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Decreasing participation is a form of modern Investment in Awqaf funds
- A comparative study -

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Abstract: The relationship between endowment and investment is organic, because investing in one aspect is a capital formation in the sense of establishing investment projects, and stopping its establishment, renewal and replacement is a process of capital formation and an investment project. The search for alternative legitimate means of riba-based financing has undoubtedly become essential in the field of investment.

The decreasing participation reached by the contemporary doctrinal mentality in order to solve the problem of financing is one of the usual contracts، However, containing some special conditions made it a new version of contracts, as it is one of the tools of short-term investment such as profit and lease ending in ownership, in order to get rid of riba and other non-prohibitive behaviors. Within the scope of this contract is the bank's financing of a new project or existing project, real estate, agricultural, industrial or educational, or the purchase of productive assets, such as the purchase of an aircraft, ship or property in the face of participation, Or by establishing facilities and buildings on land owned by those who wish to participate in the declining partnership with the bank. We should therefore have identified the definition of the endowment investment, its characteristics, and its distinction from others, as well as the decreasing participation statement as a picture of investment by cessation.

تقليص المشاركة شكل من أشكال الاستثمار الحديث في صناديق الأوقاف
- دراسة مقارنة -

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- استثمار.
- الاستثمار الحديث.
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- راس المال.

الخلاصة: العلاقة بين الوقف والاستثمار علاقة عضوية ، لأن الاستثمار في جانب واحد هو تكوين رأس المال بمعنى إقامة المشاريع الاستثمارية ، ووقف إنشائه وتجديده واستبداله عملية تكوين رأسمالي ومشروع استثماري. إن البحث عن وسائل شرعية بديلة للتمويل الربوي أصبح بلا شك أساسياً في مجال الاستثمار.

إن تناقص المشاركة التي وصلت إليها العقلية العقائدية المعاصرة لحل مشكلة التمويل هو من العقود المعتادة ، إلا أن احتوائها على بعض الشروط الخاصة جعلها نسخة جديدة من العقود، حيث أنها من أدوات الاستثمار قصير المدى. كالربح والإيجار المنتهي بالتملك، وذلك للتخلص من الربا وغيره من السلوكيات غير المحرمة. ضمن نطاق هذا العقد هو تمويل البنك لمشروع جديد أو مشروع قائم أو عقاري أو زراعي أو صناعي أو تعليمي أو شراء أصول إنتاجية مثل شراء طائرة أو سفينة أو عقار في مواجهة المشاركة أو بإقامة منشآت ومباني على أراض مملوكة للراغبين في المشاركة في الشراكة المتراجعة مع البنك. لذلك كان يجب تحديد تعريف الاستثمار الوقفي وخصائصه وتمييزه عن غيره، وكذلك بيان المشاركة المتناقصة كصورة للاستثمار عن طريق التوقف.

Introduction :

Thank God, with His grace, the best of good and prayers and peace are made for the most honorable creatures and the master of being, the last prophets and in front of the missionaries, and the mercy of God for the worlds, Our Prophet Muhammad, peace be upon him, his family and companions, and those who followed them with the charity until the day of judgment, and after:

The requirements of scientific research on the subject under study require us to address the following:

First: Introduction to the subject of the Research:

The relationship between AL-Waqf and Investment is organic because investing in one aspect is a capital formation in the sense of establishing investment projects, and stopping its establishment, renewal and replacement is a process of capital formation and an investment project, which is understood from the first part to define the Waqf as "imprisoning the original," The other aspect of Investment is the Investment of the capital formed to obtain benefits or returns, and the purpose of the Waqf is to obtain benefits and returns to be spent on charitable causes, which is understood from the second part of the definition of the Waqf as “the way to spend the fruit.”

There is no doubt that the search for legitimate alternative means of riba-based financing has become necessary in the field of Investment, as there is a fundamental difference between Islamic finance and riba-based financing; the first is worth the return because it exists within a real swap or process that generates added value, while the second, riba, arises independent of real activity and there is no mechanism to ensure the association between them, which exacerbates indebtedness and inflates its benefits to exceed the added value generated by the origin of financing, by many times.

In order for Islamic banks and financial institutions to finance economic projects in a legitimate manner, and for that, Islamic financial institutions have searched for ways to use the customary contracts in a new dress in the contemporary economy, as well as create new contacts within the framework of the general rules established in the jurisprudence

The decreasing participation that the contemporary jurisprudential mindset has reached in order to solve the financing problem is one of the usual contracts, but its containment of some special conditions made it one of the new forms of contracts. In the scope of this contract, the bank finances a new project, real estate, agricultural, industrial or educational, or purchases productive assets, such as purchasing an aircraft, ship, or real estate on the basis of participation or establishing facilities and buildings on the land owned by those who wish to participate in decreasing participation with the bank. Hence, the question that comes to mind is: What is meant by decreasing participation? To answer this question, we say: that decreasing participation does not go beyond being a company. The bank gives its partner the right to replace him in ownership at once or in installments as required by the agreed terms. It is a contract according to which each partner's share in the capital is determined. It belongs to one of the parties and is used to pay the other party's share in the partnership, so his share decreases over and over again until it is completely finished, and he exits the company, and the company or the company's entire place goes to the other party.

Second: Reasons for choosing the research topic:

A number of objective and realistic reasons that prompted us to choose this topic are closely related to the Investment in the Waqf, and these reasons, in general, are:

1. Many waqf funds objects have been neglected, especially in the field of maintenance and management, which calls for investment operations for the purpose of renewing them in various forms.
2. The reluctance of many natural individuals and addressees to establish new waqf funds due to the state of neglect prevailing in endowed funds makes Investment an important factor in the renewal and establishment of new endowments.
3. Weak imports from the waqf funds, as it is noted that most of the waqf real estate occupies distinct commercial sites, but its imports are very weak and not commensurate with the site of this money, and the reason for this is weak management and Investment in it.
4. The weakness of legal legislation and its oldness with regard to the waqf funds, and some of them are devoted to separating the people of the same country, which gives a justification for many individuals to override these funds, especially with regard to the old investment methods, especially the lease contract.

Third: Research Questions:

Through this research, we seek to find the answer many questions that may come to mind, including:

1. What is meant by endowment investment? Is it the same as endowment investment? Or are the terms different؟
2. Is the Investment in the Waqf a real source of financing for the waqf funds, or is it a form of usury and under another name؟
3. What are the distinguishing characteristics of waqf investment? What is decreasing participation؟
4. What is the actual and real reason to search for decreasing participation, excluding other forms of Investment? What are the pictures of the decreasing participation? Does it really involve the idea of speculation? Or is it, in essence, usurious financing? What is the difference between investment financing and usurious financing؟
5. Does decreasing participation put the financial assets of the waqf Bureau in a good legal position? In other words, does it weakens the negative element and strengthens the positive element? or not?

Fourth: The methodology of the research topic:

In preparing this Research, we relied on the analytical method in the main, by analyzing the legal texts that regulate this topic wherever they are mentioned, especially the texts of the law while analyzing the position of jurisprudence in this field. In addition to the analytical approach, we have adopted the comparative approach of several laws, including the Iraqi awqaf Administration Law No. (64) of 1966, the amended and enforceable Iraqi Real Estate Registration Law No. (43) of 1971, and the Egyptian awqaf Law No. 48 of 1946, as well as the Jordanian law, which is a law waqfs, Islamic Affairs and Holy Places No. 32 of 2001, as well as the Algerian Law on Endowments No. 91-10 of 1991 and amended in 2001 and 2002. This study was dominated by the analytical and descriptive approach to the main degree, which is a natural matter because the subject of the research falls within the framework of the solution And the sanctity, but the desired goal is to search for the best means of financing in endowment funds in a way that preserves these funds their economic value and is within the framework of halal from the legal point of view, which is the focus of the study.

