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Morocco Experience in Islamic Finance between the Failure of the Past and the Promising Future

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Abstract Opening of Islamic banks have been increasing considerably in recent years in many countries. Morocco is among these countries and will get the agreements to open in early 2016. This following work is done in the preparation phase of the launch and its importance lies in the fact that it comes after a first failure experienced in 2007 and that Morocco is among the last Muslim countries that will integrate this type of finance into their financial system. This article will focus on the first introduction by highlighting the various obstacles that were the reason for its failure, and will underline what the new banking law has done to overcome the problems encountered before. In the end, we will address two major issues, why the system failed in 2007 and why it is more likely to succeed in 2016.

Keywords Islamic finance, Alternatives products, Banking act, Law on securitization, Law on Takaful

1. Introduction

Morocco has considerable strengths that enable it to position itself as a financial center that can drain substantial Islamic financing possibilities. Indeed, its political stability and geopolitical situation makes it a platform between Europe and Africa.

Morocco's financial system is the most efficient in the MENA region because of its competitive and sophisticated capital market, its insurance industry that is positioned as the second largest in Africa, and its mature and highly developed banking sector that is proved in many African countries.

Thus, Islamic finance represents a great opportunity for the country to the extent that it is considered one of the hottest sectors experiencing great development in the world.

Even if it has been around for only 40 years, it has experienced a growth rate of 30% since 2000, a capitalization of 2 trillion dollars in 2014, and a potential of 3 trillion $ in 2015 (CIBAFI, 2014).

Moreover, the Kingdom of Morocco is one of the most culturally open Muslim countries due to its positioning at the crossroad of many continents, and due to its good political and economic relations.

Morocco also plans in the medium term to become a regional financial hub through the establishment of "CASA FINANCE CITY". For this, it would need to dominate this niche and give all necessary means to be successful in this sector.

The ingredients are already assembled and development prospects are interesting: 3% to 5% by 2018 (IFAAS, June 2012). Moreover, the country has an important position in many African countries such as Senegal and Mali that will allow it to offer such products and financing methods in branches of Moroccan banks established there to further develop this niche.

Therefore, a study of the Moroccan landscape is needed, and several questions arise since Islamic banks have not opened yet in the country. The Governor of Bank Al Maghreb (BAM) Central Bank of Morocco "Abdelatif JOUAHRI" announced on the 24th of March that the technical file is ready and will be published within a few days but the banks called 'participatory' will not open their doors until 2016. He defends this by the fact that requests for opening are still under study, human resources are in training phase, and offices need to be built...

The methodology of our work is presented in three parts:

First, we will make a review of the literature through which we will explain the conceptual framework of our research. The objective in this part is to characterize Islamic finance from its conventional counterpart by focusing on its ethical dimension.

Next, we will conduct an exploratory study of the Moroccan context in this area in order to present the experience of 2007 and the causes of its failure.

Finally, we will make an analytical lecture of the new legal framework introduced recently in Morocco.

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2. Conceptual Framework of the Research

The Islamic economic model is positioned between the individualism of Anglo-Saxon capitalism and collectivism of communism. It is close to the original German Rhineland model which is based on the membership in a whole, greater than its component parts (ELFARISSI, INBADELJALIL, 2013) [1].

Islamic finance takes its foundations from “SHARIA” and “Fiqh EL MOUAAMALATE” and is based on five fundamental principles which clearly distinguish it from the so-called conventional finance. Indeed, "*Islamic banks are seen as a relatively safe refuge against turmoil in global financial markets, and embody a certain spirit of equity and justice in relation to the often ruthless world of conventional finance*"(OCDE 2009). [2]

Islam is based on principles both ethical, moral, social, and religious to defend equality, equity and well-being of the whole society. It encourages honesty, trust, respect for others and social justice. Islamic banking gets its foundations precepts from “Sharia” and offers both a profitable and ethical model[1].

In the modern capitalist system, the economic fact is entirely independent of any religious consideration. However, for Islamic economy, religion is quite present in any economic or financial process. Therefore, the economic act cannot be performed outside the scope of the Islamic principles. In fact, "*the Islamic culture cannot integrate Western utopia of an autonomous market [...] which assumes that Man acts only according to their individual interests and possession of economic goods. In contrast, the economy fits into Islam in a rationality that is neither individual nor collective, but essentially regulated by the need to safeguard the social integration* "(CHAPELLIERE, 2009) [3].

The goal of Islamic financial activity is to establish a social, ethical and moral balance in economic relations. So the Islamic bank's mission is to offer companies alternative financing methods conform to these Sharia precepts.

