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Islamic Finance Modes Between Equity and Debt in Algerian Legislation

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Abstract:

Islamic finance is considered one of the most stable and equitable financing models. It is based on specific principles derived from Islamic law (Sharia), relying on profit and loss sharing while avoiding all forms of usurious interest (riba).

This unique character has enabled these financing methods to resist to global economic crises, encouraging many countries, including Algeria, to adopt them. Algeria has embraced Islamic finance and is striving to integrate it into its banking system.

Facing the diversity of Islamic finance methods, the Algerian legislator has attempted to regulate a number of them in a way that respects their underlying principles while working to integrate them into the Algerian banking system. This integration aims to attract the informal economy.

Keywords: *Islamic finance; Islamic banking; Murabaha; Musharaka.*

Introduction:

Finance is from the ideal mechanisms for obtaining financial resources, which can maintain the capital flow and direct it towards various production and investment sectors. This is especially true since finance in general no longer relies solely on quantitative criteria, but rather focuses on qualitative criteria by directing capital towards the most efficient projects, while supporting innovation and promoting environmentally friendly projects, also known as green finance.

It has become essential to diversify financing and attract all its sources, such as financing through entrepreneurship support funds dedicated to supporting small and emerging businesses through the National Agency for Development and Investment (NESDA), via a system consisting of a personal contribution, an interest-free loan from the agency, and a bank loan. There is also the Algerian Investment Fund (ASF), dedicated to financing startups by becoming an equity

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partner. Additionally, there is the Agency for Microcredit (ANGEM), dedicated to microloans and home-based businesses. Also, another option, the financing through financial markets or the stock exchange, which is still developing in Algeria. Furthermore, bank financing of all types remains the preferred financing option in Algeria, through short- and medium-term loans, leasing, and Islamic banking or Islamic finance in its various modes.

In order to contribute to the development of the banking and financial system, Algeria adopted the idea of Islamic finance or Islamic banking in response to the requirements of the Algerian Muslim society and to attract new capital by absorbing the considerable monetary mass that exists outside the banking sector.

Islamic finance is considered to be a new opportunity to increase the customer base and achieve financial inclusion, which aims to diversify the sources through which funds circulating outside the banking system can be brought back into circulation.

It is also considered that Islamic finance is a new solution that can satisfy both customers and investors, aligning with their beliefs and requirements.

Islamic finance has also proven its success in many countries, especially during the global economic crisis, where it demonstrated its resilience and ability to cope with it. This has led many countries, both Muslim and non-Muslim, across all continents, turning to it.

Despite the emergence of Islamic banks in Algeria for many years, whether in the form of autonomous banks or in the form of Islamic windows, which carried out their work by issuing various banking products known as participatory products that are not subject to any interest, this is through the Regulation 18-02 dated 04 November 2018, which includes rules for practicing banking operations related to participatory banking by financial institutions.

After the issuance of Regulation 2020-02 dated 15 March 2020, which defines banking operations related to Islamic banking and the rules for their practice by banks and financial institutions, Islamic banking products became known as Islamic banking products.

Law 23-09 deted26 August 2023, which includes the Monetary and Banking Law, was issued to confirm the genuine desire to adopt Islamic finance, where for the first time there is an explicit text that considers Islamic banking to be one of the banking operations practiced in all

Algerian banks, according to the text of Article 68 of Law 23-09, which includes the Monetary and Banking Law.

Islamic finance is based on providing a range of diverse financial services and instruments built on respect of Islamic Sharia principles, which are based primarily on the principle of profit and loss, while prohibiting all types of usurious profit, focusing on complete transparency in dealings, avoiding uncertainty and gambling, and investing only in legitimate projects, in accordance with what is stated in the Qur'an, the Sunnah, Ijma(consensus), and Qiyas(analogy).

Islamic finance is carried out through various modes or what are known as Islamic banking products, which are numerous and cover multiple fields and are characterized by a low-risk rate, while relying on Islamic Sharia as a reference when dealing with it. This leads us to pose the following question.

What are the legal Mechanisms adopted by the Algerian legislator to regulate Islamic finance modes, in order to ensure compliance with Sharia principles in light of legislative challenges?

To explore deeper into this topic, we will attempt to see a set of key objectives, namely:

- Understanding the fundamental concepts of Islamic finance.

- Clarifying the concept of Islamic banking and its physical and organizational structures within the Algerian banking system.

- Clarifying the legal dimensions of each Islamic banking product according to Algerian legislation.

