The Murabaha-to-the-Purchase-Orderer Contract as Implemented by Al Salam Bank – Algeria in Light of the Shari'ah Standard on Murabaha Issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)

عقد المرابحة للواعد بالشراء الذي يجريه مصرف السلام –الجزائر - في ضوء المعيار الشرعي المتعلق بالمرابحة الصادر عن هيئة المحاسبة والمراجعة للمؤسسات المالية الإسلاميةAAOIFI

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الملخص:

من بين الصيغ الأكثر استعمالا والتي أثبتت فاعليتها داخل المصارف الإسلامية صيغة المرابحة بأنواعها، سواء كانت محلية أو خارجية وسواء كانت بسيطة أو مركبة، و يعود كثرة التعويل عليها واعتمادها من قبل المصارف الإسلامية هو قلة هامش المخاطرة فيها.

ويأتي هذا البحث لتسليط الضوء على هذه الصيغة كما يجريها مصرف السلام بالجزائر، مقارنة بما هو مثبت لدى المعايير الشرعية التي تصدرها هيئة الـ AAOIFI، من خلال التعريف بالمرابحة للواعد بالشراء وخطواتها العملية لدى مصرف السلام – الجزائر -، وكذلك تحليل عقد المرابحة لدى مصرف السلام وفق متطلبات معيار المرابحة الصادر عن AAOIFI.

الكلمات المفتاحية: المرابحة، مصرف السلام،AAOIFI.

Abstract:

Murabaha, in its various forms, domestic or international, simple or complex, stands as one of the most widely utilized and effective financing modes in Islamic banking, largely due to its relatively low risk. This study examines the implementation of Murabaha by Al Salam Bank–Algeria in light of the Shariah standards set by AAOIFI, focusing on the operational steps of Murabaha to the Purchase Orderer and a critical analysis of its contract structure in accordance with AAOIFI's Murabaha standard.

Key words: Murabaha, Al Salam Bank, AAOIFI

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Introduction:

In the Name of Allah, and may blessings and peace be upon the Messenger of Allah, Muhammad, and upon his family, his Companions, and all those who adhere to his Sunnah and follow his guidance. To proceed:

Islamic financial institutions in general, and Islamic banks in particular, endeavor to keep pace with the ongoing developments in the world of Islamic banking. Among these significant advancements is the pursuit by Islamic banks to establish a unified framework that governs their operations, whether from a Shari'ah, accounting, or even governance perspective. Notably, one of the most prominent and influential institutions contributing to the support and evolution of Islamic banking is the Accounting and Auditing Organization for Islamic Financial Institutions, whose standards have emerged as a critical reference adopted by the majority of Islamic banks for regulating their activities, particularly in matters pertaining to Shari'ah compliance, accounting practices, governance, and ethical conduct. This widespread adoption has led numerous financial institutions around the world to implement these standards either as guiding principles or as mandatory requirements in their operations.

In this context, the present paper seeks to examine the extent to which these Shari'ah standards—foremost among them the Murabaha Standard—have influenced and guided one of the most significant contracts and financing modes, namely the Murabaha-to-the-Purchase-Orderer, as practiced by one of the banks that has demonstrated notable effectiveness in the Algerian banking sector in recent years: Al Salam Bank – Algeria. The paper aims to analyze the degree to which the Murabaha contracts executed by the bank under study conform to the requirements set forth in the Murabaha Standard issued by AAOIFI, thereby identifying areas of compliance as well as points of divergence.

Accordingly, the subject has been entitled: The Murabaha-to-the-Purchase-Orderer Contract as Implemented by Al Salam Bank – Algeria in Light of the Shari'ah Standard on Murabaha Issued by the Accounting and Auditing Organization for Islamic Financial Institutions.

Research Problem

In light of the foregoing, the following research question may be formulated:

Has the Sharī'ah Standard on Murābaḥah, issued by the Accounting and Auditing Organization for Islamic Financial Institutions, exerted an influence in guiding the Murābaḥah contract to the promising buyer as implemented by Al Salam Bank – Algeria?

Significance of the Topic:

In my view, this research topic holds considerable significance, as reflected in the following points:

- The intensifying competitiveness among Islamic banks, which has evolved beyond merely offering a diverse range of financial services, to a competition centered on which institutions provide financial products and structures most consistent with the principles of Islamic Shari'ah, duly approved by Shari'ah boards according to their respective fatwa-issuing mechanisms and the rigor with which these mechanisms are applied.

- The pivotal role that Shari'ah standards have come to occupy within the global Islamic banking landscape, as these standards have become a crucial and binding reference point for numerous Islamic banks and financial institutions worldwide.
- Addressing such topics contributes to promoting the openness of Islamic banking—including Islamic banking windows and standalone Islamic banks—in Algeria to mechanisms that seek to unify the work of Shari'ah boards and Shari'ah audit functions across Islamic financial institutions.
- Underscoring the critical importance of the contributions made by the Accounting and Auditing Organization for Islamic Financial Institutions and the standards it issues in the development and support of the Islamic financial industry.

Research Objectives:

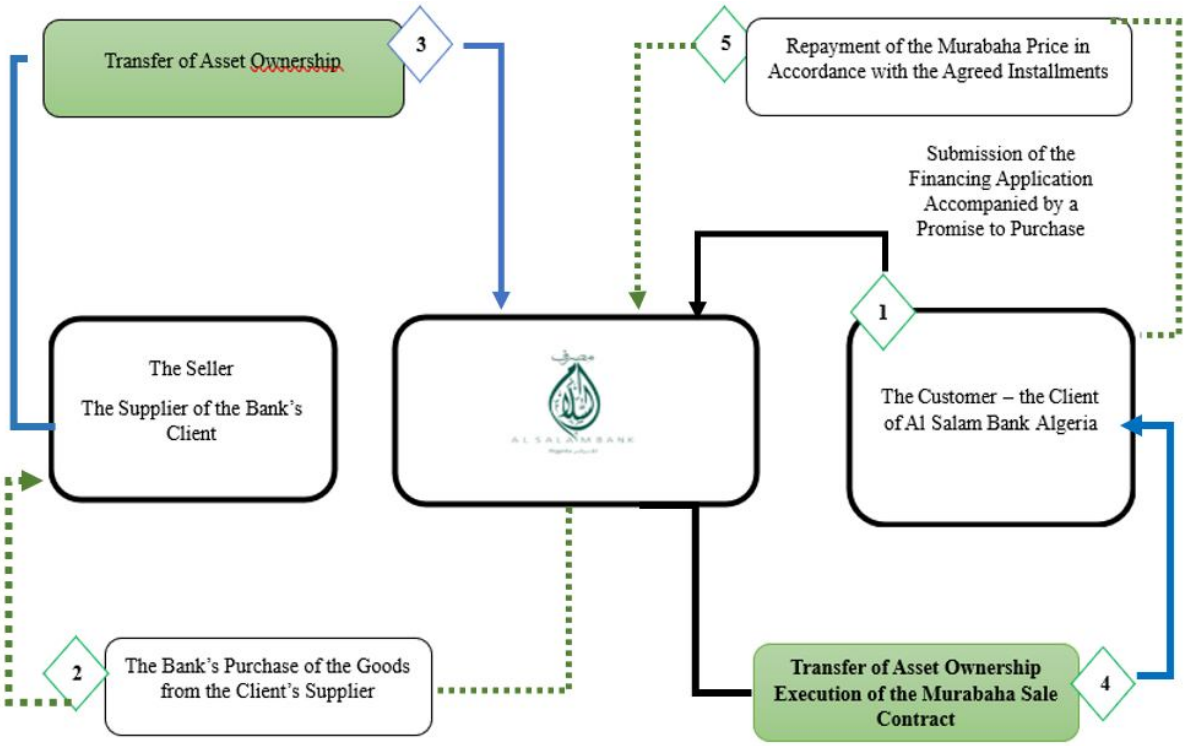
- To examine the impact of the rules and provisions of the Murabaha Standard, along with other Shari'ah standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions, in shaping one of the key financial structures adopted by Al Salam Bank – Algeria, and to identify whether the bank implements these standards as mandatory requirements or merely as guidelines.
- To identify the Shari'ah non-compliances committed by the bank in the execution of contracts related to this product, whether during contract formation or in practical implementation, and to propose potential solutions to address such non-compliances based on the relevant Shari'ah standards.

