

Controlling Islamic Financial Engineering with Reasoning and Rationale

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Praise be to Allah, and prayers and peace be upon the Messenger of Allah, his family and companions, and those who are loyal to him.

This research is on (Controlling Islamic Financial Engineering with Reasoning and Rationale), which I believe in its significance and the need of workers in the economic sector for it in light of the dominance of the usurious capitalist economy generally over the financial institutions in the world.

Introduction

This research paper aims at clarifying the meaning of Islamic financial engineering and explaining the difference between traditional and Islamic financial engineering as well as *Hiyal* (trickery). In addition, it explains the importance and objectives of Islamic financial engineering and aims to establish a standard for it. The methodology followed in this research paper is the inductive analysis approach. Financial engineering is the design, development, and implementation of innovative financial instruments and mechanisms, and the creation of innovative solutions for financing problems.

Islamic financial engineering is a set of activities that include the design, development, and implementation of each of the innovative financial instruments and processes, in addition to the creation of innovative solutions for financing problems, all within the framework of Islamic *Sharia* directives.

Islamic financial engineering includes the following: (i) Creating new financial instruments; (ii) Creating new financing mechanisms; (iii) Creating new solutions for financing management, such as liquidity or debt management, or preparing financing forms for specific projects that fit the project's circumstances; and (iv) The innovations referred to the previous elements, whether in financing instruments or processes, should be *Sharia* compliant and distant from jurisprudential differences as much as possible, which will characterize them with *Sharia* credibility.

Financial engineering is the most appropriate tool that can provide effective support to achieve the strategic goals of businesses. Islamic financial engineering and traditional financial engineering are both important; however, Islamic financial engineering has several factors that increase its significance, such as compliance with *Sharia*, protecting the economy from shocks. The relationship between Islamic financial engineering and forbidden trickery is a contrast. *Hikmah* (rationale), in my opinion, is the most important control by which Islamic financial engineering can be disciplined.

The Significance of the Topic

Islamic financial engineering is considered one of the key constituents of Islamic banking at this time, as the ability of Islamic financial institutions to compete depends on two factors: the ability to subject traditional products to *Sharia* controls while maintaining their attractiveness and feasibility; and the ability to innovate new products with *Sharia* controls that achieve attractiveness and feasibility. Both factors depend on the effectiveness of Islamic financial engineering.

Anyone interested in Islamic economics realizes the magnitude of the challenge and pressure faced by Islamic financial institutions from traditional financial institutions that do not adhere to *Sharia* controls. Such a challenge has forced many Islamic banking engineers to approach the red lines to be able to compete.

Jurists and *Sharia* researchers must clarify the red lines so that things fall into place and these lines are not crossed, and the Islamic financial institutions are not restricted by other institutions, so they lose their ability to compete and challenge.

I hope that this research is an effective and beneficial contribution that shows Allah's boundaries, and helps the Islamic banking engineers to carry out their role away from complicity with what Allah has forbidden either explicitly or by deception.

Research objectives

The research objectives are summarized as follows:

1. Defining Islamic financial engineering.
2. Explaining the difference between traditional and Islamic financial engineering.
3. Stating the objectives of Islamic financial engineering.
4. Highlighting the importance of Islamic financial engineering.
5. Explaining the difference between Islamic financial engineering and forbidden trickery.
6. Establishing a standard for Islamic financial engineering.

Research Methodology

In this research, I will follow the inductive analysis approach.

Research Plan

An introduction that includes three sections

Section (1): The Importance of the Topic.

Section (2): The Research Plan.

Introduction to the definition of financial engineering which includes two sections:

Section (1): The definition of financial engineering.

Section (2): The definition of Islamic financial engineering.

First Research Topic: The objectives of financial engineering, divided into two sections:

Section (1): The objectives of financial engineering.

Section (2): The objectives of Islamic financial engineering.

Second Research Topic: The importance of financial engineering, divided into two sections:

Section (1): The importance of financial engineering.

Section (2): The importance of Islamic financial engineering.

Third Research Topic: The difference between Islamic financial engineering and forbidden trickery.

Fourth Research Topic: Controlling Islamic Financial Engineering with Reasoning and Rationale.

Conclusion: Includes a summary of key research results.

References

Introduction: Defining Islamic Financial Engineering

Section (1): the Definition of Financial Engineering

Definition of Engineering as a term: The word engineer (Latin *ingeniator*) is derived from the Latin word *ingeniare* ("to create, generate, contrive, devise") and *ingenium* ("cleverness").

