

MANUFACTURE CONTRACT (ISTISNA'A), CONCEPT, IMPORTANCE & RISKS

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Abstract

Purpose of the study: This research deals with Manufacture Contract (Istisna'a contracts) Arabic (الإستصناع) in terms of their concept, importance, and risks related to them; as one of the means used by Islamic banks to meet the individuals special needs of goods and products that require special specifications.

Methodology: The study is based on the descriptive approach that gave a clear picture of Istisna'a is a contract and as a financing formula. It is meant by the terms and conditions of its validity and legitimacy, distinguishing it from the other financing forms witnessed by the banking reality, the methods and procedures of its application and its importance.

Results: it does not stipulate what is required in the peace contract to accelerate the price, a contract that recognizes contemporary jurisprudence in need of modification and development to be removed from its traditional image to a new image through which it is able to accommodate the fate Greater than the requirements for industrial finance. Given the importance of this contract in the field of industrial investments carried out by Islamic banks, the many questions that may be raised about its legitimacy, its relevance to other contracts, the risks faced by banks in applying it, and the solutions that must be prepared to address it, we have chosen it to be the subject of this study.

Applications of this study: This research can be used for the universities, teachers, and students.

Novelty/Originality of this study: In this research, the model of Manufacture Contract (Istisna'a), Concept, Importance & Risks is presented in a comprehensive and complete manner.

Keywords: *Manufacturer, Contract, importance, goods, products, modification, accommodate.*

INTRODUCTION

The importance of the research subject; the circumstances of the Istisna'a emergence, the justification for its progress and the increased need for it.

Istisna'a is a contract between two parties, the demander which is the one who requires the manufacturing of the product and the other is the "manufacturer", who possesses the expertise and skill necessary to manufacture the product according to the specifications required by the demander, for a certain price paid by the demander to the manufacturer in premiums or deferred payments, also it required a contract, that is characterized by special flexibility, since it does not require prepayment of the entire price of the product upon contracting.

Istisna'a is considered one of the Islamic financing methods based on selling and has an active role in:

1. **Industrial finance:** This is closely related to the manufacturing process, especially the manufacturing industry through which primary products are converted to other products that achieve greater value-added. This will help in manufacturing of equipment, machinery, ships, and aircraft; also help financing communications equipment, hospitals, transportation, and distribution network systems for electricity, water, steam and other.
2. **Real estate financing:** It allows the financing of infrastructure projects, the financing of housing projects by building houses on the owner of the land, or the land of real estate group, as well as the construction of prefabricated buildings.
3. Contributes directly to income generation, production of goods, and provide employment and work opportunity, in addition to increasing export opportunities.
4. Encourages and helps to optimize the use of technological talents and capabilities in the production of capital goods in Islamic countries.

People have become acquainted with this contract, because of the need for it, Every member of the community has his own multiple personal needs, It is certainly distinguished from the needs and requirements of other individuals, what works for one of them may not fit others; Clothes that fit a fat person are not suitable for the thin person; the ring, which was stamped with the letters inscribed with the name of the owner is not suitable for other rings owners, in addition to the different tastes and desires between people would give each one of them the right to choose what suits his taste of the things used by him, so individuals began to look for industry professionals; asking them to manufacture their own things that meet their needs and tastes at a certain price, time and sources of materials agreed upon. This is the primitive image of the contract of Istisna'a, the sale contract in its normal form in which people contract to buy and sell in pre-prepared goods ready, no longer able to meet all the needs of individuals because of their different tastes, then the Istisnaa contract was commonly

used in all human societies where craftsmen and industries seek a sum of money to perform services and work for others, you need a specialty; such as engraving on metals, making pots and knitting clothes.

However, the importance of Istisnaa did not remain within the personal scope of individuals, since its economic importance emerged in the 19th century, with the advent of the industrial revolution in the developed country, and to take control of the backward industrial countries, to take as a source of raw materials and market for the disposal of its products, once the twentieth century was resolved, until the need to use this contract has increased, which, in our view, is a natural one that has arisen from the development and progress of the needs of individuals and their ramifications, according to the economic and social progress, the increase in the population, the development of transportation and the revolution of communications and information witnessed by the humanitarian community, lead to the creation of industrial goods by inventions and the arts of industry, which motivated the companies because of the need for them to meet precise specifications, to resort to factories famous in the industrialized countries in the world and recommended manufacturing them, this included, for example; food, medicines, preventive and curative health measures, in addition to agriculture, pest control, packaging, writing, printing, lighting, heating, cooling and others, then the Istisnaa contract became a mean to achieve the common goal of industry and trade, which is to meet the needs of the community, and was used in the manufacture of major goods from the mechanisms and equipment such as; trains, aircraft and giant ships, even the same machine factories all the equipment, has been purchased through Istisna by those who want its manufacturing and its production capacity that may not be available in what is ready and already in the market.

Which is normal, in our belief, it arose from the development and progress of the individuals needs and their ramifications, while in the Muslim community, despite the existence of industrial activity and durable industrial products such as clothing, furniture, ornaments, swords and armor which exists since the first centuries, however, the emergence of the Istisnaa contract was delayed; it was known during the fourth century AH, where the industrial activities had spread in the Islamic countries, after the expansion of conquests and expansion of the Islamic State and the entry of a new skills and also new cultures, while Before that, it was common practice among people to buy finished goods from the market, instead of contracting it to be manufactured precisely for them, but some of the early historians mentioned the fact that Istisna'a was known since the era of prophecy, due to the fact that the ring of the Prophet (peace be upon him) was made by means of an Istisna'a contract without specifying the terms of this contract.

Contemporary jurisprudence recognizes the fact that the Istisna'a contract in its traditional form and before the current development; was not the perfect tool to finance industries, but only limited to finance capital real estate projects, and could not cope with the phenomenon of large production and the need for industrial finance of large capital and focused funding function in the banking system, and because of this, the direct financing of industrial companies is rarely provided by Istisna'a in Islamic banking transactions, despite the possibility of the bank entering Istisna'a contract with an industrial company, under which the Bank shall be the demander of manufacturing, while the Company shall be the manufacturer (the supplier), Provided that the company produces certain industrial production for the bank account, the company then assumes the role of the Agent in marketing the industrial production on behalf of the bank, But this formula is not acceptable to banks, because it makes the bank vulnerable to risks that are difficult to predict, in addition, the agent can't guarantee the bank profit, also the agent can't protect or backup the bank's from price fluctuations in the market.