1- Practical Steps for Executing the Murabaha to the Promising Buyer at Al Salam Bank – Algeria:

The Murabaha contract to the promising buyer, as implemented at Al Salam Bank – Algeria, proceeds through a series of practical steps outlined as follows:

- The client submits a financing application.
- The bank examines the client's request and subsequently responds to the applicant.
- The client is summoned to sign the Promise to Purchase Agreement.
- The client provides a security deposit as evidence of seriousness.
- The bank purchases the commodity in accordance with the client's specifications.
- The bank pays the price of the commodity to the supplier.
- The process of delivery and receipt of the commodity is completed between the bank and the supplier.
- A Murabaha sale contract is concluded between the bank and the client.
- The client settles the Murabaha price in installments according to a predetermined schedule and time frame.

GraghN° 1.The Practical Steps of the Murābaḥah Modality as Executed by Al Salam Bank



Source: Prepared by the researcher based on the Official Website of the Bank:www.alsalamalgeria.com

2- Analysis of the Murabaha Contract at Al Salam Bank in Light of the Requirements of the AAOIFI Murabaha Standard

This section aims to examine the extent to which the provisions contained in the Murabaha contract issued by Al Salam Bank conform to the requirements stipulated in the Murabaha Standard promulgated by the Accounting and Auditing Organization for Islamic Financial Institutions. This objective is pursued through an analytical comparison between the clauses of the aforementioned contract and the relevant provisions set forth in the AAOIFI standard, in order to ascertain the degree of compliance and alignment between them.

2.1- An Introduction to the Murabaha Standard and the Murabaha Contract at Al Salam Bank in Algeria

The Murabaha Standard constitutes one of the pivotal and significant standards that the Accounting and Auditing Organization for Islamic Financial Institutions has diligently developed and refined. This standard has garnered considerable attention and practical application among financial institutions worldwide, surpassing other standards in terms of adoption. This prominence is primarily due to its association with one of the most effective and widely demanded Islamic financing modes. Among the banks that implement this

financing structure is Al Salam Bank, which serves as the focal point of the present study, as previously noted.

This section seeks to introduce the Murabaha Standard by outlining the various stages it undergoes, from its initial formulation to its final approval and issuance. Furthermore, it aims to highlight the key features and principal provisions of the Murabaha contract as practiced by Al Salam Bank in Algeria.

2.1.1 - Overview of the Standard and the Contract

2.1.1.1- An Overview of the Murabaha Standard Issued by AAOIFI

The Murabaha Standard occupies the eighth position among the Shari'ah standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions. Its primary objective is to elucidate the fundamental principles and Shari'ah rulings governing Murabaha transactions, as well as to outline the sequential stages involved in such operations—from the initial promise to the eventual transfer of ownership of the asset to the client. Moreover, it delineates the Shari'ah parameters and regulatory requirements that Islamic financial institutions are obligated to observe[1].

The development of the Murabaha Standard underwent several stages before reaching its final formulation. The most significant of these stages may be summarized as follows[2]:

- On 12 Dhul-Qi'dah 1419 AH, corresponding to 27 November 1999 CE, the Shari'ah Board, in its first meeting held in Makkah Al-Mukarramah, resolved to establish Shari'ah requirements for Murabaha financing, and mandated the engagement of a Shari'ah consultant to prepare a draft of the proposed Shari'ah standards.
- On 13 Dhul-Hijjah 1419 AH, corresponding to 30 March 1999 CE, the Fatwa and Arbitration Committee resolved to appoint a Shari'ah consultant to prepare a draft project for the Shari'ah requirements pertaining to Murabaha.
- On 13–14 Rajab 1420 AH, corresponding to 22–23 October 1999 CE, the Committee deliberated upon the draft project of the Shari'ah requirements for Murabaha, and requested the consultant to incorporate necessary amendments in light of the discussions held and the observations expressed by the members.
- On 10–15 Ramadan 1420 AH, corresponding to 17–22 December 1999 CE, the revised draft of the project requirements was presented to the Shari'ah Board during its second meeting convened in Makkah Al-Mukarramah. The Shari'ah Board introduced amendments to the draft requirements for Murabaha and resolved to circulate it among experts and interested stakeholders to solicit their comments and observations, in preparation for further deliberation during a public hearing session.
- On 29–30 Dhul-Hijjah 1421 AH, corresponding to 4–5 April 2000 CE, the Organization held a public hearing session in the Kingdom of Bahrain, during which comments and feedback were received, and certain members of the Shari'ah Board responded to the observations and provided clarifications.
- On 25–27 Safar 1421 AH, corresponding to 29–31 May 2000 CE, the Shari'ah Board, in its fourth meeting convened in Al-Madinah Al-Munawwarah, deliberated upon the amendments introduced by the Shari'ah Studies Committee and the Fatwa and Arbitration Committee. The Board further adopted amendments deemed appropriate,

and approved the standard under the title "Shari'ah Requirements for Murabaha," with certain paragraphs adopted unanimously, and others by majority vote, as documented in the minutes of the Board's meetings.

- On 27 Safar–4 Rabi' Al-Awwal 1423 AH, corresponding to 11–16 May 2002 CE, during its eighth meeting held in Al-Madinah Al-Munawwarah, the Shari'ah Board approved the reissuance of the Shari'ah Requirements for Investment and Financing Modes N° (1) pertaining to Murabaha, under the new designation of Shari'ah Standard N° (8) on Murabaha, without introducing any substantive changes to its contents.
- In Rabi' Al-Thani 1433 AH, corresponding to March 2012 CE, the Shari'ah Standards Review Committee, in its meeting convened in the State of Qatar, conducted a review of the standard. Following deliberation and discussion, the Committee proposed a series of amendments, including additions, deletions, and redrafting, which it subsequently submitted to the Shari'ah Board for consideration and adoption as deemed appropriate.
- On 13–15 Muharram 1435 AH, corresponding to 6–7 November 2014 CE, the Shari'ah Board, during its thirty-ninth meeting convened in the Kingdom of Bahrain, deliberated upon the amendments proposed by the Review Committee. After thorough discussions, the Board ratified those amendments it deemed suitable, and approved the standard in its present revised form.

2.1.1.2- Scope of the Standard:

This Standard addresses Murabaha transactions in their various stages, including matters related to the safeguards for initiating such transactions, such as binding promises and earnest money, as well as matters concerning the guarantees for debts arising from Murabaha contracts.

The Standard does not cover MurabahaSukuk, as these fall under the Standard for Investment Sukuk. Likewise, it does not encompass deferred sales that are not conducted on a Murabaha basis, nor other forms of trust sales (Bay' al-Amanah), nor does it address bargaining sales (Bay' al-Musawamah)[3].

2.1.1.3 – Procedures Preceding the Conclusion of the Murabaha Contract:

These procedures refer to the steps undertaken by the client, commencing from the expression of their desire to purchase a commodity and the subsequent submission of a financing application to the bank, progressing to the bank's assessment of this application, and culminating in the client's execution of a binding promise. The Accounting and Auditing Organization for Islamic Financial Institutions has established a set of provisions governing the sequential stages through which these procedures must pass, as outlined below[4]:

- **Expression of the Client's Desire to Acquire a Commodity through the Institution:**

This step entails the client submitting to the bank a request to purchase a commodity with specific characteristics, whereby the client usually identifies the location of the commodity. This application is typically accompanied by a pro forma invoice indicating the cost of the commodity[5].

- **The Institution's Stance on the Client's Murabaha Request:**

The client's application is examined by the specialized committee within the bank, which subsequently determines its position regarding the client's request, either by approving or declining it[6].

- **The Client's Promise:**

The client undertakes, in writing, to purchase from the bank the commodity which they have requested, after the bank has acquired and taken actual or constructive possession of it. AAOIFI has established a set of provisions regulating the procedures, nature, and legal status of such promises[7].

- **Commissions and Expenses:**

These refer to the expenses arising from the conclusion of the contract, the transfer, receipt, and delivery of the commodity. AAOIFI has elaborated on which costs are borne by the bank, which fall upon the client, and which are shared jointly between both parties[8].

- **Guarantees Related to Commencing the Transaction:**

The client provides various guarantees in accordance with the procedures undertaken by the bank to conclude the Murabaha contract. These guarantees are intended to cover potential damages resulting from the client's default. The bank is not permitted to dispose of such guarantees except within the limits stipulated in the contract between the parties, in the agreed-upon circumstances, and strictly to the extent of the actual damage sustained[9].