The Sharia principles applied by Islamic banks focus on the prohibition of the major factors related to the financial crises such as interest rates, speculation, securitization, lack of transparency, asymmetry of information and taking excessive risks in financial transactions. Thus, securitization of transferring risk from one company to another is rejected by Islamic finance as the bank must fully assume the risk of any operation it undertakes.

The Islamic economic doctrine prohibits the transfer of debts and risks since it is based on the principle of sharing profits and risks. It encourages the banker to better analyze risks before making any operation because he is supposed to fully assume it. Under Islamic financial engineering, only securitization based on a transfer of ownership of tangible good upon which rests the operation in question and relating to a refinancing through the issuance of investment certificates (sukuk) is permitted. (EL HAZZAOUNI, 2011) [4].

Moreover, the interest rate, one of the causes of the crisis, is prohibited in Islamic finance because it increases the dominance of the rich on the poor. The lender is assured of a gain on the loan granted, and receives a fixed and independent remuneration of the success or failure of the funded activity. In case of significant profits, he receives an insignificant portion of the profits, which is totally contradictory to the principles of Islam which does not encourage inequalities and inequities since wealth should be distributed according to the effort and to the risk taken (Martin, 2012) [5].

In this sense, the Islamic economic doctrine considers that the currency is only an instrument of exchange and therefore it should not be a source of income through speculation. It considers that the economy should not be independent of ethics as wealth should not be dissociated of wellbeing. The interweaving of these two representations creates conditions of social equilibrium. Thus, "*the economy is only a way to prove faith and increase the grace of God by behaviour conform to religious precepts, and not an end in itself. The only purpose is the respect of Man, and its research passes in Islam by behaviours that enable the prosperity of the Muslim community* "(CHAPELLIERE, 2009) [3].

Also, the interest rate is inflationary which negatively impact the purchasing power and creates a dichotomy between the real economy and the financial sphere. For this, all financial and banking transactions within its scope must always be backed by real and identifiable assets which integrates the Islamic bank in the real economy as it buys real and identifiable assets, then stores them and sells them to the customer by sharing some of the legal, commercial, and assets associated risks (HAMZA and GUERMAZI-BOUASSIDA, 2012) [6].

Islamic finance also prohibits speculation, uncertainty and moral hazard (Gharar and Maysir) by excluding all transactions or contracts with a share of ambiguity, uncertainty or chance on traded goods. As well as all forms of corruption since it requires transparency of operations and transactions done in its frame. The goal is to balance between the contracting parties: No party should be harmed by the fact of lack of information at the time of engagement.

It is a socially responsible form of investment since it can invest in so-called "lawful" sectors under Sharia, through financing projects that stimulate economic growth and improve the social welfare without compromising the future generations. Indeed, Islam places the environment, social well-being, interest of future generations at the center of its concerns, as any initiative, that campaigns in these commitments will be rewarded. Similarly, any behavior that does not respect this ethic will be banned. This implies the prohibition of financial transactions or cooperation with

1 Islam is the religion that makes Man become more involved in the process of economic and social development for the individual and collective well being. In Islam, Man is on a mission from God consisting in facilitating the creation of any activity as well as giving importance, protecting and developing the resources at the disposal of mankind. (This mission is called Istikhlaf and human work is qualified ALIIMAR)

companies involved in illegal areas such as:

- Armament;
- Alcohol, wine and tobacco;
- Conventional banking and financial industry;
- Pornography;
- Gambling;
- Polluting activities;
- Products harmful to health and environment;

And in a general way, any activity that undermines nature, social welfare and environment (MZID, 2012) [7].

Islam encourages investment projects that will have a beneficial impact on the community. God will reward the efforts of all investors who have contributed to the implementation of projects that benefit to the community. In this sense, we find that the Islamic bank, a pillar of Islamic finance is a more ethical institution, favourable to sustainable development of the economy through the promotion of socially responsible investments.

We have characterized Islamic banks in order to collect its ethical dimension to the extent that it becomes required to comply with all the principles of Islamic finance emanating from the “Sharia”. For example, Islamic banking should not in any case use the interest in all the activities that it undertakes in order to limit the role of money in its exchange function because money is unproductive.

Concerning Islamic banks, they make their profit from entrepreneurial effort. From there, it links the real economy to the monetary economy by reducing the so-called financial exclusion and by encouraging entrepreneurship.

