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Islamic Microfinance Model: Civil Legal Features and Mechanisms

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Abstract
Islamic microfinance has expanded beyond a niche ethical alternative and is increasingly framed as a legally engineered instrument of financial inclusion. Yet the legal architecture that makes Islamic microfinance enforceable in secular jurisdictions – while remaining Shariah-compliant – remains conceptually under-theorised in comparative legal scholarship. This paper develops a legal typology of Islamic microfinance mechanisms and evaluates their institutional feasibility across regulatory regimes, with implications for emerging jurisdictions in Central Asia, including Uzbekistan. The study applies doctrinal legal analysis, comparative law across three jurisdictions (Malaysia, Indonesia, GCC – illustrated by UAE, Saudi Arabia practice), and institutional (regulatory) framework analysis. Elements of law & economics are used to assess transaction costs, incentive alignment, and enforcement risks. The paper offers a typology of Islamic microfinance contracts (murabaha, musharaka, mudaraba, ijara, salam, istisna, qard hasan, microtakaful) as legal forms of risk allocation; a governance-and-compliance matrix showing how Shariah governance (Shariah boards, audits, disclosure) functions as a hybrid of private ordering and public oversight; and a comparative table linking each mechanism to enforceability constraints, consumer protection tools, and regulatory arbitrage risks. Policy recommendations address licensing, disclosure of "price" (profit rate vs fees), responsible financing, Shariah governance accountability, AML (CFT), data protection, and dispute resolution design for scalable Islamic microfinance..

Keywords: Islamic microfinance; Shariah governance; murabaha; mudaraba; musharaka; consumer protection; disclosure; regulation; dispute resolution.

Introduction

Islamic microfinance is often described in terms of economic objectives –poverty reduction, the inclusion of unbanked groups, and support for small entrepreneurs. For a lawyer, however, a different question is primary: by virtue of which legal mechanisms can such a product be simultaneously Shariah-compliant and enforceable within a secular legal order. Unlike

conventional microcredit, where the price of credit is expressed mainly through interest and ancillary charges, Islamic microfinance must, by legal means, transform a financial service into permissible forms of civil-law relations: deferred sale (murabaha), lease (ijara), partnership or joint venture (musharaka), trust-based investment management (mudaraba), forward sale with prepayment (salam), manufacturing contract (istisna), or a benevolent interest-free loan (qard hasan).

The core problem of the study is that the Islamic character of a product is not exhausted by the nominal label of the contract. Shariah constraints (riba, gharar, maysir) impose requirements regarding the substance of the transaction, the allocation of risks, the reality of the underlying asset (asset-backing), and the transparency of obligations. This generates an additional layer of legal risks: the risk of merely formal compliance when the product is functionally close to an interest-bearing loan (form over substance), the risk of divergent interpretations of permissibility across jurisdictions, the risk of defective disclosure of the product's price (profit rate, markup, fees), and the risk of challenges or reputational harm if a product is deemed non-compliant with Shariah. These risks are not purely religious. They affect the validity of terms, the scope of liability, the evidentiary assessment of good faith, and permissible enforcement practices.

The research gap lies in the fact that some works focus on the socio-economic effects of microfinance, while others focus on the general principles of Islamic finance, yet comparative legal analysis of the civil-law mechanisms (contracts, governance, compliance, dispute resolution) often remains incomplete. Meanwhile, regulators (especially in emerging jurisdictions) must solve a practical task: how to design a regime that does not substitute private-law consequences with public sanctions, while also ensuring that the weaker party to the contract is not left without effective protection.

The purpose of the article is to develop a legal typology of Islamic microfinance mechanisms as forms of risk allocation and to assess their regulatory feasibility. To achieve this purpose, the following objectives are pursued: to clarify the legal meaning of the key principles of Islamic finance; to classify contractual mechanisms and demonstrate their civil-law nature; to compare regulatory models in Malaysia, Indonesia, and the Gulf Cooperation Council (illustrated by the UAE and Saudi Arabia); to analyse the protection of the weaker party and the disclosure regime; to present dispute resolution models and enforceability problems; and to formulate regulatory and contract-design implications for Central Asia and Uzbekistan.

The article's contribution consists in shifting the focus from describing a list of instruments to a legal-dogmatic reconstruction of Islamic microfinance as a multi-layered construct: contract (private law) – Shariah governance (governance) – public supervision (regulation) – dispute resolution mechanism (enforcement).

