

Sharia Mudharaba finance in Islamic banks: between reality and practice

By

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Abstract

The study of Mudharaba in Islamic banks is one of the studies in the field of Islamic economics, and it deals with the state of Mudharaba in Islam and the importance of the Islamic bank in this field, in early Islam and beyond, the study dealt with the relationship between the parties to Mudharaba process, in addition to being one of the legal formulas that Islam enacted for the development of money, as it is capable of achieving economic growth in a way that achieves the interest of both the owner of the money who cannot invest his money and the worker who does good work and does not have money. Thinkers and writers have worked to find ways that contribute to adapting the relationship between the speculator (Al Mudareb) and the bank from a legal point of view and working to rid this transaction of the suspicion of usury, so different interpretations of this relationship came, because of the different interpretation in Islam of the banking business in particular and because of the different vision in looking at the nature of the economic problem in Islam according to thinkers. However, Islamic banks were exposed to risk during Mudharaba process, and this risk was caused by the misbehavior of some individual clients of the banks, either for an ethical reason or for other reasons related to the nature of the relationship between the Islamic Bank and the Central Bank.

Key words: Speculative contract, Speculators, The bank, Finance

Previous Studies

1- Study of Mohammad Ahmed Hussein (2014) (Mudharaba in Islamic banks) This study included a presentation of the concept of Mudharaba and the most important jurisprudential conditions for this contract as well as identifying the most important obstacles to the speculative contract in Islamic banks, and the study concluded that the percentage of application of the speculative contract in Islamic banks is very low. This study did not compare the application of Mudaraba contract with other contracts in the various Islamic banks in the Arab countries.

2- Study of Farid Abdul Rahman Bouhanna (2014) (Provisions of the Mudaraba Company in Islamic Jurisprudence) This study included the definition of the concept of the Mudaraba contract company, its provisions, the transport and mental evidence on its

legitimacy, as well as clarifying the most important conditions for the invalidity of the Mudaraba contract company without exposure to the application of that company in Islamic banks. This study did not clarify the challenges that banks face as a result of applying the Mudaraba contract in Islamic banks.

3- Study of Mansour Mahmoud Miqdadi and Nabil Mohammed Al-Maghaira (2008) (the accounting of Mudaraba company in Islamic jurisprudence, an analytical study compared with contemporary Islamic banks, this study aimed to show how to calculate the profit and expenses of the Mudaraba company in Islamic jurisprudence, in addition to explaining the mechanism of its application in contemporary banks. However, this study did not clarify the conditions of the Mudaraba contract in Islamic jurisprudence, nor did it attempt to calculate profits in other Islamic formulas in contemporary banks (Rodrigo & Wilkinson, 2020).

The most important characteristic of this study is that it included all the paragraphs in the previous studies from the definition of the concept of Shariah Mudaraba and positive Mudaraba and the difference between them, as well as clarifying their conditions in Islamic jurisprudence and the mechanism of their application in contemporary Islamic banks. This study was unique in making a comparison between other investment methods (Musharaka, Murabaha, Istisna') with the method of Mudaraba as a financing tool in the various Islamic banks and showing the financing ratios with these methods (Rompoti, Madas, & Kitsios, 2020).

To achieve this, the research plan was divided into several paragraphs in addition to the introduction, conclusions and recommendations, including Defining the concept of Mudaraba and clarifying its legitimacy in Islamic jurisprudence and its conditions, in addition to the practical application Mudaraba contract in Islamic banks, as well as a statement of the obstacles to its application in those banks (Rostiyanti, Hansen, & Harison, 2020).

First: Introduction

The study of Shariah Mudaraba in Islamic banks is considered one of the studies in the field of Islamic economics, as it is the cornerstone of building the Islamic economy in the modern era. Since the inception of Islamic banks four decades before the end of the twentieth century, they have used Mudarabah formula in addition to other Islamic financing formulas in banking transactions as alternatives to the methods of granting credit and financing in traditional banks that are based on the interest system, which contradicts the principles of Islamic law, but the application of Mudaraba the manner shown in Fiqh literature has encountered many difficulties in banking.

Therefore, many attempts have been made by the jurists, whose research revolves around this transaction (Mudaraba) to develop it to suit modern changes, especially with regard to the nature of the work of banking institutions and to save economic activity from the control of interest, as it is an Islamic alternative. There are still developments and innovations behind this stage that accommodate other legitimate transactions. However, Islamic banks are exposed to risk during the application of the Mudaraba formula, and this risk is caused by the misbehavior (moral reason) of some customers towards Islamic banks, as well as other reasons related to the relationship between Islamic banks and the Central Bank.

