PO Box 3393,
Port Elizabeth, 6056
South Africa

Email: muftis@themajlis.co.za
The Majlis

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AL MABROOR INVESTMENT IS NOT HALAAL

Numerous Brothers have been asking us: "Why is Al Mabroor Investment not permissible?

Al Mabroor was rendered 'Shariah Compliant 100%' by the late Mufti Ibrahim Desai of Darul Ifta Sherwood. His rendition and claim are lamentably baseless. Al Mabroor Investment has no compliance with the Shariah.

(1) Firstly, the very designation, *Al Mabroor*, is deceptive. The company which has been given this name by the late Mufti, is kuffaar. Unwary and ignorant Muslims are deceived and entrapped by this Islamic-sounding name which was acquired from the Hadith which describes an accepted Hajj as *Al Hajjul Mabroor.*

(2) Assuming (and this assumption is baseless) that this non-Muslim company's investment products are indeed compliant with the Shariah, then too, it would not be permissible for Muslims to plough their investment into the company. The reason for this prohibition is that the Fuqaha have clarified that it is *Makrooh Tahrimi* to be in partners with the kuffaar. From the practical perspective, the two technical Fiqhi terms, Haraam and Makrooh Tahrimi, are synonyms. The consequence of both is the Fire of Jahannam. Every Molvi is supposed to be aware of this simple Mas'alah.

Since Muslims may not repose confidence and trust in the business enterprises controlled by kuffaar, it is not permissible to enter into partnership with them. They will freely indulge in *Uqood-e-Faasidah* and *Baatilah* (corrupt and invalid dealings). It is not possible to supervise and control the non-Muslim directors and actors 100%. The 'Shariah Boards' employed by the capitalist kuffaar banks are among the vilest specimens of the ulama-e-soo' fraternity. Their job is to churn out fatwaas of *jawaaz* (permissibility) for the haraam riba products of the banks. Banks do not pay fat and lucrative salaries for such fatwas which render their riba products haraam.

Thus, purely on the basis of *kufr*, investment in *Al Mabroor* is not permissible.

(3) In a valid Shar'i *Shirkat* and *Mudhaarabah* (forms of Partnership) investors are the owners of the assets in which they invest their money. The capitalist legal entity – the company – is a haraam fiction. It has no existence and no validity in terms of the Shariah. The partners themselves are the owners and liable for operation of the businesses.

(4) True to the capitalist system, the liability of investors in the *Al Mabroor* scheme has limited liability whereas according to the Shariah the partners are fully liable for the debts. In the event of sequestration/bankruptcy, the partners remain liable. There is no automatic absolution from debt in Islam.

Clause 4.10.2.25 of the *Al Mabroor Shariah Investment Partnership Agreement*, reads: *"…the Management Agent (i.e. Al Mabroor company) shall… in particular ensure that the liability of the partners is and remains limited."*
This is manifestly *baatil*.

(5) Investors labour under the misconception that they are in partnership with *Al Mabroor*, but this is not true. *Al Mabroor* is neither a *Shareek (partner in a Shar'i Shirkat)* nor is it the *Mudhaarib (the Manager in a valid Mudhaarabah contract).*

Al Mabroor's Partnership Agreement states: *"The partners have agreed that 12.5% of the proceeds from the sale of the offspring will be paid to Al Mabroor as their share of the income."*

In addition to this 12.5% stipulation being impermissible, it clarifies that Al Mabroor is an employee of the Muslim investors.

Furthermore, another ambiguity in the wage for the Management Agent stated by Al Mabroor is: *"Al Mabroor will invoice the partnership 5% p.a. on a monthly basis to settle all operational costs. Possible additional and unforeseen expenses will be covered from the initial 20% reserve."*

The 'reserve' refers to 20% of the capital investment of investors (the so-called partners in this baatil shirkat).

In this provision are two ambiguities:

(1) The operational costs. No one knows how much this will be, hence the 5% wage is hugely ambiguous.
(2) Possible additional costs.

Thus, the *Ijaarah (hiring)* contract between the Partnership and the worker (the Management Agent, i.e. Al Mabroor) is *baatil*.

2.1.13 of the Agreement states: *"Management Agent means AL MABROOR INVESTMENTS"* Thus, the partnership is not between the investors and *Al Mabroor*. Al Mabroor is the Management Agent.

The 12.5% of the proceeds is the stipulated wage for the services rendered by *Al Mabroor* in the animal enterprise. According to the Shariah, *Al Mabroor* is an employee of the partnership which it *(Al Mabroor)* has formed. It is not a partner. It is not the *Mudhaarib*. It is apart from the partnership created for the investors. It has absolutely no liability. It is a pure worker whose wage is ambiguous, and this ambiguity renders the wage contract invalid.

