

A SHARIAH-BASED EXAMINATION OF SELECTED JAIZ BANK PRODUCTS

Ahmad Hussein Folorunsho

*Associate Professor, Islamic Law Department,
University of Ilorin, Ilorin, Nigeria.
alhamaweey01@gmail.com*

Ahmad Olusola Murtadha

*Ph.D Candidate, Islamic Law, University of Ilorin, Ilorin, Nigeria;
Barrister and Solicitor of Supreme Court of Nigeria;
Managing Partner, Belgore, Murtadha, Mohammed & Co
a.o.murtadharesearch01@gmail.com*

Usman Kola Belgore

*Ph.D Candidate, Islamic Law, Kwara State University, Malete, Nigeria;
Barrister and Solicitor of Supreme Court of Nigeria,
Partner, Belgore, Murtadha, Mohammed & Co
belgoreusman@gmail.com*

ABSTRACT

Jaiz Bank is a full-fledged Islamic bank licenced and operating in Nigeria. The bank is authorized to operate throughout the federation and offers a range of products in designing its savings, current, and other banking services. This research focused on examining the Shariah compliance of some of these products. In particular, it analysed the products adopted in designing the bank's savings and current accounts. It also examined some Jaiz Bank products developed from murābahah-related contract, which have attracted criticisms from certain scholars and Islamic clerics in Nigeria. The compliance of some of these products with the principles of Shariah has generated debates and controversies as to whether the products designed from the traditional Islamic contracts truly align with the intention of the Law-Giver. It is often asserted that not all Islamic banks offer, genuinely, Islamic or

Shariah-compliant product. Thus, this research became necessary to examine the Shariah compliance of some products offered by Jaiz Bank. Undoubtedly, there are several studies on Islamic finance, particularly on Islamic banking products. However, this research distinguishes itself from the existing studies focusing, specifically, on selected Jaiz Bank products and analysing their various several terms in the light of Shariah. The doctrinal method of research is adopted to examine the bank's products. The terms and conditions of these products are analysed through the lens of Shariah. Upon the analysis, the research finds that the products used in designing the bank's savings and current accounts substantially comply with shariah. It, however, observes that the terms of the savings account do not accommodate the two-tier mudārabah structure commonly practiced by Islamic banks. Meanwhile, the murābahah-related products adopted by the bank remain subjects of juristic disagreement. This research aligns with the juristic view that considers such murābahah-based products - as adopted by Islamic banks including Jaiz Bank – to be inconsistent with Shariah. Nevertheless, this research refrain from categorically declaring these products non-compliant, as in matters of ijtihād, no single opinion is deemed superior to another. Therefore, the study proffers recommendations aimed at enhancing full compliance of the selected Jaiz Bank products.

Keywords: *Shariah, bank, products, Shariah-compliance*

INTRODUCTION

The complexity of the modern world and society has made banks and banking system a necessity. Undeniably, banking has become an important instrument for managing currencies - whether through business transactions, remunerations, or other financial activities. As such, banks have become an integral part of our social and economic life. Over time, conventional banks have dominated the global banking sector. However, their mode of operation has posed significant challenges to Muslims (Liaqat, Amzat and Hmza, 2013: 837-846). This situation underscores the need for banks that comply with Islamic law injunctions and satisfy the ethical and religious conscience of Muslims (Agbaje and Birma, 2013: 75). In other words, the prevalence of unethical and prohibited transactions (Alaro, 2010: 7-20) in conventional banking prompted

the emergence of alternative banking system grounded in the principles, ethics and tenets of Islamic Commercial Law (*fiqh al-mu'āmalāt*).

The modern concept of Islamic banking can be traced to March 12, 1975, when Dubai Islamic bank was established by group of individuals, namely Saeed Lootah, Nasser Lootah, Sultan Lootah, Mohammed Lootah and Abdullah Saeed (Mohamad, 2013: 11). Shortly thereafter, Islamic Development Bank (IDB) was established in October 1975 by 42 Muslim countries under the umbrella of the Organization of Islamic Conference (O.I.C), now known as Organization of Islamic Cooperation (Alharbi, 2015:14).

In Nigeria, the development of Islamic banking dates back to 1998, when Habib Bank Nigeria Limited was licensed to operate an Islamic banking window. However, actual operation of the bank commenced in 1999 (Daud, 2011:14; Mallum, 2016: 155). It is worthy of note that a remarkable milestone in the evolution of Islamic banking in Nigeria occurred in 2009, when the Central Bank of Nigeria (CBN) publicized and gazetted the Draft Framework for the Regulation and Supervision of Non-interest Banks in Nigeria (Ali, 2016:593). The framework was later reviewed in 2011, and subsequently became the Central Bank of Nigeria (CBN) framework for the Regulation and Supervision of Institutions Offering Non-interest Financial Services (Central Bank of Nigeria, 2011).¹

