

The Mudarabah contract executed by Al Salam Bank Algeria in accordance with the Mudarabah standard issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)

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Abstract:

This study investigates the extent to which the Mudarabah contract adopted by Al Salam Bank in Algeria aligns with the Shariah Standard on Mudarabah issued by the Accounting and Auditing Organization for Islamic Financial Institutions. The central question addressed is how effectively Islamic financial institutions incorporate standardized Shariah frameworks into their contractual structures.

The research employs both a comparative methodology—analyzing the contract's clauses against the AAOIFI standard—and a descriptive-analytical approach, which involved gathering and examining relevant contractual documents and appendices issued by the bank. Supplementary qualitative interviews were also conducted with institutional stakeholders and certified Shariah auditors.

The findings demonstrate substantial consistency between the contract and the standard in areas such as profit distribution, legal capacity, capital validity, and the fiduciary role of the investment agent. Nonetheless, the study identifies critical gaps, notably the absence of clear provisions governing premature termination and profit allocation for elapsed periods. These insights underscore the bank's considerable compliance with Shariah principles while highlighting areas for structural improvement.

Keywords: Mudarabah Contract; Al Salam Bank – Algeria; Shariah Standards; AAOIFI; Islamic Finance

Jel Classification Codes: G21; Z12

1. Introduction:

Islamic banks continuously strive to keep pace with the evolving landscape of Islamic finance by establishing unified reference frameworks that regulate their operations, particularly from a Shariah-compliance perspective. Among the prominent institutions that have significantly contributed to the advancement and standardization of Islamic banking is the Accounting and Auditing Organization for Islamic Financial Institutions. This organization has played a pivotal role in the formulation of Shariah standards that have been adopted—either on a voluntary or mandatory basis—by numerous Islamic financial institutions across the globe.

In this context, the present study seeks to examine the extent to which one of these Shariah standards—namely, the AAOIFI Shariah Standard on Mudarabah—influences the structuring and implementation of one of the key Islamic financial contracts as applied by Al Salam Bank in Algeria. This institution has, in recent years, demonstrated remarkable efficiency through its offering of a diverse range of Shariah-compliant products and services. The study endeavors to assess the degree to which the aforementioned Mudarabah contract adheres to the stipulations of the AAOIFI standard, by applying the standard as a benchmark to identify areas of conformity as well as potential points of divergence.

Accordingly, the subject of this study has been titled:

“The Mudarabah Contract Implemented by Al Salam Bank–Algeria in Light of the AAOIFI Shariah Standard on Mudarabah.”

1.1. Research Problem:

Based on the foregoing, the central research problem can be articulated as follows:

To what extent has the Shariah Standard on Mudarabah, issued by the AAOIFI, influenced the formulation and application of the Mudarabah contract as implemented by Al Salam Bank in Algeria?

From this primary research question emerge several subsidiary inquiries that the study seeks to address, summarized as follows:

- What is the true legal nature and definition of the Mudarabah contract within the framework of Islamic jurisprudence (Fiqh)?
- What is the significance of adherence to the Shariah standards issued by AAOIFI for Islamic banks and financial institutions?
- What are the key areas of convergence and divergence between the stipulations set forth in the AAOIFI Mudarabah Standard and the practical application of the Mudarabah contract at Al Salam Bank–Algeria?

1.2. Significance of the Topic:

This research holds substantial significance, as highlighted by the following considerations:

- **The Central Role of Sharia Standards:** The Sharia standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions have assumed a pivotal role in the

global Islamic banking landscape. They have become authoritative and binding references for numerous Islamic banks and financial institutions worldwide.

- **Enhancing the Integration of Islamic Finance in Algeria:** Engaging with such a topic contributes meaningfully to the advancement of Islamic banking in Algeria—both at the level of Islamic windows and fully-fledged Islamic banks—by fostering alignment with mechanisms designed to unify the work of Sharia supervisory and audit boards within Islamic financial institutions.

1.3. Research Objectives:

- **Analyzing the Impact of AAOIFI's Sharia Standard on Mudarabah:** The research aims to explore the extent to which the regulatory provisions and jurisprudential guidelines of the AAOIFI Sharia Standard on Mudarabah influence the formulation and operationalization of this partnership-based financing mode at Al Salam Bank Algeria. It seeks to determine whether the standard is applied as a binding directive or merely as a source of guidance.
- **Identifying and Addressing Sharia Non-compliance:** The study also seeks to identify instances of Sharia non-compliance by the bank during the conclusion or execution of Mudarabah contracts. It aims to propose practical remedies grounded in the stipulations of the aforementioned Sharia standard.

1.4. Rationale for Choosing the Topic:

The motivation to undertake this study stems from several compelling reasons, foremost among them:

- **Scarcity of Applied Research:** There exists a notable deficiency in academic research and field studies aimed at applying the provisions and rulings contained in AAOIFI's Sharia standards to the practical realities of Islamic banks and financial institutions.
- **Legal and Regulatory Developments in Algeria:** The Algerian legislator has formally adopted Islamic banking within the structure of financial institutions, thereby opening the door to its integration and development in the national financial ecosystem.

1.5. Research Methodology and Tools:

To comprehensively address the multifaceted dimensions of this study, the following methodologies and tools have been employed:

- **Comparative Methodology:** This approach entails a critical reading of the contractual clauses governing Mudarabah at Al Salam Bank, in parallel with the relevant articles from AAOIFI's Sharia Standard on Mudarabah. The comparative analysis focuses on assessing congruencies and discrepancies, with a view to aligning contractual practice with the Sharia framework articulated in the standard.
- **Descriptive and Analytical Methodology:** This method is employed through the systematic collection of data related to the Mudarabah contract and its associated annexes issued by the bank. These documents are then described and analyzed in light of the requirements set forth in the AAOIFI standard.

- **Qualitative Interviews:** The study also incorporates personal interviews with selected officials from various branches of Al Salam Bank Algeria, as well as with certified Sharia auditors, in order to obtain first-hand insights into the practical application of the Mudarabah contract.