The Islamic banks are obliged to share profits and risks with its clients through participatory financing, for example: Mudaraba & Musharaka contracts, where it will be a real partner accompanying the client instead of adopting a purely passive attitude as a simple funder that grants a credit and expects results (interest) on each due date without assuming any risk.

Islamic banking has as a purpose to serve society by seeking common welfare.

The Islamic banks direct its funding towards productive investments and creating wealth for society. The transactions and operations within its scope are based on all the principles cited before so it is more transparent since it is held under interdiction principles of interest, gharar, Maysir and speculation. Indeed, the transactions are based on real and identifiable assets since they are closely linked to the real economy and direct their funding to socially responsible investment projects (legitimate in the eyes of the Sharia).

3. Commercialisation of Alternative Products in Morocco: Context and Constraints

The introduction of Islamic finance in Morocco marks a long history that began with a failure.

The matter here is to consider the context of its launching before explaining the constraints associated with it.

3.1. Context to Launching of Alternative Products

In Morocco, Islamic finance represents a long history that began in the 80s when several Islamic financial institutions have applied the monetary authorities for possible implementation. An attempt to create a local Islamic bank was made in 1985 by WAFA Bank[2]. In 2003, a second request was sent to the Moroccan authorities from the international Islamic bank of Qatar who wanted to create an Islamic bank through a Qatari-Moroccan partnership [8]. All these initiatives have not taken place because BAM was against the implementation of specialized institutions in Islamic finance because of non-compliance of such operations with the National Banking Law, for the risk of dislocating the Moroccan banking sector that is unable to absorb sufficient number of Gulf interested banks, and also for a diplomatic risk since we can’t grant certain facilities to some countries on the detriment of others based on the rules of BAM [9].

Therefore, banks have organized to prevent the creation and emergence of Islamic banks in Morocco, because they were afraid that this system based on Sharia precepts achieves a big success as it happened in other Muslim countries where we have witnessed a total islamisation of their financial systems as it happened in Iran and Sudan [9]. Thus, the opening of the Moroccan economy to Islamic finance risks huge losses in market share of Moroccan banks which are all conventional. The *"[...] Moroccan banking lobby, solidly structured, [...] appears to be blocking areas in monetary, banking and financial authorities to delay the opening*."[3]

It was in 2007 that BAM bowed to market and bank pressure by developing a regulatory framework allowing local banks to market three products that comply with Sharia precepts called "alternatives" to avoid the "Islamic" adjective. The recommendation regulates the use of Ijara, Murabaha and Musharaka products [10]. Each product has been presented and specifically regulated. Other products including Istisnaa, Ijara and Mudaraba were reported for later. The goal was to expand the range of services offered by Moroccan banks to improve the level of banking services of the economy. Indeed, the approach adopted by BAM concerns the commercialization of these products by already licensed banks; there is no need to create specialized banks. So, local banks have the choice to market these products through their own distribution network or through the creation of dedicated subsidiaries.

The new authorized products, concern only funding and not deposits, whereas Moroccan consumers, according to BAM, can deposit their money in the form of non-productive deposits within existing banks, which is effectively the case because they represent more than 53% of bank deposits and

2 Now become ATTIJARIWAFA Bank after the merger with the Commercial Bank of Morocco in 2004.

3 According to the comments gathered in the press BOUTAYEB B., MENA consultant & North Africa, Former Director at DAR AL MAL AL ISLAMI Group. Quoted in NGHAIZI A. (2013), op.cit, P. 29.

are constantly growing recording growth rates of around 7%, while time deposits have been declining steadily[4]. These products are aligned with the prudential and accounting rules of BAM. Their risk management measures are identical to those governing conventional products. Moreover, these products must respect international standards issued by AAOIFI since BAM has signed a contract to align with these standards.

Nevertheless, local banks have not really invested in this niche; only four are involved with very different sizes among the 19 banks with the approval of BAM. These banks are ATTIJARIWAFA BANK, BANQUE POPULAIRE, BMCE and BMCI. None of these banks has proposed an offer based on the contract of type Musharaka, and the offer has focused more on Murabaha than Ijara. In addition, “BANQUE POPULAIRE” has suspended the commercialization of these products in 2011.

The total of these alternative products amounted to about 700 million Dirhams in 2009. They recorded a slight growth in 2010 to 800 million Dirhams, an increase of 14.28% [11]. In 2012, this figure has not passed the one billion Dirhams. This shy evolution of alternative products is due to several problems.

3.2. Multiple Constraints

Several constraints were the cause of the failure of the commercialisation of alternative products in Morocco, such as high bank rates, over-taxation, discrimination through communication, etc....

