

ISLAMIC BANKING:
**THE EFFECTS OF CONTRACT MODIFICATIONS ON SHARIAH
COMPLIANT PRODUCTS IN THE UNITED STATES**

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Abstract

Islamic Banking:

The Effects of Contract Modifications on Shariah Compliant Products in the United States

The concept of Islamic banking in the United States of America (U.S.) has become recognized as an alternative to expand into the market of traditional Muslim consumers living in the U.S. Due to strict regulatory guidelines , no Islamic banks exist in the U.S. Instead, conventional banks and other financial institutions offer Shariah Compliant Products (SCP) by modifying classical Islamic contracts or attaching a rider to define contract verbiage. This study will review current techniques of adapting contracts used for SCP's in the United States to determine if the contracts maintain the true characteristics of the original classical Islamic contracts. Contracts in Islamic sacred law provide protections by ensuring wealth is not wasted and no injustice is done to either of the contracting parties. Protection of wealth and justice are the inherit characteristics of contracts in Islamic law. Any changes or modifications may void or decrease the protections provided in Islamic law. This research will look at the changes or modifications by analyzing a sampling of the derivative Shariah Compliant Product contracts used in the Islamic finance industry in the U.S today. This data will be evaluated to determine the effects of these changes by comparing them with the requirements of their classical Islamic contract equivalents.

Keywords: Islamic banking, Islamic contracts, Shariah, Modifications, Compliant, Product, Transactions, Islamic law

Introduction

Shariah Compliant Products (SCP's) offered by conventional banks and other financial institutions in the in the U.S. are governed by U.S. banking regulations. These regulations make it difficult to establish Islamic banks in America. So banks and other financial institutions offer SCP's to consumers by using existing conventional banking contracts or modified banking contracts in order to fit the U.S. banking regulatory requirements. The U.S. banking authorities recognize SCP's as being functionally equivalent to conventional banking transactions and allow them to be used as "secured lending" or "capital investments". This recognition equates the Shariah Compliant Product used with an interest-based product or concept. This is done in order to allow the SCP to be used under this U.S. regulatory framework. The U.S. banking authorities have authorized the rental (Ijarah) and set profit sale (Murabahah) contracts for use in the U.S. market. Most U.S. Islamic finance products are derivatives of these classical Islamic contracts. SCP's are mainly used in the purchase of homes in the U.S. Whenever financial institutions finance via an SCP in the U.S., this SCP is then sold to either Fannie Mae or Freddie Mack in which they hold some of these mortgages or sell others as securities(American Finance House, 2016). These two organizations are Government Sponsored Entities (GSE) and are privately owned. Because they are backed by the U.S. government they are considered safe for investors. The securitization of SCP contracts as conventional mortgage contracts brings about many other concerns in which the protections embodied in true SCP contracts may be compromised in the event of default.

Islamic Sacred law prohibits the following in financial transactions:

1. Riba (Interest) - an increase on money borrowed as a loan or credit. Also includes increases in the trading of commodities.
2. Gharar (Uncertainty) – transactions in which there is a guarantee in a future transaction or the sale or trade of something unknown.

3. Maysir (Gambling) – These are transactions which include wagering in order to increase wealth.

These basic guidelines in Islamic Sacred Law govern financial transactions. If a transaction does not include these elements, then it is considered lawful, permissible or a legal transaction in Islamic Sacred Law, however, if there is any element of one of these included in the transaction, it will be considered unlawful, haraam, or a non-legal transaction in Islamic Sacred Law. In addition to the absence of interest, speculation, and gambling, contracts must be sound in all aspects. This means all conditions of the contract must be fair and free from injustice and the contracting parties should share in the risk proportional to their investment.

The basic requirements of contracts in Islamic sacred law are the following:

1. Subject matter, there must be a product or service which is lawful according to Islamic Sacred law
2. Offer
3. Acceptance
4. Contract must be free of interest, uncertainty, and gambling.

