

How to Design REPOs to be Shariah-compliant: A study of REPOs as a Mean of Corporate Financing from the Shariah Compliance Perspective

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Abstract

Basically, financing companies and business enterprise is the most important factor in production growth and improvement of the country's economic situation. Special conditions concerning the advantages, disadvantages, and functions of each financing tool should be provided for business enterprises to provide them with the possibility of financing from different channels and methods.

Considering the religious jurisprudence doubts that the framework of REPO contract may have, it is necessary to analyze the validity and the effects of a common REPO contract and design a contractual framework by optimizing the condition to be under religious jurisprudence and has functional efficiency as a financing tool.

In addition to introducing the REPO tool as one of the financing channels for companies, the validity, and effects of this contractual framework are discussed in this manuscript.

Keywords: Financing, REPO, Religious Jurisprudence Review

1. Introduction

All large economic companies and business enterprises need new financial tools to provide capital and advance their goals and activities, each of these tools will be used in different cases according to their function.

One of these financing tools is sales contracts with redeemable stock and securities bond conditions, which are used for short-term, medium-term, or long-term financing and to increase the liquidity of companies.

The main issue which is considered in this essay is the investigation of this type of financing contract as one of the most important and widely used tools in financial markets. This research examines these contracts from aspects of their validity and effect.

The validity of these contracts can be checked according to the laws and principles of religious jurisprudence, which is done in this research. An Adjustment between the conditions of these contracts and Islamic banking conditions is done and their validity or usurious is investigated. Regarding the effects of these contracts and according to their prevalence, their effects, both in the assumption of their validity or invalidity are necessary to be investigated in various aspects, including stocks buyer and seller rights during the period of the contract, obligations of each party, etc.

Finally, the main goal of this article is to present a final model for setting up a REPO contract under Shia jurisprudence as a financing tool.

Generalities and Concepts

1 -2 - Contract of Sale

Considering that the detailed investigation of the contract of sale has been done in many books and articles, and it is not included in the main topics of this article, thus we introduce the contract of sale briefly here.

Contract of sale can be examined from different aspects. Contract of the sale in the word means selling something, which is associated with buying, and sometimes it is used under the title of buying and selling; as Arab linguists have mentioned it under the title of exchange or barter. (Fayoomi, 1993). Also, in Article 338 of the Civil Code, the legislator has defined the sale as the possession of a thing in exchange; this definition is adapted from jurisprudential sources. Although the Imamiyyah jurists have acknowledged that there is no shari'ah definition for sale, these jurists have many and sometimes contradictory definitions of this contract, which, according to the late Saheb Javaher, does not express the true concept of the sale, and all of them are interpretations from this word. (Tafreshi and Sokooti Nasimi, 2013)

The most important characteristics of a contract of sale are that it is necessary, possessive, and exchangeable. According to this contract, the seller has an essential role as one of the parties to the contract. for this contract to take place correctly, it must have certain characteristics such as having the nature of being a property, being corpus, being possessive, and being certain.

Sales can be divided in various ways so that among the contracts, the sale contract has the most divisions. In Islamic jurisprudence books, there are more than 30 different divisions for this kind of contract. For example, based on knowing or not knowing the purchase price sale is divided into four categories:

Masavemeh, Ordinary sale (Sale without informing buy price), Murabeheh, (Sale against plus buy price), Movezeie (Resale at a loss), and Tulieh. (Shahid aval, 1411). Also, the sale is divided into four categories according to the executory sale of the purchase money or object of sale: cash, credit, salaf (short sale), and sale of Deyn. As it is clear from the title of the cash sale, the purchase money or object of sale in this sale is cash, while in the sale of credit and short sale, the object of sale and purchase money are respectively in cash, and the purchase money or object of sale is executory. The jurists have considered all three mentioned types to

be correct and permissible (Karki Researcher, 1408) (Ibn Rashid 1415), but the sale of Deyn in which both purchase money or object of sale are executory, is prohibited and invalid due to a hadith attributed to the Prophet of Islam, which forbids such type of sale. (Toosi, 1415) (Zahili, 1385).