This regulatory framework paved the way for the establishment of full-fledged Islamic banks in Nigeria. The first full-fledged Islamic bank in Nigeria is Jaiz Bank Plc. The bank commenced operation in over a decade ago precisely in 2012.² The license granted to the bank permit it to operate throughout the federation.³ This bank offers a variety of products designed to facilitate its savings, current and other banking services. In other words, Jaiz Bank conduct its operation through a range of shari'ah nominated contract. These products are often modified to suit banking needs and such modifications may alter their nature, character, or original attribute. Hence, examining these products - as adopted by Jaiz Bank - through the lens of Shariah aligns with the ultimate objective of Islamic finance. Accordingly, this research seeks to examine the shari'ah compliance of some of these products. Specifically, it evaluates the products adopted in designing the bank's savings and current accounts. It also examines certain products based on *mudarabah* and *murabahah*-related

¹ Central bank of Nigeria (CBN), 'Framework for the Regulation and Supervision of Institutions offering non-interest banking in Nigeria, (2011) <http://dc.cbn.gov.ng> accessed 15th May, 2024

² See <https://jaizbankplc.com/about-jaiz-bank/>

³ <https://jaizbankplc.com/about-jaiz-bank/>

contracts, which have attracted criticisms from various quarters including Islamic clerics in Nigeria (Sharafdeen, 2014).

Although, *murābahah*, in its classical form, is devoid of controversy, the modern application of the product by Islamic banks and financial institutions has generated divergent opinions and criticisms among jurists and researchers. These criticisms largely relate to the procedural mechanisms and contractual terms employed in the product design. Despite these concerns, *Mudarabah*-based products remain among the most widely used financing instrument of Islamic banks globally. Arguably, this is because *Murabahah* is a debt-based instrument capable of meeting customers' financing needs while ensuring stable returns for banks. In the authors' view, Islamic banks (Jaiz Bank inclusive) continuous reliance on *Murabahah*-based products, in spite of juristic controversies, showcase a legal problem that is deserving of research of this nature.

It is expected that the finding of this research will be beneficial to all stakeholders in Islamic banking and finance, including practitioners and researchers in the field. Likewise, it will assist the Muslim populace in general, and Jaiz bank's customers in particular, to better understand the shari'ah status of the bank's products amidst existing criticisms. Furthermore, this study aims to provide recommendations capable of addressing the legal and juristic controversies surrounding *Mudarabah*-related products of Islamic banks, with specific reference to Jaiz Bank Plc.

REGULATION OF BANKING BUSINESS IN NIGERIA

Banks are licensed to carry out banking business in Nigeria, and one of the fundamental requirements for licensing a bank is that it must first be duly registered as a company under the Companies and Matters Act (CAMA), 2020. Therefore, like other companies, banks have shareholders whose primary interest is for the bank to engage in profitable business operations.

Despite the existence of special or prudential regulations governing banks in various jurisdictions, including Nigeria, there remains no comprehensive statutory regulation or guidelines for regulation of banking business or banks and customer relationship. Thus, the area of banking business, particularly the relationship between banks and their customers, is largely governed by the general principles of contract law applicable to commercial transactions.

An examination of relevant statutory provisions and judicial authorities reveals that the core traditional functions of banks are the acceptance of deposits

(through savings and current accounts) and the disbursement of funds (through loans and other structured financial contracts).⁴ Hence, the maintenance of either savings or current accounts qualifies an individual or entity as a bank customer. To this end, the Supreme Court held:

*“Generally, a customer is someone who has an account with a bank, or without having an account the relationship of banker and customers exists. In the latter case some money transaction must connect banker and customer, but must arise from the nature of a contract.”*⁵

From the forgoing, it is settled that any person or entity that maintains an account with a bank is regarded as a customer, and the relationship between them is contractual in nature.⁶ Therefore, the applicable law governing banker-customer relationships is the law of contract, whose principles are derived from the common law tradition.

Consequently, the common law principles of contract apply to the operations of conventional banks in Nigeria. However, in the case of Islamic banks, although the banker-customer relationship remains contractual, the applicable law is derived from Islamic commercial jurisprudence (*Fiqh Mu‘āmalāt*). This is because Islamic or non-interest banks are established in Nigeria as special financial institutions mandated to operate in accordance with the principles of Islamic commercial jurisprudence.⁷

In line with the Qur’anic injunctions that permit trade and prohibit interest (*riba*), the Islamic banking system structures its products around shari ‘ah-compliant contracts that are free from *riba* (interest) and other prohibited elements such as *gharar* (uncertainty) and *maysir* (gambling). It is important to note that the distinction between profit and *riba* (interest) lies in the fact the profit margin in the former depends on actual economic performance and is therefore not guaranteed, whereas *riba* involves a predetermined and guaranteed return, irrespective of economic outcomes. This distinction forms

⁴ See Section 131 of Banks and Financial Institutions Act, (2020), *United Dominion Trust Ltd v Kirkwood* (1966) 2 Q.B.D 55

⁵ *Intergraded Timber and Plywood Products Ltd v Union Bank* (2006) LPELR-1519 (SC) 37

⁶ *UBN Plc v Ajabule & Anor* (2011) LPELR-8239 (SC) 39

⁷ See Guidelines for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria <https://www.cbn.gov.ng> accessed 24 May 2024

a hallmark between Islamic banking products and conventional banking products.

