

REASONS AND REQUIREMENTS FOR CONSIDERING THE INVESTMENT JOINT BANK ACCOUNT AS A LEGAL PERSONALITY IN JORDANIAN ISLAMIC BANKS

Omar Nouh Mabdah, The University of Jordan
Majdi Ali Mohammad Ghaith, The University of Jordan

ABSTRACT

The present study aimed to shed a light on the Fiqh and legal reasons for considering the investment joint bank account as a legal personality. It aimed to identify the requirements that must be met to consider the investment joint bank account as a legal personality. It aimed to identify the extent of having the characteristics and elements of legal personality in the investment joint bank accounts in Jordanian Islamic banks. It aimed to identify the significance of considering the investment joint bank account as a legal personality. It aimed to shed a light on these issues because the users of investment joint bank accounts are in need for having people defending their rights that are related to the profit percent and rights that are related proofs of negligence and infringements.

It was found that all the elements of the legal personality are existent in the investment joint bank accounts in Jordanian Islamic banks. Thus, all these accounts must be considered as legal personality through amending the regulations issued by the Jordanian Central Bank. The researcher recommends enacting laws that allow the user of an investment joint bank account to have a representative. That shall enable him/her to defend the rights of this user and negotiate the bank employees on the profits rate mentioned in the application form of creating an investment account.

Keywords: Islamic Banks, Legal Personality, Investment Joint Bank Account, Joint Mudaraba

INTRODUCTION

Economic conditions significantly affect the living conditions of people. Thus, there are several shariah-related provisions that regulate the way of acquiring, saving and spending money. That is because money is considered as something vital in life and essential for enjoying good living conditions under shariah. Joint investment account is one of the significant research topics in the field of Islamic banking. Such an account has become prevalent and popular due to the benefits they achieve for the favor of the banker and depositor.

The researchers of the present study noticed that the existent way of creating joint investment account requires medication and regulation. That is because this way is unfair for the depositors due to the nature of the contract terms. Therefore, he aimed to propose a method for creating joint investment accounts in a manner that doesn't violate the rights of depositors and holds the bank accountable for negligence and infringing the depositors' rights. The latter method involves using a form for the juridical person who wants to create a joint investment account in an Islamic bank.

Statement of the Problem

The Problem of this Study is represented in the Following Questions

The problem of this study is represented in the following questions:

- 1) What is the extent of adherence in the document of creating a joint investment account in Islamic banks?

- 2) What is the ability of having a juridical person representing the holders of joint investment accounts in an Islamic bank?
- 3) What are the legal and shariah-based grounds for having a juridical person representing the holders of joint investment accounts in an Islamic bank?
- 4) What are the requirements to be met for having a juridical person representing the holders of joint investment accounts in an Islamic bank?

The Study's Significance

The present study is significant because it aims at protecting the rights of the creators of joint investment accounts (*i.e.*, investors or depositors) and the rights of bankers who operate the joint investment account. It aims to offer such protection in a manner that is consistent with the provisions of Shairah. It aims to show the extent of enforcing the laws and legislations that are related to the protection of joint investment accounts

The Study's Objectives

The present study aimed to

- 1) Identify the impacts of having a juridical person representing the holders of joint investment accounts in an Islamic bank.
- 2) Create a representative who looks after the interests of the holders of joint investment accounts in Islamic banks.
- 3) Identify the grounds for having a juridical person representing the holders of joint investment accounts in an Islamic bank.
- 4) Identify the requirements to be met for having a juridical person representing the holders of joint investment accounts in an Islamic bank.

Previous Studies

The most significant previous studies are shown below:

- 1) Juridical persons in Fiqh: Dr. Ahmad Ali Abdullah. Al-Dar Al-Sudaneye. Sudan. The latter study is a comparative study in the fiqh field. It sheds a light on Ahkam related to juridical persons (companies and institutions) and accountability. It sheds a light on the features of the juridical persons under Fiqh and the counterpart features under law.
- 2) Identifying the texts including the legal and Shariah-based regulations for creating investment accounts by juridical persons: Dr. Mohammad Ahmad Al-Khalayleh- Jordan. A researcher submitted to a conference titled (Research and studies on cooperate insurance-related issues). This conferences is held by the International Islamic Fiqh Academy during 1 – 3/12/2014, Jeddah, Saudi Arabia.

The latter study sheds a light on extent of enjoying the features of juridical persons by the holders of investment accounts. It sheds a light on Shairah-related and legal aspects related to that.

The aforementioned studies shed a light on Shairah-related and legal aspects related to the juridical persons of investment accounts rather than joint investment accounts.

Contrary to the aforementioned studies, the present study aimed to:

- a) Identify the grounds for having a juridical person representing the holders of joint investment accounts in an Islamic bank
- b) Identify the requirements to be met for having a juridical person representing the holders of joint investment accounts in an Islamic bank

The Study's Approach

The researchers adopted the approaches mentioned below

First: The descriptive inductive approach

Second: The analytical approach

Third: The deductive approach: It's adopted to identify the grounds for having a juridical person representing the holders of joint investment accounts in an Islamic bank. It's adopted to identify the requirements to be met for having a juridical person representing the holders of joint investment accounts in an Islamic bank.

First Part: Basic Concepts

The researchers aimed to identify the meaning of several basic concepts. Those concepts are: (joint investment accounts, individual investment account and juridical person:

The Meaning of Investment Accounts

The ones specialized in Fiqh provided several definitions for the term (investment accounts). Some of those definitions are shown below:

- 1) Investment account refers to an account that includes a sum of money that is deposited in the bank in order to get an income within a short period of time (Taskhiri, 1995).
- 2) Investment account refers to an agreement made between the client and the bank through which the client deposit a sum of money at the bank for a specific duration in order to invest the money and achieve profit. During this period, the client can't withdraw his/her money before the specified agreed upon period ends. Through this agreement, the client shall get profit in a regular manner or when the periods ends. In case of lose, the client shall incur the whole loss. However, the bank mustn't show negligence nor infringe the client's rights (Elyan, 2019).
- 3) Investment account refers to a bank account through which the client deposits money within the bank. When creating this account, the client pledge to refrain from withdrawing the money before the agreed upon period ends. He created this account in order to get halal profits through carrying out halal investments in a manner that is halal (Al-Kubaisi, 1995).
- 4) Investment account refers to a bank account through which the client deposits a sum of money in an Islamic bank for a specific period of time. Such a client shall receive profits. The greater the period of investment, the greater the profit shall be. Investment account may be called term deposits (Al-Metrek, 1429H, 345).