In the Intermediate Lexicon: (Engineering) is defined as the mathematical science that investigates lines, dimensions, surfaces, angles, quantities or physical quantities in terms of their properties, measurements, or evaluations, and their relationship to each other.

There are many types of Engineering in the Intermediate Lexicon:

- Theoretical Engineering, which corresponds to the principles and academic foundations related to the properties of the matter, the sources of natural forces and the ways of using them to achieve material purposes.
- The Applied or Practical Engineering is the art of making use of scientific principles and academic foundations in building, organizing and evaluating things.

Practical Engineering has types, each with a specific purpose, including mechanical engineering, electrical engineering, military engineering, metallurgy engineering, chemical engineering, and civil engineering, such as architecture, road and bridge engineering, railroad engineering, sanitary engineering, and agricultural engineering. It also includes genetic engineering and financial engineering, and the combination of these types and terms is the term (engineering), which refers to building this science on academic foundations, not on fabricated lies. The Intermediate Lexicon defines the term "engineer" as the person who designs and builds channels on scientific foundations.

Definition of the term "money": 'Lisan al-Arab', (The Arab Tongue) defines money as what you own of all things. Ibn Atheer defines money in origin as what is owned of gold and silver, then proceeded to add that it is everything that is owned in terms of properties, and most of the money among Arabs was camels because they composed the most of their wealth.

Definition of Financial Engineering

Financial Engineering is an economic term that economists say is a profession and an application that is as old as financial transactions, but as a contemporary term, Dr. Sami Al-Suwailem claims: "Financial Engineering is a concept that is as old as financial transactions, but it may seem relatively recent in terms of the terminology and specialization.

It has several definitions, and I will only present the most famous ones:

Definition of Finnerty: Financial engineering is concerned with designing, developing and implementing innovative financial processes and instruments, and providing creative and innovative solutions for financial problems.

Definition of the International Society of Financial Engineers:

Financial engineering involves the development and innovative application of financial theory and financial instruments to find solutions to complex financial problems and to exploit financial opportunities.

Nashat Abdel Aziz, the investment expert, defines financial engineering as: "Designing, developing and applying modern financial processes and instruments, and providing creative and innovative solutions to economic and financial problems. Its role is not limited to only new products, but also extends to attempts to adapt old tools and ideas to serve the objectives of business establishments."

Dr. Sami Al-Suwailem selects the definition of some researchers of financial engineering as the design, development, and implementation of innovative financial instruments and mechanisms, and the creation of creative solutions for financing problems. In this regard, Al-Suwailem thus indicates that financial engineering includes three types of activities:

First: Creating new financial instruments, such as credit cards.

Second: Creating new financing mechanisms that would reduce procedural costs for existing businesses, such as exchange through the global network.

Third: Creating new solutions for financing management, such as liquidity or debt management, or preparing financing forms for specific projects that fit the project's circumstances.

The intended innovation is not merely a difference from the prevailing one, but rather, distinct to the extent that it achieves a better level of efficiency and perfection. Therefore, the innovative financing instrument or mechanism must achieve what the prevailing instruments and mechanisms can achieve

Accordingly, the concept of the financial industry can be summed up as: innovation for financial solutions. It focuses on the element of innovation and renewal. It also provides solutions, so it satisfies the existing needs or exploits opportunities or idle resources. Being financial determines the field of innovation in economic activities, whether in exchange or financing.

Section (2): the Definition of Islamic Financial Engineering

Fatth Al-Rahman Ali Muhammad Salih defines it as "a set of activities that include the design, development, and implementation of each of the innovative financial instruments and processes, in addition to the creation of innovative solutions for financing problems, all within the framework of Islamic *Sharia* directives."

Dr. Abdul-Karim Kunduz believes that the definition of Islamic financial engineering is the same as the definition of traditional financial engineering, with the addition of the restriction (that innovation and development should be compatible with Sharia regulations). He added: "By referring to the definition of traditional financial engineering, which means "the set of activities that include the design, development, and implementation of each of the innovative financial instruments and processes, in addition to the creation of innovative solutions for financing problems".

We can come up with a clear definition of the term Islamic financial engineering, by adding one condition to the previous definition; i.e. the innovation and development should be *Sharia* compliant.

