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Consumer Protection in Islamic Contracts: The Case of the Murabahah Contract in Morocco

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Abstract

Financing requirements take different forms. They can be met by making funds available or by signature in the form of a current account advance or a loan repayable by instalments. In terms of financing by making funds available, participative banks offer Murabahah credit as an alternative to traditional fixed-term credit as defined by article 3 of law 103-12. For individuals, this contract is used to finance the purchase of consumer goods and property. Consequently, it must comply with the legal provisions of Law 31-08 enacting consumer protection measures. This paper presents the Murabahah contract, the legal status of this contract under Moroccan law and analyses the conformity of this contract with the provisions of Law 31-08.

Keywords

Murabahah, Muslim Business Law, Credit Transaction, Consumer Protection

1. Introduction

The text of law No. 103-12 defines the banking landscape which, from 2015, has included new credit institutions such as payment companies and Islamic banks. In fact, according to the stipulations of article 55, islamic banks are legal entities authorised to carry out financing as a regular profession by means of six contracts defined by articles 55 and 58, namely Murabaha, Ijara, Moucharaka, Moudaraba, Salam and Istisna'a.

A conventional credit transaction is defined by article 3, which stipulates that "a credit transaction is a contract for pecuniary interest by which one person places or undertakes to place funds at the disposal of another person on condition that the latter reimburses them, or it takes, in the interest of a person, the commitment par signatory in the form of an endorsement, surety or any other guarantee". Under this definition, other transactions are treated as credit transactions, such as factoring, leasing, hire purchase, etc.

The needs of customers for credit can be met by conventional and Islamic offers. However, there is a major discrepancy between the two offers, both legally and religiously. Consequently, the study and legal comparison between the two credit offers are a matter of great importance.

Furthermore, credit repaid by fixed instalments under Moroccan law is defined in article 3 of law 103-12 relating to credit institutions. This article stipulates that this credit is a simple obligation which allows the bank to make funds available to the customer, who is responsible for repaying them by fixed instalments in accordance with the conditions defined in the contract. This classic formula is tainted by usury according to Muslim law because the repayment incorporates a mark-up in the form of interest over the credit period. To meet the same financing needs, the Islamic Bank offers the Murabahah contract as an alternative to conventional credit that complies with the Shari'ah.

The legal framework for Islamic credit operations has been the subject of various studies such as Al-'Amīne (1987) who studied Mudaraba and its modern applications; Abu Ghadah (2001) who studied Mudarabah in Islamic banks. In Morocco, various researches have been conducted in this framework such as Fares and Habachi (2019) who studied the current account and its applications in Islamic finance, Fares and Habachi (2020a) who studied the applications of Mudharabah in bank financing, Fares and Habachi (2020b) who studied the legal framework of the Ijarah contract and Fares (2023) who studied the legal framework of Islamic Financing of small and medium enterprises in Morocco.

In terms of consumer protection in Morocco, the law n˚ 31-08 sets out the consumer protection measures to be met by contracts for consumer credit and property loans. Consequently, several provisions must be observed, in particular the prior offer, the withdrawal period, the delivery and acceptance of the products, the formalities relating to the provision of copies of the contract and the deposit, and the periodic communication of updates on the state of execution.

In this context, the Murabahah contract must comply with these provisions, whether it is for the financing of consumption needs or property goods. Accordingly, the aim of this paper is to determine the legal status of the Murabahah contract under Moroccan law and to assess the contract's compliance with the provisions of law 31-08 enacting consumer protection measures.

Accordingly, the remainder of this paper studies the Murabahah contract according to classical Muslim law in the second section, the Murabahah contract according to contemporary Islamic jurisprudence (Islamic fiqh) in the third section, the legal qualification of the Murabahah contract according to Moroccan positive law in the fourth section, the comparison of conventional credit and Murabahah in the fifth section, applications of the Murabaha Contract for Financing Distance Purchases in the sixth section and, finally, the compliance of the Murabahah contract with the provisions of law 21-08 that follow.

