

جمادى الأول 1433 - رجب 1433

«As to those who believe and work righteousness, Allah will pay them (in full) their rewards; but Allah loveth not those who do wrong.»

Surat Aal-i-Imraan, 3:57 Holy Quran



مجلة عالم 'Alim

The Shari'ah Scholars' Review

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Editorial

Dear Readers,

About European culture and Islamic societies has been created an interesting debate regarding the compatibility of democracy and secularization with Islamic values. The rise of political Islam in the 1970s has intensified this debate leading it towards new perspectives regarding the compatibility of Islam with issues such as development, citizenship, identity, democracy and globalization. Western Academic discourse about the relationship between Islam and modernity revolves around the distinction between essentialist and reductionist approaches. While Orientalists claim that the essential background of Islam opposes modernization, secularization and democracy, reductionists argue that Islam is not a significant factor preventing the development of secularization.

Culture of Islam and European citizenship can be compatible. This compatibility can be achieved by specific youth policies addressing education and cultural issues, including education for diversity, active citizenship, intercultural learning and many other related to both concepts. To achieve the integrity of individuals living in Europe as well as inclusion of Muslim population of Europe the concept of active European citizenship can be the best policy option to be promoted at different levels of youth work.

To describe the compatibility of Islamic Culture with the concept of European citizenship, the relationship between secularized Islam and respected/accepted diversity should be analyzed. As it was defined above the respected diversity as cohesion ideology of the European citizenship is able to include several levels of different cores of self-identity formation. Therefore, Muslims living in secularized countries of Europe can believe in the supreme power of the God, and at the same time to identify themselves as European citizens. Respect to (or acceptance of) diversity as the central element of European citizenship identity can also be followed by Muslims who live in the institutionally secular societies of Europe. In fact, mutual respect serves as a ground principle for the mutual self-preservation and secure self-identification among different groups. Thus, threatening the concept of respected/accepted diversity by Muslims, who are additionally minorities with less voting potential of European political system, can ruin the mutually favorable environment of the coexistence.

To conclude, within the frames of the above defined concepts of Islam and European citizenship are mutually compatible and they can coexist.



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**Chairman of the Board of
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**FORMER CHAIRMEN
OF THE UNION TO DATE**
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From 12/3/1974 Till 5/5/1977
Mr. Bashir Zouhairi
(Common Banks)
From 6/5/1977 Till 25/11/1980
Mr. Labid AbdelKader
Al-Kara Gholi (Iraq)
From 26/11/1980 Till 25/11/1983
Mr. Anwar Al-Khalil (Lebanon)
From 28/5/1983 Till 30/4/1989
Mr. Naji Al-Soukhiry (Tunis)
From 1/5/1989 Till 30/4/1992
Mr. Mahmoud Abdel Azizi
(Egypt)
From 1/5/1992 Till 30/4/2001
Dr. Joseph Torbey (Lebanon)
From 1/5/2001 Till 2007
Mr. Adnan Youssif (Bahrain)
From 2007



Wissam Fattouh
**Secretary General of
The Union of Arab Banks**

UNION OF ARAB BANKS

Its first founders wanted it an organization which gathers Arab banks, in order to safeguard their interests, and to constitute a principal pillar in supporting economic growth and development in the arab region... The Union of Arab Banks was established for that purpose.

FORMATION

The Union of Arab Banks was formed on March 13, 1974, during a meeting which was shared by an elite group of Arab banks and management leaders under the umbrella of the Arab Administrative Development Organization. The meeting reached a conclusion to establish an Arab organization working within the framework of the unions emanated from the League of Arab States.

OBJECTIVES AND MISSION STATEMENT

The ultimate objectives of UAB are to consolidate relations and foster cooperation between its members, to coordinate their activities, and to emphasize their Arab identity to secure common interests. This besides the development of the banking and financial sector in the Arab countries, and enhancing the role of the Arab banking and financial institutions in supporting the social and economic development in the Arab region.