2.1.1.4 – Acquisition, Possession, and Agency in Relation to the Commodity by the Institution:

Following the completion of the stage of mutual promises (muwa'ada) between the bank and the client, and upon the bank's approval of the client's request, the subsequent stage ensues, namely the acquisition, possession, and possible agency arrangement regarding the commodity by the institution. This stage is founded upon two essential pillars and governed by two critical regulatory principles[10]:

- **The Institution's Ownership of the Commodity Prior to Selling it on a Murabaha Basis:**

This principle is of paramount importance before executing the Murabaha sale to the client. It is incumbent upon the bank to acquire ownership of the commodity prior to its sale under Murabaha terms. In other words, all documents and records pertaining to the commodity must establish the legal transfer of ownership from the supplier to the bank[11].

- **The Institution's Possession of the Commodity Prior to Selling it on a Murabaha Basis:**

This principle is no less significant than the preceding one. The actual or constructive possession (qabdh) of the commodity is a fundamental prerequisite for valid ownership and, consequently, for its subsequent sale. The purpose of stipulating the requirement of possession is to ensure that the bank bears the risk of loss or damage to the commodity, which signifies that the commodity must exit the seller's liability and enter the bank's liability[12].

2.1.1.5- Conclusion of the Murabaha Contract:

Following the acquisition and receipt of the commodity by the bank, the stage of concluding the sale contract between the bank and the client ensues. At this juncture, the sale price, its components, and any associated expenses are duly determined. Furthermore, the method of payment for the commodity under the Murabaha sale is specified, whether through closely spaced or more extended instalments. Consequently, the price of the commodity becomes a debt incumbent upon the client, to be settled at the agreed-upon maturity date[13].

2.1.1.6- Murabaha Collateral and Debt Treatment:

The bank ought to require legitimate guarantees from the client within the Murabaha sale contract. Such guarantees may include obtaining a third-party surety, pledging the client's investment deposit, mortgaging any movable or immovable asset, or establishing a security interest over the commodity itself, either as a non-possessory pledge or as a possessory pledge whereby the bank retains possession of the commodity, with the pledge being gradually released in proportion to the repayment made[14].

2.1.1.7- Date of Issuance of the Standard:

This standard was issued on the 4th of Rabi' al-Awwal 1423 AH, corresponding to the 16th of May 2002 CE[15].

2.1.1.8- Adoption of the Standard:

The Shari'ah Board adopted the Shari'ah requirements for the Murabaha structure during its fourth meeting convened on 25–27 Safar 1421 AH, corresponding to 29–31 May 2000 CE. Subsequently, the Shari'ah Board approved the re-issuance of the Shari'ah requirements for Murabaha in the form of a Shari'ah Standard during its eighth meeting held in Al-Madinah Al-Munawwarah on 27 Safar–4 Rabi' al-Awwal 1423 AH, corresponding to 11–16 May 2002 CE[16].

2.1.2- Overview of the Murabaha Contract Conducted by Al Salam Bank in Algeria

2.1.2.1- Concept of the Murabaha Contract:

The Murabaha Contract Appendix occupies the fourth position among the annexes accompanying the contract pertaining to Murabaha sales to the promissory purchaser, as issued by the bank.

This appendix constitutes a document whereby a contract is concluded between the bank, acting as the first party, and the promissory purchaser, acting as the second party. Pursuant to this contract, the first party (the bank) sells to the second party (the client) the commodity which the latter has requested the bank to purchase, along with the related services, the type, quantity, specifications, and location of which are specified in the purchase request submitted together with the promise.

Under this arrangement, the client undertakes to purchase the commodity from the bank for a price comprising the original acquisition cost borne by the first party, including the purchase price of the commodity, the expenses related to its acquisition and taking possession thereof, in addition to the profit margin agreed upon and stipulated in the promise previously submitted by the client to the bank[17].

2.1.2.2. External Description of the Murabaha Contract

At the top of the Murabaha contract document appear the annex number and its title, with the bank's logo positioned on the right-hand side and the contract number on the left.
The contract is headed by the following phrase: "Local Murabaha Contract."
This is followed by the section dedicated to identifying the contracting parties, namely Al Salam Bank Algeria, represented by the Branch Manager of [specific branch], and the second party, i.e., the individual or institution concerned. This section also includes various details pertaining to the parties, such as name, address, and legal representative.
Subsequently, the contract contains the substantive provisions, comprising a preamble and seven articles. At the conclusion of the document, both parties are required to affix their signatures. Notably, on the signature line designated for the second party, the name and surname must be handwritten, accompanied by the phrase: "Read and agreed."
In the lower margin of the contract, on the right-hand side, the contract's title appears alongside the name of the client, while the left-hand side bears the date and page number.
The contract consists of a single page[18].

2.1.2.3. Key Provisions of the Murabaha Contract

- **Preamble:**

The preamble refers to the current account agreement concluded between the Bank and the client. It also makes reference to the purchase request accompanied by the unilateral promise signed prior to this contract. Furthermore, it states that the client has submitted a request to the Bank to purchase goods and related services, specifying their type, quantity, specifications, and location, as indicated in the purchase request with the promise. The client has further undertaken to purchase these goods from the Bank for a price comprising the Bank's purchase cost, the expenses incurred for acquiring and taking possession of the goods, in addition to the profit margin promised and determined in the client's prior undertaking to the Bank.

- **Article One – Subject Matter:**

This article declares the Bank's sale to the client of the goods specified in type, quantity, description, and location, as stated in the purchase request and the invoice annexed to this contract.

- **Article Two – Sale Price and Payment Method:**

This article details the components of the sale price as well as the method of payment.

- **Article Three – Client's Undertakings:**

Within this article, the client acknowledges having inspected the goods subject to the contract with sufficient scrutiny to eliminate ignorance and uncertainty (jahala and gharar). The client declares that the goods conform to the specifications outlined in the purchase request annexed to this contract, and confirms acceptance and receipt of the goods in their current condition. The client bears full responsibility for any loss, damage, or deterioration occurring to the goods from the moment of receipt. Moreover, the client undertakes not to claim any rights against the Bank in relation to the goods after taking delivery, nor to seek recourse against the Bank for any apparent defects in the goods.

- **Article Four – Bank's Undertakings:**

Should the original seller of the goods subject to this contract have granted the Bank a warranty for a specific period, the Bank undertakes to transfer such warranty to the buyer, who shall thereafter have the right to pursue any claims directly against the warrantor without recourse to the Bank.

- **Article Five – Interpretation of the Contract:**

This contract shall be interpreted and supplemented, in any matter not explicitly addressed therein, in accordance with Algerian law, provided such interpretation does not conflict with the principles of Islamic Sharia. In instances where no applicable statutory provision exists, Sharia rulings shall apply.

- **Article Six – Annexes:**

The annexes to this contract are deemed an integral and inseparable part thereof.

- **Article Seven – Copies of the Contract:**

This article specifies the number of copies of the contract and contains the client's acknowledgment of having read and understood its contents[19].

2.2. Analysis of the Provisions of the Murabaha Contract in Light of the AAOIFI Murabaha Standard

The conclusion of the Murabaha contract constitutes the final stage in the series of procedures and agreements entered into between the bank and the client. It represents a pivotal step in the operational process pertaining to the Murabaha product offered by the bank and serves as conclusive evidence of the transfer of ownership of the asset to the client.

This section is dedicated to analyzing the provisions contained within the Murabaha contract as executed by Al Salam Bank, in accordance with the stipulations set forth in the Murabaha Standard issued by the Accounting and Auditing Organization for Islamic Financial Institutions. The analysis also considers related standards, such as the standard on possession (Qabd), the Islamic insurance (Takaful) standard, and other relevant standards connected to the contract, in order to evaluate the extent to which the contract is guided by and compliant with these Sharia standards.

First – Presentation of the Preamble and Commentary Thereon:

- **Presentation of the Preamble:**

The text reads as follows:

With reference to the current account agreement signed between the Bank and the customer at the time of opening the account, which constitutes an integral part of this contract.

And with reference to the financing agreement signed between both parties, which likewise constitutes an integral part of this contract.

And with reference to the purchase request accompanied by the promise, signed prior to this contract, which shall also be deemed an integral part thereof[20].

