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Moroccan Participative Banks and their Shariatic commitment

Les banques Participatives Marocaines et leur engagement Chariatique

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Summary
The Sharia[1] governance system as defined by the Islamic Finance Services Board consists of the set of institutional and organizational institutions through which Islamic financial institutions ensure that there is effective and independent oversight of compliance. From the whole process to the principles of Sharia. The Higher Council of Ulema[2] in Morocco is the only institution empowered to deliver religious consultations.

Participatory Banking remains a commercial bank whose profit and financial profitability remain primary objectives in their activities, like those of traditional Banking, which comes down to the question, can the search for financial profitability divert Moroccan participatory banks from their Chariatric commitment? The degree of respect of the Shariatic commitment by the participative bank in Morocco is an important pioneer for the development of its image and its reputation towards a Moroccan clientele, who find obstacles to access to financing by conventional banks under the pretext the non-compliance of financial products with the precepts of the Sharia.

Keywords: « Participatory banking; Financing; Financial product; sharia governance system; Morocco »

Résumé :
Le système de gouvernance de la charia comme définie par l'Islamic Finance Services Board se constitue de l'ensemble des institutions institutionnelles et organisationnelles à travers lesquelles les institutions financières islamiques s'assurent qu'il y a une surveillance efficace et indépendante de la conformité de l'ensemble de processus aux principes de la charia[3].

Le conseil supérieur des Oulémas au Maroc est la seule institution habilitée à prononcer les consultations religieuses.

La banque participative reste une banque commerciale dont le profit et la rentabilité financière demeurent des objectifs primordiaux dans leurs activités, comme celles de la banque classique, ce qui revient au question est-ce que la recherche de la rentabilité financière peut dévier les banques participatives marocaines de leur engagement Chariatique ?

Le degré de respect de l'engagement Chariatique par la banque participative au Maroc est un pionnier important pour le développement de son image et sa réputation envers une clientèle marocaine, qui trouvent des entraves à l'accès au financement par les banques conventionnelles sous le prétexte de la non-conformité des produits financiers aux préceptes de la charia.

Mots-Clés : « Banque Participative ; Financement ; Produit financier ; système de gouvernance charia ; le conseil supérieur des Oulémas ; Maroc »

[1] Sharia can be defined as the set of guidelines issued, among others, by the Koran and the Sunnah. Muslim canon law governing religious, political, social and individual life.

[2] The Superior Council of Ulema is an institution of Morocco created in 1981 with the aim of supporting the Muslim religious policy of Morocco.

[3] La Charia peut se définir comme l'ensemble de lignes directrices édictées, entre autres, par le Coran et la Sunna. Loi canonique musulmane régissant la vie religieuse, politique, sociale et individuelle.

Introduction

January 2, 2017 was a special day for Moroccan participatory banks, a date where Bank Al-Maghreb issued a press release in which gave the green light to the five banks and three participatory Windows carried out their activity. We can say that Morocco waited several years before adopting Islamic finance under the name of participatory.

Scenario N ° 1: The Mapping of Participatory Banks in Morocco

CARTOGRAPHIE DES BANQUES PARTICIPATIVES AU MAROC

	CHOIX : FILIALES / SUCCURSALES					CHOIX : BUSINESS UNIT		
Banque	Attijariwafa bank	BMCE BANK	BANQUE POPULAIRE	CIH BANK	Groupe Crédit Agricole du Maroc		BMCI GROUPE BNP PARIBAS	
Partenaires		alBaraka البركة	Barwa Bank	QIIB	Banque Islamique de Développement (BID)	-	-	-
% Partenariat	0%	49%	25%	49%	49%			
Réseau	Dédié	Dédié	Dédié	Dédié	Dédié	Dédié	Corners	Corners/ Dédié
Capital/ Dotation Millions Mad	500	500	400	600	400	200	300	200
Nom de marque	Bank Assafaa	Bank Al Tamwil wal Inmaa (BTI)	Bank Al Yousr	Umnia Bank	Assalaf Al Akhdar	Dar Al Amane	Najmah	-

Source: https://leseco.ma/finance-participative-un-chantier-sans-fin/

For three years of starting participatory banks in Morocco, its ecosystem has continued to develop, including many efforts to build a normative framework for participatory finance in Morocco.

In order to monitor and control all participatory finance entities, Bank Al-Maghreb watches over the banking sector, ACAPS[4] over the insurance sector and AMMC[5] over the capital market. But ensuring the compliance of these entities and their products with religion is the Supreme Council of Ulema (CSO) which takes over through its Sharia committee. Nowadays, the Superior Council of Ulemas has validated the standard Murabaha[6] contract (Real Estate, Automobile and equipment), also, after sight deposits, the standard investment deposit contract has been validated, participatory banks are now able to collect investment deposits.

[4] The Insurance and Social Security Supervisory Authority

[5] The Moroccan Capital Market Authority

[6] The Murabaha contract can be defined as a contract of sale at cost plus a known profit margin agreed between the buyer and the seller. Azzini, Mahmoud Housni. 2012 the Murabaha contract in Islamic fiqh. Alexandria: Dar Al Fiqh

Also Bank Al-Maghreb continues to complete the participatory finance ecosystem by validating three new products: Salam, Istisna'a, and Ijara Montahiya Bittamlik. The Murabaha contract can be defined as a contract of sale at cost plus a known profit margin agreed between the buyer and the seller. The operation of investment deposits[7], based on the principles of the Mudaraba where the client acts as much of an investor and the bank as much as a manager, is aimed at individual, professional and corporate clients with the savings they want. Grow responsibly and in accordance with the opinions of the sharia committee for participatory finance. But it is three products are not yet marketed by the Moroccan participative banks, because of the operational risk of these products without being backed by insurance while the Takaful has not yet been put into service by the bank or an entity of participatory insurance. After five years of launching the activity of participatory banks in Morocco, the CSO has currently validated only two standard contracts, the Murabaha and the investment deposit, but several products are still expected such as Takaful, the latter will soon enter the Moroccan crowdfunding market. Its legal framework has been completed, but the regulatory side is being finalized. This delay in validating contracts for other products hampers the development of the activity of the Moroccan participatory bank, as well as the satisfaction of a niche of the population, especially small and medium-sized enterprises. The advisory role of ulama remains an important player in the architecture of the participatory finance ecosystem in Morocco, also, it is thanks to the validation of standard product contracts and the speed of their launch that participatory banks and customers can be satisfied. Islam is based on ethical, moral, social and religious factors to uphold equality, fairness and the well-being of all of society. In economic relations, Islam encourages honesty, trust, respect for others and social justice. Islamic finance respects economic and social rules in accordance with Islamic law, or Sharia, which makes it possible to offer a model that is both ethical and profitable. The aim of Islamic financial activity is to establish an ethical, social and moral balance in financial relations. Islamic banks are the cornerstone of the Islamic financial system.