In the end, it can be mentioned that the sale of stock was one of the controversial topics in the past, although today its truth is clear to everyone. Stocks have value both from the legislator's point of view and custom and considering the scope of the sale of contract on one hand and the nature of the stocks as a seller on the other hand; the sale of stocks is approved both in terms of substance and form. (Tafreshi and Sokooti Nasimi, 2013). Of course, it is necessary to explain that several theories have been presented by jurists about the nature of stocks, such as being a Deyn, being corpus, being immaterial movable property, and being a special right, none of which have been absolutely approved and each of these analyzes is approved by a part of the legal community. (Ghamami and Ebrahimi, 2013) Although these differences have shown themselves mostly in contracts other than the sale of stocks, the sale of stocks is accepted by everyone today.

2. Loan Contract

In this part of the article, as in the previous part, and for the same reasons, we will briefly examine the subject of the loan contract

Loan in the word means to cut and because the lender separates a part of his property and gives it to the borrower, it is known by this name. (Mohebi, 2014) According to Article 648 of the Civil Code, "a loan is a contract whereby one of the parties assigns a certain amount of his property to the other party, which the said party should return the property in terms of amount, type and description, and in terms of rejection, he should pay the day-price of the property ". Also, in some sources of jurisprudence, a loan is giving a property to another in such a way that he is responsible for returning the same property or paying its price. (Khomeini, 1964)

Economists divide loans into two main categories: amortization loans and production and commercial loans. Consumer or amortization loans are those loans that are made to meet consumer needs by the borrower, while the purpose of production or commercial loans is to provide the capital needed to establish or develop or continue an economic activity. (Najafi, 1983).

Among the most important characteristics of a loan contract, we can mention being consent, being possessive, can be replaced, being necessary, forgivable, and apart of the subject of the contract. Regarding the difference between a loan contract and a common datum contract, the main difference is that the loan contract is possessive and the common datum contract is non-possessive. (Jaafari Langroudi, 1972)

One of the important cases raised in jurisprudence regarding the loan contract is the incorrectness of lending interest, as well as lending a property on the condition that the borrower returns more than the amount he had borrowed. (Khomeini, 1964) In addition, an increase or decrease in the value of money does not affect the loan contract and the law obliges the borrower to return the subject of the loan in terms of amount, type, and description. According to Article 650 of the Civil Code, "the borrower must return the exact property he borrowed, even if its price has increased or decreased." Therefore, the damage of late payment has nothing to do with the increase or decrease of money, because it is after the demand date and extension and after the expiration date that damage should be given for late payment, and if payment is on time, there won't be any damage. (Madani, 2006) (Ibn Manzoor, 1405).

According to the brief introduction that was made, it can be seen that stock borrowing itself is a controversial issue due to the lack of agreement among jurists about the nature of stocks, and

in addition, using this contractual framework in REPO contracts is even more problematic due to the issues raised about usury.

3-2 Usury and its Types

Riba (Usury) in its general meaning means growth, increase, and elevation, while in its specific meaning; it means excess and extra that occurs in properties. (Ibn Manzoor, 1405) Some have defined usury as follows: selling or exchanging one or two items in exchange for returning more measure or weight, or lending on the condition of receiving an extra amount. (Shaheed Sani, 1413) (Al-Siyuri Al-Hali, 1404). According to this definition, Usury has two aspects in jurisprudence. First, the exchange of two same items, in measure or weight, which one of them is more than the other, and second, lending on the condition of receiving an extra amount.

In another definition, Usury means excess in one of the exchange items, on the condition that they are special objects on which the shari'a has been mentioned. (Helli, 1416) Based on this definition, it can be argued that usury is only specific to the cases that have been explicitly mentioned by Shariah. It should be noted that jurisprudence does not consider any difference between objective excess, which means the excess of one of the two items in measures or weights over the other, and also judged excess, which means excess, which happens between two different items. (Ghaffari Cherati et al., 2016) Of course, it is necessary to mention that there is disagreement about Usury being happened in the condition of returning a property that doesn't have possessiveness; As in the proof of usury, in the condition of returning extra there is an agreement, however, mostly jurists believe that Usury is realized in these cases. (Tabatabai, 1412) (Tabatabai, 1413) (Najafi, 1983)

In the following, we will examine the types of usury:

2-3-1. Trading Usury

In general, any excess in the transaction of two objects of the same kind or a deal that is likely to exceed the excess of one of the exchange parties is a trading usury. Most jurists believe that trading usury is not a special transaction just in the sale contract and should be considered in other types of contracts such as the conclusion of a peace or gift contract. (HorAmeli 1413)

This type of usury occurs either in cash transactions or in non-cash items. Any extra amount in cash transactions is considered usury, but trading usury in non-cash items occurs on two conditions that are: being of the same type, and also both items can be measured or weighted (Mousavian, 2005).