Exceptions to the Rule

Islamic sacred law allows exceptions to the legal requirements previously mentioned in order to preserve the following when necessary:

1. Preservation religion
2. Preservation of life or limb
3. Preservation of family
4. Preservation of wealth
5. Preservation of intellect

Exceptions are allowed in case of Mashaqah (extreme difficulty). Some scholarly opinions have generally applied rulings, which should be restricted to an individual

based on individual circumstances to the general population in which circumstances vary and are not equal.

This study will examine the SCP contracts used in the U.S. in which conventional contracts or modified contracts have been used in order to fit into the U.S. regulatory framework. What is the U.S. regulatory framework? It can be understood as government requirements for a financial institution if it wants to have access to government programs or extend tax benefits to the contractors. If a financial institution is not concerned about benefitting from government programs or tax benefits, then they are free to use their own form of contracts as long as they comply with Islamic law.

The current contracts being used in Islamic finance in the U.S. will be compared with the Islamic Law Standard from the original classical contract equivalent of the SCP contracts in order to determine the impact of the modifications, if any, in maintaining the Islamic Law standard. This research will also examine the exceptions upon which it is acceptable to forgo the existing Islamic law standards in case of individual necessity.

Investments

Islamic Sacred Law allows for investments by using capital investments (Mudarabah) and Musharikah (Partnership). In the U.S. the limited partnership (Musharikah) is the predominant instrument used in Islamic financing for residential purchases. Mudarabah is a classical contract in Islamic law. It is used for capital investments. The Musharikah contract used today is a derivative of a Mudarabah contract, which allows for multiple investors or partners. The Musharikah is widely used in the U.S. market.

In conclusion, contract modifications can possibly affect the lawfulness or unlawfulness of SCP's. This research will examine the current SCP's used in the U.S. Compare, evaluate and analyze the requirements and conditions of the conventional contracts and compare these to the requirements and conditions necessary for the classical Islamic contract equivalents in Islamic Sacred law by determining the effects on these contracts.

Problem Statements

1. What are the effects of contract modifications of Shariah Compliant Products used in the United States?
2. Do the modified contracts of Shariah Compliant Products used in the United States contain the protections embodied in Islamic law?
3. Can a Shariah Compliant Product be used in the U.S. banking system?

Literature Review

1. Meezan Bank's Guide To Islamic Banking, Dr. Muhammad Imran Ashraf Usmani, mentions verses from the Qur'an and Hadith which prohibit usurious transactions (Interest) and defines different types of interests related to money and products (anything sold by weight or measure). Dr. Muhammad mentions several verses, but I am highlighting just what is necessary to establish that Islam prohibits these types of transactions in all their forms. He mentions several chapters of the Qur'an which prohibit usury (interest):

- a. Surah Al Rum, verse 39
- b. Surah Al Nisa', verse 161
- c. Surah Al 'Imran, verses 130-132
- d. Surah Al Baqarah, verses 275-281

He also mentions several ahadith, which also prohibit usury (interest) in general.

- a. The Prophet (peace be upon him) said, "Allah cursed the receiver and the payer of interest, the one who records it and the two witnesses to the transaction" and said, "They are all alike (in guilt)."¹
- b. Jabir ibn 'Abdullah, May Allah be pleased with him, giving a report on the Prophet's farewell pilgrimage said,

¹ Sahih Muslim and Musnad Ahmad

The Prophet addressed the people and said, “All of Riba of Jahiliyyah is annulled. The first Riba that I annul is our Riba, that accruing to ‘Abbas ibn ‘Abd Al Muttalib [the Prophet’s Uncle], it is being cancelled completely.”²

The author also mentions in his book the classifications of Riba which has been mentioned both in the Qur’an and Hadith. Riba An Nasiyah or Riba Al Jahiliyah, which is the interest on money and Riba Al Fadl which is the interest on those commodities sold by weight or measure.

Riba Nasiyah is considered the primary form of Riba and is the main subject of Islamic banking in the U.S. It is further defined by many scholars in the following manner:

1. That kind of loan where specified repayment period and an amount in excess of capital is predetermined.
2. Every loan that draws interest is Riba
3. Every loan that draws profit is one of the forms of Riba
4. Every loan that draws more than its actual amount.