Islamic banks seek to meet popular expectations and earn a legitimate profit, while conveying a religious approach that places banking activity in the realm of the real economy. Islamic banking seeks to provide Muslim societies with alternative modes of financing and investment,

[7] The operation of investment deposits, based on the principles of the Mudaraba where the client acts as much of an investor and the bank as much as a manager, is aimed at individual, professional and corporate clients with the savings they want. grow responsibly and in accordance with the opinions of the sharia committee for participatory finance

in accordance with Sharia law. The relationship between the Islamic bank and its customers is then based on mutual trust, reinforced by common religious convictions[8].

The ethical version and the growing size of participatory finance in Morocco, it requires even more the establishment of good Shariah control towards the products and practices of banks and Moroccan participatory windows capable of enhancing the confidence of customers, supervisory authorities and all stakeholders in this still young sector. Moreover, after five years of the commercial activity of participatory banks in Morocco, there has been a remarkable enthusiasm for this question on the degree of respect for Shariah commitments by Moroccan banks and participatory windows to the detriment of their financial profitability. This present work focuses on the Shariah governance of participatory banks and windows and its specificities, by comparing the model proposed in Morocco to existing Benchmarks around the world. It goes without saying that the search for financial profitability and the good governance of sharia are intimately linked and through this paper we will try to elucidate this relationship. Banks and participative windows in Morocco are obliged to respect the regulations in force as well as Sharia standards. Will this strengthen respect and good governance of Sharia and therefore would the search for financial profitability not have a negative impact on the respect of Shariah commitments by banks and participatory windows in Morocco?

To bring our research work well by trying to address our research problem, we have made a selection of major theoretical references in order to carry out a review of the academic and professional literature. This made it possible to examine whether the literature offered knowledge to shed light on the pragmatic problem in order to provide a solution for practitioners. Our research being inscribed in this paradigm; we will not formulate any hypothesis or proposals from the outset. Our case study, on the other hand, will lead us to propositions in the final discussion.

1. Literature review

1.1 Gouvernance of Islamic banks

Islamic finance is based on the principles of Islamic law and Sharia law and seeks to achieve transparency, fairness and justice. Islamic finance differs from classical finance on the attachment to moral and ethical concepts whose collective well-being remains the goal of its

8 Hichem Hamza and Sana Guermazi-Bouassida "Islamic banking financing: an ethical solution to the financial crisis" La Revue des Sciences de Gestion, Direction et Gestion n ° 255-256 - Finance. p.163. May-August 2012. File III

existence. Sharia governance is an angular pillar of Islamic finance, along with the sharia governance system, ensuring the compliance of the mechanisms put in place with Sharia law, also, a regularization and adjustment of anomalies and spreads and an essential component of Islamic financial institutions. Morocco has admitted the creation of a single central legitimate committee in parallel with internal and external Sharia compliance services is one of the key features distinguishing the Islamic financial system from the classic, this central committee comes from the higher Council of Ulema and called legitimate committee (charii), for participatory finance. The establishment of a Sharia governance system is an imperative requirement and an indicator measuring the performance and the Shariatic health of the participatory structures of the country. This committee is composed of a coordinator and nine members of ulemas and jurists recognized for their skills and extensive knowledge of the provisions of Islamic law and its background. The mission of this committee is to express an opinion on the compliance of the participatory financial products offered by the participatory banks and the model contracts related to these products with the provisions of Islamic law and these funds[9]. At the International Congress of Islamic Banks organized by the International Association of Islamic Banks AIBI in 1979, Islamic banking was defined as follows: "Islamic banking is a banking institution that collects funds and uses them on the basis of Islamic Sharia law. With the aim of founding a united society and achieving a certain justice in the distribution of wealth". Islamic banking has a specificity to that of traditional banking while creating wealth by respecting the precepts of Islam and promoting the principles of justice, social equity, trust and transparency. The Islamic bank has a different character from that of the conventional bank, and which imposes on them an appropriate and unique framework of operation, governance and supervision[10].

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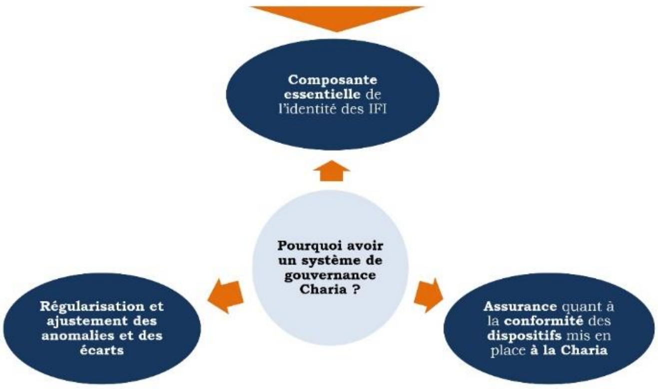
[9] https://www.umniabank.ma/fr/banque-participative/conformite/conseil-superieur-des-oulemas

[10] EL MARZOUKI Abdenbi; BENLECHEHAB Wafaa. "The governance of Islamic financial institutions" p.8; international conference in economics-management and international trade. International review of business and economic strategies. IJBES. Vol 6 pp. 1-21

1.1.1The concept of Sharia governance in Morocco

The governance and supervision of Moroccan participatory banks meet high standards in terms of ethics and professional conduct, in accordance with the precepts of the Sharia.The specific character of these banks has been fully enshrined in all legal and institutional arrangement.