The suggestion that *Al Mabroor* could be regarded as the *mudhaarib* in a *Mudhaarabah* partnership with the investors, is palpably baseless. A *Mudhaarib (the Manager)* in a *Mudhaarabah* is entitled to a percentage share of the net profit, not to a percentage of the 'proceeds' of either all the stock or portion of the stock as is currently the relationship with *Al Mabroor.*

(6) 4.8.2. of The Agreement reads: *"Each subsequent partner shall make a payment to the partnership of committed capital in accordance with such subsequent partner's 'APPLICATION FOR PARTICIPATION IN SHARIAH COMPLIANT BUFFALO INVESTMENT SCHEME' and the Management Agent shall issue to each subsequent partner with a proportionate partnership interest in accordance with this agreement."*

A lot of nonsense and deceptive jargon to befuddle the unwary and the ignorant. A 'subsequent partner' is a *'masbooq'*. He enters the partnership at a later stage after the enterprise is already functioning. The 'payment' he makes to the 'committed capital' is in reality in lieu of a portion of future profits. He does not buy any assets, in the same way as all the other partners in this corrupt partnership do not become owners of the assets (the bulls, cows, equipment, etc.). They all invest to gain a share of the profits. They are paying for a share of the profit, and this is Riba.

Thus the arrangement of paying for a share of future profits is pure RIBA since the amount invested is not the same as the amount received. The assets, in terms of the company fiction law belong to the fictitious entity, not to the partners in this imaginary Shar'i Shirkat.

(7) 4.10.2 of the Agreement reads: *"The Management Agent shall have full power and authority, on behalf of the partnership, to bind the partnership……..without limitation the power and authority to……"*

In terms of this provision numerous rights are accorded to the Management Agent. For these duties/services, the Agreement states that the partnership has to remunerate it. *"…render such investment…….clerical services, for a consideration payable to it."*

This ambiguity will of course be decided by the employee *(Al Mabroor –The Management Agent)*, not by the partners. Furthermore, this payment is in addition to the 12.5% from the proceeds of selling the offspring as mentioned above. According to the Shariah an employee is entitled to a fix wage. Thus, this agreement with the employee is invalid.

(8) 7.1 of the Agreement reads: *"Should any partner die during the existence of the partnership, the interest of the deceased partner shall devolve upon his lawful heirs."*

The 'interest of the deceased' is ambiguous in this context. His actual 'interest' in terms of the Agreement is his pro rata share of the profit, and in terms of the Shariah it is his pro rata share of the assets in the company. This Shar'i share devolves upon his heirs, not future profits. Regarding his 'interest', the Agreement further states:

"The remaining partners may thereupon within 3 months of the death of the partner, agree with his lawful heirs to continue with the partnership, or to purchase from the estate of the interest of the deceased partner."

According to the Shariah, a partnership is automatically and immediately cancelled upon death of a partner. It thus becomes Waajib for the partners to assess the financial state of the business, to calculate the share of the deceased and pay it to the heirs. The three month delay is not permissible. The state of the enterprise must
be assessed on the day of death. With all the technology, computers and the like, this should not pose a problem.

Some of the heirs may decide to be paid out while others may wish to enter into a partnership. Assuming that the current corrupt *Al Mabroor* partnership is valid, then a new partnership agreement has to be concluded with those heirs who desire to be in the partnership. It is not just a matter of transferring the 'interest'/share of the deceased to these heirs.

Furthermore, it is not an issue of the company 'purchasing from the estate the interest of the deceased'. The estate of the deceased has absolutely NOTHING to sell. The estate only has a demand which the partnership must execute most expeditiously on the day the partner dies. Once the value of the tangible assets belonging to the deceased partner has been provided, the heirs may then decide the next step.

(9) 11.2.1 of the Agreement reads:
"No sale, assignment, transfer, exchange, pledge, donation, encumbrance or other disposition of any partner's partnership interest or any portion thereof, whether voluntary or involuntary, shall be valid or effective except with the written consent of the Management Agent….."

This condition is invalid. The Management Agent is a worker, an employee in a corrupt agreement between it and the partners. Even if the partnership had to be valid in terms of the Shariah, then too, the employee has no such right. How can a salaried

employee dictate the terms to his employer? His employer has the right to do with his assets as he deems appropriate.

It is clear from the preponderance of rights and powers granted by the Agreement to the Management Agent that this entity is the boss while all the true bosses (investors) are in subservience to it. This inverse system is not valid in terms of the Shariah.