All this prompted Islamic banks to adopt an alternative form of Istisna'a, based on the idea of linking two integrated contracts; first, the Istisna contract was between the client as a demander of manufacturer, and the bank as a manufacturer, the second contract was the parallel Istisna between the bank as the demander of manufacturing and the real manufacturer, this new structure would have addressed the risk associated with direct financing.

RESEARCH PROBLEM

It seems from the above that the Istisna'a contract was unique in its appearance and conditions of development, although it is a contract of great importance in the field of manufacturing. However, by adopting some contemporary jurisprudence, it still needs to be modified and developed to be removed from its primitive, Through which it can absorb the bulk of the requirements of industrial finance away from the risks facing it, to take its place in the Islamic banking institutions in the presence of another contract is the peace contract approved in the sale of the wrong, which was the way for the contractors to reach their needs of manufactures and contracting She has a grave For its existence.

This contract has raised many questions before us. What is meant by the Istisna'a contract and what are the conditions that must be met for its health? How legitimate? As a means of financing based on deferred sale, what is the difference between it and the absolute sale, holding the peace and holding the lease? How important is Istisna'a as a financing formula in the areas of economic and social life? What is the parallel Istisna? What methods and procedures do Islamic banks apply? What are the risks to its application? How does the problem of price fluctuations of manufactured goods that the bank can face in the period between the contract date and the date of delivery be resolved? What is the advantage of hedging that characterized the contract Istisna?

RESEARCH METHODOLOGY

The study is based on the descriptive approach that gave a clear picture of Istisna'a as a contract and as a financing

formula. It is meant by the terms and conditions of its validity and legitimacy, distinguishing it from the other financing forms witnessed by the banking reality, the methods and procedures of its application and its importance.

We also tried to consider the extent to which we have texts, judgments, and views of contemporary jurists on this new form of financing in both its doctrinal and applied aspects, in order to establish a general principle of the role it can play. Istisna'a was held in the service of industrial projects and opened promising prospects for industrial development in communities.

THE STRUCTURE OF THE RESEARCH

The study in this research will be according to the following structure:

1. The concept of Istisna'a contract
 - A. Definition of Istisna'a contract and statement of conditions
 - i. Definition of Istisna'a Contract
 - ii. Conditions to be fulfilled for the validity of the Istisna'a contract.
 - B. Self-contract Istisna
 - i. The legality of the Istisna'a contract.
 - ii. The difference of Istisna'a contract from the other financing formulas.
2. The importance of the Istisna'a contract and its application in banks and the risks it faces.
 - A. Importance of Istisna'a contract
 - i. Importance of holding Istisna in itself.
 - ii. Importance of Istisna'a in the industrial field.
 - B. Application of Istisna'a in banks.
 - i. Methods of applying Istisna'a by Islamic banks.
 - ii. Procedures for applying Istisna'a in Islamic banks.
 - C. Third demand/risks facing Istisna'a contract.
 - i. What are the risks facing the Istisna'a contract?
 - ii. Istisna'a contract and the problem of fluctuating market prices.
- iii. Hedging Advantage in Istisna'a Contract.

The first topic

Concept of Istisna'a contract

Istisna'a is one of the contracts that received considerable jurisprudential attention; and provided it with several definitions that may differ from each other in the wording of the verbal, but they meet in the focus on the status of the contract the conditions that must be provided, the legitimacy, while highlighting the nature that makes it distinct from other forms of funding, and therefore we will divide This section into the following demands

The first requirement

Definition of Istisna'a and its conditions

The interest of jurists, scholars, and jurisprudential councils Reflects in devising definitions of Istisna 's great importance in this contract.

First Purpose: Definition of Istisna'a Contract

Istisna'a in the language is the request for workmanship, and requesting the Istisna'a means asking for its manufacturing: As for the term, it is stated in "The Masterpiece of the Fuqaha" of al-Samarqandi that it is: Contract on the future sale provided that the manufacturer makes it". Al-Kasani defines it as: "Istisna'a is pre-conditioned future sales based on the manufactured products". Al-Babarti (may Allaah have mercy on him) said: "The utilization is that a man comes to a manufacturer and says to him, 'Make me something with this description and cost this much, and he may pay the cost now or later", Ibn al-Hamam said: "Istisna (the utilization) is the request for workmanship, which is to say to the manufacturer of a shoes or cube or a cooking pot " make me a shoes with such length, a pot with such capacity and a pot with such capacity and gives the price named or does not give anything, and set and wait for the manufacturing, while Ibn Abidin

defines it as: "The requesting of making a special thing for specific purpose" ([Al-Ayadi, 2010](#); [Meera, 2011](#); [Samhan, et al. 2012](#); [Khalaf, 2006](#); [Makkawi, 2012](#); [Tajeddine, 2013](#); [Badran, 1979](#); [Al-Qari, 2004](#); [Al-Jazzar, 2009](#)).

It is also defined as: "the buyer requests of the "seller" someone to manufacture something genuine of a certain price, provided that the buyer shall provide all materials." While the Codes of justice Journal defined it as in Article / 124 as: "the Contracting with a "manufacturer" to make something specific in the condition of later payment." The Islamic Fiqh Academy defined it in Resolution No. 66/2/7, as: "A contract to manufacture with later debt payment that is binding for both parties if the articles and conditions are met." Which is "a contract by which it buys immediately what is made, the seller undertakes to provide it with materials of his own with specific descriptions and at a fixed price".

Based on the above-mentioned definitions, it is clear to us that this contract has conditions that must be met for its validity and these could be summarized as follows:

First: it is a contract; it has the elements of the absolute contract of sale; the text - the affirmative and the acceptance - and the two contractors – which are the buyer and the seller and the contracted item, and the price of the manufactured item. it is not merely a promise but an agreement between a seller who is a manufacturer and a purchaser.

Second: the place of Istisna'a is not something specific, it is in the seller's possession at the time of contracting; it is nothing that the seller undertakes to manufacture and find in the future; it is a debt in the seller's possession.

Third: the item requested to be manufactured: must be known; that the two contracted (the buyer & the manufacturer) need to precisely identify the specifications of the item insufficient details to eliminates ignorance, misconduct and prevents conflict upon delivery when the delivery by mentioning the nature of the manufactured and type and, therefore, all quantities, qualities need to be clearly defined and verified

Fourth: Raw materials used in the manufacturing process of the required product must come from the manufacturer, not from the inquirer who should buy them if he does not have them. If the inquirer introduced the materials to the manufacturer, then turned out to be lease contract and not an Istisna'a contract.

Fifth: the manufacturer must do the thing required to manufacture it. If he does not manufacture it, he is obliged to hire others to make it with a wage from him, because the inquirer of the manufacturing (the buyer) need to be known for his integrity, without stipulating the manufacturer or the material from which the goods are made.