3.2.1. High Bank Rates and Over-Taxation

One of the obstacles preventing the growth of alternative products in Morocco is their high rates compared to conventional loans offered. Analysis of prices on the banking market shows that a Murabaha type financing is more expensive by 62% compared to a conventional one, and an Ijara and iqtinaa type financing is more expensive by 86%[5].

This is mainly due to the high taxation practiced, because the tax rate is 20% while it is 10% in a conventional one. In addition, 20% is applied to both the capital and the profit margin under the Murabaha type funding while the 10% concerns only interests in the conventional financing. In the mean time, the Murabaha products were subject to double taxation in respect to registration fees; on the acquisition of the property by the bank and on the transfer of ownership to the customer. The bank gets back the tax payment in the profit margin paid by the customer. Also the client does not have the right to the deduction of the margin paid for the income tax (IR) compared to interest.

This over-taxation was decreased in 2010 because of the new provisions of the Finance law that cancelled the double taxation of the registration fees and granted the right to the customer to deduct the margin paid in his income taxes, same case for interest. Moreover, they have reduced the value-added tax (VAT) rate from 20% to 10% and eliminated its application to capital. These measures have reduced the high tax cost supported by alternative products compared to conventional products since the tax authority had considered them as simple non-banking business operations.

Nevertheless, the high level of bank prices persist for example the Murabaha product is still more expensive by 26% compared to a conventional product. This is due to the banking cost which remains the main factor since it amounts to 96% of the total cost. It constitutes of 45% of required bank margin, 14% of surplus related to insurance, and 36% of surplus due to contract management costs [11]. In summary, this finding raises several questions related to the interest of a financial institution to launch a new product more expensive than those offered on the market. Business logic is based on the principle that a new product must be attractive; it must be commercialised at a lower price than the one in the market or at least commercialised in the same market conditions to ensure its sustainability. On the side of the bank, it requires a margin and a higher cost of insurance even if the risk is identical. Indeed, the risk of Musharaka contract is eliminated because the bank does not provide any such contract. Moreover, during an acquisition through a type of Ijara contract, the bank has a customer's firm commitment to purchase the leased property at the time of conclusion of the contract, which gives it a manageable risk. Similarly, the bank focuses on financing housing and consumer products that are not very risky. In all cases, the high margin is not justified. Thus, the management fees are also high compared to those charged during conventional operation while the bank uses the same premises and human resources like any other conventional agency.

3.2.2. Discrimination through Communication

The authorization for the marketing of alternative products by BAM has been accompanied by the development of a guide setting out the terms and conditions of their communication. This guide [12] has been prepared in accordance with Moroccan banks, whose purpose is to prohibit all use of religious argument to market such products. Indeed, the guide directs the communication of credit institutions about the commercialization of the proposed alternatives. From there, these institutions must comply with its provisions in order to not dislocate the supply of conventional products. In this sense, BAM has the right to inspect the contents of the advertisements of these products before release to the public. No mention of religious character must be included, such as Halal, Fatwa, Islamic, Sharia, or similar advices. It is in compliance with this condition in Morocco that Islamic products are called "alternative products". In addition, the communication should focus on the value of using these products while

4 In 2010, non-operating deposits grew by 7% while those futures were down 8.6% as reported by Bank Al Maghreb. See RADI B. & BARI I. (2012), op.cit. P: 154.

5 Under calculations simulations carried out on the basis of data carried on the Moroccan banking market. See EL OMARI ALAOUI M. & MAFTAH S. (2012), Ibid, P: 26-32.

avoiding comparing it with conventional banking products. Customer service should be aware of the language to adopt with customers and ensure compliance with the recommendation in question.

These requirements express the reluctance of BAM and local banks in respect of Islamic products. They impede their position and their ability to compete with their conventional counterparts. Especially as advertising for these products is absent in that it is very rare to find in this regard, advertising posters or brochures dedicated to customers. In addition, visits to bank branches show that most customer service managers are poorly informed about the features and characteristics of these alternatives products; so, they recommend more conventional products to customers, instead of keeping their neutrality between the two types of products. Similarly, advertising brochures for alternative products are not easy to spot compared to those dedicated to traditional products that are posted on billboards and disseminated in the mass media (newspapers, TV, and radio). This confirms the presence of discrimination which hindered communication and continues to impede the growth of alternative products in Morocco since we cannot market products that are not visible and easily identifiable by consumers who must be adequately informed and aware of the specifications of such products in order to generate their interest and stimulate their increased demand.