In modern day contracts, this type of Riba has been disguised in the form of “Profit payment” or “Benefit Payment”. This has become evident in some contracts in which the “Acquisition payment” which is the principle loan payment or the actual cost of the transaction or purchase has been defined and a “Profit payment” has been distinguished. This “Profit Payment” has a different name and also defined as the rental payment in order to justify it. However, this type of payment has the harms of Riba AL Nasiyah included in it and appears to be an exchange of terms which are both synonymous with Riba or at a minimum carries the same harm.³

The author has mentioned that in the 17th century, Riba Al Nasiyah was further classified into two terms, commercial interest and usury. Commercial Interest was

² ibid

³ Guidance residential contract review

interest paid on a loan for business. Usury was interest paid on a loan taken for personal reasons.

These 17th century definitions are still applied today by some Muslims as justification to participate in the Riba banking system and are only concerned about interest for personal loans. It must be understood that Islam classifies all interest as unlawful regardless of the name, the rate, or how it is being applied.

Islamic banking in the United States, or anywhere else must be in conformance with the original guidelines of buying and selling according to Islamic law.

2. The Holy Quran is considered by Muslims to be the literal Word of God the Almighty, whom Muslims call Allah. The Qur'an is the primary source of Islamic law, along with authentic narrations from the Prophet Muhammad (Peace be upon him) called "ahadith" or "Sunnah". All rulings in Islamic law have their origins in the Qur'an and ahadith. The prohibition of interest (riba), gambling (maysir), and certain foods is found in the Qur'an and ahadith. In this research we will only be concerned with interest and gambling mentioned in the Qur'an and ahadith.

Allah says in Surah Al rum, verse 39, "That which you give as interest to increase the peoples' wealth increases not with God, but that which you give in charity, seeking the goodwill of God, multiples manifold."⁴

In the verse above, there is an implicit prohibition of interest. Then Allah says in the following more explicitly.

"O believers, take not doubled and redoubled interest, and fear God so that you may prosper. Fear the fire which has been prepared for those who reject faith and obey God and the Prophet so that you may receive mercy."⁵

The Muslim has been warned more severely in verses 275-281 in Surah Al Baqarah when Allah says

⁴ Holy Quran, Surah Al Rum, verse 39

⁵ Holy Quran, Surah Al Imran, Verses 130-132

“Those who benefit from interest shall be raised like those who have been driven to madness by the touch of the devil, because they say: ‘Trade is like interest’ while God permitted trade and forbidden interest.....⁶

In another verse, Allah threatens those who indulge in Riba.

“If you do not do so, then take notice of war from Allah and His messenger. But if you repent, you can have your principal. Neither should you commit injustice or should you be subjected to it.”⁷

From these verses, one can understand the seriousness of why Muslims are concerned about staying away from interest transactions. Allah equates it with injustice and warns that neither should you charge interest, or pay interest.

3. Summarized Sahih Al-Bukhari (Arabic-English) is a summary of authentic hadith that have been compiled by Imam Al Bukhari. The ahadith represent the Sunnah of the Prophet Muhammad. It is defined as his sayings, actions, tacit approvals, and character description. It is the second source of Law in Islam after the Qur’an(Badawi). Sahih Al Bukhari contains authentic hadith and constitute a source of law. From the Hadith we have from the book of Sales the following which gives the prohibitions of Riba. The Qur’an explicitly prohibits Riba on money, but the hadith explicitly prohibit Riba on certain types of produce.

The Qura’n has forbidden a type of interest called Nasiyah. This is the interest on money over a period of time.

The Prophet, peace be upon him also forbade selling gold for gold, and silver for silver unless it was of equal weight. But he allowed the selling of gold for silver or silver for gold as you like in whatever amounts with the requirement of being hand to hand. There can’t be any delayed transaction.⁸

⁶ Holy Quran, Surah Al Baqarah, Verse 275

⁷ Holy Quran, Surah Al Baqarah, Verse 279

⁸ Summarized Sahih Al Bukhari, The Book of Sales, Chapter 40, pg. 481

The Prophet, peace be upon him, also forbade another type of interest called Riba Al Fadl. That is the interest on certain foodstuffs. ⁹

The Prophet Muhammad also forbid the selling of silver for gold on delayed payment. ¹⁰

We can now understand that riba can be applied to money, foodstuffs and commodities by analogy as evidenced in the Qur'an and the Sunnah.

