

The Islamic joint stock company: A fundamental study of a modern investment model

شركة المساهمة الإسلامية: دراسة تأصيلية لنموذج استثماري معاصر

Dr. Mourad Belabes⁽¹⁾

Latifa kermiche⁽²⁾

(1) lecturer A, University of Algiers1 - faculty of Islamic sciences, (Algeria)

mourad85b@hotmail.com

(2) Phd student, university of Algiers1 - faculty of Islamic sciences, (Algeria)

kermiche2909@gmail.com

RECEIVED
17 - 04 - 2020

ACCEPTED
08 - 09 - 2020

PUBLISHED
30 - 09 - 2020

Abstract:

This research aims to present an example of a modern Islamic joint stock company, in order to encourage traders and money owners to invest according to the Islamic law, as well as the legal frameworks that organize the joint stock companies in the contemporary economy, which requires a large number of investors, besides a high flexibility in dealing with economic activities.

As far as I am concerned, the Islamic approach of partnerships depends on both money and work, unlike the contemporary legal system that cares about sharing either money or work, the fact that leads us to attempt to find a model of an investment corporation, suitable to Islamic law and legal system in the same time.

Key words: Corporation – partnership – investment – money – law - Islamic law.

المخلص:

يهدف هذا البحث إلى وضع نموذج لشركة مساهمة إسلامية معاصرة، قصد تشجيع المتعاملين وأرباب الأموال على استثمار أموالهم وتحريكها في ضوء أحكام الشريعة الإسلامية، وبما لا يتعارض مع الأطر القانونية والتنظيمية التي تحكم شركات المساهمة في الاقتصاد المعاصر؛ لأن الاستثمار وتوظيف الأموال يقتضي توفر شركة تستوعب أكبر عدد من المستثمرين، ومرونة عالية في التعاطي مع مختلف النشاطات الاقتصادية.

إذ الملاحظ أن الفقه الإسلامي يعتمد في الحكم على الشركات على عنصري المال والعمل، أما الفقه القانوني الحديث فلم يعد يأخذ بعين الاعتبار عنصري المال والعمل، وإنما صار يعتبر مدى قيام الشركة على الخلط بين الأموال دون الأشخاص، أو الخلط بين الأموال والأشخاص معاً، وهو ما يقودنا إلى محاولة إلى تأسيس نموذج لشركة استثمارية متوافقة مع أحكام الشريعة الإسلامية، ومنسجمة في الوقت نفسه مع القانون.

الكلمات المفتاحية: الشركة - المساهمة - الاستثمار - المال - القانون - الفقه الإسلامي.

(1) Corresponding author: Mourad Belabes,

e-mail: mourad85b@hotmail.com

Introduction:

Investment activities, in the contemporary economy, are accomplished by specialized companies in business and investment, although, the corporate system has always existed.

The topic of this study is the commercial company, which is defined in law as a company that cares about earning profits through commercial activities like buying, selling and banking, contrary to the civil company that does not use money to invest.

Scholars in Islam has studied partnerships, in term of their judgment and categories, therefore, the Islamic jurisprudence recognizes: Sharikat Al-Ibaha (the partnership of permission), Sharikat Al-mulk (the partnership of ownership), and Sharikat Al-Aqd (the partnership of contract).

The latter one is the most important kind of partnerships in Islamic jurisprudence, and includes: Sharikat Al-Amwal (money partnership), Sharikat Al-A'mal (working partnership), Sharikat Al-Wujuh (worth partnership), Al-Modharabah...

These partnerships contribute in the construction of a strong economy, by bringing together wealth and skills; since there are wealthy people without commercial competence and vice versa.

Partnership in both Islamic and legal jurisprudence has advantages and disadvantages. In this research, we present a comparison between corporations in the two systems, for the sake of collecting similarities that will be used in the establishment of a concept of a modern Islamic investment corporation, having in mind that the commercial transactions are basically permitted in Islam.

The most remarkable difference between the Islamic and the secular approach to partnership, is that the Islamic perspective depends on two factors: money and work, hence, we notice: the money partnership which is founded on the share of money, the working partnership that is based on corporal work, and finally, Al-Modharabah which is built on the combination of work and money.

On the other hand, the contemporary jurisprudence takes into consideration the share of money on one side, and the share of money and work on the other.

We relied in this paper on Arabic references that represent the main sources of Islamic jurisprudence, in addition to important contemporary studies that compare Islamic jurisprudence with law, in order to highlight the Islamic input to the modern economy.

For that, we took care of Islamic terminology, especially the companies' names, whose translation is not completely accessible. So, we managed to translate the most we could.

It is indispensable to put on readers' guard that the names of partnerships differ from one country to the other; according to its definition in the commercial code, this is why, we can find one term with two distinct definitions, the fact that complicates the translation, for that, we advise readers and researchers to always associate the translated term with its definition.

We followed in the translation two methods, the first: is the translation by giving the equivalent term in English, which is the norm in translation.

The second: is the transliteration by writhing the Arabic term with English letters, which we tried to avoid as we could.

The transliteration was used in the case of the absence of the equivalent, as well as names of scholars, books, authors and publishing houses.

The modern classification of partnerships, leads us to select the most appropriate investment corporation that suits the Islamic approach and the legal frameworks, and provides a considerable financial return, depending on the principle of interests in Islamic law.

The Research Problem:

- Could the features of partnerships, in Islamic jurisprudence and legal system, be exploited to suggest a modern model of an Islamic investment company?

To answer this question, the article starts by defining the partnerships and their rules in jurisprudence and Islamic law. After that, the paper presents the Islamic conditions that must be respected in dealing with investors and customers, to figure out the type of the appropriate investment company.

For that, we divided the article into five sections as follows:

Section 1: Definition of the company and determining its pillars

Section 2: the commercial companies in law

Section 3: The partnerships in Islamic jurisprudence

Section 4: A comparison between partnerships in Islamic law and jurisprudence

Section 5: The Islamic and legal basis of the Islamic joint stock company

The conclusion: contains the results of the study.