2. The Murabahah Contract According to Classical Muslim Law

Muslim business law (Fiqh al Al-mu'âmalât Al-Mâliyah) is based on a set of principles and commandments designed to ensure that Islamic markets comply with the provisions of the Shari'a. Among these principles are[1]:

- The prohibition of usurious interest (Al-Ribâ): Nazīh Ḥamâd (2007) gives a general definition of this concept, which leads us to consider riba as any increase in the capital or maturity of debts and sales, and any sale that is invalid or prohibited by the Shari'ah.
- The prohibition of gambling and games of chance (Mayser).
- The prohibition of randomness and of uncertainty (al-gharar).
- The prohibition injustice (Al-ghubn).
- The prohibition of the sale of debt for debt[2].
- The prohibition of two sales in one and two transactions in one[3].
- The prohibition on selling a good before obtaining possession of it[4]: this prohibition is based on a declaration of the prophet reported by Hakim ibn hizam which stipulates that: "I asked the Messenger of Allah, I said: 'A man came to me asking to buy something that I did not have. Can I buy it from the market for him and then give it to him?' He said: Do not sell what".

Sales contracts in Muslim business law are based on the exchange of assets. Under Muslim law, assets are called *Al-Mâl*[5]. This latter concept is defined by the Malikite[6] rite as anything permissible under the Shari'ah that has value, is achievable and can be attained, and generates benefits and profits.

In the literature, sale is defined as the act of exchanging one thing for another. In this way, sale can be the exchange of goods for goods, the exchange of goods for money or the exchange of a right for goods or money.

In Muslim law, selon Ṭariq Ibn ʿawaḍa (2011), the definition varies according to the school of thought. We will therefore limit ourselves to the definition given by the Malikite rite, given by Al-Majâjī Muḥammad Sakḥâl (2001), which stipulates that:

"The sale is a commutative onerous contract, generating neither usufructs nor pleasure, characterised by vigilance and negotiation in order to appreciate the price for the seller and depreciate the price for the buyer, one of the elements exchanged is not gold or silver, present at the conclusion of the contracts except for the money part."

This definition excludes currency exchange, and stipulates that the thing sold must not be a debt (i.e. sale with deferred delivery of the goods or property as Salam), and requires the parties to the contract to be vigilant and each to negotiate the price in its own favour.

In commercial practice, sales contracts may be preceded by promises to sell

[1]Al-Zarqâ, Muṣṭafâ, (2004) "Al-Madkhal Al-Fiqhī Al-ʿâm", Dâr Al-Qalam, Damascus, Syria, 2nd Edition, , Vol. 1, pp. 956-969.

[2]This subject has been treated in detail by Ḥamād Nazīh (1986).

[3]Jâmi' Attirmidhī, (2007), chapter 18, ḥadith 1231, Vol.3, p. 41.

[4]Jâmi' Attirmidhī, (2007) chapter 19, ḥadith 1232, Vol 3, p. 43.

[5]This Arabic word has several translations in English, as it can mean funds, assets, capital or goods.

[6]It is the current of Islamic fiqh which forms with the three other currents which are the ḥanifite, ḥanbalite and shafi'ite the principal schools of Islamic thought.

between the parties. In fact, according to Muslim law, the promise is the fact that one party (the promisor) declares the willingness to do gratuitously suitable acts permissible according to the Sharīʾah, in the future, generating benefits and interests in favour of the other party (the beneficiary)[7].

The promise may be unilateral, in which case Islamic fiqh calls it "Al-wa'd", or reciprocal, in which case it is called "Al-muwâ'adah". It is unilateral if one of the parties promises the other to carry out future acts in his favour without there being a reciprocal promise, whereas it is reciprocal if there are reciprocal promises from both parties.

As regards the obligations of the promisor towards the beneficiary, the schools of thought have divergent judgments. In fact, some scholars consider that a promise is an obligation with legal effects and that the promisor must honour it except in cases of force majeure, whereas others consider that it is preferable for the promisor to honour his promise and that this is not a legal obligation for him but a religious obligation[8]. On the other hand, according to Nazīh Ḥamâd (1990) and Ben Khadah (2017) scholars are unanimous on the promise linked to a condition that the beneficiary must satisfy, in this case, the promise is a legal obligation for the promisor who must honour it or repair the damage caused to the beneficiary by the promise.

For the reciprocal promise (al-muwâ'adah), the Malikite school considers that permission is conditional on the fact that one of the parties will have the choice of honouring the promise or not honouring it, since if both parties are obliged to honour their promises, it becomes a contract which binds both parties in the future. According to Nazīh Ḥamâd (1990), the Malikite School deems bilateral contracts impermissible due to the fact that it may be a pretext for usury or for something prohibited by the Shari'ah.