HEADQUARTERS AND REGIONAL OFFICES

The Union's headquarters is located in Beirut, republic of Lebanon and has three major regional offices in Egypt, Sudan and Jordan. This besides a network of strategies relations with major banking and financial institutions in other Arab countries where the Union provides various types of services for domestic banking sectors.

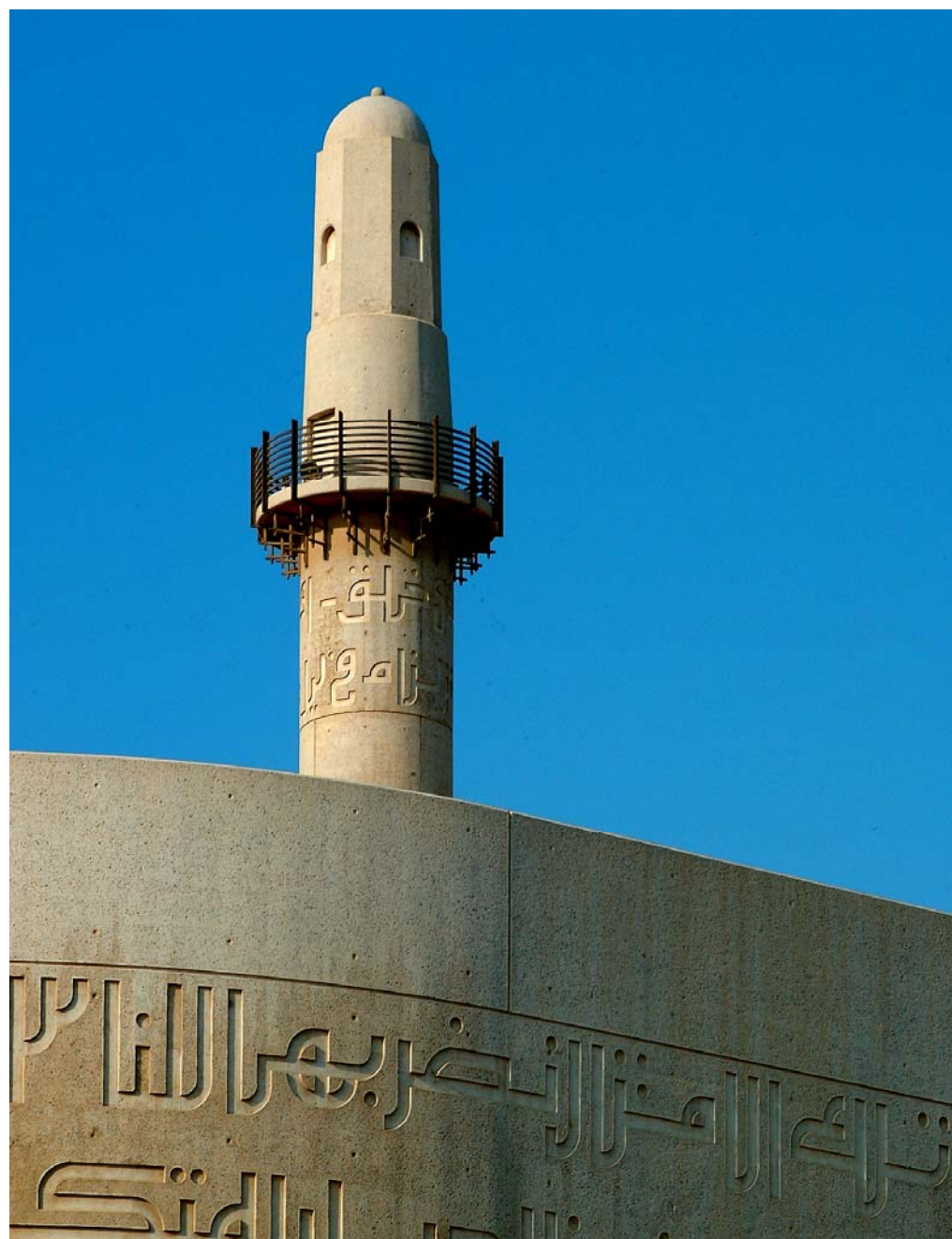
MEMBERSHIP AND OFFICES

The Union of Arab Banks comprises today more than (300) Arab financial and banking institutions representing the major and biggest Arab banks. This makes the Union the largest banking and financial consortium in the region and the true representative of the Arab banking community. The members of the Union consists of two categories: The First category combines active members and includes all Arab banking, financial, and investment institutions and joint Arab foreign banking institutions. And the second category combines observer members and includes Arab central banks, Arab banking associations and joint Arab-Foreign financial institutions in which the Arab share is less than 51% but more than 25%.