- **Commentary on the Preamble:**

The contract states: "With reference to the current account agreement…"

It is noteworthy that Algerian legislation does not stipulate any provision defining the current account in the Algerian Commercial Code. Consequently, it may be concluded that the legal

rules governing the current account are those stipulated under the Algerian Civil Code concerning commercial and banking customs and practices[21].

Al Salam Bank defines the current account as follows:

"A demand deposit account denominated in Algerian dinars, through which transactions are effected either by the customer (such as salary payments, settlement of bills, etc.) or for the benefit of the customer in the course of their daily economic activities[22]."

Accordingly, it may be said that the current account agreement is:

"An arrangement between the bank and the customer whereby a non-interest-bearing bank account is established, offering services such as cheque books and Visa cards. Customers may access credit facilities provided the account remains active, and their funds are typically safeguarded in the event of any financial distress experienced by the bank[23]."

Based on the foregoing, the Bank requires the customer to open a current account. This is particularly the case where the customer receives a regular monthly salary, from which instalments are deducted directly, without awaiting manual payment by the customer.

The contract further stipulates: "And with reference to the financing agreement…"

The term "financing agreement" refers to the procedure that takes place after the customer submits a purchase request to the Bank.

Moreover, the contract states: "And with reference to the purchase request accompanied by the promise, signed prior to this contract, which shall also be deemed an integral part thereof."

Here, the term "purchase request accompanied by the promise" denotes the customer submitting a document in which he expresses his wish to acquire a specific commodity, precisely described, and indicating, in most cases, its location. This request is typically accompanied by a pro forma invoice issued in the name of the Bank for the benefit of the customer. Frequently, this request is a formal document prepared in advance by the Bank, commonly referred to as a Murabaha Request or Purchase Request, along with a financing application form.

This application comprises a set of data as follows:

(a) Information pertaining to the prospective purchaser;
(b) Information regarding the financial standing of the prospective purchaser;
(c) Information concerning the expenses of the prospective purchaser;
(d) Information related to the commodity intended for purchase, including a statement of its specifications.

In addition to the aforementioned data, the following particulars are also included:

(a) The method of calculating the Murabaha sale price;
(b) The price and its mode of payment;
(c) The earnest money margin;
(d) The guarantees;
(e) Expenses and obligations;
(f) Judicial jurisdiction;
(g) General provisions.

This application, when accompanied by the document of promise and the proforma invoice, constitutes a binding obligation upon the client, who is legally precluded from

withdrawing from it. In the event that the client, who has issued the promise to purchase, defaults on his commitment, the bank may obtain a judicial ruling that serves as a substitute for the contract itself, in accordance with Article 72 of the Algerian Civil Code.

It is necessary at this juncture to pause and consider the term "Promise Agreement," or as it is designated by Al Salam Bank, "Promise to Purchase." It is evident that the bank renders the promise binding upon the client, thus obligating him to fulfill it. In doing so, the bank contravenes the AAOIFI Shari'ah standards, which stipulate non-bindingness. This is clearly articulated in Clause 2/3/1 concerning the procedures preceding the conclusion of a Murabaha contract, wherein it states[24]: "It is impermissible for [the preliminary arrangements] to include a mutually binding promise between the two parties[25]."

This stance by AAOIFI is grounded in the predominant opinion among jurists that a mutual promise (Muwa'ada) is non-binding. Conversely, Al Salam Bank upholds the binding nature of the promise executed between the parties, as can be inferred from its characterization of the promise as "an integral and indivisible part of the contract." This position aligns with the well-known view within the Maliki school of jurisprudence[26], which maintains that a promise becomes judicially enforceable if it pertains to a valid cause and the promisee has undertaken action in reliance thereon[27].

Moreover, were this promise to purchase not binding upon the ordering party, the bank would not assume the risk of procuring the commodity. Thus, the promise in this context is linked to a specific cause, namely the purchase of the designated commodity with its defined specifications. The promisee, namely the bank, becomes involved in the transaction by purchasing the commodity at the request of the ordering party[28]. Should the latter renege on his promise to the bank, the bank is thereby entitled to compel performance or to pursue legal action against him, given that the bank has incurred obligations and costs by purchasing the commodity on the client's behalf and at his request.

The legal effect of such enforceability, in this case, may be determined either through compelling the promisor to fulfill his promise or by obligating him to compensate for the actual damages incurred as a result of non-performance without a legitimate excuse.

From the interviews we have conducted and the documents we have examined, it becomes evident that the bank renders the promise binding upon the client while it remains non-binding upon the bank itself (i.e., it is treated as a unilateral promise). In doing so, the bank relies upon Article 71 of the Algerian Civil Code, which stipulates that:

"An agreement by which one or both parties undertake to conclude a specific contract shall have no effect unless all the essential elements of the contract intended to be concluded, as well as the period within which it must be concluded, have been determined."

In summary, it may be stated that the bank's reliance on the Mālikī opinion stipulating the obligatoriness of the promise—even while this opinion is considered preponderant—leads the bank into the prohibition of selling what it does not possess. This prohibition consequently entails the impermissibility of executing a Murābaḥah sale in the manner practiced by banks, according to the majority of Mālikī scholars. This is because the Murābaḥah transaction, in such a scenario, is structured in two distinct phases:

a) The first phase: the phase of the promise (Al-Waʿd).

b) The second phase: the phase of mutual possession and delivery (Al-Taqābuḍ).

Upon examining the conditions and procedural steps encompassed within each phase, it becomes apparent that the actual sale transaction (i.e., the definitive offer and acceptance) — based on the view of the obligatoriness of the promise — is effectively concluded during the phase of mutual promises. This occurs prior to the bank (as the seller) taking possession of the commodity.

The second phase is essentially a final stage that merely fulfills the formal requirements of the contract, namely the taking of possession (often only notional or simulated).

Concerning the legal ruling on the mutual promise (Al-Muwāʿadah) entered into by the bank and the customer, AAOIFI has permitted such an arrangement. This permission is articulated in Clause 2/3/3 of the Shariah Standard, which addresses the procedures preceding the conclusion of a Murābaḥah contract, on the condition that an option (Khiyār) is available to both parties or to either of them[29].

Furthermore, the preamble to the contract stipulates:

"Whereas the customer has submitted a request to the bank for the purchase of specific goods and associated services, indicating their type, quantity, specifications, and location in the purchase request, along with a promise."

This is also affirmed in Clause 2/1/1[30].

However, it is imperative for the bank, in this context, to ascertain that the party selling the commodity specified by the customer (in terms of its characteristics and location) is neither the customer himself nor his agent.

This requirement is expressly provided for in Clauses 2/2/3 and 2/2/4 of the procedures preceding the Murābaḥah contract. If it is established that the seller of the commodity specified by the customer is in fact the customer himself, or his agent, or a close relative, the transaction would be invalid. This is because it would fall under the category of "Aʿīnah" sale, rendering the transaction merely a simulated or fictitious sale[31].

It is observed that Al Salam Bank authorizes the customer to purchase the goods on its behalf. In such an arrangement, it remains uncertain whether the customer himself is the actual owner of the goods or whether he maintains familial ties with the owner thereof.

This is explicitly stated at the outset of the preamble to the Agency-to-Purchase Agreement, which reads:

"Whereas the First Party (the Bank) desires to appoint the Second Party (the Customer) as its agent to purchase the goods which he has requested and promised to purchase…[32]"

In this respect, the Bank—based on our examination—appears to have contravened the stipulations set forth in Clauses 2/2/3 and 2/2/4.

Moreover, the preamble states:

"…and has promised to purchase the goods from it for the cost incurred by the First Party and the purchase price thereof."

Within the customer's purchase request and the promise, the customer specifies the method for calculating the cost price of the commodity under the Murābaḥah structure, which comprises the following components[33]:

a) The base price of the goods;
b) The actual expenses incurred;
c) The Bank's profit margin and the percentage thereof.

In this regard, the Bank is compliant with the provisions of Clause 4/6, which stipulates that:

"The price of the commodity in the Murābaḥah sale as well as the profit margin must be determined and known to both parties at the time of signing the sales contract[34]."

In such cases, it is imperative to observe the requirements stipulated in Clause 4/4 concerning the conclusion of the Murābaḥah contract, which provides that:

"An institution may not add to the cost price of the commodity anything except for direct financial expenses actually paid to third parties[35]."

Furthermore, the preamble states:

"…and the expenses related to acquiring ownership and taking possession thereof, in addition to the profit margin promised and determined in the promise submitted by the customer to the Bank."

