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Examining US approvals of Islamic financing products and the Islamic theory of lawful profit

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Abstract

Purpose

This paper aims to analyze the legal interpretation of three Islamic financing products considered for approval by US authorities, from the United Bank of Kuwait and Guidance Residential, even though the USA has not enacted any Shari'ah legislation in relation to the Islamic law of transactions (fiqh mu'amalat).

Design/methodology/approach

This paper primarily adopted qualitative document and content analysis, supported by quantitative numerical analysis, in reviewing legal interpretive letters from the US Office of the Comptroller of Currency and National Administrator of Banks (OCC) and the US Department of Revenue.

Findings

The research found that in assessing economic substance over legal form, each of the three products involved risk-free transactions and interest.

Research limitations/implications

The research had access to published OCC, Department of Revenue and US Patent Office material that fully disclosed the mechanics of each of the selected products.

Practical implications

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Social implications

The social implication is customer awareness of Shari'ah non-compliance in the USA and the impact for other jurisdictions carrying the same products.

Originality/value

The significance of this research for Islamic banking product design and development is that it enhances the ability to block the legal means to an unlawful outcome (sadd al-dhara'i), thereby avoiding harm (al-darar) attributed to usury (riba), and upholding what is in the public interest (maslahah), to fulfil one of the objectives of the Shari'ah (maqasid al-Shari'ah), which is to protect wealth (hafiz al-mal).

Keywords

Islamic banking

Murabahah

Ijarah

Musharakah mutanaqisah

P48

E44

G21

N22

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