(10) The following is an extreme incongruity in terms of the Shariah:

"13.1…the partnership shall be dissolved (without any further action on the part of the partners) upon the occurrence of one or more of the following events:-

13.1.1…..the Management Agent resolving, in its sole discretion, that the partnership shall be dissolved;
13.1.2 the winding up of the Management Agent."

While the other provisions of this clause 13 are also foul and unacceptable to the Shariah, we confine the argument to these two fundamental acts of incongruity. Just who is the boss in this *Al Mabroor* set-up? In terms of the *baatil* Agreement and also in the understanding of the unsophisticated investors whose only concern is 'gains' projected as 'profit', the boss is this Al Mabroor Management Agent, not the investors who in terms of the Shariah are the owners of the enterprise.

According to the *baatil* Agreement, this paid worker, the Management Agent, has the right to wrap up the business by dissolving the partnership at its ***sole discretion*** or when this kuffaar Management Agent decides that it is now time to fly by night and sets in motion the legal process for its own demise (winding itself up into oblivion), leaving the investors with huge losses about which they can do bunkum nothing.

Just this one provision is a deplorable commentary on the academic expertise of the Ulama of have advertised this baatil, haraam *Al Mabroor* enterprise to be 100% Shariah compliant. Even a mediocre Molvi should be able to have ascertained the fiction of this *"100% Shariah Compliant"* Riba enterprise.

(11) *"12.3 No business shall be transacted at any general meeting unless 75% of the partners are present…."*

From whence was this stupidity acquired. The worker has no such right to debar the partners from conducting their business. The enterprise has been termed a *"partnership"* which is called *Shirkat* in Shar'i terms. This enterprise is not a *Mudhaarabah* enterprise in which the *Mudhaarib* (the Manager) has the power of conducting the business. In a *Shirkat* the controllers and conductors and the operators are the *Shurakaa'* (the partners), not the labourers. In this Al-Mabroor partnership while the employee status of the Management Agent is specified, the Agreement nevertheless grants all powers of any kind whatever to this employee.

(12) *"13.2 The partnership shall be automatically reconstituted if, within 90 days of the occurrence of any event referred to in clause 13.1, the partners agree in writing to continue the business of the partnership and appoint one or more persons to replace the Management."*

This provision is palpably baseless and silly. In terms of the Shariah there is no such concept of 'automatic reconstitution' of a partnership. Once the partnership is dissolved, it is relegated to its grave. The winding up of the employee (Managing Agent) in no way whatsoever may be equated with the dissolution of the partnership in terms of the Shariah. The partners have the right to kick out the employee at any time and to appoint a new worker in its place. There is neither dissolution of the *Shirkat* nor automatic reconstitution in the "event of the occurrences" enumerated in provision No.13.

(13) The Agreement makes provision for resolving disputes by arbitration. However, its states: *"The arbitration shall be held in terms of the Arbitration Act, No.42 of 1965."*

This is an Act of Taaghoot. What has happened to the Act of *Tahkeem* of the Shariah? Thus, Taaghoot will be the final arbiter which the Muftis will simply have to rubber stamp, and this is what they term *"100% Compliant with the Shariah"!!!*

(14) To crown the *Baatil*, is the following provision which demands subservience to the law of Taaghoot:

"22.1 This agreement and the rights, obligations and relationships of the parties pursuant to this agreement and in respect of shall be governed by and construed in accordance with the laws of the Republic of South Africa and all the parties irrevocably agree that subject to clause 18, the courts of South Africa are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this agreement, or the acquisition of partnership interests and that accordingly any suit, action or proceedings arising out of or in connection with any of the same shall be brought in such courts. The parties hereby waive, to the extent not prohibited by applicable law, and agree not to assert by way of motion, as a defence or otherwise, in any such proceeding, any claim that it is not subject personally to the jurisdiction of such courts, that any such proceeding brought in such courts is improper or that this agreement or the subject matter hereof or thereof, may not be enforced in or by such court."

Where is the *"100% Shariah Compliance".* Nothing but deceptive hallucination. This clause clinches the baatil and haraam status of this *Al Mabroor* enterprise. The final say is the law of Taaghoot.

(15) The *Al Mabroor* vehicle financing scheme fares worse in the wake of the Shariah's mauling. The *fasaad (corruption)* is quite conspicuous. The gimmick which the Muftis had forged to render this corrupt financing *"100% Shariah Compliant"* (i.e.

snug in their own hallucination) was the introduction of a non-Muslim company, Newfin.