Fifth: Research topic plan:

In order to understand the topic of the Research, we will divide it into two Chapters, as follows:

The First Chapter: was dealt with under the title of Investing Endowments in two demands, as follows:

The first section: The definition of waqf investment.

The second sections: The characteristics of waqf investment and distinguish it from others.

The second Chapter included Research on decreasing participation as a form of waqf investment, and all of that is in two demands, as follows:

The first section: the nature of the decreasing participation

The second section: Pictures of the decreasing participation

Conclusion: It includes the most important findings and recommendations for the research topic. It is only a modest contribution to this subject; we hope that it will be the subject of study and application.

1. The first Chapter

1.1. Waqf investment concept

Investment is one of the things that Islamic Sharia has emphasized in many places. Because the Investment is linked to a legitimate intent. The Islamic awqaf institution has an important role in the social and economic fields. Moreover, this role lies in taking over the management of waqf funds through a competent and independent body. It requires focus and attention to waqf funds and to highlight its role in contemporary life because it is considered one of the financial acts of worship, and investing the Waqf is its exploitation and use in a way that generates additional revenue from which Waqf and its benefit, according to the waqf sight. The permanence of money circulation and its volatility, the achievement of prosperity for all, and the movement of money for the benefit of individuals, society, and the nation.

It is important to identify the impact of Investment on waqf funds and the availability of legal systems for Investment in relation to Waqf. Through this, it is necessary to address the concept of waqf investment and indicate the characteristics of this type of Investment as well as distinguish it from other types of other Investment. This will be addressed through the following two sections:-

The First Section: The definition of Waqf investment.

The Second Section: The characteristics of the waqf investment and distinguish it from others**.**

1.2. The first requirement

1.2.1. Definition of waqf investment

The term waqf investment consists of two syllables, and for the purpose of arriving at a comprehensive definition of this term, it is necessary to define each of these two syllables separately, as follows:

1.2.2. First branch

1.2.2.1. Defining the Waqf linguistically:

Linguistically, the infinitive word waqf means confinement, and the plural name is awqaf ([1]). It is called a waqf because of the confinement of money on the specific side, and the Waqf (confinement), and the Waqf of the land, i.e., its confinement ([2]), and the Waqf is the source of the Waqf if confinement it as a waqf, and this is the meaning intended by the Almighty saying in the arbitrator of his dear book**: [if you see, as they stood on the fire they said, Oh I wish we respond not lie, the verses of our Lord and be one of the believers]**([3]). In addition, ALLAH saying [**And stop them; indeed, they are to be**

(1)Ibn Manzoor Abu al-Fadl Jamal al-Din Muhammad ibn Makram, Lisan al-Arab, Dar Sader, Beirut, pp. 359 -360; Muhammad Rawas Qalaji and another, Dictionary of the Language of the Jurists, 2nd Edition, Dar Al-Nafais, Beirut, 1408 AH / 1988 A.D., p. 508.

(2) Ibn Manzur Abu al-Fadl Jamal al-Din Muhammad Ibn Makram, (n 2) 359.

(3)Surah Al-An'am verse 27.

questioned]([1]). They stood in the first, meaning confinement, and they stood in the second, meaning lock them up.

1.2.2.2 Second: Defining the Waqf idiomatically:

The jurists mentioned different definitions of the Waqf according to their opinions on its partial issues, but the most comprehensive definition of the Waqf is (the confinement of the origin and the use of the benefit) ([2]); This statement is supported by what Abdullah bin Omar, may God be pleased with him, that Omar bin Al-Khattab, may God be pleased with him, struck land in Khaibar, so he came to the Prophet, may God bless him and grant him peace, asking him for advice, and he said: Messenger of God! I acquired land in Khaybar; I have never had more money than it, so what do you order? He said: (If you wish, lock up its roots, and give it as a charity) ([3]), and in a narration: (Take back its roots and scatter its fruits) ([4]).

Allah says in his book: (Tahbees) is from confinement in the sense of preventing, and it means holding the eye and preventing its possession for any reason of ownership, and his saying (the original) means the endowed eye. ([5]). Allah saying (Tasbeel the benefit) means releasing the benefits of the endowed asset and its proceeds to the intended destination of the Waqf and which is concerned with it ([6]) and the jurists have defined endowments with many definitions that differ according to their different rulings as to whether and where they are to be owned. Among these definitions are the following: Imam Abu Hanifa defined the Waqf as (Holding an eye on the king of the standing

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(1)Surah As-Saffat verse 24.

(2)Muhammad bin Abdullah Al-Zarkashi Al-Masri Al-Hanbali, Explaining Al-Zarkashi on Mukhtasar Al-Kharqi, Investigation and Graduation by Abdullah bin Abd al-Rahman Al-Jibreen, 1st Ed., without a publishing house, without a place of publication 1410 AH, pg. Dr... Nazih Hammad, A Dictionary of Economic Terms in the Language of the Jurists, 3rd Edition, International House of Islamic Books, without a place of publication, 1415 AH / 1995 A.D. p. 353.

(3) Narrated by Al-Bukhari in his Sahih, Book of Conditions, Chapter on Conditions in Waqf 982, No. 2586, and Wills, Chapter on Waqf how to Write 1019, No. (2620), and Muslims narrated it in the Will, Chapter 1255, No. 1632.

(4) Narrated by Al-Nasa'i in his Sunan, Book of Al-Ihbas, Chapter on Imprisonment of Al-Masha'a 6/232, and Ibn Majah in his Sunan, Book of Charities, Chapter on Waqf, p. It is a valid chain of transmission according to the conditions of the two sheiks; Al-Albani, Rawa Al-Khalil, p. 30, No. 1583.

(5)Mansour bin Younis Al-Bahooti, Scouts of the Mask, 1st Edition, Al-Amrah Ash-Sharafiya Press, Egypt, 1319 AH, p. 489.

(6)Bahouti, p. 267.

and believing in benefit ([1]) . The two companions defined him as (Holding an eye on the rule of the King of Allah, the king who stands for him will go to Allah on the face of which his benefit belongs to the servants, and he is obliged, not sold, and not given) ([2]). The Malikis defined it as: "Giving the benefit of a thing for the duration of its existence, it is necessary to keep it in possession of the giver, even if it is an estimate" ([3]), and the Shafi'is defined the Waqf as: "the confiscation of money that can be used while keeping its eye on a permissible bank" ([4]), as the Hanbalis defined the Waqf as: (Endowment). The origin and the stabilization of the benefit) ([5]), and the Ja'fari people defined the Endowment as (the confinement of the original and the stabilization of benefit)([6]).

From the above, it is clear that the definition of the Endowment by Imam Abu Hanifa and the Malikis necessitates that the ownership of its origin remains for the waqif without its benefit, while the ownership of its origin departs from its ownership with the two companions, the Shafi'is, and the Hanbalis.

By reviewing the definitions that were received, it can be noted that the definition of the Waqf by Abu Hanifa and the Maliki requires that the ownership of the waqf money remains for the endower without its benefit, in contrast to the definition of the two owners, the Shafi'is and the Hanbalis, which indicated that the ownership of its origin departed from its ownership, and that the definition of the Waqf idiomatically consists of several elements: (Giving a benefit, the purpose of which is in the face of God Almighty, the endowed money must be money or by virtue of it, The form of the Waqf is like like perpetuity and a time.

