

**The Rules of Wakala Contract (agency) in Sharia
law and its application in Islamic Finance
A comparative study**

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Abstract:

This study focus on the origination of Wakala contract in Islamic sharia beside to explain the important of this contract in the field of Islamic finance. The significance of studying this topic steams from the effective role that the wakala transaction played in the field of Islamic financial as modern alternative instruments to avoid the traditional instruments.

This study adapted the analytical approach through exposing the different views of four Islamic jurisprudential school and then compare it with the Sudanese Civil Transaction Act 1984 and other related enactments.

The study conclude with the numerus outcomes which is there's shortcoming Sudanese Civil Transaction Act 1984 in the definition of wakala is not comprehensive as we explained in the Islamic jurisprudence namely the Hanbali school definition, also This Act lack to provide for the pillars of wakala, Moreover this Act didn't provided for the investment wakala Wakala Bi Al-Istithmar as one of the wakala types according to its important in the field of Islamic finance.

Moreover the study recommended the necessity to amend section (416) of the Sudanese Civil Transaction Act 1984 to adapted the definition of wakala in according to the *Hanbali* School because is

comprehensive definition. As will appears in the AAOIFI definition, adapted the investment wakala Wakala Bi Al-Istithmar as one of the types of wakala in the Act to carry out the Islamic banks to implement this formula according to sharia law standards, Moreover the study recommend about the necessity of constitute workshops and public lectures for the researcher's in the field of Islamic law and legal studies about awareness of the wakala contract and it significant in Islamic finance.

Keywords: Wakala Contract, Sudanese Civil Transaction Act1984, Investment Wakala, Islamic Banks and Finance, AAOIFI

الملخص باللغة العربية:

تهدف هذه الدراسة إلى التركيز على التأسيس الفقهي لعقد الوكالة في الشريعة الإسلامية وبيان أهميته في المصرفية الإسلامية، وتتبع أهمية هذه الدراسة من بيان الدور الرئيسي الذي يلعبه عقد الوكالة في المصرفية الإسلامية كبديل للوسائل التقليدية، قد اتبعت هذه الدراسة المنهج الوصفي التحليلي وذلك من خلال ايراد آراء المذاهب الفقهية الأربعة وتحليلها ومن ثم مقارنتها مع نصوص قانون المعاملات المدنية السوداني ١٩٨٤ والقوانين الأخرى ذات الصلة منها المعايير الشرعية الصادرة عن هيئة المحاسبة للمؤسسات المالية والإسلامية.

خلصت الدراسة إلى عدة نتائج منها أن هناك قصورًا في قانون المعاملات المدنية السوداني بحيث يعرف الوكالة تعريفًا شاملاً كما في الفقه الإسلامي وتحديدًا المذهب الحنبلي، كذلك لم ينص على أركان الوكالة، بجانب أنه لم يعتبر الوكالة بالاستثمار أحد أنواع الوكالة لما هذا النوع من الوكالة أهميته خاصة في مجال المصرفية الإسلامية، كذلك لم يتناول القانون أركان عقد الوكالة، ولم يعرف الوكالة تعريفًا شاملاً كما هو الحال في الفقه الإسلامي.

أوصت الدراسة بضرورة تعديل المادة (٤١٦) من قانون المعاملات المدنية السوداني ١٩٨٤ تعريف الوكالة في القانون ليتماشى مع تعريف المذهب الحنبلي الذي سبق ترجيحه كما تبنته أيضًا المعايير الشرعية، أيضا لابد من إضافة أركان الوكالة وتبني الوكالة بالاستثمار كأحد أنواع الوكالة في القانون، وكذلك أوصت الدراسة بضرورة عقد ورش علمية ومحاضرات عامة للباحثين في مجال الشريعة والقانون وتوعيتهم بأهمية عقد الوكالة في المصرفية الإسلامية.

الكلمات المفتاحية: عقد الوكالة- قانون المعاملات المدنية السوداني ١٩٨٤- الوكالة بالاستثمار - المصرفية الإسلامية- المعايير الشرعية.

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Introduction:

The contract of Wakala (agency) is one of the most important contracts in the commercial and other family field under Islamic and conventional legal systems, much formula of Islamic banking and finance are tied to the concept of agency in one way or another.

Wakala is one of the many supporting contracts that is used in the Islamic finance sphere. It comes from the root word *wakala*, which means to perform a task on the behalf of another, that is, the delegation of duties or job to another person/entity.