Section 1: Definition of the company and determining its pillars:

A. The definition of the contract:

1- A contract in law:

is the agreement of two wills to establish, transfer or terminate a right.¹

Thus, a contract is a commitment of the contractor to perform a valuable work in the favor of the other part, and to avoid what contravenes his interest, the fact that require a legal relationship between them. In short, the contract is the source of commitment.²

2- The contract in Islamic jurisprudence:

is the association of the offer and the acceptance in a legitimate manner that accomplishes its effect in its proper place.³

So, the contract in the Islamic perspective, is a corporate link of two persons, due to the agreement of their wills that appears by the expression named “the offer and the acceptance”.

The previously mentioned, is the beginning of their engagement with the subject of the contract, which is the intended effect of the contract.⁴

B. The definition of partnership in jurisprudence and Islamic law:

1- The partnership in jurisprudence (the commercial code):

A partnership is a contract whereby two or more persons commit to contribute to a financial project, by providing a share of money or work, in order to share any profits or losses that may arise.⁵

In view of the above, a partnership contract must contain the general basis, such as: “the complete satisfaction of the contractors”, “the subject of the contract”, and “the reason of joining the partnership” represented in gaining profits.

Furthermore, a partnership’s contract must include special basis, namely: “the multiple partners”, “the deliverance of shares” whether they were currency, non-monetary or work, in addition to “sharing profits and losses”, as well as “the intention of partnership” and “the collaboration”, and finally “the registration of the contract” which is a condition, without it the partnership is invalid.⁶

2- The partnership in Islamic jurisprudence:

Scholars defined the partnership of contract with several definitions. Here are the most important, according to each doctrine:

- **According to the Hanafi school (Madh’hab):** a partnership is a contract between partners in assets and profits.⁷

- **According to the Maliki school:** a partnership is the permission of each partner in dealing, in favour of each other, with each other.⁸

- **According to the Shafi'i school:** a partnership is what occurs willingly between two or more persons by association, in order to gain profits.⁹

- **According to the Hanbali school:** a partnership is an association in dealing like selling.¹⁰

The scholars agree about the necessity of -at least- two wills in partnership, in addition to the mixture of partners' money, to gain profits from the activity, wherein they authorize each other to share the profits.

C- The pillars of partnership in Islamic jurisprudence:

The scholars disagreed in determining partnership's pillars as follows:

The Hanafi scholars say: that there is only one pillar which is the form of the offer and acceptance that make the contract binding, however, the other elements are conditions of validation not pillars, because they do not make a part of the essence of the partnership.¹¹

The Maliki, the Hanbali and some of the Shafi'i scholars stated four pillars: the form of the offer and acceptance, the two contractors, the object of the contract.

Even though the cited elements are not a part of partnership's essence, they are considered as pillars, because the contract cannot be fulfilled without them.¹²

On the other hand, some of Shafi'i scholars stated five pillars: the form of offer and acceptance, the two contractors, the object of the contract and the work.

We notice that they considered the work as an independent pillar, contrarily to other scholars that considered it as a part of the contract's object which includes: money and work.¹³

It seems that the opinion of the majority is the most probable, so the partnership's pillars are: the form of offer and acceptance, the two contractors, the object of the contract including the work, because the contract depends on each of the previous elements. Moreover, the scholars that considered them as conditions agree on their necessity for the contract.¹⁴

Section 2: the commercial companies in law

The commercial companies are divided into three main sections which are: the firms (Sharikat Al-Ashkhas), the capital companies (Sharikat Al-Amwal), the collective companies (Al-Sharikat Al-Ama). These types can be illustrated as follows:

A. The firms (Sharikat Al-Ashkhas):

Are mostly small companies, based on personal consideration and mutual trust between the partners that know and trust each other, generally friends or relatives, as consequence:

-The mistake in the partner himself is considered a fundamental mistake, upon which the company's contract is relatively invalid.

- It is not permissible for a partner to deal with his share without the consent of the other partners.

- The company ends with: the death, the interdiction, the insolvency, or the bankruptcy of a partner,¹⁵ in addition to the common reasons that cause the end of the other types of partnerships.

This section includes three types:

1- The solidarity partnership (Sharikat Al-Tadhamon):

That is founded by two or more partners, with the intention of trading in form of partnership, with a specific address which represents the name of the company, in which each of the partners is jointly liable for the payment of the company's debts.¹⁶

This type of companies is appropriate for little projects with low budget, with a collective guarantee in case of asset's deficiency to cover loaners' rights. Moreover, if the company goes bankrupt, all the partners go bankrupt, and the court must announce this ruling.¹⁷

2- The limited partnership (Sharikat At-Tawsia Al-Basitah):

which is held between two teams of partners, one or more partners called "the joint partners", they are responsible for the management of the company its debts and pledges towards others, and one or more partners named "the dormant partners", their responsibility for the company's debts is limited to the extent of their shares in the company's capital.¹⁸

This partnership is adequate for traders and industrial workers that do not have capital. The experience and work are more essential than money.¹⁹

3- The hidden company (Al-Mohassah):

Is defined as a company that only exists between the partners, without a legal personality, it is proven by all means of proof.²⁰

This company deals with one or more works, accomplished by one partner in the name of the company, however, the profit and the losses are shared between all the partners. In other part, this company does not have a legal personality, so, it suits partners who want to hide their identity.²¹

It seems that the firms with their sections are suitable for limited transactions built on trust, rather than the full-sized projects that require a high capital.

B. The capital companies (Sharikat Al-Amwal):

That are based on money, and do not care about the personality of the partner, this is why, the mistake in the partner is not an essential error that nullifies the contract. Also, a partner is allowed to deal with his share without the agreement of the other partners, furthermore, the death of one partner, his interdiction, his insolvency or bankruptcy does not annul the partnership, in other word, collecting money is more important than gathering people.

