DARUL IFTAA
MAHMUDIYYAH
35 Candella Rd, Sherwood, Durban, 4091, South Africa
Email: admin@daruliftaa.net | **Call:** + 27 (0) 31 271 3338

بسم الله الرحمن الرحيم

2nd Sha'ban 1442

15th March 2021

As-salāmu 'alaykum wa-rahmatullāhi wa-barakātuh.

RE: Manzil Musharakah Model

The CEO and co-founder of Manzil, Mohamad Sawwaf, requested the Darul Iftaa to review Manzil's Musharakah model of financing.

We were presented the following two set of documents by Manzil;

1. Manzil Musharakah Contracts (New Purchase)
2. Manzil Musharakah Contracts (Transfer & Refinance)

According to our understanding from the documents in reference,

- The client approaches Manzil and expresses his intention for Manzil to finance a home through a Musharakah.
- There can be two scenarios. (a) The client requires new financing or (b) the client seeks to refinance an existing property.
- Manzil performs a preliminary credit assessment
- In both scenarios, Manzil and the client initially enter into a partnership agreement.
- In scenario A, the client identifies a property to be purchased and enters into a purchase and sale agreement with an assignment clause in favor of the partnership. On the closing date, the property is purchased by the partnership.
- In scenario B, the client sells a portion of his property (the amount of financing required) to the partnership. The partnership pays off the existing financing in exchange
- Manzil offers to sell its portion of equity on a quarterly basis. The client continues to purchase equity in the property until he becomes the full owner of the property.
- Manzil grants the client occupancy of the property. There is **no** ijarah agreement between the parties

The documents in reference as well as the mode of finance adopted by Manzil are Shariah Compliant. The following are key features of Manzil's Musharakah product which ensure the product complies with the laws of Shariah.

1. The client and Manzil enter into a legal partnership. Hence, the partnership is valid from both a legal and Shariah standpoint.
2. Beneficial ownership of the property belongs to the partnership. The client is listed on title on behalf of the partnership.
3. Each agreement is signed separately and independently. Namely, there is a separate agreement to form the partnership, a separate agreement pledging to purchase shares periodically, etc.
4. The periodic sales of equity take place with a due offer and acceptance every single time.
5. Change of ownership equity percentage is reflected every time a purchase takes place. The client receives a share certificate that confirms the change in ownership.
6. In the case of market value loss, or loss beyond the client's control, Manzil shares in loss according to proportion of ownership. However, in the case of profit, the client enjoys the profit exclusively.

Concerning the sharing of expenses, we wish to state the following:

Generally, a diminishing musharakah, as implemented in most places worldwide, comprises of three separate transactions. The first is that of a partnership, the second of an Ijarah, and the third is a buy and sale of equity. For the Shariah compliancy of a diminishing musharakah, each and every transaction must be according to the laws of Shariah.

Manzil's Musharakah model does not include the element of Ijarah. As stated above, Manzil grants the client usage of the property. Hence, the Manzil Musharakah model comprises of two transaction. (a) *Shirkat Al-Milk* and (b) buy and sell of equity.

The Fuqaha discuss in the context of Ijarah that a landlord is required to pay the expenses relating to ownership. Stipulating anything to the contrary is impermissible and causes the transaction to be void. This is because a landlord enjoys the direct benefit derived from his ownership through the rental received. As such, he is obliged to assume the responsibility of assuming the expenses relating to the ownership of the asset being leased. Otherwise, stipulating such expenses on the client is tantamount to stipulating an excess over and above the rent stipulated, which is regarded as implicit riba. Accordingly, as a typical Diminishing Musharakah contains an Ijarah agreement, stipulating the expenses on the client would not be permissible. This is the view the Darul Iftaa maintains.

Regarding *Shirkatul Milk* (Partnership in property), as opposed to *Shirkat ul Aqd* (Commercial partnership), the matter is not as sensitive. While in principle, both partners are to share expenses proportionately, not doing so does not invalidate a partnership in property, contrary to an Ijarah. The fuqaha state that if one partner pays the expenses on behalf of the partnership, he is entitled to recuperate that amount from his partner. However, as it his sole right to do so, he may forgo the right of recourse and undertake to discharge the expenses himself.

Manzil allows the client to enjoy occupancy of the property and the client agrees to assume the responsibility of taking care of the expenses. Consequently, as the client agrees to pay for the expenses, Manzil agrees to forego its rental in favor of the client. Through this arrangement, the client agrees to forego its right of recourse to Manzil for the expenses paid, to make up for Manzil forgoing its exclusive right to claim rental. This is a mutual agreement and understanding that both parties come to, and such understanding is clearly stated in the contracts without any ambiguity.

Nonetheless, the essential element that separates a transaction from an interest-bearing transaction is the presence of a Shariah compliant financing vehicle, free of any condition which causes the transaction to be void. This is being achieved through a valid *Shirkat* in which the essential risks are assumed by both parties. As there is no Ijarah agreement, a mutual understanding is reached regarding the expenses. Hence, the product is Shariah compliant.

However, in order for a product to be Shariah compliant, the practical implementation of the procedure is equally important. This is the responsibility of the internal Shariah board. We are aware that Manzil has recently appointed its internal Shariah Supervisory board. We expect the correct protocol for audits will be carried out accordingly. To this effect, the Darul Iftaa has been appointed as an External Shariah Observer to ensure the product is implemented correctly.

And Allah Ta'āla Knows Best

Mirza-Zain Baig

Student - Darul Iftaa

Montréal, Québec, Canada

Checked and Approved by,
Mufti Ebrahim Desai.

<u>Note:</u> The Darul Iftaa has spent the last eight months reviewing and analysing Manzil's products. The documents provided for our review were collectively over 300 pages. After 100s of hours of research and multiple lengthy discussions with Manzil's management and scholars, this fatwa has been issued. If there are any concerns regarding our Fatwa, the concerns should be sent by email to admin@daruliftaa.net. The Darul Iftaa will engage both constructively and academically.