It is essential, therefore, to specify precisely what should be included under the expenses associated with the commodity, restricting such expenses exclusively to actual financial outlays, in accordance with Clause 4/4 of the Murābaḥah Standard issued by AAOIFI.

Regarding the issue of possession (Qabḍ), the Bank is obliged to acquire ownership of the goods before selling them to the customer under Murābaḥah. Likewise, the customer must ascertain that the Bank has indeed acquired ownership of the goods and taken possession thereof, whether physically or constructively. To address this matter appropriately, the Bank may acquire the goods under an invoice issued in its name. This is consistent with Article 30 of the Algerian Commercial Code, which stipulates:

"Every commercial contract may be proven… by an accepted invoice[36]."

Neither the Bank nor the customer is permitted to consider the Murābaḥah contract automatically concluded merely because the Bank has acquired ownership of the goods. Furthermore, the Bank may not compel the customer to take delivery of the goods unless the Murābaḥah contract has been duly concluded. This is in line with the provision stipulated in Clause N° 4/1[37].

However, should the bank incur actual damages as a result of the client's default, the bank shall deduct from the earnest money margin deposited by the client in the bank's account an amount equivalent to the proven loss sustained due to the client's failure to fulfill the purchase commitment.

This is explicitly stated in the purchase undertaking document prepared by the bank, which reads as follows:

"In the event that we withdraw from concluding the contract after the bank has acquired ownership of the requested commodity and has taken possession of it in a manner that transfers liability and risk, we undertake to indemnify the bank by paying the difference between the amount the bank obtains through selling the commodity and the cost it incurred in purchasing it. Should the earnest money margin paid by us suffice to cover such difference, the bank shall recover its right from it; otherwise, we undertake to settle the remaining balance[38]."

This position is confirmed by Clause N° 4/2 of the Sharia Standards on Murabaha, which provides that:

"The institution is entitled to compensation for actual damages arising from the client's default in the case of a binding promise[39]."

The preamble states: "Since both parties possess full Shariah and legal capacity to contract, they have agreed upon the following terms."

In this context, "capacity" denotes a person's eligibility to acquire rights and assume obligations—that is, the person must be legally competent to have rights enforceable against others and to bear obligations towards others, as well as to personally undertake such obligations[40].

Legal capacity, on the other hand, refers to the individual's ability to acquire rights, perform duties, and engage in acts permitted by law. Article 78 (as amended) states: "Every person is competent to contract, unless an impediment arises that renders his capacity diminished or void by operation of law[41]."

Thus, capacity in this sense bestows legal personality upon both natural and juridical persons.

Second: Presentation of Article One and Commentary Thereon

- **Presentation of Article One: Subject Matter**

  In consideration of the purchase price specified in Article Two below, and subject to the terms and conditions stipulated in this contract, the Bank has sold to the Customer the goods, the type, quantity, specifications, and location of which are set out in the Purchase Order and the Invoice attached to this contract, both of which shall be deemed integral parts thereof[42].

- **Commentary on Article One: Subject Matter**

  The first paragraph of Article Two, which addresses the components of the sale price, states as follows:

  "The sale price consists of the cost of purchasing the goods, including all actual expenses, amounting to … (in words and figures), in addition to the promised profit margin amounting to … (in words and figures).[43]"

The term "terms and conditions" here encompasses all matters mutually agreed upon by the Customer and the Bank, from the stage of the undertaking (promise) up to the conclusion of the contract, including the modalities of delivery and receipt, the method of payment, and the ultimate acquisition of ownership of the goods by the client. Such terms and conditions must always conform to the principles and objectives of Shariah.

Pursuant to this Article, the sale contract between the Bank and the Customer (the purchase orderer) is executed after the price has been determined—as will be further detailed in the following Article—by specifying the type, quantity, specifications, and location of the goods in the Purchase Order, while observing the following essential requirements:

a. The Bank must acquire ownership of the goods prior to selling them on a Murabaha basis[44].

b. The Bank must take possession of the goods before selling them on a Murabaha basis[45].

As for the manner of taking possession, it varies depending on the nature of the goods and prevailing commercial customs. The purpose of stipulating the requirement of possession is to ensure that the Bank bears the risk of loss or damage to the goods[46].

c. The institution (i.e., the Bank) is not permitted to deem the Murabaha contract concluded automatically merely by acquiring ownership of the goods, nor may it compel the Customer (the purchase orderer) to accept delivery of the goods and pay the Murabaha sale price if the Customer refrains from concluding the Murabaha contract[47].

Third – Presentation and Commentary on Article Two:

- **Presentation of Article Two: Sale Price and Method of Payment**

a) The sale price consists of the purchase cost of the goods, inclusive of all actual expenses, amounting to … (in words and figures), in addition to the promised profit margin, amounting to … (in words and figures).

b) Any amount paid by the client at the time of submitting the purchase request accompanied by the promise to buy shall be deemed as a security margin to evidence seriousness, estimated at … Algerian dinars (in words and figures), and shall be considered as part of the total sale price[48].

c) Accordingly, the remaining balance of the sale price shall amount to … Algerian dinars (in words and figures). The client undertakes to pay this remaining balance either in installments or in a lump sum, as specified in the repayment schedule agreed upon between the parties, which forms an integral and indivisible part of this contract.

- **Commentary on Article Two: Sale Price and Method of Payment**

In this provision, the Bank explicitly discloses the price of the commodity separately, which is consistent with the stipulations of Clause 4/6 concerning the conclusion of a Murabaha contract. The said clause provides that: "In a Murabaha sale, both the cost price of the commodity and the profit margin must be determined and known to both parties at the time of signing the sale contract[49]."

As can be observed, the Bank has assigned the expenses to the purchaser (the one ordering the purchase), incorporating them into the sale price.

However, the general principle dictates that all actual expenses should be apportioned between the Bank and the client, unless there is an explicit agreement whereby one of the parties assumes full responsibility for such costs.

Nonetheless, the Bank has included these expenses in the sale price, effectively transferring them to the client. The client, in turn, has implicitly accepted this arrangement by proceeding to sign the purchase request document and by acknowledging the contractual terms set forth herein.

This approach aligns with the stipulations of Clause 2/4/3 concerning commissions and expenses related to the Murabaha contract, which provides that: "The costs of preparing contracts concluded between the institution and the client shall be shared between them, unless the parties agree that one of them shall bear such costs in full[50]."

Yet, the Bank has not specified in the contract the nature of these expenses, nor has it clarified whether such costs fall within those customarily recognized as legitimate components of the commodity's cost price, in which case their inclusion in the cost structure would be unobjectionable, or otherwise.

Accordingly, it is incumbent upon the Bank to disclose within the contract the precise nature of these expenses. A failure on the part of the Bank to provide such disclosure would

constitute a breach of the provisions of Clause 3/4 concerning the conclusion of the Murabaha contract, which stipulates that the institution must, at the time of contracting, explicitly state the details of any expenses it intends to incorporate into the cost price[51].

As for indirect expenses, they are not to be included in the cost price of the commodity—for instance, any amounts added to the price as remuneration for the services of the institution's staff or similar internal costs[52].

With regard to the profit amount, the Bank has explicitly stated its value, thereby complying with the stipulations of Clause 4/7 concerning the procedures for concluding a Murabaha contract, which provides that: "The profit in a Murabaha contract must be determined and known, and it is insufficient merely to disclose the aggregate sale price."

Furthermore, the Bank has treated the amount paid by the client at the time of submitting the purchase request along with the promise to buy as a security margin to evidence seriousness, considering it as an advance payment towards the sale price[53]. This treatment is consistent with the provision of Clause 2/5/3 of the Murabaha Standard concerning guarantees related to initiating the transaction, which stipulates that: "The institution may take an amount known as a security margin to ensure compensation for any damage it may suffer in the event of the client's breach of his binding promise[54]."

As for considering this amount as part of the sale price, the Bank's practice aligns with Clause 2/5/5, which relates to the pre-contractual procedures of the Murabaha transaction, and provides that: "It is permissible to agree with the client, at the time of concluding the Murabaha contract, that this amount—i.e. the security margin—shall be deducted from the price of the commodity[55]."