Based on the aforementioned definitions, the researchers define (investment account) as an agreement made between the bank and the client in order to increase the client's funds through providing him/her with profit. Such a profit is provided in the form of a percentage or fixed amount of money. There are two types of investment accounts, which are: (joint investment account and individual investment account (Al-Wadi & Samhan, 2012). Information about such accounts are shown below:

First Section: Joint Investment Accounts

Such accounts may be also called (unrestricted investment account). They refer to the accounts through which the client deposits a specific amount of money and delegates the bank to invest it in any area perceived suitable by the bank (Soliman, 1996). In fiqh, they may be considered as mudarabah-based contracts or a contract for delegating the bank to carry out investment. Through this contract, the profit shall be distributed between the bank and the client in a manner that's identified in the contract. The loss shall be incurred by the client in usual cases. However, in case the loss occurred due to negligence shown by the bank or infringement for the depositor's rights, the bank shall incur the loss (Sano, 2002). In case of making an agency contract, the bank shall deduct part of the deposited money as charges for investing the funds. In the latter case, the client shall receive all the profits and incur the whole loss (Al-Ali, 2014). In this regard, the client may wonder about the way of ensuring that the bank didn't show any negligence nor committed any infringement for the depositor's rights in case of making

mudarabah-based contract. The researchers of this study believe that it's necessary for the client to ensure that in order to consider the investment account as a juridical person

Investment accounts are called unrestricted accounts because they are not subjected to conditions. Through such accounts, the Islamic bank shall invest the client's money that was deposited in his account. Investment accounts are created through mudarabah-based contracts (Al- Tayyar, 1988). There are 3 types for the joint investment accounts, which are shown below:

First: Saving Accounts

Through the saving accounts, the client shall deposit money in the bank through creating an account. The records of this type of account identifies the withdrawals and deposits of the account. They show the revenues of the account. They show the daily cash withdrawal limits. The holder of the saving account can't withdraw all his funds from the ATM once (Al-Hasani, 1420; Al-Amin, 1430; Ziad, 1417; Al-Wadi & Samhan, 2012).

The saving account is not governed by a specific period of time. For instance, the holder of this account can withdraw funds from his account at any time. That is because bank doesn't invest all the funds that are deposited in this account. That shall raise the liquidity level in the bank (Awad, 1988). The saving account doesn't exist in the Islamic banks.

Second: Notice Accounts

They refer to the accounts in which their holders desires to invest their funds in the bank. However, such accounts allow their holders to withdraw their funds, provided that such holders notify the bank in advance (Al-Wadi & Samhan, 2012).

Third: Term Deposit Accounts

They refer to the accounts which are created based on an agreement between the bank and the client. Through this agreement, the client deposit money and pledge to refrain from withdrawing it till an agreed upon period (Al-Akkad, 1983). Term deposit accounts may be defined as the accounts which their holders aren't entitled to withdraw money from them until a specific period possesses (Al-Wadi & Samhan, 2012). People today use term deposit accounts. The researchers suggest that the differences between such types are represented in the way one withdraw his/her money and the conditions of drawing money. The features of all the aforementioned accounts and the profit rate of the aforementioned accounts differ from one to another.

Second Section: The Individual Investment Accounts

They refer to investment accounts that are not associated with unrestricted delegation. Through creating such accounts, the holders shall choose the project to invest their funds in. They shall also choose the duration to invest their funds during. They shall receive profits based on the agreed upon percentages (Shehata, 1982).

The individual investment accounts are also called restricted investment accounts. Through creating such accounts, the bank shall invest the funds deposited by the depositor in the agreed upon type of investment and in accordance with the agreed upon time and place (Al-Ali, 2014).

The Description of Individual Investment Accounts is Shown Below

The individual investment accounts are created through restricted mudarabah-based contract. They aim at investing funds and providing the depositors with profits. The minimum limit allowed for investing funds is great in comparison to the counterpart limit of other

accounts. Through the individual investment accounts, the holders shall receive part of the profits. However, they shall not incur any loss, unless the loss is uncured due to reasons that are beyond the control of the bank. The profit percentage of the individual investment account is considered high in comparisons to the profit percentage of other accounts. It's 85%. The deposit in the individual investment account. The deposit in an individual investment account requires making a new contract. As for the withdrawal of money from individual investment accounts, it requires ending the investment and meeting conditions specified by the bank. Meeting such conditions is harder than meeting the conditions of other accounts. That's because the individual investment accounts are associated with specific investments (Ashour, 2003)

There isn't anything that prevents providing the bank with additional funds to fund the project after launching the project or after withdrawing old deposits. That applies provided the profit shall be earned by both parties and loss shall be incurred by both parties based on the agreed upon percentage. The amount of profits shall be calculated based on the number of days in which the money was deposited in. It shall be calculated based on the number of dinars deposited in the account (Irsheed, 2001).

As for the profit, it shall be divided between the bank and the holder of the individual investment accounts. It shall be divided based on the agreed upon percentage. This percentage is set based on the amount of effort exerted by the bank. When creating the latter accounts, the bank must supervise, organize and follow up the project. Holders of individual investment accounts can't withdraw money before the agreed upon period ends (Muheisen, 1989).

Third Section: The Juridical Person under Shariah

The juridical person refers to a legal entity that has a distinct identity that's constituted through having a group of natural persons or several amounts of money (Al-Zarqa, 1961: 272). It's also defined as a legal entity that has a legal capacity that's distinct and separate from the legal capacity of the partners constituting this legal entity. This entity has a distinct financial liability (Al- Sanhour, 2000).

The ones specialized in law provided several definitions for the term (juridical person). However, all the definitions suggest that the juridical person is a legal entity that's constituted through having a group of natural persons or several amounts of money. They suggest that the juridical person aims to meet a specific goal and has distinct rights. They suggest that the juridical person has a distinct financial liability that is not related to the financial liability of the natural persons constituting the juridical person (Hijazi, 1951: 507; Al-Qari, 2016).

The ones specialized in Fiqh didn't shed much light on the term (juridical person) (Abdullah, 1990; Tomoum, 1987). However, they provided definitions for the latter term (Al-Khayyat, 1994). That can be noticed when searching about the following terms: Bait Al-Mal, companies specialized in murdarabah, and rights of Allah (Abdullah, 1990; Tomoum, 1987). The ones specialized in Fiqh used the term (Themah) to refer for the term (juridical person) (Al-Khayyat, 1994).

As for the ones specialized in contemporary fiqh, they provided definitions for the term (juridical person). From a fiqh-based perspective, juridical person is a term introduced by the ones who set positive laws in the aim of facilitating the process of making transactions with people and managing funds. It aims to represent the interests and liabilities of a group of natural persons constituting this legal entity. It enjoys specific rights and has responsibilities to fulfill (Al-Bouti, 2009).

The ones specialized fiqh assigned the responsibility of defining the term (juridical person) to the ones specialized in law. That's because the latter term was introduced by the ones specialized in law.

Second Part: The fiqh-based grounds for having a juridical person representing the holders of joint investment accounts in an Islamic bank:

There are several fiqh-based grounds for having a juridical person representing the holders of joint investment accounts in an Islamic bank. Such grounds are represented in

showing compliance with several contractual principles. Compliance with such principles is essential to consider the contract valid. Such principles are: the principle of having multiple parties and the principle of complete consent. Further information about that is shown below:
 First section: The principle of having multiple parties and the goal sought from compliance with this principle

According to the ones specialized in Fiqh who investigated the theory of contract in Fiqh, there are contractual principles that the contract parties must comply with to consider the contract valid. Such principles include having multiple contractual parties. When reading the contract terms, one can identify the goal sought from setting this principle. In the contract of creating a joint investment account in an Islamic bank, there are several contractual parties. The contractual parties are the ones who create the contract and approve the form of the contract. The contract party may sign the contract by himself or assign a representative, a guardian or custodian (Najim, 245). One person or a group of people may serve as one party in the contract (Al-Zarqa, 1998).

In this regard, one may ask: (What is the goal sought from having multiple parties?) (Does the contract of creating a joint investment account in an Islamic bank has multiple parties?)

To answer such questions, the researchers presented several statements and views made by researchers specialized in Fiqh about having multiple parties and the goal sought from requiring that.