There are many different forms of interest. In the area of Islamic banking, one must be aware of this because there are some Shariah Compliant Products that involve the buying and selling of commodities. However, in the United States, Islamic banking predominantly involves residential purchases.

4. Islamic Jurisprudence (Usul al Fiqh), Imran Ahsan Khan Nyazee

The principles of fiqh are used to guide the one who gives fatwa in interpreting the text of the Qur'an or the hadith. The one who does this is a mujtahid or one capable of struggling diligently to discover the intention of the Lawgiver, Allah, whenever there is an issue where there is not a text from the Quran or the Sunnah. "The discovery of the intention of the Lawgiver in the texts leads to the assurance that the legal rulings derived are truly Islamic."¹¹ The rulings derived from ijthad are called Fataawa or individually, Fatwa.

Whenever the Muslims are faced with circumstances which there is not a specific text from the Qur'an, or hadith, the Mujtahid, a Muslim scholar must identify the cause mentioned in a previous text and then extend that ruling to the new circumstance by analogy. This is the process of ijthad. This is the reason that Islam is not restricted to a single time frame or generation. It is a divine, comprehensive, legal system that guides all actions related to belief, worship, and daily transactions of man. The Lawgiver, Allah, does not place any burden on man which he cannot handle. If a person does not have ability to do something, Allah allows some things to be lightened or annulled. It

⁹ Summarized Sahih Al Bukhari, The Book of Sales, Chapter 48, pg. 484

¹⁰ Summarized Sahih Al Bukhari, The Book of Sales, Chapter 43, pg. 482

¹¹ Islamic Jurisprudence (Usul Al Fiqh), Imran Ahsan Khan Nyazee, pg. 265

is necessary to understand the underlying principles, which guide the lightening or annulment of a ruling, which Allah has commanded implicitly or explicitly.

There are other issues that are of concern when we look at the principles that guide Islamic banking. There is the concept of “public interests”. This is not the interest on money or commodities, but has to deal with community benefit and harms. The public interest supersedes individual interests whenever there is a conflict. These also affect rulings which may leave harm to a community. So this has to be considered as well whenever rulings are being derived through ijihad in a particular community because there may be something that may prevent a ruling from taking place, as we mentioned earlier when the Lawgiver allows lightening or annulment of certain rulings depending on individual or public circumstances. In Islamic banking there are Fataawa (legal rulings) used based on evidences from the primary and secondary sources of Islam, The Quran and the Sunnah. The Usul Fiqh are the rules that govern the interpretation of the sources in order to understand if something falls into one of the five major rulings in Islam which include the following: obligatory, haraam, recommended, permissible, and hated. These rules would govern the interpretation of contract language and structure in Islamic banking which would determine the lawfulness of the SCP's.

5. 500 Questions and Answer on Islamic Jurisprudence

In the chapter, Dealings and Transactions, the compiler discusses several issues related to Islamic Banking. It starts out with the forbidden types of trade and points out potential harms to the economy, such as business monopoly. A monopoly means that wealth is concentrated in one hand and it leads to the exploitation of consumers and workers. It keeps the wealth out of circulation and also manipulates market prices, thus leading to individual and public harm. The monopoly of goods brings about speculation that holding on to these goods in order that market prices may increase and then the owner selling them at high market prices. The author also reiterates riba, gambling, and gharar (uncertainty) are forbidden. It then also mentions the haraam items which are prohibited from sale such as alcohol (intoxicants), unslaughtered meat, swine, dogs, statues and pictures of things which have a soul, unripe fruit and vegetables.