Regarding the remaining balance of the sale price and the client's obligation to settle it either through installments or in a lump sum, as stipulated in the agreed-upon repayment schedule, the Bank's practice conforms to Clause 4/8, concerning the procedures for concluding a Murabaha contract, which states that: "It is permissible to agree on the payment of the sale price in a Murabaha transaction in either closely spaced or widely spaced installments[56]."

Fourth: Presentation and Commentary on Article Three – Client Undertakings

- **Presentation of Article Three: Client Undertakings**

The Client acknowledges that he has inspected the subject matter of the contract with a thorough examination that removes any ambiguity or uncertainty (Jahala and Gharar). He affirms that he has found the goods in conformity with the specifications stated in the purchase request attached to this contract, which constitutes an integral part thereof. The Client further declares that he has accepted and received the goods in their current condition, and, from the moment of delivery, assumes full responsibility for any loss, damage, or deterioration that may affect the goods. Moreover, the Client undertakes, within the limits stipulated under Article Four below, not to claim any rights against the Bank concerning the goods after having received them, and also commits not to seek recourse against the Bank for any apparent defects in the goods[57].

- **Commentary on Article Three: Client Undertakings**

The aforementioned text of Article Three states:

"The Client acknowledges that he has inspected the subject matter of the contract with a thorough examination that removes any ambiguity or uncertainty, and that he has found it conforming to the specifications stated in the purchase request attached to this contract, which constitutes an integral part thereof. He further declares that he has accepted and received the goods in their current condition, and, from the moment of delivery, assumes full responsibility for any loss, damage, or deterioration that may affect the goods."

At this juncture, it is crucial to ascertain whether the Client has taken actual (Haqīqī) or constructive (Hukmī) delivery of the goods. Should the delivery be both actual and constructive, the Bank shall not bear responsibility for any subsequent damage or loss that may affect the goods.

However, if the delivery is merely constructive, and damage or loss befalls the subject matter of the contract, the Bank may not lawfully transfer to the Client the liability for any harm occurring to the goods, particularly during the period of shipping and storage. This principle is expressly stipulated under clause 2/5/2 of the relevant standards[58]. Furthermore, such liability can't be construed as constituting a guarantee of the seller's proper performance[59].

It is necessary here to highlight an important point concerning transportation costs. If the Bank includes the shipping expenses—in this context referring either to transportation from the supplier to the Bank or from the Bank to the Client—within the overall cost of the goods, then the Bank shall consequently bear the risk associated with the transit of the goods.

The contract further stipulates: "Moreover, the Client undertakes not to seek recourse against the Bank for any apparent defects in the goods."

Here, it is essential to distinguish between latent defects and defects occurring after the conclusion of the contract. The Bank remains liable for latent defects that become manifest after the contract's execution, unless it has expressly stipulated its non-liability for such defects and the Client has agreed to such a condition.

Conversely, defects arising after the conclusion of the Murabaha contract and following the Client's actual receipt of the goods do not fall under the Bank's liability.

The position adopted by the Bank aligns with the stipulations of Clause 4/9 concerning the conclusion of the Murabaha contract, which states:

"The institution shall be liable for pre-existing latent defects that emerge after the contract, unless it has stipulated exemption from such liability. However, defects occurring after the conclusion of the Murabaha contract and following the Client's receipt of the goods are not the responsibility of the institution[60]."

Similarly, Clause 4/10 regarding the procedures for concluding a Murabaha contract provides:

"It is permissible for the institution to stipulate in the Murabaha contract that it shall be free from liability for all or some defects in the goods[61]."

Nonetheless, given that the Bank, as a juridical person, must place religious and ethical considerations at the forefront of its dealings, it is impermissible for it to conceal any defect or withhold disclosure from the purchaser while simultaneously stipulating exemption from liability for defects. Such an exemption is not permissible in absolute terms, as it is contingent upon the seller's honesty and uprightness.

Al-Kāfī states:

"If the seller stipulates exemption from liability for all defects, he shall not be absolved of such liability because exemption is an accessory to the sale which does not take effect except by explicit condition; thus, it is not established in cases of ambiguity, similar to a deferred term. According to another opinion, the seller is absolved unless he knew of the defect and concealed it[62]."

Fifth – Presentation and Commentary on Article Four: The Bank's Undertakings

- **Presentation of Article Four: The Bank's Undertakings**

If the original seller of the asset subject to this contract has granted the Bank a warranty for a specified period, the Bank shall be obliged to transfer this warranty to the purchaser. Consequently, the purchaser shall acquire the right to pursue any claims directly against the grantor of the warranty without recourse to the Bank. Upon the expiration of the warranty period, the customer shall have no right to lodge any claim against the Bank in this regard[63].

- **Commentary on Article Four: The Bank's Undertakings**

The purport of this Article is that, in instances where the original seller of the commodity that the customer has requested to purchase grants a time-bound warranty to the Bank, it becomes incumbent upon the Bank to transfer all rights and privileges conferred by such warranty to the customer or purchaser. In such a scenario, the purchaser acquires full authority to lodge claims directly against the original seller for any defects or deficiencies that may arise in the commodity and to seek compensation, without any necessity to revert to the Bank.

We observe that the Bank, even in circumstances where it appoints the customer as its agent to purchase the commodity, must nonetheless retain the warranty and insurance over the commodity in its own name throughout the duration of the warranty period. This necessity arises for two primary reasons:

A- In the event that the commodity perishes or is destroyed, the Bank retains the right to pursue a claim against the party responsible for the loss through the coverage provided by the insurance.

B- Should a latent defect in the commodity be discovered after the customer has taken delivery thereof, the Bank is entitled to seek recourse directly against the supplier, insofar as the warranty is issued in the Bank's name.

However, if the Bank were to appoint the customer as its agent to arrange for the insurance of the commodity, and were also to transfer the warranty granted by the original seller to the customer—thereby conferring upon the customer the right to pursue any claims directly against the grantor of the warranty without recourse to the Bank—then, in such a case, the Bank would no longer bear any risk. It would consequently be profiting from that which it did not guarantee. This contravenes the prohibition established by **thePropheet Muhammad** (peace be upon him), who said:

"It is not lawful to combine a loan and a sale, nor to stipulate two conditions in one sale, nor to profit from that which one does not guarantee, nor to sell what one does not possess[64]."

We have not come across any provision within the Murabaha contract, nor any clause in the agency agreement for purchase, indicating that the Bank retains the warranty in its own name

for the entire duration of the warranty period granted by the supplier. All that we have found is the aforementioned clause stipulating that:

"If the original seller of the asset subject to this contract has granted the Bank a warranty for a specified period, the Bank shall be obliged to transfer this warranty to the purchaser."

This wording clearly suggests that the Bank absolves itself of any liability for defects that may exist in the commodity.

However, the Bank's own website, in its description of Murabaha to the Purchase Orderer, states:

"…this transaction does not entail profiting from that which one does not guarantee, for the Bank takes possession of the goods it has purchased, thereby assuming the associated liability (Damān)[65]."

Accordingly, and in light of the foregoing—particularly since the Bank frequently appoints the purchase orderer as its agent to acquire the commodity himself, resulting, by default, in the warranty being issued in the customer's name—we propose the establishment of two tiers of warranty: one warranty between the supplier and the Bank, safeguarding the Bank's rights in the event of defects, and another warranty between the Bank and the customer, thereby protecting the customer's rights. This is to mitigate the risk of the Bank falling into the prohibited practice of earning profit without bearing liability (Ribḥmā lam yaḍman).

Alternatively, the Bank could stipulate, vis-à-vis the supplier, a right of option exercisable within a specified period.

As for the Bank referring the customer directly to the original seller for compensation in respect of defects covered by the warranty in favor of the Bank, we observe that this aligns with the guidance set forth in Clause N° 4/10 of the procedures for concluding a Murabaha contract, which states:

"It is preferable for the institution to authorize the customer to pursue claims directly against the original seller for compensation in respect of defects for which the institution is entitled to compensation from the seller[66]."

Sixth – Presentation and Commentary on Article Five: Interpretation of the Contract

- **Presentation of Article Five: Interpretation of the Contract**

  This Article provides that the contract shall be interpreted and supplemented, in respect of matters not expressly stipulated therein, in accordance with the provisions of Algerian law, provided such provisions do not contravene the principles of Islamic Shari'ah. In cases where Algerian law contains no applicable provisions, the rules of Islamic Shari'ah shall be applied[67].