2. The Shariah Foundation of Mudarabah

2.1. Definition of Mudarabah:

2.1.1. Linguistic Definition of Mudarabah: The term Darb in the Arabic language encompasses a broad range of meanings related to action and movement. It is used in reference to commercial activity (Darb fi al-Tijarah), travel (Darb fi al-ard), and striving in the cause of God (Darb fi Sabil Allah). The term portrays the notion of embarking upon a journey or endeavor in pursuit of sustenance (Khalil, Al-Mukhtasar, 2005), particularly through business or trade (Ibn Manzur, 1993). Etymologically, it is derived from the Quranic phrase “Darb fi al-ard”—travelling through the land—in search of livelihood (Nasafi, 1893). In this context, the Mudarib (the investment manager) is so named because he is entitled to a share of the profit due to his effort and labor in managing the investment (Marghinani, n.d).

2.1.2. Juristic Definitions of Mudarabah: The juristic definition of Mudarabah largely aligns with its linguistic meaning, though classical jurists introduced certain technical qualifications to delineate its legal framework. The following are representative definitions from the major schools of Islamic jurisprudence:

2.1.2.1. Ḥanafī Definition: Mudarabah is defined as: "The act of transferring capital to another person for the purpose of engaging in commercial activity, whereby the profits are distributed between them based on pre-agreed terms. The profit is due to the capital provider (Rabb al-mal) by virtue of his capital, and to the Mudarib by virtue of his labor, which is the causal factor for the realization of profit. (Samarqandi, 1994)"

The Ḥanafīs opted for the term Mudarabah in particular, as it aligns with terminology found in the Qur'an. Al-Sarakhsi explains: "We prefer the term Mudarabah because it conforms with the usage in the Book of Allah, as in the verse: { and others traveling throughout the land seeking [something] of the bounty of Allah} (al-Muzzammil: 20), which indicates commercial travel. (Al-Sarakhsi, 1993)"

2.1.2.2. Maliki Definition: Among the Malikis, Mudarabah is more commonly referred to as Qirad, a term rooted in the dialect of the people of the Hijaz. Ibn Rushd notes: "The validity of the term Qirad in the Arabic language is affirmed by the statement of the Companions to ‘Umar ibn al-Khattab—may Allah be pleased with him—concerning his sons ‘Abd Allah and ‘Ubayd Allah: ‘Why not designate it as a Qirad? (Malik ibn Anas, n.d, p. 992)’ The Companions, being the masters of the Arabic tongue, lend authoritative weight to this usage. (Ibn Rushd, 1988)"

Qirad is thus defined as: "A contract whereby an individual is entrusted with engaging in trade using a specified and delivered sum of coined money, with the understanding that he shall receive an agreed-upon share of the profit, provided both the capital and profit ratio are known (Khalil, Al-Mukhtasar, 2005)."

2.1.2.3. Shafii Definition: The Shafiis define Mudarabah as: "A contract in which one party entrusts his capital to another to engage in trade, with the profit to be distributed between them according to mutually agreed terms. The principal remains the property of the capital provider (Al-Imrani, 2000)."

2.1.2.4. Hanbali Definition: According to the Hanbalis, Mudarabah is: "A transaction whereby a person entrusts his capital to another to engage in commercial activity. The profit is shared between them: the capital provider earns it by virtue of his capital, and the Mudarib earns it through his labor. (Al-Kalwadhan, 2004)"

2.1.3. Definition by the Accounting and Auditing Organization for Islamic Financial Institutions: AAOIFI defines Mudarabah as: "A partnership in profit whereby one party provides the capital (Rabb al-mal) and the other provides the labor (Mudarib). (Accounting and Auditing Organization for Islamic F, 2015, p. 369)"

2.1.4. The Definition of Mudarabah According to Article 07 of the Bank of Algeria Regulation N° 20-02: This regulatory framework, which delineates Islamic banking operations and their modalities of implementation by banks and financial institutions in Algeria, defines Mudarabah as follows:

"A contract by virtue of which a bank or financial institution, referred to as the lender of funds, provides the necessary capital to an entrepreneur, who contributes his labor in a project with the aim of generating profits (Algerian Government, 2020)."

*** Commentary on the Definitions:**

A careful examination of the definitions advanced by Islamic jurists reveals a consensus that Mudarabah is a contractual partnership wherein one party, referred to as the capital provider (Rabb al-Mal), entrusts a sum of money to another party, the entrepreneur (Mudarib), with the objective of investing and growing the capital. The resulting profit is then shared between the two parties according to a pre-agreed ratio—compensating the Rabb al-Mal for his capital and the Mudarib for his effort.

Nevertheless, some variations and distinctive features can be identified among the classical definitions. Notably:

- The **Hanafi** school defines Mudarabah in broad terms, emphasizing that the authorized activities are not confined exclusively to commercial trade, but rather encompass any form of lawful economic activity. This indicates that the contract's validity is not contingent solely on trade or sale-based operations.
- The **Maliki** definition introduces several restrictions pertaining to the nature of the invested capital, most significantly the requirement that the capital be in the form of coined money (i.e., dirhams or dinars), to facilitate precise profit calculation and distribution.
- The **Shafii** definition aligns closely with that of the **Hanbali** school in underscoring that Mudarabah is intrinsically linked to commerce—a notion historically rooted in pre-Islamic and early Islamic commercial practice where Mudarabah was prominently employed.

Importantly, all definitions—except that of the Malikis—permit the contract to be concluded using capital in various forms, whether cash or otherwise, thereby not restricting Mudarabah to coined currency alone.

*** On the Legislative Definition of Mudarabah in Algerian Law**

In contrast to classical juristic formulations, the definition adopted by the Algerian legislator diverges in several critical respects:

- **Institutional Restriction:** The legislator confines the scope of Mudarabah to banks and financial institutions, effectively excluding individual or informal contractual relationships of this nature.
- **Terminological Deviations:** The nomenclature employed in the legislative definition deviates significantly from the canonical Islamic legal terminology. Specifically, the capital provider is designated as a "lender of funds" rather than Rabb al-Mal, and the working partner is referred to as an "entrepreneur" rather than Mudarib (Algerian Government, Law No. 23-09 of Dhu al-Hijjah 3, 1444, 2023). These semantic shifts are not merely lexical; they carry substantive Shariah implications. For example, labeling the capital provider as a "lender" implies—implicitly but significantly—that the entrepreneur bears liability for the full capital amount in the event of loss, thus contradicting the juristic principle that the Mudarib's liability is limited. According to classical jurisprudence, the Mudarib acts as a trustee (Ameen) and is only liable in cases of proven misconduct, negligence, or breach of contract. By contrast, a borrower is unconditionally liable for repayment, which is a fundamentally different legal construct.
- **Erroneous Analogy with Muqawala (Contracting):** The legislative definition appears to draw an analogy between Mudarabah and Muqawala (a contract for services or construction). However, this analogy is legally unsound, given the stark differences between the two contracts in terms of their legal structure and contractual obligations. In Muqawala, compensation is typically fixed and determined in advance, whereas in Mudarabah, the working partner's remuneration is intrinsically uncertain and contingent upon the realization and sharing of profits. This distinctive feature aligns Mudarabah with the family of Shirkah (partnership) contracts—a categorization emphasized explicitly in the AAOIFI Shariah Standard on Mudarabah, and implied, though not always explicitly stated, in other juristic definitions.