Scenario N ° 2: the governance of Sharia law in Morocco



Source: Umnia-Bank Charia "Experience in Participatory Finance"

the level of control of Moroccan participatory banks, their control is more than that of traditional banks, either at the level of the Basel committee regulations, or in terms of the specificity of the participatory bank taking into account the principle of sharing of profit and loss (3P)[11].

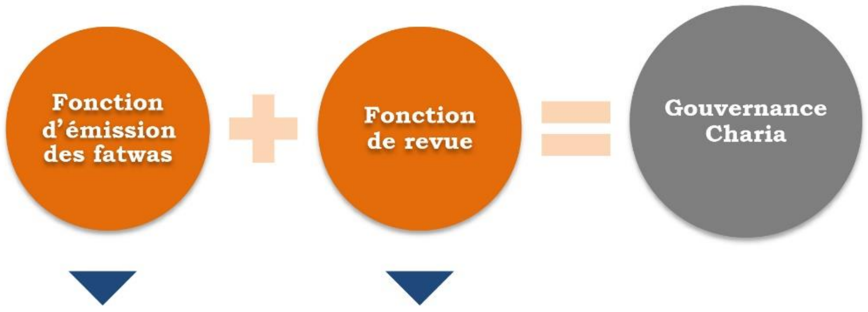
Morocco has chosen a central model, the Central Sharia Committee is a supreme and unique Shariatic Body often managed by the Central Bank, it is he who is responsible for issuing Fatwas and ex ante recommendations to all IFI[12]s in the country and the latter are not authorized to create Sharia committees within them. On the other hand, they must establish Shariah audit or Shariah compliance functions or committees whose role is to continuously verify the compliance of the operations and products proposed by the management of the IFIs with the Fatwas and Shariah rules enacted by the Central Sharia Committee. This is the model that prevails especially in Pakistan. Morocco is starting the experience of participatory banks with

[11] The PPP principle, the bank concludes a contract with its client in such a project, the latter generates gains and risks which are distributed equitably between the two contracting parties. It is no longer a lender-borrower relationship, but a partnership relationship unifying the interests of two contracting parties. The use of profit and loss sharing contracts with significant benefits according to Al-Jahri and Iqbal (2002).

[12] Islamic financial institutions

a major advantage, which is that of regulation and the constitution of an independent central Sharia committee created at the level of the highest authority in the country. This body will be responsible for supervising Islamic financial institutions as well as the compliance of so-called Islamic financial products Morocco will create a Sharia Board responsible for supervising Islamic financial institutions, according to the Dahir published in the Official Bulletin on February 9. This body will be responsible in particular for issuing and opinion on the compliance of Islamic financial products offered by credit institutions, insurance companies and similar organizations as well as the contract models relating to these products with the precepts of Sharia. The committee is also responsible for giving an opinion by Islamic financial institutions report on the compliance of the content of publications issued by the governor of the central bank with the precepts of Islamic law. The Sharia Board, which constitutes the second major step in the development process of Islamic finance in Morocco, after the recent adoption by Parliament of a law on "halal" finance, will be composed of a coordinator and 9 specialized scholars (ulama), recognized for their in-depth knowledge in the field of Sharia law. In addition, the committee may consult at least 5 permanent experts chosen from natural and legal persons recognized for their skills and experience in the fields of law, Islamic finance, banking transactions, the insurance sector and the capital market.

Scenario N ° 3: Sharia governance process in Morocco



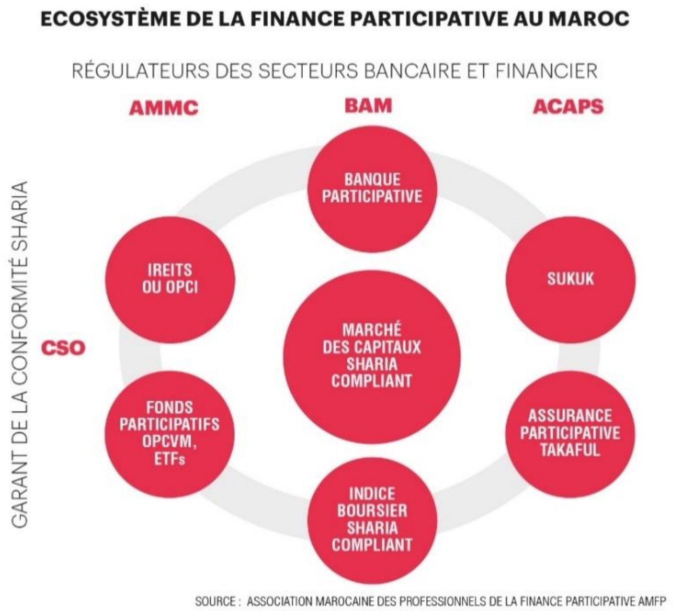
Source: Umnia-Bank Charia "Experience in Participatory Finance"

Note that Law 103.12 did not allude to an external Sharia audit, which, for the start of the activity, does not pose a problem since the CSO as well as the Central Bank are responsible for verifying the activities of the bank as well as the compliance reports raised to them.

1.1.2 The Moroccan participatory finance ecosystems

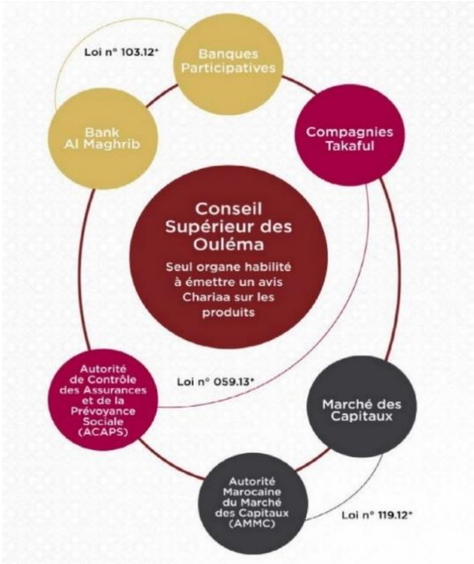
In Morocco, the regulatory and control body for Islamic-participatory financing products now falls under the scope of the Supreme Council of Ulema. Considering the dahir n ° 1-15-02 establishing the Sharia committee of participatory finance modifying the dahir n ° 1-03-300 of 2 Rabii I 1425 (April 22, 2004) relating to the reorganization of the Superior Council of Ulemas, Morocco has chosen the centralized model in terms of Sharia supervision, for which the issuance of Fatwas and notices of conformity to the precepts of Islam is under the responsibility of a supreme body at the national level, the Higher Council of Ulema (CSO).