Sixth: That the manufactured item is actually made on, for this manufacturing contract may not be made on natural things that are not manufactured, such as grains, vegetables, fruits, and others.

Seventh: The price of Istisna'a shall be determined precisely in terms of qualities and quantities, in a manner that is not subject to dispute, while payment could be paid in advance, deferred or installment.

Eighth: Dr. Mohamed Zaki Abdel-Barrm went further by commenting: "There should be no specific duration of the contract; If the "term" is included then the contract will be called "Salum" and not a "manufacturing contract", then the rules and conditions of "Salum" contract will apply to it; Because the determination of the "term- duration" show that the will of the contractors have gone to the "Salum" contract, since the contracts are named by their meanings not words and writing, and therefore the price must be stated when the contract is set and set a known time for the delivery of the work ([Al-Ayadi, 2010](#); [Meera, 2011](#); [Samhan, et al. 2012](#); [Khalaf, 2006](#)).

Ninth: also the delivery location of the manufactured items needs to be stated.

But could the Istisna contract include other conditions than the above? Especially after it had become important financing means in the field of banking?

Dr. Abdel Ghani Hassan Abu Ghada mentioned that: "(That there is no Sharia impediment in commercial and financial institutions to take precautionary measures, such as the presence of penal conditions placed on factories and manufacturers involved in projects, in order to guarantee their rights and the rights of depositors and investors, who authorized them to invest their money through the Istisna'a contract, and the confirmation of the other party (manufacturer) that the fulfillment of the contract and its requirements, and his obligation to deliver the contracted items on time, which is consistent with what was issued in the decision of the Islamic Fiqh Academy no. (109) at its (12th) session, it read: "A penalty clause may be required in all financial contracts except for contracts where the original obligation is a debt, then this is an explicit "Riba", based on this, the condition may be, for example, in contracts agreements for the contractors, the supply contract for the supplier, and Istisnaa contract for the manufacturer, If they did not comply with what they had committed to or delayed the implementation, and it is not permissible in the Istisna'a contract the party that required the manufacturing, if they are late in performing what they should do.

We support the view of some researchers that the contracts of Istisna'a can include conditions such as:

- A condition related to training, installation and maintenance services provided that the cost of these services is less than the cost of manufacturing the required product.

- A condition that prevents the manufacturing bank from authorizing the who is the agent of the client - convinced to start the industry - the implementation of the fear of the contract to become an interest loan ([Badran, 1979](#); [Al-Qari, 2004](#); [Al-Jazzar, 2009](#)).

Second Purpose: the legitimacy of Istisna'a Contract

Since the Istisna'a contract is: "a contract on a commodity that does not exist at the time of the contract", the question may arise as to whether it is permissible according to Sharia or not?

The majority of the Hanafis - contrary to Zafar - went to the conclusion that the Istisna'a contract was legitimate, Whether paying the price right when contracted, or part of it was paid, or the payment had been fully or partly delayed until delivery date, or even after delivery in one installment or in installments; which is already been recognized by the Islamic Fiqh Academy of the Islamic Organization Conference, and the Shari'a Council of the Accounting and Auditing Organization for Islamic Financial Institutions, which has also been taken by a large number of Shariah bodies of Islamic banks and financial institutions.

This is based on the jurists of the Hanafis in their ruling on the permissibility of Istisna to the Sunnah of the Prophet; the Messenger (PBUH) for Istisna platform for a Masjid, a ring and his actions made things permissible, upon comparing the action the sale is permissible, for it is the sale of what is not in man, not in peace, The Messenger of Allah (PBUH) forbade the selling of what doesn't the person have. But it is permitted in "Salum", It is permissible to be done in the consensus of the people on that, for reasons such as:

- The practical consensus of the people to practice it and deal with it without any denial.
- The need calls for it: because the person could need a special thing of special type, with specific quantity, and specific style, and does not find it manufactured, therefore, he needs to manufacture it, and If we're not allowed to do so, then people will feel embarrassed, which Shari'a is held responsible to overcome this embarrassment.

Istisna 'is also permissible because it means two permissible contracts, namely "Assulum" and "Ijara", since "Assulum" was held on sale on Dima basis, and the And hire "Assunna'a" is conditioned by the action work, and since the two contracts are permissible, then the "Istisna'a" contract is permitted ([Al-Ayadi, 2010](#); [Al-Jazzar, 2009](#)).

Third Purpose: Distinguishing the Istisna'a contract from other contracts

The Istisna'a contract and the "Assulum" contract having one thing in common that they both are based on the debt-based mode of financing. Also the Istisna'a shares with the absolute contract that they involve the exchange of a commodity with price. It also approaches Ijara because it is contracted to work. However, the Istisna'a contract has different things In these contracts, we have been able to show them in this purpose to reflect the economic importance that led the banks to invest and use their own resources and the resources of others in industrial projects through it - through Istisna.

First: distinguishing between the Istisna'a from the Assalum contracts.

Although Istisna is considered by many to be one of the types of "Assalum" in industries, those who distinguish between Istisna and "Assulam" see that there are many differences between them, according to the following:

1. Istisnaa is done according to the items manufactured, and could not be applied to natural things; such as fruits and grains, and so on, for selling these natural products it will be sold according to Salam contract only.
2. It is not necessary to expedite the determination of the price in Istisna'a, but it must be known by determining the quantity and quality of the produced item. Then the price in Istisna'a may be hastened all or deferred, or paid in installments, As in the normal sale, this is a major difference between Istisna and Salam, which shows the advantage of Istisna'a, as for salam, it is shown in (Rowdet Altalebeen) that: "... It is not permissible in "Istisna" unless it is paid for it, and this is a purchase of an item with guaranteed status, and the item should be in accordance with its description.

In "Assalam" is paid in advance, the capital is paid in advance, While Istisnaa is based on the delayed payment since each party is responsible for their part, the factory is occupied by producing the specified product, while the buyer is occupied by the cost of the finished product. The Istisna'a contract is not binding on its parties, whereas the "Salam" contract is binding on its parties ([Khalaf, 2006](#); [Makkawi, 2012](#); [Tajeddine, 2013](#); [Badran, 1979](#); [Al-Qari, 2004](#)).

Second: the distinction of Istisna'a from the lease contracts.