2.2. The Legitimacy of Mudarabah and Its Conditions of Permissibility:

2.2.1. Evidences Supporting the Permissibility of Mudarabah: The Qur'anic verses, Prophetic traditions, and juristic reports have collectively affirmed the permissibility of Mudarabah. We may enumerate most of these evidences—not exhaustively, but by way of illustration:

2.2.1.1. From the Noble Qur'an: Among the Qur'anic verses indicative of the permissibility of Mudarabah are the following:

- The Almighty says:

“O believers! Do not devour one another's wealth illegally, but rather trade by mutual consent. And do not kill 'each other or' yourselves. Surely Allah is ever Merciful to you.” (Al-Nisae: 29)

- And He says:

“Do not consume one another’s wealth unjustly, nor deliberately bribe authorities.” (Al-Baqarah: 188)

This is because Mudarabah constitutes a form of trade. It was a commercial practice known during the pre-Islamic period (Jahiliya) and was subsequently sanctioned in Islam due to its necessity, for people require means to manage and grow their wealth through trade. Yet not everyone is capable of undertaking this personally; thus, appointing others as agents becomes inevitable. Furthermore, it was customary that such arrangements were not conducted on the basis of wage contracts, but rather through Mudarabah (Ibn Rushd, 1988).

Al-Mawardi states: “The foundational evidence for the permissibility of Qirad (another term for Mudarabah) lies in the general statement of Allah, Exalted be He: ‘There is no blame on you for seeking the bounty of your Lord ‘during this journey.’ (Al-Baqarah: 198) And Qirad is, in essence, a pursuit of bounty and profit-seeking. (Al-Mawardi, 1999)”

2.2.1.2. From the Prophetic Sunnah: It is reported that the Prophet (peace and blessings be upon him) said:

“Let people benefit from one another, for Allah provides sustenance to some through others. (Muslim, n.d)”, Indeed, Mudarabah embodies this mutual sustenance (Al-Mawardi, 1999).

It is also narrated from ‘Umar ibn al-Khattab, ‘A’ishah, ‘Abdullah ibn Massud, and ‘Abdullah ibn ‘Umar that they would say:

“Engage in trade with the wealth of orphans so that it is not consumed by zakah.” They would thus invest the orphans’ wealth through Mudarabah (Ibn Abd al-Barr, 2000).

2.2.1.3. From Juristic Consensus (Ijmae): Ibn al-Mundhir states:

“The scholars have unanimously agreed upon the permissibility of Mudarabah involving gold and silver (i.e., dinars and dirhams). This entails that a man gives another man gold or silver to trade with, as he sees fit among different forms of commerce, on the condition that—after the capital is returned to the owner—any profit granted by Allah is shared such that the agent receives a third or half of it, while the remainder belongs to the capital owner (Ibn al-Mundhir, 2005, p. 270).

2.2.2. Conditions of the Mudarabah Contract (Mulla, no date):

2.2.2.1. Legal Capacity of the Contracting Parties: It is a prerequisite that the capital provider (Rabb al-mal) possesses the legal capacity to appoint an agent, and that the entrepreneur (Mudarib) is legally competent to act as an agent. This ensures the mutual consent and legal validity of the contractual relationship.

2.2.2.2. Validity of the Capital: The capital must consist of assets that are legally recognized as valid capital for the purpose of partnership. Should the Rab al-mal provide the Mudarib with a tangible asset (non-monetary) and instruct him to sell it and invest the proceeds in a Mudarabah arrangement, and the Mudarib accepts these terms, the contract remains valid. The key requirement is that the capital ultimately used in the Mudarabah is in the form of cash or monetary value suitable for investment.

2.2.2.3. Transfer of Capital to the Mudarib: The capital must be physically or constructively delivered to the Mudarib. The Rabb al-mal must relinquish all direct control over the funds, as the capital is considered a trust (amanah) in the hands of the Mudarib. The Mudarabah cannot be deemed effective unless such delivery takes place, akin to the rules governing the safekeeping of deposits. This contrasts with a partnership (Shirkah), wherein both parties may contribute capital; whereas in Mudarabah, capital originates solely from one party, and labor from the other.

2.2.2.4. Clarity and Specification of Profit-Sharing Ratio: It is essential that the capital amount is precisely known at the outset of the contract. Furthermore, the profit-sharing ratio must be specified as a clearly defined proportion (e.g., one-half, one-third) of the actual profit realized, rather than a fixed monetary amount. This clarity precludes future disputes and ambiguity, as profit is the principal subject matter of the contract, and any ignorance (Jahalah) thereof invalidates the contract.

2.2.2.5. Invalidity Resulting from Breach of Conditions: Should any of the aforementioned conditions be violated—such as if the profit-sharing ratio is stipulated as a fixed amount rather than a proportion of the profit—the Mudarabah contract is rendered void. For instance, if the agreement stipulates that one party is to receive a predetermined sum of profit (e.g., a fixed number of dirhams), rather than a share in the actual profit, the contract fails to meet the essential criteria of a valid Mudarabah.

3. Introduction to the Mudarabah Standard and the Mudarabah

Contract at Al Salam Bank – Algeria

3.1. Overview of the Standard and the Contract:

3.1.1. Overview of the Mudarabah Standard Issued by AAOIFI: This standard seeks to delineate the Shariah foundations and rulings governing Mudarabah in its two primary forms: unrestricted and restricted. It articulates the guiding principles and regulatory parameters that Islamic financial institutions are obliged to observe, irrespective of whether the institution acts in the capacity of Mudarib (investment manager) or Rabb al-Mal (capital provider) (Accounting and Auditing Organization for Islamic F, 2015, p. 368).

3.1.2. Scope of the Standard: The standard addresses Mudarabah contracts concluded between the institution and external parties, including individuals and other entities. It further applies to joint investment accounts, as well as specified investment accounts, provided they are managed on the basis of Mudarabah.