In another place, researcher Abdul-Karim Kunduz defines Islamic financial engineering as: “The innovation and development of financing instruments and mechanisms within the framework of Sharia regulations.”

Looking at the previous definitions of Islamic financial engineering, it becomes clear that it involves the following aspects:

- 1- Creating new financial instruments.
- 2- Creating new financing mechanisms.
- 3- Creating new solutions for financing management, such as liquidity or debt management, or preparing financing forms for specific projects that fit the project’s circumstances.
- 4- The innovations referred to previously, whether in financing instruments or processes, should be *Sharia* compliant and distant from jurisprudential differences as much as possible, which will characterize them with *Sharia* credibility.
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First Research Topic: the Objectives of Financial Engineering

Section (1): the Objectives of Financial Engineering

Based on the foregoing, the objectives of financial engineering are summarized in providing creative and innovative solutions to economic and financial problems through:

- (1) Creating new financial instruments, such as credit cards.
- (2) Creating new financing mechanisms that would reduce the procedural costs of existing businesses, such as exchange through the global network.
- (3) Creating new solutions for financing management, such as liquidity or debt management, or preparing financing forms for specific projects that fit the project’s circumstances.

Section (2): the Objectives of Islamic Financial Engineering

- 1- The objectives of Islamic financial engineering are consistent with the objectives of traditional financial engineering, except that its solutions and innovations are required to be *Sharia* compliant.
- 2- One of the objectives of Islamic financial engineering is to help Islamic financial institutions to compete in a huge market dominated by non-compliance with Sharia Regulations.

- 3- Another objective is to help Muslims adhere to Allah's boundaries by creating *Sharia*-compliant solutions and innovations by which they can achieve their economic interests while adhering to the *Sharia* Regulations set by Allah at the same time.
- 4- Among the objectives of Islamic financial engineering is to highlight the advantages of a committed Islamic economy, and its ability to create practical solutions to the world's economic problems.
- 5- Whenever Islamic financial engineering provides *sharia*-compliant alternatives to banned financial transactions and the Islamic governments implement and adhere to them, this will be one of the greatest reasons to protect their economies from being affected by the successive suffocating economic crises.
- 6- When Islamic financial engineering highlights the Islamic economic system, this constitutes a great call for this comprehensive and transcendent religion, which addresses the world's economic problems. This call is even greater when it emerges in times of economic crises, and when the world searches for a savior, and only finds it in this perfect religion.

Second Research Topic: The Importance of Financial Engineering

Section (1): the Importance of Financial Engineering

Several researchers refer to an article by one of the pioneers in modern management, Drakar Peter, published in *The Economist* under the title "Innovation or Death". In this article, the writer warns that the financial industry today is facing a decline in profitability and deterioration in product quality, and calls for restoring the spirit of innovation and renewal.

The author points out in this article that the reason for the prosperity of financial markets and institutions in the recent past is financial innovations; however, these products turned after their popularity and prevalence from profitable products to low-profit or even losing common products. Then he recommends that if such products were to rise from their deteriorating state, the following two paths shall be followed:

- 1- Importing new items and ideas from outside the field.
- 2- Financial institutions should reinvent themselves, to be creative and innovative of new products.

This role is played by financial engineering.

The Researcher Abdul-Karim Kunduz summarizes the role and importance of financial engineering by saying: "Financial engineering is thus the most appropriate tool that can provide effective assistance to achieve the strategic goals that businesses plan for".

If financial crises and economic shocks are a feature of the capitalist economy that dominates the world today, then every crisis economic disaster that occurs highlights the role of financial engineering as a savior and healer, as it is concerned with designing, developing and applying innovative financial processes and instruments, in addition to providing creative and innovative solutions to financial problems, as defined by Finnerty.

The financial industry, like other industries, needs development, renewal and innovation, which has become a feature of modern civilization. Unless the financial industry develops its mechanisms, addresses the problems of its instruments, and initiates the creation of attractive effective instruments, with rewarding returns, and few risks, it will face many problems, and there is no doubt that financial engineering is the party that it is hoped to play this role as mentioned in its definition.