The shares in this company's capital are called stocks, and the partners are named shareholders, those are not concerned about the company's debts except for the amount of their shares.²²

Stock companies have three types:

1- The joint stock company:

Is a company whose capital is divided into equal bankable parts called stocks, the shareholders' responsibility in repaying debts does not exceed the value of their stocks.²³

This type of companies contains one kind of shareholders whose ownership is inheritable. Those partners may be unknown to each other. Furthermore, this company controlled by the state has a legal personality.

Other property of the joint stock company is that it suits big projects that require a considerable capital due to its stability.²⁴

It should be noted that only monetary shares are allowed in the capital, unlike work, because the capital must be estimated by currency.

Moreover, this company may be interdicted because it is the only way to guarantee the loaners' debts, besides, the monetary shares must be completely paid by the foundation of the company.

In case of subscription in cash, the shareholder is allowed to pay the quarter of the amount, unless the articles of association stipulate the full payment.²⁵

The stocks fall into two categories:

The ordinary stocks: which are based on the equality in value and rights.

The preferred stocks: that give preference to the owner, like the priority in profits and sharing assets in case of liquidation of the company.

They are also named multiple voting shares, because they give the owner more than one vote in the general assembly.²⁶

2- The limited partnership by shares:

In this corporation, the capital is shared into stocks. It also contains two kinds of partners, **the first one**: is the joint partner whose liability is unlimited.

The second: is the dormant partner whose liability is limited on the value of his stocks.²⁷

This company is similar to the limited partnership in term of partners, but the shares of joint partners in the partnership limited by shares are represented by bankable inheritable stocks, because the personality of the partner is unimportant, contrarily to the limited partnership by shares where the stocks are un-assignable. Other dissimilarity, the latter is dissolved with the death of one partner due to the importance of his personality.²⁸

3- The limited liability company:

Is a company where the number of partners does not exceed fifty, besides their liability is limited by their shares.²⁹

There are some similarities between this kind of companies and the individual companies, like:

- Both are founded by a limited number of partners.
- Both cannot be formed by public offering.
- Both cannot issue stocks and bankable bonds.
- The transfer of the partner's shares should be subject to retirement.

In other part, the limited liability company resembles the stock companies in term of the formation, the managing, the determination of partners' liability, and the transfer of shares by inheritance.³⁰

C- The collective companies (Al-Sharikat Al-Ama):

Are companies in which the public capital is combined with the private capital, to care of the common good as well as the individual freedom, or those whose stocks are only owned by the state or a public society.³¹

The collective companies are classified into:

1- The companies of mixed character:

A commercial company generally formed as a joint stock company, and submits to its laws, its capital as well as its management is shared between individuals and public societies.

2- The public shareholding companies:

Are companies owned by the state or a public society, they are the result of nationalization that occurred in some Arab countries.³²

Section 3: The partnerships in Islamic jurisprudence:

According to Islamic scholars, the classification of partnerships depends on their bases, therefore we notice:

- **Sharikat Al-Amwal (money partnership):** which is based on money.
- **Sharikat Al-A'mal (working partnership):** that is based on work.
- **Sharikat Al-Wujuh (worth partnership):** whose base is the guarantee.
- **Sharikat Al-Modharabah:** that combines work and money.

A. Sharikat Al-Amwal (money partnership):

Is a partnership in which two or more partners agree to share a specific amount from the trading capital, in a way that they share profits and losses.³³

This partnership is divided into two kinds; Sharikat Al-Mofawadha (Authorization partnership), and Sharikat Al-Anan.

1- Sharikat Al-Mofawadha (Authorization partnership):

Al-Mofawadha in literal means sharing everything, or equality,³⁴ whereas in Islamic jurisprudence can be defined as follows:

- **According to Hanafi school:**³⁵

Sharikat Al-Mofawadha: is a partnership that includes procuration and Surety, as well as the equality in profit and capital, this partnership is only valid for equal partners in term of freedom and maturity.

This partnership is permitted exceptionally by **istihsan** (the exception of one issue from a general rule) due to the undefined procuration which causes the invalidity in usual, however, people dealt with it since the prophet's era without reproach, what may be a silent consensus about its validity.

- **According to Maliki school:**³⁶

Sharikat Al-Mofawadha: means the permission of each partner to the other in dealing with the shared money, whether in absence or presence, selling or buying, rent or hiring, this is why it is called "**Mofawadha**" (authorization).

The latter is valid as long as the activities are carried out by a Muslim if his partner was non-Muslim.

- **According to Shafi'i school:**³⁷

Sharikat Al-Mofawadha: is a partnership between two or more to share profit, and fine, whether it was caused by usurpation, damage, invalid sell etc.

Shafi'i scholars prohibited it because it includes deception that is forbidden, it also contains undefined surety and procuration which causes the invalidity in partnerships.

- According to Hanbali school:³⁸

Sharikat Al-Mofawadha: has two forms, one of them: is to take part in all kinds of companies, for example: partners combine Sharikat Al-Anan, Sharikat Al Wujuh, and Sharikat Al- Abdan (the corporal partnership), this act is permissible, because each kind of partnership is valid separately, so, it is permissible jointly.

The second: is counting in partnership what each partner gains from inheritance, or finds as rikaz (buried treasures) or laqata (money found in the ground whose owner is unknown). In return, each one is concerned about his partner's liability, like: indemnity, the warranty of usurped or damaged item, fines or surety, and this kind is prohibited.

2- Sharikat Al-Anan:

Al-Anan in Arabic is derived from a verb that means to appear, it is called so because the share of each partner appears to the other. In other opinion, the word Al-Anan comes from the opposition, because each partner faces the other in term of money and work.³⁹

- In the Hanafi school:⁴⁰

Sharikat Al-Anan: is to share some money, in a way that each partner has the procuration in dealing, in a specified or unspecified trading activity according to their agreement, with the statement of the amount of profit.

This partnership is permitted because it is based on procuration which is permitted in Islamic law.

- In the Maliki school:⁴¹

Sharikat Al-Anan: is a partnership in which each partner must agree on the dealing, or a partnership in a specified trading activity.

It is permitted in the two mentioned cases.

- In the Shafi'i doctrine:⁴²

Sharikat Al-Anan: is defined as a partnership in money for the purpose of trade, or to be partner in a specified thing.