The importance of the research:

The importance of the research comes from the importance of studying Mudaraba contract in Islamic economics studies, and that it is an Islamic financing tool that contemporary Islamic banks can rely on, in addition to being one of the legal formulas that Islam enacted for

the development of money, as it is capable of achieving economic growth in a way that achieves the interest of all, from the owner of money who cannot invest his money and the worker who does good work and does not have money.

Research problem: Islamic banks are exposed to risk during the application of the Mudaraba formula and bear the loss of depositors' money, as it is not possible to interfere in the management and control of investors' businesses in projects just to respect a jurisprudential rule.

Research hypothesis: The research stems from the hypothesis that the application of Mudaraba contract in Islamic banks faces great difficulties resulting from the jurisprudential nature of Mudaraba contract, the lack of qualified cadres, as well as the moral risks of the dealers.

Research Objectives: Among the objectives that the research seeks to reach are.

1-Introducing the concept of Mudaraba in positive and Islamic economics

2-**Clarify** the jurisprudential terms and conditions that govern the application of Mudaraba contract

3-**Statement** of the positive importance in the application of Mudaraba contract in Islamic banks and how to invest money in investment projects

4-A statement of the most important obstacles facing the application of Mudaraba contract in Islamic banks

Research methodology: In order to reach the objectives of the research, it was relied on the data of the scientific methodology of economic research, which uses various descriptive and analytical research tools, and linked its results to the reasons.

Second: The concept of Mudaraba: between traditional economics and Islamic economics

Determining the basic concepts in any scientific research acquires special importance, as it establishes the rules for a correct understanding of the topic of research, removes the ambiguity surrounding the concepts, and provides an appropriate approach for scientific analysis, proceeding from the foregoing, we find that exposure to the concept of Mudaraba acquires centrality and paramount importance in the framework of this study, before starting to define Mudaraba in the Islamic economy, we must define Mudaraba according to the modern concept of it within the traditional economy.

The meaning of Mudaraba in the traditional economy and in its modern concept known in the stock exchange means that it is (a contract for a future operation that predicts that it will be profitable, whether through high prices, or by avoiding losses in it)(Al-Barwari, 2001, p. 170) and another defined it as (sale or purchase that does not for the purpose of investment, but to benefit from the changes that occur in the market value of securities in the very short term, as the correlation rate between the market value of securities on one hand and the “real” nominal and book value on the other hand)(Ahmed, 1995, pp. 484-485)

It is noted from these definitions that despite their differences in wording, they are consistent with the characteristic of Mudaraba in its modern concept, which is the state of benefiting from changes and fluctuations in prices for something in the market through prediction, for the purpose of selling it at a later time at a higher price.

Thus, Mudaraba depends mainly on the prediction factor, and the latter, in turn, depends on the dealers' abilities to analyze and intuition, correct perception of the market and not be affected by emotional factors such as rumors and the like (Al-Barwari, p. 171)

As for Mudaraba in the Islamic economy, speculation is defined linguistically as: a word for the weight of a reaction, the continuation of the word from the verb hit (Al-Masry, , p. 544), and multiplication has several real and figurative meanings. It is used in its real meaning in holy Quran in almighty saying (Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand (1 Surah An-Nisa, Verse 34)

In its figurative meaning, to indicate the attribute of absoluteness in travel, what is meant by the Almighty's verse (And when you travel throughout the land, there is no blame upon you for shortening the prayer, [especially] if you fear that those who disbelieve may disrupt [or attack] you. Indeed, the disbelievers are ever to you a clear enemy) (01 Surah An-Nisa, Verse)

It is clear from these Qur'anic verses that the term Mudaraba is derived from beating, and the beating has two meanings: the first is beating in the land, because the worker strikes in it to obtain profit through trade at the request of the owner of the money, so he was caused by them, so the interaction between them is achieved (Al-Amili p. 211), As for the second meaning it is the multiplication of the profit for each of them by a share, or the multiplication of the money because of Mudaraba of multiplying and turning the money. The worker is also called Mudarib (the fraction of the r'), while linguistics did not find a name for the owner of the money that derives from the Mudaraba. (Al-Amili, 1995, p. 251)