To understand the topic of this research paper, we will try to rely on the descriptive approach by considering the various concepts and definitions related to the subject, and the analytical approach by analysing the various legal and regulatory texts related to the subject.

We will try to divide this research paper into three main chapters:

Chapter 1: The foundational path of Islamic finance in Algeria.

Chapter 2: Islamic finance Modes based on. Equity.

Chapter 3: Islamic finance Modes based on debt

Chapter I: The foundational path of Islamic finance in Algeria

Algeria faced a significant challenge assimilated in the informal market, due to the accumulation of money in homes outside the banking system. This resulted in the underutilization of a substantial amount of cash circulating outside the formal banking system. Therefore, it became essential to consider alternatives that could attract this cash.

Islamic banking emerged as one of the most important alternatives that Algeria considered and pursued.

Numerous Islamic banks, windows, and Islamic banking units have appeared within various Algerian banks, practicing Islamic finance in its various forms in a manner entirely different from conventional banks.

Firstly: The concept of Islamic banks and Islamic windows

Islamic banks appeared in response to a social necessity to meet the needs of Algerian Muslim society, and to an economic requirement to support the financial and banking system.

1- Definition of Islamic Banks:

Islamic banks are defined as a financial, banking, economic, and social organization that seeks to attract resources from individuals and institutions, and works to use them in the best way while performing multiple banking services, and works to achieve a suitable return for the owners of capital, and also contributes to realizing social solidarity in society, and adheres to the principles and requirements of Islamic Sharia, with the aim of achieving economic and social development for individuals and institutions while taking into account the circumstances of society(1).

An Islamic bank is a financial institution that attracts monetary resources from members of society and invests them effectively, ensuring their growth and expansion within the framework of the established principles of Islamic law (Sharia), serving the interests of the Muslim community and contributing to its economic development(2).

An Islamic bank is a bank or institution whose founding law and fundamental system explicitly stipulate adherence to the principles of Islamic law and prohibit interest-based transactions, both receiving and giving(3).

An Islamic bank is a financial institution that conducts currency exchange and investment operations in accordance with the moral principles of Islamic law(4).

The agreement establishing the International Union of Islamic Banks, in Article 05, Paragraph 01, defines Islamic banks as those banks or institutions whose founding law and articles of association stipulate the prohibition of interest-based transactions, both receiving and giving. The same agreement also defines an Islamic bank as a banking institution for collecting and investing funds within the

framework of Islamic law, serving the development of a cooperative Islamic society, achieving equitable distribution, and guiding money towards Islamic path(5).

Therefore, an Islamic bank can be considered an institution that conducts banking operations without receiving any usury interest, in accordance with the principles and rulings of Islamic law (Sharia).

2- Definition of Islamic Windows:

Islamic finance can be practiced in its various forms through Islamic windows found in various banks, which are considered an alternative to Islamic banks .

Islamic windows are bank-affiliated structures, defined by the Islamic Financial Services Board as being part of a conventional financial services institution, in the form of a window or specialized unit affiliated with that institution, providing money management services (investment accounts) and financing and investment services that comply with the provisions of Islamic Sharia(6).

Islamic windows are organizational units run by conventional banks, specializing in providing Islamic services. They are called the dual system, meaning the system in which the conventional bank provides Islamic banking services alongside conventional services(7).

Islamic banking windows were defined as "participatory finance windows" by the cancelled system 18-02, where Article 05 states (meaning a participatory finance window a department within an authorized bank or an authorized financial institution that exclusively grants participatory banking services and products).

As defined in Article 17 of Regulation 2020-02 dated 15 Marc 2020 (the Islamic banking window is defined as a structure within a bank or financial institution, exclusively responsible for Islamic banking services and products)(8).

Paragraph 4 of Article 72 of Law 23-09 also confirms the existence of an Islamic banking window within the bank or financial institution.

To ensure that Islamic banking windows comply with the fundamental principle on which depends the Islamic finance and so it is the avoidance of all forms of usurious interest, regardless of their value, the Algerian legislator has established a set of conditions that must be met by these windows, including:

- From a financial perspective, the Islamic banking window must be independent from the rest of the bank.

- From an administrative perspective, it must be independent from the rest of the bank.

- The Islamic banking window's accounting must be completely separate from the bank's general accounting.

- The accounts of Islamic banking window customers must be completely separate from the accounts of the bank's other customers.

Some doubt on the legitimacy of dealing with Islamic windows, arguing that they cannot make decisions without consulting the bank's management depending on it, this doesn't make it independent but it is subjecting it to the principle of subordination. However, most contemporary Islamic scholars permit dealing with them(9).