It is permitted by consensus for its safety from all kinds of deception.

- According to Hanbali school:⁴³

Sharikat Al-Anan: is a partnership between two or more, in which they share their money, their corporal work and profit, or to share money in a condition that only one of them works and gets higher profit in return.

This partnership is valid and permitted in the doctrine.

B. Sharikat Al-A'mal (working partnership):

Sharikat Al-A'mal is a partnership in work, or in the acceptance of it. Moreover, the profit is shared as agreed. Or a partnership of two or more in which they gain by their manual work, like permitted hunting, carpentry and blacksmithing.

It usually depends on the physical or intellectual effort, this is why it is named Sharikat Al-Abdan (the corporal partnership), or Sharikat Al-Sana'i' (manufacturing partnership).

Sharikat Al-A'mal also comes in form of Sharikat Al-Mofawadha or Sharikat Al-Anan.⁴⁴

The majority of scholars from: the Hanafi, the Maliki, and the Hanbali schools permitted this partnership with its two kinds, because it includes a permitted procuration,⁴⁵ however the Maliki scholars stipulated the similarity in industry and its place.

By contrast, the Shafi'i and Dhahiri scholars forbade this partnership and judged it as invalid, because of the deception and the ignorance in the work, furthermore, a worker cannot share his own work's gain.⁴⁶

C. Sharikat Al- Wujuh (the worth partnership):

Is a partnership between two or more un-wealthy partners whose value in the society makes people trust them, according to this partnership, partners buy goods on terms, and sell them immediately, and share profits as agreed.

This partnership is founded on the traders' trust in partners due to their value, despite of the absence of capital whether it was money or work.

This type of partnership is valid whether in form of authorization partnership (Sharikat Al-Mofawadha) or Sharikat Al-Anan.⁴⁷

On the other hand, the Maliki and the Shafi'i scholars forbade this partnership, due the lack of capital, because a partnership usually stands on either money or work, moreover, this partnership contains deception, because the gain is not determined nor exchanged for work, one more point, Sharikat Al-Wujuh is invalid because of the share in human worth (Al-Dhima).⁴⁸

In contrast, the Hanafi and the Hanbali scholars permitted Sharikat Al-Wujuh, because it includes the procuration of each partner to the other in buying and selling, as well as the surety and both are permitted, besides, this partnership is beneficial and harmless, so it is permitted.⁴⁹

D. Sharikat Al-Modharabah:

Al-Modharabah is a contract of partnership founded on money in one side and trading in the other side, with the share of profits.

It represents the exchange of benefit by another benefit, it is considered as a contract of assistance. It is also called “Sharikat Al-Mo’amala” in reference to the partner’s work.⁵⁰

Al-Modharabah is permitted by the consensus of scholars, Islam admitted it although it existed before,⁵¹ the prophet’s companions like Omar, Othman, Ali and Ibn Mas’oud (may Allah be pleased with them) invested the orphans’ money by this partnership without reproach, what may be a consensus about its validity.⁵²

Section 4: A comparison between partnerships in Islamic law and jurisprudence:

In order to reach the aim of this research which is the formation of a modern Islamic investment company, we will first, compare between companies in the secular law to determine the best one, then we will compare between the most important partnerships in Islamic schools, and finally, we will compare between companies in the two systems.

A. comparison between Partnerships in the commercial code:

1- A comparison between the capital companies:

The Joint stock company	The limited partnership by shares
The capital is divided into equal bankable shares.	It is formed by two kinds of partners.
The partner’s liability is determined by the value of his share in the capital.	The joint holders have a joint and personal liability towards the company’s debts. The dormant partners’ shares are bankable stocks.
Its name is not a partner’s name.	Its name does not include names except the joint holders’ names.
Its capital is divided into indivisible, but bankable shares in many ways.	Its capital is divided into bankable shares in many ways like the joint stock company.

2- A comparison between the kinds of firms:

Standards of comparison	The solidarity company	The limited partnership	The hidden company
1- The quality of trader.	Acquired to the partners.	Acquired to the joint holder only.	Acquired to the manager only.
2- The partners’ liability.	Absolutely symbiotic.	Absolute to the joint holders and limited by the capital amount of the dormant partners.	The manager is the only liable.

3- The partner's share trading.	With the agreement of partners.	With the agreement of partners.	With the agreement of everyone.
4- The attestation of the contract.	Must be written with its conditions.	Must be written with its conditions.	The writing is not compulsory.
5- The firm name.	Partners' names.	Does not include the dormant partner's name.	Without a firm name.
6-the declaration of the partnership.	Compulsory.	Compulsory.	Without declaration.
7- The management.	By partners or those who are determined by them.	By the dormant partners only.	By one partner.
8- The profits.	According to the capital.	According to the agreement.	According to the agreement.
9- The extinguishment of the partnership.	With the expiration of work's duration, death, or the loss of money.	With the expiration of work's duration, death, or the loss of money.	It turns to a solidarity partnership or a limited partnership.
10- The commitment's effects.	Considering them as individuals in the debts litigation from the company or partners.	Jointly, by the Joint holders, in the limit of the dormant partners' capital.	With the dealing partner only.

Therefore, the joint stock company is the best partnership to invest, as long as it is available to each investor.

B. A comparison between Partnerships in the Islamic jurisprudence:

We will mention the most important characteristics of partnerships according to the Islamic schools in order to find the most acceptable partnership.

1- Table of permitted and forbidden partnerships in each school:

The Hanafi school	The Maliki school	The Shafi'i school	The Hanbali school
Al-Anan	Al-Anan	Al-Anan	Al-Anan
Al-Mofawadha	Al-Mofawadha	////////	////////
Al-A'mal	Al-A'mal	////////	Al-A'mal
Al-Modharabah	Al-Modharabah	Al-Modharabah	Al-Modharabah
Al-Wujuh	////////	////////	Al-Wujuh

2- A comparison between Islamic schools concerning the partnership of Al-A'mal (the working company):

Standards of comparison	The Hanafi school	The Maliki school	The Shafi'i school	The Hanbali school
The industry	Similar or different.	Similar or complementary.	////////	Similar or different.
The equality in working	Not a condition.	A condition.	////////	Not a condition.
The oneness of the place of work	Not a condition.	Must be the same.	////////	Not a condition.
The profit	According to the condition.	According to the work.	////////	According to the condition.