The unilateral promise and the reciprocal (bilateral) promise are the subject of standard 49 of the AAOIFI Shari'ah standards. This legal instrument is becoming a key element in the legal engineering of Islamic finance and enables certain forms of conventional financing to be adapted to the provisions of the Shari'ah.

In Morocco, Article 14 of the Moroccan Code of Obligations and Contracts states that a simple promise does not create an obligation. However, Article 18 provides that in the case of unilateral obligations, commitments are binding as soon as they come to the knowledge of the party to whom they are made[9].

On the other hand, Muslim business law defines a set of commercial contracts designed to govern commercial relations between the parties. Each contract corresponds to a specific objective and must fulfill a set of provisions to comply with the shari'a. In this context, the Murabahah contract is used for sales trans-

[7]Nazīh Ḥamâd, "Dirâssât Fiqhiyah", Dâr Al-Fârruq, Saudi Arabia, 1990, pp.137-138 et Al-ḥaṭâb Abū Abdullah Muḥammad Al-Mâlikī Al-Maghribī, "Taḥrir Al-Kalâm Fī Massâ'il Al-'iltizâm", Dâr Al-gharb Al-Islâmī, Beirut, 1984, pp.153.

[8]An obligation can be religious or legal, the religious obligation gives rise to religious effects without having legal effects. The unfulfilled promise has religious effects because the Koran in several verses insists on conformity between speech and deeds but has no legal effects.

[9]Articles 14 and 18 of the Moroccan Code of Obligations and Contracts.

actions to guarantee that the purchaser has the right to information about the seller's profit margin.

The classic Murabahah contract is a contract between two parties in which the purchase price paid by the seller and the margin charged to the buyer are known and agreed by both parties. Accordingly, a sales contract is deemed to be Murabahah if the seller informs the buyer of the purchase price and the margin he expects to make on the sale. Murabahah may be cash, with immediate payment of the price, or credit, with payment in one or several instalments.

According to Al-Qarnī (1987), the justification for using the Murabahah contract in sales transactions is based on the practices of the companions of the Prophet Muhammad (pbuh).

According to Al-kassânī (2013), schools of thought have studied this type of sale and determined its legal status. Indeed, the Ḥanifite School defines Murabahah as "Murabahah is a sale with the same (original) purchase price plus an additional amount of profit". Whereas, for the Malikite School, the definition is given by Ibn Rushd[10] as follows:

"Sales are of two types: Murabahah and Musawamah; In Murabahah, the seller would disclose to the buyer the price he initially paid for the goods and indicate a supplement in the form of a dinar or dirham as a condition that represents a profit"[11].

For the Shafi'ite school, Murabahah is the sale in which the seller would clearly indicate the original cost of the goods and the rate of profit by saying that its purchase price is 100 dinars and I am selling it to you at its original price and a profit of one dirham for every ten (i.e. charging the ten percent profit)[12]. Whereas for the Ḥanbalite School, Murabahah is the sale of a commodity whose original cost is increased by a declared profit. Knowledge of the purchase cost is a prerequisite for this. Thus, the seller should say: "This thing cost me X (Dirham) and I am selling it to you for that cost added to a profit of Z (Dirham)"[13].

3. The Murabahah Contract According to Contemporary Jurisprudence

The genesis of Islamic finance has given rise to new financial instruments that combine traditional contracts to meet the customer's needs. The Murabahah contract remains the core of the Islamic financing system.

In this context, to replace simple credit repaid by fixed instalments, banks are offering the combined Murabahah contract, defined as follows "an agreement between the bank and the customer for the bank to purchase a good, merchandise or other item. The customer undertakes to purchase it from the bank at a

[10]Ibn Rushd, "Bidâyatu Al-Mujtahid wa Nihâyatu Al-Muqtaṣid", Maktabay Ibn Taymiyah, Egypte, 1415h, Vol. 3, p. 407.

[11]Idid.

[12]Al-Shirâzī 1996 "*Al-muhaḏab*", *Dâr Al-Qalam*, Damascus, Syria, , Vol. 3, p. 133.