The opinions of jurists differ on the fact that in usurious transactions, only the received extra amount is corrupt and invalid, or the whole transaction is absolutely invalid, although there is a relative agreement on the invalidity of the entire transaction. (Najafi, 1983) If a jurist gives the sentence of corruption and invalidity only in the received extra amount, returning the extra amount to the owner is obligatory, while in the case of the nullity of the transaction, again the jurists have different opinions and some believe in returning extra amount and some believe in returning the original and extra amount to the owner, the second opinion is the consensus. (Al-Tabatabai Alyazdi 1414) (Sabzevari, 1388).

2- 3 -2. Debt Usury

This type of usury has always been the most common type of usury and its structure is such that a person requests a loan for any reason and undertakes to return the borrowed item to the lender along with an extra amount. (Teachers of Qom, 2002) In this type of usury, there is no difference between measurable or weighable properties, and any additional receipt is considered as usury. The jurists have different opinions on whether a usurious loan is

invalidated by the condition of receiving an extra amount or only the extra amount stipulated, although the final opinion of the jurists is that the usurious loan is invalid. (Dadgar, 1996)

Jahili usury is also a type of loan usury that is claimed to have been common among people in the Jahiliyyah era and before Islam. In this type of usury, the borrower does not have the financial ability to repay on the due date and asks for an extension, and the lender agrees to the extended due date only by increasing the interest rate. This type of usury is also subject to the conditions of usurious loans and according to famous jurists, it is void.

Of course, it is necessary to explain that some jurists believed in the theory of non-sanctity of usury in production and commercial loans, and in their opinion, there is a major difference between amortization and production loans in the realization of usury. In the following, we will examine this theory and the possibility of designing a REPO contract within the framework of a collateralized loan.

2- 3 -3. The reason behind the forbiddance of Usury in Islam

The main reason that Muslims consider interest prohibited is that the Qur'an which instructs them in many places to stay away from interest. In reality, many Muslims do not know any practical reasons for the prohibition of interest other than religious beliefs. Here are a few rational reasons for the prohibition of interest in Islam:

1. Interest concentrates wealth in the hands of a small minority
2. Interest can cause over-consumption that later can be life-destroying Interest
3. Interest is a cause of injustice and exploitation

2-4. Uncertainty and Risk

Uncertainty means danger in the word (Al-Zubaidi, 1414) but it is used in different meanings. Imamiyyah jurists have presented several definitions of Uncertainty based on the differences in their opinion. For example, some of them consider it ignorance (Naini, 2018), while others consider it as but not the absolute concept of risk. (Najafi, 1983) According to the Sunnis, Uncertainty is the sale of something in which its existence or nonexistence is not known, or its quantity is unknown, or there is no possibility to return it. (Ibn al-Morteza, 1987)

In general, Uncertainty can be defined as follows: " Uncertainty is the possibility of loss in a trade, which is caused because of ambiguity in some aspects of the trade, and this ambiguity is also caused by ignorance "(Mesbahi Moghadam and Rostamzadeh Ganji, 2007) In general, there are three main cases in Uncertainty include Uncertainty caused by ambiguity in the existence of the sale subject, its attributes and possibility of returning. (Ali Dost, 2003)

In Islamic law, avoidance of uncertain and risky transactions is based on narrations and there is no explicit text or reference in the Qur'an that independently indicates the invalidity of these kinds of trades. Uncertainty and being risk are effective in financial transactions and are ineffective in free or non-financial contracts. Also, there are no coherent provisions about uncertainty and being risky in civil law, and the legislator has emphasized avoiding it in discussions related to trades. (Taleb Ahmadi, 2001)

There are several definitions for the word risk that one of the best definitions is as follows: financial risk means fluctuation in actual return compared to the expected return. In another sense, this concept is a combination of uncertainty in the occurrence of unfavorable results and favorable results.