First Sub-Section: Requiring Multiple Contractual Parties

When making a contract, there must be several parties. For instance, in the sale contract, there must be a seller and a purchaser. It's not permitted to assign the responsibility of signing the contract to a representative who represents both parties. That is because there is a conflict of interests. For instance, the interests of the seller are represented in raising the price of the commodity and reducing the number of conditions. As for the interests of the purchaser, they are represented in reducing the price of the commodity and raising the number of conditions). However, there are exceptions. Such exceptions include: having the guardian father selling an asset owned by his child on his/her behalf. They include: having the ruler selling an asset owned by a minor (Hamish, 2001)

Thus, having multiple contractual parties is essential due to the conflict of interests between the parties (e.g. buyer and seller). The same applies to the parties of the contract concluded for creating a joint investment account. For instance, the interests of the bank are represented in raising its profit percentage and reducing the profit percentage of the depositor (*i.e.*, the account holder). They include: setting contractual terms and conditions that reduce its liability in case of incurring loss. The interests of the account holder are represented in raising his/her profit percentage and reducing the bank's profit percentage. When having a disagreement about such profits, negotiations shall be held between the parties. In terms of the joint investment account, the conflict of interest exists. However, the impact of such conflict (*i.e.*, the need to have multiple parties) is a matter of formalities. For instance, it's not permitted for the account holder to negotiate about issues related to the contract form nor demand to change the contract form. When having a juridical person representing the holders of joint investment accounts in an Islamic bank, the negotiations shall be held between the bank and this juridical person. In this case, the juridical person can negotiate about issues related to the contract form. Thus, in this case, there shall be an actual compliance with the principle of (multiple contractual parties).

Thus, in case of concluding a contract, an agent representing the parties can't sign this contract on behalf of the parties. Permitting that shall mean that the agent shall be responsible for submitting and receiving the funds simultaneously. However, that's impossible and not logical. Thus, the ones specialized in fiqh suggest that having multiple contractual parties is essential to consider the contract valid (Bakr, 2009).

It's essential to having multiple parties because the same person can't serve as buyer and seller simultaneously. Permitting that shall violate the standards related to honesty and credibility. It can be noticed that the bank set conditions and percentages in the contract of creating investment account in a manner that meets its interests. After setting such conditions and percentages, the bank shall ask the depositor to make his/her consent on the contract. The banks used to conclude this contract with itself with giving priority to meeting its interests through assigning an agent for making this contract on behalf of the parties.

According to a researcher, under fiqh, there must be multiple parties in order to have two free wills and mutual consent and hold the parties liable for their pledges. Under fiqh, there must be multiple parties because each party can't enjoy capacity unless there are several parties in the contract (Al-Asadi).

However, due to applicability of the delegation principle, a representative may be appointed to sign a contract on behalf of the two parties due to exceptional case. Such a representative may be assigned to act on behalf of minors and the ones who lack legal capacity. He/she may be delegated willingly by the party representing him/her. In this case, the delegate can conclude the contract on behalf of the two parties, provided that the contract form mentions the two parties. In this case, the parties shall be held responsible for executing the signed contract (Al-Jaziri, 1998). Since the juridical person has a representative, this representative shall be responsible to act on behalf of the holder of the joint investment account.

After reviewing the aforementioned information, the researchers concluded that it's essential to have multiple parties due to having a conflict of interests. For instance, the bank's interests are represented in reducing the client's profit percentage. They are represented in raising its charges in case of concluding an agency contract. The client's interests are the opposite of the bank's interests. Thus, it can be noticed that concluding a contract for creating an investment account requires having multiple parties. However, meeting this condition doesn't have a major effect. That's because the account holder isn't entitled to hold negotiations about his/her profit percentage. It's because the account holder can't enforce control over the bank's operations. In this case, the contract of creating an investment account is considered a type of adhesion contract.

The present study aimed to explore the impacts of having a juridical person representing the holders of joint investment accounts in an Islamic bank when concluding a contract for creating this account. In this case, each party shall sign this contract separately. In this case, the juridical person shall be permitted to negotiate the bank about its profit percentage or the bank's charges. In this case, this contract isn't a considered a type of adhesion contract. There shall be an actual multiple contractual parties in this case.

Second Section: The Principle of the Complete Consent

Through this section, the researchers shed a light on the significance of having a complete consent in the contract of creating an investment account. Having a complete consent is a significant contractual principle.

Sub-Section: The Meaning of Consent: Theoretically and Technically

In language, consent refers to approval to the things and changes that occur (Al-Manawi, 1990, 365) and feeling relieved with them (Al-Qalamouni, 1990).

Technically, consent refers to choosing an option willingly and such willingness manifest in facial gestures (Al-Bukhari, 382; Al-Taftazi, 1996). Based on Hanifi School, it refer to being comfortable about the actions being taken and satisfied with them (Al-Zarqa, 1998). Based on the majority of fiqh scholars, it refers to doing an action without having coercion (Al-Ramli, 1886). It may refer to having the desire to do something (Al-Zarqa, 1998).

Based on Shariah, it is necessary to have consent when concluding a contract between parties. Based on Shariah, contractual consent must be free from coercion. Based on the Holy

Quran and Sunnah, having a contractual consent is essential when concluding and terminating contracts.

Allah says: (Believers, do not consume your wealth among yourselves in falsehood, except there be trading by your mutual agreement. And do not kill yourselves. Allah is the Most Merciful to you) (Al-Nisa' Surah, Verse No. 29). In terms of Sunnah, Prophet Mohammad (May peace be upon him) said: (Everything of a Muslim is sacred to a Muslim: his property, honour and blood. It is enough evil for any man to despise his brother Muslim) (Muslim, 1374, 1333).

There are several Ahadith suggesting that the funds of Muslims mustn't be taken from them under coercion. Under shariah, money must be earned in a halal manner, with having the consent of his holder. It's earned through making a business transaction or getting it as a grant (Al-Kasani, 1986; Al-Jassas, 172).

Sub-Section: The Adhesion Contract

- 1) The meaning of the term adhesion: adhesion refers to showing obedience (Ibn Manzoor, 1414). It manifests in the following verse: (If the right is theirs, they would have hastened to him obediently) (Al-Nur Surah, Verse No. 49). It refers to acknowledging the truth and showing obedience.

Technically, the adhesion contract refers to (the contract in which one of the parties set the contractual form by himself/herself and pass this form to the other party in order to approve or reject it. That applies, provided that the latter party doesn't have the right to change the form nor engage in negotiations over the contractual terms). The adhesion contract is a western term. It may be called (the approval contract) in the Lebanese law. That is because one of the parties shall approve the contractual terms without engaging in negotiations over them. The adhesion contract may be called (the public facilities contract) because it's sometimes concluded for delivering significant services to the public (Al- Qurari, 3/308).

Based on the definitions provided for the (adhesion contract) by most of the ones specialized in Fiqh, the adhesion contract is concluded between two parties in which one party sets the contractual terms and wait for the other party to approve such terms without being allowed to hold negotiations over them. Based on such definitions, the contract of creating joint investment account in Islamic banks is a form of an adhesion contract.

From a legal perspective, Al-Sanhouri -a scholar specialized in Fiqh- suggests that the adhesion contract refers to the contract in which the approval of one of the parties to the contractual terms is a form of adherence to the other party (Al-Sanhouri, 3/279).

The adhesion contracts usually have a standard form that is passed to many people during a specific period. They are usually printed and include all the essential terms. Such terms are set by the one making the offer. They are standard terms that don't change. The one who shall accept the offer isn't permitted to hold negotiations or discussions to change those terms. Those terms aim mainly at meeting the interests of the ones making the offer. In case the concerned party approved the contractual terms and concluded the adhesion contract, the latter party can't terminate the contract unless the other party approved that. The execution of the adhesion contract may be linked to a specific condition (Al- Qurari, 3/277).