Scenario N ° 4: Participatory Finance Ecosystem in Morocco



The Moroccan model consists of the Council of Ulema (CSO) which plays the role of a central sharia committee through the participatory finance sharia committee that it issues standards and opinions for the entire Islamic financial industry. In the Kingdom of Morocco, with compliance functions within each participatory bank, whose Moroccan regulations define in detail the missions of compliance with the opinions of the CSO within Moroccan participatory banks.

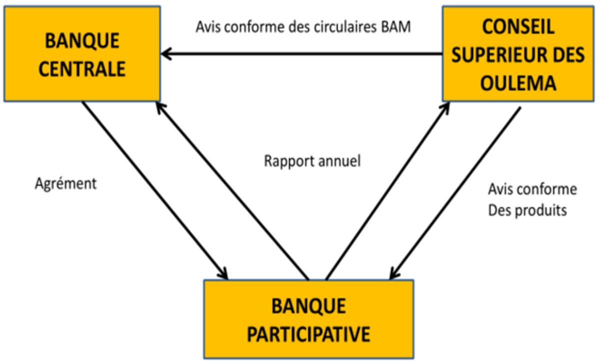
Scenario N ° 5: The working environment of the Superior Council of Ulema



Source: ABWAB Consultants

The Superior Council of Ulema (COS) is the only institution empowered to decide on religious consultations. Morocco has chosen to establish a single and central Sharia committee which is an offshoot of the CSO, namely the Sharia Committee for Participatory Finance independent of the banking system, in order to avoid any overbidding. The latter is composed of a coordinator of members recognized for their in-depth knowledge of Sharia rules

Scenario N ° 6: The CSO circuit and the Moroccan banking sector



Source : RIBH. https://ribh.wordpress.com/2016/04/07/pour-une-meilleure-gouvernance-des-banques-participatives-au-maroc

The missions of the function of compliance with the opinions of the CSO within the participative banks in Morocco Article 10 bis of Chapter 5 of Dahir N ° 1-15-02 establishing the Sharia Committee for Participatory Finance, enumerated the missions of the said committee, namely:

●The issuance of opinions concerning the compliance of participatory financial products offered by credit institutions and similar organizations to their customers and the contract models relating to these products, with the precepts of Islamic Sharia.

●The issuance of opinions in relation to the compliance of the content of publications issued by Wali Bank Al-Maghreb with the precepts of the Islamic Sharia, relating to participatory financial products, investment deposits, operations carried out by the guarantee fund of bank deposits Participatory.

●The issuance of opinions, in particular concerning the compliance of operations carried out by Islamic insurance companies called "Takaful"[13], within the framework of participatory finance, with the precepts of Islamic Sharia.

●The issuance of notices regarding the compliance of "Sukuks" (Islamic investment certificates) with current legislation and the precepts of Islamic Sharia regardless of the issuer).

This central Sharia committee will receive notices of compliance with the precepts of Islam via:

●The Central Bank of Morocco (BAM) for notices of compliance requested by financial institutions and similar organizations. The Insurance and Social Security Control Authority (ACAPS) for notices of compliance requested by insurance and reinsurance companies.

●The Moroccan Capital Markets Authority (AMMC) for notices of compliance requested by parties wishing to issue "Sukuk" certificates.

1.1.3 Members of the National Sharia Board in Morocco

This central Sharia committee will receive notices of compliance with the precepts of Islam via: The Central Bank of Morocco (BAM) for notices of compliance requested by financial institutions and similar organizations. The Insurance and Social Security Control Authority (ACAPS) for notices of compliance requested by insurance and reinsurance companies. The Moroccan Capital Markets Authority (AMMC) for notices of compliance requested by parties wishing to issue "Sukuk" certificates.

The Sharia Committee for Participatory Finance is made up of a coordinator and 9 ulama with sound knowledge of Sharia law, Islamic jurisprudence and recognized for their ability to rule on the issues that will be presented to them. In addition, for the time being, the committee also has recourse to two experts chosen from among specialized individuals recognized for their skills and experience in the fields of crowdfunding and banking transactions. And given the

[13] Takaful derives from the Arabic verb "KAFALAH": to guarantee It is a concept of insurance based on cooperation and protection and on reciprocal help between participants.

request from the secretary general of the Supreme Council of Ulama, the identity of the members of the Sharia committee is surrounded by the utmost discretion. The skills of the members of the Sharia supervision following article 10 bis of chapter 5 of Dahir N ° 1-15-02 establishing the Sharia committee for participatory finance, the said committee is a central collegial body made up of ulemas and professionals from the banking and financial sector, including 9 scholars (Muslim jurisconsults) with a very specific knowledge of Muslim business law, a coordinator and 5 professionals and business experts (natural or legal persons) who will provide their technical support to the jurisconsults if necessary. The background and experience of the members of the Shariah committee confer the capacity to issue a legal opinion (fatwa) on the compliance or not of the operations of the Moroccan financial sector with regard to Islamic law and business ethics. They have a deliberative role, their opinions then become obligatory for the stakeholders of the national financial sector. For the experts and professionals of the committee, they are not empowered to give their opinions on compliance with Muslim law, their role is purely advisory. For better Shariatic governance, this body should not be limited to an "external" look at participatory activity and be a simple "letterbox" operating remotely, by issuing compliant opinions relating to the industry. participatory financial system as well as the receipt of annual evaluation reports from stakeholders in the sector. It should be invested with a more extensive mission and have the powers of investigation and audit "on the spot" as "on documents", through a cell of auditors specializing in Sharia audit and compliance within the Board of Governors Ulemas[14].