There are many fataawah in this book which are related to Islamic banking. They are not expressed opinions of the author, but a compilation of rulings related by topic from other scholars. However, in this study we are only concerned with the rulings pertaining to financial dealings and transactions. It is a good source to provide clarity on the principles found in the Quran and Hadith concerning forbidden financial transactions.

6. Issues in Islamic Banking: Selected Papers, Muhammad Nejatullah Siddiqi, 1994

Muhammad Siddiqi mentions that the only alternative to interest on a commercial level is Profit sharing in accordance with Islamic rules. Qard Hasan (good loan) has been proposed as a service provided by the bank and the losses from these loans can be distributed proportionally respectively to capital contributions.

The book mentions that we should not consider the Qard Hasan as a loss for it will lead us astray from the justice ordained by Islamic law. This breaks from the status quo of banks being for profit only. Islamic banks are part of a system to share wealth with those that are less fortunate for the betterment of society.

Profit sharing should be the main method used as it is far away from interest. Other methods of eliminating interest include the following:

1. Ijarah (leasing)
2. Hire-Purchase
3. Financing on the basis of Normal Rate of Return
4. Time Multiple Counter loans
5. Bai' Mu'ajjal
6. Bai' Salam

The Murabahah is based on a juristic opinion and the preferred method is Bai' Mu'ajjal. The use of Murabahah and Bai' Mu'ajjal is feared to be too close to interest and is recommended to stay away from these types of products and primarily use the profit

sharing model. However, there seems to be no significant difference between Murabahah and Bai' Mu'ajjal.

Profit sharing is the preferred method of finance and then the following supplemental methods may be used: Leasing, Hire-purchase, Financing on the basis of Normal Rate of Return and Time Multiple Counter loans, Bai' Mu'ajjal and Bai' Salam. The supplementary methods should be applied with caution as they are close to Riba transactions.

7. Sales and Contracts in Early Islamic Commercial Law, Author Abdullah Alwi Haji Hassan, Publisher: The Other Press, Kuala Lumpur, 2007

The author states that "the Principal function of Islamic Commercial law is not to create a new system of commercial law, but to re-evaluate or ratify the existing (pre-islamic institutions) of contractual obligations and commercial laws completely or partially."

Pre Islamic commercial law is the law that existed before Islamic law as we know it today, came into existence. This pre-Islamic era is commonly referred to as the age of Ignorance. Because during the pre-Islamic times, usury and injustice were the norm of the day.

Today, the commercial laws represented in most countries, if not all, contain usury and some form of injustice inherent in a usurious system. Usury, the charge on a loan of money, can also be in trading commodities which are dissimilar and unequal by weight and measure.

With the Era of the development of Islamic commercial law, Islam changed or modified pre-Islamic commercial laws.

As Islamic banking principles are applied today in the United States, they are subjected to acceptance based on some aspects of pre-Islamic commercial law. Just as Islam came and changed or modified the existing pre-Islamic commercial law in the past, it is necessary to do so in our day and time if we want to maintain the protections afforded in Islamic law from usury and injustice in modern commercial laws existing today.

8. Ali Isma'il and Jabir Shu'ayb mention in the *History and Emergence of Islamic Banks* (2011) people consider Islamic Banks a modern phenomenon but they did not realize they are an essential part of the Islamic economic system. Therefore, the one who follows the history and emergence of Islamic Banking will realize the importance of these banks which have proved their role and necessary presence today one after another and how fast they have circulated throughout the world.(Ismail and Shuayb, 2011)

The term "Islamic Banking" refers to the Shari'ah compliant products that have been derived from classical Islamic contracts. As there were no Islamic banks established in the past, Muslims would conduct business using the transactions which were approved by the Prophet (peace be upon him) and his companions. An example of some common transactions used in Islamic banking today include the following:

1. Murabahah (cost plus sale)
2. Mudarabah (capital investment)
3. Ba' Al Salam (agricultural sales)
4. Ba' Al Istisna' (manufacturing products)
5. Ijaarah (leasing)
6. Musharikah (a modern term used to describe a partnership)

Shari'ah compliant products today are derivatives of these transactions which are governed by the prohibition of usury, uncertainty, gambling, and the selling or trading of haraam (unlawful) products.