The significant of study this contract drives from need of Wakala, the Muslim scholars have reached the consensus on the permissibility of Wakala based on evidence from the Quran and the Sunnah of the Prophet Mohammed (peace be upon him). This is due to the fact the people need an assistant to perform certain tasks which they are unable to do themselves. The main purpose of Wakala contract (agency) is to facilitate economic exchange and transaction between principal and third party when the principal is unable to do it personally

This study is an attempt to look at the concept of wakala from the perspective of Islamic *fiqh* and also to evaluate the current practices of wakala prevalent in the Islamic Banking and finance industry from the lens of Islamic Sharia so that a more permissible and preferable form of wakala can be introduced in the Islamic banking and finance industry.

Research Methodology

This paper will follow the jurisprudence analytical approach through exposing the jurisprudential views held by jurists of the four schools of Islamic Jurisprudence (*fiqh*) from their original resources namely: *Hanafi, Maliki, Shafi, and Hanabli*. In addition, after that summarized the matter and compared with Sudanese Civil Transaction Act 1984 and any other relevant legislation.

Research question

Is the implementation Wakala contract in Islamic finance institutions permissible according to Sharia Standard?

Research plan

This paper will be divided into three sections and conclusion.

Section one: Definition of Wakala (Agency) and its legality in Sharia and law

Sub Section1: Definition of Wakala in Literally

The word “Wakala” has literally several meaning including looking after, delegation, authorization, preservation and performing a task on behalf of others¹.

Technically Wakala refers to a type of contract in which one person (the principle) delegated another person to perform some tasks on behalf of him. In the other words it’s an agency contract which authorizes an agent to perform and undertake some dealing on behalf of principal, there are two contracting parties in wakala contract the principal also known as muwakkil and the agent also termed as wakeel, So Wakala is a kind of responsibility whereas the agent has a discharge his delegated task I the way the trustee discharges his responsibilities².

¹ Al- Razi, Mohammed Ibn Abi Bakr , Mukhtar al- Sihah (1415), Beirut , Lebanese edition, Libnan.page 717

² Abdur Rahman Al Jaziri‘Al Fiqh 'ala al Madhahib al Arba'ah (Beirut: Dar al Kutub al Ilmiyyah,2003),3:148

2. Definition of Wakala in Islamic Jurisprudence:

Islamic jurisprudential schools have a various definitions of Wakala according to their understanding of the notion and effect of wakala, so according to the Hanafi's³, an agency contract has two pillars of offer and acceptance. The major it is of the jurist's state that the contract of wakala is based on four pillars. They are **the principal (muwakkil), agent (wakil), subject matter of an agency, and by the parties, which includes offer and acceptance**

The Maliki jurists⁴ define wakala as “a representation of one person (wakil) by another Person (muwakkil) to dispose over his rights and possessions without restricting a deputation after his death”. The definition specifies the elements of wakala that excludes a testament (wasiyyah). So, according to Maliki jurists, wasiyyah is not wakala.

According to the Shafi'i jurists⁵, wakala is defined as “the authorization of one person (wakil) by another person (muwakkil) to dispose of something (muwakkal fih) during his lifetime provided that he (muwakkil) has the right to do so and that such things are liable to be represented”. The definition provides that the representation should exist during the principal's lifetime. This is to distinguish wakala from testament (wasiyyah). Somehow, this definition is also similar to Maliki's jurists.

The Hanbali jurists⁶ propose the definition of wakala as “a deputation of a person who is legally competent (muwakkil) by a person of the same qualification (wakil) in matters embodied under the concept of deputation”. This definition mentions the main elements of wakala and those are the principal and the agent and

³ Alauddin Abu Bakr bin Masood Al-Kasani·Badaye' Al Sanaye' Fi Tarteeb Al Sharaye,Beirut ,Dar Al Kutub Al Ilmeyyah, 1986),6:19

⁴ Abu Abdullah Muhammad b. Abdur Rahman Al Hattab·Mawahib al Jalil li SharhMukhtasar Khalil (Beirut: Dar al Fikr, 1992), 5:181

⁵ . Shamsuddin Muhammad b. Shihab al Din Al Ramli·Nihayat al Muhtaj ila Sharh AlMinhaj (Beirut: Dar al Fikr, 1984), 5:15

⁶ . Al Bahuti· Kashshaf al Qina' 'an Matn al Iqna', 3:461.

requires that they must be legally competent in order to engage in agency contracts. In addition, the definition also names the subject matter of agency which is reflected in the rights of Allah SWT, for example implementing punishment for crimes (hudud) and the rights of man for example in Transactions (mua'malah).