1.1.4 The Sharia Audit Dar Al MAALAUDITING

The Sharia audit approach adopted by the firm follows three phases. The first is that of awareness. The second is the assessment of Sharia internal control and the last is the concluding one. During the first phase, the firm focuses on defining the scope of the assignment, collecting the necessary documentation and planning the service and transfers from the external auditors to the various entities involved in the audit. The second phase is that of carrying out the questionnaires, assessing the strengths and weaknesses and drafting the FRAP (disclosure and problem analysis sheet). The last phase is the dissemination of the audit report.

Why a Sharia external audit entity of the Supreme Council of Ulemas?

[14] Faissal Ouali Oubaha, https://lematin.ma/journal/2017/ro-competences-comite-charia/282729.html

First of all, the Sharia audit has a different purpose and methodology from the financial audit, it mainly aims to ensure that there is a sufficiently effective Sharia governance within the bank or financial institution. Then, he makes sure that the compliance visas and CSO visas are well applied at the practice level. In addition, it is possible that there is complementarity between the auditor and the Sharia audit. Likewise, the Sharia audit focuses on the information system. The objective is to verify whether the information system on the Shariatic level provides assurance as to its conformity and the conformity of its provisions.

A Sharia Audit entity is responsible for:

- Manage what is conflict of interest between advice and audit
- Have a dedicated team and capitalize on their experience to better serve the customer

-The target of the Sharia Audit is first of all the institutions of the participatory financial sector, that is to say the participative banks, the Takaful insurance companies, the management companies which will launch UCITS or OPCI compliant with the Sharia.The Moroccan participatory banks, given their youth and their age at the start of their activities, do not yet have the tools and professional skills of sharia auditing to set up an internal sharia audit department. The CSO can also call on a sharia audit firm to carry out missions within banks, insurance companies or any entities subject to its control.

1.2 contracts validated by the sharia committee of participatory finance of the Higher Council of Ulemas and marketed by Moroccan participatory banks

The regulations provide for several participatory banking products: These are the "Mourabaha", "Ijara", "Moucharaka", "Moudaraba" and "Salam" products. But until very recently, only the Murabaha, in its real estate component, had a standard contract validated by the Superior Council of Ulemas (CSO) with friction on the fiscal level, in particular with regard to social housing. The same thing for the Murabaha automobile and equipment contract were also validated by the CSO. Its standard contract contains 15 articles specifying the constraints of the customer and the bank, the bank's profit margin, the payment schedule, etc. The duration of the Mourabaha Auto contract should be aligned with the practices of traditional banks.

After three years of starting the activity of participatory banks, the Higher Council of Ulemas (CSO) validated the standard Murabaha contracts, but several products are still expected, such as Takaful, halal insurance. which consequently puts Ijara, ijara Mountahia Bittamlik and Istisna'a without a commercial reaction by the Moroccan participative banks given the high level of operational risk.

1-2-1 Murabaha contract

The murabaha contract can be defined as a contract of sale at cost plus a known profit margin agreed between buyer and seller (Azzini 2012). In a normal sale, the profit made by the seller is not disclosed. The normal sale where only the final sale price is disclosed is known as Mousawama. The Murabaha is the most common instrument used by Islamic banks, although some use the Mousawama. The main differences between the murabaha and a classic debt contract:

• In the Murabaha, the financier remains the owner of the asset and bears the underlying risk, (even for a short period) until the asset is resold to the client. It is therefore not a loan but a credit sales transaction.

• There is no reference to an interest rate. The financier is remunerated through a commission which does not compensate for the intrinsic value of the money but rather corresponds to the reward for the service rendered by the bank. This financing technique is widely used for the acquisition of assets when the client wishes to acquire a tangible asset such as a machine, a building or a stock[15].

1-2-2 Mourabaha Immobilier contract

The bank sells a specific asset owned by the bank to its customer at its acquisition cost plus a pre-agreed profit margin. The mechanism is therefore quite simple! As in the context of a real estate transaction, the client is obliged to sign a promise to purchase as part of a Murabaha financing. The margin is agreed in advance between the two parties according to several parameters (the socio-professional category of the client, the duration of the financing, the contribution and the amount of the property ...). Very advantageous rates within the framework of employer agreements or professional groups as well as property developers agreements can be offered to clients. However, it should be noted that the cost of crowdfunding remains higher in Morocco than in the context of traditional financing. On average, it is up to 15% more expensive excluding insurance, according to our calculations. However, "it is necessary to qualify, the arbitrage should not be limited to the price", will tell you the adviser in a bank branch participatory. There are other things to take into account. First of all, in the treatment of unpaid debts, a participatory bank will never charge you late fees or additional profit in the event of rescheduling". Under a traditional contract, arrears automatically generate additional costs. On the other hand, within the framework of Murabaha, the amount of the sale agreed in

[15] IZLANE CHIHAB& AMZA ZOUHAIR, Revue du Contrôle de la Comptabilité et de l'Audit ISSN : 2550-469X Numéro

the contract is immutable. Then, as part of an early repayment, "for ethical reasons, the bank may grant you a rebate on the remainder to be paid, without forgetting that no early repayment penalty will be applied". Finally, we must wait to find out what the mandatory "Takaful" insurance, which has not yet been launched in Morocco, will actually cost.

1-2-3 Mourabaha Auto contract

The Murabaha automobile contract comes with a promise to purchase. It is a document that the customer presents to his bank and in which he agrees to acquire the vehicle purchased by the bank and to accept the conditions relating to Hamish Al Jiddia (margin of sincerity). From this commitment, the bank begins the formalities for acquiring the property and debits the customer's account for the amount of this sincerity margin, the time for the preparation of the final contract and the transfer of ownership. The sum is returned directly to the customer once the contract is signed. If, within 30 days, the customer does not, the bank will take from the security deposit an amount equivalent to the damage caused. If the bank withdraws, the customer gets their deposit back and even has the right to claim damages. He also has the right to renege on his commitment until the bank has acquired the property. The banks are studying the part of the sincerity margin. It would be different depending on the establishment.