As for the definition of Mudaraba in its idiomatic meaning, the jurists agreed in defining speculation in some matters and differed in others, and this is due to the absence of an explicit text, whether from the holy Quran or from the Prophetic Sunnah about Mudaraba idiomatically. The jurists of the Imamia defined it by saying (it is to pay money to someone else to work on it with a certain share of his profit) (al-Amili, p. 211). While the Shafi'i jurists defined it as (to pay him money to trade in, and the profit is shared) (Al-Khaqani, , 2002, p. 47) and thus this definition is very close to the previous definition, and close to the two previous definitions, Hanbali jurists defined Mudaraba as (that a man pays his money to another in which he trades, provided that the profit that has occurred between them is according to what they stipulate) (Qudamah, 1985, p. 15), although they tended to expand the work of Mudaraba and not limit it to commercial activity.

From the foregoing, it can be said that Mudaraba in Islamic jurisprudence is based on a bilateral contract between two parties in which the first party provides money, and the second party provides work in the manner agreed upon in the terms of work and profit sharing.

Third The legality and nature of the Mudaraba contract in Islamic jurisprudence

Mudaraba is one of the legitimate contracts according to the jurists of Islamic schools of thought, and they infer its legitimacy based on many Qur'anic verses, narrations and texts from the Prophet (peace be upon him), which are as follows.

-Evidence for the legality of Mudaraba in the Holy Qur'an 1

Although there is no explicit text in the Holy Qur'an on the legality of Mudaraba, some Muslim jurists have inferred the permissibility of Mudaraba contract with some verses from the Holy Qur'an, even if they refer to the figurative sense of Mudaraba, but they believe that it includes meanings that refer to this contract (Abu Zaid, 1996, p. 24) and from these verses The Almighty says... 'And others will strike the earth, seeking God's grace (Surat Al Muzammil, Verse 20)

-Evidence of the legality of Mudaraba in Sunnah 2

A - Dealing with Mudaraba was known to the Arabs in the time of ignorance, and it was narrated that the Messenger (peace and blessings of God be upon him and his family)

The Prophet trades for Khadija (may God be pleased with him) who is twenty-five years old, he went out with money for Lady Khadija until he came to Levant with a boy, Maysara, then the Messenger of God (peace and blessings of God be upon him and his family) sold his goods and bought what he wanted to buy, then he took a convoy to Mecca and sold what he brought, and that was before the prophecy, and this transaction continued until after his mission, so he decided it (ibn Hisham, p. 203) and the report is one of the aspects of the Sunnah.

B- It was narrated that Ibn Abbas (may God be pleased with him) that he said: "that our master al-Abbas ibn Abd al-Muttalib used to pay money Mudaraba, he stipulated that his owner should not use it by sea and descend into a valley with it, and not buy a wet-liver beast with it.

So, the Messenger of God (may God's prayers and peace be upon him and his family) reached his condition, and he permitted his condition. (Al-Kasani, Volume 6, Al-Gamaliya Press, Egypt)

From the foregoing, it is noted that the honorable Sunnah of the Prophet confirms by inference that the Messenger (peace and blessings of God be upon him and his family) approved Mudaraba, as the Messenger (peace and blessings of God be upon him and his family) was sent and people contracted Mudaraba, but he did not mention them. It is evident from the evidence of the legality of Mudaraba that Islamic Sharia has approved dealing in the form of Mudaraba because of the necessary interest of the community in order to live a satisfied life that some of its members seek help from others and what brings them good and happiness, as the owner of money who is unable to dispose of his money in trade, as for the lack of experience in trade business, or because he is preoccupied with another work according to this formula of investing his money and increasing its development by paying his money to another person who has no money, but he is good at disposing of money and is able to do business in terms of investing money in it, so this formula was needed to reconcile between money and work, i.e. (between The owner of the money and the worker), and thus the wisdom of Sharia necessitated the permissibility of the Mudaraba contract.

As for the nature of Mudaraba contract, the jurists differed about its classification among other contracts, and is it one of the contracts of compensation such as lease or is it one of the partnership contracts? As a result of this disagreement, the jurists have two tendencies.

The first trend: Mudaraba of the type of compensation

Which is what the Hanafis held, as they considered from the type of compensation, such as the lease (hire for an unknown wage (Al-Kasani, , p. 79) rather for a non-existent wage, and for an unknown work), because it is a work of compensation, considering the wage that the worker receives from the owner of the money as that compensation. However, they considered

it to be contrary to analogy in the lease when they saw that the worker does not know the amount that he will get from that Mudaraba, at a time when it is stipulated in the lease that the wage and the work be known as is the case in all leases, and thus Mudaraba with them was legitimate in contrast to the analogy.