The offer made in the adhesion contract is usually a standard and fixed offer that can't be negotiated to change it. Today, there are many adhesion contracts being used. Such contracts include: the rent contract, job contract, and the contracts concluded by the telecommunications companies with their customers. The acceptance of the adhesion contract is represented in neither approving the contractual terms without holding negotiations over them nor changing them. One may accept the adhesion contract without reading them. Accepting the adhesion contract doesn't necessarily mean that one is satisfied and convinced with the terms of this contract (Al-Sanhouri, 3/277).

The Characteristics of the Adhesion Contract

There are several characteristics for the (adhesion contract) that makes it distinguished from others. Such characteristics are shown below:

- 1) The offer made by the ones passing the adhesion contract is a standard offer that's passed to other too. It is not passed to a specific person only. It may be passed to anyone who has legal capacity (Al- Qurari, 3/461)
- 2) The approval is represented in showing an approval for everything that is included in the contract without showing an objection or expressing a view about it. The adhesion contract is binding for both parties. The one who makes the offer may set a contractual term suggesting that he/she has the right to terminate the contract whenever he/she wants. In case of terminating the contract by the one who made the offer, the contract shall not be binding for the latter person (Aba Layl, 277).

Based on the aforementioned characteristics, the contract concluded for creating a joint investment account is an adhesion contract. That is because the depositor is not allowed to hold negotiations to change the form and terms of this contract. This depositor is entitled to accept or reject signing this contract. This contract doesn't include a term suggesting the bank has the right to terminate the contract at any time. However, it suggests that the depositor doesn't have the right to change any term of the contractual terms. It suggests that the bank has this right. Look at article 6/ section 6 of the contract of creating a joint investment account. That is because the offer presented in the latter contract is a standard offer. This offer is not passed to a specific person. In fact, it's passed to several the clients who want to create this account. The researchers of the present study don't suggest that the depositors should be entitled to hold negotiations to change the contractual terms by themselves. In fact, they suggest that the depositors should be considered as juridical persons and entitled to draft the contract based on a mutual agreement reached with the bank:

C) The Consideration of the Adhesion Contracts may Include: indispensable commodities and services. The things considered indispensable vary from one society to another (Al-Jawahiri, 427). The joint investment made by an Islamic bank is an essential service. The researchers of this study believe that making a joint investment is deemed essential today in order to achieve economic development (Ghaith, 2016). The researchers specialized in Fiqh allow concluding adhesion contracts to make investments. That is because the latter researchers don't want to negatively affect the business operations and interests of the institutions delivering investment services. For instance, allowing each client to negotiate over the terms of investment contracts shall allow each client to add his/her own terms. Thus, the researchers of this study suggest assigning a representative for the juridical person who is responsible for negotiating the bank employees. Assigning such a representatives shall contribute to protecting the interests of the account holder. Holding such a negotiation shall not negatively affect the way in which the bank operate nor hinder the bank from delivering its services. Based on the aforementioned information, the contract concluded to create a joint investment account shouldn't be an adhesion contract.

D)- The one who make the offer is the one who sets the contractual terms. Such terms aim mainly at meeting the interests of the latter person. They aim at reducing the severity of the contractual liability held by the latter person and increasing the responsibilities of the other party. The party who shall accept the contractual terms wouldn't accept such terms if he's capable to negotiate to change them.

The researchers suggest that article 6/section 11 of the contract of creating the joint investment account indicates that this contract is an adhesion contract. The latter article grants the bank the power to change the contractual terms. The researchers suggest that this contract is an adhesion contract because it doesn't allow the depositor to hold negotiations with the bank over the terms. This contract is an adhesion contract because the bank is the one who draft the contractual terms by itself.

E)- The one who deliver the commodity or the service (*i.e.*, the one makes the offer) monopolize the commodity or the service. That applies to the companies who deliver water, electricity, and telecommunication services. There may be several companies monopolizing the

service and have an agreement with each other about the way of drafting the contract. Such a way hinders the ones who shall accept the contract from negotiating to change the terms (Al-Jawahiri, 3/427; Hammad, 3/ 359).

Practically, Islamic banks have an agreement with each other about the way of drafting the contract. Thus, they all carry out similar procedures when creating a joint investment account for the depositor.

F)- The adhesion contracts are not a life-long term contract. In fact, they expire on a specific date. When reviewing the contract of creating a joint investment account in the appendix, it can be noticed that the second page identifies the validity period of the contract. This period may be one, three, six, or twelve months.

g)- There are abusive clauses in the adhesion contract. Such abusive clauses include:

- 1) The adhesion contract suggests that once the notification is delivered to the client, the client doesn't have the right to object to the notification.
- 2) The same thing is stated in article 6/paragraph 17 in the joint investment contract. The latter article suggests the depositor doesn't have the right to object to any modification made to the contract when he/she is notified about them in hand or in an electronic manner. It suggests that he/she isn't entitled to send such an objection to the bank.
- 3) The adhesion contract suggests that the powerful party has the right to terminate the contract when every he/she wants or change its conditions by himself/herself without getting the approval of the other party. The contract is considered binding for the other party once he/she signed it (Al- Qurari, 3/461).
- 4) That is states implicitly through article 6/ section 17. It can be noticed that the joint investment contract doesn't state implicitly nor explicitly that the depositor has the right to change the articles of the contract.
- 5) The types of the adhesion contracts

The Adhesion Contracts have Three Types

- Service contracts: They refer to the contracts that people conclude with the telecommunication, electric, and transportation companies and post office (Ghaith, 2020, 3679; Al-Furfour, 3/200)
- Insurance contracts: They refer to the contracts concluded with insurance companies and banks, such as: the joint investment contracts
- Exclusive contracts involving commodities: They refer to the contracts that grant a party an exclusive right to manufacture or import commodities (Al- Nadawe, 3/412).

Hukum of the Adhesion Contracts

There are three ahkam governing the adhesion contracts. They are shown below:

First Hukum: It's provided by Al-Jawahiri (3/447), Hammad (3/ 372), Sanu (3/373), Mohammad Sultan, Abi Al-Layl (3/285), Al-Furfour (3/241), and Al-Nadawe (3/417). It suggests that the adhesion contracts as halal, provided that certain conditions related to percentages and monopoly are met (Al-Furfour, 3/241)

Second Hukum: Some scholars suggest that the adhesion contracts are Makrouh if they include monopoly (Farfour (3/241).

Third Hukum: Some scholars suggest that the adhesion contracts are definitely haram. That's because they deprive one of the parties from their free will. This hukum is acknowledged by all the scholars who are specialized in contemporary fiqh. It's acknowledged by Qadri Basha Al-Masri, Mohammad Abu Zuhrah and Dr. Wahbah Al-Zuhaili (Al-Furfour, 3/241).

The ones who acknowledges the first hokum, they base their view on the following verse in the Holy Quran: (O you who believe! fulfill the obligations. The cattle quadrupeds are allowed to you except that which is recited to you, not violating the prohibition against game when you are entering upon the performance of the pilgrimage; surely Allah orders what He desires) (Al-Ma'idah Surah, Verse No.1). They also base their view on the following hadith: (Prophet Mohammad said: (Reconciliation is allowed among the Muslims, except for reconciliation that makes the lawful unlawful, or the unlawful lawful. And the Muslims will be held to their conditions, except the conditions that make the lawful unlawful, or the unlawful

lawful)) (Al-Bukhari, 1352/318). Regarding the ones who acknowledge the second hukum, they base their view on the fact that some adhesion contracts include monopoly which cause harm to the interests of groups and one (Al-Furfour, 3/241).