Based on the foregoing, the definition of a waqf can be stated as (the confinement of the owner of a valid asset and the transfer of its benefit to a known charitable entity). As for the legal definition of the Endowment, at first

(1) Kamal al-din Mohammed bin Abdul Wahid Ibn AL-Hammam, explained Fatah AL-Qadeer, DarAL-Ayaa AL-Turath AL-Araby, Beirut, p. 337.

(2) Abu AL-Hassan Ali bin Abi Bakr bin Abdul Jalil AL-Marginani, Al-Hidaya explained the beginning of the beginner, without his nature, the Islamic Library, without a place and a year of publication, p. 13.

(3) Muhammad bin Abd al-Rahman al-Maghribi al-Hattab, Talents of the Galilee to explain Khalil's brief, 2nd Edition, Dar al-Fikr, Beirut, 1398 AH, 1978 A.D., p.18.

(4)Shihab Al-Din Ahmed bin Ahmed bin Salama Al-Qalyubi, Al-Qalyubi's footnote on the explanation of Jalal Al-Din Al-Mahali on the platform of the two students, 1, Dar Al-Fikr, Beirut, 1419 AH, 1998 A.D., pp. 98-99.

(5)Alaa Al-Din Abi Al-Hassan Ali bin Suleiman Al-Mardawi, Al-Insaf, without reprint, House of Revival of Arab Heritage, without the place of publication, 1957 A.D., p. 3.

(6)Abu al-Qasim al-Khoei, Minhaj al-Salihin, Volume 2, i 1, Al-Adab Press, Najaf Al-Ashraf, 1972, p. 269.

sight, we find that the legislation of the countries differed in the definition of the Endowment, and we see that the reason for this is due to the different Islamic jurisprudence schools and that this difference does not deviate from the Endowment from the meaning and the general idea that (the confinement of the owner to the origin of stable money and the transfer of its benefit on the side of righteousness and good information).

The Iraqi legislator outlined the meaning of the stay within article 4 (1) of the Waqf Administration Act No. (64) of 1966, which included (the correct stay in the eye that was owned and stood by one side and includes the arrested genius). ([1]). As the Iraqi legislator has already known the correct AL-Awqaf as the one whose neck was king and then stopped to one side, within the Article (1) of the law on the administration of Waqf No. (27) of 1929 abolished, as the Iraqi legislator knew The waqfs were the ones that were owned and then arrested to one side of the authorities on legitimate grounds([2]) and the Waqf was known as "imprisoning the eye owned by the rule of God and believing in its benefit to those who are entitled to the conditions of the standing. ([3]). As for the Egyptian legislator, he dealt with the suspension within the provisions of the Law of Endowment No. (48) of 1946, which the Egyptian legislator said represents a state of excellence in allowing the standing to return from his suspension and return the money arrested to him again in his life, but after his death, it is for the deserving. ([4]).

The Jordanian legislator also defined the Waqf in Article (2) of the Law of awqaf, Islamic Affairs and Holy Sanctuaries No. 32 of 2001 as "the confinement of the money owed by the judgment of God Almighty on perpetuity and the allocation of its benefits to charity, even if money." ([5]). The Algerian legislator defined In Article (3) of the Algerian awqaf Law, the Waqf, as "withholding the eye from ownership in perpetuity and giving alms for the

(1)See Paragraph (4) of Article (1) of the Iraqi Awqaf Administration Law No. 64 of the amended 1966, published in the Iraqi Gazette No. 1293 on 7/31/1966. The right of land is meant the fixed share of the landlord or his legal substitute in the proceeds of the land in accordance with the provision of Article (224) of the Real Estate Registration Law No. (43) of 1971, as amended, and all real estate transactions are carried out in accordance with the provision of Article (225) Real Estate Registration

(2) See Article (6/b) of the amended and enforceable Iraqi Real Estate Registration Law No. (43) of 1971, published in the Iraqi Gazette, No. 1995 on May 10, 1971.

(3)Muhammad Taha al-Bashir and Dr. Ghani Hassoun Taha, Rights in Kind, Part 1, without reprint, Ministry of Higher Education and Scientific Research, Baghdad, 1982, p. 26.

(4) Egypt's Waqf Law No. (48) of 1946 is considered.

(5) Article (2) of the Jordanian Law of Endowments, Islamic Affairs and Holy Places No. 32 of 2001, published in the Official Gazette No. 4496 on 7/16/2001.

benefit to the poor or in the way of charitable and charitable purposes" ([1]). The Algerian in Article (11) of the Algerian Endowment Law indicated that "the place of the endowment is real estate, movable or usufruct." Does this mean that the Algerian legislator made the Endowment limited to real estate and movables, excluding money? This is on the one hand, and on the other hand, does the Algerian legislator treat the Endowment as money? We see that the legislator has neglected this matter in the text of the law altogether. Some may respond that the definition given by the Algerian legislator for the Waqf is that it includes real estate and movable property, including money, but it is noted that the latter is not imaginable to imprison its object because it is not intended for its objects, that is, it is not imagined that its object will remain with the benefit of it, but its benefits are represented in what it devolves from properties or other benefits. From this point of view and in harmony between the definition of Endowment in Article 3 of the Algerian Endowment Law and Article 11 that organized the place of the Endowment, we call on the Algerian legislator to reconsider the definition of the Endowment so that it accommodates the issue of the Endowment of money.

1.2.3. Second branch

1.2.3.1. Defining Investment in language:

Investment is a source of the verb invest, and Investment is the use or operation of money with the intention of achieving the fruit of this use, so the money increases and grows over time ([2]).

In general, these releases are the most important meanings of the term "fruit," but the principle in it when it is used abstractly is to carry trees, as for its release on money, that is a metaphor and not the truth, and Investment has a language that is intended to seek growth, and investing money is a language that is meant by it. Seeking the fruit of money that is its growth and its offspring ([3]).

1.2.3.3. Defining Investment idiomatically:

Idiomatically, Investment is (that purposeful human activity that works to multiply material and moral goods by investing funds in productive projects that

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(1) Law No. 91-10, dated Shawwal 12, 1411 AH, corresponding to April 27, 1991, containing the Algerian Endowment Law issued in the Official Gazette of CCDSH, No.: 21 for the year 28, dated Shawwal 23, 1411 AH corresponding to May 8, 1991, The complement.

(2)Siham bin Sahel, investment strategy in Biskra, memorandum for obtaining a bachelor’s degree in economic sciences, University Center Mohamed Khider Biskra, 1996, p. 2.

(3) Qutb Mustafa Sano, Investment Rulings and Controls in Islamic Jurisprudence. Dar Al-Nafees for Publishing and Distribution, Amman, 2000 A.D., pp. 15, 16.

take into account the priorities of society within the framework of the values and ethics of the nation) ([1]).

The Investment was also mentioned in a decision of the International Islamic Fiqh Council on behalf of the Organization of the Islamic Conference that "endowment funds, whether they are assets or proceeds, by means of investment that are legally permissible" ([2]), which is "every acquisition of funds in order to obtain a product, or its consumption" ([3])

It is noted that the term investment did not appear in the language books in its economic sense. The definition of Investment was stated as (the use of money in production, either directly by purchasing machinery or in an indirect way such as purchasing.

It is noticeable that the term investment is not included in the language books in its economic sense, as Investment is defined as (the use of money in production either directly by purchasing machines or indirectly, such as by buying shares and bonds ([4]). The term investment is a modern and contemporary term, so its definition must be defined economically and financially in order to be able to reach a clear and precise definition as economists have defined Investment as (the activity by which time consumption is waived in order to increase returns.