The second trend: Mudaraba of the type of participation

This is what the Imamiyyah jurists (al-Amili, pp. 198-199) and Hanbalis (bin Qudamah, p. 3) who attached Mudaraba to the partnership contracts, i.e. they considered it is a type of company (Al-Abdan Company, Al-Wujooh Company, Al-Anan Company, Al-Mufawadah Company, Al-Mudaraba Company) and on this basis it is not contained in contradiction to analogy. In Mudaraba, the owner of the money and the speculator participate in the profit if it occurs, and if it does not happen, they share in the loss, the speculator has lost his work, and the owner of the money lost from his money, and accordingly it is included according to the measurement of companies that do not require knowledge of work and profit.

Fourth: Conditions of the Mudaraba Contract

The jurists of Islamic sects laid down a set of guarantees for the Mudaraba contract, represented by conditions related to each of the five pillars of the Mudaraba contract: formula, contracting parties, capital, work, and profit, in order to ensure the application of these conditions in dealing to prevent unfairness and injustice between people. Among those pillars and conditions are.

1-Formula: Formula is the first pillar of Mudaraba, and speech in the form of a Mudaraba contract deals with two aspects: the wording of formula and its rulings, and the conditions of offer and acceptance. Since in every contract there must be a formula in which the contracting parties express their will in the contract, because desire is an internal matter that cannot be viewed, it is necessary to highlight and show that intended matter by word or deed, and this is what is called (the offer and acceptance) and they are two conditions for the establishment of Mudaraba contract between the two parties. contractors. The offer is made in Mudaraba contract with every express indicative word of the obligor, as if the owner of the money says to the worker: I gave you or you lent on this money, provided that the profit is between us in two halves, and the acceptance is obtained from the other party with every word that indicates satisfaction, by saying: I accepted or I consented or so that. (Al-Qudah, , 1984, p. 182)

2-The Contracting Parties: The application of the Mudaraba contract on the ground requires the presence of two parties working to abide by the aforementioned formula, including the agreement to make and create the content, and accordingly the contracting parties must be among those who meet the conditions of the people of the phrase considered in the establishment of the contract. These conditions are.

A. The capacity to perform with the owner of the money and the worker: What is meant by this condition is the person's ability to practice actions, whether they are transactions or acts of worship in a respectable manner from a legal point of view, and accordingly it is present in a sane adult, where he is qualified to deal and act and realize the resources of financial benefit and harm (Samhan, 2008, p. 45)

Permissibility of disposing of the owner: Since Mudaraba contract is an authorization and permission from the owner of the money to dispose of his money, then it is like power of attorney. He owns it himself, and authorization to delegate to someone else, and on this it is not valid to delegate a person who is interdicted for his foolishness or penny, because they are

prohibited from disposing of their money (Al-Kasani, p. 20)

3-Capital: The jurists of the Islamic schools unanimously agreed on the requirement that Mudaraba capital be in common cash, but if Mudaraba capital is from offers and in-kind things, such as merchandise or any notable asset, the majority of jurists believe that it is not permissible to make the speculative offers, whether they are homosexual or value-for-money, Mudaraba capital, and to the condition of the validity of Mudaraba contract that its capital must be from prices, and they mean dirhams and dinars, as they stipulated that Mudaraba capital be of known amount, quality and gender, and they also stipulated that the capital that will be submitted to Mudaraba should be present, not debt (Al-Amin, p. 28.). In order to complete the validity of the Mudaraba, the owner of the money must vacate between the speculator and the Mudaraba capital, as he enables the worker to be able to dispose of it whenever he wants (Al-Zuhaili, 2008. p. 440.)

4-Work: Work is a basic pillar and an original pillar upon which Mudaraba is based, because it is the second pillar after the money that must be speculated from, as it exists with them and comes into existence. Most of the jurists went to the requirement that the work be the specialty of the speculator, so that he takes his hand over him and works alone, away from the owner of the money, the company is profitable with money on one side and work on the other, and this condition is subject to agreement. Also, the requirement of the Mudaraba contract requires the worker to dispose of Mudaraba capital by buying and selling in matters of trade and the collection of profit (al-Hasan, pg. 137), and the majority of jurists see the need to expand the scope of Mudaraba work to include in addition to trade, agriculture and other crafts, considering the latter activities as trade, which is a way to develop money and obtain a profit, and they also allowed the worker to exploit Mudaraba capital in every aspect that seeks growth. (Al-Kasani, p. 98)

Profit: The profit is considered as the return that the speculator achieves through his investment of the asset and its management, it is what exceeds the capital as a result of its investment, and this return is in the form of an increase and growth included in the value of the invested assets, and profit is an important pillar of Mudaraba, because it is the main incentive for which it was held.