1. A contractual contract in the lease contract is the benefit of the product, while the Istisna contract is the product to be used and its benefit.
2. What is needed for the work of raw materials in the lease contract is provided by the buyer and not the manufacturer, While in the Istisna'a contract, the substances or raw materials from which the manufactured object is manufactured and all other accessories or essential materials required by the work, or extras required by the customer, are all provided by the manufacturer from and the buyer of this manufacturing does not provide anything Because it is calculated in the price already, and he buys the whole thing. The maker of Istisna'a offers two things that are fully integrated, namely,

the item and the manufacturing, or according to the economic expression, a commodity and a service. While in Ijara, he only offers work, service or benefit.

3. The person who performs the task of Istisna'a gets a reward for it, which is the cost includes manufacturing costs and work, while in the Ijara contract, it is the wage which is considered the price of labor Performed in accordance with this contract.
4. The Istisna'a contract is permissible and non-binding, whereas the Ijara is as agreed upon by a non-binding contract between the parties, although others consider the Istisna'a contract to be a binding contract in the event of an Ijara contract.

Third: Distinguishing the Istisna'a contract from the regular sale (absolute sale).

The scholars of the Maalikis mentioned several types of Istisna, and shifted one of them from the sale type; that is when a person asks for a manufacturer, for example, to make him a pot from a specific copper, then it is a conditional sale that requires the commencement, to the ruling, they also added and some of the forms of Istisna'a to be included in the section on selling and renting. Some of the Hanafis said that Istisna 'is a lease at the beginning that is transformed into sales in the End.

However, Dr. Mustafa Zarqa goes to: "The Istisna'a contract is a kind of sale subject to general sale provisions; but by virtue of being a special kind with characteristics that it must have its own obligatory, to have exceptions of the provisions of the ordinary sale," Therefore, it is possible to distinguish between Istisna'a contract and the sale contract through the following points:

- 1- The Istisna'a contract is a type of sale located where the product will be manufactured by contracting in a specified period, where it is not available at the time of the contract, and the seller undertakes to manufacture it.
- 2- The seller in the contract of sale of all kinds shall be bound by the delivery of the sale in order to perform the intended purpose thereof, free from any defect before it is delivered to the buyer, and that the seller is committed to ensuring the hidden defect by law without the need to require that in the contract, the exemption from liability for the defects of the sale, which need a condition in the contract, while the manufacturer conditions in the contract of Istisna not responsible for the defects of the sale to be manufactured (or identified) has been silent in legal texts, such a condition, in Istisna'a, is considered invalid, and that the manufacturing seller remains liable to the purchaser who is satisfied with the full liability for the defects of the thing to be manufactured for the buyer, and that the invalidity of this condition from the exceptional provisions of the ordinary sale rules, because this requirement in Istisna'a protects the seller's bad faith and moral corruption, is contrary to the rules of public order, which is bound to the contracting authority of law in the law world, and contrary to the purposes of Islamic law in the eyes of jurists. While in the normal sale; if the seller required to be exempted from responsibility for the defects of the sale or to limit his liability to a limit not exceeding it, providing his good faith, (Non-spoiled for the defect he knows and mute), then this is true in the view of positive law and absolute in some doctrines of Islamic jurisprudence, and is not true in most doctrines of jurisprudence only in special cases.

Istisna' (Manufacture Contract), concept, importance and risks

Abstract

This study deals with the concept, significance, and risks of the **Istisna'a contract (Manufacture Contract)**. As one of the means used by Islamic banks to meet the needs of individuals in terms of goods and products that require special specifications. **Istisna** is a financial instrument in Islamic finance in which a manufacturer agrees to complete a construction project on a future date for a fixed, agreed-upon price and with product specifications that both parties agree to. The only difference between the two would relate to the type of commodity (manufactured commodities for istisna'a); elements and conditions of validity of the contract would be the same as for Salam.

Due to the importance of this contract in the field of industrial investments carried out by Islamic banks, and due to many questions that can be raised on its legitimacy, its relation to other contracts, and the risks faced by banks when applying it, we have decided to carry out this study.

Section (1) / Importance of Istisna' (Manufacture Contract)

This section includes discussing the importance of the Istisna'a contract itself and its importance in the industrial field in the following two topics:

Topic (I): The importance of the Istisna Contract in itself.

Istisna'a is a contract; it is of great importance that it is needed in human life, where Allah states that individuals are different according to their abilities what makes them need each other. Allah said, *“Do they distribute the mercy of your Lord? It is we who have apportioned among them their livelihood in the life of this world and have raised some of them above others in degrees (of rank) that they may make use of one another for service. But the mercy of your Lord is better than whatever they accumulate...”* The client in the Istisna contract needs those who manufacture the good it wants,

and the manufacturer needs the money, in addition to its importance to society. This importance has prompted banks to use it extensively to support industrial development efforts and increase their capacity.

The importance of Istisna'a is a contract stems from that it has great facilitation for dealers; It covers two important aspects: the contract of delivery, which does not require the existence of the goods that must be delivered, but the price must be delivered when contracting according to the view of the majority of jurists, or within three days according to the view of the Maalikis, and the deferred sale contract which does not require delivery of the price, but the good must be delivered to the buyer.

Accordingly, the importance of the Istisna contract is realized for the manufacturer, the client and the society according to the following:

1. **As for the manufacturer;** he knows that what he makes was previously sold and made sure he gained profit and knew the amount of profit. So, it works with reassurance. Without the Istisna'a contract, the manufacturer may need a period to market it and may suffer losses until he sells the product, and the goods may become stagnant, then the loss will be double in terms of the work and materials.
2. **As for the client;** he gets what he wants regarding the quality he wants; he does not have to buy what may not be suitable for ready-made goods, in addition some equipment is not ready-made but must be to be exclusively manufactured upon demand, like houses and buildings. As the client is reassured that he is following the manufacturing process himself and there is no fraud in the product manufacturing process.
3. **As for society;** through Istisna'a, money moves from one side to another, thus reviving the economic movement in the country. Therefore, many Muslim economists call for assigning such works to Muslims in order to revive their economy and increase their sources of income Istisna'a .allows specialists to full-time work in their specialties. If a university professor wanted to construct a house and he does not find anyone to do it, there would be great harm to the community by employing this university professor. This would deprive his students and society of his knowledge. Also, a man cannot do everything he wants himself and cannot do any work himself, he always needs others.
4. It is worth mentioning that the Istisna'a contract is one of the deferred contracts, which contributes significantly to increase the volume of trade, so it is not limited by the cash available or even the available commodities. This increase leads to the recovery of the economy and helps to fight unemployment in society, especially in this era in which the percentage of deferred commercial transactions is higher than cash transactions.
5. It is worth mentioning that the popularity of the Istisna'a contract could not have been achieved but after the scholars of the Hanafi (Muhammad and Abu Yusuf) authorized the possibility of identifying the duration of the Istisna'a contract by the parties, which gave it the flexibility of jurisprudence to become the base of future Islamic contracts.
6. Istisna'a contract is characterized by hedging. "The Istisna contract, as established by the Hanafiyah jurists, reflects reasonable and rational economic behavior because it is unreasonable to accept that the client pays the full amount to the manufacturer if he has any doubt regarding the manufacturer's ability to manufacture that commodity in accordance with the required technical specifications at the time of delivery, or the ability of the manufacturer to meet the required quantity of the commodity, ie, the client takes care against the quality risks when paying part of the price to the manufacturer and the remaining sum of the price is deferred to the delivery date. Accordingly, this contract includes the clients 'carefulness against the manufacturer's inability to meet the production of required commodity. When the client pays part of the price and defer the remaining sum of the price until the delivery date, he hedges against the risk of failure of the manufacturer to produce the required amount of the item, which are two acceptable reasons for the jurisprudence of Istisna'a to not provide as a condition the prepayment of the price clause in Salam contract. "