Classical economic literature on microfinance often assesses access to capital and delinquency rates. For Islamic microfinance, however, it is crucial to translate the financial function into legal forms permissible from a Shariah perspective. In this regard, important works emphasise that Islamic financial instruments cannot be reduced to a cosmetic replacement of interest with markup. The legal nature of the contract determines permissibility, risk allocation, the security regime, and the consequences of default [7; 19].

At the same time, in the micro-segment, tension increases between the ideal of risk-sharing and the widespread use of debt-like structures (especially murabaha). Some authors see this as an

inevitable scalability compromise: partnership models require costly monitoring and generate agency problems (moral hazard), particularly with small amounts and high transaction frequency [3]. A counterargument is that microfinance (as a socially oriented segment) is precisely where the development of qard hasan, waqf (zakat)-integrated models, and microtakaful is most justified, as they are structurally closer to the idea of fair risk allocation and social responsibility [22].

A body of research on Shariah governance shows that Shariah governance is not an external advisory add-on to a product. It performs the function of a trust-and-compliance infrastructure and an additional (relative to corporate governance) layer of control. Classic problem statements highlight risks of conflicts of interest, heterogeneity of fatwas, differences in national models (centralised vs decentralised Sharia boards), and "fatwa shopping" as a regulatory and reputational risk [4;10].

An important conclusion in the literature is that the effectiveness of Shariah boards depends on the legal status of their decisions, independence and professional competence requirements, and whether Shariah control is integrated into the system of liability and disclosure. Empirical studies on Islamic banks confirm that Shariah supervision affects behaviour and risk profiles, but the effect varies depending on whether the board plays a supervisory or merely advisory role [18].

Normative and standards-based literature (Islamic Financial Services Board; Accounting and Auditing Organization for Islamic Financial Institutions) develops a common language: governance, disclosure, and risk-management requirements. Yet standard-based unification does not eliminate national differences in sources of Shariah legitimacy (the role of central Shariah councils and fatwas issued by national religious institutions), in the degree of legal binding force of standards, and in supervisory and sanctioning tools. An example is the requirement to assess repayment capacity (affordability or feasibility) in Indonesian Sharia banking law as a formal element of prudential oversight, linking the Shariah principle of harm prevention (darar) with banking risk management [15].

Literature on consumer protection and financial inclusion stresses that microfinance clients often constitute a weak party due to information asymmetry, limited financial literacy, and dependence on standardised terms. In Islamic microfinance this is further complicated because the product's price may be expressed as profit rate (markup) and fees. In the absence of clear disclosure rules, there is a risk of hidden charges and tied products. International recommendations on financial consumer protection require transparent disclosure of the total product cost and fair sales practices [25].

Dispute resolution in Islamic finance breaks down into two levels: private-law enforceability of contracts in courts (or arbitration); and the assessment of Shariah compliance and the legal status of Shariah bodies' decisions. The literature points to a conflict-of-qualification risk: a court may treat a dispute as an ordinary sale or lease, while the parties (or a Shariah board) attach importance to religious compliance. Hence, the practical relevance of governing-law clauses, arbitration agreements, internal complaint procedures, and the documentation of compliance (audit trail) – especially in digital channels.

The study is built on a combination of three methods.

1. Doctrinal legal analysis. For each key Islamic microfinance instrument, its civil-law nature is reconstructed: contract type (sale, lease, partnership, loan), object, consideration, risk allocation, typical terms, security methods, and consequences of breach. This makes it possible to separate

the legal construction from the functional purpose (financing) and to identify where risks of invalidity, unfair terms, and disclosure defects arise.

2. Comparative law. Jurisdictions representing different regulatory configurations are selected:

Malaysia as an example of a highly institutionalised Islamic finance regime where Shariah governance is closely linked to regulation and standards;

Indonesia as an example of a system where Shariah principles are institutionalised through the linkage between fatwas of a religious body and banking regulation;

GCC (illustrated by the UAE and Saudi Arabia) as an example of a region where standards and state policy actively construct an infrastructure of Shariah governance and supervision.

3. Institutional (regulatory) framework analysis. The analysis focuses on how norms change the behaviour of actors: the financier, the client, the Shariah body, and the regulator. Elements of law & economics are used: assessment of compliance transaction costs, incentives for opportunism (e.g., formal compliance), risks of regulatory arbitrage, and the costs of enforcement.

A methodological limitation is that industry rules and by-laws change quickly; therefore the article fixes stable architectural elements (licensing, governance, disclosure, enforcement), and details specific norms only where a reliable source is available.

Main Part

Key principles of Islamic finance are typically formulated as prohibitions and positive requirements, but in legal terms they function as constraints on the permissible content of obligations and on risk allocation.