9. Islamic Banking Products and Processes-Key Regional Variations, Oracle White Paper 2012

The paper addresses the geographical variations in the Islamic banking products offered. These products vary from region to region however; they maintain the core principles of Islamic banking. Islamic banks are responsible for having their own scholars approve their products. The lack of sufficient scholars and the difference of interpretation of rulings has led to these variations. Interpretation is subject to an individuals knowledge of the Shariah which includes the Quran, Sunnah, lawful and

prohibited, consensus, abrogation, Fiqh, and Usool Fiqh. These interpretation of texts is subject to an individuals orientation to Islam, intellectual ability, and strength of faith.

10. Islamic Economics, Dr. Sabahuddin Azmi, 2002

With the problems faced in Islamic banking today, one must understand the underlying reasons for this. The world is operating with a banking system, which charges interest on money in order to generate profits. The profit and taxes are a form of revenue today for all governments. Islamic banking operates with the premise of being free from interest. It is important to understand the reason that classical contracts are being modified in the United States. They have to be able to provide tax benefits for those financial institutions and consumers that want these benefits. In order to understand Islamic banking, one must understand the Islamic economic system.

The classical Islamic economic system of public finance received revenues from various sources. Sabahuddin mentions that there are three main categories which Islamic public finance was derived:

1. Ghanimah revenue- The war booty received from defeated enemies. The state kept, 1/5th of the war booty and the rest was divided among the fighting army.
2. Sadaqah Revenue- It was the most important component of revenue. It consisted of Zakat (Charity) collected from the wealth of Muslims and custom duties collected from Muslim traders on the articles of trade. Zakah included money, livestock, agricultural products, minerals and other resources.
3. Fay' Revenue-These included lands that were seized from defeated enemies. This land became property of the state. Money was levied on these lands for those who used them and this constituted a large source of revenue for the state.

As we moved to modern times, this method of public finance evolved into taxes. But understand that the Islamic state was not in need of borrowing money in order to run. Therefore, there was no need for a central bank. In modern times, the U.S. government as well as many others levy income taxes and borrow money in order to run. The United States has a federal reserve bank in which it borrows money from in order to run.

The Federal Reserve bank consists of private investors. Their system uses fiat money which is money that does not have any value because the U.S. left the gold standard a long time ago. This money is generated on the basis of a treasury note, a debt to the Federal Reserve bank in which it charges an interest rate to the U.S. Government. The Central bank provides money to U.S. banks in which these banks loan this money out to consumers at an interest rate. As the money is lent out, the interest is compounded. Therefore, the U.S. economic system is driven by debt. If consumers are not able to make payments on their debts, none of the financial institutions in the chain to the central bank can pay their debts and this can bring about an economic collapse.

In contrast, an Islamic economic system is based on real assets and commodities. These Islamic principles are embodied in Islamic banking today and is one of the reason Islamic banking was less affected by the recent economic crisis of 2008.

11, Dr. Muhammad Sadqee Bin Ahmad Bin Muhammad Al Burnuu, 2015

This book summarizes the major fiqh rules and their branches. It defines Fiqh as understanding the Islamic rulings as it pertains to condition and the actions of the one who is obligated to follow them. The five major rules are inclusive of the whole Shariah:

1. Matters are by their intentions
2. Certainty is not removed by doubt
3. Difficulty brings ease
4. Harming is to be removed
5. Custom become the Rulings
6. Speech should be acted upon first than rejected

As it pertains to Islamic banking, these rules are important to understand the differences between some of the scholars in different areas of the world. One reason is that each society has conditions that may warrant a different ruling at certain times. The rules of usool are used in the interpretation of the sources of Islamic law, and the Qawaid rules

are used to govern the actions. All of these would be relevant to the laws of contracts as they include the fundamental principles in which they are based upon.