LEBANON

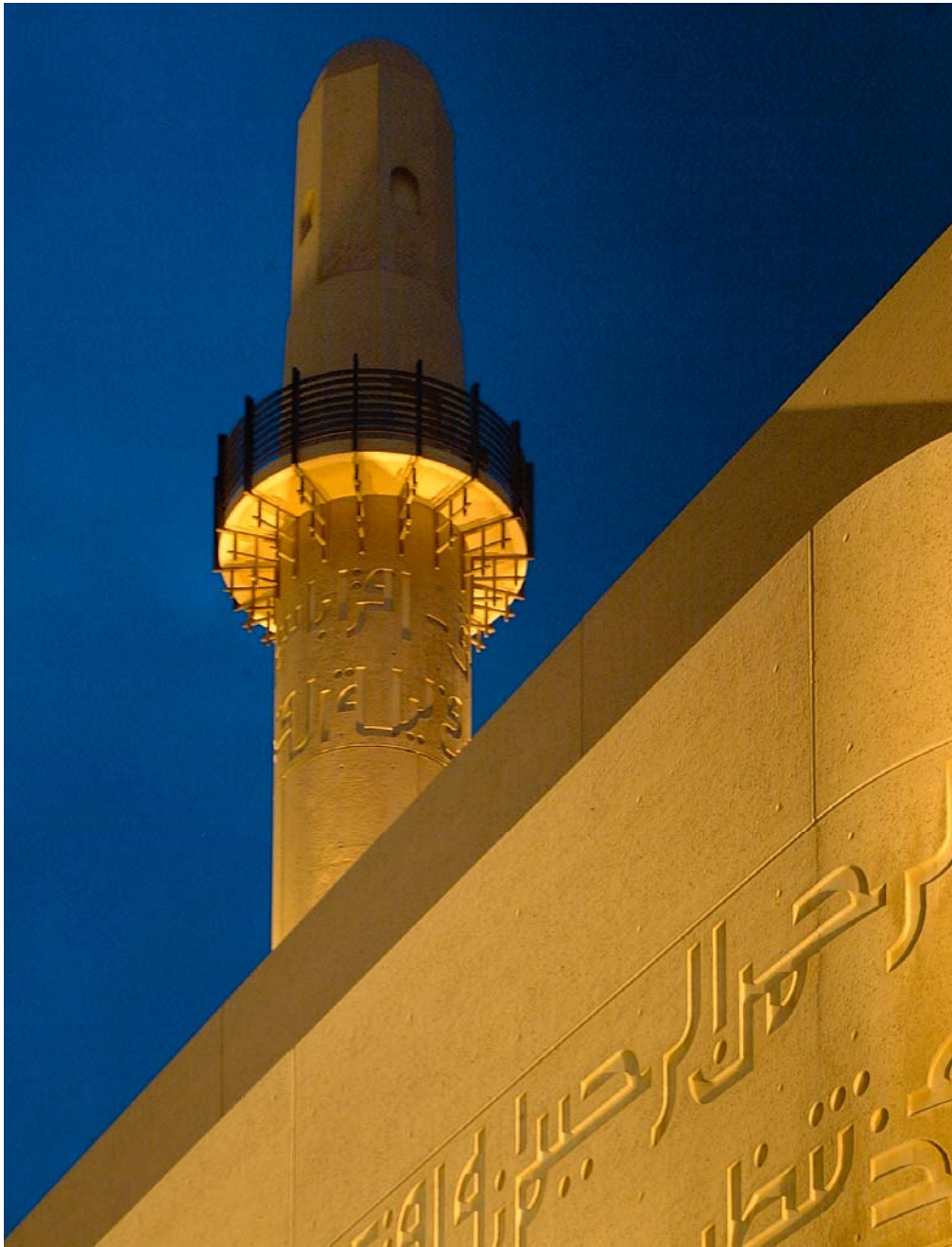
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Islamic Bankers And Islamic Finance Ethical Principles