To avoid interest-based transactions, Islamic banks in Nigeria have developed several products designed from shari'ah-nominated contracts. Prominent among these are *Mudarabah*-based, *Musharakah*-based, *Murabahah*-based, and *Qard*-based contracts. Jaiz Bank Plc, for instance, structures its savings account based on the *Mudarabah* contract and its current accounts on the *Qard* (benevolent loan) principle. Thus, the terms and conditions governing the relationship between Jaiz Bank and its customer must not contravene the Shari'ah principles applicable to the underlying contracts. A detailed analysis of Jaiz Bank's savings and current account arrangements is presented in the subsequent section.

JAIZ BANK OPERATION OF SAVINGS AND CURRENT ACCOUNT

Savings and current accounts are operated by Islamic banks vide shari'ah-nominated contract such as *Mudarabah*, *Qard* and *Wadi'ah*. However, Islamic banks operating in Nigeria and Jaiz Bank in particular adopts *Mudarabah* and *Qard* for savings and current account respectively. Thus, this segment of the work analysed shari'ah rulings on *Mudarabah* and *Qard* before examining the shari'ah compliance of Jaiz Bank terms of savings and current account.

MUDARABAH (SLEEPING PARTNERSHIP)

Mudarabah is a form of partnership sanctioned by shari'ah (Udovitch, 1970: 172). Historically, the *mudarabah* arrangement predates Islam, but it was later endorsed and regulated under Islamic law. *Mudarabah* refers to a partnership contract in which an investor (or group of investors), known as *Rab al-Mal*, provides capital to an entrepreneur or manager, known as the *Mudarib*, who undertakes business activities with the capital. The profit generated is shared between the parties according to a pre-agreed ratio. In case of loss, *Rab al mal* bears the loss and the *Mudarib* bear no financial loss unless such loss results from the negligence or misconduct of the *Mudarib*. In essence, the *Mudarib*'s contribution is his time, skill, and managerial effort, while the *Rabb al-Mal* contributes the capital (Ayub, 2007:321). If the venture incurs a loss, the *Mudarib* loses only his effort and time, whereas the *Rabb al-Mal* loses part or all of the investment.

Classical and contemporary Muslim jurists (*fuqaha'*) unanimously agree that *Mudarabah* is permissible under Shariah, as it is supported by both

Prophetic practice and the consensus (ijma') of scholars (Ayub, 2007:321).⁸ Hence, it is permissible for an Islamic bank or financial institution to adopt *Mudarabah* as an underlying contract for its financial products.

Accordingly, Jaiz Bank's adoption of *Mudarabah* as the contractual basis for its savings account is consistent with Islamic Jurisprudence. However, it remains necessary to examine whether the terms and conditions of the bank's savings account comply with the essential principles of *Mudarabah*, as prescribed under Shariah.

ANALYSIS OF JAIZ BANK SAVINGS ACCOUNT TERMS AND CONDITIONS

Jaiz Bank adopts *mudarabah* in designing its savings account as a means of conducting its banking operations. Consequently, the relationship between the bank and a customer operating a savings account is that of sleeping partnership. The customer acts as the *Rab al-Mal* (Capital provider), while Jaiz Bank serves as the *Mudarib* (manager). The bank is, therefore, obligated to invest the customer's funds in accordance with the terms and conditions mutually agreed upon.

According to Jaiz Bank's savings account terms and conditions, the profit-sharing ratio between the customer and the bank is 30: 70. The customer is entitled to 30% of the profit generated from the use of his capital, while the bank receives 70%. In the event of loss, only the customer, being the capital provider (*Rab al-Mal*) bears the financial loss, while the bank, as *Mudarib*, merely loses its effort and management input.

This profit and loss-sharing formula aligns with the fundamental principles of *Mudarabah* and is therefore Shari'ah-compliant. Under *Mudarabah*, the contracting parties have the liberty to determine the profit-sharing ratio through mutual consent. Thus, the agreement between Jaiz bank and its customers on a 70: 30 profit-sharing ratio-formalised through the bank's account opening documentation-complies with Shari'ah principles. Similarly, the clause stipulating that financial loss shall be borne solely by the customer is valid, as the *Rabb al mal* bears any loss of capital, while the *Mudarib* is *only* liable if found negligent or in breach of trust.