In Islamic finance, the term *wakala* describes any agency or delegate authority where *a muwakkil* (principal) appoints the *wakil* (agent) to carry out specific job on behalf of the *muwakkil*⁷.

Conclude: from the above definitions of the jurists it seem the definition of Hanbali School is more preferable because it contain the definition of Wakala and its pillars as well.

3. Definition of Wakala in Sudanese Acts & other related Legislations:

Due to the lack of Sudanese legislations, the Sudanese courts continued, for a very long period, to apply the common law rules. By the enactment of the civil law of 1971, the rules of agency found some sort of codification despite its limited effect. This act was repealed by the law of agency of 1974, which identified the general principles of agency without involving into details (flexibility).The 1974 act was repealed by section (2) of the civil transactions Act 1984 which contains – in chapter XIV- the rules which govern the contract of agency. In this regard, it is remarkable to consider that the CTA did not address some principles, which was expressly conducted by the repealed act (the 1974 act), i.e.

- ورد تعريف الوكالة في المادة (٤١٦) من قانون المعاملات المدنية لسنة ١٩٨٤ والتي نصت على ان "الوكالة عقد يقيم الموكل بمقتضاه شخص اخر مقام نفسه في تصرف جائز معلوم"

Agency is a contract whereby the principal puts another person in the place of himself in a known and permissible disposition.⁸

⁷ . Nicholas HD Foster, Islamic Commercial law Anoverview1, school of Oriental and African studies, University of London,p21

⁸ . Section (416) Sudanese civil Transaction Act 1985

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Therefore, the advantages of definition Agency under Sudanese Act is a contract under which the agent is obliged to carry out legal work on behalf of the principal.

According to AAOIFI, *wakala* is “the act of one party delegating the other to act on its behalf in what can be a subject matter of delegation. It can be comparable to the concept of agency in general, whereby one party (*muwakkil*) would give authorization to another (*wakil*) to perform a task as an agent on behalf of the *muwakkil* in the matters that can be delegated. This is done either voluntarily or for a fee.⁹

In English law, Friedman offers a tentative and brief description of what agency involves as follows:

"Agency is a relationship that exists between two persons when one called the

Agent, is considered in law to represent the other, called the principal, in such a way as to be able to effect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property”

From the above definition of wakala in CTA it seems followed the Malki School so suggest it preferable to follow Hanbali School because is comprehensive definition. As will appears in the AAOIFI definition.

4. Formation (Arkan) of Wakala

A number of constituent elements (arkan) without which forms the contract of Wakala Will not come into existence. The essential elements of wakala will be explained as following:

The majority of the jurists: The formation of wakala contains subject matter of contract, the principal (*muwakkil*), the agent (*wakil*) and the subject matter (*muwakkal bihi*).

⁹ Sharia Standard for Islamic Financial Institutions , December 2015, p 605

The offer and acceptance must be clear for the contract to be valid. As with the offer, the acceptance can be expressed either by verbal expression or by other means of expression. For instance, some of the verbal acceptances are as follows; “I accept the agency” or “I will perform your order” or “I will represent you” and other similar expressions. These expressions are clear and do not bear another meaning.

In general, no special form of contract is required. Even if the agent is appointed to make a contract (such as the purchase of land) which is required to be in writing, signed by or in behalf of each party to the contract. The appointment of the agent need not be in writing.

Capacity. The general rule is that both principal and agent must be capable of acting as principal or agent. Whether such capacity exists is a matter for general law of contract.

Validity. The purposes of the contract of agency must be lawful and possible. Therefore, if the contract of agency is illegal by the law of the place where it is to perform it cannot be treated as valid and enforceable in the country where the parties entered into it.¹⁰

لم يفرد المشرع السوداني نصا في قانون المعاملات المدنية لسنة ١٩٨٤ يبين طرق نشوء الوكالة في المقابل فقد أوضح المشرع في قانون الوكالة الملغي لسنة ١٩٧٤ طرق إنشاء الوكالة في نص المادة (٤) ، تنشأ الوكالة :-

- ١- بإتفاق صريح أو ضمني سواء أكان الإتفاق عقدا أم غير ذلك.
- ٢- بإجازة الأصيل اللاحقة لما قام به أي شخص من عمل نيابة عنه و دون أن تكون له سلطة في ذلك.