One of the conditions for the validity of the Mudaraba contract, agreed upon by the jurists, is that the owner of the money stipulates in his affirmative the profit and an explanation of how to distribute it between them, because the ignorance of the profit necessitates the corruption of the contract. It suffices to determine the specificity of the profit, to determine the share of the speculator, because the rest is known to be from the share of the owner of the money, who is entitled to it by virtue of the principle for the growth of his money (Al-Hassan, p. 141)

Fifth: The application of the Mudaraba contract in Islamic banks

Islamic banks, at the time of their establishment, relied mainly on the application of the method of Shariah Mudaraba in addition to other formulas according to the rules of Islamic Sharia, with the aim of reaching the investment of money in the legally permissible fields and subjecting it to the rule (Gunum bil Gurem) and diversifying it between different fields, in a way that guarantees a reasonable return and reduces the risks are minimized. (Al-Malqi, 2000, p. 275)

Mudaraba in the era of the Prophet and after was often established between two people, the first is the owner of the money, called (Rab al-Mal), and the second is the worker,

(Mudarib). Today, the method of Shariah Mudaraba has become applied in lofty financial institutions, consisting of many partners and many employees. Banks accept deposits from individuals who have a financial surplus and who cannot manage their money themselves, with the intention of investing it for them, on Islamic grounds, and sharing their profits. Through the method of legitimate Mudaraba with merchants, owners of professions or farmers, or through direct trade, or other Islamic transactions, which is called collective Mudaraba, or joint Mudaraba. What concerns us here is the practical application of Mudaraba by Islamic banks.

It is worth noting that Islamic banks have adopted a special application for the Mudaraba contract and financing by Mudaraba with banks is based on joint Mudaraba, although this method involves a high percentage of risk and the bank does not guarantee its capacity as speculator except in the event of infringement and default, Banks usually take precautions to reduce the amount of risk and to ensure the proper execution of Mudaraba, Shariah Mudaraba is applied in Islamic banks as follows (Abdo, 2009, p. 42):

1-A number of money holders put each of them a certain part of his money at once or in multiple successive payments in Islamic banks in order to invest it for them by legal means, provided that they have a certain common part of its profits, such as one-half or two-thirds... and the rest of the profit for Islamic investing banks, if there is a loss, it is on the owners of the funds in particular.

2-Islamic banks mix these funds as soon as they reach them with each other, and perhaps they mix them with their own money as well, and then they invest these funds as soon as they reach them or after a period of time according to the available opportunities to them to invest in Islamic investment methods, including paying them to some craftsmen or traders, as a matter of individual Mudaraba, all of them separately.

3-These banks calculate their profits at the end of each year using the judgmental or discretionary liquidation method, by counting what they have of funds, including what they recovered from those with whom they speculated from merchants, craftsmen and others, with their share of the profits they received from them, after deducting the expenses from them

4-Then the banks will deduct their share of these profits, which is the percentage indicated in the joint Mudaraba contract with the owners of the funds, and the rest of the profit, which is their share of it, will be handed over to them according to the amount of each of their capital and the time during which this capital remained with them. Profits that did not take anything, and did not distribute anything to the owners of the money, so if a loss occurred, she did not take anything from this money, and the amount of the loss was deducted from the capital of each of the owners of the money dealing with it, in proportion to his share of the capital with the time that has passed since the money remained in it then. And if the absence of profit or loss, neither of them occurred in Islamic banks because of the ability of these institutions, and their taking appropriate precautions, and appropriate caution, in managing and investing these funds.

5-Each capital owner has the right to withdraw all or part of his capital at any time before or after the end of the year, but with a change in the profit accrual ratio from (deposit) to investment account.

6-If these funds are damaged or some of them are damaged, without the negligence of those in charge of the Islamic investment banks, the amount of this damage is deducted from the profits of the money, and counted as a loss, and if the damage was the result of a mistake

on the part of those in charge of the institution, the institution alone would bear the amount of this damage, and would compensate the owners of funds for it from its own money.