On this basis, the Istisna'a contract is preferred to Salam contract, although both are futures contracts. In the Salam contract, the price is deferred. Al-Qurtubi said: "The sale of Salam "Salam contract" is necessary for the parties to the contract (seller and buyer); the buyer needs to buy the" fruit "and the owner needs the price before the maturity of the fruits to spend on these fruits.

As for the sale of Istisna'a, the scholars of the Hanafi have permitted the postponement of the price and delivery of the commodity in the contract. Dr. Mustafa Al-Zarqa pointed out that the importance of Istisna'a lies in the possibility of delaying the price and delivery of the commodity. He said: The Istisna'a contract, which does not include the need to accelerate the payment of the price, is the right solution. It is possible to sell a commodity that is manufactured because of the need for it before it was manufactured in an era in which the industry, its arts, and innovations based on scientific discovery are continuously increasing.

The Istisna'a contract is preferable to the Murabaha contract. The Islamic banks avoid through istisna'a contract the application of Murabaha for in favor of the buyer because the parties of Murabaha contract do not adhere to this contract. They sometimes use part of the fund to finance some Murabaha transactions when constructing houses, where the client resort to crooked methods to collect the wages of construction workers which cannot be financed from Murabaha. This is a real problem faced by Islamic banks, so Istisna'a saves both the bank and the client from violations that may be occurring.

Istisna'a can also be used to finance high-priced goods that are custom-made such as aircraft, ships, etc., where Murabaha sale contracts are not effective in financing such commodities.

Section (II): the importance of Istisna'a contract in the industrial field

It can be said that the Islamic Bank can, through Istisna'a, finance the needs of industrial enterprises, which are huge and important for investment in the industrial sector, which plays a vital role in modern economies. This is a substitute for interest, and the Bank earns a legitimate profit of capital and the expected profit from Istisna'a financing.

Accordingly, the economic and social importance of Istisna'a can be defined as an Islamic financing method as follows:

1. The importance of Istisna'a stems from the importance of industrialization, especially in relation to the manufacturing industry through which raw materials are converted to other products that achieve greater value-added, which is the most important sector in achieving economic development, because the manufacturing sector contributes directly to income generation, employment and exports because development of this type of industry is not hindered by obstacles and natural determinants, as in agriculture, which development depends on natural determinants such as arable land, water, and climate.
2. Istisna'a is currently expanding to include many economic activities, which have become expressed as an industry, such as the transport industry, the construction industry, and others, and the industry expanded to include non-productive economic activities such as tourism, media, and cinema industry.
3. The Istisna'a contract is characterized by special flexibility that combines the Murabaha formula with the buyer and the diminishing participation in the Muntahia Bittamleek, a position in which Islamic banking institutions can build various industrial complexes. For example, if we take for example the request of one of the institutions dealing with the bank Istisna'a private building of the company to work as a hospital, in the case of Murabaha, the institution is provided with building materials only, and the payment of the financing plus the profit from the client's own resources, The building is constructed by the owner by a contractor, the bank pays the contractor costs and the bank recovers its capital in the project revenues only. In Istisna'a, the bank will construct the building according to the specified specifications. It will be delivered on time. The owner will pay his obligations, including the value of the project, plus an agreed profit on the dates specified from his own resources. Thus, the bank can serve a large sector of industrialists in particular.
4. The Istisna'a contract is characterized by special flexibility that combines the Murabaha method for the buyer and the diminishing lease-to-own, a quality through which Islamic banking institutions can build various industrial complexes. For example, when an institution requests the bank to establish a private building for the company to be a hospital, in the case of Murabaha, the institution is provided with building materials only. The value of the financing plus the profit is paid from the client's own resources, whereas on the basis of lease the building is prepared by the owner by a contractor, the bank pays the contractor costs and the bank recovers its capital in the project revenues only. In Istisna'a, the bank will construct the building according to the specified specifications. It will be delivered on time. The owner will pay his financial obligations, including the value of the project, plus an agreed profit on the dates specified from his own resources. Thus, the bank can serve a large sector of industrialists in particular.
5. Istisna'a serves the interests of the client, who often lacks sufficient experience in evaluating many of the work or the time necessary to follow up or the money required to finance the project.
6. The development of the Istisna'a contract by Islamic Bank employees and clients alike helps greatly in operating the huge liquidity that is usually found in Islamic banks.
7. Istisna'a is an innovative form of financing as a contract for the financing of the commodity industry. This type is suitable for pre-shipment financing. The first who applied this tool was the Islamic Development Bank, which is responsible for assisting in the development of foreign trade, especially in production and capital goods among member countries.
8. Encourages the Istisna formula and helps in the optimal utilization of technological talents and capabilities in the production of capital goods in Islamic countries.

Topic (II): Application of Istisna' in banks

Istisna'a contract is a contract in which the characteristics of financing are available, through which the bank provides the client with the item manufactured for him and collects the price thereof in installments. The bank also contracts with the manufacturer to pay the price until the end of industrialization, less than the amount received from the client, which generates a profit for the bank. But the question that is raised in this regard is: how do Islamic banks serve investors dealing with them through this method, and then how to serve society and the economy to meet its needs, and contribute to its development? What are the actions of the Islamic banks in the UAE in this regard? These questions will be answered in the following two sections:

Section (I): Methods of application of Istisna by Islamic banks.