Islamic windows have gained significant popularity because establishing one is easier than establishing an Islamic bank.

3- <u>The Reality of Islamic Banks and Windows in Algeria</u>:

Islamic banks are established as joint-stock companies, like other banks, according to Article 91 of Law 23-09, which includes the Monetary and Banking Law(10). They must obtain a certificate of conformity for their Islamic banking products and structures from the National Sharia Authority for the Islamic Financial Industry, which is affiliated with the High Islamic Council.

Islamic banking in Algeria appeared with Al Baraka Bank Algeria, established on 20 May 1991, with mixed capital. Participating companies included:

- The Bank of Agriculture and Rural Development (BADR), representing the public sector.

- Al Baraka Banking Group Holding, representing the foreign private sector.

Following Al Baraka Bank Algeria, Al Salam Bank Algeria was established in 2006 and started operations in 2008.

Afterward, Islamic banking windows were opened in three private banks: Gulf Bank in 2009, Housing Bank for Trade and Finance in 2016, and Bank of Algeria in 2018. Following the issuance of Regulation 2020-02, which defines banking operations related to Islamic finance and the rules for their practice by banks and financial institutions, the National Bank of Algeria (BNA) launched an Islamic banking window, the first of its kind in a public bank, offering nine Sharia-compliant products. The total number of Islamic banking windows reached approximately 106, distributed among the National

Bank of Algeria (CPA) (59 windows), the People's Credit Bank of Algeria (CPA) (31 windows), and the National Reserve Fund (CNEP) (16 windows)[11].

Secondly: the need to adapt the Algerian banking system to the requirements of Islamic banking:

In order for Islamic finance to effectively achieve its objectives, the Algerian legislator asserted the need to adapt the Algerian banking system to the requirements and specificities of Islamic banking, which differ significantly from conventional banking operations. To this end, specific conditions were established, involving specialized bodies comprised of experts and specialists who understand financial and banking transactions in accordance with the principles of Islamic law.

1- Exercising conditions for Islamic Banks and Islamic Windows to Operate in Algeria:

Islamic banks and various Islamic windows operate by marketing Islamic banking products and services, as stipulated in Article 73 of Law 23-09[12]*. To ensure compliance with the principles of Islamic Sharia, the Algerian legislator established a set of conditions for Islamic banks and Islamic windows to operate within the framework of Regulation 2020-02. Article 14 of this law emphasizes the necessity of obtaining a certificate of conformity to Sharia provisions, issued by the National Sharia Authority for Islamic Financial Industry Fatwas. This authority was established on 01 April 2020, by the High Islamic Council.*

Article 13 of Regulation 2020-02 stipulates the necessity of obtaining prior authorization from the Bank of Algeria by submitting a file to the Bank of Algeria, which, according to Article 16, must include:

(- A certificate of compliance with Sharia principles issued by the National Sharia Authority for Islamic Financial Industry Fatwas.

- A product description.

- An opinion from the bank or financial institution's compliance officer, in accordance with the provisions of Article 25 of Regulation 11-08 dated 03 Muharram 1433, corresponding to November 2011.

- The procedure to be followed to ensure the administrative and financial independence of the "Islamic banking window" from the other activities of the bank or financial institution, in accordance with the provisions of Articles 17 and 18 below).

Article 4 of Regulation 20-01 of 15 March 2020, which establishes the general rules relating to banking conditions applicable to banking operations, also confirms the necessity of obtaining prior authorization to offer banking services and products.

The term "product" refers to financing instruments or services issued by various banks and financial institutions, as defined in Article 5 of Regulation 20-01 (for the concepts of this regulation, a new product or service is defined as any reserves product, loan product, or banking service that has not yet been authorized and launched on the market).

2- The Monetary and Banking Council:

In order to respond to the requirements of Islamic banking, especially as it has become a standard banking practice in all Islamic banks, the Algerian legislator emphasized the necessity of assigning a specialist in Islamic banking to the Monetary and Banking Council. Article 61 of Law 23-09, which contains the Monetary and Banking Law, stipulates that the Monetary and Banking Council (referred to herein as "the Council") shall consist of:

- Members of the Board of Directors of the Bank of Algeria.

- A person chosen for their expertise in economic and monetary matters.

- A person chosen for their expertise in Islamic banking.

- An executive from the Bank of Algeria, holding at least the rank of Director General, who appoints the three members mentioned in the last three clauses as members of the Board by presidential decree. These Board members deliberate and participate in voting within the Board[13].