By Dr. Mohammed Burhan Arbouna

Introduction

Generally, market discipline is crucially important for the operations of banks. Self-discipline, a sense of justice, honesty, fairness, moderation, respect for human dignity and other firm ethical values are things which people must possess prior to engagement with market place. They are indispensable supports that distinguish good market players, create product reputation and lead to success and prosperity. Hence, market rules and regulations require that an individual in the market to possess outstanding ethical values. It is these values that lead to self-regulation and enforcement of contracts, undertakings and promises.

There is nowhere that these values are obviously required than in Islamic banking and finance. The compliance to religious requirements of operation requires these self-enforcement ethical values. Without these values individuals would not abide by the rules and regulations of Islamic banking and they will try to maneuver and introduce legal tricks to avoid abiding to ethics and values required by the law. In fact, no human institution, let alone banks and corporations, can operate efficiently within the rules and regulations if human beings themselves are not self-disciplined and reformed ethically. It is undeniable fact that Islamic finance is associated with universally acceptable ethics and moral values. This association with these values and ethics are made possible due to religious requirement on one hand and fiduciary nature of a number of instruments of Islamic banking on the other hand. In the following sections, we will shed light on how an Islamic Banker should behave at the work place in the context of the Islamic banking ethical principles. It must be noted that the below principles are not all the ethical principles of Islamic banking and finance. They are only few examples which observation will have positive impact on the principles not mentioned in this paper.

1. Freedom of Contract and Trading

The Shari'a strongly stresses on basic freedom of human beings to enter into contracts and agreements. Any form of contract, investment or financing agreement is valid unless explicitly prohibited by a unequivocal text from the Holy Qur'an or hadith (sayings of the Prophet Muhammad, peace be upon him). In the absence of a clear-cut legal authority to the contrary, all transactions are considered under the original principle of natural permissibility. This natural permissibility is more evident in financial transactions. Hence, when a structure or any component thereof does not explicitly involve islamically unacceptable features or elements, such a structure or deal should be considered an acceptable and permissible mode of financing. . Therefore, the freedom of contract suggests that Islamic banks are required to avoid, in their contractual dealings, all elements of coercion and exploitation of the situations of other parties. The Prophet (may peace and blessing of Allah be upon him) prohibited selling to, or purchasing from a person under "necessity to purchase or sell", which is known in Arabic as "*bay al-mudtarr*". This is because the immediate status, which is the need, affects the

contractual freedom of such a person. In this situation, such a needy person (*mudtarr*) would purchase goods which he or she needs under unfavourable terms and conditions. Therefore, Islamic banks are obliged to avoid "hard selling techniques" where the situation of clients is exploited because clients have no choice but to sell or purchase. In this respect, the Prophet (may peace and blessings of Allah be with him) said:

"إِنَّ بَعْدَ زَمَانِكُمْ هَذَا زَمَانًا عَصُوفًا يَعْضُ الْمُسِيرُ عَلَى مَا فِي يَدَيْهِ وَلَمْ يَزْمِرْ بِذَلِكَ، قَالَ اللَّهُ تَعَالَى: "وَمَا أَنْفَقْتُمْ مِنْ شَيْءٍ فَهُوَ يُخْلِفُهُ وَهُوَ خَيْرُ الرَّازِقِينَ" وينهى شرار خلق الله يُبَايِعُونَ كُلَّ مُضْطَرٍّ أَلَا إِنْ بَيْعَ الْمُضْطَرُّ حَرَامًا، الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يَخُونُهُ إِنْ كَانَ عِنْدَكَ خَيْرٌ فَعُدْ بِهِ عَلَى أَخِيكَ وَلَا تَزِدْهُ هَلَاكًا إِلَى هَلَاكِهِ".