Regarding the ones who acknowledge the third hukum, they base their view on the fact that the adhesion contracts deprive one of the parties from his/her free contractual will. They base their view on the fact that such contracts don't allow parties to take decisions mutually (Al-Furfour, 3/241).

In the 14th conference held by the International Islamic Fiqh Academy in Qatar, the latter academy offered a description for the adhesion contracts. It suggests that the investment account contract falls under the adhesion contracts. It suggests that the state must change contracts that involve abusive articles and unfair price and enforce oppression on any of the parties.

In the light of the aforementioned information, the researcher suggests that the joint investment contract is an adhesion contract. That is because the depositor doesn't have the right to negotiate with the bank about the articles of the contract. It's because the depositor doesn't have the right to change anything in the contract. In fact, the only power that the depositor has is represented in accepting or rejecting to conclude the contract.

When having a juridical person representing the holders of joint investment accounts in an Islamic bank, this juridical person shall engage in negotiations about the contract articles.

The third Part: The legal grounds for having a juridical person representing the holders of joint investment accounts in an Islamic bank.

First Section: Taking care of the interests of the holders of the joint investment account

Second Section: Compliance with the governance principles.

Since there are fiqh-based grounds for having a juridical person representing the holders of joint investment accounts in an Islamic bank, there are legal grounds for that.

First Section: Taking care of the interests of the holders of the joint investment account

This study presents information about the rights of the holders of investment account in general and the rights of the holders of the joint investment account. The Jordanian Central Bank Law of 2000 doesn't include any article that's related to the rights of the holders of investment accounts in Islamic banks. However, it includes articles that are related to Islamic banks (*i.e.*, articles No. 50-59). However, article 55 sheds a light on the establishment of an investment trust for addressing the investment risks. Article 56/b/1 recommends providing the holders of investment accounts with their entitlements in case the Central Bank decided to liquidize the concerned Islamic bank.

Sub-Section: The reality of protecting the rights of the account holders in Islamic banks in Jordan

First : Rights of Joint Investment Accountholders in Jordan Islamic bank According Article (22) in Corporate Governance Guide for the year 2020 (<https://www.jordanislamicbank.com>).

- 1) The Bank shall preserve rights of Joint Investment Accountholders, whether these accounts are for absolute or restricted investment.
- 2) In general, the Bank preserves rights of Joint Investment Accountholders through taking the following actions:
 - a) Acknowledge rights of Joint Investment Accountholders in following-up performance of their investments and the relevant risks and setting the adequate means to ensure preserving and practicing these rights, in terms of:
 - 1) Put Joint Investment Accountholders on an equal footing with the shareholders with regard to obtaining the necessary information about their investment accounts.
 - 2) Disclose the Bank's policies and practices, with regard to the Joint Investment Accounts, to the Joint Investment Accountholders.
 - 3) The right of Joint Investment Accountholders is not considered as intervention in the Bank's management of these investments.

- 4) The Bank, before opening Joint Investment Accounts, shall provide the owners of the accounts with adequate information about their contractual rights and the risks related to products of Joint Investment Accounts, including their main investments, strategies for distributing its assets, and the method of calculating profits/ losses on investments.
- 5) The Bank is responsible for losses arising from violation of default in applying investment contract.
 - b) Adopt a sound investment strategy compatible with the expected risks and returns of owners of Joint Investment Accounts (Taking into account distinguishing between owners of absolute and restricted investment accounts), in addition to adopt transparency in supporting any returns:
 - 1) The returns (Dividends) of Joint Investment Accountholders and shareholders are supported using the reserve of profit rate, which is deducted from profits of investment before deducting the Bank's portion as a speculator.
 - 2) Reserve of profit rate is not used to cover a loss or to transfer a loss to profit. Corporate Governance Guide
 - C) Contracts concluded with Accountholders or conditions of opening accounts signed by them.
 - d) Provisions and principles of Sharia Law and opinion of the Bank's SSB.
 - e) The Bank's law and other applicable legislations.
 - f) The Bank's Memorandum and Articles of Associations.
 - g) Accounting and audit standards and controls of Islamic financial institutions.
 - h) Corporate Governance Manual and internal and Sharia control systems contained therein.
 - i) Work systems developed by the Bank

In particular, the Bank preserves rights of Absolute Investment Accountholders through compliance with Article No.(3) of clause No.(16) of the Bank's Articles of Association which stipulates that:

- a) The Board determines, through announcing to the public, the general portion of profits related to the total amounts involved in the Joint Investment at the beginning of the same financial year, provided that announcement shall be made before end of the first month of each year.
- b) The Bank shall preserve a cash account to face risks of investment in Joint Investment Accounts, in order to cover any losses exceeding total investment profits within a certain year. This account is supplied as follows:
 - 1) Deduct at least (10%) of net investment profits that have been made on various ongoing transactions during the year.
 - 2) Increase the above-mentioned percentage at the request of the Central Bank. The amended percentage, after being increased, shall be valid in the financial year subsequent to the year at which decision of amendment has been issued.
 - 3) Deduction shall be suspended when the total amount of the account is twice the Bank's capital or any other amount determined by the Bank.
- C) The Bank, in its capacity as a participating speculator, shall fulfill the percentage declared for the speculator's portion. Also the Bank is entitled to participate in profits of joint investment according to the percentage of its own resources or funds that the Bank is authorized to use through "Al-ghunm bil-ghurm".
- D) The Bank, in its capacity as a participating speculator, shall bear losses arising from any legitimate cause, including cases of violation and default arising from acts of members of the Board, Senior Executive Management or employees. Also the Bank will be responsible for cases of manipulation, breach of confidence, and collusion, in addition to any forms of violating limits of honest work in management of joint speculation made by the Bank. Corporate Governance Guide

E) SSB appointed by the Bank as per provisions of the law shall verify presence of jurisprudential base that supports the Bank's responsibility for any loss inflicted within the scope of joint investment operations.

Second Rights of Joint Investment Accountholders in International Arab Islamic According Article (23) in Corporate Governance Guide for the year 2020

bank:(<https://iiabank.com>)

The Board Perform the Following

A) The Bank provides a specific mechanism to insure communication with stake holders through disclosure and to provide contextual information about the Bank activities for the stake holders through:

- 1) The General Assembly Meetings.
- 2) The annual report.

- 3) Semi-annual reports.
- 4) The website of the Bank
- 5) The shareholders' relations Section/The Board Secretary.

b) Ensure that the bank allocates a part of its website including a clarification of Shareholders rights encouraging them to attend the meetings of the general assemblies and to vote, in addition to publishing the bonds related to the meetings including the full text of the invitation and the meeting minutes.

C) Ensure that the bank allocates a part of its website including a clarification of Investment Accounts' Holders rights and publish the policy that organizes the relationship between the Bank and the Investment Accounts Holders so that it includes quality and quantity disclosures.

Third: Rights of Joint Investment Accountholders in Safwa Islamic Bank. According Article (22) in Corporate Goernance Policy for the year 2020

Rights of Stakeholders

The Board shall provide a specific mechanism to ensure communication with the stakeholders through disclosure and to provide information of significance about the Bank's activities to the stakeholders through the following:

General Assembly Meetings

Annual Report

Quarterly reports containing financial information, in addition to reports of the Board about the Bank's stock exchange, and its financial position during the year.