The image of joint or collective Mudaraba that the jurists put forward and developed by contemporary jurists at the present time on the field of Islamic financial investment is an alternative to the usurious investment that has spread in the world, and spread in Islamic countries and others, to the extent that some thought that there is no alternative to it.

In general, Mudaraba has been applied in most Islamic banks, including the Faisal Islamic Bank of Sudan, as this bank opens investment accounts for its clients on the basis of Mudaraba contract, and in this case the bank considers itself a partner in its work, i.e. a speculator, and the dealer (depositor) is a partner with his money, and Mudaraba return is determined for each party of a common and known share of the profit. In accordance with the bank's policy of supporting the owners of small projects, it provided them with financing in the form of Mudaraba according to the following table.

Table (1) *Funding distribution ratios according to Islamic formulas in Faisal Islamic Bank of Sudan For the period 2016-2018*

S/N	Year Formula	2016	2017	2018
1	Mudaraba	%1	%1	%3
2	Participation	%1	%2	%2
3	Istisna	%1	%2	%1
4	Murabaha	%61	%63	%45

Source: Faisal Islamic Bank of Sudan, Annual Report, 2016 and 2018, p. 34.

The ratios were calculated by the researcher

We note from Table (1) that the percentage of financing using Mudaraba method does not exceed (3%), and that the percentage of financing in the form of participation remained low despite the strong support for it by the makers of financing policies. As for the Istisna' formula, it did not witness any increase in the financing percentage. While the Murabaha formula occupied the center stage among the other formulas, as financing with the latter continued to occupy the largest share of the total bank financing flow.

As for the Jordan Islamic Bank, the bank continued to implement the program for financing projects and requirements of various professions and crafts in multiple formats. However, dealing in the form of Mudaraba has gradually decreased within the receivables of Islamic sales and financing, according to the following table.

Table (2) *Funding distribution ratios according to Islamic formulas in the Jordan Islamic Bank For the period 2016-2018*

S/N	Year Formula	2016	2017	2018
1	Mudaraba	%1	%1	%1
2	Participation	%1	%1	%1
3	Istisna	%2	%1	%1
4	Murabaha	%35	%35	%25

Source: Jordan Islamic Bank, Annual Report, 2018, p. 30

Jordan Islamic Bank, Annual Report, 2016, p. 30

The ratios were calculated by researcher

From the data in Table (2), we note that Mudaraba formula did not gain wide popularity in the investment methods granted by the bank to clients due to the high risks involved in implementing this contract. Therefore, the proportion of Mudaraba financing did not rise among other forms of financing. While the percentage of shares of Murabaha formula increased, reaching approximately 35%.

As for the Islamic Development Bank, according to the bank's annual reports, the Mudaraba formula did not receive any contribution within the bank's investments in the elements of the financing portfolio. This is due to the problems and risks surrounding Mudaraba formula, which led the bank to not deal with this formula except within narrow limits, leading to not dealing with it. The following table shows that.

Table (3) *Funding distribution ratios according to Islamic formulas in the Islamic Development Bank*

For the period 2016-2018

S/N	Year Formula	2016	2017	2018
1	Mudaraba	%0	%0	%0
2	Participation	%2	%2	%6
3	Istisna	%56	%18	%15

Source: Islamic Development Bank, Annual Report, Saudi Arabia, 2018, p. 110.

The ratios were calculated by the researcher

According to the statistics of the annual report quoted in Table (3), we find that the percentages of using Mudaraba formula have reached zero among the Islamic financing formulas. On the other hand, the percentage of the Istisna'a formula's contribution increased by 56% in 2016 and then decreased during 2017 and 2018 to 18% - 15%, respectively. This is due to the conditions of the war faced by Saudi Arabia, which led to the weakness of granting funding to most forms of Islamic financing and the suspension of the establishment of new projects.