It is reported that the Prophet (may peace be upon) said:

"After this era, a tough time will come when a solvent person would bite on fortunes in his hand (i.e., not willing to spend in charity) although he is not to do this, but rather to do the opposite. Allah Almighty said: **'and nothing do you spend in the least in His cause but He replaces it. He is the one who gives fortunes'**. The evil-minded persons will stand on their feet competing on sale to, or purchase from, people in circumstances of necessity. Beware that a sale to a person in circumstances of necessity is prohibited (*haram*). A Muslim is a brother of a fellow Muslim and he will not cheat or ill-treat a fellow Muslim. If you are privileged, you are required to return the excess over your need to a fellow-Muslim and do not burdened your fellow Muslim further".

In the above context, an Islamic banker is required to avoid taking advantage of circumstances and need of clients. If a client is in a dire need for financing, it is preferable to extend to the client an interest-free loan. If the bank chooses to sell to the client a commodity, the bank should not use the situation of the client to profit more than the market price. The circumstances of trade and transaction must be free from any form of coercion or taking the advantage of situation of the client to get the financing at any price. This is because a transaction is set to meet the requirements of freedom of contract only when it is supported by the free will of parties to the contract. Freewill is not the agreement to sign on the financing contract, but it includes as well any form of psychological elements exemplified in the dire need of the client.

2.3. Fairness and just treatment

The universal and core values of Islamic financial system are rooted in the principles of fairness and just treatment. It clearly follows that Islamic banking and finance is characterized by fairness and just treatment. Therefore, it is necessary that one ensures that parties to the contract enjoy equal negotiation power in trade activities. Unequal bargaining power can occur when one party has deficiencies in information process or imperfect self-control due to, as explained above, the need and necessity. An Islamic banker is required to ensure that clients are treated equally as far as projects of Islamic banks are concerned. Each individual in the society should be given opportunity to have information on the projects, their price and benefits associated with

them. Thus, the fundamental requirement with regards to fairness and just treatment is that an Islamic banker should not either deliberately issue information that is potentially misleading clients or manipulates price or misleading market as to the Shari'a compliant of the products.

An example of fairness and just treatments is ensuring that investment opportunities are equally available to depositors' accounts and Shareholders' accounts. In view of the fact that depositors' funds and shareholders' equity are comingled in one portfolio; the Islamic banks should treat both funds equally when placing in investments. Each fund should be placed in good and profitable investment opportunities. The Shareholders' fund should not be placed in a good and high yield investment when depositors' fund is placed in low yield investments. Equally important is fairness and equality with regard to profit allocation. They should not be any preference so far as the investment is in the same project. The Islamic banker must not differentiate between investors of the same pool with respect to profit allocation and loss bearing.

On another front, fairness and just treatment obliged an Islamic banker to ensure that each client have access to right channels to lodge complaints with respect to treatments and Shari'a compliance of the businesses of the Islamic bank. An example of unfairness is the manner in which some Islamic banks deals with complaints of non-Shari'a compliant products by suggesting to clients that the Shari'a Board of the institution has approved the product without giving any proof to clients or a chance to meet the Shari'a officer of the institution.

The fairness and just treatment is also evident in an Islamic Investment Scheme. In this investment, the fund manager may engage in various practices that result in its making undisclosed profits at the expense of investors, such as churning assets in the fund portfolio to generate commissions for itself or its affiliates, or dealing with the fund as a principal on terms that are contrary to the investors' interest. Any such practice is incompatible with Islamic principles of fairness and just treatment.