⁸ Ibid, p. 488, See also Standard No. 13, AAOIFI Shari'ah Standards for Islamic Financial Institutions, (2010) referred to in The Islamic Deposit Insurance Group of the International Association of Deposit Insurers, Insurability of Islamic Deposits and Investment Accounts, 6 <https://www.iadi.org/assets/File/papers>, assessed 16th May, 2024

Another notable aspect of the terms is that the arrangement between Jaiz Bank and its customers is classified as *Mudarabah Mutlaq* (unrestricted *Mudarabah*). The terms explicitly state that:

“The relationship between the Bank and Customers holding Savings and/or Term Deposit Account shall be based on the principles of al-Mudarabah al-Mulaqah.”

Classical jurists recognize two types of *Mudarabah*: *Mudarabah Mutlaqah* (unrestricted *Mudarabah*), and *Mudarabah Muqayyadah* (restricted *Mudarabah*). In restricted *Mudarabah*, the capital provider (*Rabb al Mal*) may impose conditions concerning how, where, or with whom the *Mudarib* may invest the capital. According to Abu Hanifah and Ahmad ibn Hanbal, such restrictions may relate to the time frame, trading partners, or the nature of business (Al-Zuhayli, 11989: 490). Conversely, the Maliki and Shafi'i schools prefer *Mudarabah* to remain unrestricted, except for stipulating the profit-sharing ratio. Accordingly, Jaiz Bank's adoption of *Mudarabah Mutlaqah* does not contravene the opinions of jurists. In fact, it aligns with the Maliki and Shafi'i positions that *Mudarabah* ideally remain unrestricted.

It is pertinent to note that Islamic banks often do not invest the depositor's funds directly. Instead, such funds may be invested through third parties, creating what is known as a two-tier *Mudarabah*. For instance, Jaiz Bank plc. may receive deposits under a *Mudarabah* arrangement and then invest those funds with another entrepreneur. This creates two levels of *Mudarabah* between the customer and the bank, and between the bank and the ultimate investor. Although Jaiz Bank's terms and conditions do not explicitly indicate the adoption of a two-tier *Mudarabah* structure, the clause describing the arrangement as *Mudarabah Mutlaqah* authorizes the bank to invest either directly or indirectly.

Jurists have expressed varied opinions regarding the Shari'ah validity of two tier *Mudarabah*. The majority of scholars, including those from Hanafi, Maliki, Shafi'i, and Hanbali schools, generally validate the arrangement (Al-Zuhayli, 11989: 504), provided that the first *Mudarib* (in this case, the bank) is required to guarantee the capital under certain circumstances. Differences, however, exist concerning the point at which the guarantee obligation arises.

Abu Hanifah holds that the guarantee arises only after the second *Mudarib* earns a profit while Zufar opines that the guarantee takes effect immediately upon transferring the funds to the second *Mudarib*. On the other hand, Abu Yusuf and Muhammad ibn al-Hasan maintain that the guarantee obligation begins once the second *Mudarib* starts using the capital, a view also supported by Abu Ya'la of the Hanbali school (Al-Zuhayli, 11989: 504). Maliki jurists,

however, assert that the first *Mudarib* guarantees the capital if he transfers the funds to a third party without the permission of the *Rabb al-Mal*. In contrast, Shafi'i Jurists invalidate the two-tier *Mudarabah* entirely, even with the capital provider's approval, though they consider the first *Mudarabah* valid (Al-Zuhayli, 11989: 507).

From the foregoing, it is clear that under Shari'ah, capital may be guaranteed in a two-tier *Mudarabah* arrangement, as Islamic banks act not as direct entrepreneurs but as intermediaries. Therefore, they may legally be made to guarantee depositors' capital.⁹

In the view of these authors, Jaiz Bank's Account Opening Form does not explicitly provide for a two tier *Mudarabah* arrangement. However, if it is established that Jaiz Bank transfers customer deposits to third-party investors, the bank should be required under Shari'ah to guarantee the capital, notwithstanding the absence of such a clause in the terms. Consequently, the term exempting the *Mudarib* (Jaiz Bank) from financial liability should be invalidated for being inconsistent with Shari'ah, since freedom of contract in Islamic law does not extend to stipulations that render unlawful, or vice versa.

Another term that calls for consideration in Jaiz bank and customer arrangement is the provision of Clause 4(c) of Jaiz Bank Plc. The clause provides:

“The average of daily balances standing in Customer's account as at the last day of each calendar month, shall be taken as the balance in the account for that month, upon which profit shall be distributed under the Mudarabah Savings Deposit Accounts. A customer shall forfeit profit distribution if at any period in a given month the Customer's average balance falls below the Bank's investment Bank's investable Mudarabah Savings Deposit Account threshold of N2, 000 or as may be determined by the Bank from time to time.”