From this table, it appears clearly that Shafi'i scholars forbid the partnership of Al-A'mal, due to the lack of the mixture of money, besides the deception in partners' work.

3- A comparison between Islamic schools concerning the partnership of Al-Mofawadha (the authorization company):

Standards of comparison	The Hanafi school	The Maliki school (in one opinion)	The Shafi'i school	The Hanbali school
The equality	A validity condition in the whole money	In the money subject of the contract only	////////	////////
The partnership in items	Not permitted	Permitted with the evaluation	////////	////////
The Partnership with non-Muslim	Not permitted	Permitted with the control of the Muslim	////////	////////
The partner's work	Without restrictions	Without restrictions	////////	////////
The trade	General	General and special	////////	////////
The profit	Equally	Equally	////////	////////

It is notable that Shafi'i, Hanbali and some Maliki scholars forbid this partnership, because of the deception, in addition to the obligation of equality in gains and liabilities in all kinds. Furthermore, this partnership comes to dissolution easily because of the difficulty in keeping the equality between partners.

4- A comparison between Islamic schools concerning the partnership of Al-Modharabah:

Standards of comparison	The Hanafi school	The Maliki school	The Shafi'i school	The Hanbali school
The capital	In cash, known, present.	In cash only, not items.	Known.	Known, present.
The profit	Known proportion.	Known proportion.	Known proportion.	Known proportion.
The restriction of the trade	Permitted.	Not permitted.	Not permitted.	Permitted.
The timing	Permitted.	Without timing is better.	Without timing is better.	Permitted.
The partners' capacity	Being or giving proxy.	Being or giving proxy.	Being or giving proxy.	Being or giving proxy.
Non-Muslim's partnership	Valid in Muslims' lands.	Valid with the management of the Muslim.	Valid with the management of the Muslim.	Valid with the management of the Muslim.

According to what precedes, the scholars agree on the permission of this partnership, despite of some differences in term of conditions and restrictions.

5- A comparison between Islamic schools concerning Al-Anan company:

Standards of comparison	The Hanafi school	The Maliki school	The Shafi'i school	The Hanbali school
The principle of the partnership	Sharing money	Sharing money	Sharing money	Sharing money
The capital	In cash	In cash and items	In cash	In cash
The partner's work	Not restricted	Restricted	Not restricted	Not restricted
The distribution of the profit	As agreed	According to the share in the capital	According to the share in the capital	As agreed
The distribution of losses	According to the share in the capital	According to the share in the capital	According to the share in the capital	According to the share in the capital
Mixing money	Not a condition	Not a condition	A validity condition	Not a condition

The trade	General or specified	General or specified	General or specified	General
The guarantee	Once the dealing starts	Once the contract occurs	Once the dealing starts	Once the contract occurs

In conclusion, the partnership of Al-Anan is the most likely to be agreed on by scholars, therefore, we can say that Al-Anan is the best partnership whose characteristics allow working with more freedom and more partners.

C. A comparison between the most important Partnerships in the two systems:

In this chapter, we will compare between some companies in the commercial and the Islamic law:

1- A comparison between Sharikat Al-Mofawadha (the authorization company) and the solidarity partnership (Al-Tadhamon):

Sharikat Al-Mofawadha (the authorization company)	the solidarity partnership (Al-Tadhamon)
Each partner ensures his partner's liabilities.	The liability is absolutely joint and unlimited
Based on a direct relationship determined by the contract, without an independent legal personality.	It has a legal personality and a financial disclosure, as well as a firm name, a country, a nationality, a capacity. Moreover, the partner is considered as trader.
The partners' relationship is direct in all duties and rights.	The partner is responsible about the company's debt with his own money, and the loaner can impound the company's money as well as the partners' money.
The partner's liability covers all the activities of his partner equally.	The partner's liability achieves all his own money regardless his share in the capital.
The equality in shares is compulsory.	The equality in shares is not compulsory.
The delivery of the share must be immediate.	The delivery of the share can be in term.
Both of partners are free in dealing.	One or more partners manage the company.

2- A comparison between the limited partnership and Al-Modharabah:

Al-Modharabah	The limited partnership
The capital owner assumes the losses from his own money.	The joint holders are responsible for the company's liabilities from their own

	money.
The partner is a trustworthy servant, and a procurator, so he is not liable with his own money	The joint holders are responsible within the limit of their shares.
The working partner does not deliver a capital without working.	All partners deliver shares in the capital.
The working partner earns money in exchange of his work and management.	The management is for the joint holders in exchange of a wage even in the case of loss.
The working partner has a share in the profit, whereas the money owner assumes the losses.	The joint holder like the manager has a share in profits and losses.
The activity is limited within the contract's conditions and market's conventions, as if he works for his self.	The joint holder has the privilege to manage the company.
The dormant partner has the right in the internal management.	The money owner does not work in the company's business or its management.

3- A comparison between the hidden company and Sharikat Al-Anan:

Sharikat Al-Anan	the hidden company
The partnership in a specified kind of companies.	It deals with one or more work in a particular way.
A partner should not act without the permission of his partner. Each of them is a procurator not a guarantor.	One guarantor person manages this partnership.
Does not have a legal personality itself, rather a personality for the independent partners.	A hidden partnership without a legal personality.
It deals with a part from partners' money.	Without an independent financial disclosure of partners.

According to this comparison, we can notice that the best Islamic joint stock company can be achieved by the combination of the joint stock company known in the commercial law, and Sharikat Al-Anan from the Islamic jurisprudence, it is a modern investment company with a legal personality in one hand, and fulfills Allah's purposes in term of preserving money on the other, besides the mundane benefit that realizes the shareholders' interest.