Entering into any type of economic activity requires acceptance of some amount of risk and Islam has confirmed the principle of risk acceptance in many cases, including the rule of profit and loss depending on cost and investment, acceptance of partnership contracts, and many other cases, and while explaining the bond between accepting risk, and creating wealth in some way encouraged the acceptance of risk.

Regarding the relationship between risk and uncertainty, it can be said that the risk resulting from the existence of uncertainty in the trade is an unacceptable risk that is related to confidence in the elements of the contract and can be reduced by transparency in the elements of the contract, but the risk in the concept of financial risk is an acceptable risk related to the future of the property. (Mousavian and Alizadeh Asl, 2014).

Finally, it can be concluded that the main difference between risk and uncertainty is that risk involves both threat and opportunity, but there is no opportunity in uncertainty.

3. Validity of REPO Contract

In this part of the article, we examine the validity of REPO contractual frameworks and the doubts in them from the perspective of Shia jurisprudence.

3- 1. Feasibility of Designing a REPO Contract in the Framework of Collateralized Loan

In this contractual framework and considering the interest of the REPO contract, there is always the question of the contract usury. The only theory that negates the usury of this contract is the theory of usury being disrespected in production and commercial loans.

With the expansion of the capitalist and banking system to Islamic countries, traders, businessmen, and bankers have faced the problem of usury prohibition, and jurists tried to solve this problem through two different approaches. By accepting the usurious banking system, a group of jurists tried to present a new interpretation of usury to be compatible with banking transactions, and another group tried to design new banking transactions based on Islamic rules, the pattern of the usury-free banking system was the result of their work. (Moosavian, 2005)

One of the new interpretations of usury to solve the banking system's problem is the theory of usury disrespecting production loans. This theory was initially proposed by some Sunni scholars such as Rashid Reza, Mostafa al-Zargha, and Sheikh Shaltoot, and then some Shia scholars such as Ayatollah Bojnordi, Marefat, and Sanei joined the supporters of this theory. (Moosavian, 2005) For example, Ayatollah Sanei, after explaining the production loan and usury concepts, says: (Famous jurists banned usury and have cited verses and narrations, but we claim that this concept is not haram and avoidance does not include it (Sanei, 2004).

To prove this claim, this group has presented their arguments in different frameworks. Among these cases, we can refer to the "attribution of Jaheli usury to the interest of consuming loans", "the non-cruelty of usury in production and commercial loans", "just enrichment of property due to the non-invalidity of usury in production loans" and "the correctness of production usury according to scholars". (Moosavian, 2004)

On the other hand, a group of jurists is strongly against this issue regarding "the Qur'anic verses and hadiths that indicate the sanctity of usury" and by rejecting the reasons and arguments of the first group, they strongly oppose this issue and emphasizing the sanctity of usury for whatever purpose it may be. (Moosavian, 2004) (Ahmadvand and Toheedi, 2016).

According to the mentioned cases, in general, the consensus of jurists is on the sanctity of loan usury, both production, and consuming type. the theory of non-sanctity of usury in production loans is not accepted by the majority of jurists and criticized by some researchers and serious doubts have been cast on the arguments of the supporting group. Also, the country's legal, banking, and economic system has not accepted this theory and tried to design a usury-free Islamic banking system.

As it was mentioned, the only theory that makes it possible to design REPO in the framework of collateralized loans is the theory of usury disrespecting productive loans, and according to the cases mentioned in the previous part of this article, this theory is rejected by most jurists and has not been approved by the country's legal and banking system, and in general, designing

of REPO contract in this framework will not only be very controversial but also will not be accepted by many experts and jurists, as well as the current practical banking system.

3-2. REPO in the Framework of Sale and its jurisprudential Doubts

Although designing the REPO contract in the framework of the sale contract, is not as problematic as designing it in the framework of collateralized loans, it also faces many doubts itself.