The clause stipulates the method for determining a customer's eligible balance for profit calculation. By using the average daily balance, the bank ensures a fair and realistic representation of the customer's investment for the month. Furthermore, the minimum investable amount of N2,000.00 serves

⁹ Malaysia International Financial Centre (MIFC), Kafala on *Mudarabah*, available at <http://www.mifc.com> last assessed 20th April, 2024, The Islamic Deposit Insurance Group of the International Association of Deposit Insurers, Insurability of Islamic Deposits and Investment Accounts, p. 6 available at <https://www.iasi.org/assets/File/papers> assessed 11th May, 2024

as the threshold below which funds are deemed non-investable, and hence ineligible for profit distribution. In the authors' view, this provision does not conflict with Shari'ah principles, as contracting parties may stipulate operational terms that do not contravene Islamic legal norms. Hence, the provision is valid and Shari'ah compliant.

Based on the foregoing analysis, this study concludes that Jaiz Bank's terms and conditions governing savings accounts comply substantially with the principles of Shari'ah. However, should it be established that the bank practices a two-tier *Mudarabah* structure, the bank must be deemed to guarantee the capital.

***QARD* (LOAN)**

Linguistically, the term *qard* means "cutting." Technically, it refers to the payment of a sum of wealth to a person who intends to benefit from it, with the obligation to return an equivalent amount at a later time (Al-Jaza'iry, 2001: 279). The Hanafis define the contract as one in which a fungible property is transferred from one party to another, in exchange for the repayment of an equivalent amount in the future. Other schools of jurisprudence define it as an exchange of property for a liability on the recipient equivalent to the amount received from the lender, where only the recipient of the loan is intended to benefit from the contract (Ibn Abidin, n.d: 179; Al-Dardir, n.d: 291).

Jurists unanimously permit this type of contract, basing their justification on the Qur'an¹⁰ and the Sunnah of the Prophet (peace be upon him). There are numerous prophetic traditions that encourage and commend the giving of loans. For instance, the Prophet (peace be upon him) is reported to have said that every two loans extended by a Muslim to another are counted as a charitable deed. In another hadith, the Messenger of Allah stated that whoever relieves his brother of a difficulty in this world, Allah will relieve him of a difficulty on the Day of Resurrection. Therefore, the *qard* contract is recommended in Shari'ah, as it brings immense benefit to the lender by relieving the borrower of worldly hardship. Consequently, jurists unanimously agree that *qard* is recommended in Islamic law.

It is important to note that under a *qard* contract, the borrower has unrestricted rights to use the borrowed property. For example, if a borrower receives a sum of money, he is at liberty to invest it or use it for any other lawful purpose, and the lender cannot impose any restrictions on its use. Similarly, the

¹⁰ Surah al-Hadid, 57: 11

lender is entitled to the return of exactly the same amount loaned—no more and no less. Although it is permissible for the lender to stipulate a time for repayment, it is recommended that he should not be strict with the borrower and should grant an extension if the borrower is unable to repay at the agreed time. Nevertheless, the borrower remains obliged under Shari‘ah to settle his debt, as unpaid debt continues to hang over a person even after death.¹¹

APPLICATION OF *QARD* BY ISLAMIC BANKS

Jaiz Bank Plc operates its current account on the basis of a *qard* arrangement. Funds deposited by customers into current accounts are treated as debts, with the bank as the debtor and the customer as the creditor. The bank is at liberty to utilize these funds for ethical business purposes; however, it remains under an obligation to refund the deposits on demand.

In this arrangement, the customer is not entitled to any additional amount, as such would constitute *riba* (interest). Consequently, any profit derived from the bank’s use of the funds belongs exclusively to the bank, and in the event of loss, the bank bears it entirely. Likewise, no incentives of any form may accrue to the customers under a *qard* arrangement. Similarly, the bank cannot rightfully charge any fees merely for safekeeping the funds, except where extra services such as the provision of ATM facilities, SMS notifications, or similar value-added services are provided upon request and duly charged.

The terms of the arrangement provide that: “The relationship between the Bank and the Customers holding current accounts shall be based on the principles of *Qard*, and no profit or loss shall accrue to balances in the said accounts.”¹² This provision clearly aligns with the fundamental principles of the *qard* contract in Shari‘ah, as the arrangement mirrors the traditional *qard* relationship. Hence, there is no dispute regarding the legality of its application by Islamic financial institutions.

However, a pertinent issue for consideration is whether other contracts can be combined with a *qard*-based product. This is significant because *qard* is among the contracts that are not receptive to contract combinations. For instance, a *qard* contract cannot be combined with contracts such as *hibah* (gift), *bay‘* (sale), or *ijarah* (lease), as these may generate a benefit linked to the loan, and any form of benefit derived from a loan is prohibited in Shari‘ah. Therefore, scholars have established the principle that *qard* may only be

¹¹ See www.jaizbankplc.com

¹² See paragraph 3.4 of Jaiz Bank Individual/Joint Account Opening Form

combined with another contract if such combination ensures or guarantees repayment of the loan. Based on this principle, it becomes evident that Shari‘ah does not prohibit the guarantee of a loan amount, whether by the debtor or a third party.