Section 5: The Islamic and legal basis of the Islamic joint stock company

The desired Islamic joint stock company is Sharikat Al-Anan which scholars mention in Islamic jurisprudence, with some modern modifications that

bring it close to the joint stock company as stated in law, in order to keep the Islamic judgments in harmony with the commercial law.

We previously stated the agreement of Muslim scholars on the permission of Sharikat Al-Anan. In the same way, we will study the judgment of the joint stock company in the view of contemporary scholars.

The joint stock company is the partnership whose capital is divided into equal bankable shares. In addition, each partner's liability is limited by the proportion of his share to the capital.⁵³

A. The judgment of the joint stock company in Islamic jurisprudence:

According to scholars' studies, it seems that the joint stock company is permitted, like the other kinds of the capital companies. However, the proof of legality differs. Here are some opinions:

1. Some scholars judge the joint stock company as Sharikat Al-Anan known in the Islamic jurisprudence, because their properties are the same, like: delivering the share by stocks, the participation of the shareholder in the general assembly, acting according to his right given by the general order, and the mixture of money which establishes this company, in addition to activities like selling and buying, as well as the management of money according to the company's purposes, and the procuration of the board of management to manage the company.

All this, is compatible with the Islamic rules of Sharikat Al-Anan.⁵⁴

2. Other scholars judge it as Sharikat Al-Modharabah, that represents a contract within the money is provided by one side and the work is accomplished by the other side, and the profit is divided between them, it is permitted since the norm in the financial transactions is the permission until the prohibition is proved.⁵⁵

Another point, this partnership is one of the most appropriate partnerships to invest savings no matter their value, due to the disproportion between the stocks' prices, what allows the humble as well as the rich savers to join this company and gain profits accordant to the value of their stocks, which means that this partnership is characterized by flexibility and variation that influence the adequacy of companies as well as their competence.⁵⁶

B. The most important organizational properties of the Islamic joint stock company:⁵⁷

The organizational properties	Details
The company's personality	This company has an independent legal personality, and a special financial disclosure, it also has a delegate who

	<p>represents it with the authorities. Furthermore, it has a legal capacity that enables it to acquire rights and commit in duties. Though, the Muslim scholars did not admit the partnership's personality, because the personality is related to livings, thus, there is no personality nor liability except those of partners. Yet, they acknowledge personality to some entities like Mosque, endowment, the treasury, so, it is possible to admit the legal personality of this partnership by analogy.</p>
The contract of the company	<p>It is not a binding contract, thus, a partner that wants to leave the company can sell his stocks without the annulment of the contract, because the annulment can cause damage to the other partners. Another point, anyone who wants to invest his money can join this company liberally with his satisfaction which is approved by law and religion.</p>
The subject of the company	<p>Must be consistent to the general order, and the Islamic law and principles, this should be absolutely committed in advisory work.</p>
The formalities	<p>In law, this partnership is judged invalid if its contract was not written, whereas in Islamic jurisprudence the will of the contractors is the essence of the contract, this is why Majalat Al-Ahkam Al-Adliya stated in article 173 that: the offering and the acceptance may be verbal or written. So, the writing is a condition of proof not a condition of validity, as a result, a contract can be valid without writing since the latter is not a pillar in the partnership.</p>
The capital's shares	<p>The monetary shares must be delivered in time of subscription or before starting activities as required by the law. In other hand, Muslim scholars imposed the presence of the capital in cash during contracting. However, the value of the shares in kind is estimated after the selling and the holding, what requires its equality to the shared amount in cash.</p>
The stocks	<p>A stock represents the share of the shareholder in the delivered capital, its monetary value reflects the company's activities in term of profits and the increase in assets, thus the value of the issued stocks can be higher than the nominal value. Moreover, the stocks</p>

	must be registered stocks or common stocks only, for the prohibition of the other kinds, in order to guarantee the equality, justice and partners' recognition. Also, the circulation of shares could not precede the work.
The founders' shares	The founders' shares are those that are given to some people who helped in the foundation of the company with assistance, invention, or effort, the latter is not a debt and those people are not loaners. However, the simple work cannot be a share in this partnership. Hence, those people are rewarded for their services from the establishment cost.
The stock value	The value should be low to allow the small savers to join this partnership, but this reduction should not be overstated, to avoid the increase of the administrative tasks and costs that harm the company, pursuing the principle of solidarity recommended by Islamic law.
Partners' dealing with company's money	Partners procure the board of management in the general meeting to manage the company, with the appropriate restrictions that maintain the workflow, this procedure is permitted in Islam as long as it does not opposes Islam's principles. In exchange, the board directors are rewarded by either a determined wage or a proportion of profit; however, having the two is a combination of Ijarah (employment) and Al-Modharabah which is invalid.
The general meeting	Any partner can attend meetings regardless of his share or number of stocks, without stipulating a minimum number of stocks. Moreover, the vote should be by counting stocks not partners, because the justice entails that every vote has a stock, and every stock must have only one vote, due to the prohibition of stocks with multiple votes.
The company's accounts	The management of the company's business as well as the preparation of the general accounts is the task of the board directors, in order to draft the financial activity reports, and distribute the gains after giving the Islamic alms (Zakat) and so on.
The control of accounts	Every shareholder has the right to control the accounts, and to supervise the board management's work, by revising the accounts. Furthermore, it is necessary to assign an external audit office to control the activities, and preparing reports to the general meeting, and

	checking the internal accounts, for the sake of approving them.
The increase and the decrease of the capital	The expansion of business or the adjustment of capital in case of loss may require an increase in capital, and may require a decrease in it, this fact adheres to the merchants' custom and the satisfaction of partners, and can be stated in the contract, this is permitted as long as the partners know and agree about it.
The workers' rewards	The general assembly or the company's recruitment system decides to distribute rewards to workers from the administrative expenses only, and not from the percentage of profits, because they are not guarantors in case of loss.
The expiration of the partnership	The company expires for several reasons, including: the expiry of the period specified in the company's contract, the end of the purpose for which it was established, the transfer of all shares to one person, or the destruction of most of the company's money, it also ends with the agreement of all partners to dissolve it before its time.