Riba (prohibition of interest). In legal terms, the prohibition of riba means that a monetary obligation must not generate a guaranteed return “from money as such”. Therefore, the price of financing is shifted into other legal constructs: a markup in a sale contract (murabaha), rent in a lease (ijara), or a share in profits (mudaraba, musharaka). The result is increased complexity of legal qualification: a dispute over the “interest-like” nature of payments may be reframed as a dispute about price fairness, hidden fees, and the good-faith quality of disclosure.

Gharar (excessive uncertainty) and maysir (speculation, gambling). These prohibitions strengthen requirements for certainty of essential terms: the subject matter, the price (markup), delivery timelines, and allocation of loss risks. In the micro-segment this implies the need for standardised contracts with clear parameters and plain language; otherwise compliance becomes opaque and the weaker party does not understand the real cost and the consequences of default.

Asset-backing and risk-sharing. The requirement of a real underlying asset and participation in risk transforms the financier into a seller (lessor, partner), rather than a pure lender. The legal effect is that the financier incurs additional obligations (e.g., ownership of the asset before transfer, risk of accidental loss at certain stages of the transaction, quality and delivery obligations). This increases transaction costs but simultaneously gives the consumer additional private-law remedies (e.g., claims based on defects of the goods or the leased asset).

Ethical screening, zakat (or waqf). These elements introduce criteria regarding permissible financing purposes and sources of funding. Legally, they require internal compliance rules (policies), verification and reporting procedures, and liability mechanisms for violations (e.g., mis-selling or financing prohibited activities).

Accordingly, Islamic finance principles are not an add-on to the contract. They modify its legal structure and, consequently, the rules of validity, liability, and judicial control.

Below are the main contractual mechanisms used in Islamic microfinance, indicating their legal nature and key enforceability issues.

Murabaha (cost-plus sale). In microfinance, murabaha typically finances a purchase of goods: the operator acquires an asset and resells it to the client with a markup and instalments. The legal nature is a sale with deferred payment (sometimes with elements of mandate/agency in procurement). The form over substance risk arises when the asset is fictitious and the transaction effectively substitutes a monetary loan with interest. For enforceability, central issues are proof of the reality of the transaction (purchase orders, invoices, title transfer), clear disclosure of the markup, and a ban on hidden fees. In Uzbek regulation on Islamic microfinance services, murabaha is expressly described as financing through the sale of goods based on the purchase price plus markup, which underscores the importance of documenting price and markup [6].

Musharaka (partnership, profit-and-loss sharing). Legally, this is a partnership activity agreement or equity participation. The challenge lies in agency risks: the entrepreneur may conceal profits, inflate expenses, or change behaviour after receiving financing. For the micro-segment this implies the need for contractual monitoring tools (covenants), reporting duties, audit rights, and clear exit rules. With weak enforcement, partnership models either degrade into quasi-debt structures or become too costly to administer.

Mudaraba (trust-based profit sharing). Classically, this involves capital provided by one party (rab al-mal) and management by another (mudarib). Profits are shared according to agreed ratios, while losses are borne by capital (except in cases of misconduct or negligence of the manager). In microfinance, mudaraba is a sensitive instrument: it requires a legal doctrine of manager liability, due care criteria, and evidentiary standards. In the absence of clear rules, conflict easily arises: the operator seeks to shift risk onto the client, which contradicts the model's logic.

Ijara and ijara muntahiya bittamlik (lease, lease-to-own). The legal nature is lease, sometimes followed by transfer of ownership. In microfinance this finances equipment (or transport). Key questions include allocation of accidental loss risk, insurance (maintenance) duties, and the permissibility of penalties for delay (in Islamic practice, penalties are often directed to charity to avoid riba). In Uzbek by-law regulation on Islamic microfinance services, both Islamic lease and lease-to-own are singled out, enabling standard contract models [6].

Salam and istisna (forward sale, manufacturing or works contract). Salam is the delivery of future goods with full prepayment. Istisna is manufacturing (construction) with staged payments. For agricultural and craft projects these may be key instruments, but legally they are complex: quality rules, timelines, force majeure, rights of refusal/substitution, and performance security are needed.

Qard hasan (benevolent loan). Legally, this is an interest-free loan, often with permissible compensation for actual administrative costs (depending on jurisdiction and Shariah interpretation). It is the most socially inclusive instrument, but scalability depends on funding sources (zakat, waqf, donors) and the risk of disguising costs as hidden pricing. Hence the need for strict disclosure and audit.

Microtakaful (Islamic microinsurance). In microfinance, microinsurance reduces default risk from shocks (illness, loss of property). Legally, takaful is based on mutuality and delegated

management (wakala or mudaraba models). For regulators, key issues include reserving rules, disclosure, fairness of surplus distribution, and consumer protection in insurance products.