Through the previous data, we note the low contribution of Mudaraba financing in the activities of Islamic banks despite its importance in the forms of financing, and although it is considered one of the forms of financing that depend on the principle of sharing in profits and losses, to the extent that it can be considered (in the right of the non-usurious formula that is compatible with Modern banking transactions, because it works to accumulate savings from multiple sources, regardless of their size, and on the other hand is considered a way to provide the necessary money for investors. (Al-Banna, , 2006, p. 230) In addition, most of the annual reports of Islamic banks did not address Mudaraba formula in their accounts. Recently, Islamic banks have merged the items of participation and Mudaraba in their financial statements under the item of sales receivables, which makes it impossible to know the extent of Mudaraba in their business, as Islamic banks deal with them within narrow limits and with great caution. Perhaps this is due to the risks involved, which we will talk about in the next paragraph. As for the high contribution of the Murabaha formula in most Islamic banks, this is due to the fact that the image adopted by the Islamic banks in applying the Murabaha formula for the purchase order differs from the old image, which assumes that there are two parties (seller and buyer) and that the seller's ownership for him , Whereas the modern image is that the bank does not buy anything except at the request of the customer in order to avoid buying and storing goods and waiting for someone to buy them from him, which harms him if he does not find the buyer.

Thus, this sale is distinguished by the fact that its place does not enter into the ownership of the seller except after the request for it and before the conclusion of the contract (Al-Malqi, , p. 440). In addition to the long experience that banks have in the practice of financing with this formula, in addition to the lack of risks in this formula while ensuring the return and profitability.

Sixth: The problems of applying Mudaraba contract in Islamic banks

The practical experience of Islamic banks has proven the futility of applying the Mudaraba contract, as this formula is surrounded by many obstacles, which lead to a narrowing of the scope of its use. We have divided these obstacles into three sections. The first section includes obstacles related to Mudaraba contract, the second relates to the nature of investment by Islamic banks, and the third group of obstacles relates to the relationship of Islamic banks with the Central Bank. These obstacles are as follows.

The first section: Obstacles related to Mudaraba contract

The formula of Mudaraba in Islamic banks faced a set of difficulties in application despite the development that occurred in the provisions of private (bilateral) Mudaraba and its jurisprudential rules to suit work in Islamic banks, especially cases of collective investment, and these difficulties were related to the nature and origins of Mudaraba. As according to the provisions of Mudaraba contract, which states that the capital is from one party, and the work is from another party, this means that working in Mudaraba money is the right of the speculator alone, and therefore the possibility of the bank following the investment process closely and directly is almost non-existent (Siddiqi,1985, p.15). Dealers or clients, the success of the Mudaraba contract in Islamic banks depends on it, whether in terms of morality (honesty, credibility, trust) or in terms of efficiency and practical experience in their field of activity.

The role of the bank is limited to providing restrictions by which it chooses the type of investment activity, provided that these restrictions do not prevent the speculator from acting (Abu Ghuddah, 1996, p. 60). On the other hand, the speculator may work to charge the expenses not related to management to Mudaraba base, despite his responsibility, and they are considered in exchange for the profit due to him through speculation. This is what called some jurists to oblige the speculator to pay expenses related to investment decisions (The previous source, p. 61)

This feature, which is called (moral risk) in Mudaraba contract, allows the investor-dealers to manipulate and alter a lot of profits by loading them into Mudaraba container, and it follows that the projects financed by banks through Mudaraba contract may lose a lot, a loss that is reflected on the depositors on the basis of their owners of money in Mudaraba.

Section Two: The nature of Islamic banking investment

The nature of Islamic banks and the nature of their objectives that extend for development purposes makes them fall into a contradiction between banking work, which tends to be short-term, and development work, which is by its nature long-term. In order for Islamic banks to carry out their development goals, they must employ deposit funds in long-term projects, which delays depositors' access to the returns of their deposits, which forces them to withdraw those deposits, which puts the bank's financial position at risk.

The principle in investment deposits is that they are not withdrawn except on specific dates, which are mostly medium or long-term, and accordingly, Islamic banks employ these deposits in investments of a medium or long-term nature using the Mudaraba formula, but the actual reality of applying Mudaraba formula using Mudaraba formula. Investment deposits in

Islamic banks have proven otherwise, as many depositors do not have sufficient willingness to leave their investment deposits for a long period, in addition to their desire to obtain them quickly and easily, similar to what depositors obtain in traditional banks. This led Islamic banks to keep pace with the practical reality. and its variables, it relied on a new formulation that would meet the needs of its depositors in terms of the possibility of withdrawing on deposits in short periods as well as obtaining returns during periodic periods, which resulted in this situation results that are not consistent with the nature of Mudaraba, especially with regard to the process of calculating profits. Allowing the depositor, the right to withdraw his deposit at any time and obtain periodic returns contradicts the essence of liquidation, which requires the complete liquidation of the project, despite the jurisprudence of contemporary jurists in authorizing the so-called judgmental liquidation, which includes converting contract objects into monetary values at the end of the bank's fiscal year. (Al-Ajlouni, 2008, pg. 445)