1-2-4 Murabaha equipment contract

The standard contracts were communicated to them at the same time as those for the automobile. The Murabaha Equipment contract contains 15 articles which determine the operating procedures of this credit, such as the acquisition and resale by the bank, the general and specific conditions of the operation, the obligations of each party. From an operational point of view, the customer who accumulates three successive unpaid debts is invited to regularize his situation within 8 days. If necessary, he is required to repay the arrears and the remainder at once. He also has the option of paying in advance, provided that the total or partial repayment is at least equal to 10% of the amount outstanding. The bank is not required to reimburse the share linked to its profit margin. Even if Mourabaha Equipment is linked to a Takaful insurance contract, it will still be marketed, despite the non-publication of regulatory texts. The Mourabaha Equipment financing contract must be accompanied by a unilateral promise to purchase. The security deposit is not compulsory.

1-2-5 Salam contract

A forward sale contract of a product by the financier to the customer with immediate payment, the price is advanced and the product is delivered later, on a date fixed in advance. The financial institution may, after receipt of the product covered by the first Salam sales contract, sell it under another parallel Salam sales contract concluded with a buyer for a specific product which must be of the same nature and have the following same characteristics as that of the first Salam sales contract. Salam is a sales contract with deferred delivery of the goods. Unlike the Murabaha, the Bank does not act as a seller on credit of the goods acquired on order of its relationship, but as a purchaser, with cash payment of a commodity that will be delivered to it eventually by its partner.

1-2-6 Istisna'a contract

Istisna'a is a progressive fundraiser. It is a manufacturing (or construction) contract under the terms of which the participant (seller) agrees to supply the buyer, within a certain period and at an agreed price, with specified goods after their manufacture (construction) in accordance with the specifications. charges. This financing technique is very suitable for financing infrastructure, construction of industrial or residential buildings, construction and equipment of factories or industrial complexes. In fact, the seller undertakes to provide the property within a specific timeframe and at a price agreed in advance according to the conditions issued during the preparation of the specifications. In return, the buyer agrees to pay the seller according to the progress of the work.

The parties involved in an Istisna'a contract are: the principal (Moustasni'i) and the company that will carry out the transaction (Sani'i) and the financial institution. The latter assumes responsibility for the proper execution of the operation. The bank's remuneration is linked to its performance and the responsibilities incumbent upon it in this capacity. Payment of the price of the work carried out can be made in advance or at the end of the operation when the property is handed over, or even in portions as the operation progresses .

1-2-7 Ijara contract

Ijara (or Ijarah) is a medium-term financing method whereby the bank buys machinery and equipment and then transfers the usufruct to the beneficiary for a period during which it retains title to these assets. The ijara is the equivalent of the leasing contract, the only point of difference in leasing, that there are no longer penalties for late payment in the event of non-payment of instalments, if not the concept interest exists and therefore, non-compliance with Sharia law. Also, under the Ijara contract, payment can only begin after possession of the property in question. Unlike a leasing contract, payment begins upon acquisition or purchases of the underlying asset by the lessor. On the other hand, in an Ijara contract, it is possible to determine the amount of each payment not in advance but on the date when the delivery of the underlying asset is expected. This flexibility makes this instrument particularly useful in the case of project finance, an activity where uncertainty about the future profitability of an investment project can be significant.

For economic operators, the advantages of Ijara are multiple. On the one hand, it allows them to renovate their obsolete or obsolete equipment and thus benefit from the latest technological developments 16 (SAINT-PIERRE and BENNAMARA 2012). On the other hand, it offers the advantage of avoiding long or medium term immobilization of part of their resources in the case of an acquisition that is self-financed or even financed by an investment loan. The Istisna'a, it is a business contract under which one party (Moustasnii) asks another (Sanii) to manufacture or build a work for him for remuneration payable in advance, in a fractional manner. or eventually.

1-2-8 Ijara Mountahya Bittamlik contract

Ijara Montahya Bittamlik consists in transferring, at the end of the rental, the ownership of the property, movable or rented building, to the customer according to terms agreed between the parties.

2 - Shariatic anomalies observed on participatory banks in Morocco

Criticisms have been levelled at the financial products marketed by participatory banks, and systematically raised in the Supreme Council of Ulemas and at Bank Al-Maghreb, these anomalies affected the operation of current accounts at the request of the customer, the Murabaha of the goods transported. the Automobile Murabaha, the Real Estate Murabaha and the Investment Depot and the Wakala Bil istithmar.

2-1 Five anomalies on the operation of the current account at the request of the customer

• Exemption from account maintenance fees, commissions for all banking operations and services for clients who have large demand deposits in their account, with regard to other clients classified as poor or medium in terms of deposit at seen. For example: Al Qard Al Hassan from customer to the bank, if the customer has drained a large sum from the bank; the customer is exempt from the bank's fees and commissions, which is of great benefit to the customer as he has drained and loaned a large deposit to the bank.

• The bank grants cash facilities like Qard Hassan against an irrevocable direct debit of salary.

• The bank agrees to pay DH 6 excl. VAT, the commissions for withdrawals moved by their clients' ATM cards to colleagues on condition that the client himself agrees to open a bank account and buy an ATM card. For each withdrawal made by the customer at the bank counters of colleagues, the bank bears the commission costs of 6 DH HT on each withdrawal operation; the customer is exempt from paying this commission, because the bank benefits from one side of demand deposit of their clients and on the other hand, the bank will generate bank profit from the commissions of charges kept on account and that of other services and banking operations "Provision, delivery of checks, bank transfer, etc.".

• The bank obliges the customer to open a bank account at his counter, obliging the customer to have his salary or income domiciled as a necessary condition subject to a reimbursement guarantee in the event of Mourabaha Real estate, automobile or equipment financing, without domiciliation of salary the bank does not grant the financing, because the bank does not want to have withdrawals from other banks, either conventional or participatory, given the profit that the bank can generate throughout the financing period, also, the guarantee and the management risk in the event of non-payment of due dates.

• The bank sells packs, the latter, contains several products and services whose objective is to exempt the customer from account maintenance fees and commissions on several banking transactions, without taking into consideration whether the customer will use these products and services. or not. The bank ensures several sales by a single sale by a single price even though the customer will not use them in full.