As for the definition of Investment by law, the term investment is mentioned in several laws, and the Iraqi legislator has indicated that Investment is meant to be "investing in any economic activity or project that benefits the national economy ([5]). The Egyptian legislator also defined Investment as "using money to build, expand, develop, finance, own or manage an investment project that contributes to the overall and sustainable development of the country ([6]). As for the Syrian legislator, Investment was defined as "setting up, expanding, developing or modernizing projects ([7]).

(1) Siham bin Sahel, p. 2.

(2)The decision of the Council of the Islamic Fiqh Academy emanating from the Islamic Conference, held in its fifteenth session in Muscat (Sultanate of Oman), for the period from 14-19 Muharram 1425 AH corresponding to March 6-11, 2004 A.D.

(3) Ayush Karbou Kamal, Investments Law in Algeria, without Edition, Diwan of University Publications, Algeria, 1999, p. 2.

(4) Ibrahim Anis and his brothers, Al-Mu'jam Al-Wasit, 2nd Edition, Dar Al-Amwaj, Beirut, 1431 AH / 1990 A.D., p.

(5) Paragraph VI of Article (1) of the amended Iraqi Investment Law No. (13) of 2006, published in the Iraqi Gazette, No. 4031 on 17/1/2007; The Investment Law in the Kurdistan Region No. (4) of 2006 has been devoid of a definition of Investment.

(6) Article (1) of the Egyptian Investment Law No. (72) of 2017.

(7) The Syrian Investment Law No. (8) of 2007.

Shawki Dunya stated that the Investment of waqf funds is intended to "employ, exploit and develop the funds arrested to ensure that they remain valid for revenue management, as well as to employ, exploit and develop the excess revenues collected from them ([1]). The Council of the International Islamic Jurisprudence Complex of the Organization of the Islamic Conference (OIC) has also confirmed that the Investment of waqf funds is intended to develop endowment funds, whether assets or proceeds by legally permitted investment means and that the detainee must be preserved in order to achieve the survival of his eye and the permanence of his benefit and that waqf assets, whether real estate or transfers, must be invested unless they are suspended for direct use of their dignitaries ([2]).

The foregoing definitions, which we see as definitions tainted by some shortcomings because they do not fully address the elements of Investment, in addition to the fact that these definitions or meanings were received in line with the content of the laws in which they were contained, and cannot be adopted as a comprehensive definition that prevents Investment in general, and a definition can be given Investment as (the use of money or what is equivalent to it and to increase its production capacity in order to develop it and achieve its goal in increasing its returns).

1.3. The second requirement

1.3.1. Characteristics of Waqf investment and distinguish it from others

The Endowment is a disposition that has an investment dimension, and this dimension is so important that it cannot be ignored, specifically with regard to waqf funds that are intended to produce a return and return that is distributed and disbursed to achieve the purposes of the Endowment ([3]) and the Endowment represents a joint process that combines Investment with savings by deducting money from consumption. And transferring it to Investment for the purpose of increasing the return on benefits, services, or revenues and returns. Through the foregoing, we divide this requirement into two branches. The first deals with the characteristics of endowment investment and the second are to distinguish it from others.

(1) Donia, Shawky, Waqf Aspects of Jurisprudence, Research Symposium on Waqf Experiences in Islamic Countries, Cairo, Saleh Kamel Center, 2002, p. 15.

(2) Decision of the Council of the International Islamic Fiqh Academy emanating from the Organization of the Islamic Conference No. 140 (6/15) regarding Investment in the Endowment and its yields and proceeds, at its fifteenth session, Muscat, Sultanate of Oman, 14-19 Muharram 1425 AH, corresponding to 6-11 March (March) 2004 A.D.

(3) Dr. Munther Al-Qahf, The Islamic Waqf, (its development, management, development), I 1, Dar Al-Fikr, Damascus, 1421 AH / 2000 A.D., p. 34.

1.3.2. First branch

1.3.2.1. Waqf Investment Characteristics

Given the importance of waqf investment - and after the definition of waqf investment has been clearly stated - it is necessary to discuss the characteristics of this type of Investment through the following:

1.3.2.1.1. First: In terms of achieving the greatest return:

Achieving the largest return for the Waqf is the goal of investing it by finding legitimate means that secure the highest profits from the endowed asset, so that those proceeds and profits are disbursed to the beneficiaries of the endowed charitable bodies, and part of those proceeds are used to preserve and maintain the waqf money to ensure its survival and the continuation of its giving. The Waqf and the benefit from it is considered an investment because the Waqf is not permissible for any reason to suspend its benefits investment is the way to obtain those benefits, and this is what the jurists have warned of the impermissibility of delaying endowed money, breaching and differing in the collection of its benefits ([1]).

1.3.2.1.2. Second: in terms of being a financial cult:

The moratorium is a type of ongoing handout that a person approaches his Lord, and the Investment, management, and establishment of the Endowment must be in accordance with the Islamic provisions, (where it is not permissible to establish any moratorium with haraam money([2]) (in itself, in his eye, or in the interest of earning it from the force, carve, or riba, and must stay away from the forbidden methods in his Investment and the need to commit to establishing the Endowment and investing it in the legitimate provisions of the moratorium).

1.3.2.1.3. Third: in terms of acting on the origin and imprisonment of the Waqf:

The disposal of the origin of the Waqf is a property within the definition of the Waqf and has been unanimously agreed upon by all Islamic doctrines([3]), which

(1)Yahya bin Sharaf al-Nuclear, Student Kindergarten, Without His Nature, Islamic Office, Damascus, 1386 Ah, p. 351; Sheikh Khalil al-Mays, Investment in Waqf in Glat and Raya, Research for the Islamic Jurisprudence Complex, 15th session of 2003, Muscat, p. 3; Dr. Abdullah bin Musa al-Ammar, Investment of Endowment Funds, Research at the First Jurisprudence Issues Forum, General Secretariat of Endowments in Kuwait - 1424 Ah/2003, published in the Journal of Contemporary Jurisprudence Research, Year 16 - Rajab 1425 Ah / September 2004, p. 3.

(2) Shams Uddin Al-Sarkhsi, Al-Mabsout, without his nature, published by Dar al-Knowledge, Beirut, 1409 Ah- 1989 A.D., p. 31.

(3) Explain Fatah al-Qadeer, Abdul Wahid bin Hammam al-Hanafi, I2, Dar al-Fikr, Beirut, without a year of publication p. 416; Mohammed bin Ahmed Al-Sharbini Al-Khatib, singer in need of knowledge of the words of the curriculum, without his character,

represents that the establishment of the Waqf is an investment of the money suspended as it is (unspent money), and this property must work to keep the Endowment as it was established in terms of maintaining its productive capacity and this requires further reconstruction of it by renewal and replacement, all of which means that the establishment of the Endowment itself represents an investment process([1]).

1.3.2.1.4. Fourth: In terms of compensation and guarantee:

The guarantee and compensation must be provided if the cause of the Waqf's failure or the disruption of its benefits is due to the destruction of the waqf money, and compensation and guarantee are through the purchase of money similar to the Endowment to be an waqf in its place, so that the purpose of the Waqf is not disrupted, or the right of the endowed is lost, even if it is for an unsecured reason and something of the Waqf remains The stay is not interrupted in the more correct.

1.3.2.1.5. Fifthly: In terms of fruiting:

Spreading the fruit represents a clear impact on the Investment of the Waqf and one of the characteristics of the Endowment because the Investment of the Endowment is to obtain returns, and these returns are considered the property of the beneficiaries by agreement and do not belong to the origin of the Endowment and yield (expendable money).