[13]*Ibn Qudâmah, Abū Muḥammad Al-Maqdissī*, "*Al-Mughnī fī Al-fiqh Al-ḥanbalī*", *Dâr ʿÂlam Al Kutub*, Saudi Arabia, 3rd edition, 1997, Vol.6, p.266.

later date, with the bank undertaking to sell the thing purchased to him, in return for payment of an immediate or forward price. The margin between the sale price and the purchase price is fixed in advance".[14]

The AAOIFI Shari'ah standards define the combined Murabahah by:

"Murabahah is selling a commodity as per the purchasing price with defined and agreed profit mark-up. The mark-up may be a percentage of the selling price or a lump sum. This transaction may be concluded either without a prior promise to buy, in which case it is called an ordinary Murabaha, or with a prior promise to buy submitted by person interested in acquiring goods through the institution, in which case it is called a "banking Murabaha" e.g. Murabahah to the purchase orderer. This transaction is one of the trust-based contracts that depends on transparency as to the actual purchasing price or cost price in addition to common expenses"

According to Ḥassan Ḥamūd (1982), the combined Murabahah is known by several names namely: Murabahah to the purchase orderer, Murabahah with promise to purchase, sale with promise, Murabahah for the giver of the purchase order, Bank Murabahah and promise for Murabaha.

The word "combined" is used to designate the use of several legal documents to carry out the Murabahah sale. The combination in this situation takes the following two forms:

1) ***The combination of the contract of sale and the promise with reciprocal commitment.***

In this case, the sales contract is preceded by the promise, which commits the two parties to concluding the contract at an agreed price. In effect, the customer contacts the bank to request the purchase of a good, merchandise or other item, the characteristics of which are well defined, and the two contracting parties (bank and customer) agree to purchase the item.

The commitment is bilateral in that the bank commits to purchase and then sell the item to the customer, who in turn commits to purchase it from the bank at a fixed price, specifying the cost price, the margin and the term.

2) ***The combination of the contract of sale and the unilateral promise to purchase.***

In this case and for the same purpose, the promise combined with the Murabahah sales contract is a promise between the bank and the customer without there being an agreement committing the two parties simultaneously. This type of promise can stipulate price fixing and margin, or it can be made without deciding on either.

In Morocco, the Murabahah contract is associated with a unilateral promise on the part of the customer. In fact, the model validated by the Higher Council of Ulemas in Opinion No. 7 of the Committee shari'atique of Islamic Finance of the Council, dated 20 July 2017 relating to the unilateral promise to purchase in the context of Murabahah for the principal provides that:

[14]AAOIFI Shari'ah standards, version 2017, l'Appendix D of the standards N°8, Mourabaha to the purchase orderer, pp. 223.

1) The promise must specify the customer's commitment to purchase the goods from the bank.

2) The definition of the good and its characteristics.

3) Defining the acquisition price and margin.

4) The terms of payment and the delivery date of the goods, and

5) Hamish Al-Jidiya and the conditions of its use.

In this case, the promise is an obligation to be honoured by the customer, by virtue of Article 18 of Moroccan law on obligations and contracts.

In Shari'ah terms, the combined Murabahah has been validated by the majority of Muslim scholars and by international Shari'ah compliance bodies such as the International Academy of Islamic Fiqh and AAOIFI[15]. However, some Muslim scholars have taken a different position. For this reason, we will present the different positions below.

Contemporary Islamic jurisprudence has examined the validity of the Murabahah contract, giving rise to two schools of thought. The first is formed by supporters of the use of combined Murabahah by banks. This current is supported by several Islamic scholars and jurists such as *Ḥassan Ḥamūd* (1982), *Youssef Al-Qaraḍâwī* (1987), *ʿAli Aḥmad Al-Sâlūss* (1988, 2008), *Al-Ṣidīq Al-Ḍarīr* (1988) *and Aabdal-sattâr Abu Ghâdah* (1988).

The second school of thought prohibits the use of combined Murabaha. This school of thought is supported by several scholars, such as *Rafīq al-Masrī* (1988), *Muḥammad Sulaymân al-Ashqar* (1995), *Bakr Ibn Abdellah Abū Zaid* (1988) *and Ḥassan Abdellah Al-Amīne* (2009).

In this context of divergence, we will highlight the decision of the International Academy of Islamic Fiqh and the opinion of the Moroccan Higher Council of Ulemas. Indeed, the International Academy of Islamic Fiqh issued Resolution No. 40-41 (2/5 & 3/5) concerning the compliance of the combined Murabahah which stipulates:

"The sale of Murabahah for the purchase orderer is permitted on goods already in the physical possession of the seller, as required by Shari'ah law, on condition that the seller assumes the risk of loss before delivery or the consequences of the return of the goods purchased due to latent defects or any other reason justifying the return of the goods after their receipt, on condition that the conditions of the sale are complied with and in the absence of any obstacle."