Previous compositions of the Monetary and Banking Council, under the prior repealed laws, did not include a member with expertise in Islamic banking. This indicates that the Algerian legislator is striving by all means to achieve compatibility between Islamic banking products and the principles of Islamic Sharia.

3- Sharia Supervisory Board:

If an Islamic bank obtains accreditation to practice Islamic finance or Islamic banking, it must establish a Sharia Supervisory Board as stipulated in Article 15 of Regulation 2020-02, which consists of at least three members appointed by the General Assembly[14].

The Sharia Supervisory Board is comprised of Sharia scholars specializing in contemporary transactions jurisprudence, and

specialists in economics and law with experience in the Islamic financial system. The Board holds periodic or emergency meetings to answer all inquiries from the bank's management, and this latter works to publish the Board's fatwas and decisions in the form of publications directed to the public.

According to Article 2 of its establishment decree, the Sharia Authority is tasked with assessing the conformity of products presented to it by official bodies, banks, and accredited institutions with the provisions of Islamic Sharia and issuing a certificate of conformity. It also provides the Sharia opinion on financial products related to the field of Takaful insurance, the Transferred market values, and charitable financing such as Zakat, Waqf, and Sadaqah. It also accompanies banks and financial institutions during their activities by studying any evolving issues or practical and applied problems in order to provide solutions regarding them in accordance with the principles and provisions of Islamic Sharia[(15)].

This authority carries out its duties by exercising Sharia supervision over the Islamic bank when it practices banking operations related to Islamic banking products. It is considered one of the independent authorities of the Islamic bank that works to ensure its protection from falling into violation of the provisions of Islamic Sharia during its business operations, and provides Sharia solutions to the problems that it may face.

Chapter II: Islamic finance Modes based on Equity

Islamic banking is not a type or model of financing, but rather an integrated banking system based on numerous legitimate contracts and transactions, designed to meet the needs of the Muslim community in accordance with the principles of Islamic law.

Islamic banking offers what are known as Islamic banking products, which are regulated by the Bank of Algeria through Regulation 2020-02 dated 15 March 2020, which defines banking operations related to Islamic banking and the rules for their practice by banks and financial institutions, and Instruction 03-2020 dated 02 April 2020, which defines products related to Islamic banking and specifies the procedures and technical characteristics for their implementation by banks and financial institutions.

The Algerian legislator has enumerated Islamic banking products exhaustively in Article 04 of Regulation 2020-02, Which is represented

by Musharakah, Mudaraba, Ijarah, Le Salam, Istisna', deposit accounts, and deposits in investment accounts.

Islamic banking products are divided according to two main criteria: Equity and debt. The first criterion includes Mudaraba and Musharakah, while the second includes, Ijarah, Istisna', and El Salam. We will begin by focusing on products based on Equity

Firstly: Mudarabah:

Mudarabah is one of the oldest and most important financing methods in Islamic law based on partnership. It relies mainly on capital and expertise and aims to transform banks from investors into partners.

Islamic banks utilize Mudarabah when investing in small and medium-sized enterprises owned by artisans, merchants, and professionals such as doctors and engineers. Despite its advantages, Mudarabah involves a degree of risk because the Mudarib (investor) manages the enterprise or business, while the bank's role is limited to providing the capital(16).

1- Definition of Mudarabah:

El-Imam Ibn Rushd defined Mudarabah as when a man gives money to a financier to trade with on a known part, with the worker receiving a predetermined share of the profit, whether a third, a quarter, or a half, as they both agree.

Mudarabah is a partnership agreement between a capital provider and an investor who invests their expertise. Profits are distributed between them at the end of each transaction according to agreed-upon ratios. But Any losses happened can be bore solely by the capital provider, while the investor loses their effort, unless the investor is negligent or at fault, in which case the capital provider is liable for compensation(17).

Mudarabah is a profit-sharing agreement where capital is provided by one party and labour by the other. It encompasses all activities that invest and grow capital in legitimate activities(18).

The Mudarabah process is based on an agreement between two parties, namely the owner of the capital and the speculator or worker, who is the party tasked with investing the money. The two parties agree together to share what may be achieved from the operation in certain proportions between them. In the event of a loss, if it occurs, it is borne by the owner of the capital, meaning that the money is provided by one person and the work by another, with the profit being between them as

stipulated in the contract. If there is a loss, it is only the basis of the capital, while the speculator worker, with his work, is only liable for the loss of his effort, unless negligence is proven against him, in which case he is liable for the capital[19].