- **Commentary on Article Five: Interpretation of the Contract**

  The content of this Article, and similar clauses, is a common feature in contractual practice generally. The primary purpose of including such a provision in contracts is to establish an agreed mechanism to which the parties may resort in the event of any dispute arising between them concerning the formation, interpretation, execution, termination, cancellation, validity, or invalidity of the contract or any matters ancillary thereto.

It is evident from this clause that the Bank has conditioned the interpretation of the contract, and the supplementation of any matters not expressly provided for therein, upon the

provisions of Algerian law, insofar as these do not conflict with Islamic Shari'ah. This implies that any dispute arising from the performance or interpretation of this contract, which the parties are unable to resolve amicably, shall be referred to the judiciary, provided that the resolution does not contravene the principles of Islamic Shari'ah.

However, in the absence of any legal provision governing the interpretation of matters stipulated in this contract, or issues not expressly addressed therein, both the Bank and the customer shall be subject to the rules of Islamic Shari'ah governing the matter in dispute.

At this juncture, one may pose the following question: **Does the Algerian judiciary sufficiently recognize the specificities of Islamic banking operations and possess a comprehensive understanding of the modes of operation of Islamic financial institutions?**

Alternatively, one may pose the following question: **Does the governing law to which the Bank and the customer have agreed—namely, Algerian law—in the event of a dispute, adequately accommodate the specificities inherent in Islamic banking operations?**

Upon close examination of the legal framework pertaining to Islamic banking in Algeria, it becomes apparent that such legislation is of relatively recent origin. Indeed, it does not yet encompass the full spectrum of Islamic financial contracts, nor does it address in detail the various interpretations and nuances associated with such contracts as concluded between Islamic banks and their clients. Moreover, Algerian law subjects Islamic banks to the same legal and regulatory provisions applicable to conventional banks and financial institutions, without differentiation, as stipulated in Article 22 of Regulation N° 20-02[68]. This inevitably has implications for the resolution of disputes. The scarcity and novelty of legislation specifically governing Islamic banking, coupled with the absence of an arbitration mechanism tailored to the particularities of Islamic banking operations, may have led the Bank to opt for Algerian law and the legal mechanisms for arbitration it provides.

Nevertheless, it remains entirely conceivable that, when a dispute is referred to the judiciary, the courts will base their decisions on the provisions enshrined in Algerian law. Consequently, there is a risk that judgments may favour either the Bank's position or that of the customer, without due regard for the principles of Shari'ah, particularly given the absence—or insufficiency—of specialized legislative texts in Islamic banking to which a judge might refer. As noted earlier, a judge may justify his ruling on the grounds that the contract concluded between the Bank and the customer does not contravene Algerian law, even though the parties to the contract have previously affirmed that the choice of Algerian law must not conflict with the provisions of Islamic Shari'ah.

It is worth noting here that Law No. 23-09 on monetary and banking matters, despite its importance in developing the overall framework of the banking sector, has not introduced any significant innovations regarding the establishment of specialized arbitration mechanisms or detailed provisions governing dispute resolution in the field of Islamic banking, which makes the need for specialized arbitration even more pressing. As mentioned earlier, a judge may justify his ruling on the grounds that the contract concluded between the Bank and the customer does not contravene Algerian law, even though the parties to the contract had

previously affirmed that the choice of Algerian law must not conflict with the provisions of Islamic Shari'ah.

Despite the important provisions introduced by this law to formalize Islamic banking, it still contains several shortcomings, some of which can be summarized as follows:

First: Although Article 72 of this regulation stipulates the necessity of separating conventional banking activities from the funds managed by Islamic banking windows — financially, accounting-wise, and administratively — this separation raises a significant concern related to the *unity of the bank's financial liability* at the end of the fiscal cycle. In practice, the liquidity surplus resulting from Islamic window operations tends to flow back to the parent conventional bank, thereby becoming commingled with capital generated through interest-based activities. Ultimately, the bank remains a joint-stock company with *a single capital structure*, in which ownership is shared and undifferentiated between funds originating from lawful (Sharīʿah-compliant) transactions and those derived from interest-based ones.

Second: It is observed that Article 73 of Law No. 23-09, along with Articles 2 and 14 of Regulations 18-02 and 20-02, as well as Instruction 20-03, fail to clarify the *legal authority* and *procedural framework* of the Shariah compliance certificate. Specifically, they do not specify the legal weight of this certificate, the manner and requirements for submitting an application, the deadlines for review, the consequences of non-response or rejection by the Shariah Board, the method of notifying the applicant bank of such a decision, or the competent authority before which an appeal may be filed and the legally prescribed time limit for doing so. Since the certificate constitutes an *administrative decision*, it must, by nature, be subject to judicial oversight.

It would therefore have been more appropriate for the Central Bank of Algeria to seek the Shariah Board's opinion through an official administrative correspondence, based on the request of the commercial bank seeking authorization to open an Islamic window. In the event of refusal, the bank should have the right to *appeal* the decision before the competent issuing authority.

This consideration prompts us to raise an important question: **Why has the Bank, in the event of a dispute, not opted to refer the matter to a specialized arbitration body that takes into account the specificities of Islamic banking operations, such as the International Islamic Centre for Reconciliation and Arbitration?**

The purpose of this latter institution is to enable all stakeholders in the Islamic financial industry—whether natural or legal persons—to resolve their banking, financial, and commercial disputes through specialized institutional mediation and arbitration. Such mechanisms are capable of ensuring proper Shari'ah and legal characterization of financial transactions, while also sparing the disputing parties the lengthy duration and significant costs associated with litigation[69].

It is also worth noting that Al Salam Bank Algeria is one of the member institutions of the International Islamic Centre for Reconciliation and Arbitration (IICRA).

Accordingly, instead of referring the interpretation of contracts and the arbitration of potential disputes between the Bank and its clients to Algerian law—and, consequently, to the

judiciary, which lacks sufficient legislative texts that adequately address the specificities of Islamic banking operations, and which may result in delays and disruptions in the execution of transactions and contracts—the Bank ought to refer arbitration to the aforementioned Centre. This is particularly advisable given the Centre's capacity for expeditious dispute resolution, attributable to the inherent flexibility of arbitration proceedings, whereby arbitrators are not bound by the rigid procedural formalities characteristic of court litigation.

It is also pertinent to note that Instruction N° 03-2020 has devoted eleven articles to the regulation of the Murabaha structure, with which both contracting parties are obliged to comply and whose substance they must fully understand. These provisions span Articles 03 to 13.

Seventh: Presentation of Article Six – Annexes, and Commentary Thereon

- **Presentation of Article Six: Annexes**

The annexes to the contract shall be deemed an integral and inseparable part thereof, and shall serve as a complement to its provisions[70].

- **Commentary on Article Six: Annexes**

The term "annexes" as employed herein refers to the following documents:

a. **Purchase Request Document**

b. **Invoice Document**, which is subdivided into two types:

- **Proforma Invoice**: issued by the supplier in the name of the bank for the benefit of the client.
- **Final Invoice**: issued by the bank in the name of the client.

c. **Undertaking to Purchase Document**

d. **Inspection and Delivery Receipt Protocol**

e. **Delivery and Receipt Protocol**

f. **Delivery Order Document**

g. **Repayment Schedule**

Conclusion

All praise is due to Allah, through Whose grace righteous deeds are accomplished. May peace and blessings be upon the best of creation, Muhammad, and upon his noble family, his esteemed Companions, and his pure wives.

By the grace and generosity of Allah, I have completed the study entitled: "The Murabaha Contract to the Promisee to Purchase as Implemented by Al Salam Bank – Algeria, in Light of the Shari'ah Standard on Murabaha Issued by the Accounting and Auditing Organization for Islamic Financial Institutions."

Following my presentation and analysis of the clauses of the Murabaha contract to the promisee to purchase, as implemented by Al Salam Bank – Algeria, in accordance with the stipulations of the AAOIFI Murabaha Standard and its complementary standards, such as the Standard on Possession, and in my attempt to clarify the extent to which this contract is influenced by such standards, I have arrived, at the conclusion of this research, at a number of findings, which I herein record, followed by certain recommendations which I believe would further contribute to enhancing this field.

Research Findings

This study has yielded the following results:

- The Accounting and Auditing Organization for Islamic Financial Institutions, and the Shari'ah standards it issues, represent a qualitative leap forward in organizing, developing,

and regulating the activities of Islamic financial institutions, both within and beyond the Islamic world.