JAIZ INVESTMENT ACCOUNT

A perusal of Jaiz Bank’s products reveals that the bank adopts several Shari‘ah-nominated contracts in designing its offerings. However, the focus of this research is to examine Jaiz Bank products designed from *Murabahah*-related contracts. Accordingly, the following Jaiz Bank products are analysed:

JAIZ AUTO FINANCE (JAF)

This product is designed to facilitate the acquisition of automobiles by salary account holders in public, private, and other reputable organizations. Under this arrangement, the bank purchases the vehicle and sells it to the customer with a reasonable mark-up (profit). Payment for the vehicle is made on a monthly basis from the customer’s salary, usually over a period of three to four years.¹³

JAIZ HOUSEHOLD APPLIANCES

This is a consumer product that enables customers to acquire household items such as refrigerators, freezers, furniture, cookers, laptops, and televisions, with the flexibility of a monthly payment plan. The product is financed under *Murabahah* (cost-plus sale). The bank purchases the appliances identified by the customer and sells them to the customer at cost plus a profit. Payment is typically made monthly from the customer’s salary over a period of up to twenty-four months.¹⁴

JAIZ GENERAL CONSUMER FINANCE

This product allows customers to acquire building materials, consumable goods, and real estate, with the flexibility of a monthly payment plan. It is also financed under *Murabahah*. The bank purchases the items identified by the

¹³ See www.jaizbankplc.com last accessed 18th May, 2025

¹⁴ See www.jaizbankplc.com last accessed 18th May, 2025

customer and sells them at cost plus a profit. Repayment is made monthly from the customer's salary over a period of up to thirty-six months.

Evidently, the products identified and discussed above are not explicitly named after *Murabahah*. However, the nature of the contractual arrangements clearly indicates that they are *Murabahah*-based. In each of these contracts, Jaiz Bank purchases an identified item and sells it to the customer at a cost-plus price. Therefore, these products are unmistakably *Murabahah*-based. The items that Jaiz Bank is prepared to trade under this arrangement are specifically defined for each product. This implies that the bank's customers have a limited range of subject matter upon which they may engage Jaiz Bank on a *murabahah* basis.¹⁵

Undoubtedly, *Murabahah* is a contractual arrangement sanctioned by Shari'ah. However, variations exist between the traditional form of *Murabahah* and its contemporary application by Islamic financial institutions. In modern practice, three or more parties are involved in the transaction, unlike in the traditional model which involves only two. This contemporary form is technically described as *Murabahah al-Āmir bi al-Shirā'*, a term coined by Dr. Sami Hamud in 1976 (Muhammad, n.d, 2).

The Jaiz Bank products identified above mirror the structure of *Murabahah al-Āmir bi al-Shirā'*, which refers to a situation where a customer approaches an Islamic financial institution to purchase an item or commodity, promising to buy it back from the institution at a cost-plus price, usually payable in instalments.

Jurists have expressed divergent opinions on the legality of this contractual arrangement. Broadly, two major views exist. The first group of scholars—including Sami Hamud and Yusuf al-Qaradawi—validate the transaction on the ground that the fundamental rule in Shari'ah commercial dealings is permissibility. They maintain that every transaction is permissible unless there exists an explicit text prohibiting it. Since there is no explicit Shari'ah text invalidating this form of contract, they consider *Murabahah al-Āmir bi al-Shirā'* lawful.

Conversely, the second group of jurists invalidates this form of *murabahah*, arguing that it involves the sale of what one does not own or possess at the time of contract conclusion. They contend that when the financial institution and the customer enter into an agreement, the subject matter neither belongs to

¹⁵ See www.jaizbankplc.com last accessed 18th May, 2025

the institution nor is in its possession. These jurists further argue that Shari‘ah seeks to reduce hardship, citing *Surah al-Baqarah*, 2: 185.

They posit that the arrangement of *murabahah al-Āmir bi al-shirā’* fails to fulfil this objective of Shari‘ah, as it imposes hardship on the customer who approaches the bank precisely because he lacks the funds to meet his needs. The scholars liken this arrangement to *bay‘ al-‘inah* and argue that both transactions resemble an interest-bearing loan, with a property merely inserted between the parties to mask the transaction.

The scholars who validate *Murabahah al-Āmir bi al-Shirā’* counter this position by asserting that the contract is distinct from *Bay‘ al-‘Inah* because the intention of the parties in the former is to transfer ownership, not to disguise a loan. They cite the statement attributed to Imam al-Shāfi‘ī, who held that if a man sees another person with an object and says, “Sell this item for me, and I will give you a profit of such and such,” and the transaction proceeds, then the contract is valid (al-Shafi‘i, n.d: 45). They also reference the opinion of Ibn al-Qayyim, who stated: If one says, ‘Buy this house or property at this price and I will buy it from you at this price,’ and he fears that if he purchases it, the other party might change his mind, he may include an option of return for three days, which makes the transaction valid (Ibn Qayyim, n.d: 29). Thus, these jurists uphold the validity of *Murabahah al-Āmir bi al-Shirā’* and refute the objections raised by the opposing group.