Thus, Islamic microfinance does not have a single "microcredit" or "microloan" contract. It is a set of legal constructions, each producing distinct consequences for liability, consumer protection, and the supervisory model.

A comparative table (conceptual, applicable to the micro-segment) is provided below.

Mechanism	Legal nature (civil-law lens)	Sharia (compliance) risk	Consumer protection focus	Practical constraints
Murabaha	Sale with deferred payment; sometimes agency elements	fictitious asset; hidden price via fees; formal compliance	total cost disclosure; ban on tied products; fairness of terms	documentation burden, logistics, verification costs
Musharaka	Partnership (or joint venture); equity participation	pseudo-debt instead of sharing; conflicts of interest	exit rules, profit transparency, audit rights	costly monitoring; weak enforcement
Mudaraba	Trust-based profit sharing; fiduciary duties	disputes over negligence (or gross negligence); information asymmetry	reporting standards, burden of proof, good faith	high variability in practice; evidentiary complexity
Ijara	Lease; property risk allocation	misallocation of risks; insurance issues	clarity of duties (maintenance, insurance), fair repossession	asset valuation; repossession (or storage costs)
Salam	Forward sale with full prepayment	uncertainty of quality (or terms); force majeure	quality terms, remedies, refund (or substitution)	market and weather risks; delivery control
Istisna	Manufacturing (or works contract)	risk of non-conforming specifications	warranties, staged payments	performance control; output valuation
Qard hasan	Interest-free loan (social)	disguising costs as hidden markup	strict fee disclosure; ban on "profit" from penalties	funding sustainability; moral hazard
Microtakaful	Mutual risk pool and management (wakala, mudaraba)	opaque surplus; mis-selling	disclosure, withdrawal (or complaints), fair claims handling	regulatory requirements; actuarial data

Shariah governance, disclosure, dispute resolution, and the multi-layer risk-allocation model. The legal specificity of Islamic microfinance lies in the fact that compliance with Shariah constraints cannot be reduced to private autonomy. Even with full contractual freedom, parties cannot arbitrarily set aside riba (or gharar) and at the same time claim an Islamic status for the product. Therefore, Shariah governance becomes a distinct subsystem. It does not replace state courts and is not a second law, but it affects the provability of good faith, disclosure standards, and trust in the product.

International standards. The IFSB defines Shariah governance as a set of organisational mechanisms through which an institution ensures independent oversight of Shariah compliance, including issuing opinions, audit, and reporting [11].

Centralisation vs decentralisation. Some jurisdictions rely on national Shariah bodies (which increases uniformity and reduces fatwa shopping), while others rely on institutional Shariah boards (which increases flexibility and speed of innovation). Yet decentralisation entails a risk of competition among boards for commercial clients; the literature describes this as a condition conducive to fatwa shopping and a shift toward formal compliance [4].

GCC model (UAE, Saudi illustration). In the UAE, the central bank establishes a Shariah governance standard for Islamic financial institutions, linking it to national regulation and institutional governance requirements. In Saudi Arabia, the central bank (SAMA) likewise formalises a Shariah governance framework, reflecting a tendency toward institutionalised control and reduced space for discretionary interpretation for commercial purposes [23].

Indonesian linkage between fatwa and banking regulation. The Sharia banking law links Shariah principles to fatwas of a religious body (MUI) and their subsequent incorporation into banking regulation. At the same time, it introduces a requirement for prior assessment of the client's ability to perform obligations (feasibility, affordability) as part of prudential discipline [15].

Thus, Shariah governance becomes an evidence layer and an accountability layer. If a product is challenged as misleading the consumer or containing unfair terms, the presence (or absence) of proper governance and documented disclosure may be decisive for allocating the burden of proof and for characterising conduct as good faith.

For microfinance clients, the key legal guarantee is understanding the total cost of the product and the consequences of delay. In the Islamic model, the price may be expressed through a markup in murabaha, rental payments in ijara, a profit share in mudaraba (musharaka), administrative charges in qard hasan, and premiums in microtakaful. Without a disclosure standard, a hidden price risk arises – especially through linked contracts (mandatory services, commissions, paid consultations, appraisal, delivery, insurance).

International consumer protection approaches require disclosure of key terms in advance and in a comparable format, prevention of unfair sales practices, effective complaint and out-of-court settlement mechanisms, and supervisory tools for fair treatment [25].