Section (2): the Importance of Islamic Financial Engineering

Islamic financial engineering and traditional financial engineering are both important, however, Islamic financial engineering has several factors that increase its significance, including:

- 1- It helps attaining the pleasure of Allah and the worship of people to their Creator by adhering to His commands, avoiding His prohibitions, and following the *Sharia* with regard to financial transactions, as it provides *Sharia*-compliant financial transactions, in addition to addressing and correcting banned traditional financial transactions to be *Sharia* compliant.
- 2- Whenever the world goes through financial crises and economic shocks, the opportunity is favorable for Islamic financial engineering to market *Sharia*-compliant financial transactions as a remedy for the causes of those crises, and an alternative to the transactions leading to these problems.
- 3- Whenever Islamic financial engineering provides *sharia*-compliant alternatives to banned financial transactions and the Islamic governments implement and adhere to them, this will be one of the greatest reasons to protect their economies from being affected by the successive suffocating economic crises.
- 4- When Islamic financial engineering highlights the Islamic economic system, this constitutes a great call for this comprehensive and transcendent religion, which addresses the world's economic problems. This call is even greater when it emerges in times of economic crises, and when the world searches for a savior, and only finds it in this perfect religion.

Third Research Topic: The Difference between Islamic Financial Engineering and Forbidden Trickery (*Hiyal*)

If we want to know the difference between the previously defined Islamic financial engineering and trickery, then we have to know trickery definition, a brief summary of its divisions in addition to the ruling on using it.

Hila (trick) lexically means cleverness, sharp-wittedness, and the ability to act accurately.

In Taj Al-Aros and AlMesbah, *Hila* (trick) means the skill in managing matters, which is the fluctuation of thought until it is guided to what is intended. According to Al-Ragheb, *Hila* (trick) is that which leads to achieving the purpose but in ambiguity.

Hila in philosophy:

Ibn Taymiyyah, may God have mercy on him, said: The trick mean the forfeiture of the duty, or making legitimate of the forbidden.

Al-Shatibi, may God have mercy on him, said: Referring in a seemingly legitimate or unjustified way to overturn a ruling or turn it into another ruling, so that it does not fall or is not reversed except with that intermediary, so you do it in order to reach that intended purpose, knowing that it is not legitimate. Therefore, trickery entails two actions, namely overturn a ruling or turn it into another ruling; and making the action intended in law to have certain meanings to mean other things.

These two definitions are given the general meaning of trickery before they are divided into forbidden trickery, and permissible trickery sometimes called legitimate exits. The permissible trickery or legitimate exits are: everything that leads to a way out of distress and embarrassment in a legitimate, legal way.

This definition of permissible trickery or legal exits is the exception from the general definition of trickery, except for this exception, trickery is forbidden. Moreover, this distinction between forbidden trickery and permissible trickery or legal exits is the rule (in a legitimate, legal way), but this aspect of what *fiqh* scholars differ about is explained by their differences in the applications of trickery. While some sects expand in adopting trickery, other sects do not, based on their regulation of permissible trickery.

The difference between Islamic financial engineering and trickery:

With the previous definitions of Islamic financial engineering, it becomes clear that it includes the following:

- 1- Creating new financial instruments
- 2- Creating new financing mechanisms
- 3- Creating new solutions for financing management, such as liquidity or debt management, or preparing financing forms for specific projects that fit the project's circumstances.
- 4- The innovations referred to previously, whether in financing instruments or processes, should be *Sharia* compliant.

Looking at the first two points that are included in Islamic financial engineering, it is noted that there is no relationship between them and jurisprudential trickery, as trickery is the search for ways out of legal distress and embarrassment, and these instruments and mechanisms have not been preceded by legal interdiction.

As for the third point, which is the creation of new solutions for financial management in accordance with Sharia, it is the subject of the relationship between Islamic financial engineering and doctrinal trickery, provided that the requirement of Sharia approval in innovative solutions for financial management makes Islamic financial engineering related to permissible doctrinal trickery or legitimate exits without forbidden trickery.

However, it is a relationship between a general and a specific, as permissible trickery are more general than Islamic financial engineering. Permissible trickery may be in marriage, divorce, oaths and vows, and these have nothing to do with financial engineering. If permissible trickery is in creating solutions for financial management, then they are Islamic financial engineering.

When financial engineering is called Islamic, then this restriction must be regulated by the controls of permissible trickery. If these regulations are not adhered to, then it is not part of Islamic financial engineering, and if it is issued by a researcher or a Sharia board, the point is the adherence to the legal controls, not the name that the researcher or the entity bears.