1.3.2.1.6. Sixth: In terms of ownership:

The jurists differed regarding the ownership of the Waqf, some of them say that ownership remains for the endower, who are the Hanafis and the Malikis, and others say that the ownership of the endower ceases to belong to the Waqf and transfers it either to the ownership of the Waqf if they are concerned, or to the ownership of God Almighty and they are the Shafi’is and the Hanafis, and despite this difference, the agreed-upon It is not to dispose of the Waqf by selling or gift and that the yield by agreement belongs to the beneficiaries, and therefore there are two rights and two objectives in the waqf investment, which

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Mustafa al-Babi al-Halabi, without a publishing place, 1377 Ah / 1958 A.D., p. 376; Abdullah bin Ahmed bin Amama al-Maqdisi, singer, investigation of Abdullah bin Abdul Mohsen al-Turki and Abdul Fattah al-Helou, i2, abandoned printing and publishing, Cairo, 1412 Ah / 1992 A.D., p. 597.

(1) Dr. Sultan Al-Muhammad Al-Sultan and Dr. Wasfi Abu Al-Makarem, Accounting in Government Units and Other Social Organizations, Without His Nature, Publishing Mars House, No Publishing Place, 1990, p. 467.

are the right to the eye and the goal to preserve it, and the right to yield and the goal is to invest the eye to obtain the yield([1]).

1.3.2.1.7. Seventh: In terms of being money:

Money is everything that is beneficial, and this benefit may be through the use of money that leads to its demise, and this type of money may not be endowed by agreement. The survival of money, the jurists, differed about that (some see the survival of the eye by itself, and others see the survival of the eye in terms of its productive capacity and based on that, they differed on the permissibility of the Endowment of money ([2]).

1.3.2.1.8. Eighth: In terms of maintaining the waqf itself:

The proceeds of the waqf investment are a tool to maintain the endowed property. If the endowed money is damaged or destroyed, it is sold according to the correct statements, and its price is spent in the interests of the endowed person, or a replacement for the damaged is purchased with its price and becomes a Waqf([3]), and if the endowed money is sold for a legitimate reason, and the waqfs are taken from The allowance, so it is permissible to invest the allowance money in any form of Investment that is legally permissible until it is possible to exchange it for another eye ([4]).

1.3.3. Second branch

1.3.3.1. Distinguishing waqf investment from others

1.3.3.1.1. First: Distinguishing waqf investment from waqf investment:

Investing in the Waqf in the sense of establishing the Waqf and adding to it, and maintaining its productive capacity by repairing what was ruined by renewal or replacing it with another waqf of replacement, which is what we can call the development of the Waqf, and here the Waqf is a request for funding. As for the waqf investment in the sense of using the waqf money to obtain benefits or yields that are spent on the endowed charitable causes, and here the waqf is financed ([5]).

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(1) Ibn al-Hamam, a previous source, pg. 423; Al-Khatib El-Sherbiny, , pg. 389; Ibn Qudamah, pg. 601.

(2) Ibn Qudamah, the same source, p. 545; Dr.Ali Abdel Wahid Wafi, Political Economy, without Edition, House of Revival of Arab Books, without a place of publication, 1952, p. 50.

(3) Yahya bin Sharaf Al-Nawawi, previous source, p. 353 .

(4) Dr. Wahba Al-Zuhaili, Islamic Jurisprudence, and Its Evidence, 3rd Edition, Dar Al-Fikr, Damascus, 1409 AH / 1989 A.D., p. 228.

(5) Dr. Muhammad Abdul Halim Omar, Investing in the Endowment, its Yields and Proceeds, Research Presented to the Islamic Fiqh Academy, Session 15, Muscat 6/3/2003 A.D., p. 23.

1.3.3.1.2.Second: Distinguishing waqf investment from its development:

As ([1]), the waqf investment is intended to achieve the largest possible financial return, so that part of it is spent on the charitable endowments on which it is endowed, and the other part secures the necessary and continuous development of the way wealth ([2]).

There is no doubt that the goal of Investment is to obtain profitable profits and benefits, which represent the total return on investment, and this is achieved through carrying out a specific commercial activity. There are three terms related to Investment, but they differ in their concept from it in several ways. Exploitation and colonialism. As for Istis'ma, it is meant to bring about growth, and growth in the language is an absolute addition, and the jurists use this word for the extra thing itself from the eye, such as the milk of cattle and its offspring, in exchange for the gain that is what happened because of the eye and not some of it, such as human earnings, for example. ([3]), This is what some of the jurisprudence makes up, including the one with the prohibited gains of separate and related development. ([4]) Al-Kasani was used by the manufacturers of the development industry on two topics ([5]):

The first is when you talk about the speculative contract, he said: The purpose of the speculative contract is to make money.

Second: When talking about the legitimacy of Al-Anan company, he stated that these contracts began for the benefit of the people and their needs to develop in fact and this type is a viable path to development and was legitimate. Second: When talking about the legitimacy of Al-Anan company, he stated that these contracts began for the benefit of the people and their needs to develop; in fact and this type is a valid way to develop and it was legitimate.

Development in contemporary terms is defined as (interaction between a group that leads to a steady increase in real national income, resulting in higher average per capita income ([6]). As for exploitation, it is intended to demand yields and take yields, which are each of the property's rents or income from the

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(1) Ibrahim bin Ali, Abu Ishaq Al-Shirazi, Al-Muhadhab in the jurisprudence of Imam Al-Shafi'i, investigated by Dr. Muhammad Al-Zuhaili, I 1, Dar Al-Qalam, Damascus, 1417 AH / 1996 A.D., 681.

(2) Sheikh Khalil Al-Mays, previous source, pg.4.

(3) Dr. Mahmoud Ahmed Abu Al-Lail and Muhammad Abdul Rahim Sultan Al-Ulama, Investment in Endowment Resources and its Yields, previous source, p. 8.

(4) Sheikh Murtada Al-Ansari, Kitab Al-Makasib, the investigation by the Islamic Thought Council, Al-Hadi Foundation, Qom Holy, 1, 1417 AH - 1997 A.D., p. 100

(5) Masoud Al-Kasani, Badaa' Al-Sana'i in the Order of Laws, previous source pg.60.

(6)Abu Al-Barakat Ahmed bin Muhammad bin Ahmed Al-Dardir Al-Adawi Al-Sagheer Al-Gardner, Volume 3, previous source, p.186.

rent and the land.([1]). The Maliki jurists have called the yield on the renewed commercial goods before selling their necks, such as the palm fruit purchased for trade, wool and milk for the year bought for trade before selling their necks, the rent of the house, and other trade offers, as well as the increase in the sale itself if it buys it for trade by 20 and then grows and sells it five times more. What we mentioned is called yields other than the increase in what he bought for the channel. It is called interest. ([2]).In the Chapter on the will, the Hanifa differentiated between yield and fruit. If he bequeaths a fruit, he goes to the existing ones in particular, and if he bequeaths his yield, it includes the present and what is present in existence, and the presentation of existence is what is in the same rank and equal to it ([3]) As for colonization, It was mentioned in the saying of God Almighty (He created you from the land and colonized you in it, so ask His forgiveness and then repent to Him that my Lord is near and responding) ([4]) meaning, He made you build it, and He wanted you to build it by building houses, planting trees and so on, and this is a kind of Investment. ([5]) The people of knowledge said. Colonialism is the demand for architecture, and the absolute request from God Almighty requires that it be obligatory ([6]). This requires architecture with all kinds of activities that lead to it, such as building houses, preparing agricultural lands, paving roads, and everything that achieves the meaning of construction. From the disposal of money, such as development.