Islamic banks in the application of contracts Istisna'a one of the following methods:

1. **Direct Istisna (bilateral).** It is Istisna'a through which the manufacturer manufactures the agreed commodity and bears the value of supplies and the work required to manufacture, that is, the manufacturer of the product provides materials and work. Construction is part of Istisna'a when construction contractor provides all that is required for construction from the beginning to turnkey, and it includes construction contracts for the construction of buildings either for residential purposes or for other uses.
2. **Indirect Istisna'a (multilateral):** It is also called Parallel Istisna'a ; it is under which the manufacturer asks other party to do the job, and sign a new Istisna'a contract with the same specifications required, and the second party (the first manufacturer) and the third party (the subcontractor) share the profits achieved as a result of this process of Istisna'a .
3. **Istisna'a in installments:** The process in which Istisna'a is done bases on payments (installments) and stages of completion of the Istisna process. If the process is to build an industrial complex or a residential building that requires large financial resources, Istisna'a can be made in successive financial installments and according to the stages of Istisna'a. For example, in the case of the industrial complex, there is the feasibility study stage, the construction stage, Importing machines and installation of these machines ... etc. This can apply to construction projects so that payments in terms of amount are commensurate with the costs of the stage to be paid for completion and within the total costs of the project.
4. Establish projects which task is to manufacture something specific, such as building factories or houses, where Istisna'a bonds are dedicated to financing the process of Istisna within the specifications of the process and then delivered to the client.

Section II / Procedures of application of Istisna in Islamic banks

Some of the firms of Istisna'a are manufacturing of clothing, food and electrical appliances, household, mobile phones and computers, printed books, newspapers and the work of decorations, the manufacture of industrial equipment, trains and their stations, ships and their ports, airplanes and their airports, the construction of buildings such as residential complexes, hotels, tourist resorts and many others needs of the peoples and countries, especially in the current era.

And the construction of industrial buildings, trains, ships, aircraft and airports, and the construction of buildings such as residential complexes, hotels, resorts and many other needs of the peoples and nations, especially in the present age.

Islamic banks in the United Arab Emirates have contributed to the financing of residential and investment buildings in the Istisna'a system, through which they have played a major role in solving many contemporary problems. Islamic banks provided the manufacturers with raw materials, In addition to the work, and they have contributed to several other industries. They have also concluded Istisna'a contracts with their clients. The most prominent of which is the real estate field, and the following is the method applied through Istisna real estate in one of the Islamic banks:

1. The client submits to the bank an application to construct a building for him. A detailed report, by the consultant supported by drawings and maps, shall be attached to clarify the type and specification of the building he wishes to construct. He also attaches the ownership drawings, the land drawing, an initial plan for construction and a brief report from the architect who designed the building, so the report includes the cost of construction and its estimated revenues.
2. The client also submits with his request his estimated cost of the building, the down payment to be paid, the land area, its location, the guarantees it provides, and the method of payment.
3. The bank shall carry out a specialized technical feasibility study for the project by the engineers of the bank, accompanied by a financial study and estimated the expected revenue and its ability to cover the installments.
- 4- If the bank approves the offer of the client, then he is required to provide the necessary guarantees.
5. After the final agreement, the Bank signs an Istisna'a contract with the client specifying all the rights and obligations of each party. The most important part of the contract is the price of the building, the date of delivery according to the specifications, the period of payment, the value of the payment and the value of the down payment paid.
6. After signing the Istisna'a contract between the bank and the client, the bank signs another Istisna'a contract with the contractor who won the bid through the tender – which is called parallel Istisna'a - and the client 's relationship becomes direct with the bank and has no relationship with the contractor.
7. The contractor shall submit a bank letter with a certain percentage of the value of the project. – Good Performance Bond- and the bank reserves from each payment to the contractor a certain percentage as an as a good performance bond to be paid to him after the completion of the manufacturing conforming to the specifications and 5% as project maintenance warrantee for one year.
8. If the client fails to pay his debt on the specified dates and does not pay the amount of the installments, the bank gives him a grace period and helps him to find the solution, and then the bank has the right to take action on the mortgage and offer the property for sale.

Topic (II): The risks of Istisna'a contract

Despite the great importance of the Istisna'a contract in the various areas of economic and social life, it involves a range of risks faced by the Bank when it is activated. This is the case for most of the financing methods used by the Bank. This led the jurists to search for means or solutions to face these risks, thus, has the Istisna'a contract been able to retain its importance and advantages despite all the challenges and obstacles facing its application? Has it been able to overcome the problem of fluctuating commodity prices in the market between the time of the contract conclusion and the delivery time? We will answer these questions in the following sections:

Section (I): What are the risks confronting the Istisna'a contract?

The risks facing Islamic banks vary when applying Istisna'a. The most important of these risks are those related to Istisna'a itself, credit risk, market risk, operational risk, and liquidity risk. We will briefly describe them with the solutions presented to confront, as follows:

First: Risks related to the Istisna'a contract. These risks can be summarized as follows:

- 1. Manufacturer related Risks:** These are the group of risks relating to the manufacturer, because of the lack of sufficient experience of the manufacturer, which affects the quality of the product and the length of delivery time or because of lack of technical or financial capabilities.
- 2. Client-related Risks:** These risks are due to lack of sufficient experience in determining the specifications of the product, which allows the manufacturer to act and deliver goods contrary to what the client expects.
- 3. Product-related risks:** These risks realize when the product needs special conditions during manufacturing, transport, and storage, such as the pharmaceutical industry. Regardless of which party assumes responsibility in the event of damage to the goods, additional risks will arise from the nature of the goods.
- 4. Duration of the contract-related Risks:** The longer the duration of the contract is- whether the manufacturing period or the repayment period - additional risks will arise, which are the risks related to the change in economic conditions which occur after the conclusion of the contract.

Second: Credit risk; these risks relate to the risk of settlement or inability to deliver by the manufacturer in the parallel Istisna'a contract or the risk of non-payment by the client in the initial Istisna'a contract. In order to avoid these risks, they must be covered by an appropriate choice by the manufacturer and with sufficient guarantees against Istisna'a debt.

Among fiduciary risk may also include the risk of replacement arising from the failure of the manufacturer to meet the terms of the contract, which leads the bank to replace the contract with another one, but at the current market price resulting in a loss due to the difference in the price of the contract and the current price.

These risks also include risks arising from the lack of ethical standards in the manufacturer and client in the case of parallel istisna'a (parallel manufacturing) and lack of administrative efficiency. Such risks may also arise from the delay of the manufacturer in delivering the product to the client on the agreed date so that the institution delays the delivery of the product to the client, and thus, the burden of paying the penalty clause will be met.