Sometimes *Sharia* researchers, members of *Sharia* bodies, members of jurisprudence councils, *fatwa* bodies, scholars and students who are engaged in the jurisprudence of financial transactions have differences due to some people's non-compliance with the controls of trickery and *Sharia Makharij* (maneuvers). This makes their work fall within forbidden tricks, and the dispute may be based on the opinion differences of scholars regarding the guidelines for *Sharia Makharij*, which is the same reason why the followers of sects differed in the past in the types of trickery, 'Are they what is permissible or what is forbidden?'

Fourth Research Topic: Controlling Islamic Financial Engineering with Reasoning and Rationale

Perhaps it is appropriate, in preparation for this topic, to emphasize that the *Sharia* rulings were appropriate to the exalted wisdom of Allah the Almighty, His encompassing knowledge, and His mercy that includes everything. Allah, Glory be to Him, has decided this meaning in many places in the Holy Quran, where He has imposed quite a few of His rulings on His servants by reminding them of His knowledge and wisdom. God Almighty said when legislating the right oath.

What brings peace and tranquility to a Muslim, and makes it easy for him to bear *Sharia* obligations, God Almighty says when legislating the oath-trickery: "Allah has mandated for you the dissolution of your oaths. And Allah is your Master. And He is the Knower, the Wise" (At-Tahrim – 2)

In some heritage verses, Allah decides: "Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sisters) the mother has a sixth. (The distribution in all cases ('s) after the payment of legacies and debts. Yet, know not whether your parents

or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-knowing, Al-wise. In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to anyone). Thus is it ordained by Allah; and Allah is All-knowing, Most Forbearing". (An-Nisa – 11-12).

When Allah mentioned women, He says: "Also (prohibited are) women already married, except those whom your right hands possess: Thus hath Allah ordained (Prohibitions) against you: Except for these, all others are lawful, provided ye seek (them in marriage) with gifts from your property,- desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, agree Mutually (to vary it), there is no blame on you, and Allah is All-knowing, All-wise".(An-Nisa – 24)

And in the judgment of manslaughter, the Almighty says: " Never should a believer kill a believer; but (If it so happens) by mistake, (Compensation is due): If one (so) kills a believer, it is ordained that he should free a believing slave, and pay compensation to the deceased's family, unless they remit it freely. If the deceased belonged to a people at war with you, and he was a believer, the freeing of a believing slave (Is enough). If he belonged to a people with whom ye have treaty of Mutual alliance, compensation should be paid to his family, and a believing slave be freed. For those who find this beyond their means, (is prescribed) a fast for two months running: by way of repentance to Allah: for Allah hath all knowledge and all wisdom".(An-Nisa – 92)

There are many examples in defining this fact, that there is a divine wisdom in Allah's commands and prohibitions and all his other rulings varies in forms. In acts of worship, it may appear and become apparent, and it may be hidden from the obligated one despite its existence and the emphasis on submission to what is sensible of it and what is unreasonable, which is what the scholars call devotional reasons.

They are the reasons in which the person in charge believes in the perfection of God's wisdom, knowledge and mercy in the legitimacy of His rulings, even if he does not comprehend the wisdom and mercy in them, then he follows faith with submission and obedience. Al-Bukhari on the authority of Abes bin Rabi'ah on Umar ibn Al-Khattab, may God be pleased with him, that he came to the Black Stone and kissed it and said: I know that you are a stone that does not harm or benefit, and had it not been for the fact that I saw the Prophet, may Allah's prayers and peace be upon him, kissing you, I would not have kissed you.

With regard to financial transactions, wisdom, in most cases, become apparent to everyone, and it may not become evident except for some people of knowledge, investigation and scrutiny. The Sheikh of Islam Ibn Taymiyyah, may God have mercy on him, said: "And the prohibition of differentiation becomes evident in true hadiths and for the majority of the nation, but Allah and His Messenger in Sharia has the

extreme wisdom, complete grace and general mercy; which may be hidden from many scholars".

Wisdom is the real reason that motivates the Sharia ruling, even if the legislator arranged the ruling on an apparent cause that is the suspicion of obtaining wisdom, for wisdom may be hidden from many people, and it may appear and people vary in its assessment. His servants, just as he claimed to establish the proof by linking the ruling to an apparent matter whose appearance there is no doubt, and there is no argument for denying it.

Reducing hardship is what motivates travel permits, but hardship is something that is hidden and varies, and it may appear and people vary in their estimation, and so the wise legislator arranged those permits clearly based on the risk of hardship, which is travel.