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(1) Dr . Muhammad Yunus Muhammad and d. Abdel Moneim Mohamed Mubarak, The Basics of Economics, p. 404, and also reviews, d. Ali Mohieddin Al-Qara Draghi, Developing and Preserving Endowment Resources, Research Presented to the First Awqaf Conference at Umm Al-Qura University in the Kingdom of Saudi Arabia, p. 7.

(2) Kuwaiti Vig Anseklopedia, Bart 31, Public of the General Secretariat of The Waqf In The State of Kuwait, B. 267. C. Also Der. Nazih Hammad, A Dictionary of Economics symbolizes the Langweg of Eurest's, International House of Islamic Books, 3rd Edition, 1415 Ah, B. 213.

(3)Muhammad bin Ali bin Muhammad al-Shawkani, Fath al-Qadir, who combines the art of the novel and the know-how from the science of interpretation, Dar al-Maarifa, first Edition, 1423 AH, 2004, Beirut, Lebanon, volume 1, p.491.

(4) Surah Hud: Verse 61.

(5) Abu Al-Barakat Abdullah bin Ahmed Al-Nasafi, Interpretation of Al-Nasafi, Perceptions of Revelation and the Realities of Interpretation, previous source vol.2, pg.195.

(6)Abi Abdullah Muhammad bin Ahmed Al-Ansari Al-Qurtubi, The Collector of the Provisions of the Qur’an, House of Revival of the Arab Heritage, 1985, Beirut, Lebanon, 1, volume 4, p. 328,

2. Second Chapter

2.1. Decreasing participation is a picture of Investment by stopping

After we presented the concept of investing in the first Research, in terms of its definition and characteristics and distinguishing it from the suspected cases. We are discussing in this Research on the concept of decreasing partnership as a form of modern Investment in suspended funds. Does it depend on or will it be a form of Riba? Investment has two aspects: capital formation and the use of this configuration to obtain future benefits. It is necessary to distinguish between Investment in the Endowment in the sense of establishing the Endowment to it, and also maintaining its productive capacity by repairing or replacing what has been destroyed (renewal) or replacing it with another stop (replacement), which we can call the development of the Endowment. The moratorium is here a request for funding. The Investment of the Endowment, i.e., the use of endowment money to obtain benefits or yields spent on land on which it is suspended, is here funded. This is the basic idea that we will try to research in this Research as follows:

2.2. The first requirement

2.2.1. What is decreasing participation?

There is no doubt that the search for alternative legitimate means of Riba-based financing has become necessary in the field of Investment. So that Islamic banks and financial institutions can finance economic projects in a legitimate manner. For that reason, Islamic financial institutions have sought ways to use contracts typical in a new dress in the contemporary economy, as well as to create new contacts within the framework of the general rules of jurisprudence. The decreasing participation reached by the contemporary doctrinal mentality in order to solve the problem of financing is a standard contract. Nevertheless, it contains some special conditions that made it one of the new formulas for contracts. It is one of the tools of short-term Investment such as granting and renting, ending with ownership. In order to get rid of Riba and other behaviors involving haram, the bank finances a new or existing project. The project involves real estate, agricultural, industrial or educational, purchases of productive assets, such as the purchase of an aircraft, ship, or property in the face of participation. Also, to participate in the decreasing partnership with the bank through the establishment of facilities and buildings on land owned by those wishing. **Hence, the question that is being asked in the mind is: What is the meaning of decreasing participation?** To answer this question, we say that decreasing participation does not make a company whereby the bank gives its partner the right to replace it in ownership at once or in batches as required by the agreed terms. It is a contract whereby each partner's share of capital is determined, but the return of one party is used to pay the other party's share of the participation. Also, its share decreases again and again until it is fully terminated. This results in exiting the company and the company or the entire company's place are transferred to the other party ([1]). In other words, it is an agreement to join the capital of an economic project with profitable benefits, with the right of one partner to buy the share of his other partner in the joint venture, either in one payment or in installments, under agreed terms.This is often achieved between a financial institution from a bank and others and between a natural person ([2]).

It is undisclosed that the decreasing participation is involved in Al-Anan ([3]) because it is a company that is achieved as a result of a contract intended to collect profit. In principle, they are based on the formula of regular participation with the addition of a new element. Significantly, that the Endowment allocates part of its investment return to purchase the construction from the financier gradually until it is finally owned by the Waqf. Then the Endowment is the owner of the land and the construction together ([4]). This concept is one of the most important investment formulas that develop the Endowment in Islamic countries, as most waqf institutions barely cover their own expenses. So how can they build and invest in the construction of markets, buildings that generate an investment return in order to achieve self-sufficiency and benefit? Therefore, decreasing participation can be considered a new investment process by the government bank with its client who needs funding. For example, establishing a project or the construction of property away from loans like Riba. This is achieved by providing the bank with a portion of the project capital as a participant of the client in his project. The bank undertakes with the partner in a

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([1]) Dr. Ahmed Abdul Aziz al-Haddad, «Investing in the Waqf, In Its Kettles and Raya», Research submitted to the OIC Conference, Islamic Jurisprudence Complex, 15th session, held in Jeddah on 6-11/3/2004, p. 49.

([2]) Sheikh Morteza al-Turabi, decreasing participation in its photographs and provisions, Research published in the Journal Jurisprudence of the People of the House, Year 10, Issue 37, 2005, p. 119 and beyond.

([3]) Al-Anan Company: It is that each one of them takes out money like his owner and mixes it, so he does not distinguish, and each one of them gives his owner to trade money in what he saw of the types of luggage, provided that the profit between them is as much as the money, and the loss is likewise. For more details, see Abu al-Hasan Ali bin Muhammad bin Habib al-Mawardi, al-Hawi al-Kabeer, investigated by: Dr. Mahmoud Matarji, Part 8, Beirut Dar Al-Fikr, 1414 AH - 1994 A.D., p. 157.

([4]) Dr. Fdad Al-Ayachi, Investing waqf Funds, Research Presented to the Fifteenth Session of the Islamic Fiqh Academy, Sultanate of Oman for the year 1424 AH, pg. 40.

certain way to gradually sell the bank's share in the project. To the partner and here is the endowment side, such as the threshold

2.3. The second requirement

2.3.1. Decreasing Participation photos

It is worth noting in this regard that the Islamic Fiqh Academy discussed in one of its seminars the issue of diminishing participation. They considered that it is one of the permissible companies if it is carried out in accordance with the legal regulations. These regulations are summarized in the following: ([1])

1. That it is not just a financing process with a loan, but rather that there must be an actual will to participate and share the profit. This must be according to the agreement that all parties bear the loss.
2. That the bank fully owns its share in the partnership and that it enjoys its full right to manage and dispose of it. In the case of assigning the partner to work, performance can be monitored and followed up.
3. That the decreasing partnership contract does not include a condition requiring that the partner return to the bank his entire share in the capital. In addition to the profits that belong to him, because of the suspicion of usury, meaning the suspicion of an interest-based loan.