However, the standard does not encompass Mudarabah sukuk, as these fall under the purview of the standard governing investment sukuk. Similarly, other forms of partnership contracts are excluded, as they are addressed under separate dedicated standards (Accounting and Auditing Organization for Islamic F, 2015, p. 369).

3.1.3. Date of Issuance: The Mudarabah standard was formally issued on 4 Rabi' al-Awwal 1424 AH, corresponding to 16 May 2003 CE (Accounting and Auditing Organization for Islamic F, 2015, p. 378).

3.1.4. Adoption of the Standard: The Shariah Board formally ratified the Mudarabah standard during its eighth session, which was convened in Al-Madinah Al-Munawwarah from 28 Safar to 4 Rabi' al-Awwal 1424 AH, corresponding to the period from 11 to 16 May 2003 CE.

3.2. Overview of the Mudarabah Product Contract Implemented by Al Salam Bank – Algeria:

3.2.1. Concept of the Mudarabah Product Contract: The Mudarabah contract is a partnership arrangement in profit, wherein one party provides the capital and the other contributes labor or entrepreneurial effort. It is a legitimate contractual framework that governs collaborative investment activity, combining capital from one side and expertise or managerial work from the other. The profits generated from such a venture are shared between the two parties in accordance with their prior agreement. The party supplying the capital is referred to as the Rab al-mal, whereas the party responsible for the execution of the work is termed the Mudarib, or alternatively, the agent or investment manager (Muqarid) (Al Salam Bank Algeria, 2025).

3.2.2. External Description of the Mudarabah Contract: The Mudarabah contract consists of a single-page document, formatted in a structured manner as follows:

At the top center of the page appears the contract title. The right side features the official logo of the bank, while the left side contains the contract number. The document opens with the heading: “Mudarabah Contract.”

Following this is the section identifying the contractual parties: namely, Al Salam Bank – Algeria, represented by the branch manager, and the second party—either an individual or a corporate entity. This section also includes pertinent information such as the names, addresses, and legal representatives of the respective parties.

Subsequently, the contract presents its substantive content, comprising a preamble and nine articles. The contract concludes with the signatures of both parties. Notably, the second party is required to write their full name and surname by hand, accompanied by the statement: “I have read and agreed to the contents.”

The footer of the contract page includes, on the right side, the title of the contract alongside the name of the client; and on the left side, the date and page number (Appendix No. 01 , 2025).

3.2.3. Key Provisions Contained in the Mudarabah Contract:

3.2.3.1. Preamble: The preamble references the current account agreement signed between the bank and the client, in addition to the financing agreement. It further affirms that the client (Mudarib) has submitted a request to the bank (Rab al-mal) seeking Mudarabah-based financing, as detailed in the financing application.

3.2.3.2. Article One: Reiterates the content of the preamble by affirming the mutual agreement between both parties to finance the specified project.

3.2.3.3. Article Two: Specifies the amount of capital allocated for the Mudarabah.

3.2.3.4. Article Three: Establishes the duration of the Mudarabah agreement.

3.2.3.5. Article Four: Details the method and ratios for profit distribution, and includes provisions addressing loss scenarios.

3.2.3.6. Article Five: Outlines the key obligations of the Mudarib in favor of the Rab al-mal. Chief among these is the requirement for the Mudarib to consult the Rab al-mal before undertaking any significant steps or transactions. The Mudarib must also submit a detailed implementation timeline and periodic progress updates throughout the contract term.

3.2.3.7. Article Six: Specifies the rules related to loss-bearing and addresses the issue of capital guarantee under Mudarabah principles.

3.2.3.8. Article Seven: Stipulates that all annexes and attachments to the contract shall be deemed integral components thereof.

3.2.3.9. Article Eight: Provides interpretive guidance for the contract, ensuring that any interpretation aligns with the principles of Islamic Shariah.

3.2.3.10. Article Nine: Indicates the number of original copies produced, and includes an acknowledgment by the client affirming that they have read and fully understood the terms and contents of the contract (Appendix No. 01 , 2025).

3.2.4. Stages of Implementing a Mudarabah Contract at Al Salam Bank Algeria:

3.2.4.1. Submission of the Mudarabah Financing Request: The client (Mudarib) submits a financing application under the Mudarabah structure for a specific project—whether newly initiated or already operational. The application includes comprehensive details such as the nature of the business activity, the required capital amount, the proposed implementation timeline, and any other pertinent information.

3.2.4.2. Evaluation of the Application: The Bank undertakes a thorough review of the submitted file, assessing the viability of the project and attaching any requisite guarantees or collateral prior to issuing its approval.

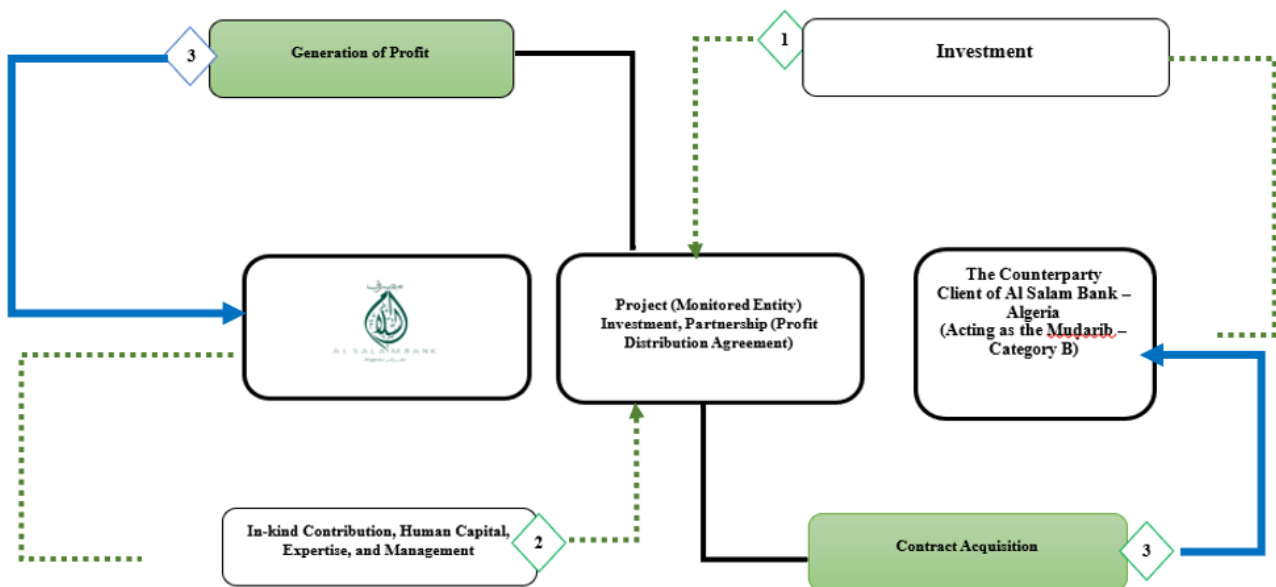
3.2.4.3. Disbursement of Capital: Upon approval, Al Salam Bank disburses the capital—either in cash or by opening a designated Mudarabah investment account—for the client to commence the execution of the project. This is carried out in accordance with the agreed parameters of either unrestricted (Mudarabah mutlaqah) or restricted (Mudarabah muqayyadah) Mudarabah.