2- Regulation of Mudarabah in Algerian Legislation:

The Algerian legislator defined Mudarabah in Article 07 of Regulation 2020-02, which considers it a contract whereby the bank provides capital to the other party, who in turn provides a work to generate profit.

To ensure the proper implementation of Mudarabah, the Algerian legislator established conditions through Instruction 03-2020, which are as follows:

- The Islamic bank's contribution must be in cash, in nature, or both, with a specified value.

- The contractor is exclusively responsible for managing the funds.

- The contractor may not participate in managing the funds.

- The contractor has the right to request any guarantee it considers appropriate from the contractor.

- Profits must be distributed according to the agreement established.

- In the event of a loss, the bank alone bears the responsibility.

- If the contractor neglects, cheats, or breaches the terms of the contract, it becomes partially or fully liable for the resulting damages.

The Algerian legislator, through Instruction 03-20, defined two types of Mudarabah:

a- Unrestricted Mudarabah: *In this type of Mudarabah, no restrictions are imposed on the Mudarib (investor), whether in terms of time, place, the parties involved, or the type of trade. The Mudarib enjoys complete freedom of action during this Mudarabah.*

b- Restricted Mudarabah: *In this type of Mudarabah, the Mudarib is subject to and bound by the conditions set by the employer, which is the Islamic bank, such as specifying the time, place, parties involved, and type of trade.*

There is also speculation in terms of the number of parties involved, which the Algerian legislator did not address. It is divided into bilateral speculation, which takes place between only two parties, namely the owner of the money and the employer, and multilateral speculation, in which the owner of the money gives the money to the employer, who gives it to another employer.

Secondly: Moucharaka:

Moucharaka is considered the optimal banking formula for investment based on shared risk, and is considered one of the fair financing tools.

1- Definition of Moucharaka:

Moucharaka is a formula by which the financial benefits of individuals and institutions are banked up in order to form capital, and it has considerable economic power that contributes to the formation of new investments or the expansion and renewal of existing projects(20).

Moucharaka is the association of two or more individuals to undertake a specific project, with each contributing either capital or labour, and sharing the resulting profits or losses(21).

Moucharaka is an investment contract through which funds are banked up for investment in specific activities, where each partner contributes a share of the capital and the profits are distributed among them according to their agreement(22).

Moucharaka is a form of business organization where two or more individuals contribute to financing and managing the business in equal or varying proportions. Profits are shared fairly, though not necessarily equally, according to agreed-upon ratios between the partners. Losses are borne in proportion to their capital contributions(23).

Moucharaka is a financing method whereby an Islamic bank and a client jointly finance a project or transaction. Both the bank and the client share in the profits according to the ratios agreed upon in the contract. In case of loss, each party shares in proportion to their respective financing. The bank is considered a full partner in the transaction(24).

2- Regulating Moucharaka in Algerian Legislation:

The Algerian legislator clarified the meaning of Moucharaka in Article 06 of Regulation 2020-02 (Participation is a contract between a bank or financial institution and one or more parties, with the aim of contributing in the capital required by the contractor, who provides their work in a project to generate profits).

The Algerian legislator also established conditions for exercising Moucharaka in Instruction 03-2020, which are as follows:

In Moucharaka, the contribution may be in cash or in nature, according to the shares agreed upon in the company's contract.

The partners' shares, especially in nature, must be specified in the contract.

Profits are distributed according to the partners' agreement. In the event of a loss, each partner bears a part of the loss proportionate to their contribution. The profit distribution agreement can be amended, and profits are distributed as percentages, not as arbitrary amounts.

The company is managed by selecting one or more partners as managers or by appointing a manager from outside the partnership.

The Algerian legislator, through Instruction 03-20, defined two types of Moucharaka:

a- Fixed Moucharaka: *In a fixed Moucharaka, the Islamic bank's share in the project's capital remains fixed throughout the Moucharaka period.*

b- Reducing Moucharaka: *In a reducing Moucharaka, the bank must commit to transferring its share in the project's capital to one or more partners, as agreed upon.*

Chapter III: Islamic finance Modes based on debt

There are Islamic financing methods based on indebtedness, which arise from creating a debt owed by the client after the sale of a good or the provision of a service, instead of providing an interest-bearing loan. The Algerian legislator has not adopted all debt-based methods stipulated by Islamic law, having only adopted Murabaha, Ijarah, Salam, and Istisna' through Regulation 2020-02 and Instruction 03 20.