3.2.3. Weak Commitment of the Actors

The Moroccan banking sector is not so much engaged in the development of alternative financing. First, BAM refused to create or grant accreditation to specialized banks in Islamic finance as it left exclusively local banks to offer such products through their own outlets or by creating specialized subsidiaries for the risk of destabilizing the sector. Secondly, the lack of a committee "Sharia BOARD" that controls and certifies the compliance of products offered to the precepts of Sharia: the Moroccan authorities have not set up a national oversight body for the conformity of these products to Sharia principles and were content to opinions from foreign organizations. In fact, the absence of an independent national body does not allow to continually check if the products meet these requirements and therefore must be certified compliant or not with Sharia. Especially since it is an offer based on a conventional insurance in the absence of a Sharia-compliant Takaful insurance. Similarly, the products are offered by conventional banks where the problem of the clear separation of funds to the extent that the source of financing is mixed.

In addition, the reaction of local banks was very small compared to the weight and importance of the national demand for products such that customers of other banks have not been able to access these products. Similarly, the four banks selling such products did not use enough of their distribution network. Consequently, the constraints of proximity and accessibility to such services have contributed to the failure of their marketing. To this is also added the high concentration of supply in big cities compared to other regions, particularly in the absence of a structure targeting the population of rural areas where we find only conventional associations of micro-finance. These are not yet authorized to market Sharia-compliant products. Therefore, the supply to the rural areas is absent despite the potential of this segment of the population.

In addition, these bank offers are not completely compatible with the competition rules, including the free formation of prices, free market access, transparency, fairness in trade relations, and building rules for information and consumer protection. In this sense, the offer is suffering from a lack of communication to the extent that the products are not visible to consumers and are not encouraged by the sales agents, the information disseminated is insufficient which stops the degree of transparency of banks in this regard, and finally the profit margins are almost dictated and not negotiated between the bank and customers.

In such situation, BAM is not required to force local banks to market such products, but can think of granting licenses to foreign banks interested in these customers that are still not served. This initiative will encourage them to mobilize more on this new path that constitutes a real lever for growth and development of their activities.

Finally, the constraints related to the experience of the marketing of alternative products in Morocco are multiple and varied, which can be categorized in several sections. We treated those that seem most striking, that have impeded and are still impeding the success of such products.

4. Recent Evolutions

Many preparations are underway for Islamic finance in organizations and training centres. The state, also, is preparing the appropriate legal framework.

We will see in this part the composition of the three main laws which are: the Banking Act, the law on securitization, and the Law on Takaful.

4.1. Recasting the Banking Law

The study of the new 2015 banking law is a very important step because it provides answers to several constrained elements which were mentioned earlier and integrates for the first time an entire chapter dedicated to participatory finance. The objective of this section is to conduct a comparative analysis of this law with the precedent one in order to identify the advances made.

The real will of the acting power in the country and of the parties concerned have boosted the development of the regulatory framework to successfully reintroduce participatory finance. Benchmarking was done to benefit from the experiences of other countries as well as to not make certain mistakes especially since this is the second introduction for the country and therefore there is no room for error.

The work team responsible for the finance bill was seduced mainly by two models from which it was inspired: The Turkish model that has a chapter dedicated to Islamic banking in the Banking Act [13] and the Malaysian model where there is a successful coexistence of conventional and Islamic system as well as the existence of Islamic windows[6] that Morocco intends to develop and which are prohibited in a number of other Gulf countries.

The first appearance of Islamic products, called participatory products in Morocco was in 2007 under the aegis of the 2006 Banking Law N° 34-03 [14] relates to similar credit institutions and organizations. It is clear that at no chapter of this law, the participatory finance name was mentioned. This is due to the fact that the adoption of this finance has been linked to the one already in place and specifications were made by a simple circular or rather by recommendation of the Governor of BAM: Recommendation N° 33 / G / 2007 Released on September 13, 2007 by BAM [10].

While the essence of this finance is very different from the conventional one by its ethical and humanistic principles, by its a very diversified contrasts, by its financing targets, and by trying to reduce the gap between the poorest and richest through simple but effective mechanisms.

This very brief recommendation talks only about three most known products, "Ijara", "Musharaka" and "Murabaha", it talks also about the general conditions of their commercialization, which are exclusive to authorized banks. This recommendation follows clearly, as already mentioned at the beginning, to the opinion expressed by the Credit Institutions Committee. And it is also important to indicate that the formulation has imposed itself due to the role of Islamic Finance in the world and to the capital it represents, but without a real commitment of those involved. This, indeed, explains the failure of these products at the time of launch.