3.2.4.4. Execution of the Project by the Mudarib: The client (Mudarib) is entrusted with the management and execution of the business activity or project, drawing upon his own expertise and capabilities. In the case of unrestricted Mudarabah, the Mudarib enjoys broad discretion in managing the capital. Conversely, under restricted Mudarabah, specific conditions and limitations may apply—such as geographic scope or the sector of activity.

3.2.4.5. Recovery of Capital: Prior to the distribution of profits, the invested capital must first be recovered. This is a fundamental precautionary measure, as losses are to be borne solely by the capital provider (Rabb al-mal, i.e., the Bank), unless such losses are attributable to negligence, misconduct, or breach of contract by the Mudarib.

3.2.4.6. Distribution of Profit or Loss: In the event of a profit, distribution occurs in accordance with the pre-agreed profit-sharing ratio between the Bank and the client. Conversely, in the case of a loss, the entire loss is borne by the Bank (Rabb al-mal), except where the loss results from the Mudarib's negligence, misconduct, or breach of the terms of the contract.

Figure (1): Illustration of the Stages of Implementing a Mudarabah Contract at Al Salam Bank Algeria.



The source: Prepared by the researchers based on the Official Website of the Bank:
www.alsalamalgeria.com

4. Analysis of the Murabaha Contract in Light of the AAOIFI Standard on Murabaha

4.1. Presentation and Commentary on the Preamble:

4.1.1. Presentation of the Preamble: “With reference to the current account agreement signed between the Bank and the customer at the time of account opening, which shall be deemed an integral part of this contract;

And with reference to the financing agreement signed between both parties, which shall also be considered an inseparable component of this contract;

And with reference to the request submitted by the second party (the Mudarib) to the first party (the Rabb al-Mal) for Mudaraba-based financing for the project specified in the request, which is itself deemed an integral part of this contract;

And with reference to the projected utilization schedule annexed to this contract;

In consideration of both parties possessing full legal capacity to enter into contracts, the parties have agreed as follows: (Appendix No. 01 , 2025)”

4.1.2. Commentary on the Preamble: This preamble clearly refers to the various agreements entered into by the Bank and the client (the Mudarib or the Rabb al-Mal) with the objective of facilitating a Mudaraba-based financing arrangement. These agreements are expressly considered integral and inseparable components of the present contract, thereby establishing a foundational framework upon which the Mudaraba relationship is structured.

In this regard, the Bank's formulation aligns with **Clause 3/1** of the AAOIFI Mudaraba Standard, which provides that:

"It is permissible to agree, through a general framework or memorandum of understanding, to establish Mudaraba financing contracts within a specified amount and over a defined period, provided that this understanding is executed through specific and successive Mudaraba contracts (Accounting and Auditing Organization for Islamic F, 2015, p. 369)."

The primary purpose of such agreements, as stated in the AAOIFI standard, is to delineate the general contractual framework whereby the intention to engage in Mudaraba-based financing—whether unrestricted or restricted, and whether through recurring transactions or discrete deals—is made explicit. Within this framework, the parties agree on matters such as profit-sharing ratios, the nature of guarantees to be provided by the Mudarib in cases of misconduct, negligence, or breach of contract, and other relevant contractual obligations (Accounting and Auditing Organization for Islamic F, 2015, p. 369).

Moreover, the Bank's assertion that these preliminary agreements constitute inseparable parts of the contract is also in strict compliance with **Clause 3/3** of the Mudaraba Standard, which affirms that:

"If the Mudaraba contract is concluded on the basis of a memorandum of understanding, then such a memorandum shall form part of any subsequent contract, except for any provisions specifically excluded by mutual consent of the contracting parties. (Accounting and Auditing Organization for Islamic F, 2015, p. 370)"

Furthermore, the stipulation in the preamble that both contracting parties must possess full legal capacity is in complete conformity with **Clause 4/2** of the Mudaraba Standard, which states:

"Both parties to a Mudaraba must possess the legal capacity to act as principal or agent. The contract shall not be valid unless concluded by two parties who are legally competent, or by those duly authorized to act on their behalf in such capacity."

This meticulous alignment of the contract's preamble with the AAOIFI's Mudaraba Standard underscores the Bank's commitment to Shariah-compliant financial structuring and its adherence to best practices as outlined by recognized Islamic financial regulatory authorities (Accounting and Auditing Organization for Islamic F, 2015, p. 370).

4.2. Presentation and Commentary on Article One: Subject Matter:

4.2.1. Presentation of Article One – Subject Matter: "The two parties have agreed to finance the project or operation specified in the financing request attached to this contract through a Mudaraba contract (Appendix No. 01 , 2025)."

4.2.2. Commentary on Article One – Subject Matter: This article serves as a continuation and elaboration of the preamble, clarifying the contractual form under which the agreement is being concluded—namely, a Mudaraba contract. The article explicitly designates Mudaraba as the mode of financing agreed upon for the project referred to in the attached request.

This formulation aligns directly with **Clause 4/1** of the AAOIFI Mudaraba Standard, which states (Accounting and Auditing Organization for Islamic F, 2015, p. 370):

"A Mudaraba contract is validly concluded through the use of terms such as ‘Mudaraba’, ‘Qirad’, or ‘Muamala’."

In essence, the Bank has fulfilled the formal Shariah requirement regarding the explicit identification of the contract’s form, thereby ensuring its legitimacy and legal efficacy under Islamic jurisprudence.