Embodied in Islam are the protections that are given to the adherent of Islam or anyone else who abides by it. Interest is a harm that is taking advantage of an individual's low economic circumstance in which a Qard Hasanah would be relevant to assist the individual in his endeavor. Also, the harm of Interest can extend to the society at large because in the United States as well as the majority of the world economies are debt driven. If people aren't able to pay their debts, these economies will fail. This would cause public harm. So the rule of "Harming is to be removed" applies to Interest. In contracts, the intention of the contract is given more weight than the actual words of the contract, thus the Qaidah, "Matters are by their intentions". Sometimes, a person has a circumstance in which he may need to do something which the Shariah prohibits, such as a loan on interests in order to preserve his life. If a person needs a life saving operation and the only way to have it is through an interest based loan, then this constitutes Mashaqah (difficulty) in his life. So he is allowed to preserve his life in that instance to take the loan on Interest. This falls under "Difficulty brings ease". The execution of business contracts may also fall under the local customs, "Custom becomes the rule" as long as it does not oppose Islamic law.

12. AMJA Resident Fatwa Committee resolution about Islamic Home Financing Companies in the US., 2014

The America Muslim Jurist Association (AMJA) reviewed the contracts of the major providers of Islamic financing in the United States. They have issued fataawah concerning these contracts and classified Islamic financial institutions in the U.S. into three categories.

1. Those companies whose contracts are in agreement with the Shariah. They do not require any modifications to fit into any regulatory framework because they are not in need to sell their contracts the interest based

organizations in the U.S. such as Freddie Mac or Fannie Mae. They have ruled that it is permissible to deal with these companies.

2. The second group are those companies whose contracts in general avoid falling into explicit interest. In general they are permissible but contain clauses however their contracts have forbidden components which include inequity, invalid clauses, and unknown quantities. These companies are in need of selling their contracts to Fannie Mae and Freddie Mack. These organizations put restrictions on these contracts that forces them to include Islamic violations. The AMJA has ruled that it is only permissible to use these contracts under necessity.

3. The third group consists of companies that deal with interest based loans. These contracts are derivatives of interest based loan instruments using strategic wording to work around interest. Giving the impression of being permissible. The AMJA ruled that these contracts are unlawful and therefore not permissible to use the companies that use them.

This article is important in that it recognizes the problems in contract manipulation. It also highlights the problems associated with using non-interest based system within an interest-based system.

13. Chong, S. & Liu, M., 2009. Islamic banking : Interest-free or interest-based ?

Chong and Liu state that the Profit-and-loss sharing paradigm in Islamic banking is predominantly based on the Mudarabah and Musharikah concepts. Under this paradigm, the assets and liabilities of Islamic banks are integrated in the sense that borrowers share profits and losses with the banks, which in turn share profits and losses with the depositors. They also state that although Islamic banking in theory is interest free. There products are closely aligned to the conventional interest based products.

Objectives of the Study

- a. Compare Islamic banking contracts used in the U.S. with the classical contract equivalents.
- b. Evaluate contract modifications in Islamic banking contracts in the U.S.
- c. Analyze the impact of contract modification in Islamic banking contracts in the U.S.

Method of Research

We will use the qualitative research method in this research by gathering data through personal interviews, direct observation of contract instruments, and previous studies. This information will be compared with the criteria of the legal maxims in Islamic law that govern the rules of contracts in Islamic law.

Structure

Information gathered from this research will be used to gain a better understanding of how changes in Islamic banking contracts in the United States affect the legal status of these contracts according to Islamic law. It will also show the limitations of Shariah compliancy of Shariah compliant products subjected to U.S. regulatory guidelines.

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Summary

In this study Islamic banking contracts used in the U.S. will be reviewed and compared with the classical Islamic contract equivalents. This will be done by evaluating contract modifications and analyzing the impact of these modifications against the Islamic law standard of the classical Islamic contracts. The data gathered from this study will be used to answer the problem statements of the study:

1. What are the effects of contract modifications of Shariah Compliant Products used in the United States?
2. Do the modified contracts of Shariah Compliant Products in the United States contain the protections embodied in Islamic law?
3. Can a Shariah Compliant Product be used in the U.S. banking system?

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