2-2 Four anomalies on the Murabaha contract for goods

• The signing of Murabaha contracts on raw materials and construction materials before quantifying, designating and delivering them to the bank. The latter signs the request with the supplier, by signing the Murabaha contract directly with the customer without taking into consideration whether the goods are real and exist before at the supplier. This kind of behaviour directly results in what is called in Arabic relative ATAWARUQ.

• The bank buys the raw material and the merchandise with the possibility of returning it to the supplier within a deadline if the end customer recedes; and sell it to the client through La Mourabaha before being owned by the bank. In case of signature of the final customer of Murabaha contract, the bank must settle the initial supplier within the period supplier does not become valid.

• The bank signs Murabaha contracts for goods without being paid by the bank to the supplier. The bank does not pay definitively the value of the goods until it ensures the signature of Murabaha contract and sell it to the customer, and in other cases the bank pays only part of an advance with the possibility of recovering it under the pretext that the request can be cancelled.

• The client pays an application fee for the study of his financing request.

2-3 Twelve anomalies on the Mourabaha Automobile contract

• The advance given to the car dealer is not returned to the customer as part of a compromise between the two parties before the signing of the Murabaha contract with the bank. The bank buys and sells the car for which the customer has paid for part of the car.

• The bank buys the car without paying for it in full, it only focuses on the customer's advance and sells it to the customer with a Murabaha contract, the bank pays the full amount of the car to the dealer only after having the guarantee that she will sell it to the customer.

• In the event that the customer pays the dealership upfront, the bank only pays the remainder of the price of the car. In this case the bank and the customer shared the purchase and payment for the car, after the bank and the customer sign the Murabaha contract only to notarize the debt.

• The non-designation of the vehicle with the non-existence of the chased number of the car in the bank request.

• The car is not actually designated as there are times the car does not exist at the dealership.

• On the request of the car made by the bank, the name of the customer is integrated on the basis that the bank requests the car by the name of the customer.

• The purchased car is not mortgaged, which can generate a risk of non-repayment of credit by the customer; because the latter has a possibility of reselling it to a third person and having cash which comes down to the question of organized Tawaruq, this operation can affect new cars and used cars.

• The bank buys the car on condition that the end customer completes the operation while the dealer receives his money only after signing the Mourabaha Automobile contract, this contract can be cancelled which therefore amounts to the dealer cancelling the sale as well.

• The customer pays the costs of financing Mourabaha automobile

The bank obliges the customer to domiciled his salary or income as an obligatory condition, ie of solvency, instead of receiving direct debits from the counterparts of conventional banks.

• The bank gives a discount on their commercial margin on condition of domiciling his salary or his income, of which the bank benefits from sight deposits of his client and the deductions of commissions on the various operations and services in order to make profitable the net banking profit.

• The bank made a rebate on their commercial margin at the level of the Murabaha on the basis of the amount of demand deposit drained by the customer into his account, the largest depositors of which benefit from this advantage n while the small depositors no longer benefit from this discount.

2-4 Nine anomalies on the Mourabaha Immobilier contract

• The signing of the sale between the customer and the bank on the same day that the bank buys the property from a real estate developer or a seller as a natural person, before the property being financed will be registered in the name. of the participatory bank with the land conservation and to have a certificate of ownership in the name of the bank, for the following reasons: - the customer can cancel the sale within the period of 3 weeks to 2 months, depending on the situation of preparation of a financing file, for example the property being financed can be mortgaged by a bank which delays the release. - the bank avoids bearing the cost of capital during the period of payment of the property by the bank and the first payment of the due date, the bank prefers to take advantage of investing this capital during this period because during this period the bank does not generate no profit.- the saving on the cost of capital during this period, this allows the bank to offer a Murabaha product with less commercial margin, which will promote the competitiveness of financing and receive more customers.

• The profitability at the level of the Mourabaha Immobilier contract also includes the administrative expenses of the purchase of the property by the bank "Notary, registration fees, land conservation ...". While the customer must pay these expenses to the bank on a one-off or monthly premium without being increased by additional profits on another due date from the expenses of the operation of the purchase by the bank.

The bank receives from the notary a commitment to no longer deliver the check to the seller of the object of financing until the sale transaction is final, that is to say that the asset will be in the name of the customer and the mortgage was established in favor of the bank ranked first. In this form, that the payment of this real estate transaction is not made to the seller or the real estate developer until after the property has been registered in the name of the client and the mortgage has been established in favor of the bank. The completion of the first sale and its payment to the seller or to the property developer only takes place after the establishment of the Murabaha contract, the guarantee of non-cancellation of the contract and its mortgage in favor of the bank in the first rank.

• The non-termination of the sales agreement between the two parties, between the first seller and the end customer and the non-return of the notary of the advance given by the customer, therefore, the sale price of the property is less than the counterpart of the amount of the advance. The bank must terminate the old compromise via the notary and it pays the entire transaction to the first seller without the amount of the sale being deducted from the advance that the seller or the promoter received from the client.

The customer pays the costs of the Mourabaha financing object

• The client pays the amount of the appraisal of the property subject to Murabaha financing.

• The bank obliges their client to domiciliate their salary and their income by opening a bank account, from which the bank will benefit from deposit, the cross-selling of their financial product, and to withdraw the due date without being made wait to receive it from another bank.

• The bank gives a discount on their commercial margin on condition of domiciling his salary or his income, of which the bank benefits from sight deposits of his client and the deductions of commissions on the various operations and services in order to make profitable the net banking profit.

• The bank made a discount on their commercial margin at the level of the Murabaha on the basis of the amount of demand deposit drained by the customer

2-5 Three anomalies on investment deposits and Wakala Bil Istithmar

• The participatory bank invests the investment deposits and wakala Bil istithmar deposits without a global envelope, amalgamated between a new or an old Murabaha. A new Murabaha remains a real investment subject to a real commercial transaction of real estate and automobile via a debt sale. An old Murabaha remains an old and finished commercial transaction, so the bank cannot invest in this case, because the good is in the property of the client which is not possible to make it available to the investor without his face value without any profit for the investor, which will make debt transfer impossible.