Financial transactions' principle, as the majority of scholars have decided, is permissibility, and it does not depart from it except what evidence indicates as exclusion and prohibition, such as usury, deceit, fraud, etc. These forbidden practices are prohibited for huge reasons that the eye of the jurist does not miss, and fully understand; such as devouring people's money unjustly, stirring up animosity, hatred and rivalries among believers, distributing wealth on unjust bases, disrupting production... and other things that are known to be misleading.

Since these evils are grave, Islam came with its prohibition and the prohibition of its means, and the contracts that lead to it. The Prophet said: "May Allah curse the Jews! The fats were forbidden for them, so they melted the fat and sold it." This Hadith is recorded in the Two Sahihs. Allah says: "For the iniquity of the Jews We made unlawful for them certain (foods) good and wholesome which had been lawful for them;- in that they hindered many from Allah's Way;" "(An-Nisa – 161)

Sheikh Abd al-Rahman al-Saadi, may God have mercy on him, said when explaining this verse: "then (by way of punishing them) on account of the transgression of those who judaised, We made unlawful to them certain of the good and pure things which had been allowed to them before, and that too on account of their causing hindrances to many (people, and their own staying away) from Allah's way.

And he said in another place: For usury was not forbidden because of its form and term, but rather it was forbidden because of its reality, which is distinct from the reality of the sale, so that reality where it was found prohibition in any form and in which word it was expressed. The issue is not in the names and forms of contracts, but in their facts, purposes, and what they were contracted for.

Since the prohibition was for eating fat, and cursing was due to the legalization of the price of selling it, the ruling is then related to God's wisdom, for God Almighty punished them for their bad deeds by forbidding them to eat fat, and cursed them for selling it. Based on the reason, and accordingly, whoever cares about observing the reason rather than the wisdom will have a share of the actions of the Jews whom God Almighty cursed for violating the wisdom of the prohibition, even if they did not violate the reason for the prohibition.

Similar to this Allah's Apostle appointed somebody as a governor of Khaibar. That governor brought to him an excellent kind of dates (from Khaibar). The Prophet asked, "Are all the dates of Khaibar like this?" He replied, "By Allah, no, O Allah's Apostle! But we barter one Sa' of this (type of dates) for two Sa's of dates of ours and two Sa's of it for three of ours." Allah's Apostle said, "Do not do so (as that is a kind of usury) but sell the mixed dates (of inferior quality) for money, and then buy good dates with that money."

This rule can be applied to the so-called *Murabaha* sale to the person ordering the purchase, which is the customer asks the bank to buy a specific commodity with the specifications he determines on the basis of a promise from him to buy that commodity necessary for him to buy *Murabaha* at the rate they agree upon and it has occurred and he pays the price in installments according to his capabilities. Islamic banks in this transaction are between two risks:

1. The risk of the customer (the person ordering the purchase) taking back his promise to buy leaving the bank stuck with a commodity that it has no need for, but rather it is the need for a specific person.
2. A *Sharia* risk of making the sale contract to the customer before owning the commodity, which collides with the prohibitive texts, such as the hadith of Hakim bin Hizam, may God be pleased with him, who asked (the Prophet): Messenger of Allah, a man comes to me and wants me to sell him something, which is not in my possession. Should I buy it for him from the market? He replied: Do not sell what you do not possess." Also Abd Allah b. 'Amr reported the Messenger of Allah as saying: The proviso of a loan combined with a sale is not allowable, nor two conditions relating to one transaction, nor profit arising from something which is not in one's charge, nor selling what is not in your possession." Narrated 'Amr b. Suh'aib

This is what made Islam seek to engineer this contract in a way that eliminates the risk of getting entangled with goods that the bank do not need when the purchaser breaks his promise and retracts the purchase of the goods, provided that this engineering does not clash with the legal texts. Some Islamic financial engineers responded to this and invented a modified modality that takes into account both matters in their view. This modified modality is based on obligating both the bank and the purchaser to fulfill their promise to conduct the sale contract after the bank owns the commodity. This modality is applied by a number of Islamic financial institutions.