This resolution also deals with the nature of the obligations associated with the promise. It stipulates that "According to the Shari'ah, a promise (made unilaterally by the buyer or seller) obliges the promisor in religion, unless there is a valid excuse and it obliges him legally if it is conditional on the fulfilment of an obligation and if the beneficiary of the promise has already committed expenses on the basis of such a promise. The obligatory nature of the promise means that it must be fulfilled or that compensation must be paid for damages caused by the unjustifiable non-fulfilment of the promise."

[15]AAOIFI Shari'ah standards, version 2017, the standards N°8, Murabahah to the purchase orderer, pp. 199-235.

In Morocco, the Higher Council of Ulemas has validated its compliance as part of its opinion on Bank Al-Maghrib[16] circular 1/W/2017 relating to the technical characteristics of the products Murabahah, Ijarah, Moucharakah, Moudarabah and Salam and the terms of their presentation to customers.

4. The Legal Qualification of the Murabahah Contract According to Moroccan Positive Law

Under Moroccan law, the Murabahah contract is defined by Article 58 of Law 103-12 on credit institutions and Article 3 of Circular 1/w/2017 of the Central Bank as "any contract by which a participating bank sells to its customer a specific movable or immovable asset owned by the bank at its acquisition cost plus a profit margin agreed in advance. Payment by the customer in respect of this transaction is made in accordance with the terms agreed between the parties".

This definition limits the Murabahah contract to movable or immovable property and excludes intellectual rights, patents and services. In fact, it must include intangible rights which take three forms, namely[17]:

- Literary and intellectual production.
- Invention or discovery.
- Trade name, company name and brand.

As a contract of sale, the Murabahah contract is governed by article 487 of the D.O.C., which stipulates that a sale is "a contract by which one of the parties transfers ownership of a thing or a right to the other contracting party in return for a price that the latter is obliged to pay". This definition completes the insufficiencies of the previous definition in that it is more exhaustive and makes it possible to include financial rights by observing the conditions of conformity with the Shari'ah.

The effects of a Murabahah contract depend on its legal status. This may take various forms. A Murabahah contract may be considered as a credit contract attached to the sale of an underlying asset. As a result, it can have various legal qualifications, as it can be assimilated to three legal contracts which are

- Simple credit contract.
- Contract of sale with a supplier's deadline.
- Contract of sale on credit.

In the first case, the Murabahah contract can be described as a nominated banking contract whose purpose is to make goods available to another person, with the latter being obliged to repay the price. This is a new commercial contract that must be governed by the Commercial Code[18]. The latter must be amended to incorporate the Murabahah contract by stipulating that the Mura-

[16]The Moroccan Central Bank.

[17]These rights are defined by the Islamic Fiqh Academy resolution, "Resolutions and recommendations of the Council of Islamic, Fiqh Academy: 1985-2000", Jeddah, Saudi Arabia, 1988, resolution 43(5/5), Incorporeal Rights, pp. 89; AAOIFI, 2017, standard No. 42, financial rights, pp.1057 and Al-Sâlūss Aḥmad, 2008, "Fiqh Al-Bay' Wa Al-'Istīthâq Wa Al-Taṭbīq Al-Mu'âṣir", Dâr Al-Taqâfah, Qatar, 7th edition, pp.1290-1292

[18]Law No. 15-95 forming the Commercial Code.

bahah margin is due in full to the bank as soon as the contract is signed.

In the second case, Murabahah contracts can be qualified as supplier credit for which the payment period is agreed between the parties. The payment period is governed by law no. 32-10 completing the law no. 15-95 forming the Commercial Code, which stipulates in Article 78.1 that “A payment period for remuneration of transactions between merchants must be included in the payment conditions which the merchant concerned is obliged to communicate before the conclusion of any transaction to any merchant who so requests. These conditions must be notified by any means proving receipt[19]”.

According to this law, the deadline for payment of sums due is the sixtieth day from the date of receipt of the goods or execution of the service. Where the period for payment of sums due is agreed between the parties, it may not exceed ninety days[20].

Consequently, Murabahah contracts in this case must comply with the ninety-day time limit. This qualification is appropriate for Murabahah loans intended to finance consumption needs. However, the Murabahah contract cannot be qualified as a sale with a payment period if the period exceeds ninety days.