The Bank's Website

Shareholders' Relation Division

The Board shall ensure the designation of a part of the website to include explanations and clarifications of the shareholders rights and encourage them to attend the general assembly meetings and vote therein as well as dissemination of meetings-related documents including the full text of convocation and minutes of meetings.

The Board shall ensure the designation of a part of the website to include clarifications about rights of the investment account holders and disseminates the policy that regulates their relations with the shareholders to include quantitative and qualitative disclosures.

Fourth: Rights of Joint Investment Accountholders in Alrajhi Bank. According Article (1-1-4) in Corporate Goernance Policy for the year 2020, (www.alrajhibank.com.jo)

The duties of the Internal Control Shariah Authority include expressing opinion and acknowledging the investment contracts, agreements, transaction, services, products and policies that regulate the relationship between shareholders and the owners of investment accounts. Such agreements, transaction, services, products and policies include the ones that govern the distribution of profits and the process of incurring loss. They include: the earnings of the investment accounts and the way of spending the earnings earned in a manner that violate Shariah.

Second Sub-Section: The interests of the holders of joint investment accounts in Islamic banks from the researcher's perspective.

The researcher set the rights of the holders of joint investment accounts. He identified them through reviewing the regulations issued by the Islamic Financial Services Board (The Islamic Financial Services Board, 2006; Al-Rimawi, 2014). Such rights are shown below.

- 1) Holders of joint investment accounts should negotiate with the bank to draft the articles of the contract of creating a joint investment account. Such a negotiation should be held to draft an article that is fair for both parties, especially in terms:
 - a) Determining the profit percentage of the bank and the depositors
 - b) Determining the percentage of the deposited funds to be invested
- 2) Holders of joint investment accounts should monitor their investments and the relevant risks. That should be done through forming a committee selected by them (Islamic International Arab Bank. Annual Report, 2012).

The holders of joint investment accounts should have the right to monitor their investments and the relevant risks. That should be done through forming a committee involving members selected by them. In addition, there must effective mechanisms for monitoring the performance of the Islamic banks in investing the funds in the investment accounts and addressing the associated risks.

- 3) The bank should incur the loss incurred from investing the funds in the joint investment accounts in case it committed acts of negligence or infringe the depositors' rights:

The bank may commit acts of negligence or infringe the depositors' rights. That may be attributed to having malpractices carried out by a member in the board of directors or an employee in the bank. In this case, the bank should incur the loss incurred from investing the funds in the joint investment accounts. The same should apply in case the bank committed manipulative acts or acts considered as a breach of trust (Jordan Islamic Bank. Annual Report, 2012, 70)

- 4) The holders of joint investment accounts should get a fair percentage of earnings. This percentage should be consistent with the investment outcomes and risks:

That should be done because those holders are partners in the investment and shall incur the whole loss (Jordan Islamic Bank. Annual Report, 2012)

- 5) The bank should comply with the articles of the investment contract without showing negligence. Therefore, it should implement an effective investment strategy. This strategy should allow the bank to manage risks effectively and obtain the expected amount of earnings (Islamic Financial Services Board, 2006).

- 6) The holders of joint investment accounts should get adequate information before signing the contract:

That's because those holders have adequate knowledge about the profit percentage, and manner of incurring loss and allocating earnings. It's because the depositors should be informed that they shall incur the whole loss, unless the bank committed an act of negligence or infringe the depositors' rights (Islamic Financial Services Board, 2006).

Second Section: Compliance with the Governance Principles

The most important ground for having a juridical person representing the holders of joint investment accounts in an Islamic bank is represented in showing compliance with the governance principles. For instance, such consideration contributes to achieving justice and fairness for the bank and the account holders (depositors). Further information is provided below:

First: The Meaning of the Term (Governance)

Based on the Modified Instructions Institutional Governance for Islamic Banks (2016), governance refers to the system that's being run by the bank and aims at meeting the organizational goals of the bank. It aims at running the bank operations efficiently and meeting the interests of depositors. It aims at carrying out the responsibilities to the shareholders and stakeholders. It aims at showing compliance with the bank internal policy and regulations (Modified Instructions Institutional Governance for Islamic Banks, 2016: 5). The latter definition of governance fits with the definition of governance in the Jordanian Central Bank Law.

The researcher defines governance as a set of measures taken by a bank to ensure that the operations are carried out in an efficient manner that meets the interests of depositors, and

shareholders in accordance with the laws that regulate the banking works. Having a juridical person representing the holders of joint investment accounts in an Islamic bank shall contribute to engaging the holder(s) in the decision making process and complying with governance principles.

Second: The Governance Principles in the Islamic Banks

Similar to commercial banks and companies, Islamic banks must comply with the governance principles. In this regard, there are two types of governance principles that Islamic banks must comply with. The first type involves the governance principles that all types of companies and banks -including Islamic banks- must comply with. The second type involves the governance principles that Islamic banks only must comply with (Farhan & Abd al-Qadir, 20).

The First Type: The governance principles that all types of companies and banks - including Islamic banks- must comply with. They include:

Protecting the Rights of Shareholders and Treating Them Fairly and Equally

Islamic banks must protect the rights of shareholders. Such rights include: the right to elect, the right to vote, the right to profit and the right to dispose what they own through sale, transfer or using it as a security. They include: the right to get essential information about the bank, such as: the statute of the bank and its permit to get additional shares. They include the right to engage in the decisions related to selling the owner's equity and merging the bank with another bank.

Based on the rules of governance, the rights of shareholders must be protected from any conflict of interests. That applies especially to the shareholders who are minorities.

Protecting the Rights of Stakeholders

Based on the rules of governance, the rights of stakeholders must be protected. For instance, stakeholders must get compensations when violating any of their rights. They must be entitled to get the information that matters to them. The most important stakeholders are employees. In compliance to the governance rules, employees must get reports about their practices when enforcing disciplinary measures upon them. In compliance to the governance rules, the bank must implement fair policies in terms of wage, promotion and incentives. The researcher believes that having a juridical person representing the holders of joint investment accounts in an Islamic bank shall allow this juridical person to negotiate the bank about the profit percentage. It shall allow this juridical person to monitor the investment till the contract expires. That shall serve as a kind of compliance with the governance principles.

The Validity of the Statute of the Bank

Complying with the governance principles involves updating the statute of the bank in accordance with the latest developments. It involves: having a clear strategy for carrying out the operations. It involves: having a clear accounting systems and other clear systems. Such systems include: the system used for enforcing control on the product quality, and the internal control systems. It involves having an organizational structure that identifies the powers and responsibilities of the board of directors, executive managers and employees.

The Performance Efficiency and Effectiveness of Auditors

Complying with the governance principles involves having internal and external auditors whose performance efficiency and effectiveness levels are high

Disclosure and Transparency

Complying with the governance principles involves disclosing the financial data published in the annual and periodical financial reports in a transparent manner. It involves disclosing information about the financial position, ownership, management and the operations in a transparent manner through using reliable means, such as the website of the bank.

The Responsibilities of the Board of Directors

Complying with the governance principles involves having a board of directors whose members are highly qualified. Those members must carry out their supervision-related responsibilities and generate a suitable amount of earnings for shareholders. They must ensure that there isn't any conflict of interests. They must set performance-related goals and enforce control over the execution of plans. They must ensure compliance with the risk management policies and budget. They must ensure that operational efficiency level of the bank is high. They must ensure that the financial position of the bank is good.