From the above mentioned it appears there is specific element which without it the contract of wakala will existed , Principal , agent Wakil, Subject matter , there’s shortcoming in civil transaction act which did not provide for this pillars so I suggest to adapt this point of view .

¹⁰ Friedman, The Law of Agency (Butterworth’s, 1971) 8

Sub Section 2: Legality of wakala in sharia and law:

1. Legality of Wakala in Sharia

The legality of *wakala* is derived from the main sources of *sharia* law. Apart from the Qur'an, there is also a *hadith* that mentioned the Prophet ([saw] had commended one of his companions when he had instructed his companion to buy a sheep for him, which in turn brought the Prophet (saw) an additional dinar as a profit from his business dealing. *Wakala* concept is also generally accepted by all classic

Wakala is derived from the Arabic root word *wakala*. The word *wakala* appears in the Quran in several places and bears various meanings. These words have different meanings and interpretations, for example, *al-hifz* (to preserve or to defend), or *al-tawfidh* (to entrust with or to give mandate) and in terms of agency, it means a person responsible for arranging one's affair. However, all these words are used to indicate "a representation of a person on behalf of another person in certain dispositions"¹¹ also "Now send one of you with this your silver coin unto the city, and let him see what food is purest there and bring you a supply thereof"¹²

This verse is related to the Companions of the Cave (*Ashab al-Kahf*), which one of them was

Appointed to go out and buy food from the city with their silver coin. In this verse, the word

ib'athii could mean "send" or "appoint" or "authorize

There are various a *hadith* which show the permissibility and legality of

Wakala. It is reported in a *hadith* that when Jabir bin Abdullah (R.A) intended to go to Khyber, the Holy Prophet (S.A.W) addressed him: "If you meet my agent, take or ask from him fifteen *wasaq* (a unit of weight measurement)". This *hadith* expressly supports the legality of *wakala*.

¹¹ (Al-Bahuti, 1982).

¹² verse of Sura Al Kahaf

The jurists agreed upon its permissibility based on the concept of helping each other.²⁸ there is unanimity among the Muslim jurists that agency is a lawful contract and has been since the early stage of Islam.

2. Legality of Wakala in CTA 1984

The civil transactions act stipulates the terms of validity of the agency in section 417 \ (1)

- I-The principal has the right to dispose by himself of what he is entrusted with.
- II - The agent shall not be prohibited from disposing of what he is entrusted with.
- III -The subject matter shall be known and capable of being represented.

Sub-section (2) stipulates that the consent of the Opponent party is not a condition for litigation agency.

The validity of the agency requires conditions in the principal, the agent and the subject matter of the contract.

The principal's conditions:

It is necessary for the principal to be qualified to practice the conduct that is entrusted to others, because he who does not have the right to act does not have the right to delegate others.

The agent's conditions:

The agent is required to be sane, so it is valid to delegate the power of attorney to the distinguished minor, whether he is authorized to trade or interdicted. On the other hand, it is not permissible to delegate the incompetent person, such as the insane, the undistinguished minor, and those in their position, because their expression is not considered.

There is no rules concerning delegation of the distinguished minor except the general rules concerning the capacity of the distinguished minor set out in section (54) of the CTA.

From the above provisions it appears the wakala contract is permissible according to specific conditions this is completely

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agree for it in both Islamic jurisprudence and Sudanese civil transactions act.

Section two: Types of Wakala¹³

The contract of (*wakala*) can be divided into two types: general agency and specific agency.

General Wakala (Unrestricted agency)

A general agency is a type of contract in which a principal delegates full authority to an agent to perform a series of transactions on his behalf. For example, a principal may delegate an agent to purchase the house, lease it to others and collect the rental on monthly basis. A director of a company could be an example of general agency. Because he has full authority to perform a series of tasks on behalf of the company.

Specific Wakala (Restricted agency)

It's a type of agency in which a principal authorizes an agent to do a specific task on behalf of him. For example, someone delegates an agent to sell his car at certain price. In this case, the agent's authority is limited to sell that particular car at given price¹⁴.