Dr. Sami Hassan Mahmoud claims that: There are those who see the necessity of the promise to the two parties to the agreement, namely the obligation of the orderer to buy what he promises to buy what he ordered, as well as the obligation of what is required of him to sell what he buys at the request of the orderer, and this opinion is what the Fatwa Committee in the Hashemite Kingdom of Jordan took when discussing the draft law of establishing the Jordan Islamic Bank, as well as the Kuwait Finance House and Dubai Islamic Bank, which is an opinion that is justified in terms of fulfilling promises, as it is consistent with the direction chosen by the Jordanian civil law derived from Islamic jurisprudence in terms of considering a promise as binding.

He also says: The Jordanian experience had a clear impact in introducing the concept of a binding promise on the sale of Murabaha to the one who ordered the purchase, through what the Jordanian model presented for this image when the Islamic Bank Law No. 13 of 1978 was issued. The Fatwa Committee commissioned by His Excellency the Minister of Awqaf to study the bank's draft law adopted the opinion that a promise is binding, given that judicial obligation to make a promise is a well-known matter in Maliki jurisprudence. A promise of a contract is considered binding on the one who promises who is under a financial obligation to conclude the sale based on the promise.

Also, the saying that a promise is necessary to spend is also transmitted from Ibn Shubrama. In view of what leads to saying that the promise is necessary to fulfill the stability of transactions and pay for the damage that the Islamic bank may suffer as a result of the failure to complete the sale in what the person ordered to purchase of goods or equipment that may not be valid for anything other than the purpose for which he requested it. The researcher concluded that a promise is necessary to avoid harm, achieve the stability of transactions, and avoid deception. In the light of this foreseeable vision and for the safety of the foundation upon which the work of the Jordan Islamic Bank will be built, a comprehensive definition of Murabaha sale has been drawn up to the purchase orderer. This is the definition approved by the Fatwa Committee and included in Law No. 78 of 1978, the text of which is as follows:

Murabaha sale to the purchase orderer: The bank implements the request of the contracting party based on the former purchasing what the latter requests with cash paid by the bank in whole or in part, in return for the requester's commitment to purchase what he ordered and according to the price agreed upon at the beginning.

And the Islamic financial engineer, by adopting the saying that the promise to buy is obligatory to the one who ordered it, wards off the risk of the bank buying goods to the person ordering the purchase when he takes back on his promise. It also does not clash with the texts that forbid the sale of what the seller does not own, since the contract of sale is not completed until the bank owns the commodity. Therefore, if we look in it at the prohibition of selling what the seller does not own, we will find the innovative modality does not contradict the apparent meaning of this text.

If we examine the reason for the prohibition in selling what the seller does not own, we find that the reason for the prohibition is "what is forbidden in the sale of the commodity before its ownership is deception," as the seller may be unable to collect it and is unable to deliver it, so it is like selling birds in the air, fish in water, stray animals, stolen properties and the like. Sheikh Bakr Abu Zayd, may God have mercy on him, said: The reason for it is the deception in being able to deliver at the time of the contract."

Ibn al-Qayyim, may God have mercy on him, said: The wording of the two hadiths agreed, about selling what you do not have, it is a deceit similar to gambling, so the Prophet forbade it. If we delve beyond the reason, we find what leads to delusion (eating people's money unjustly and the enmities, rivalries and animosity that follow).

He said in the rule of Gharar: Gharar is forbidden because of the risk it involves, which often leads to consuming people's wealth unjustly, which in turn leads to enmities, quarrels and rivalries among Muslims, as Allah the Almighty says: " Satan's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and

hinder you from the remembrance of Allah, and from prayer: will ye not then abstain?" (Al-Maa'idah – 91). The sale of fruits before they become ripe was acceptable among Muslims in Medina, benefiting both the owners of the fruits and the traders alike. When they differed and quarreled because of the many infirmities that afflict the fruits before they become ripe, Allah knew that the corruption of this contract exceeds its interest, so he forbade it.

Sheikh of Islam Ibn Taymiyyah, may God have mercy on him, said: (And among the principles of Sharia is that if the interest and the harm conflict, the more likely the two are presented. It is only about the sale of gharar, because it involves the risk that harms one of the involved parties..) Al-Bukhari and others narrated of Zaid bin Thabit, may God be pleased with him, who said: The people in the time of the Messenger of God, would buy fruits. If people attested, the buyer would claim: He was afflicted with bad fruits, he was afflicted with diseases, or he was afflicted with brittleness, so the Messenger of God said, when there was a lot of strife with him about that: "Do not sell until it appears that the fruit is ripe," as advice because of their many quarrels. It was narrated that Sa'd bin Abi Waqqas said: "At the time of the Messenger of Allah landowners used to lease their arable land in return for whatever grew on the banks of the streams for irrigation. They came to the Messenger of Allah and referred a dispute concerning such matters to him, and the Messenger of Allah forbade them to lease land on such terms, and said: 'Lease it for gold or silver.'"