It is noteworthy, however, that the traditional form of *murabahah* differs from its contemporary application by Islamic financial institutions such as Jaiz Bank. In traditional *murabahah*, which is almost unanimously accepted as permissible, there are two parties, whereas in the contemporary version there are three. While the difference in the number of parties may not appear significant, a closer examination of the essence and purpose of both contracts reveals notable distinctions.

The traditional *murabahah* serves as an alternative to *musawamah* (a simple contract of sale). It is typically employed when a buyer lacks the skill or expertise to negotiate the price or assess the quality of a commodity. This form of *murabahah* has existed since the time of the Prophet (peace be upon him) (Al-Zuhayli, 1989: 354) and was sanctioned by Shari‘ah without reservation because it meets a natural human need-no individual possesses expertise in all trades. Importantly, in traditional *murabahah*, the initiator of the transaction does not approach the seller due to lack of funds but due to lack of expertise. Thus, payment of both the cost price and profit is made immediately.

In contrast, in the contemporary *Murabahah* applied by Islamic banks, including Jaiz Bank, the customer approaches the institution not due to lack

of expertise but because of financial incapacity. Consequently, the customer agrees to pay the cost price plus profit in instalments over a future period.

Based on the foregoing, this research observes that although both forms of *Murabahah* share the feature of disclosing cost and profit, the differences in purpose and structure appear to alter the original intent of the contract. Hence, the validity of traditional *Murabahah* as affirmed by the Prophet (peace be upon him) and early jurists does not automatically confer validity on its contemporary form, thus explaining the divergence of modern scholarly opinion. By way of preference, this research aligns with the group of jurists who invalidate *Murabahah li al-Āmir bi al-Shirā'* on the following grounds:

- a) The authorities relied upon by this group possess stronger legal force.
- b) While both groups agree that all contracts are permissible unless explicitly prohibited, those invalidating the arrangement demonstrate that *Murabahah li al-Āmir bi al-Shirā'* contravenes certain Shari'ah texts, as follows:
 - i) It violates the Prophetic hadith prohibiting the sale of what one does not possess.
 - ii) It imposes hardship on the customer, who pays an additional price without receiving any real service in return.
 - iii) It contains elements of *riba* (interest), which is expressly prohibited in Shari'ah.

In summary, the arrangement of *Murabahah li al-Āmir bi al-Shirā'* embodies both *gharar* (uncertainty) and *riba*, and should therefore not be permitted. Nevertheless, as a progressive-minded researcher, these authors acknowledge that Islamic financial institutions may have practical reasons for adopting such products. Hence, an alternative structure that upholds Shari'ah principles while achieving similar benefits is proposed. In the author's view, the key advantages of *Murabahah li al-Āmir bi al-Shirā'* for both the Islamic bank and its customers include:

- a) Enhanced customer patronage;
- b) Profit generation for the bank; and
- c) The customer's ability to acquire desired goods with convenient instalment payments.

It is the authors' considered opinion that these benefits can still be achieved if Islamic banks maintain stores where customers can directly purchase products and pay in instalments. Such stores would be open to the public, but only customers of the Islamic institution would qualify for instalment payment options. This arrangement would encourage patronage and ensure profitability

for the bank while eliminating hardship on customers and avoiding Shari‘ah non-compliance.

Given the nature of banking operations, it is further recommended that Islamic banks establish subsidiary companies responsible for maintaining such stores and offering benefits to the bank’s customers. The parent bank would function as a holding company. Prior to establishing such a company, the bank should conduct market research to identify customer needs, which would guide the types of goods offered—for example, vehicles, building materials, and household appliances.

Despite the authors’ preference for the juristic view invalidating *Murabahah li al-Āmir bi al-Shirā’*, this research cannot conclusively declare that Jaiz Bank’s products reflecting this contractual arrangement are invalid. This is because the issue of the validity of *Murabahah li al-Āmir bi al-Shirā’* is ultimately a matter of *ijtihād*, and in such matters, no opinion is considered inherently superior to another (Mohammed, n.d: 321).

CONCLUSION

This article examined the products adopted by Jaiz Bank in designing its savings and current accounts, as well as its *Murabahah*-related products. The choice of these products stems from the fact that the savings and current account products constitute the foundation of the bank’s operations, while *Murabahah*-based products have, in recent times, attracted significant scholarly and clerical criticism.

The research found that the contractual models employed in structuring the bank’s savings and current accounts substantially comply with Shari‘ah principles. However, the *Murabahah*-related products adopted by the bank remain a subject of juristic divergence. This research aligns, by way of *tarjīh* (preference), with the juristic opinion that questions the validity of these products. Nevertheless, it cannot be conclusively asserted that the *Murabahah*-related products of Jaiz Bank are non-Shari‘ah-compliant, as in matters of *ijtihād* (independent juristic reasoning), no opinion is deemed inherently superior to another.