Considering the nature of this contract, in which the buyer of the REPO is committed to buying negotiable securities and selling them at a higher price to the seller on the due date of the contract, doubts such as Conditions contrary to the requirements of the contract, purchase on credit, optional sale of the contract, the uncertainty of the contract, and even the contract being non-sale type considering its intention, which is to borrow money come up.

In the following, with a brief definition of each of these cases, we will examine the doubts.

3-2-1. REPO being purchased on Credit

Purchase on credit (Biy al-Aina) means financing through buying a property on credit and selling it again in cash at a lower price. (Ansari, 2010) (Moosavi Khoei, 1997) In purchase on credit, the goal of the seller and the buyer is to provide financing for the initial seller in the short term and to collect interest for the other party, and for this reason, both Shia and Sunni jurists consider it as a type of usury.

In general, there are two types of purchases on credit:

- financing a needed person buys a product on credit and then sells it for a lower price in cash.
- To collect his debt, the creditor sells a certain product on credit to a person who cannot pay his debt and then buys the same product at a lower price in cash so that the debtor can pay his previous debt with the money received from the creditor. (Moosavian et al., 2015)

It should be mentioned that there are narrations according to which, whenever there is a repurchase condition in purchase on credit, the trade is considered void, while if there is no repurchase condition and the buyer is free to resell or not resell the product, and the seller is free to repurchase or not, then the trade will be valid. We can refer to Hamiri's narration from Ali Ibn Ja'far and also another narration regarding Hossein Ibn Manzar's question from Imam Ja'far Sadigh, both of which explicitly mention this matter. (Hor Ameli, 1413) In addition to the above point, some researchers also believe that the condition of buying or selling an asset does not lead to purchase-on-sale trading. (Masoominia, 2019)

It is also necessary to explain that REPO has fundamental and significant differences with purchase on sale, which practically rules out the issue of REPO contract being purchase on sale type. Among these fundamental differences, the following can be mentioned:

- In purchase on sale, the second sale happens at the same time as the first sale, and the subject of the sale leaves the seller's ownership only for a moment, and if the seller does not fulfill this condition, the buyer can cancel the trade, while in the REPO, the second contract occurs in a significant interval amount of time (especially in the case of REPO for corporate financing) and also if the seller does not fulfill this condition, the first contract will be still valid.
- In purchase on sale, it is stipulated that the same product will be sold to the seller, while in REPO, it is possible that the traded bonds or stocks are replaced by similar ones in the market, and the same bonds or stocks are not necessarily transacted.

In the end, it should be mentioned that in purchase on sale, practically no special economic activity happens in the interval between two trades, while the purpose of REPO is to provide financing to solve the lack of liquidity and to carry out the economic activity with this liquidity. As a result, not only REPO has very significant differences with purchases on sale, but also it is possible to eliminate all jurisprudential doubts by making the repurchase of bonds optional. Of course, this will naturally bring many negative effects and risks for both parties, which destroys many of the economic functions of REPO.

3-2-2. REPO being optional Sale of Contract

Sale with an option or sale under condition is a kind of sale in which the seller stipulates that if he returns the price of the product within a certain period of time, he will have the option of canceling the trade and can return the product to himself, and if the specified period of time passes and he does not return the product price, his right of canceling the trade is forfeited and the deal will be valid. (Mirmoezi, 2007).

From the point of view of the majority of Shia jurists, this type of sale is considered without any juristic problem and its authenticity is confirmed, while its authenticity is disputed from the point of view of Sunni jurists. However, in general, sale with an option has very noticeable differences from the REPO contract. Some of these basic differences include the following:

- In a sale with an option, the seller has the right to cancel the trade by returning the price of the product, while in REPO, the first contract is not canceled and a reverse sale occurs on the due date.
- In the REPO contract, the price of the second trade is proportionally higher than the first trade, while in a sale with an option, the same price will be paid to terminate the contract.
- In a sale with an option, the interests of the subject of trade belong to the buyer until the termination of the trade, but in the REPO contract, these interests can be owned by each of the parties, depending on the REPO type.

As a result, in addition to the fact that a sale with an option is fundamentally different from a REPO contract, in general, from the point of view of Shia jurists, a sale with an option does not invalidate or cause doubts in that trade.