Firstly: Murabaha:

Murabaha is one of the most common formulas used in Islamic banks and is used in several fields, due to the ease of procedures and low risk with a high guarantee factor compared to other formulas, as the relationship between the bank and the customer in this formula turns into a creditor and debtor relationship.

1- Definition of Murabaha:

Murabaha is a process carried out by the Islamic bank through the purchase of a commodity needed by the market, based on a study of its conditions or based on a promise to purchase submitted by one of its clients. If the bank is convinced of the market's need for this commodity, it purchases it and has the right to sell it to the first buyer or to others on a Murabaha basis. That is, the bank determines the purchase price plus the expenses incurred by the bank in relation to it, and requests a certain amount of profit in addition to its value[25].

2- <u>Murabaha Regulation in Algerian Legislation</u>:

The Algerian legislator defined Murabaha in Article 05 of Regulation 2020-02 and Article 03 of Instruction 03-2020, considering it a contract whereby an Islamic bank sells goods it owns, regardless of their type, by selecting a commodity, calculating its cost price, and adding a profit margin agreed upon by the bank and the other party.

The Algerian legislator further regulated Murabaha in Articles 04 to 13 from the same Instruction, clarifying its conditions and procedures.

Murabaha transactions must be conducted through separate contracts: the contract in which the bank undertakes to purchase the commodity from the first party, the contract in which the bank purchases the commodity, and the profit-sharing contract.

The agreed-upon selling price must remain fixed and unchanged throughout the agreed-upon period.

The Islamic bank may request any guarantees it considers appropriate and is entitled to include a penalty clause in the Murabaha contract in the event of the second party's delay or refusal to pay.

The Islamic bank can demand full or partial payment from the buyer if the buyer refuses or delays payment.

The buyer can pay part or all of the price in a single payment without any change to the agreed-upon price and without any penalties.

To ensure the validity of the Murabaha transaction, particularly from a Sharia perspective, the bank must own the commodity. The initial contract must be valid, the buyer must be informed of the initial price, the sale must be of the commodity in exchange of cash, and the commodity's specifications must be fully defined, including any defects[(26)].

There are two types of Murabaha:

a- <u>Simple Murabaha</u>: *Also known as Murabaha without a buyer's request, this type of Murabaha involves selling a commodity at a price that includes the cost of the commodity plus a profit margin. The Islamic bank purchases the commodity without a buyer's request and takes possession of it. Then, if the buyer requests it, the bank sells it at the purchase price plus the profit margin.*

b- <u>Complex Murabaha</u>: *This type of Murabaha is practiced by Islamic banks and is executed through several successive and separate contracts. The client selects a commodity and specifies its*

characteristics, which constitutes a promise to purchase (the purchase orderer). The bank enters into another contract to purchase the agreed-upon commodity, taking possession of it (the purchase agent). Finally, the bank sells the commodity it owns to the purchase orderer at a new price, which is the cost price plus the agreed-upon profit margin, according to the payment terms agreed upon by both parties.

Secondly: Ijarah

Ijarah is a contract that emerged in the modern era and is practiced in all real estate, industrial, and commercial sectors. It is distinguished by combining characteristics of both sales and Ijarah contracts.

1- Definition of Ijarah:

Ijarah is also known as Ijarah-purchase, finance Ijarah, Ijarah to own, lease that converts into a sale, and Ijarah coupled with a promise to sell.

Ijarah is a contract that the contracting parties describe as Ijarah, agreeing that the renter will pay rent for a specific period, after which the contract converts into a sale. The rent paid in installments is considered the price of the sale[(27)].

Ijarah is a rental agreement coupled with a promise to sell, whereby one party rents an item to another for a specific period. Upon the expiry of the rent term, the renter has the option to purchase the item at a predetermined price[(28)].

Ijarah is a rental agreement between two parties for an existing or described asset, at a known rent, usually higher than the market rent. The renter pays this rent in installments over a specified period.

At the end of the rent term, the owner transfers ownership of the asset to the renter based on a prior agreement and a new contract[(29)].

2- The Regulation of Ijarah in Algerian Legislation:

The Algerian legislator defined Ijarah in Article 08 of Regulation 2020-02 and Article 24 of Instruction 03-2020, considering the Islamic bank as the owner and the client as the renter. They agree on Ijarah contract for a commodity, whatever its type, in exchange for installments representing the rent, which they agree upon in the contract.

The Algerian legislator regulated the procedures and conditions of Ijarah in Articles 23 to 35 of Instruction 03-2020.

