

105290 - Penalty clause and penalty for delay in an import contract

the question

I work in a government department, in the purchasing department. When we want to purchase some material and the time for this import exceeds 15 days and the value exceeds 100,000, we take from the supplier 10% of the tender as they guarantee to us, which will be returned after the material is imported. Is there anything wrong with this according to sharee'ah?.

Detailed answer

There is nothing wrong with taking an amount of money from the supplier to guarantee delivery of the product at the specified time. This comes under the heading of penalty clauses, which were permitted by the scholars.

But if the supplier does not fulfil what is expected of him, and the amount (of the penalty) exceeds what is commonplace, then he may refer it to the sharee'ah court, which will seek the help of people with experience to calculate the harm that has befallen the purchaser or the importer.

Dr. Yoosuf al-Shubayli said concerning import contracts: The penalties for delay that the purchaser imposes on the supplier in the event of delay, if it is in the form of a discount on the value mentioned in the contract, then it is permissible, because it is not like something extra in a loan owed by somebody, rather it is a discount or deduction, and it is a kind of penalty clause. The Council of Senior Scholars in Saudi Arabia has issued a fatwa stating that it is permissible, and that the penalty clause that is stipulated in the contract is a valid and sound clause which must be adhered to, unless there is a legitimate reason not to meet the commitments which dictates the penalty which is regarded as valid in sharee'ah. In that case, the reason makes the clause null and void until the reason or excuse is gone.

If the penalty clause is too much according to custom, so that it was meant as a financial threat and went far beyond the guidelines of sharee'ah, then we should go back to justice and fairness

on the basis of the benefit that was missed or the harm that was caused, and in the event of a dispute, that should be referred to the sharee'ah judge, who will base his judgement on the advice of people of experience. Abhaath Hay'at Kibaar al-'Ulama', 1/214

End quote from the Shaykh's website.

And Allaah knows best.