For Islamic microfinance this implies that regulatory design should avoid a false dilemma: either "we trust Shariah and do not regulate price", or "we replicate conventional interest caps". A more productive approach is different: standardise disclosure of total cost regardless of whether it is expressed as profit rate or aggregate payments; prohibit hidden fees and tied products; and introduce a regime of private-law consequences for non-transparency (e.g., reducing the recoverable amount to the disclosed level, invalidating specific terms, damages, restitution).

Dispute resolution in Islamic microfinance should be treated as a pre-designed product element rather than a post-default problem. Four legal nodes are important:

1. Contract qualification by the court. A secular court will usually qualify the transaction by the forms of national civil law (sale, lease, partnership, works contract). Therefore, the contract must be legally self-sufficient and enforceable without recourse to religious arguments. Depending on the jurisdiction, Shariah compliance may matter as an element of good faith, public policy, or professional standards of service.

2. The role of a Shariah body in a dispute. Possible models include: an expert opinion; a mandatory pre-trial internal Shariah review; or arbitration with Shariah experts. Each model has a trade-off: strengthening Islamic trust may complicate enforceability if decisions are not integrated into procedural law.

3. Limits of recovery and penalties. In Islamic practice, late-payment penalties are problematic because they may be treated as riba. Therefore, charitable allocation of penalties, reimbursement of actual costs, and restructuring are often used. For enforceability, it is important that contractual sanctions be legally classifiable (liquidated damages, penalty, reimbursement of expenses) and comply with mandatory consumer-protection norms.

4. Out-of-court mechanisms. In the micro-segment, complaint procedures, mediation, an ombudsman, and communication standards in collection are especially important. They reduce enforcement costs and lower the risk of abuse.

Islamic microfinance can be described as a multi-layer risk-allocation system:

Level A – Sharia constraints (normative layer): prohibitions of riba, gharar, maysir and the asset-backing requirement define the permissible set of contractual forms.

Level B – Contract design (private-law layer): the specific contract (murabaha, ijara, etc.) allocates risks (price risk, delivery risk, business risk) between operator and client; remedies and security mechanisms are also set here.

Level C – Governance & compliance (trust and accountability layer): Sharia board, Sharia audit, disclosure policies, internal controls create verifiability of compliance and prevent opportunism (e.g., fictitious assets) [11].

Level D – Public supervision (regulatory layer): licensing (registry), risk-management requirements, consumer protection, AML (CFT), sanctions for mis-selling and non-transparency [9].

Level E – Dispute resolution (enforcement layer): courts, arbitration, an ombudsman, and collection procedures ensure enforceability and correct the imbalance of the weak party.

Resilience increases when all levels are aligned. A gap at any level yields either formal Islamic character without substantive compliance, or legal fragility and an increase in disputes.

Functionally, Islamic microfinance addresses the same task as conventional microfinance. Financing households and microbusinesses amid high transaction costs and elevated default risk. Legally, however, the difference is fundamental. Conventional microcredit is built around a monetary loan and interest, whereas the Islamic model is forced to decompose the financing function into a set of real-sector contracts. This has two consequences.

First, the role of documentation and legal qualification increases. If murabaha is not supported by a real purchase and transfer of title to the asset, it becomes a disputed construction and is vulnerable both in compliance terms and in consumer protection terms (disclosure).

Second, risk allocation becomes more complex. For example, in ijara the operator bears risks associated with ownership of the asset, which changes the logic of recovery and liability. From a law & economics perspective, this increases transaction costs but may reduce social costs of aggressive collection, because the product is more closely tied to an asset and its economic use.

Murabaha and ijara scale more easily because they generate predictable cash flows, whereas musharaka and mudaraba require monitoring and complex evidence, which raises product costs. Hence a structural risk: the market will gravitate toward debt-like instruments even if risk-sharing models are ideologically preferred.

Stronger Shariah governance reduces the risk of fatwa shopping and formal compliance, but may increase the time and cost of product approval. With weak independence requirements, an agency problem emerges: the board becomes a service for business rather than a control mechanism. Empirical studies on Islamic banks show that the actual supervisory status of the Shariah Supervisory Board (SSB) matters for governance effectiveness [18].

In the micro-segment, key risks are mis-selling and hidden pricing. Even an interest-free product may become expensive under an unclear system of charges and tied services. Therefore, protection of the weak party must be built into disclosure and private-law consequences, not only into public fines imposed by the regulator. International consumer protection approaches emphasise comparable cost disclosure and fair treatment.

If legal form serves as a shell while the economic substance remains an interest-based loan, the system loses trust and disputes increase. This problem is especially pronounced in mass standardised products where the client cannot verify the reality of the asset.