Visions and perspectives such as the diversification of the range of banking services, the access to the banking system for the most religious population and those in rural areas, and the introduction of new capital were present, but with a large constraint which is the disinterestedness of the parts that hold the power to make things happen and the assimilation to the other system which is completely false.

In Article 15 of this recommendation [10], it is even mentioned that credit institutions offering foreseen products, must ensure by any means the compliance with the international standards of the AAOIFI in place. This proves the low commitment on the part of BAM which has chosen to be based on international standards instead of establishing her own.

In 2012 and 2013, because of the elite of Moroccan professionals formed by professors and researchers, converted conventional bankers, experts, and the Justice and Development Party (PJD) in power, the framing of this finance was drawn. Local bankers have understood the importance and interest of Islamic finance and started to give it more attention, the population demand was increasing and international institutions were encouraging. It is in this way that the ruling party: The PJD began to think about a law that will establish these institutions properly by completing the banking law and by cleaning the precedent provisions.

Today, the new banking law was released in the Official news paper. It includes a chapter with 17 articles dedicated to alternative banks. The Law 103-12 [15] on credit institutions and similar organizations has expanded the bank's intervention field. It is now able to perform all the operations performed by conventional banks, which was not possible before, and of course that can comply with Sharia, including transaction deposits under section 57 of this law and especially investment deposits (which are very important for this system) under section 55 and 56. The financing contracts have been diversified according to Article 58: We went from three to six products, before only Ijara products, Murabaha and Musharaka were regulated, the new law includes the products Mudaraba, Assalam and Istisnaa with the possibility of introducing other products later that comply with the law and Sharia after submission to BAM under Article 59.

The other big development is the establishment of a Sharia Committee under article 62 of chapter 3 dedicated to participatory banks that will be able to certify all operations and contracts before public presentation.

Also, Islamic banks will be authorized to open in Morocco under section 60 after a study and agreement of BAM. However, concerns about the protection of the Moroccan financial landscape by the authorities impose on them to ally with banks already in place and prevent them from owning more than 49% of the participative bank capital. “This could constitute measures restricting the prerogatives of foreign investors” (Bouchra B., 2012) [16].

According to article 63, participatory banks will be forced to submit annual summary reports to the Sharia scientific committee and a report of compliance with these standards according to the central bank according to article 65.

Finally, and very importantly, the law provides under article 67 the development of a guarantee deposit fund which provides liquidity and credibility of these banks. This element is very important because other countries sometimes by lack of alternatives to provide liquidity seeks the central bank help against an interest rate, and that is completely forbidden.

The technical specifications of these banks are not mentioned, but according to article 70, it is cited that they will be defined later by BAM.

Several practical measures will be declined at the time of exercise of these institutions, and will be subject to discussion and approval by stakeholders and especially by the Sharia Scientific Committee. For example fiscal measures, margin trade, and transfer of the property to the heirs, and this is according to the problems identified by El Omari Alaoui Sidi Mohamed and Maftah Suhail in their book " Finance islamique: Vers la voie de la normalisation." [11]

However, through this legislation, we understand that two issues of the major elements that have contributed to its

6 A department of a conventional bank offering Islamic financial services.

failure the first time have been resolved. On one hand and for the first time there is a legal and regulatory frame and there is no tax discrimination since 2010; on the second hand, the actors finally are mobilized and the BAM finally understood the importance and relevance of this system and decided to give approvals to foreign banks. A "sharia committee" will also be created and the offer this time will be more diverse and complete which will increase its chances of success.

4.2. Contribution of the Law on the Securitization for Islamic Finance

Previously, Morocco had two distinct and incomplete laws: the Law N° 10-98 relative to the securitization of mortgages and Law N° 35-94 relative to certain negotiable debt securities. These were repealed in 2008 by the 33-06 law [17] relative to securitization of receivables, converging and completing the two laws to make only one. This new law provides an arsenal of new developments on all sides: It redefined the whole legal framework for securitization in Morocco; and it strengthened legally the collective investment funds in securitization called: FPCT that can now take many forms. But we will only, at this stage, quote the new developments that have a direct relationship with the Sukuks because it is the point of interest that concerns us in this law in relation to participatory finance.

First, the 33-06 law introduces, for the first time the possibility of issuing Sukuk securities. Thus, the law has expanded the scope of assets that can be acquired by the organization or securitization at any tangible, intangible or financial assets. Indeed, this has made it possible to have a real asset backed securities as an underlying (important requirement for sukuk). Also, to expand opportunities for structuring Sukuk, it is specified that the qualified assets may be dismembered to other assets such as the usufruct, and this dismemberment can result from the actual acquisition or its constitution in favour of FPCT.