REFERENCES

- AA Alaro (2010). “Islamic Law of Banking: A Discourse of *Riba* and Its Modern Instruments,” *Journal of Islamic Law and Judiciary*, vol. V, 7-20.

- Ajagbe Tunde Suraj & Birma A.N, (2013). “Islamic Banking Development and Evolution: Current Issues and Future Prospects” *Journal of Research in International Business and Management*, vol. 3, no.2, 75
- Alharbi Ahmad, (2015). “Development of the Islamic Banking System” *Journal of Islamic Banking and Finance*, vol. 3 no. 1, 14
- Ali Yusuf Olaolu (2016) “Non-interest Banking’ in Banking Theory, Regulation, Law and Practice. Lagos: *AU Courant*, 572 – 596
- Ayub Muhammad, (2007), Understanding Islamic Finance. England: John Wiley & Sons Ltd
- Al-Dardīr Ahmad (n.d), *Al-Sharh Al-Saghir*. N.p: Dar Al-Ma’arin
- Daud Mustafa, Yusof Mohammed, Abideen Adeyemi Adewale, (2011). “The Establishment and Operation of Islamic Banks in Nigeria: Perception Study on the Role of the Central Bank of Nigeria” *Australian Journal of Business and management Research*, vol. 1, no. 2, 14
- Ibn Abidin Muhammad Amin (n.d), *Hashiyat Radd al-Muhtar*. Egypt: Matba‘at Al-Bābī Al-Halabī
- Ibn Qayyim Muhammad, *I‘lām al muwaqi‘n ‘an Rabb al al. ‘ālamīn*. Cairo
- Al-Jaza’iry Abu Bakr Jabir (2001) *Minhaj al-Muslim*, Riyadh : Darussalam.
- Liaqat Ali, Azmat Ali & Hamza Khwaja (2013). “Comparison of Islamic and Conventional Banking on the Basis of Riba and Services” *International Review of Management and Business Research*, vol. 2, no. 3, 837 -846
- Ljerka Cerovic, SS Nikolaj & Dario Maradin, ‘Comparative Analysis of Conventional and Islamic Banking: Importance of Market Regulation’ (2017) <https://www.researchgate.net> last accessed 15th May, 2024.
- Malaysia International Financial Centre (MICF), Kafala on *Mudarabah*, available at <http://www.mifc.com> last assessed 20th April, 2025
- Mallum Ahmed (2016). “The Operational Implication of the Challenges of Islamic Banking in Nigeria” *University of Maiduguri Annals of Borno*, vol. 26, 155
- Al-Marwyne M (1985). “Islamic bank and its areas of work: comparative study”. Ph.D Thesis, Umm al-Qura, Mecca, Saudi Arabia.
- Mohamad Mohammad Taqiuddin, Abdullah M.Y, Afifuddin Mohamad Mohammad et al (2013). “The historical development of modern Islamic banking: A Study in South-east Asia countries” *African Journal of Business Management*, vol. 10, no. 20, 11
- Mohammed Hashim Kamali, *Principles of Islamic Jurisprudence*,

- Muhammad Awawadah Samīr, ‘*al-uqud Murakkabat fi fiqh Islamiyy wa tathbiqatuhu al-ma’asirat kamā yajrihā al-bank al-islamiyy al-palestine*’ available fiqh.islammessage.com last accessed 23rd May, 2025
- Al-Shafi’i Muhammad Idris, *Al- Ummu*. N.p: Darr al-wafa
- Sharafdeen Raji, ‘Al-Adabul Mufrad, Monthly halqa Session’ at Al-Madeen Central Masjid, Papa Agbede Area, Ogbomosho, (2024)
- The Islamic Deposit Insurance Group of the International Association of Deposit Insurers, Insurability of Islamic Deposits and Investment Accounts, p. 6 available at [https://www.iadi.org/assets>File>papers](https://www.iadi.org/assets/File/papers) assessed 11th May, 2025
- Udovitch Abraham (1970), Partnership and Profit in Medieval Islam. N.p: Princeton University Press
- Al-Zuhayli Wahbah (1989), *Al-Fiqh Al-Islamiwa ‘Adillatuh*” terj. El-Gamal M.A, Financial Transactions in Islamic Jurisprudence). Damascus: Dār Al-Fikr

List of Statutes

Banks and Financial Institutions Act, 2020

List of Cases

- Intergraded Timber and Plywood Products Ltd v Union Bank* (2006) LPELR-1519 (SC) 37
- UBN Plc v Ajabule & Anor* (2011) LPELR-8239 (SC) 39
- United Dominion Trust Ltd v Kirkwood* (1966) 2 Q.B.D 55

Guidelines

- AAOIFI Shari’ah Standards for Islamic Financial Institutions, 2010: Standard No. 13
- Central bank of Nigeria (CBN), ‘Framework for the Regulation and Supervision of Institutions offering non-interest banking in Nigeria, (2011) <http://dc.cbn.gov.ng> accessed 15th May, 2024