These were the most important organizational properties in jurisprudence and Islamic law of the Islamic joint stock company that we chose, regarding its similarity to Sharikat Al-Anan, and its accordance to the legal framework, as an ordinary joint stock company.

Conclusion:

The research concluded that the corporate system in the Islamic economy is a flexible and renewable system, which interacts positively with the financial developments, and contributes in providing solutions and mechanisms to overcome financial difficulties that may face investors through the best use of the various resources available; by collecting them and diversifying Their fields of investment, in addition to the creation of reserves to offset losses what provides a positive profit to investors.

The Islamic joint stock company, as proposed by this research, is one of the most adequate companies for investment, because of its flexibility represented by its acceptance to all classes of investors due to the diversity in stocks' prices, which permits humble and major investors to participate, in a way that allows them to gain profit and tolerate losses according to their shares.

In conclusion, we recommend more attention, enrichment, and constructive criticism of this proposed investment model, to serve the interests of

shareholders, and achieve the purposes of Islamic law in preserving money and circulation of funds, and fairness in their acquisition and spending.

Bibliography:

- ¹ - Az-Zarqa Mostafa Ahmad, *Al-Madkhal Al-Fiqhi Al-Am*, 2, Dar Al-Qalam, Syria, 1985 AD, 1/ (P 382).
- ² - Aqil Farid, *Al-Iltizam Nadhariyat Al-Iltizamat fi Al-Qanun Al-Madani As-suri Wa Fi Al-Fiqh Al-Islami*, Matba'at Jami'at Dimachq, Syria; 1986AD, (P 8).
- ³ - Az-Zarqa Mostafa Ahmad, *op cit*, 1/(P 382).
- ⁴ - *Ibid* 1/ (P 382-383).
- ⁵ - Taha Mostafa Kamal, *Ash-Sharikat At-Tijariya*, Dar Al-Matbo'at Al-Jami'iya, Egypt, (P 19), and Al-Marzoqi Salih Ibn Zabin Al-Baqmi, *Sharikat Al-Mosahama Fi An-Nidham As-saudi*, Matabi' As-Safa, Saudi Arabia; 1986AD, (P 31), and Al-Musa Muhammad Ibn Ibrahim, *Sharikat Al-Ashkhas Bayna Ash-Sharia Wa Al-Qanon*, 2, Dar Al-Asima, Saudi Arabia. 1998 AD, (P 40).
- ⁶ - Taha Mostafa Kamal, *op cit*, (P 20-21).
- ⁷ - Shaykhi Zada Abd Ar-Rahman Ibn Mohamad, *Majma' Al-Anhor Sharh Moltaqa Al-Abhor*, Dar Al-Kotob Al-Ilmiya, Lebanon; 1998AD, 2/(P 542).
- ⁸ - Al-Hattab Abu Abd Allah Shams Ad-Din Ar-Ro'ayni, *Mawahib Al-Jalil Li Sharh Mokhtasar Khalil*, Dar Alam Al-Kotob, Lebanon; 2003 AD, 7/ (P 64).
- ⁹ - Ibn Hajar Al-Asqalani, *Fatho Al-Bari bi sharh sahih Al-Bukhari*, Dar Al-Ma'rifa, Lebanon; 1379 hijri, 5/ (P 129).
- ¹⁰ - Al-Bohoti, Mansor Ibn Yunus, *Ar-rawdho Al-Morbi' Sharho Zadi Al-Mostaqni' Fi Ikhtisar Al-Moqni'*, Dar Al-Fikr, Lebanon, 1/ (P 259).
- ¹¹ - Al-Mawsili Abd Allah Ibn Mahmud, *Al-Ikhtiyar Li Ta'lil Al-Mokhtar*, 3, Dar Al-Kotob Al-Ilmiya, Lebanon; 2005AD, 3/(P 13), and Shaykhi Zada, *op cit*, 2/ (P 544).
- ¹² - As-Sawi Ahmed, *Bolghat As-Salik Li Aqrab Al-Masalik*, Dar Al-Kotob Al-Ilmiya, Lebanon; 1998 AD, 3/(P 289-293), and An-Nawawi Abu Zakariya Yahya Ibn Sharaf, *Rawdhat At-Talibin wa Odat Al-Moftin*, Manshorat Al-Maktab Al-Islami, Lebanon; 1405 hijri, 4/(P 275), and Al-Bohoti, *op cit*, 1/(P 259).
- ¹³ - Ash-Shirbini Mohamad Al-Khatib, *Moghni Al-Mohtaj Ila Ma'rifat Alfadh Al-Minhaj*, Dar Al-Fikr, Lebanon, 2/(P 212).
- ¹⁴ - Al-Musa, *op cit*, (P 58).
- ¹⁵ - Taha Mostafa Kamal, *op cit*, (P 73).
- ¹⁶ - Al-Musa, *op cit*, (P 234).
- ¹⁷ - Taha Mostafa Kamal, *op cit*, (P 73 -74-85).
- ¹⁸ - Al-Musa, *op cit*, (P 234).
- ¹⁹ - Taha Mostafa Kamal, *op cit*, (P 73).
- ²⁰ - Al-Musa, *op cit*, (P 234).
- ²¹ - Taha Mostafa Kamal, *op cit*, (P 74-151).
- ²² - *Ibid*, (P 74), and Al-Musa, *op cit*, (P 234).
- ²³ - *Ibid*, (P 235).
- ²⁴ - Al-Khayat Abd Al-Aziz, *Ash-Sharikat fi As-Sharia Al-Islamia Wa Al-Qanun Al-Wadh'i*, 3, Muassasat Ar-Risala, Lebanon, 2/ (P 86), and Taha Mostafa Kamal, *op cit*, (P 75).
- ²⁵ - *Ibid*, (P 184-206).
- ²⁶ - *Ibid*, (P 232).
- ²⁷ - Al-Musa, *op cit*, (P 235).
- ²⁸ - Taha Mostafa Kamal, *op cit*, (P 75).
- ²⁹ - Al-Musa, *op cit*, (P 235).
- ³⁰ - Taha Mostafa Kamal, *op cit*, (P 75-76).
- ³¹ - Al-Musa, *op cit*, (P 234).
- ³² - Al-Khayat Abd Al-Aziz, *op cit*, 2/ (P 120-124).