It also opened the door to other initiators, and apart from banks, insurance companies and other financial institutions, it allowed all people and all organizations with or without legal personality, resident in Morocco or not such as, the state and its subdivisions, the entities formed by funds (FPCT) or by collective investment organizations in securitization called: OPCT, the trusts and the partnerships to carry out securitization transactions [18].

Concerning recipients: The law allows that the issuance of sukuk may be made for national as well as international investors for the simple reason that one of the objectives of the introduction of sukuk is to drain a share of foreign capital and specifically those of the Persian Gulf whose owners prefer the securities in accordance with their beliefs and thus to the Sharia. However, the Sukuk's transparency and soundness made it possible to attract not only Islamic investors but also non Islamic investors. Therefore, the law n° 33-06 allows the Sukuk certificates to be governed by a foreign law and exchanged by foreign currency. And the aim is to facilitate the promotion and placement of Moroccan Sukuk in any other financial market including Persian Gulf countries.

The Moroccan regime provides a wide range of Sukuk to meet the greatest number of investors. Thus, Sukuk certificates can be in the form of classic structure of sale and lease with an option to purchase (sale and leaseback qualified al Ijara Sukuk), and can also be based on an investment (Al Mudaraba Sukuk) or active or future construction (Salam and Istisna).

To make these certificates comply with domestic and foreign investors and especially with international standards, creating a Sharia committee is required. It is for this reason that the new law plans for the establishment of a national committee called Sharia Committee for Finance, whose composition, prerogatives and operations shall be determined by special Dahir in accordance with article 41 of the Constitution.

Indeed, the law also plans for strict prudential rules and control, as well as modalities of implementation of securitization transactions such as the use of a secure FPCT and supervised by the Ethics Council for Securities called: CDVM to regulate a direct eligible financing asset without going through banks.

However, certain tax and regulatory imperfections persist. The law n°33-06, despite being inspired by the best European practices, still needs to be improved. It is for this reason that the Moroccan regulators have developed a new bill to the law n° 119-12 that modifies and supplements law n° 33-06 as well as other laws and accompanying regulations. These were adopted by the House of Representatives on January 22, 2013 and shall soon be enacted.

These laws will help promote and increase chances of success of this finance as it will open other prerogatives and outlets that deal with this system which seeks to propose a complete offer to attract the maximum of investors and improve the attractiveness of Morocco that aims to become an African financial hub.

4.3. Law Project about Takaful Insurance

The banking law and the law on securitization are not sufficient to establish a general framework for this emerging finance in Morocco. They need an Islamic insurance that will be added to the Islamic products to create a coherent and complete offer that will meet the requirements of national and international clients.

In addition, Takaful insurance represents an opportunity for Morocco because it has a great potential for development according to foreign experience. Many large insurance companies and even in non-Muslim countries have introduced it in their products.

If Morocco really wants to become a financial hub, then it needs to offer all financial products possible, and first he needs to lay the founding regulations, it is for this reason that Morocco has established a new law n° 59-13 amending and supplementing the law n° 17-99 on the issue of insurance code [19]. This legislation is a revision of certain provisions of the old code and the birth of a legal framework for the Takaful insurance. This law is still in the design stage but will soon emerge.

Indeed, this restructuring of the law is very important because Islamic banks will not be credible in offering Islamic products with conventional insurance. This restructuring is even becoming very urgent especially with the approach to the introduction of Islamic banking in the country.

Takaful insurance policies should go with the Islamic banking products, instead of the death insurance policy (performed at the first introduction of this finance in Morocco), and should cover the amount financed by it and exclude the amount provided by the customer which previously has made incorrect calculation of the insurance policy.

As a result, this project brings a new regulation; it includes definitions for new concepts and basic principles for the Takaful as well as adjustments of definitions to incorporate features of the Takaful insurance and insertion of a number of new provisions to take account of the specificities of this industry.

The bill also provides for the presence of a "Sharia committee" that operates in accordance with article 41 of the Constitution to grant approval under section 5-1 to perform this activity, approve contracts and validate transactions that are within this insurance. To do this, an internal Sharia board is essential, this reinforces the tangibility and credibility of these institutions doubly controlled; On the one hand by the committee and on the other hand by the internal audit structure, which together will establish at least once a year a specific report on compliance with the precepts of Sharia law and submit it to the administration under conditions established by regulation [19].