If these controls are available, the contract will be valid. Owing to this issue is one of the newly created complex contracts that do not contradict the purposes of Sharia. Also, it does not involve harm or unfairness to anyone, and it is permissible according to many of our contemporary jurists. In addition to the interest in it by the Islamic Fiqh Academy, which discussed it in its session thirteen ([2]). Since the contract is valid and the benefit in achieving the investment return from it is desired. It is worthwhile for endowment institutions to adopt it in developing their resources in agreement with Islamic banks. This is one of the following two forms:

One of the waqf bodies (the Sunni Waqf Or the Shiite Waqf Office) must agree with an Islamic bank to participate in the total or partial financing of a particular project. So that the bank will receive a certain percentage of its proceeds, such as the profit of participation, and another part to pay off its financing. . While the latter part goes to the Diwan until the bank meets its capital, which is financed by the entire project. Then the partnership is closed and the entire

([1])The decisions of the Islamic Bank of Dubai Conference in 1990 were published in the Journal of the Islamic Jurisprudence Complex issue 10 C2 p. 507-508.

([2])Dr: Ahmed Abdul Aziz al-Haddad, former source, p. 51 and beyond.

project is entirely the property of the Diwan. For example, The Sunni Waqf Office, for example, should have a plot of land in Baghdad located on an important commercial site. This site can be commercial markets on the ground floor and an excellent hotel in other classes, which is a successful project if the Waqf Office. The office must have sufficient funds to do it, especially since there are many factors indicating its success. The success includes the demand for religious tourism in Baghdad province (Holy Shrines). Also, the location of the land to be invested and other attractions so that the Diwan administration can benefit from the land and not disrupt its benefit. Because of the pretext of lack of sufficient funding for the project to agree with an Islamic bank to contract it to finance the project in whole or in part. In addition, the investment return of the project is shared by the percentage of their participation in the project after sharing the return to pay off the principal provided by the bank. So the partnership continues, and both parties share profits and capital gradually recovers until it is fully fulfilled. Then the partnership ends and the entire project is Owned by the Administration of the Waqf Office.

2.3.2. Second picture

It is agreed between the bank and the department of the Waqf in the Diwan to determine the participation rates. The rate must be in the form of shares representing the value of the project and each bank and the Diwan. These both receive their share of the revenue from the property and manage the Diwan if it wishes to acquire a certain number of shares owned by the bank each year. For example, these shares will decrease until they are fully owned by Diwan in this way. Then the rent is for him alone, and the participation is finished for the bank to acquire its full capital with its share of profits. This is the most widespread picture in dealing with, whether with waqf institutions or with other people. This contract has been applied by the banks of some Islamic countries. After participating in the project, the parties agree that the bank will gradually waive its share to its partner in exchange for paying for it monthly within an agreed period. At the end of the payment process, the ownership of the bank's share is transferred to the partner. We note in this picture that although the bank takes more from the partner than it paid to it when it became a partner. This can be graduated doctrinally on two bases: ([1])

([1])Hassan al-Zawahiri, Research in contemporary jurisprudence, former source, C2, p. 97.
The partner paid a portion of the price because the bank had 50% of the project. Then the partner paid him the corresponding 1% of the price, his share was reduced to 49%, and therefore its rent decreased.

2.3.3.The first foundation

The bank undertakes to sell its share in the same amount that is paid to the partner when participating. When the amount is at the bank in the form of monthly payments, the excess of that amount he met with is a lease of the share of the partner bank with the client in this period. Certainly, the bank lowers the fare every time.

2.3.4. The second foundation

After participation, the bank can sell its stake to its partner in monthly installments more than the amount entered by a participant. The bank then departs from being a participant who is obliged to have the consequences of the participation. And has its rights, but the bank does not recognize the partner's ownership of the project until payment is made, which is documentation of the bank's price of the share is sold. This process is helpful for financing industrial facilities and farms, constructing hospitals, and building houses away from Riba. In the sense that it is mutually beneficial, making one of them receives monthly profits, and the other gradually acquires ownership of the project or home.

From the previous, it is clear that this declining participation is two decades:

First: The company's contract between the two parties to establish a project or build a property.

Second: The contract for the sale of one of the parties' shares of the company gradually to its partner, or any other person, as the seller is free to sell it and the buyer as well. Within these contracts, there may be a lease to a third person or one of the partners so that he pays a fee to his partner, who has rented his share and made it at the disposal of his other partner, in the form of not selling the entire stake after the company is complete.

If we look at these complex contracts alone, we find no legitimate impediment to their validity. Also, if we look at them together in a single convention, there is a commitment to abide by them. Then there is also no objection to preventing the validity of these contracts from being forced, damaged, raised, or otherwise prohibited from the validity of contracts. Unless the bank does these things and contracts unintentionally so that it is not responsible for the company's liabilities and guarantees, it is clear that its real intention is Riba under the company and the sale ([1]). In other words, the reason here is illegal, and the apparent conduct, i.e., as a decreasing participation contract, is nullified by the illegality of the reason corner, which is one of the essential pillars of the contract.

(1) Hassan Al-Zawahiri, p. 97

The basis for decreasing participation in the contract concluded by the parties. Also, each contributes a share of the partnership capital in a particular project, whether its contribution to the money or the dignitaries after it has been evaluated, with a statement of how the profit is distributed, with each bearing the loss, if any, as much as its share in the project capital. This approaches the mechanism of action and the system of joint-stock companies so that financial consideration emerges. Declining participation is concerned with the existence of a binding promise by one party only that the other party's share will be owned. The other party has the option of concluding sales contracts when each part of the stake is owned, even by exchanging two notices of affirmative action and acceptance ([1]). When Islamic banks enter into such entries, they draw up a series of tapes:

1. The ability and management experience of the partner to manage the process should be available.
2. The partner must maintain a separate and structured account for the participation process and manage the stores properly while retaining the right of the bank to effectively supervise the warehouses.
3. The partner is obliged to write periodic reports on everything related to the company's work.
4. The partner must commit to supplying the proceeds of sales to the bank as agreed, and the purchases shall be in accordance with the contract.

([1]) Saying that it is permissible is the opinion of most different scholars, researchers, bodies, and conferences in terms and regulations. Such as the first Conference of Islamic Banks in Dubai in 1979. The Shariah Council of the Islamic Financial Institutions Accounting and Audit Authority at its eighth meeting held in the Prophet's City on 28 0-4Th Spring 1423 Ah and the International Islamic Jurisprudence Complex of the Organization of the Islamic Conference held in its fifteenth session. Where it came up with the decision of the Council of The Assembly of Islamic Jurisprudence No. 136 (2/15) on the decreasing participation and its sharia controls:

1. Basis for decreasing participation: the contract was concluded by the parties, and each was contributing a share in the company's capital, whether its contribution to the money or the dignitaries, after it had been evaluated with a statement of how the profit is distributed, with each bearing the loss if any as much as its share in the company.
2. Declining participation is concerned with the existence of a binding promise by one party only that the other party's share will be owned with the other party having the option of concluding sales contracts when each part of the stake is owned, even by exchanging two notices of affirmative action and acceptance.
3. Each partner remains responsible for basic maintenance by its share.
4. Decreasing participation is legitimate if it complies with the general corporate provisions and the controls are taken into account.

The bank usually sets a certain duration for the company that the partner must abide by. And if the bank violates the right to take appropriate action in the light of the details contained in the partnership contract. The decreasing participation must be obtained from the fact that the two partners are joint shareholders in the capital if all the capital is for anyone.