The lease of a vehicle is firstly between the employee (Al Mabroor Management Agent) and Newfin, the non-Muslim auto-dealer. Al Mabroor leases the vehicle (required by a client) to Newfin who in turn leases it to the client. Thus, there are two lease agreements in this corrupt scenario: One, between Al Mabroor and Newfin, and two, between Newfin and Abdullah (the client). In its brochure, Al Mabroor states:

"Al-Mabroor has partnered up with Newfin Vehicle Finance to provide such customers (i.e. Muslim customers requiring vehicles) an alternative for their financing needs."

The 'alternative' in this scenario is the corrupt partnership between two kuffaar entities: (1) Al Mabroor Management Agent, and (2) Newfin Vehicle Finance. Both entities are soaked in *Riba*, *faasid* and *baatil* deals. The 'alternative' is a mirage – a figment of the Muftis who had created this baseless and false system for so-called 'halaal' procurement of vehicles.

Describing this *baatil* arrangement, *Al Mabroor* states:

*"**Stage Two- Vehicle Acquisition***
The customer first identifies a suitable vehicle at an auto-dealer that is processed and approved by Newfin. The customer then contacts Newfin and applies for vehicle financing through them… Al-Mabroor then acting as the sole agent of the investment partnership purchases the vehicle from the dealer and takes legal title of the vehicle… Thereafter Al-Mabroor leases out the vehicle to Newfin at a fixed monthly rental…

Stage Three
Newfin subleases the vehicle to the customer in exchange of fixed monthly instalments over 48 months. Newfin will be in charge of adding all tracking devices, insurance, mechanical warranty and vehicle finance insurance to the vehicles without involvement of Al-Mabroor or the customer. Al-Mabroor will authorize Newfin to gift the vehicle upon maturity of the rental agreement. All customers would be required to pay a fixed deposit of R10,000 upfront."

The following are the factors of this corrupt arrangement:

(a) The first lease agreement is between Al Mabroor and Newfin.
(b) The second lease agreement is between Newfin and Abdullah (the Muslim client who applied to Al Mabroor for vehicle finance).
(c) The stipulation of the haraam conditions (insurance/riba) by Al Mabroor on Newfin is haraam.
(d) The stipulations of mechanical warranty and tracking device on Newfin are haraam. The Muslim 'partnership' represented by Al Mabroor is the owner of the

vehicle, not Newfin. It is not permissible for the lessee (the partnership) to impose such conditions on the lessee (Newfin).
(e) Furthermore, the Muslim Partnership represented by Al Mabroor imposes the 'gift' condition on Newfin. In this case Newfin will be acting on behalf of the Muslim Partnership which has leased the vehicle to Newfin with the baatil gift condition.
(f) The term 'gift' in this context is a misonomer. It is a deception. The second lessee (Abdullah) is given the right to claim this 'gift' whereas in terms of the Shariah a gift cannot be demanded or claimed. The precondition of 'gift' to be made at the expiry of the rental tenure is *baatil*. The first lessee (Newfin) cannot renege on this condition. He has to fulfil it. Abdullah cannot claim the 'gift' from Al Mabroor since the deal his between him (Abdullah and Newfin).

While the Muslim Partnership represented by *Al Mabroor* Management Agent soothes its conscience with the fiction of the deal being halaal, *Al Mabroor* passes on the haraam acts to Newfin. Thus, in addition to *I'aanat alal Ma'siyat (Aiding Sin),* the very contract between Al Mabroor and Newfin is *baatil*.

(g) The Agreement is conveniently silent about the fate of the R10,000 deposit. What is this deposit for? Is it advance payment of rental or some other charge? Since the Agreement is silent on this issue, it is reasonable to infer that the R10,000 is pocketed by the Management Agent (Al Mabroor) or goes into the coffers of the Muslim Partnership. Wherever it is channelled to, it is a haraam charge if it is not deducted from the rental.

(h) It is likewise not permissible to stipulate that the lessor (Al Mabroor) has to transfer ownership to Newfin on termination of the lease.

(i) When legal title is transferred to Newfin, it becomes the owner of the vehicle. Thus, Al Mabroor has no right to impose on Newfin to make a gift of the vehicle to Abdullah.

(16) In its brochure, *Al Mabroor* states:

*"**Special Window Period -** Al Mabroor will specify a special window period to allow investors to sell, trade or exit the partnership."*

This is another fiction introduced for deception. Firstly, *Al Mabroor* is merely the Management Agent (the worker/employee). It has no right to make impositions, especially of this nature, on the investors who are the actual owners in the partnership.

Secondly, after the vehicles have been leased, there are no assets to sell since the vehicles have already been bartered away to Newfin, then to the other lessees (the sub-lessees of Newfin). Now will remain only the income in the form of money. The investor/partner has no assets to sell. He cannot sell his share of the money in the bank in the name of the Partnership. Selling money is haraam riba if there is monetary gain for any party.