• The bank distributes dividends according to an amalgamation of an envelope or what is called a "unified envelope", or quite simply, the mixture between a new and an old Murabaha. So the dividends distributed for a new Murabaha remains logical and rational, but for the old Murabaha, the dividends cannot be in this case for the new investors because their deposit is not used in this envelope.

The participatory bank uses the deposits in the framework of investment deposit and that of Wakala Bil istithmar in the redistribution of funding in three forms:

- Debt payment of invested capital (due)
- Debt payment from Wakala Bil Istithmar
- Payment for withdrawal of sight deposits used by the bank for long-term financing.

CONSLUSION:

Financial profitability in participatory banking is omnipresent in their activity, competitive intelligence remains an important point in the development of participatory banking in the Moroccan banking market, gaining banking market share remains among the primary objective in the strategy of growth in the face of a conventional banking system that is stronger and more dominant in the market, which can push participatory banking in Morocco to be more aggressive at the commercial level by seeking to gain market share and financial profitability, which may deflect the Moroccan banks and participatory windows towards practices deemed non-compliant by Islamic law.

The quality of the compliance of participatory products and their compliance with the precepts of Islam is a cornerstone for the Moroccan consumer, the latter has taken a long time to see the day of participatory banks installed in Morocco, also, respect for precepts of Islam by participatory banks take care of the image and reputation of Islamic finance and ensure the sustainability of development because the fight for this young participatory financial industry in Morocco is very long and difficult in a banking market very dominated by conventional bank and a portfolio of highly discerning customers. The shortcomings and anomalies deducted from practices or Islamic financial products by Moroccan banks and participatory windows during five years of operation can be a brake on the development of the evolution of the activity of participatory banking in Morocco. The character of compliance with Islamic law remains an important factor in the reputation and image of participatory finance in Morocco**.**

The Sharia Board in Morocco has a special character and a unique model by its status of independence, the CSO has made a lot of efforts to validate the contracts of participatory products in order to satisfy the need of Moroccan customers thirsty for products. in accordance with Islamic law, also, to satisfy the activity of participatory banks to ensure their development and the construction of their image in the Moroccan banking market. The Moroccan participatory finance ecosystem is still under construction, the lack of certain contracts and products, for example, Takaful hinders the smooth running of the commercial activity of the participatory bank, as well as the control of operational risk.

The role of senior council of Ulemas is important in the development of Moroccan participatory finance, either in terms of the speed of validation of standard contracts for products that a large niche of the population is waiting for, especially for small and medium-sized ones. company which dominates almost 85% of the national economy.

Financial profitability in participatory banking is omnipresent in their activity, competitive intelligence remains an important point in the development of participatory banking in the Moroccan banking market, the gain in banking market share remains among the primary objective in the strategy of growth in the face of a stronger and more dominant conventional banking system in the market, which can push the participatory bank to be more aggressive at the commercial level by seeking to gain market share and financial profitability, which can divert the participatory banker towards practices deemed by Islamic law to be non-compliant.

The training of trades people on the Shariatic side is strongly requested by Moroccan participatory banks, because most of the recruitments have been made from former employees of the traditional bank, while the mechanism, operation and commercial interest are different in Islamic banking. Also, it should be noted that the Murabaha of the raw material has several characteristics especially in terms of the reception of the goods which is done on slices and so that the operation is one hundred percent compliant with the Sharia in a certain vigilance in term of this type of Murabaha raw material contract, requiring rigorous monitoring by the participatory bank.

The quality of the conformity of participatory products and their conformity with the precepts of Islam is a cornerstone towards the Moroccan consumer, the latter took a long time in order to see the light of the participative banks installed in Morocco, also, the respect of precepts of Islam by participatory banks look after the image and reputation of Islamic finance and ensure sustainability of development because the fight of this young participatory financial industry in Morocco is very long and difficult in a banking market very dominated by the conventional bank and a portfolio of very discerning customers. The shortcomings and anomalies deduced in relation to Islamic financial practices or products in Moroccan banks may be a brake on the development of the development of the activity of participatory banking in Morocco. The character of compliance with Islamic law remains an important factor in the reputation and image of participatory finance in Morocco.

The discussion on Sharia law and participatory banking in Morocco raises open questions about participatory windows, after three years of activity, it is time for these participatory Windows in Morocco to become a participatory bank and to have independence. of their parent company, especially since their operation poses a certain uncertainty in terms of Sharia law because communication and production are accounted for through participatory windows and charges and expenses are recorded by their parent company. This convertibility proposal can only harmonize the environment of participatory banking in Morocco. The Moroccan participatory bank must have a distance from the creative bank, the latter seeks financial profitability which can deflect the Shariatic commitment by trades people under the effect of pressure from the achievement of commercial objectives by ensuring a GNP (Profit Net Banking) sufficient for the bank to ensure development over time and escape from there under performance of their participatory banking agency. The time has come to give the green light to foreign Islamic or participatory banks to set up in Morocco with a higher council of Ulema characterized by its model of independence (Unique) of validation of contracts vis-à-vis stakeholders in the Moroccan participatory banking system. The discussion on Sharia and the participatory bank in Morocco poses open questions to us on the participatory windows, after five years of activity, it is time for these participatory Windows in Morocco to become a participatory bank and to have independence of their parent company, especially since their operation poses a certain uncertainty at the level of the sharia because the communication the production is accounted for by the participatory windows and the charges and expenses are accounted for by their parent company. This convertibility proposal can only harmonize the environment of participatory banking in Morocco.

The Moroccan participatory bank must have a distance from the creative bank (conventional bank), the latter seeks financial profitability which can deviate the Chariatric commitment by tradespeople under the effect of pressure from the achievement of commercial objectives by ensuring a GNP (Net Banking Profit) sufficient for the bank to ensure development over time and escape from there under performance of their participatory banking agency.

After five years of the introduction of participatory banks and windows on the Moroccan banking market, the market share still remains low at 1% and far from the expectations of stakeholders in Morocco, the search for financial profitability is essential to ensure development on the Moroccan participatory banking market, which comes back to the question of how participatory banks and windows can gain their market share and achieve their financial profitability while ensuring compliance with their Shariah commitment (products and practices) and promoting their development in the Moroccan market. 'coming ?

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