Third: Market risk: These are represented by the risk of loss due to changes in market conditions. These risks can be classified as follows:

- 1. Profit margin risk or so-called reference price:** Islamic banks may not appear to be exposed to market risks arising from changes in interest rates as long as they do not deal with interest rates, but changes in interest rates pose some risk in the income of Islamic financial institutions because they use reference price to determine the prices of their various financial instruments.
- 2. Exchange rate risk** in the case of first purchase in a particular currency, and then when selling in another currency in parallel Istisna'a.
- 3. Product price risk.**
- 4. The failure of the manufacturer** in the parallel Istisna'a contracts to deliver the product in full according to the client's specifications does not exempt the Islamic Bank from its obligations to deliver the product according to these specifications, thus exposing it to a potential loss of obtaining the product from another place.
- 5. Risks of different specifications.**
- 6. Risk of implementation;** we have already noted that the Istisna'a method is based on two contracts: Istisna'a contract between the bank and the client, and another Istisna'a contract between the bank and (the manufacturer). In order for the Istisna'a contract to be valid, the two must be independent of one another. Due to this independence, the bank may be subject to the risk of execution, where delivery of the product on the specified date and specifications agreed upon with the client sets a responsibility to be borne by the bank and such responsibility cannot be transferred to the manufacturer. Therefore, this type of risk is borne by the bank in the event that the contractor fails to fulfill its

responsibilities properly. This is a serious risk. Therefore, the banks seek to avoid these risks by agreeing with one engineering office in both contracts so that his certificate of completing the stages with the agreed specifications is binding on the client.

7. Operational risk: The risks of operations such as inaccuracy in the execution of operations or record keeping, the risks of documenting Istisna'a contracts, the risks of internal fraud and external fraud, as well as the indulgence of Islamic banks to adequately inquire about the manufacturer and the client in parallel Istisna'a, or the risks of bad faith.
8. Liquidity risk: The risk arises from the Bank's inability to meet its obligations when they are due by providing the necessary funds without incurring unacceptable losses. In Istisna'a, these risks occur when the Bank is unable to finance Istisna'a contracts that meet the Bank's liquidity requirements.

A part of contemporary jurisprudence provides a solution to the liquidity risk, which is "the need for the contracting parties to abide by the terms of the contracts until they are implemented in order to avoid the financial risks of the futures markets in Western countries."

Section (II): Istisna'a and the problem of fluctuating market prices.

The question that arises in this regard is whether the advantages and importance of Istisna'a have an impact on the size of its practical application in the banking field, or is it limited in comparison to other forms of financing?

A part of the jurisprudence regarding the Salam and Istisna'a contracts together stating that "Despite the limited practical applications of funding through the Salam and Istisna'a contracts, there are pioneering experiments in this field, including: a number of large projects in which Al Rajhi Bank in Saudi Arabia has concluded Salam and Istisna'a contracts for the financing, including an aviation company for the purchase of 6 jet fighters (Decision of the Shariah Committee No. 80) and financing the construction of a number of public schools (Decision of the Shariah Committee No. 147) Istisna'a contract to finance national petrochemical company (Decision of the Shariah Committee No. 187), Istisna'a contract to finance furnishing a number of government schools (Decision of the Shariah Committee No. 219), and Istisna'a contract to finance the construction of a huge power plants in the Makkah region.

In addition, a number of banking professionals point out that Al Rajhi Bank has created a new product, "Istisna'a Application Program," which allows clients to obtain their own houses. This product involves the bank to build the house in full and sell it to the client in installments by guaranteeing the client's income and mortgage of the house. The program provides clients with several options: the construction of the house in full for the client on a plot of land owned by the client, or on a plot of land owned by the bank, or just constructing the house only (partial Istisna'a). The Bank has made all these options available in installments to all clients for up to 15 years.

This product is highly flexible because it also allows the owners of unfinished buildings to participate in the program for the purpose of completing the implementation after the bank assesses the completed building and the cost of completing it. It does not require the client to provide a sponsor. In addition, it is possible for the client to choose the engineering design and technical specifications of the house he wishes to own, and it is possible for two clients to conclude one single contract jointly if they meet the terms of the product, which the bank is keen to be facilitated and accessible to all.

The above shows clearly that most Islamic banks limit their interest in applying Istisna'a in the field of real estate financing, while the areas of its application can be included in all the economic fields in which the capital is mixed while working to meet the commercial, industrial, service, and infrastructure needs.

Therefore, we hope that the Islamic banks in the United Arab Emirates will expand the scope of applying this distinctive financing method in all fields that can benefit clients and investors and prepare models of Istisna'a contracts that comply with the provisions of Islamic Sharia-Preparing the feasibility study for the project, choosing the manufacturer through the tender and contracting with him via Istisna'a contract and with the consultant via supervision contract - and also includes guarantees and good performance bond, as well as procedures to conduct the transaction, which varies naturally from an Islamic bank to another.

An analysis of the reality of the Saudi banking market - the region's largest and most developed economy - issued in March 2008 showed that financing through Istisna'a accounted for only about half percent of the Islamic finance market in Saudi Arabia (0.6%), compared to Murabaha (26%) and Tawarruq (64%).

The most important reasons that prevent the expansion of funding via Istisna'a is the so-called capital risk; since the prices of goods are different and vary from the time of the contract to the time of delivery deadline, which would have a major damage to one of the parties; this causes banks to refrain from entering Istisna'a contracts because of the risk of fluctuating commodity prices.

Therefore, the amount of risk involved in the fluctuation of commodity prices in Istisna'a is an effective factor for refraining from financing. Is there a legitimate solution to activate the Istisna'a contract while addressing the risk of fluctuating commodity prices? We raise this question as part of our concern that Istisna'a is away from the risks that would weaken its ability to apply in the new areas and prospects that will extend to it in the near future.

According to some of the jurisprudence, the solution lies in taking the so-called "Istisna'a at the market price on the day of delivery." This includes: "The buyer shall deliver a specific amount of money in a commodity described in the sale of the specified unit. Or reduced by a specific percentage on the delivery day. "If the meaning of this formula is to be defined, it is necessary to specify the meaning of each of the expressions in the definition:

The "buyer" is the "customer".

A "specified amount of money" is the "price of manufacturing".

The term (to deliver), means is obliged to hasten the payment of the price, defer it or pay it in installments.

The term "commodity" means that the commodity is " a manufactured product", otherwise the contract is not an istisna'a "manufacturing" contract. [Sarker, A. \(2005\)](#)

"Described" means a description that removes ambiguity, which is one of the conditions of the Istisna'a contract.