In mudaraba and musharaka, agency problems are two-sided: the entrepreneur may conceal profits; the operator may impose terms that in fact shift risk to the client, undermining the model. The solution lies in covenant-based contract design, due care standards, and audit procedures.

The risk of selecting the most convenient Shariah opinion increases in decentralised models and competitive expert markets. Theoretical and empirical works indicate that without institutional constraints, this creates incentives to lower compliance standards [4].

Jurisdictional heterogeneity creates regulatory arbitrage: a product deemed permissible in one country may be challengeable or unenforceable in another. Hence the importance of international standards (AAOIFI, IFSB) as a common language, as well as national implementation mechanisms.

From the standpoint of legal resilience in the micro-segment, mechanisms are more устойчивы where: the reality of the transaction is easy to prove; terms are transparent; and consumer protection remedies are embedded in the structure. By these criteria, murabaha or ijara (with robust documentation) often outperform mudaraba (musharaka) in scalability. However, if the system aims at inclusion, qard hasan and waqf (zakat)-integrated models have strong social potential provided that cost controls and transparency are strict.

Recommendations for regulators:

1. Market access should differentiate operators by risk: microfinance organisations offering Islamic products may require a separate permission category or an overlay to an existing licence, with proportional requirements for capital, governance and reporting.
2. A unified standard of total-cost disclosure is needed regardless of whether the price is expressed as markup, rent, profit share, or fees. Comparability is achieved by disclosing the total amount payable, schedule, all mandatory charges and linked services, and default (restructuring) scenarios. International consumer protection guidance can serve as a template for disclosure structure [25].

3. The regulator should directly restrict hidden charges and tied services, or require explicit separate consent and proof of economic necessity. For Islamic products, transparency in distinguishing profit rate from fees is particularly important.
4. Even without interest, the risk of over-indebtedness remains. Therefore, a duty to assess repayment capacity proportional to amount and term is necessary. Indonesian Sharia banking law explicitly requires assessing a client's ability to perform obligations, which may be viewed as an example of institutionalising responsible financing [15].
5. Minimum standards of independence, competence, and conflict-of-interest prevention are required for Shariah boards, including rules for disclosure, rotation, and documentation of fatwas (opinions). International standards (IFSB, AAOIFI) provide a framework, but national law must connect governance to liability for mis-selling and misleading Shariah positioning [11].
6. Microfinance often serves clients with limited formal documentation, while digital channels increase transaction speed. Therefore AML (CFT) should be risk-based and compatible with inclusion, as reflected in FATF guidance on financial inclusion and AML (CFT) [9].
7. Digital transformation (scoring, alternative data) requires data-minimisation rules, transparency of criteria, procedures to challenge decisions, and non-discrimination safeguards. This is also important because trust and reputational risks are higher when automated refusals are opaque.
8. Limits on communications and collection, restructuring rules, and protection against aggressive practices are necessary. For Islamic products, the regime of penalties (liquidated damages) should be separately regulated, including their acceptable legal classification.

For regime stability, some solutions should be translated into private-law consequences:
invalidity or inapplicability of non-transparent terms;
restitution for hidden charges;
presumptions in favour of the consumer where disclosure is defective;
shifting the burden of proof regarding the reality of the transaction (especially in murabaha);
the creditor's duty to prove good-faith sales practices and adequate information.

These measures reduce dependence on external regulatory fines and foster predictable court practice.

For Central Asia, the issue of Islamic finance has a dual character: demand for products aligned with religious convictions; and the need to integrate such products into existing civil-law and supervisory frameworks without creating legal uncertainty.

In Uzbekistan, an important step is the approval of procedures for providing Islamic services by microfinance organisations (registration No. 3536 of 26 July 2024), which explicitly lists and describes murabaha, ijara, ijara muntahiya bittamlik, salam, mudaraba, and musharaka, and provides for a special council coordinating Islamic finance issues.

Practical implications follow:

1. Documenting the reality of transactions becomes a central requirement (especially for murabaha, salam, and ijara). In a secular legal order, the enforceability of Islamic instruments depends not on a declarative label of the contract, but on how convincingly the reality of the economic–legal structure required by Sharia constraints is evidenced (asset-backing; prohibitions of riba and gharar). For murabaha, the decisive point is proof that the financing institution actually

acquired the asset, assumed the relevant risk at the appropriate stage, and only then resold it to the client with a properly disclosed markup. Where there is no evidence of a real transfer of title (or at least legally significant control over the asset), the structure becomes vulnerable: the dispute shifts toward a disguised loan characterization, and legal risks include challenges to price terms, requalification of fees as hidden remuneration, and expanded grounds for claims based on pre-contractual bad faith.