As for Murabaha when one orders the purchase, which is based on the obligation of the promise, if you look at the copy of the contract and find that there is no violation in it, since the sale is not completed to the orderer until the bank buys the commodity. If the bank is unable to obtain the commodity, especially the specific one, and accordingly shall be unable to fulfill its sale and hand it over to the person ordering the purchase, and this inability, even if it does not result in unlawfully taking the purchase orderer's money, but the failure of the bank to fulfill its obligation to collect the commodity and sell it to the orderer leads to litigation and rivalry, as is the case with selling fruits before they are ripe.

Dr. Al-Siddiq Al-Darir said: The correct thing to me is that the one who ordered the purchase is not obligated to the evidence mentioned by the foregoing jurists, the strongest of which is that the Murabaha sale to the one who ordered the purchase with the order being bound by his promise leads to the person selling what he does not have; because there is no difference between someone saying to another: I sold you such-and-such a commodity for such-and-such, and the commodity he does not have, and between someone saying to another: Buy such-and-such a commodity, and I am obligated to buy it from you for such-and-such, and a person selling what he does not have is forbidden by the hadith: "Do not sell what you do not have."

Sheikh Bakr Abu Zaid said about the Murabaha ordering to buy with a promise to pay: that it is actually a contract of sale on a commodity that can be owned by the bank at a profit before the bank owns the commodity for real. Accordingly, when the form is prohibited in the contract, or the reason for the prohibition is found, even if the form is left behind, or the wisdom of prohibition, even if the form and the reason are behind, the prohibition is still valid. This provision can be demonstrated with practice for the jurist and the financial engineer, and it is easy to apply on the modified modalities and innovative transactions.

Conclusion

The key findings of this research paper can be summarized as follows:

- 1- Financial engineering consists in the design, development, and implementation of innovative financial instruments and mechanisms, and the creation of innovative solutions for financing problems.
- 2- Islamic financial engineering is a set of activities that include the design, development and implementation of each of the innovative financial instruments and processes, in addition to the creation of innovative solutions for financing problems, all within the framework of Islamic *Sharia* directives.
- 3- Islamic financial engineering includes the following:
 - a) Creating new financial instruments.
 - b) Creating new financing mechanisms.
 - c) Creating new solutions for financing management, such as liquidity or debt management, or preparing financing forms for specific projects that fit the project's circumstances.
 - d) The innovations referred to previously, whether in financing instruments or processes, should be *Sharia* compliant and distant from jurisprudential differences as much as possible, which will characterize them with *Sharia* credibility.
- 4- Financial engineering is the most appropriate tool that can provide effective assistance to achieve the strategic goals of businesses.
- 5- Islamic financial engineering and traditional financial engineering are both important, however, Islamic financial engineering has several factors that increase its significance, including:
 - a) It helps attain the pleasure of Allah by conducting *Sharia*-compliant financial transactions and addressing and correcting banned traditional financial transactions to be compliant with *Sharia*.
 - b) Whenever the world goes through financial crises and economic shocks, the opportunity is favorable for Islamic financial engineering to market *Sharia*-compliant financial transactions as a remedy for the causes of those crises, and an alternative to the transactions leading to these problems.
 - c) Whenever Islamic financial engineering provides *sharia*-compliant alternatives to banned financial transactions and the Islamic governments implement and adhere to them, this will be one of the greatest reasons to protect their economies from being affected by the successive suffocating economic crises.
 - d) When Islamic financial engineering highlights the Islamic economic system, this constitutes a great call for this comprehensive and transcendent religion, which addresses the world's economic problems. This call is even greater when it emerges in times of economic crises.
- 6- The relationship between Islamic financial engineering and forbidden trickery is a contrast. For financial engineering to be Islamic, it must be disciplined by the controls of permissible trickery (*Hiyal*), in contrast to forbidden trickery.
- 7- *Hikmah* (rationale), in my opinion, is the most important control by which Islamic financial engineering can be disciplined according to the previously mentioned details at the crux of the research.

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