Investment Wakala Wakala Bi Al-Istithmar

Wakala investment, a financial instrument deeply rooted in Islamic finance, employs a unique method to facilitate wealth growth. Unlike conventional banking, a Wakala investment complies with the principles of Sharia law, a vital aspect for many Muslims around the world¹⁵.

¹³ Ibn Al- Hummaam , Sharh Fath Al- Qadeer, First edition , Beirut , Lebanon (1415-1995),Vol.7, Dar Al Kotob Al- Ilmiyah, page 198, Ibn Rushd , Bidayat al-Mujtahid wa –Nihayat al-Muqtasid(2004), Dar Al Kotob Al- Ilmiyah, page 220.Ash – Shafi – Imam Abi Abdallah Mohammed bin Idris, Al – Umm, Kitab – Al - Buyu -1403-Vol 3, Arab world published house, page329

¹⁴ Ibn Muflih, Shams al-Din al-Maqdisi Abu Abdullah, Al- Furu, (1997), Dar Alam Al Kutub, page 350.

¹⁵ [Wakala Investment in 2023: Understanding Islamic Finance | Adam Fayed](#)

In a Wakala investment, there are two primary parties – the investor, or *muwakkil* and the ‘Wakil,’ or agent. The Muwakkil invests the funds, and the Wakil invests these funds on behalf of the Muwakkil. The Wakil act based on an agreed-upon strategy and, in return, earn a fee for their services¹⁶.

Unlike interest – based systems seen in conventional finance, Wakala investment relies on the profit-and-loss sharing principle. Thus, the investor’s return is not a fixed percentage but rather depends on the profit generated from the investments made by the Wakil.

This structure highlights a crucial difference between Wakala investment and other conventional investment methods, making Wakala a unique alternative for those seeking investment avenues aligned with Islamic principles.

Wakala investment is considered Halal as it adheres to Sharia law’s key principles. In the investment, there’s no fixed interest, known as *Riba*, which is forbidden in Islam¹⁷.

The returns depend on the performance of the investment, aligning with the Islamic principle of profit-and-loss sharing.

Moreover, the full disclosure and transparency required in the agreement also align with Islamic principles. All terms of the investment, including Wakil’s fee, the strategy for investment, and the potential risks, are disclosed upfront, ensuring fairness and ethical conduct in the transaction¹⁸

¹⁶ **Wakala Investment**, [Wakala Investment Definition | Law Insider](#)

¹⁷ [all-wakala-tcs-en.pdf \(dib.ae\)](#)

¹⁸ Wakalah bi al-Istithmar: A Case Study of Wafiyah Investment Account Bank Islam Malaysia Berhad (BIMB) , Marina Abu Bakar1 & Nur Fatin Husna Mohd Nasir2 1 Kulliyyah of Shariah and Law, Universiti Islam Antarabangsa Sultan Abdul Halim Mu’adzam Shah, 09300, Kuala Ketil, Kedah, 2 Islamic Business School, University Utara Malaysia, 06010, Sintok, Kedah.

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Types of Wakala in the Sudanese Civil Transaction Act 1984
حصر قانون المعاملات المدنية السوداني لعام ١٩٨٣ انواع التوكيل والوكالة وفق احكام المادة ٤١٨ في الآتي :
١١ يجوز ان يكون التوكيل مطلقا أو مقيدا أو معلقا أو مضاف الى شرط
١٢ تكون الوكالة خاصة اذا اقتضرت على أمور معينة وعامة اذا اشتملت على كل امر يقبل النيابة وذلك على النحو التالي :
أ\ اذا كان الوكالة خاصة فليس للوكيل الا مباشرة الامور المعينة فيها وما يقتضيها من تابع ضروريه تقتضيها طبيعة التصرف الموكل بها
ب\ اذا كانت الوكالة عامة جاز للوكيل مباشرة المعاوضات والتصرفات عدا التبرعات فلا بد من التصريح بها .

From the above mentioned it appear the Sudanese Civil Transaction Act does not provided for the Investment Wakala Wakala Bi Al-Istithmar thus there is shortcoming and I suggest to adapt this type of wakala according to its important in the field of Islamic finance .

Section three: Implementation of Wakala in Islamic Finance

Wakala contract is also used by Islamic Finance Institutions in respect of many Islamic modern financial like *mudharabah*, *salam*, *istisna*’, *ijarah*, diminishing *musharakah* and many other activities like the letter of credit, payment and collection of bills, fund management and securitization. In this section, some wakala based products will be discussed

Wakala is a very important tool and the Islamic financial institutions cannot overlook it. In this section, those practices will be examined in the light of classical *fiqh*¹⁹.