"In debt" means that the commodity is deemed as a debt that shall be manufactured by the manufacturer.

"to be sold in the unit": The unit of measurement, which is estimated according to the contracted goods as tons, kilo and grams, the barrel and the liter for containers, piece, etc., which is a known standard in some varieties of quantities.

"The amount of the commodity is not determined by the amount in the contract session means the quantity of a good is not determined at the place where the contract is concluded", so we cannot say: the total commodity is one hundred barrels of kerosene, but instead we mention the "unit" only.

"Market unit price": the price is determined at the market price which is an important condition in this formula. The contract is not considered to be valid if it is for a commodity where the parties may differ in determining its price on the day of delivery.

"Or reduce it by a known percentage": If the product is oil is said: the quantity and amount of oil contract is determined based on the price of a barrel in the market on the day of delivery minus 10% ,this means that there is a known percentage of discount at the contract, and this percentage is the amount of profit of the manufacturer for in advance delivery of the price,

"Delivery Day": This is one of the most important restrictions in the formula of the contract; as the determination of the amount of the commodity in the contract is determined based on the unit price in the market on the day of delivery.

An example of Istisna'a at the market price on the day of delivery is that two parties contract so the client pays five hundred thousand dirhams as Istisna'a - whether it is contracted to be paid in cash in the contract session (the place where the contract is concluded) , deferred or in installments in specific maturity dates - a price of iron with specific specifications known without specifying the total quantity, so the iron quantity is to be delivered on 15/4/2018. The quantity shall be determined based on the price of tons of iron - of the type specified in the contract - on the day of delivery with a discount of 5% of the market price on that day.

If the date of delivery of the iron comes- 15/4/2018 - the price of a ton of iron is considered on that day in the market. For example, if the price of one iron ton is 3000 dirham's, 5% is deducted so that the amount contracted for one iron ton will be 2850 dirhams per ton. [Ariffin, N. M., Archer, S., & Karim, R. A. A. \(2009\)](#)

The scholars of modern times were divided in their opinion regarding "Salam and Istisna'a "at the market price on the day of delivery" into two parties: the first party says it is haram because it is one of the gharar contracts "An Arabic word meaning risk, uncertainty, or hazard. Financial products where details concerning the conditions of sale are unknown or uncertain are generally prohibited under Islamic law". Some say that it is haram because it includes riba "Unjustified increment in borrowing or lending money, paid in kind or in money above the amount of loan, as a condition imposed by the lender or voluntarily by the borrower. "and some of them depends on the Hadith Sharif as Prophet Mohammad has prohibited it saying: "*No advances and sale are permitted, no two conditions for sale, there is not profit unless warranted, nor you can sell what you do not possess*" "while the second party says that this method is valid and legitimate, and they believe that the origin in customs, transactions, contracts, and conditions is " validity and permissibility "unless there is true evidence of prohibition and prevention.

A part of the researchers believes in the validity of "Salam and Istisna'a at the market price on the day of delivery" because it is a contract that meets the conditions of its validity and does not include riba, gharar or gambling. Also, allowing this method - which we support - will support the Islamic banking process through the activation of the Istisna contract, one of the most important legal contracts that have a significant impact on the encouragement of industry and to avoid investing Muslims 'monies from their countries. Also, encouraging the Istisna'a contract will effectively reduce or diminish the financing formulas commonly used in Islamic banks today, such as securitization which leads to the expansion of debts that are not related to the actual size of economic activity. [Haron, A., & Hock, J. L. H. \(2007\)](#)

Section III: Hedging advantage in the Istisna'a contract.

There is no doubt that the solutions offered by the jurists regarding the risks of using the Istisna'a contract were intended to avoid them, while these risks can be managed and controlled through the hedging advantage of this contract.

An opinion of the Fiqh says: "The advantages of an Istisna contract based on the principle of approbation reflect a logical economic behavior because it is unreasonable to accept the buyer to pay the full amount to the manufacturer on the contract session if he has any doubt regarding the ability of the manufacturer to produce that commodity according to the required technical specifications at the time of delivery. Under the first consideration, the Istisna'a contract includes a precautionary margin in favor of the client in order to ensure the quality of the product according to the required specifications. In other words, the customer hedges against the risks of quality when he pays part of the price to the manufacturer at the place of the conclusion of the contract and postpones the remaining amount to delivery date.

According to the second consideration, the Istisna'a contract includes the protection of the client against the inability of the manufacturer to meet the production of the required quantity of the manufactured product. When the client pays part of the price, and the rest is delayed to the date of delivery, it hedges against the risk of the manufacturer failing to produce the required amount of the commodity, which are reasonable reasons for Istisna'a jurisprudence away from the requirement of prepayment of the price in salaam contract. [Boumediene, A. \(2010\)](#)

On the other hand, if we subject Istisna'a to the conditions of Salam and deprive Muslims of the advantage of hedging against the risks of quality in industrial production and the risk of meeting the required amount of product, it is natural that people avoid entering high-risk manufacturing contracts, instead, they would head to buy ready-made products from countries that do not comply with the conditions of Salam contracts in the industry.

This restriction will lead to Muslim societies being backward and industrially consuming to produce others. Thus, the permissibility of the Istisna'a contract implies an interest in urging Muslims to proceed with financing their industrial activities with a contract that provides them with the possibility of hedging against economically significant risks rather than having to import industrial products from countries that do not apply Islamic law.

One of the most important amendments and additions to the draft of this standard is the confirmation of the permissibility of the penalty clause in the Istisna'a contracts, the supply and the leasing of the business only, without the contracts resulting in a debt owed by the debtor.

This standard is fully consistent with the contents of the Islamic Jurisprudence Decision No. (109) at its 12th session mentioned above in the first part of this research. It states: "The penal condition may be required in all financial contracts except for contracts where the original obligation is debt because it would be usury. This contract is permissible for the contractor, the contract of supply for the supplier, and the Istisna'a contract for the manufacturer if he does not implement what he has committed or is late in executing it ... It is not permissible in istisna'a contract for the client if he is late in paying his obligations". [Tariq, A. A. \(2004\)](#)

CONCLUSION

Based on the findings of the current research, we hope that the Islamic banks in the United Arab Emirates will expand the scope of applying this distinctive financing method in all fields that can benefit clients and investors and prepare models of Istisna'a contracts that comply with the provisions of Islamic Sharia- Preparing the feasibility study for the project, choosing the manufacturer through the tender and contracting with him via Istisna'a contract and with the consultant via supervision contract - and also includes guarantees and good performance bond , as well as procedures to conduct the transaction, which varies naturally from an Islamic bank to another.

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