Second Sub-Section: The governance principles that Islamic banks must comply with:

Islamic banks differ from other banks. Thus, there are certain governance principles that such banks must comply with. Such governance principles are listed below:

- 1) Islamic banks must protect the interests of the holders of restricted and unrestricted investment accounts (depositors):

The Organization for Economic Co-operation and Development (OECD) and Basel Committee on Banking Supervision have issued several governance principles in order to protect the rights and interests of depositors. That's because there is a specific pre-set interest rate that identifies the amount of earnings that depositors and bond holders should get from commercial. Commercial banks don't share their profits and loss with the shareholders (Al-Saeed, <http://islamfin.yoo7.com/t1780-topic>).

As for Islamic banks, they share profit and loss with their depositors. That means that the depositors in Islamic banks face much risk than the depositors in commercial banks. Therefore, Islamic banks must have a management that's fair, and transparent and capable of identifying the rights and duties of each party. They must have effective control system (Bourgubam, 14). In other words, managements of Islamic bank must protect the interests and rights of the holders of investment accounts. Such rights include: providing those holders with information about the criteria adopted for allocating profits. Such information should be provided before creating the accounts. It must include the information related to the percentage of profit and loss. This principle is acknowledged by the Syrian Central Islamic Bank and the Jordanian Islamic banks.

The Performance Efficiency and Effectiveness of the Shariah Supervisory Board

The ones who must comply with the corporate governance principles are: shareholders, board of directors, management, stakeholders and the government. In Islamic banks, there is a sixth party (*i.e.*, the Shariah Supervisory Board). The latter board is an independent body that's responsible for enforcing shariah-based control on the banking operations. It's responsible for making sure that the banking operations are consistent with the provisions of Shariah. The Islamic banks must disclose the information related to the works and functions carried out by Shariah Supervisory Board in a transparent manner. The members of Shariah Supervisory Board must be qualified and show high performance effectiveness levels in terms of issuing Fatwa about banking operations and matters. Such members must show a high performance in enforcing shariah-based control on the banking operations. They must show a high performance in making sure that the banking operations comply with the provisions of shariah. The Islamic Financial Services Board suggests that there must be several shariah-based views in Islamic banks. It suggests that internal shariah auditors and the ones who enforce shariah-based control

must get the required training for improving their skills and abilities (Islamic Financial Services Board, 2007).

The governance regulations governing the works of Jordanian Islamic banks shed a light on the roles of the Shariah Supervisory Board and the internal shariah auditors in protecting the interest of the holders of joint investment accounts. They shed a light on such roles when committing acts of negligence or infringement for the depositors' rights. They shed a light on such roles when having profits allocated. Further information about that is shown below:

Article 2: Definitions: section E: Stakeholders: They refer to the ones who have interests in the bank, such as: depositors, shareholders, employees, creditors, holders of investment accounts, customers, and certain control bodies.

Article 11: The Shariah Supervisory Board: section 9/a: The members in the Shariah Supervisory Board must be fair and just when treating stakeholders

Article 11/ section 10/ b and c: The Shariah Supervisory Board is responsible for regulating the relationship between shareholders and the investors. They are responsible for regulating the issues related to profit allocation, incurring loss. They are responsible for approving the loss associated with investment accounts (Modified Instructions Institutional Governance for Islamic Banks, 2016, 4)

Article 20/a/ 4 &5: The responsibilities of the shariah internal auditing department include: checking the extent of compliance shown by the executive management with the policies that govern the allocation of profits between shareholders and holders of joint investment accounts. They include: making sure the bank didn't commit any act of negligence nor infringement for the depositors' rights. That should be done through reviewing the information related to the funding sources and accounts receivable that are related to the joint investment accounts (Modified Instructions Institutional Governance for Islamic Banks, 2016).

The researcher wonders whether the presence of Shariah Supervisory Board eliminate the need of having a juridical person representing the holders of joint investment accounts in an Islamic bank. He believe that the presence of Shariah Supervisory Board doesn't eliminate the need of having a juridical person representing the holders of joint investment accounts in an Islamic bank. That's because this juridical person is a contract party. It's because the juridical person shall be keen on meeting the interests of the holders of such accounts more than the Shariah Supervisory Board.

Compliance with the Islamic Accounting Standards

Islamic banks carry out all types of banking activities, except for the ones that violate the provisions of Shariah. For instance, they open current accounts and accept deposits. They fund the business, industrial and agricultural sectors. They fund joint stock companies (Suleiman, 235). Therefore, they must carry out the accounting operations efficiently and accurately. They must also show much compliance with the Islamic accounting standards.

Showing Accuracy in Calculating and Recording the Zakkah-Related Values in the Published Financial Reports

The Islamic banks must be accurate and employ the relevant accounting methods when calculating the Zakkah-related values and recording them in financial reports. They must disclose such values in a transparent manner

Making Sure that the Banking Operations Comply with the Provisions of Shariah

Islamic banks must be honest when dealing with customers and employees. They must disclose information to customers and employees in a transparent manner. Thus, the boards of directors and managements of such banks must exert much effort to choose people who re qualified for managing the funds. They must choose the best methods for investing and

managing the funds in a manner that meets the interests of customers and the needs of the Islamic society (Suleiman, 235).

When reviewing the aforementioned principles, the following can be concluded:

- 1) The control-related conditions that must be met by Islamic banks are more strict than the control-related conditions that must be met by commercial banks. Meeting the control-related conditions by Islamic banks shall increase the operational costs incurred by such banks
- 2) Because there are strict control-related conditions that must be met by Islamic banks, depositors and investors feel more relieved and satisfied with the validity of the technical and investment measures taken in Islamic banks. That shall positively affect the extent of trust that depositors have in Islamic banks. It shall increase the amount of funds invested in Islamic banks
- 3) The shariah-based control measures carried out in Islamic banks hinder some managers in those banks from taking risks that aren't studied well. However, taking such risks by managers in commercial banks led to facing many problems. In some cases, it led to bankruptcy
- 4) The nature of the governance conditions that must be met by Islamic banks contributed significantly to increasing the amount of funds invested in such banks. Therefore, some commercial banks started offer Islamic banking services.
- 5) Islamic banks have difficult responsibilities to fulfil. That's because such banks represent Islam.

Fourth Part: The requirements of having a juridical person representing the holders of joint investment accounts in an Islamic bank

First section: Amending the legislations that govern the works related to joint investment accounts in Islamic banks

Second Section: The characteristics of the proposed juridical person representing the joint investment account

First Section: Amending the legislations that govern the works related to joint investment account in Islamic banks

The researcher reviewed the (amended governance regulations governing the works of Jordanian Islamic banks). Such regulations hold No. 2016/24 and were issued by the Jordanian Central bank on 25/9/2019. After reviewing such regulations, the researcher made the following notes:

1) Notes on article 15 which is titled: (the qualification of the members of the Shariah Supervisory Board):

a) Based on the latter article, the board of directors are the ones who choose the members of the Shariah Supervisory Board). In this regard, the researcher has concerns about the freedoms and powers enjoyed by the latter members. He has concerns about the abilities of such members in doing their responsibilities as required.