Section 2 of the bill presents the Takaful as an insurance transaction operating in accordance with the precepts of "Sharia", based on the gift (Tabarru) also called participation or even prime, and mutual assistance among a group of individuals called participants that contribute mutually to the objective of covering the risks specified in Takaful insurance policy. Indeed, it is similar to a mutual insurance.

On this basis, the compensation of the insurance and reinsurance company, and under article 12, is the counterpart of the management that it carries and not the participation in the contract as it is the case with conventional insurance.

After having received the management fees according to the mode set by the administration, the rest if a surplus is distributed among the participants according to well-established procedures under Article 5-2 after deduction if there are Takaful deposits and incorporation of the various provisions and reserves.

If it is a deficit, which is very rare, the project requires Takaful Company to look into its reserves if there are any, otherwise subject it with interest-free advances. These advances are recoverable precisely on future surpluses as what was explained just before.

In case of termination of the insurance contract before maturity for one reason or another, the Takaful management company must repay to the purchaser the portion of interest related to the remaining time for which the risk did not run and this according to article 86-1.

Also, according to article 165, the approval for Takaful insurance operations may not be granted to a licensed company to other insurance operations. We summarize from here that insurance companies already in place will not be able to offer Takaful products unless through the opening of specialized subsidiaries and not directly.

Finally this project is still in the legislative circuit, but will soon emerge, especially that the Moroccan market, according to an article from a newspaper [20], is in high demand. Moreover, many insurance companies have begun to prepare well before this introduction with different offers. In fact, according to the same newspaper, the insurance industry leader in Morocco, Wafa Assurance, prepares itself and said it is particularly interested. Driss Bencheick, the new boss of the Attijariwafa Bank Group Insurance branch explained on a press conference in Casablanca on 19 September that his company is waiting only for the implementation of the regulatory framework to start [20].

5. Conclusions

In conclusion, we have found that the Islamic finance is more ethical compared to its conventional counterpart as it gives priority to collective well-being by financing projects conducive to the development of society while avoiding any opportunistic or speculative behavior.

Also, we answered the two questions asked in the beginning which are why the system failed in 2007 and why it is more likely to succeed in 2016.

We found that the commercialization of alternative products in 2007 failed essentially due to the omnipresence of several constraints that faced their competitiveness compared to their conventional counterparts, the most important of these constraints were:

- The over-taxation that penalized the prices of alternative products commercialized and the high cost of fees and commissions that were applied by the Moroccan banks.
- The discrimination of the political communication since the target audience could not perceive the specifics of such finance. As a result, the same policy has not pushed enough people to look for such funding formulas.
- The low involvement of socio-economic operators who did not want to invest in such new markets.

Despite all of that, there is a huge potential of Islamic finance in Morocco. In fact, 1/3 of the Moroccan population is predisposed to place more than 700 DH / month in an Islamic savings account and 1/4 plans to block their savings in it for a minimum period of 2 years (IFAAS).

And due to difficulties in mobilizing resources in conventional banks, they could find in Islamic finance growth opportunities to broaden and enrich their commercial offering to serve a segment of the population that refuses to be banked for several reasons, from which, religious.

According to a study conducted by CDVM, 90% of issuers consider a Sukuk issuance, in condition that it's allowed by the regulation. Thus, market issuers consider that the costs associated with a conventional bond issue are very high. 50% of companies reported in the same study that for the same cost, the Sukuk can replace conventional emissions.

Then, the system is more likely to succeed in 2016 because big changes have taken place in this regard, thanks to the redesign of the National Banking Act that provides for the first time in the history of the country, a legal framework allowing the establishment of Islamic banks (called participatory) in Morocco. These changes have been added to the securitization law that we already have since 2012, whose main contribution is introducing the possibility of issuing Sukuk on the Casablanca financial centre, and to the draft on TAKAFUL insurance that will accompany the introduction of Islamic banks because they cannot operate without having insurance that will meet strictly with Sharia requirements.

Any success requires adequate ingredients in all confused field and it is not possible to succeed in this new introduction without a comprehensive legal framework. So, we found that the implementation of the laws mentioned earlier is the most important ingredient for the success.

Therefore, the Moroccan system is facing a big challenge in coexisting conventional and participatory systems in a stable and correct way, without discrimination or preference. For this, it needs after the regulatory framework, a national strategy clearly defining what we wish to do with this finance. In other words, it should put in place an action plan outlining the roadmap for the achievement of strategic objectives to be set; in the short term to succeed in the reintroduction of this finance in Morocco, and especially in the medium and long term to continue and sustain it.

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