As a Complementary to Sharia Contract Transactions Wakala contract is used as a document that includes the power of attorney

¹⁹ Al-Zuhayli, D. W. (2003), Financial Transaction in Islamic Jurisprudence. Damascus: Dar Al-Fikr, p21.

from the Bank to the Customer to purchase/acquire assets with the following conditions²⁰:

In the context of purchasing or procuring or acquiring movable or immovable assets prior to a *murabahah* or *musyarakah mutanaqisah* contract, and refinancing between the bank and the customer. In order to procure services prior to the multi-service *Ijarah* contract between the bank and the customer.

In the context of channeling financing with a Cooperation scheme between a Bank and a financial institution where the financial institution as the recipient of the funds only acts as a manager and obtains a reward or fee from the management of these funds and the risks arising from this activity rest with the Bank as the party that owns the funds. In this channel financing mechanism, the wakala scheme is carried out where the bank gives power to financial institutions to manage end users.

In terms of wakala to *murabahah*²¹, wakala is prohibited from being a condition for the validity or validity of a *murabahah* transaction, because the two contracts stand independently and do not affect each other.

In essence, *murabahah*²² financing is the provision of funds or equivalent claims, in the form of buying and selling transactions in the form of *murabahah* receivables based on sharia principles. In practice, Islamic commercial banks issue wakala contracts to customers, in which the customer acts on behalf of the Islamic commercial bank with the aim of making a purchase first from the supplier or initial owner, after first negotiating the price of goods, specifications, method and place of payment. Goods purchased by customers based on wakala contracts will then be resold by sharia

²⁰ Badri, M. B. and Bouhreaou, D. S. (2014), "Charging fee on letter of guarantee-is it permissible?", Fatwa in Islamic Finance, Issue 2, pp. 2-3, available from <http://ifikr.isra.my/documents/10180/16168/isra-bloomberg-feb-2014-fatwa.pdf> [Accessed on 5 August 2016]

²¹ **Md.Habibur Rahman, Mudarabah and Its Applications in Islamic Finance, (PDF) Mudarabah and Its Applications in Islamic Finance (researchgate.net), p12**

²² <https://www.investopedia.com/terms/m/murabaha.asp> .

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commercial banks to customers based on sharia principles with murabahah contracts²³.

The granting of wakala to customers may not eliminate the two legal relationships that underlie Islamic commercial banks to sell goods to customers

So we can notice that essential information which stipulated as even though the customer purchases for his interests by not including the purchase on behalf of the bank, then legally the goods remain the property of the bank, so that the bank can resell the murabahah object to the customer by including the nominal profit of the sharia commercial bank in the contract²⁴.

In the wakala contract, Islamic commercial banks also give power and authority to customers to sign all buying and selling documents including but not limited to sale and purchase deeds, receipts and appear before authorized government officials in the context of buying and selling.