3 -2- 3. The Uncertainty of REPO Contract

Uncertainty means danger in the word (Al-Zubaidi, 1414) and it is used in different meanings. Imamiyyah jurists have presented several definitions of this word based on their different opinions about its nature. For example, some consider it as ignorance (Naini, 2018), while others consider it as ignorance about the quantity and quality of the subject of sale and not the absolute meaning of risk. (Najafi, 1983) According to the Sunnis, uncertainty is the sale of something whose existence or nonexistence is not known, its quantity is unknown, or there is no power to give it. (Ibn al-Morteza, 1987).

In general, Uncertainty can be defined as follows: " Uncertainty is the possibility of loss in a trade, which is caused because of ambiguity in some aspects of the trade, and this ambiguity is also caused by ignorance "(Mesbahi Moghadam and Rostamzadeh Ganji, 2007) In general, there are three main cases in Uncertainty include Uncertainty caused by ambiguity in the existence of the sale subject, its attributes and possibility of returning. (Ali Dost, 2003)

In Islamic law, avoidance of uncertain and risky transactions is based on narrations and there is no explicit text or reference in the Qur'an that independently indicates the invalidity of these kinds of trades. Basically, uncertainty and risk are effective in financial transactions and are ineffective in free or non-financial contracts. Also, there are no coherent provisions about

uncertainty and being risky in civil law, and the legislator has emphasized avoiding it in discussions related to trades. (Taleb Ahmadi, 2001)

There are several definitions for the word risk that one of the best definitions is as follows: financial risk means fluctuation in actual return compared to the expected return. In another sense, this concept is a combination of uncertainty in the occurrence of unfavorable results and favorable results.

Entering into any type of economic activity requires acceptance of some amount of risk and Islam has confirmed the principle of risk acceptance in many cases, including the rule of profit and loss depending on cost and investment, acceptance of partnership contracts, and many other cases, and while explaining the bond between accepting risk, and creating wealth in some way encouraged the acceptance of risk.

Regarding the relationship between risk and uncertainty, it can be said that the risk resulting from the existence of uncertainty in the trade is an unacceptable risk that is related to confidence in the elements of the contract and can be reduced by transparency in the elements of the contract, but the risk in the concept of financial risk is an acceptable risk related to the future of the property. (Mousavian and Alizadeh Asl, 2014).

Finally, it can be concluded that the main difference between risk and uncertainty is that risk involves both threat and opportunity, but there is no opportunity in uncertainty.

According to the explanations provided about the difference between uncertainty and risk, it can be said that if the time and amount of repurchasing are clearly specified in the REPO contract, and considering the truth that the parties of REPO contract mainly benefit from experts in financial and economic fields, and also very high trade costs, experts carry a lot of investigations on traded papers and terms of the transaction, so there won't be any uncertainty in these contracts and the risk of these transactions is acceptable from Shari'a point of view.

Also, getting help from an intermediary person for the transaction of bonds, stocks, and cash, ensuring the fulfillment of the obligations of the parties, checking the quality of bonds and stocks, checking the credit conditions of parties, conducting market operations to maintain the favorable price of the parties, etc can facilitate the contract fulfillment, and also helps to make the transaction transparent and non-aggressive.

3- 2- 4. Existence of the Condition Contrary to the requirements of the Contract in REPO

Every contract has its effects, conditions, and characteristics that distinguish it from other contracts, although these effects are not on the same page in terms of their relationship with the nature of the contract. In general, every contract has two requirements:

- Requirements of the nature of the contract: these effects and features are somehow related to the nature of the contract, without which the contract loses its legal nature.
- Requirements of applied conditions to the contract: these effects and features are secondary matters related to the contract, which are not the main purpose of the contract, and only if the contract is concluded unconditionally those matters will be necessary.

In general, doctrine and jurists believe that if there is a condition in a contract that is contrary to the requirements of that contract, that contract will be invalid, even though the contrary condition of Requirements of applied conditions to the contract will be valid and in many cases, the law has prescribed these conditions. (Katouzian, 2008).