Islamic banks utilize Ijarah, particularly in financing medium-term projects. These banks purchase various equipment and real estate and

rent them to their clients for an agreed-upon period. During this time, the renter maintains the rented asset and pays the agreed-upon rental price. Upon the contract's expiration, the bank offers the client the option to terminate the contract or purchase the rented asset. This contract is very similar to a standard rent agreement but is free of penalties associated with late payment of the rental price.

An analysis of Articles 23 to 35 of Instruction 03-2020 reveals that the Algerian legislator has established the following conditions for the close of Ijarah contract:

Ijarah is only permitted for non-perishable goods, and the rental amount must be explicitly specified in the contract.

The parties agree on the rental amount, and they are free to choose whether it is fixed or variable, providing that the method of determining it is clearly defined.

The rental period must be specified in the contract, which begins immediately after the rented property is placed at the tenant's disposal. The tenant is responsible for its maintenance and upkeep, while the bank provides insurance.

To protect itself from late or non-payment of rent, the bank may include clauses in the Ijarah agreement stipulating that the full remaining rent amount must be paid in the event of a payment delay.

The bank may also require a unilateral Ijarah agreement from the renter outlining the specifications of the leased property and the terms of the Ijarah agreement.

The bank is also allowed to request what is known as an earnest money deposit, which represents a security deposit that the renter can recover upon signing the contract, or it can be considered as installments towards the rent. The bank can deduct from this earnest money deposit compensation for damages if the renter fails to complete the contract or assigns it.

The renter can recover the earnest money deposit and claim compensation if the bank breaches its contractual obligations.

The bank's purchase agreement, the unilateral Ijarah agreement, the Ijarah contract, and the assignment contract must be kept strictly separate.

The Ijarah agreement may stipulate a specific amount or percentage of the rent to be allocated to charitable causes under the supervision of the Sharia Supervisory Board.

The Algerian legislator has defined two types of Ijarah:

***a- Operating Ijarah**: This is Ijarah that does not result in ownership of the rented asset by the renter. It is very similar to a regular Ijarah, and Islamic banks resort to this form when they prefer to retain ownership of the rented asset.*

***b- Ijarah ending with ownership transfer**: This is a Ijarah in which ownership of the rented asset is transferred to the renter immediately upon the expiration of the Ijarah term.*

Thirdly: Istisna

Istisna is a less common form of contracting than others, but it plays a developmental role as it is considered an effective means of converting cash resources into real projects belonging to several real estate and industrial sectors.

1- Definition of Istisna:

Istisna is when one person requests another to manufacture something that has not yet been made, according to specific specifications, using materials provided by the manufacturer, in exchange for a predetermined price, which the manufacturer accepts(30).

Istisna is a contract between two parties, one being the manufacturer and the other the customer, based on the manufacture of a commodity that was not manufactured at the time of the contract, using materials provided by the manufacturer. The commodity must be described precisely to prevent disputes upon delivery, and the price must be specified. Payment may be made in full at the time of the contract, deferred until delivery or after, or in multiple installments, and the customer accepts this(31).

Istisna' is a contract through which a bank undertakes to construct facilities for its client in exchange for a premium that includes the cost of the facility plus a profit margin. The bank appoints a contractor to carry out the work, and it can be converted into bonds with successive entitlements(32).

2- The Regulation of Istisna' in Algerian Legislation:

The Algerian legislator defined Istisna' in Article 10 of Regulation 2020-02 and Article 44 of Instruction 03-2020, and regulated it through Articles 45 to 49 of Instruction 03-2020.

The Algerian legislator considered Istisna' to be an agreement by an Islamic bank to deliver a product to a client, known as the "mustasna'"

or "mustasna' buyer," which they ordered from a manufacturer according to specifications they themselves defined and which were agreed upon by all parties at a fixed price payable as agreed.

The Istisna' contract involves the following procedures:

The customer, known as the Mustasna', submits the specifications of the product they wish to manufacture to the Islamic bank.

The bank signs an Istisna' contract with the customer to manufacture the requested product according to their specified specifications.

The bank engages a subcontractor and enters into a parallel Istisna' contract with them to manufacture the requested product.

The bank commits to paying for the raw materials and necessary services related to the requested product, with payment made as agreed upon in the parallel Istisna' contract.

The manufacturer is obligated to produce the requested product according to the specified specifications and under the customer's supervision.

The subcontractor delivers the finished product according to the agreed-upon terms.

The bank transfers ownership of the requested product to the customer.

The Algerian legislator has also established a set of conditions that may be included in a manufacturing contract. The manufacturing price must be explicitly stated in the contract and can be paid in cash, in nature, or as a utilisation right for a specified period.