4.3. Presentation and Commentary on Article Two: Mudaraba Capital:

4.3.1. Presentation of Article Two – Mudaraba Capital: "The capital of the Mudaraba has been determined in the amount of Algerian Dinars (DZD). (Appendix No. 01 , 2025)"

4.3.2. Commentary on Article Two – Mudaraba Capital: This article establishes the capital contribution by the Rab al-mal (capital provider) to the Mudarib (entrepreneur/agent), which is an essential pillar of any valid Mudaraba contract. The capital must be both determined and delivered, and its precise specification is a fundamental condition for the contract’s validity (Accounting and Auditing Organization for Islamic F, 2015, p. 372).

In this respect, the contract is fully consistent with the stipulation in **Clause 7/1** of the AAOIFI Mudaraba Standard, which affirms that:

"The capital of the Mudaraba must be known with certainty, free from ambiguity, in terms of both type and amount (Accounting and Auditing Organization for Islamic F, 2015, p. 371)."

Moreover, while the default position is that the capital should be in cash, the Standard also permits non-monetary assets (goods in kind) to serve as Mudaraba capital, provided that they are valued appropriately. As per **Clauses 7/3 and 7/4:**

"It is permissible for the capital of the Mudaraba to consist of non-monetary assets. In such cases, the value of the assets at the time of the contract shall be considered as the capital, and such valuation must be conducted either by mutual agreement between the parties or by recourse to experts."

Thus, the article as presented is in full conformity with the detailed requirements of the AAOIFI Standard, demonstrating both procedural compliance and substantive alignment with Shariah principles governing Islamic financial contracts.

4.4. Presentation and Commentary on Article Three: Duration of the Mudarabah:

4.4.1. Presentation of Article Three: Duration of the Mudarabah: “The duration of this Mudarabah is: (Appendix No. 01 , 2025)”

4.4.2. Commentary on Article Three: Duration of the Mudarabah: This article sets forth the agreed-upon timeframe constituting the commencement and termination of the Mudarabah contract. While a comprehensive exposition of the divergent juristic opinions concerning the permissibility of stipulating a fixed duration for a Mudarabah exceeds the scope of this discussion (Al-Mawardi, 1999, p. 109), it is pertinent to note that the content of this clause aligns with the provisions articulated in paragraph 4/3/2 of the AAOIFI Shariah Standard on Mudarabah, which addresses the conditions under which termination rights are recognized. Specifically, it states:

“The right to revoke or terminate the Mudarabah contract is not established except in two cases, one of which is: if the two parties agree to fix a term for the Mudarabah, then it may not be terminated prior to the expiration of that term except by mutual consent (Accounting and Auditing Organization for Islamic F, 2015, p. 370).”

In a similar vein, paragraph 10/1/3—concerning the modes of termination of a Mudarabah—stipulates:

“The Mudarabah contract shall come to an end upon the expiry of its term, if the two parties had agreed to fix such a term, except in specified cases. (Accounting and Auditing Organization for Islamic F, 2015, p. 376)”

At this juncture, an important jurisprudential question arises: If the Mudarabah contract is dissolved prior to the completion of its stipulated term, what are the resultant rulings with respect to profit allocation for the elapsed duration? And what share is due to each contracting party?

In addressing this, the eminent jurist al-Sarakhsi remarked:

“Upon the invalidation of the Mudarabah, the Mudarib assumes the status of a hired worker (Ajir), such that he is entitled to compensation equivalent to the prevailing market wage—whether profit is realized or not (Al-Sarakhsi, 1993).”

Moreover, legal rulings also extend to cases where the invested capital exists as a debt owed by a third party, and a profit accrues from it, rendering both parties entitled to a share thereof. Al-Jassas states:

“If the Mudarabah is dissolved while the capital is in the form of a debt, and if profit is realized, then the Mudarib is compelled to pursue collection, since he has earned compensation for his labor akin to a wage-earner. However, if no profit is realized, he is not obligated to collect the debt, as he has earned no compensation and is thus considered a volunteer (Mutabarrie) like an agent (Wakil). (Al-Jassas, 2010)”

The al-Mudawwanah similarly notes:

“In a case where a Mudarabah is contracted using goods as capital, if the dissolution occurs after the sale of the goods but before any further business activity, the Mudarabah is nullified and the Mudarib is entitled to the equivalent wage for the sale. If commercial activity has already begun, then it is treated as a valid Mudarabah, and the Mudarib is entitled to a wage commensurate with his work on the sold goods (Malik, 1994).”

Accordingly, it is imperative for the financial institution to clarify such matters and eliminate ambiguities regarding them, as they directly affect the rights and obligations of both parties to the contract.

It is also worth noting that scholars have identified several scenarios under which a Mudarabah may be dissolved, each bearing specific legal consequences. Although a detailed discussion of these cases lies beyond our present scope, they have been extensively addressed by Imam al-Mawardi and others in works such as al-Hawi al-Kabir, wherein he enumerates four distinct circumstances in this regard (Al-Mawardi, 1999).

4.5. Presentation and Commentary on Article Four: Profit-Sharing Ratios:

4.5.1. Presentation of Article Four: Profit-Sharing Ratios: “Profits shall be distributed according to the following ratios:% for the first party, and% for the second party.

Losses shall be borne by the capital provider (Rabb al-mal) unless the Mudarib is proven to have committed misconduct, negligence, or a breach of the terms of the Mudarabah agreement. (Appendix No. 01 , 2025)”

4.5.2. Commentary on Article Four: Profit-Sharing Ratios: This article clearly delineates the agreed-upon mechanism for profit distribution and the respective ratios allocated to each party. It also affirms that in the event of a loss, it is the capital provider who bears the financial burden, provided that the Mudarib has not caused the loss through transgression (Taaddi), negligence (Taqsir), or contravention of contractual stipulations.