In the third case, the bank, as supplier, transfers the goods or thing which is the subject of the Murabahah to the customer in his quality as purchaser, with the latter paying the price in accordance with the terms and instalments set out in the contract. Consequently, the Murabahah contract is subject to the provisions of the Code of Obligations and Contracts relating to sales pursuant to Article 478 et seq, with the exception of the provisions relating to interest rates, late payment penalties and sale with right of repurchase, which may conceal a usury transaction.

5. Financial Comparison of Conventional Credit and Murabahah

In legal terms, art. n˚ 3 of Law 103-12 on credit institutions defines a traditional credit transaction as any onerous transaction whereby a person makes funds available or undertakes to make funds available to another person, with the latter being obliged to repay them. Murabahah credit, on the other hand, is a named contract of sale defined by art. n˚ 58.

In financial terms, the value repaid for conventional credit is composed of the initial value plus the interest accrued over the period of use. For Murabahah credit, the value to be repaid is equal to the acquisition value of the asset plus the Murabahah margin.

The overall cost of conventional credit and Murabahah may be identical if the

[19]The conditions of the article relating to merchants are applicable to credit contract because a credit contract, even if the customer is not a merchant, is considered to be a commercial contract. In fact, Ben‘adū Abd-Al-Qâdir, “Dawr Al-‘amal Al-Qaḍâ’ī Fī Taḥqīq Al-Tawâzun Bayna Al-Muqriḍ Wa Al-Muqtariḍ Fi Munâza‘ât Al-Qurūḍ Al-’Istihlâkiyah”, https://www.marocdroit.com/دور-العمل-القضائي-في-تحقيق-التوازن-بين-المقرض-والمقترض-في-منازعات_a7083.html, cited several Moroccan tribunal decisions stipulating that banking contracts are commercial contracts governed by the Commercial Code, regardless of the customer’s status.

[20]Law no. 32-10 completing the law no. 15-95 forming the Commercial Code, art.78.2.

mechanisms of competition on the market are respected. However, certain differences may arise in the following cases:

1) In the case of early reimbursement, the customer must repay the entire sale price in the case of Murabahah and only the outstanding capital, increased by early reimbursement penalties in the case of conventional credit.

2) As regards credit insurance, in the conventional case the customer recovers part of the insurance premium in proportion to the remaining period, whereas for Murabaha, the customer recovers the balance of his account in the Takâful insurance.

In terms of formalism, the credit contract is not subject to any specific formalism[21], whereas the Murabahah contract must comply with an operational formalism that requires the bank to have ownership of the goods before proceeding to sell them by means of Murabaha.

In summary, Islamic business law has accepted the Murabahah contract as a contract based on trust between the buyer and the seller, because the seller must disclose the purchase price and the percentage of that price set as the profit margin. Negotiation between the parties in this type of contract is limited to the margin to which the seller is entitled.

In Muslim law, payment may be immediate or forward. However, the forward price differs from the immediate price and takes into account the period of deferment. For this reason, Islamic engineering has opted for this type of contract to replace conventional credit, which is judged not to comply with Islamic Shari'ah.

This use has given rise to various positions by Islamic scholars regarding its compliance with the Shari'ah. However, the majority of scholars as well as international institutions have validated this form of financing subject to compliance with certain provisions dictated by the Shari'ah.

In our opinion, we believe that the legal framework is based on the foundations of Muslim law, using the combination of contracts to preserve the rights of the parties, and we consider that it is necessary to create Shari'ah compliance committees to prevent banking practices from deviating from the norms of the Shari'ah.

6. Applications of the Murabaha Contract for Financing Distance Purchases

The Murabaha contract has many applications in finance. In this section, we will confine ourselves to the financing of distance purchases using bank cards. We will therefore present the concept of the Murabahah credit agreement and the deferred credit associated with the bank credit card.

6.1. Murabahah Credit Agreement

Credit agreements play an important role in the bank-customer credit relationship, as they allow beneficiaries to benefit from a commitment to finance, on the

[21]With the exception of the formalities relating to the protection of personal data.

part of the bank, up to a ceiling of funds with a renewable use. This generally facilitates administrative procedures and reduces the time it takes for customers to obtain financing.

In Morocco, these credit agreements are not marketed by Islamic banks. As a result, they must be taken into consideration by the legislator and the appropriate models must be validated by the Higher Council of Ulemas because of their usefulness in financing, bearing in mind that the Sharī'ah standards of the AAOIFI have dealt with this subject in standard 37[22].