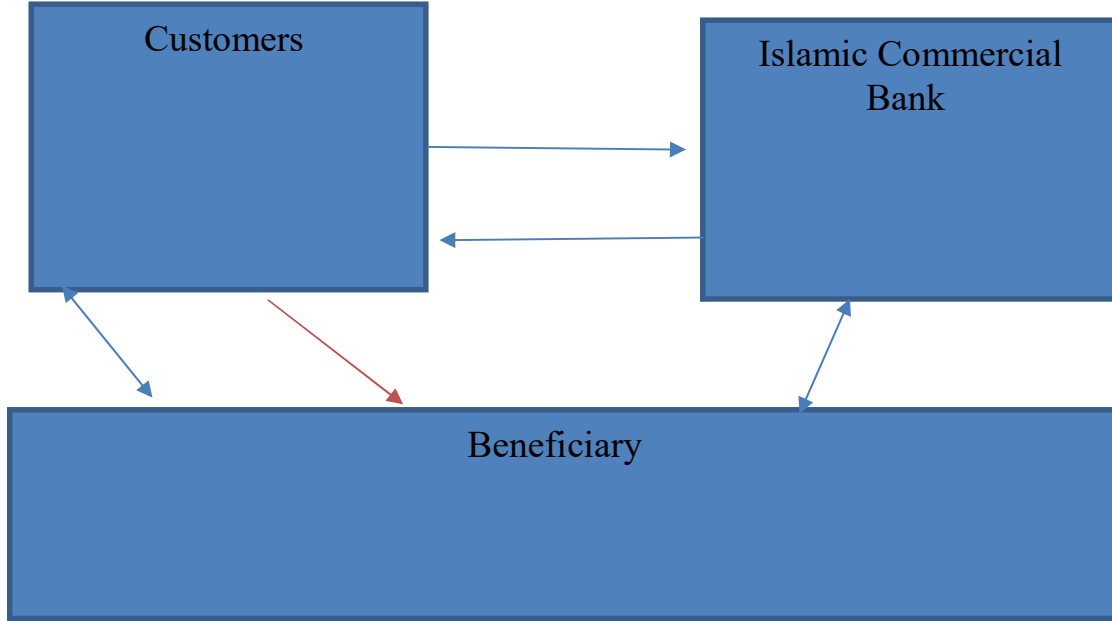
From the above mentioned we can notice in Islamic commercial banks in practice issue wakala contracts to customers, in which the customer acts on behalf of Islamic commercial banks with the aim of making purchases first. First from the supplier or original owner, after first negotiating the price of goods, specifications, method and place of payment. Goods purchased by customers based on wakala contracts will then be resold by sharia commercial banks to customers based on sharia principles with murabahah contracts²⁵.

Its seem from the above provisions the Islamic commercial banks still depend on it transaction for the wakala contract and not adapted the investment wakala as modern financial instrument which is permissible according the sharia law standards.

²³ Bank Negara Malaysia (2015), Wakala Concept Paper. [Online] Available at: http://www.bnm.gov.my/guidelines/05_shariah/Wakalah.pdf [Accessed 15 March 2016].

²⁴ Furqani, D. (2013), "The Contract of Wakala and Its Application in Islamic Finance", Fatwa in Islamic Finance-ISRA & Bloomberg, August, Issue 8, p. 6.

²⁵ Zaher, T. S. and Hassan, M. K. (2001), "A Comparative Literature Survey of Islamic Finance and Banking", Financial Markets, Institutions & Instruments, Vol. 10, No. 4, pp. 155–199. <https://doi.org/10.1111/1468-0416.00044>



1. Islamic commercial banks in practice issue wakala contracts to customers.
2. The customer acts on behalf of Islamic commercial banks with the aim of making purchases first. First from the supplier or beneficiary, after first negotiating the price of goods, specifications, method and place of payment.
3. Resold the subject matter by sharia commercial banks to customers based on sharia principles with murabahah contracts.

The rationale behind this steps which adapted by the Islamic bank is to avoid *Gharar* which is prohibited according to sharia standards one of this standards each contract will be separated from the other to avoid to sells in one.

Conclusion

According to the above provisions we can conclude this paper focused on the wakala contract which is one of the Islamic financial formula its deriver it legality from the Quran and *Sunna* and *Ijma* , and which is defined in the Islamic Jurisprudence and Sudanese Civil Transaction Act beside the AAIFO standards.

The study concludes with there is specific elements which constituted the legality of wakala contract according to specific conditions which explained in the Islamic Sharia and enactments, this conditions related to the principal, agent and subject matter of the wakala, and also this study reached the wakala contract is permissible according to sharia law standards in the Quran, Sunnah and Ijma.

This study was explained the role which played by the wakala in Islamic finance banking with other formula such as murabaha, musharkka.

Moreover this paper conclude with numerus finding the Sudanese Civil Transaction Act 1984 doesn't provided for the investment wakala Wakala Bi Al-Istithmar thus there is shortcoming and I suggest to adapt this type of wakala according to its important in the field of Islamic finance, also civil transaction act which did not provide for this pillars so I suggest to adapt this point of view.

Moreover the study recommended the necessity of adapted the definition of wakala in the Sudanese Civil Transaction Act 1984 according to the *Hanbali* School because is comprehensive definition. As will appears in the AAOIFI definition, adapted the investment wakala Wakala Bi Al-Istithmar as one of the types of wakala in the Act to carry out the Islamic banks to implement this formula according to sharia law standards, Moreover the study recommend about the necessity of constitute workshops and public lectures for the researcher's in the field of Islamic law and legal studies about awareness of the wakala contract and it significant in Islamic finance.

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