For salam, documentation serves a dual function: first, it confirms the permissibility of prepayment for a future good under clearly defined parameters of quality/quantity/time; second, it reduces the likelihood that the contractual model will be treated as excessively uncertain (gharar) due to an indeterminate subject matter. In the microfinance segment, this requires standardising a minimum set of evidence: product specification, delivery schedule, confirmation of full prepayment, return (replacement) mechanisms in case of breach, and traceability of the counterparty chain (supplier, storage, logistics), because it is precisely this chain that forms the evidentiary basis in disputes.

For ijara, evidencing reality is expressed through confirmation of the lessor's legal status, the allocation of ownership-related risks, maintenance and insurance terms, and rules for repossession (return) of the leased asset upon default. The practical conclusion is that documentation should be embedded in the product as a mandatory compliance contour (audit trail): recording the sequence of actions (acquisition – lease – payments – maintenance – default steps) and ensuring these data are available to the regulator and the court. Otherwise, the adjudicator will have to infer qualification from indirect indicators, which increases the probability of adverse findings for the creditor/operator.

2. Standardised disclosure must accompany the introduction of instruments; otherwise the hidden price risk will shift into fees and linked services. Introducing Islamic instruments into the microfinance segment inevitably raises a problem of price comparability. Because remuneration in the Islamic model is expressed not through interest, but through markup (murabaha), rent (ijara), profit share (mudaraba, musharaka), or administrative charges (qard hasan), the hidden price risk arises not only from intentional concealment, but also from the structural fragmentation of payments. If the legal regime is limited to general information duties without a unified standard, the market quickly produces avoidance practices: the total cost is split into fees, paid services, appraisal, delivery, insurance, subscriptions, service packages, and payments to affiliated entities.

Therefore, disclosure should not be merely declarative. It must be standardised in both format and metrics. For micro-products, the most operational format is a unified Key Information Document (akin to a Key Facts Statement), disclosing: the total amount of mandatory payments over the entire term; the payment structure distinguishing the instrument's price component and all mandatory fees; default and restructuring scenarios; early termination or buyout conditions (for ijara) and refund conditions (for salam in case of non-delivery); a list of linked services indicating whether they are mandatory or optional and under what conditions credit or financing is available without them.

The key doctrinal point is that standardised disclosure must be coupled with a private-law sanction for defective disclosure. Otherwise, disclosure becomes a compliance ritual: the creditor formally discloses information yet retains incentives to design the product so that a substantial portion of

revenue flows through non-obvious charges. Accordingly, an anti-hidden-price mechanism should logically include: a prohibition on charging payments not included in the standard disclosure; consumer-favourable presumptions in disputes over hidden charges; and clear consequences (restitution, reduction of the recoverable amount) as factors that change the economics of a non-compliant model.

3. The status and liability of the special council require doctrinal elaboration: whether its opinions are binding; how conflicts of interest are prevented; and who bears liability for mis-selling and misleading representation of a product as Shariah-compliant. Establishing a special council (or coordinating body) on Islamic finance is an institutional step, yet its legal significance depends on a prior question: what place does its opinion occupy within the system of sources and liability? If the council is treated as a consultative body with no legal force, its views operate merely as an argument of good faith, without generating market predictability. If its opinions become, in practice, a mandatory filter for product access to the market, a different requirement follows: the scope of competence, decision-making procedures, reasoning standards, and the legal regime for errors and conflicts of interest must be normatively defined.

Doctrinally, it is important to distinguish at least three models:

1. Advisory model: the opinion is expert guidance affecting the assessment of good faith and the standard of professional diligence;
2. Gatekeeping model: the opinion is a condition of admission for a product (practice);
3. Hybrid model: the opinion is mandatory at the product-development stage, while non-compliance triggers specific consequences (e.g., a ban on marketing as Shariah-compliant or a duty to disclose that the product is disputed).

In each model, the conflict-of-interest problem must be addressed. Sharia expertise should not become a service that optimises commercial outcomes at the expense of compliance substance. A minimum set of safeguards includes: independence rules for council members; disclosure of affiliations; limits on role accumulation (e.g., simultaneous consulting for competitors and participation in product approvals); rotation requirements; documentation of reasoning; and standardised publication of core findings (to the extent consistent with commercial confidentiality).