The Murabaha credit agreement for an agreed ceiling is a promise between the two parties to carry out Murabaha transactions up to the said ceiling. The two parties agree on the characteristics of the goods and the bank looks for a supplier of the goods. For each customer request, the bank buys the goods from the supplier and sells them to the customer at cost plus a margin representing a percentage of the purchase price.

For payment the bank credits the supplier's account and debits the Murabaha facility account held in its books. Murabaha credit agreements must comply with Sharī'ah provisions.

As far as Shari'a status is concerned, the legal solution for credit agreements may be a combination of a non-binding promise between the bank and the customer and a Murabaha contract for each purchase within the ceiling authorised by the agreement.

The credit agreement in conventional banks is a contract that is binding on both parties. It is subject to the principle of contractual freedom and governed by the laws governing Moroccan commercial law. By contrast, the Murabaha line of credit is not a contract but a promise binding on the promisor in favour of the beneficiary. It is governed by the Moroccan Code of Obligations and Contracts, in particular articles 14 to 18.

6.2. Deferred Credit Backed by a Credit Card

According to standard no. 2 of the Sharīʿah standards of the AAOIFIF[23], the deferred debit card is a means of credit up to a ceiling set by the bank and for a specified period. It is used to pay for purchases of goods and services and to draw cash.

Holders of this card do not benefit from a revolving credit facility, as they must pay within the set period. For the payment of purchases, the bank commits itself to the amount of the credit and has a personal and direct right over the customer to recover the amount of the payments.

In legal terms, the deferred debit card contract is a legal solution made up of the following four contracts:

- A contract of guarantee given by the bank to its customer to the seller.
- A contract of sale materialised by the payment and delivery of the goods re-

[22]AAOIFI, Shar'itiques standards, 2017 version, standard No. 37 on credit agreements.

[23]AAOIFI, Shar'itiques standards, 2017 version, standard No. 2 debit card, charge card and credit card.

spectively by the buyer and the seller following the signature of the invoice by the customer which represents an effective payment.

- A contract of mandate given by the customer to the bank to complete the transaction procedures (debit his portfolio account and credit the seller's account) or a contract of mandate given by the seller to the bank to recover the debt from the customer.
- A Murabaha contract for the duration of the deferment between the bank and the customer.

7. The Murabahah Contract and the Consumer Protection Law

The Murabaha contracts concerned by law 31-08 are contracts intended to finance personal needs and the acquisition of real estate intended for housing. In fact, the law lays down measures for contracts to finance needs for personal use and contracts to finance real estate.

For the financing of needs for personal use, the Murabahah contract can have two legal statuses, namely the qualification of Murabahah as a "credit contract" or as "affected credit".

As a credit agreement, the Murabaha contract associated with consumer goods is subject to the provisions of Law 31-08, by virtue of Article 74, which stipulates that sales or service offerings for which payment is staggered, deferred or fractioned are assimilated to credit transactions.

This classification as a credit contract requires the bank, as the supplier, to comply with Tapez une équation ici.all the information and management obligations set out in the aforementioned law, in particular the prior offer, the withdrawal period, the delivery and receipt of products, the formalities relating to the remittance of copies of the contract and the guarantee and the periodic communication of the progress of execute. As regards the latter, Article 80 of Law 31-08 should be amended to include information relating to the Murabaha loan contract, in particular the provisions relating to the purchase price, the Murabaha margin and the provisions relating to early reimbursement.

With regard to insurance, Law 31-08 must be amended in order to include provisions relating to credit insurance in accordance with Sharī'ah standards in Article 81, which provides that in the case of fixed-term credit, in addition to the terms and conditions set out in article 78, the preliminary offer must specify, for each instalment, the cost of insurance and the schedule of repayments or, where this is not possible, the means of determining them. These transactions must also comply with the provisions of article 82, which stipulates that when the preliminary offer is accompanied by an insurance proposal, a notice must be remitted to the borrower, which includes an extract from the general terms and conditions of the insurance concerning him.

The withdrawal period is fixed by the said law at seven (7) days. The provisions of article 87 prohibit any payment in any form during the withdrawal period. As a result, these provisions cannot be applied because the bank may require the purchaser to pay the amount of Hamish Al Jidia as part of Murabahah to the purchase orderer. Consequently, the provisions relating to Hamish Al Jidia must be included in this law in order to take into account the specificities of Murabahah to the purchase orderer.