The parties will not be involved but will be either renting, farming, speculation, or similar contracts. And if this is supposed to be the case, there will be no participation as mentioned. Participation is also required to have a mix between the two money so that they cannot be dismantled. So that capital must either be a mixable thing or mix them, or it will occur as a result of mixing, which is the rumor of ownership by treatment. One partner was selling a common part of his money to the other for a common section of the other's money so that these two funds were owned by their common property. The Iraqi legislator did not regulate the decreasing participation provisions like other Arab countries, where the Jordanian legislator organized its provisions in the Islamic Bank Law. Also, they defined decreasing participation as (entering the bank as a fully or partially funded partner in a project with expected income, based on agreement with the other partner that the bank would receive a relative share of the net income actually realized with its right to retain the remaining part or any amount of it agreed to be allocated to pay the bank's principal). Contractors may assign the type of joint money investment provided in the participation contract, which varies depending on the purposes of the contractors and the different specifics of the company's subject matter. They may choose any type of Investment, taking into account the correct legal wording. Investment can be in one of the following ways:

1. The bank leases its share at a specified fee or at the market rate each year to the participating customer so that he may become independent by using the money.
2. Lease the joint money to a third and the appointment of the lessee. Also, the rent is in the custody of the two parties at the time of the lease, as is the original, or in the custody of one of them. For example, under a condition in the partnership contract, the bank rents its share of the money in the original. In addition, the share of the client participating by proxy which it wants, at the market or rental fees specified when creating a partnership contract.
3. Profiting the joint money by other means, such as compensation, sharecropping, or otherwise.

4. Assigning one of the two partners or a third party to make a profit as he deems fit, without himself being a tenant, a farmer, or a worker in remuneration.

The profit is divided among the two partners according to the proportion of their money. The loss, if it occurs, is distributed to the two dealers together in proportion to their share of the joint money. Because the company only transfers the separated ownership to the common ownership, so what is destroyed from the joint money from their ownership? Because they are supposed to be partners in every part of that money gossip. And the fact that the damage is in the hands of one of them or a third does not affect that as long as his hand is a trusted hand. If one of the partners is an agent in the disposal or a lessee and so on and does not violate the agreed conditions for investing the money ([1]). However, the diminishing participation can be terminated at the request of one of the dealers or both by termination or dismissal. This is in view of the nature of the partnership contract, which is a permissible but not required contract. But if the partnership contract is made a condition in a necessary contract, such as a sale or a lease. Then it turns into a necessity and it cannot be terminated except by what ends the necessary contracts of mutual consent or the stipulation of the right of rescission, for example.

At the end of the partnership contract, each of the two partners takes the amount of his share of the joint money after dividing it if it is divisible or selling it and dividing its price if it is not. Neither the bank nor the other partner has the right to demand the payment of the financing provided. In addition to taking profits according to the amount of his share of the joint money, unless he stipulated that his partners include his share in the partnership, and we said that is legally correct ([2]).

After the advanced presentation, we see that decreasing participation is one of the best investment formulas in endowed funds. The reason for this is due to the basic idea on which the diminishing Musharakah is based, which is that the service of funding burdens is linked to the idea of revenue and not a loan. Meaning that it depends on the positive elements of financial disclosure that the legal person enjoys. And he is here the administration of the Bureau, without relying on the harmful elements of financial disclosure. It is realized in the form of the loan in the financial disclosure of the Diwan, i.e., the Waqf Department. As is the case in the industrial Istisna, observatory, financial leasing, or bot contract, given that they involve the risk of losing the endowment money. Due

(1) Sheikh Mortada al-Turabi, p. 138
([2])The previous source, p. 141

to the length of the contract period and the lack of revenue in a way that causes damage to the persons entitled to the endowed funds. In a manner that weakens the financial disclosure of the Bureau by increasing the negative elements and weakening the positive elements.

Conclusion :

In the conclusion of this Research, we record the most important results and recommendations that have been reached, which are as follows:

First, the results:

1 .An endowment is defined as (the confinement of the owner of a valid asset and the transfer of its benefit to a well-known, charitable entity). It is noted in the definition of the Algerian legislator that he dealt with real estate and movables without money? This is on the one hand, and on the other hand, does the Algerian legislator treat the Endowment as money? We see that the legislator has neglected this matter in the text of the law altogether. Some may see that the definition given by the Algerian legislator for the Endowment is that it includes real estate and movables, including money, but it is noted that the latter is not conceivable to imprison its object because it is not intended for its objects, that is, it is not imagined that its object will remain with the benefit of it. Properties or other uses.

2. Investment is defined as (the use of money or its equivalent and increase of its production capacity in order to develop it and achieve its goal of increasing its habit).

3. It became clear to us from the folds of the subject of the research that there is a difference in meaning and content between the Investment of the Endowment and the Investment in the Endowment, the Investment in the Endowment in the sense of creating the Endowment and adding to it, and maintaining its productive capacity by repairing what was ruined by renewal or replacing it with another endowment replacement, which is what we can call it Development of the Endowment, and here the Endowment is a request for funding. As for the endowment investment, in the sense of using the endowment money to obtain benefits or yields that are spent on the endowed charitable causes, and here the Endowment is financed.

4. The Investment in the Endowment differs from its development, as development increases the amount of money exploited or invested for the Endowment, such as construction costs on endowed land or the price of seeds, fertilizers, plowing machines, and irrigation machines for the cultivation of endowed land, and this increases the capital value of the

Endowment. The endowment investment is intended to use the endowment money to achieve its purposes and prepare it to carry out its mission, such as investing in a school in teaching, exploiting a building for housing, or establishing prayer in the mosque.

5. It became clear to us that Diminishing Musharakah does not go beyond being a company. The bank gives its partner the right to replace him in ownership at once or in installments as required by the agreed terms. It is a contract according to which each partner's share in the capital is determined, except that the return that belongs to one of the parties It is used to pay the other party's share in the partnership, so his share decreases again and again until it is completely expired, and he exits the company, and the company or the company's entire business is transferred to the other party. It is a true picture of Investment and financing endowed funds

6 .The forms of diminishing participation as a source of financing do not go beyond two forms: The first form: is that one of the endowment bodies (Sunni Endowment Board or Shiite Endowment Board) agrees with an Islamic bank to participate in the total or partial financing of a specific project that the bank obtains a certain percentage From his proceeds as the profit of participation and another part to pay off the financing he provided. While the last part goes to the benefit of the Bureau until the bank completes its capital in which it financed the project in full, then the partnership is dissolved, and the entire project becomes the full property of the Bureau.

7. As for the second scenario, an agreement is reached between the bank and the endowment department in the Bureau to determine the participation rates in the form of shares representing the value of the project. Every year, for example, until these shares decrease until the Bureau acquires them completely in this way, then the revenue is for him alone, and the participation ends for the bank to obtain its entire capital with its share of the profits. This image is the most prevalent image in dealings, whether with endowment institutions or with other persons.

7. Through the Research, it became clear to us that diminishing participation is one of the best investment formulas in endowed funds, and the reason for this is due to the basic idea on which it is based, which is that the service of funding burdens is linked to the idea of revenue and not a loan, meaning that it depends on the positive elements of financial disclosure. That the legal person enjoys, and he is here the administration of the Bureau, without relying on the negative elements of the financial disclosure, and it

is achieved through the form of the loan in the financial disclosure of the Bureau, i.e., the management of the Endowment.

Second: Recommendations:

1. Through the advanced presentation, we recommend the Iraqi legislator in particular and the Arab legislator, in general, to adopt diminishing participation as the best formula for financing the endowed funds in order to achieve the desired goal of investing these funds in charitable causes.
2. We call on the Algerian legislator to reconsider the definition of the Endowment so that it accommodates the issue of Endowment of money, in line with the definition of Endowment in Article 3 of the Algerian Endowment Law and Article 11 that organized the place of the Endowment in order to achieve the intended purpose of the definition.

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