In doing so, the institution has aligned its practice with paragraph 8/1 of the AAOIFI Shariah Standard on Mudarabah, which stipulates:

“It is a condition for the validity of profit that its method of distribution be known in a manner that eliminates uncertainty and prevents disputes. It must be based on a pre-agreed percentage of actual profit, not on a fixed amount or a percentage of the capital. (Accounting and Auditing Organization for Islamic F, 2015, p. 372)”

Furthermore, paragraph 8/3 of the same standard provides:

“The profit-sharing ratio must be determined at the time of contracting. However, it is permissible—by mutual consent of the parties—to amend the ratio at any point, provided that the period to which the amendment applies is clearly specified. (Accounting and Auditing Organization for Islamic F, 2015, p. 372)”

In addition, paragraph 8/4 addresses scenarios where the contract is silent regarding profit distribution:

“If the parties do not specify a profit-sharing ratio and there is an established custom, then the customary practice shall be upheld—such as dividing profits equally. If no custom exists, the Mudarabah is deemed invalid, and the Mudarib is entitled only to the wage equivalent to the services rendered. (Accounting and Auditing Organization for Islamic F, 2015, p. 372)”

Regarding the second clause of the article—"Losses shall be borne by the capital provider unless the Mudarib is proven to have committed misconduct..."—the institution has again adhered to the guidance of the AAOIFI standard, specifically paragraph 8/7, which states:

"The Mudarib shall not bear any portion of the loss, as he is considered a trustee (Amin), unless proven guilty of misconduct (Taaddi) or negligence (Taqsir). (Accounting and Auditing Organization for Islamic F, 2015, p. 373)"

This is in harmony with paragraph 4/4, which affirms:

"The Mudarabah contract is classified as a trust-based partnership, wherein the Mudarib is deemed a trustee with respect to the capital entrusted to him. He is not liable for losses unless he violates the terms of the trust, transgresses upon the capital, mismanages the investment, or breaches the contractual terms of the Mudarabah. In any of these cases, he becomes liable for the capital entrusted to him."

Accordingly, the institution's formulation of this article reflects a commendable adherence to the established Shariah principles governing Mudarabah contracts, particularly in ensuring the equitable and transparent distribution of profits and clarifying the extent of liability in the event of loss (Accounting and Auditing Organization for Islamic F, 2015, p. 370).

4.6. Presentation and Commentary on Article Five – Final Results of the Mudarabah:

4.6.1. Presentation of Article Five: Final Results of the Mudarabah: "Upon the conclusion of any operation or transaction subject to this contract, the second party shall, without any delay and within the agreed-upon timeframe as stipulated above, present to the first party the final financing schedule or the final exploitation account, which shall reflect the actual and conclusive results of the operation or transaction financed under this contract (Appendix No. 01 , 2025)."

4.6.2. Commentary on Article Five: Final Results of the Mudarabah: This article delineates specific obligations imposed upon the Mudarib (investment manager) for the benefit of the Rabb al-mal (capital provider), most notably the duty to submit—without undue delay and within the predefined timeframe—the final financing statement or exploitation account. This statement must accurately represent the actual and definitive outcomes of the operation or transaction financed under the terms of the Mudarabah contract.

It is imperative that both contracting parties remain cognizant of the nature of the circumstances that may result in delays in achieving the expected outcomes of the Mudarabah within the specified timeframes or in realizing the strategic objectives set forth at the inception of the partnership.

With regard to the Mudarib's obligation to periodically provide a detailed timeline outlining the progress of operations and the stages of implementation during the execution phase, if such reporting is intended to be conducted post-completion of the Mudarabah, then it may be considered a commendable practice that reflects transparency and sound performance management.

However, if such reporting is required throughout the actual execution of the Mudarabah contract, it is impermissible for the bank (as Rabb al-mal) to impose a condition that obliges the Mudarib to seek prior approval for every minor detail or step taken during the Mudarabah process. This

prohibition is explicitly articulated in clause 9/3 of the AAOIFI Sharia Standard on Mudarabah, which addresses the powers and autonomy of the Mudarib. The clause states:

“The capital provider may not stipulate that he work jointly with the Mudarib, thereby participating with him in decisions of buying, selling, giving or taking; nor may he require that the Mudarib consult him in every matter, rendering him incapable of making decisions independently. Furthermore, it is not permissible for the capital provider to impose conditions that strip the Mudarib of his discretionary authority—such as compelling him to involve a third party or to commingle the capital with other funds.”

This regulatory directive serves to preserve the operational independence of the Mudarib while maintaining the integrity of the Mudarabah contract in accordance with Sharia principles (Accounting and Auditing Organization for Islamic F, 2015, p. 375).

4.7. Presentation and Commentary on Article Six – General Provisions:

4.7.1. Presentation of Article Six: General Provisions: "The Mudarib (entrepreneur or investment agent) shall submit a feasibility study outlining the expected outcomes of the Mudarabah activity. Should these outcomes fail to materialize due to the Mudarib's negligence, misconduct, or breach of the Mudarabah terms, he shall be held liable for the capital provided by the bank, along with any realized profit, provided such fault is substantiated.

Moreover, if the Mudarib claims that a loss has occurred, the burden of proof lies upon him to demonstrate that the loss arose from circumstances beyond his control, and that such circumstances could neither have been foreseen nor their consequences averted. Should he fail to provide such evidence, he shall be liable for the bank's capital in the Mudarabah as well as its share of any proven profit. (Appendix No. 01 , 2025)"

4.7.2. Commentary on Article Six: General Provisions: This article serves as a continuation of the previous provisions concerning the obligations of the Mudarib toward the Rabb al-mal (capital provider) and the proceeds of the Mudarabah. Notably, the article explicitly stipulates that if the Mudarib causes deviation from the projected outcomes due to willful misconduct, negligence, or violation of the Mudarabah agreement, he becomes liable for the capital provided by the bank. This aligns with Clause 4/4 of the AAOIFI Sharia Standard on Mudarabah, which states:

"If the Mudarib violates the terms of the trust-based contract by encroaching upon the Mudarabah capital, mismanaging it, or breaching the contractual stipulations, then he becomes liable for the capital (Accounting and Auditing Organization for Islamic F, 2015, p. 370)."

Regarding the issue of profit liability, it is important to note that the AAOIFI standards do not require the Mudarib to guarantee profit recovery in the event of a loss, even if the expected profitability had been substantiated in a prior feasibility study. The essential obligation in the case of loss—whether under normal circumstances or due to proven misconduct—is addressed in Clause 8/7 of the Mudarabah Standard, which affirms:

"No profit may be distributed in a Mudarabah until the capital is preserved. Should a loss occur, it is to be covered from the profits of other Mudarabah operations. Previous losses are offset by subsequent profits, and it is the net outcome at the time of liquidation that is determinative. If, at

liquidation, the loss exceeds the accumulated profit, the deficit is deducted from the capital. The Mudarib, as an agent in trust, bears no liability unless negligence or misconduct is proven. If expenses equal revenues, the capital provider receives his principal, and the Mudarib is entitled to nothing (Accounting and Auditing Organization for Islamic F, 2015, p. 373)."