³³ - *Ibid*, 2/ (P 22).

³⁴ - Az-Zabidi Al-Mortadha, **Taj Al-Arus An Jawahir Al-Qamus**, Dar Al-Hidaya, Lebanon, 18/ (P 497) , and a group of authors, **Al-Mo'jam Al-Wasit**, Dar Ad-Da'wa, Egypt.1972 AD, 2/ (P 706).

³⁵ - Al-Kasani Abu Bakr Alaa Ad-Din, **Badai' As-sanai' Fi Tartib Ash-sharai'**, 2, Dar Al-Kitab Al-Arabi, Lebanon; 1982AD, 6/ (P 58).

³⁶ - Al-Hattab, op cit, 7/(P 102).

³⁷ - Ash-Shirbini Mohamad Al-Khatib, op cit, 2/(P 212).

³⁸ - Ibn Qudama Mowaffaq Ad-din Abd Allah Ibn Ahmad Al-Maqdisi, **Al-Moghni fi fiqhi al-imam Ahmad ibn Hanbal Ashaybani**,1, Dar Al-Fikr, Lebanon; 1405 hijri, 5/(P 138).

³⁹ - Az-Zabidi, op cit, 35/ (P 415), and a group of authors, op cit, 2/(P 633).

⁴⁰ -Al-Mawsili, op cit, 3/(P 15).

⁴¹ - At-Tasuli Abu Al-Hasan Ali Ibn Abd As-salam, **Al-Bahjato Fi Sharhi At-Tohfa**, 1, Dar Al-Kotob Al-Ilmiya, Lebanon; 1998AD, 2/ (P 345).

⁴² - An-Nawawi Abu Zakariya Yahya Ibn Sharaf, **Al-Majmo' Sharh Al-Mohadhab**, Dar Al-Fikr, Syria, 14/ (P 67).

⁴³ - Al-Bohoti, Mansor Ibn Yunus, **Kashfo Al-Qina' AN Matni Al-Iqna'**, Dar Al-Fikr, Lebanon; 1402 hijri, 3/ (P 497).

⁴⁴ - Al-Khayat, op cit, 2/35, and Al-Musa, op cit, (P 168).

⁴⁵ - Al-Kasani, op cit, 6/ (P 58) and Al-Hattab, op cit, 7/ (P 65), and Ibn taymiyah Taqiy Ad-din Ahmad ibn Abd As-salam, **Majmu' Al-fatawa**,3, Dar Al-Wafa, Egypt; 2005 AD, 30/ (P73-74).

⁴⁶ - An-Nawawi, Rawdhat At-Talibin, op cit, 4/P279, and Ibn Hazm Ali Ibn Ahmed Ad-Dahiri, **Al-Moholla Bi Al-Athar**, Dar Al-Fikr, Lebanon, 8/ (P 122).

⁴⁷ - Al-Khayat, op cit, 2/ (P 46), and Al-Musa, op cit, (P 183).

⁴⁸ - At-Tasuli, op cit, 2/(P 348), and An-Nawawi, Rawdhat At-Talibin, op cit, 4/ (P 280).

⁴⁹ - Al-Kasani, op cit, 6/(P 57), and Ibn Moflih Abu Ishaq Borhan Ad-din Ibrahim Ibn Mohamad, **Al-Mobdi' Fi Sharh Al-Moqni'**, Dar Alam Al-Kotob, Saudi Arabia; 2003AD, 4/(P 300).

⁵⁰ - Al-Khayat, op cit, 2/(P 50), and Ibn Taymiyah, op cit, 29/(P 189), and Al-Mawardi Abu Ali Mohamad Ibn Habib, **Al-Modharaba**, 1, Dar Al-Wafa', Egypt: 1989AD, (P 124).

⁵¹ - Ibn Rochd Al-Hafid Abu Al-Walid Mohamad Ibn Ahmad, **Bidayat Al-Mojtahid wa Nihayat Al-Moqtasid**, 1,Dar Al-Aqidah, Egip;2004 AD, 2/(P 284).

⁵² - Al-Kasani, op cit, 6/(P 79).

⁵³ - Sano Qotb, **Al-Moddakhirat Ahkamoha Wa Toroq Takwiniha Wa Istithmaroha Fi Al-Fiqh Al-Islami**, 1, Dar An-Nafais, Jordan; 2001AD, (P 307).

⁵⁴ - Al-Khayat, op cit, 2/208, and Az-Zohayli Wahba, **Al-Fiqh Al-Islami Wa Adilatuhu**, 2, Dar Al-Fikr, Syria; 1985AD, 4/(P 881).

⁵⁵ - Al-Khayat, op cit, 2/ (P 208).

⁵⁶ - Sano Qotb, op cit, (P 315).

⁵⁷ - Al-Atiqi Mohamad Obayd Allah, **Oqod Ash-Sharikat**, 1, Maktabat Ibn Kathir, Kuwait; 1996AD, (P 27-30) and Al-Mawardi, op cit, (P 202), and Taha Mostafa Kamal, **Al-Qanon At-Tijari Al-Lobnani**, 2, Dar An-Nahdaha Al-Arabia, Lebanon ; 1975AD, (P 377) and Ash-Shirbini Imad, "**Al-Ahkam Al-Amma Li Ash-sharikat**", Majalat Al-Mo'amat Al-Islamia , Issued by Markaz Salih Kamil Li Al-Iqtisad Al-Islami, number 5 ; Egypt; 1993AD, (P 93) and Al-Marzoqi, op cit, (P 343-353-409-492-466-523), and Al-Khayat, op cit, 2/ (P 220-222-234-100-207) and Al-Musa, op cit, (P 122-123).