The method of payment must be specified in the contract, whether over a fixed period or for a fixed term.

The bank may request an advance payment as a guarantee, which can be considered part of the agreed price.

The bank is allowed to use this advance payment as compensation in the event of contract termination.

The bank may request other guarantees as stipulated by law. A clear distinction must be made between a manufacturing contract and a parallel manufacturing contract.

The subcontractor is responsible for delivering the agreed-upon goods .

Fourthly: Alsalam

Alsalam is considered one of the oldest forms of Islamic finance. It differs from other forms because it does not rely on the delivery of the

commodity and then payment for it. Rather, it exceptionally allows the sale of a non-existent commodity with immediate payment. Salam is known to be used particularly in the agricultural sector.

1- Definition of Alsalam:

Alsalam is a contract for the purchase at a predetermined price of a specific type of commodity, to be delivered later, on a specific date, in a specified quantity and quality. The Islamic bank, as the buyer, pays the full purchase price upon signing the Salam contract or within a subsequent period not exceeding two or three days, as permitted by the regulatory authority(33).

Alsalam is a type of sale where the price is paid immediately, called the Salam capital, while the commodity described in the contract is deferred and called the "Salam item(34)."

Alsalam is the sale of a commodity described in the contract, for a known future date, at an immediate price(35).

2- Regulating Alsalam Contracts in Algerian Legislation:

The Algerian legislator defined Alsalam in Article 9 of Regulation 2020-02 and Article 36 of Instruction 03-2020, considering it a contract between an Islamic bank that purchases a commodity from its client, without immediate delivery, while committing to immediate cash payment.

The Algerian legislator also addressed parallel Alsalam contracts in Article 37 of Instruction 03-2020, defining it as a contract whereby an Islamic bank enters into a second Salam contract with a third party unrelated to the first contract, to sell them a commodity identical to that of the first contract, to be delivered later at a mutually agreed price, payable immediately in cash.

The Algerian legislator further regulated Alsalam contracts in Articles 38 to 43 of Instruction 03-2020, stipulating the necessity of specifying and defining the subject of the contract, which is the agreed-upon commodity, the availability of which is not a requirement.

The Algerian legislator granted the buyer the right to choose any production area they prefer for agricultural products, without specifying a particular farm. For industrial products, the buyer has the right to specify a preferred brand.

The price is paid in advance and in cash, and may be reduced in case of poor quality, if both parties agree.

The method, date, and location of delivery are specified in the contract. If the contract does not specify these details, delivery is made at the location where the contract was concluded.

The forward sale contract does not include any penalty clauses of any kind, and it can be terminated by mutual agreement of the parties

Conclusion:

This research paper has shown that despite Algeria's relatively recent experience with Islamic finance, it has taken positive steps towards achieving a balance between Sharia principles and the legislative requirements of Islamic finance.

A review of the various legal and regulatory texts established by the Algerian legislature to regulate Islamic finance and integrate it into the Algerian financial and banking system, particularly Directive 03-2020, reveals an attempt to respect the specific Sharia principles to each form of Islamic finance through the conditions it has set. However, numerous technical obstacles remain a challenge to achieving full compatibility between Islamic finance, in its various forms, and the Algerian financial and banking system.

Finally, we have arrived at the following set of findings:

1- Theenactment of Law 23-09, the Monetary and Banking Law, provided a legal basis for Islamic banking, explicitly recognizing it as a banking operation.

2- Considering that Islamic banking has become a banking operation, the composition of the Monetary and Banking Council was modified to require the presence of a qualified expert in Islamic banking to ensure its practice in accordance with Islamic law.

3- The necessity of having a Sharia Supervisory Board at the level of all Islamic banks and Islamic windows is to ensure that Islamic banking products comply with the principles of Islamic law.

4- The Algerian legislator has exhaustively demarcated the products of Islamic banking as Mudarabah, Musharakah, Murabaha, Ijarah, Istisna', and Salam.

5- To guarantee that Islamic windows operate in accordance with the principles of Islamic law and are free from all forms of usury, the Algerian legislator has emphasized the necessity for these windows to enjoy administrative and financial independence from the rest of the bank.

- Recommendations:

1- Promote a culture of Islamic finance in its various forms by raising awareness through seminars and academic conferences.

2- Attempt to redress other forms of Islamic finance not currently covered by Algerian legislation.

3- Provide training and development for bank staff on Islamic finance practices to ensure their smooth implementation.

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