This reality has made it imperative for Islamic banks not to invest in the long term in any of the large projects that require huge capital, because the time that the bank

needs to convert Mudaraba investments into cash that exceeds one year, which led to reducing speculative dealings and maintaining high levels of liquidity (ibid p.126)

Section Three: Obstacles to Relationship with the Central Bank

One of the main obstacles that faced the application of the speculative contract in Islamic banks is that the banking supervision system (the Central Bank) applied to Islamic banks has been formulated and its controls and standards are derived from the reality of the nature of conventional banks, and since these methods and tools have been discovered and designed in a manner that suits the nature of the interest-based banking system, and since Islamic banks differ from traditional banks in approach and application, so many of the methods, procedures and control systems that the central bank follows with conventional banks are not suitable for application to Islamic banks because they do not correspond to the nature of their work, their foundations, and the various forms used in accepting money and its use.

The central bank exercises its supervisory role over the banks operating in the economy, using special monetary tools for this purpose, such as the cash reserve ratio and the liquidity ratio, the legal reserve that the Central Bank imposes on the banks operating under its control is represented in deducting a specific percentage of their deposits and keeping them with it, and this percentage varies according to the prevailing economic conditions in the economy. Granting credit, and on the contrary, in times of stagnation, the legal reserve ratio is reduced, with the aim of increasing the ability to grant credit. (Al-Rifai, 2004, p. 151)

When applying the legal cash reserve policy to Islamic banks, it leads to the disruption of part of the resources deposited by their owners for the purpose of investing them, which are not deposits in the banking sense, but rather funds provided for investment on the basis of participation (by Gunem Wal Gurem) and they accept the full risk in this regard. Withholding (10%) of each deposit and investment (90%) of it, leads to a decrease in the return on deposits and thus an implicit reduction of the depositor's profits by the equivalent of (10%) of his share if his deposit was fully invested. There is no doubt that the existence of such tools hinders the possibility of Islamic banks adopting Mudaraba formula or expanding it. (Al-Ajlouni, previous source, p. 358)

As for cash liquidity, it is one of the control tools that impede the application of the Mudaraba formula indirectly in Islamic banks, as banking legislation usually requires the imposition of a liquidity ratio.

Certain liquid monetary assets in addition to financial assets dominated by liquidity (Al-Dulaimi, 1990, p. 202): in fact, the Central Bank does not distinguish between Islamic and traditional banks when imposing the ratio of liquidity despite the different principles and nature of the work of these banks. Hence, the equality between Islamic banks and conventional banks when imposing this ratio makes the former in a non-competitive and unfair situation, as Islamic banks do not engage in the process of credit creation as in conventional banks, but rather invest their money in productive and investment processes (such as Mudaraba and participation) on the basis of Participation in profit and loss, and therefore the adoption of this ratio with the aim of limiting the ability of these banks to grant credit becomes an obstacle to the employment and investment of these banks' funds in the application of the Mudaraba formula, because Mudaraba method requires real investment operations of a medium or long-term nature, and this requires basically directing financial resources towards these operations (Al-Ajlouni, a previous source, p. 220), which puts Islamic banks in an unfair competitive position from increasing the expansion of financing methods on the basis of profit and loss sharing. which ensures that it obtains an adequate profit margin.

Conclusions

1- Mudaraba contract is a legitimate alternative to the prior interest, and Islam has approved it after the jurists laid down its rules and conditions that preserve the rights of both parties.

2- Mudaraba contract has a prominent role in investing money by legitimate means, whether on the individual level or in the form of collective investment companies in Islamic banks.

3-As a result of the risks incurred by Islamic banks as a result of the application of the Mudaraba contract, Islamic banks are now financing investment tools based on the principle of obtaining a profit margin (Murabaha) away from forms of financing based on sharing in profits or losses (Mudarabah)

Recommendations

1-The need to find and develop new tools within the framework of Mudarabah contract applied in Islamic banks that allow banks to follow up on the customer in investing money to reduce losses faced by Islamic banks.

2-Working on the use of modern technologies in banking work, represented by technical and legal means in choosing the customer and the guarantees taken from him. This will contribute and play a major role in increasing the effectiveness of the application of Mudarabah contract in Islamic banks.

3-In terms of the constitutional and legal responsibility that falls on the shoulders of the monetary authorities, they must support Islamic banks and develop their legislation to serve the nature of the work of these banks.

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