- Al Salam Bank in Algeria endeavors earnestly to improve its services by keeping pace with the rapid developments in the realm of Islamic banking. The bank actively participates in numerous bodies and councils that govern the operations of Islamic financial institutions, thereby benefiting from their rulings and resolutions concerning new developments in contemporary financing structures.
- The bank has kept abreast of recent developments in Islamic banking practices domestically, by adhering to the stipulations laid down by the Algerian legislator, such as Resolution 18-02 and Resolution 20-02, which repeals the former. Both resolutions constitute positive steps and significant advances undertaken by the Algerian legislator in this regard, and are likely to alleviate many restrictions and relieve considerable pressures imposed upon Islamic banks.
- Despite Al Salam Bank's compliance in numerous clauses of the Murabaha contract to the promisee to purchase with the requirements of the Murabaha Standard, there remain certain fundamental issues forming the core of the Murabaha contract to the promisee to purchase, where the bank has not fully aligned itself with the provisions of the said standard and its complementary standards. This divergence may impact the extent to which the contract achieves the objectives that the standard seeks to fulfill, particularly in the following matters:

  a. **Binding Nature of the Promise:** The AAOIFI Standard holds that, as a rule, the promise in Murabaha to the purchase orderer is non-binding unless the two parties explicitly agree otherwise. However, the bank considers the promise and the obligation to fulfill it as a fundamental principle within the contract.

  b. **Agency of the Purchase Orderer in Procuring the Commodity:** According to the standard, the default rule is that the bank itself should execute the purchase of the commodity, resorting to appointing the customer as its agent only out of necessity. Nonetheless, it has been observed that the bank's practice of appointing the customer as its purchasing agent has become routine, under the pretext that the customer is more knowledgeable about the particularities of the commodity than the bank itself.

  c. **Requirement for the Agent (the Customer) to Provide Guarantees:** The bank requires the customer to furnish guarantees upon concluding the agency contract. In contrast, the AAOIFI Standard stipulates that, by default, the agent's possession of the commodity should be deemed a trust (Amanah) rather than a liability (Daman), unless there is misconduct or negligence on the part of the agent.

In addition to other issues such as ownership and possession costs and their nature, the methods and mechanisms of delivery of the sold item, and disclaimers with respect to hidden defects.

Research Recommendations

- It is proposed that the titles of all contracts be formulated to align precisely with their counterparts in the Shari'ah standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions, given that the titles of these standards are clear and expressive of their respective contents.
- In cases where the bank appoints the purchase orderer as its agent to procure the commodity, it is recommended that there be two layers of guarantees: one between the financier and the bank to secure the bank's rights in the event of defects, and another between the bank and the customer to secure the customer's rights. This is to ensure that the bank does not gain profit without bearing the associated risk.

Citations:

[1]- See: Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), previously cited reference, p. 202.
[2]- Ibid., pp. 221–223.
[3]- Ibid., p. 203.
[4]- Ibid., p. 203.
[5]-Ibid., p. 203.
[6]-Ibid., p. 204.
[7]-Ibid., p. 205.
[8]-Ibid., p. 206.
[9]-Ibid., p. 207.
[10]-Ibid., p. 209.
[11]-Ibid., p. 209.
[12]-Ibid., p. 211.
[13]-Ibid., p. 212.
[14]-Ibid., p. 215.
[15]-Ibid., p. 217.
[16]-Ibid., p. 218.
[17]- Appendix N° 04: Murabaha Contract, Al Salam Bank Algeria.
[18]-Ibid.
[19]-Ibid.
[20]-Ibid.
[21]-Upon reviewing Law N° 05-02 dated 6 February 2005, which amends and supplements Ordinance N° 75-59 dated 26 September 1975 concerning the Commercial Code, no legal provision defining the current account was found.
[22]-See: The official website of Al Salam Bank, accessed on 20/03/2025 at 18:40. URL: https://www.alsalamalgeria.com/ar/produits/detail-312-22-188.html
[23]-Mohamed TawfiqBattah, *Effects of the Current Account in Banking Transactions*, Al-Warraq Publishing House, Amman, Jordan, 2003, p. 84.
[24]-AAOIFI, previously cited reference, p. 203.
[25]-Ibid., p. 202.
[26]-See: Al-Qarafi, *Al-Furuq*, 12/24; Ibn Rushd, *Al-Bayan wa al-Tahsil*, 15/343; Al-Qarafi, *Al-Dhakira*, 6/297; Al-Hattab, *Tahrir al-Kalam fi Masail al-Ilzam*, p. 156; Abu Yunus al-Siqilli, *Al-Jami' li Masail al-Mudawwana*, 18/446.
[27]-In the appendix related to the promise—termed by the bank as ""Purchase Promise""—the final paragraph of the promise includes the following: ""We acknowledge that this promise is non-binding on the bank, which retains full discretion to reject any submitted quotations, and to consider the purchase request automatically declined."" See: Appendix N° 1, related to the Murabaha structure.
[28]-Article 71: Algerian Civil Code.
[29]-AAOIFI, previously cited reference, p. 206.
[30]-AAOIFI, previously cited reference, p. 203.
[31]-Ibid., p. 205.
[32]-See: Appendix N° 6, related to the Purchase Agency Agreement.
[33]-See: Appendix N° 1, related to the Purchase Promise.
[34]-AAOIFI, previously cited reference, p. 213.

[35]-Ibid., p. 213.
[36]-Article 30: Algerian Commercial Code.
[37]-AAOIFI, previously cited reference, pp. 212–213.
[38]-Appendix N° 1, related to the Purchase Promise.
[39]-AAOIFI, previously cited reference, p. 213.
[40]-Mohammad Mustafa Al-Zuhaili, *Al-Wajiz fi Usul al-Fiqh al-Islami*, 2nd ed., Dar Al-Khair, Damascus – Syria, 2006, vol. 1, p. 492.
[41]-Article 78 (Amended): Algerian Civil Code.
[42]-Appendix N° 04: Murabaha Contract, Al Salam Bank Algeria.
[43]-Ibid.
[44]-AAOIFI, previously cited reference, p. 209.
[45]-Ibid., p. 211.
[46]-Ibid., p. 211.
[47]-Ibid., pp. 212-213.
[48]-Appendix N° 04: Murabaha Contract, Al Salam Bank Algeria.
[49]-AAOIFI, previously cited reference, p. 213.
[50]-Ibid., p. 206.
[51]-Ibid., p. 213.
[52]-Ibid., p. 213.
[53]-Ibid., p. 214.
[54]-Ibid., p. 208.
[55]-Ibid., p. 208.
[56]-Ibid., p. 214.
[57]-Appendix N° 04: Murabaha Contract, Al Salam Bank Algeria.
[58]-AAOIFI, previously cited reference, p. 208.
[59]-Ibid., p. 209.
[60]-Ibid., p. 214.
[61]-AAOIFI, previously cited reference, p. 214.
[62]-Ibn Qudamah, Al-Kafi fi Fiqh al-Imam Ahmad, 1st ed., Dar al-Kutub al-Ilmiyyah, 1414 AH / 1994 CE, vol. 2, p. 54.
[63]-Appendix N° 04: Murabaha Contract, Al Salam Bank Algeria.
[64]-Narrated by al-Tirmidhi in his Sunan, Book of Sales (Kitab al-Buyu'), Chapter: "What Has Been Reported Concerning the Dislike of Selling What One Does Not Possess," Hadith N° 1234, vol. 2, p. 526. Al-Tirmidhi said: "This is a good and authentic (hasansahih) hadith.
[65]-Murabaha to the Purchase Promiser," accessed on March 22, 2025, at 17:26, from the official website of Al Salam Bank. Available at: https://www.alsalamalgeria.com/ar/blog/list-26-4.html
[66]-AAOIFI, previously cited reference, p. 214.
[67]-Appendix N° 04: Murabaha Contract, Al Salam Bank Algeria.
[68]-According to Article 22 of Regulation N° 20-02, the Algerian legislator subjects all provisions contained in this regulation—as well as all matters related to Islamic banking products—to the entirety of legal and regulatory frameworks governing banks and financial institutions. See: Article 22, Regulation N° 20-02.
[69]-Objectives of the International Islamic Center for Reconciliation and Arbitration," accessed on March 22, 2025, at 14:44. Available at: https://iicra.com/ar/about-iicra.
[70]-Appendix N° 04: Murabaha Contract, Al Salam Bank Algeria.