This framework is intended to maintain the balance between accountability and the trust-based nature of the Mudarabah contract, ensuring that the Mudarib remains a fiduciary unless proven otherwise, while protecting the capital provider against willful or negligent mismanagement (Appendix No. 01 , 2025).

4.8. Presentation and Commentary on Article Seven – Annexes:

4.8.1. Presentation of Article Seven – Annexes: "The annexes to this contract shall be deemed an integral and inseparable part thereof, and shall be considered complementary to it."

4.8.2. Commentary on Article Seven – Annexes: This provision affirms the legal and contractual significance of the annexes associated with the Mudarabah agreement, emphasizing that they are not to be viewed as mere supplementary documents but rather as essential components of the contract itself. The term "annexes" in this context refers to documents such as the financing request, the feasibility study, the Mudarabah agreement itself, the final financing schedule, the final exploitation account, and other relevant attachments. These documents collectively form a coherent legal and operational framework that substantiates the contractual relationship between the contracting parties and ensures clarity regarding the terms and conditions of the Mudarabah.

4.9. Presentation and Commentary on Article Eight – Interpretation of the Contract

4.9.1. Presentation of Article Eight – Interpretation of the Contract: "This contract shall be interpreted and supplemented, in the absence of specific provisions therein, in accordance with the provisions of Algerian law, provided that such provisions do not contravene the principles of Islamic Shariah. In the absence of applicable statutory provisions, the rules of Shariah shall prevail. (Appendix No. 01 , 2025)"

4.9.2. Commentary on Article Eight – Interpretation of the Contract: This clause represents a standard formulation in administrative and institutional contracts, outlining the methodology to be adopted in interpreting and supplementing the contract. It provides a mechanism agreed upon by the contracting parties for addressing interpretative ambiguities or gaps in the contract, especially in the event of disputes that cannot be resolved amicably. The article stipulates that the applicable legal reference shall be Algerian law, insofar as it does not conflict with Islamic Shariah principles. In cases where Algerian legislation is silent on a given matter, recourse shall be made directly to the rulings of Islamic jurisprudence. This dual-layered approach underscores the commitment of the Islamic financial institution to both national legal frameworks and the overarching authority of Shariah in financial transactions (Internal document, 2025).

4.10. Presentation and Commentary on Article Nine – Contract Copies

4.10.1. Presentation of Article Nine – Contract Copies: "This contract has been executed in a preamble and nine articles, in three original copies in the Arabic language. The second party has received one copy, while the first party has retained two copies. The client affirms that he has read

this contract and its annexes prior to signing, that he has fully understood and comprehended its contents, and that he unreservedly accepts all its provisions. He further commits to complete and irrevocable adherence to its stipulations."

4.10.2. Commentary on Article Nine – Contract Copies: This concluding clause delineates the formal aspects of the contract's execution, specifying the number of articles it comprises, the number of original copies prepared, and the allocation of these copies to each party. As is customary in contracts issued by Islamic financial institutions, this article reiterates the binding nature of the contract and underscores the necessity of full compliance with its provisions. It affirms the informed consent of the client, who acknowledges his full understanding and acceptance of the terms, thereby reinforcing the principles of contractual transparency, mutual consent, and enforceability in line with both civil law and Islamic contractual ethics.

5. Conclusion:

All praise is due to Allah, by whose grace righteous deeds are perfected. May peace and blessings be upon the noblest of all creation, Muhammad, and upon his noble family, his esteemed companions, and his pure and virtuous wives. To proceed:

By the grace and generosity of Allah, we have completed the study entitled:

"The Mudarabah Contract Implemented by Al Salam Bank – Algeria in Light of the Mudarabah Standard Issued by AAOIFI."

Throughout this research, we undertook a detailed exposition and analysis of the clauses of the Mudarabah contract adopted by Al Salam Bank – Algeria, as measured against the provisions of the AAOIFI Shariah Standard on Mudarabah. We aimed to assess the extent to which the bank's contractual framework aligns with and is influenced by the principles and regulations set forth in this standard.

At the conclusion of this study, we have reached a set of key findings, which are summarized below, followed by a number of recommendations that we believe may enhance the implementation and governance of Mudarabah contracts within Islamic financial institutions.

5.1. Research Findings:

This study yields the following principal findings:

- The Accounting and Auditing Organization for Islamic Financial Institutions, through its issuance of Shariah standards, represents a significant and qualitative leap in the regulation, standardization, and arbitration of Islamic financial activities both within and beyond the Muslim world.
- Al Salam Bank – Algeria demonstrates a determined effort to enhance the quality and compliance of its services by affiliating with numerous regulatory and consultative bodies dedicated to Islamic financial institutions.
- The Mudarabah Standard aims to articulate the Shariah foundations and legal rulings governing both restricted and unrestricted forms of Mudarabah. It also delineates the regulatory guidelines that Islamic financial institutions—whether acting as Rabb al-mal (capital provider) or as Mudarib (entrepreneur/agent) must observe.
- Despite the bank's adherence to many of the Mudarabah Standard's provisions within its contractual structure, it appears that the contract falls short in addressing a critical area that directly impacts the validity and outcome of the Mudarabah arrangement. Specifically, the contract lacks detailed stipulations regarding unforeseen circumstances that may lead to premature termination of the contract. It also omits explicit provisions for the distribution of profits accrued during the elapsed period of the Mudarabah. This omission may hinder full compliance with the objectives and protective mechanisms envisaged by the standard.

5.2. Research Recommendations:

- We recommend that greater emphasis be placed on the use and promotion of participatory contracts within the Algerian economic system at large. Islamic banks should not confine themselves predominantly to debt-based instruments—such as Murabahah, Salam, Ijarah, and Istisnae—on the sole basis of lower risk and more predictable returns.
- We propose that the headings and structure of the Mudarabah contract employed by Al Salam Bank—and by extension, all related contracts—be aligned as closely as possible with the corresponding headings and formats found in the Shariah standards issued by AAOIFI. The latter employ precise, expressive terminology that reflects the substantive content of each clause.
- We recommend adapting concession-based contracts introduced by the Algerian legislator into participatory or Mudarabah-based models (both restricted and unrestricted) in order to attract a broader spectrum of investors and to enhance the mobilization of capital within a Shariah-compliant framework.

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