If the legislator enacted a law regulating the process of having a juridical person representing the holders of joint investment accounts in an Islamic bank, this juridical person shall play an effective role in protecting its funds and interests. However, the Shariah Supervisory Board shall not defend the interests of such holders like this juridical person.

b) The characteristics that must be possessed by the selected members of Shariah Supervisory Board in pursuant to the latter article aren't adequate. Under the latter article, such members must have BA degree in Fiqh, Islamic economy, or Islamic finance. Under the latter article, they must have three years of experience in the teaching profession and research field, or issuing Fatawi. The latter article doesn't mention explicitly any condition that must be met by the members of the board who shall defend the rights of the holders of investment accounts.

The researcher recommends having a juridical person representing the holders of joint investment accounts in an Islamic bank. He recommends adding the relevant regulations that govern the works of this juridical person. He believes that this juridical person must be having expertise about investment accounts. For instance, every administrative member in this juridical person must have published a research about the rights of the holders of joint investment accounts.

Notes on Article 24 which is Titled (Rights of Stakeholders)

a) The latter article doesn't mention explicitly the rights of the holders of investment accounts. In fact, it mentions their rights implicitly through addressing the rights of stakeholders explicitly. However, based on article, 2/ section E: Stakeholders: They refer to the ones who have interests in the bank, such as: depositors, shareholders, employees, creditors, holders of investment accounts, customers, and certain control bodies.

The researcher believes that the holders of joint investment accounts are very important. Thus, their rights must be addressed explicitly and separately from the rights of others. That should be done because the holders of joint investment accounts represents the majority of account holders. It should be done because the rate of return on the joint investment accounts are high.

It should be noted that (the amended governance regulations governing the works of Jordanian Islamic banks) doesn't include a definition for the term (holders of joint investment accounts). Therefore, the researcher recommends:

a) Adding a text to the latter regulations in the aim of identifying the rights of the holders of joint investment accounts. That's because their deposits represent twice the value of shareholders' equity

Adding a text to the latter regulations in the aim of identifying the one responsible for protecting the rights of the holders of joint investment accounts (*i.e.*, a juridical person representing the holders)

b) Adding article c of the (amended governance regulations governing the works of Jordanian Islamic banks) suggests the following: (The board must ensure that that the website is used for promoting knowledge about the rights of the holders of investment accounts. It must ensure that the website is used for promoting quantitative and qualitative information about the policy that regulates the relationship between the bank and the holders of investment accounts).

The latter condition isn't actually met. For instance, the rights of the holders of joint investment accounts are not published on the website. Such rights are listed only on the contract of creating the account. The account holder son can't negotiate the articles and conditions of the contract. However, when having a juridical person representing the holders of joint investment accounts in an Islamic bank, this juridical person shall be responsible for protecting the rights of such holders and negotiating about such rights.

In case such rights are actually presented on the website of the bank, it's not enough. That's because such rights must be protected. The researcher of this study suggests that the juridical person can protect such rights. Thus, he claims for acknowledging this juridical person by the legislator.

There isn't anything in the regulations suggesting that there is a juridical person representing the holder(s) of a joint investment account. The researcher recommends adding a text to such regulations acknowledging this juridical person and giving it control and negotiation powers in order to negotiate over the profit percentage in an official manner.

Second Section

The characteristics of the juridical person representing the holder(s) of a joint investment account

The juridical person must enjoy a distinct and independent financial liability. It must enjoy legal capacity and have a name. It must have a homeland, and nationality, and enjoy the right of litigation and a deputy representing it. Further information is shown below:

First Sub-Section: The juridical person must enjoy a distinct and independent financial liability:

The researcher suggests that a juridical person representing the holder(s) of a joint investment account in an Islamic bank should be acknowledged by the legislator. That should be done through adding a text to (the amended governance regulations governing the works of

Jordanian Islamic banks). The latter regulations are issued by the Jordanian Central Bank. This juridical person shall be officially registered and have a distinct and independent financial liability

Second Sub-Section: The juridical person must enjoy a legal capacity:

The receptive legal capacity refers to the ability of the one to enjoy rights and do obligations (Zidan, 2006). The active legal capacity refers to the capacity that allows one to make transactions (Zidan, 2006).

When having a juridical person representing the holders of joint investment accounts in an Islamic bank, there shall be rights enjoyed by this juridical person. In this case, there shall be responsibilities that must be fulfilled by this juridical person. In this case, this juridical person shall be exercising its active legal capacity.

Third Sub-Section: The juridical person must have a name

The researcher suggests that the juridical person must have a name. This name may be as follows: (The association of the holders of the joint investment account in the Islamic bank called -----).

Fourth Sub-Section: The juridical person must have a homeland

The homeland of the juridical person is represented in the Hashemite Kingdom of Jordan. That's because this juridical person is created in the latter country

The Fifth Sub-Section: The juridical person must have a nationality

The nationality of this juridical person must be Jordanian. That's because this juridical person is created in Jordan

The Sixth Sub-Section: The juridical person must enjoy the right to litigate

When acknowledging this juridical person legally, the Jordanian legislator shall give it the right to litigate

The Seventh Sub-Section: The juridical person must have a deputy representing it

The researcher makes suggestions for the process of creating a juridical person representing the holders of joint investment accounts in an Islamic bank. Such suggestions are shown below:

- 1) An association can be created for depositors in each Islamic bank. This association should include an administration that represents it in front of the bank. To form this association, 1 JD may be deducted from each account that exceeds Zakah.
- 2) The bank may choose a group of depositors in order to represent all the holders of joint investment accounts in the bank. The researcher recommends issuing regulations by the Jordanian Central Bank for regulating this process. Such regulations include:
 - a) The depositor must be having a deposit which value exceeds 10,000 JDs.
 - b) The account of the depositor must be created five years ago at least.
- 3) A committee by be formed by the bank in accordance with certain regulations. For instance, the members of such a committee must be well-known figures in the investment field. They must be keen on protecting the interests of the holders of investment accounts. They must have knowledge about the investments carried out by the bank in order to invest the funds.
- 4) There should be a regulation committee which aims at regulating the relationship between the bank and the holders of investment accounts. This committee should consist from:
 - A members in Shariah Supervisory Board
 - A member who is an employee in the Ministry of Industry and Trade
 - A member who is an employee in the Jordanian professional association

5) There may be a committee consisting from the holders of major investment accounts. This committee shall be represent all the holders of investment accounts in the bank

Results:

The researcher concluded several results. For instance, he concluded the following ones:

- 1) The contracts of creating a joint investment account in Islamic banks are considered adhesion contract.
- 2) It's halal to have a juridical person representing the holder(s) of a joint investment account in an Islamic bank. That is because there are legal grounds and fiqh-based grounds justifying that.
- 3) The holders of joint investment accounts in Islamic banks are in need for having someone responsible for defending their rights. They are need for having something responsible for negotiating the bank over the

articles of the contract of creating such an account. They are need for having something responsible for holding the bank accountable in case the bank committed an act of negligence or infringed the account holders' rights.

RECOMMENDATIONS

The Researcher Recommends

- 1) Amending the relevant laws by the Jordanian Central Bank. Through such amendments, the legislator must allow having a juridical person representing the holders of joint investment accounts in an Islamic bank
- 2) Enacting a law by the Jordanian Central Bank that is related to the juridical person representing the holders of joint investment accounts. Under this law, the legislator must acknowledge the role of this juridical person and grant it powers. Such powers include: negotiating the bank about the articles of the contract concluded for creating a joint investment account. They include: holding the bank accountable in case the bank committed an act of negligence or infringed the account holders' rights.
- 3) Amending the laws. For instance, the laws must include texts that identify the rights of the holders of joint investment accounts.

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