The second qualification is that the Murabaha contract, intended to finance goods for personal use, is an affected credit because it is associated with the financing of a tangible good. Under Article 90 of Law 31-08, affected loans are consumer loans used to finance a given good, product or service.

However, the provisions of law 31-08 relating to earmarked credit cannot be applied to the Murabaha contract because, on the one hand, it is associated with a promise to purchase on the part of the consumer and, on the other hand, the Murabaha contract combines the sales agreement and the credit agreement in a single contract, whereas under the said law, for affected credit, the sales contract and the credit contract are two separate contracts.

The use of a single contract[24] for the sale agreement and the associated credit agreement is due to the fact that the bank, in the case of Murabaha, is both supplier and lender. As a result, the provisions relating to affected credit, which imposes mandatory formalities for the credit contract, in particular those relating to the deposit and payment in favour of the supplier before the contract is signed and those relating to the withdrawal period for awarding credit, must be amended to take account of the specific features of the Murabaha contract.

Furthermore, the Murabahah real estate contract is designed to finance residential housing. In terms of consumer protection, this contract is governed by the provisions of article 113 of law 39-08 and the second chapter relating to real estate credit. In this context, the bank's obligations can be summarised as follows:

- Informative and honest publicity.
- A written offer sent free of charge, by any means that can be shown to have been received, to the borrower and to any guarantor declared by the borrower in the case of a natural person.

However, the information that must be included in the preliminary offer must be adjusted to take account of the specific features of the Murabaha contract, since the information fixed by Article 118 relates mainly to conventional mortgages based on usurious interest. On the other hand, Article 119 relating to credit insurance, may be applied to the Murabaha contract provided that the insurance complies with the Sharī'ah (Takâful).

As regards the withdrawal period, the law must be amended to take account of the specific features of the Murabaha contract, in particular by introducing a withdrawal period before the signature of the unilateral promise, in the case of Murabaha to the purchase orderer.

The provisions relating to interest rates and early reimbursement cannot be applied to the Murabaha contract. As a result, the law must be amended to take

[24]This association is due to the qualification of the Murabahah contract as a contract of sale and the associated credit represents the terms of payment.

account of the specific features of Murabaha, in particular the Murabaha margin and the fact that the bank is not obliged to repay part of the margin to the customer in the event of early reimbursement.

8. Conclusion

The Murabaha contract is the Shari'ah-compliant alternative to conventional credit, which involves making funds available to the customer who is obliged to reimburse them in accordance with the agreed terms. The two products are technically and financially similar in that they represent a loan associated with a good, the amount of which is equal to the purchase price plus a return in the form of interest in the case of the conventional loan and a margin on the sale in the case of the Murabaha contract.

At a legal level, the two credits have two distinct forms in that the first is a simple obligation linked to a loan of funds whereas the second is a credit associated with a sales transaction, which makes the first illegal and the second compliant with the Shari'ah.

The Shari'ah compliance of Murabaha practised by banks is the position taken by the majority of scholars and international Shari'ah compliance bodies. However, some scholars consider that this form is marred by certain defects of non-conformity.

The use of the Murabaha contract exposes the contracting parties to a significant legal risk due to the multitude of legal qualifications under Moroccan law. As a result, its characteristics must be taken into account when amending legislation, in particular the law of obligations and contracts, the commercial code and the consumer protection law.

In terms of consumer protection, the provisions of the current law do not take into account the specific features of the Murabaha contract, in particular the provisions relating to compliance with the Shari'a. As a result, the legislator needs to make amendments that take into account the characteristics of this type of financing.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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Arabic Alphabet Transcription Chart

Arabic letters	*Transcription of this document*
ء	ʻ
ب	b
ت	t
ث	th
ج	j
ح	ḥ
خ	kh
د	d
ذ	ḏ
ر	r
ز	z
س	s
ش	sh
ص	ṣ
ض	ḍ
ط	ṭ
ظ	ẓ
ع	ʻ
غ	gh
ف	f
ق	q
ک	k
ل	l
م	m
ن	n
و	w
ه	h
ى	y

VOYELLES

Arabic letters	*Transcription of this document*
ـَ	a
ـِ	i
ـُ	u
ا	â
ـِى	ī
ـُو	ū
ـَى	ay
ـَو	aw
ة	ah