As discussed in the previous discussions, the existence of a repurchasing condition in the sale contract is not against the requirements of the nature of the contract, and also optional sale of the contract and conditional sale, which is approved by Shiite jurists, caused REPO contract to be correct from this point of view.

It is also necessary to mention that in the case of using repurchasing conditions in the REPO contract, we consider the possibility of optional buying and selling, practically there won't be any subject against the nature of the sale and ownership contract.

4. The Proposed Framework of REPO Contract under Shia Jurisprudence as a Financing Tool

4- 1. Basic Framework

According to the mentioned cases, the primary framework of a REPO contract under Shariah should have the following features:

1. Should be based on the contract of sale.
2. The securities subject to the REPO contract should be legitimate.
3. The sale of bonds must be accompanied by the right of optional buying and selling.
4. The due date and repurchasing price of bonds or stocks should be clearly defined.
5. The sale of bonds should be in a non-profit way.

According to the mentioned features, this type of contract can be defined as follows:

REPO is an exchange in which the REPO seller hands over his securities to the REPO buyer in a non-profit way and exchange for cash, and at the same time undertakes to repurchase those securities or their equivalents at a specified price on a specified due date or at the time of demand.

The main effects and features of this type of contract are as follows:

- The obligations of REPO buyer and seller are exactly in accordance with CLASSIC REPO, and REPO seller has the right to repurchase the bonds on the due date and with a certain price, and unlike REPO, selling/repurchasing two sales contracts at the same time, will not be concluded because of elimination the doubts REPO sales are objective.
- Just like CLASSIC REPO the securities are transferred to the seller of the REPO profit and all the profits belonging to the securities are transferred to the seller instantly.
- The right to vote and attending in meetings relevant to traded securities is in the hands of the REPO buyer, while it is also possible to transfer these rights to the seller.
- In terms of the conditions after the default of each party, as well as the risks related to the absence of a central intermediary, this contractual framework is exactly similar to CLASSIC REPO
- The main difference between this contract and CLASSIC REPO is that to prevent the transaction from becoming uncertain, the due date and repurchase price must be determined, which can increase the probability of default by the parties.

In the end, it is necessary to explain that considering that the purpose of this article is to examine the REPO contract as a financing tool for economic enterprises and companies, and in this situation, the traded bonds are the stocks of companies whose prices can fluctuate a lot. It seems that this proposed framework is risk more than the desired amount, and in the continuation of this article, an attempt has been made to modify this framework.

4 -2. Final Framework to Optimize the Effects

It is obvious that this initial framework is very risky in terms of its effects and is not optimal and practical in using REPO as a financing tool. For this purpose, the final framework should not only be approved by Shariah but also be an effective tool in financing companies from a functional aspect. The features of the final REPO model which is under Shariah and a practical financing tool are as follows:

1. It is based on buying and selling.
2. The securities subject to the contract (company stocks) must be legitimate.
3. The sale must be accompanied by the right of buying and sell.
4. The price and due date of repurchasing should be determined precisely and clearly.
5. The sale of bonds should be made at profit.
6. REPO should be made tripartite.
7. The scope of powers should be explicitly agreed upon by both parties or determined by regulatory bodies such as the Securities and Exchange Organization depending on the value of the traded stocks.
8. The right to attend meetings and the right to vote related to stocks belongs to the REPO seller by default, although other agreements are also accepted.

5. Conclusion

Based on the cases mentioned in this article, REPO faces many doubts from a jurisprudential point of view as a funding tool. Based on the investigations that have been done, we concluded that the loan contract has doubts about the contract being usury and is not a suitable basis for designing the REPO contract.

Therefore, the basis of the sale contract and application of a contract package including a sale contract and two buying and selling options were considered as the suitable basis for setting up such contracts, and also by examining the doubts such as whether these trades were uncertain, risky or usurious, we concluded that it is possible to resolve these doubts by applying some special articles.

In the end, after presenting the initial REPO model in accordance with Shia jurisprudence, it was tried to present the optimized REPO model as a financing tool that has the desired economic and market functions with removed Shariah doubts. This final model, while having all the features of the initial model, is a tripartite framework, which reduces contractual risks and facilitates the execution process of this contract.

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Persian

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