A separate block concerns the allocation of liability for mis-selling and misleading representation of a product as Shariah-compliant. Here, private-law liability cannot be replaced by reputational consequences. If a client is promised a Shariah-compliant product but the structure in fact conflicts with declared standards or contains material hidden charges, legally relevant conduct arises: misleading pre-contractual information, breach of a professional standard, and potentially unfair terms. Doctrinally, a model is justified in which primary liability rests with the financial service provider (operator), because it controls the product, marketing, and sales interface; the council may bear liability only where gross negligence (conflict of interest) is proven, and only if the national model assigns legal significance to its opinions. This approach avoids an improper shift of responsibility from the stronger party to the expert infrastructure.

4. The dispute resolution model is best designed as a combination: internal complaint procedures – mediation (or ombudsman) – court (or arbitration), with a clear status for Shariah expertise. For the microfinance segment, dispute resolution should be designed as an element of product architecture, since post-conflict mechanisms are often too expensive and slow for small claims. The optimal model is therefore a multi-layer system combining fast procedures, procedural guarantees, and ultimately enforceable adjudication.

The first layer is internal complaint handling. Its legal value lies in producing an evidentiary record: capturing communications, disclosures, calculations, and the grounds for refusal (recalculation). In digital products, this must be linked to mandatory logging: what data and rules the decision relied upon, what information was disclosed, and what documents confirm the reality of the transaction (for murabaha, salam or ijara). Without such recording, the dispute moves into a situation of evidentiary asymmetry in which the weaker party cannot challenge the decision in a reasoned manner.

The second layer is mediation or a financial ombudsman. Its function is to provide a fast and relatively low-cost mechanism for restoring the disturbed balance, especially with respect to hidden pricing, tied services, and collection practices. For this layer to work, the following are needed: clear time limits; mandatory participation for the provider; an evidence standard; and the capacity to prescribe concrete remedies (recalculation, refund of fees, schedule adjustments).

The third layer is court or arbitration, ensuring final enforceable protection. Here it is crucial to predefine the status of Sharia expertise. A secular court will qualify the contract according to national civil law forms (sale, lease, partnership); therefore, a religious argument cannot serve as the sole basis of claims. However, Sharia compliance may be legally relevant: as part of the promised quality of the service (where the product was marketed as Shariah-compliant); as a component of the professional diligence standard; as a factor in assessing good faith and the reliability of pre-contractual information. For procedural clarity, it is advisable to recognise that a Sharia opinion has the status of expert evidence or a mandatory preliminary procedure within internal mechanisms, but does not replace the court's legal qualification.

As a result, the combined model reduces enforcement costs, decreases incentives for aggressive collection, and makes consumer protection realistic for small amounts, while preserving full judicial review where disputes concern the validity of terms or significant property consequences. For further development, it is important to avoid two extremes: copying purely banking (prudential) requirements without regard to the micro-segment, and, conversely, excessive reliance on self-regulation by Shariah bodies without private-law consequences and without a total-cost disclosure standard.

Conclusion

1. Islamic microfinance is not a single microcredit agreement. It is a set of civil-law constructions, each defining its own model of risk allocation, liability, and protection remedies.
2. The principles of riba, gharar, maysir and the requirements of asset-backing/risk-sharing act as legal constraints on contractual content and require provable transaction reality, especially in mass products.
3. Murabaha and ijara are the most scalable in the micro-segment but are vulnerable to formal-compliance risk; their legal resilience depends on documentation quality and total-cost disclosure.

4. Musharaka and mudaraba better reflect the risk-sharing ideal but generate agency problems and high monitoring costs; without developed enforcement they may degrade into quasi-debt forms.
5. Shariah governance functions as a hybrid trust-and-accountability framework; its effectiveness depends on independence, legal status, and integration into liability and disclosure regimes.
6. Protection of the weak party in Islamic microfinance should be built around a total-cost disclosure standard and a ban on hidden charges (tied services), as well as private-law consequences for non-transparency.
7. AML (CFT) and digitalisation require risk-based regulation compatible with inclusion, plus data-protection rules and procedures to challenge automated decisions.
8. Comparative analysis suggests that institutionalising Shariah governance (UAE, Saudi Arabia, Indonesia) reduces space for fatwa shopping but requires a balance between flexibility and control.
9. For Central Asia and Uzbekistan, the key task is aligning new Islamic microfinance instruments with disclosure regimes, responsible financing, and dispute resolution mechanisms.
10. The most resilient model is one where private-law remedies (invalidity of opaque terms, restitution, shifting the burden of proof) complement – rather than replace – the supervisory framework.

Promising directions include: comparative analysis of court cases on the enforceability of murabaha (ijara) across legal families; evaluation of consumer-protection tools in Islamic products; legal design of explainable scoring in Islamic fintech; and research on the role of waqf (zakat) in sustainable funding of qard hasan.

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