2.4. Fair Trade, Full Disclosure and Deceptive Practices

The Qur'an clearly made a distinction between trade and unfair practices. All trade transactions that involve, in practices, oppression and injustice, such as deceit, misrepresentation, lying, greedy, etc, are transactions and activities that are condemned in Islamic business system. The principle of *caveat emptor* – a principle that put onus of knowing quality of goods on buyers- does not have place in Islamic business transactions. The Shari'a principles impliedly and automatically guarantees investors and traders quality of information and products. The Islamic trade system requires that goods be in merchantable quality and all information in this respect must be disclosed fairly and accurately. The vendor is obliged by the rules and regulations of Islamic trade to provide a refund or exchange defect goods, especially hidden defects. Thus, the Islamic legal system allows greater leeway to return goods that do not meet legal standards of acceptance. The consumer must be made aware

of any defects and unwanted issues relating to their business and purchase activities. In other words, the seller is responsible for the product, and is discouraged from selling products of unreasonable quality. In this respect, a *hadith* is reported by Abu Hurayra that:

"أن النبي (صلى الله عليه وعلى آله وسلم) مر على صبرة طعام فأدخل أصابعه فيها فإذا فيه بلل فقال ما هذا يا صاحب الطعام قال أصابته السماء يا رسول الله قال فهلا جعلته فوق الطعام حتى يراه الناس من غشنا فليس منا".

"The Prophet walk passed a stock of foodstuff. He inserted his fingers in it (to examine it) just to find that the underneath is wet. He exclaimed: O the owner of the food stock, what is this? The Owner said: O the messenger of Allah, it is affected by rainwater. The Prophet said: why not you put the wet portion on top so that people may see it. **Whoever cheats us is not part of us**".

The scholars explained that the statement "*whoever cheats is not part of us*" suggests that the doctrine of "let the buyer beware" is not an Islamic business ethic and warn an Islamic trader against engagement in trading of goods of non-merchantable quality. In view of the above, the obligation of an Islamic banker is to disclose all information on investments and products to investors and clients. Not only that, it is required that assistance is extended to investors in connection to comprehending the consequences of their investments. If the client is not in a position to analyze the information, the Islamic banker is morally obliged to provide sincere advisory services without favouring the bank or some investors at the expense of others.

The fair trade practices of Islamic financial system necessitate that investors are protected from making mistakes and decisions that are harmful to their investments. In this regard, the Islamic financial and business institutions are required to allow the client a cooling off period of three days in which investors or clients are legally entitled to cancel impulsive transactions.

This requirement is more evident in view of the fact that majority of Islamic banking clients are from grass root citizens with limited knowledge on financial matters and negotiation skills. This is also supported by the fact that some clients may not necessarily be aware of the consequences of contractual conditions and terms. They may also be cheated on prices. In order to deal with unfair trade practice, the Islamic legal system laid down an important principle of *khiyar al-shart* or conditional option on the basis of the case of a companion of the Prophet (may peace and blessings of Allah be with him) by the name Munqidh Ibn Amr, may Allah be pleased with him.

Ibn Umar, may Allah be pleased with him, narrated that Munqidh was knocked in his head and he is always duped on sale and purchase because his intelligence has been affected due to this knock. The Messenger of Allah advise him to purchase with a condition that there is "no dupe" and to have an option for three days (i.e. to conclude the contract or return the purchased goods)". This principle gives the client or the purchaser a right of cooling off period to analyze the situation and ensure that there is no hidden defects, deceit or fraud.

Therefore, an Islamic banker is ethically required to provide a clear and truthful information and make sincere and necessary disclosures as to the quality of products under use or sale. This requirement is also applicable to information to the clients and potential clients concerning the Shari'a compliance of the products.

A classical example of achieving of fair trade and full disclosure ethics is in the requirement that for a *Murabaha* transaction to be valid, the seller (in this case the bank) has to disclose the original purchasing cost (including any discount received) and the profit margin or mark up. The ethics of disclosure and fair trade require transparency as to commissions and agency fees charged for a particular financing. The practices of hidden costs, fees, legal expenses, non-disclosure as to amounts that will not earn profit and use of small print to make potentially important information less visible are not compatible with Islamic requirements of fair trade and disclosure. Islamic principles of fair treatment require that these features of the product and their implication for the returns that the client may reasonably expect, be explained to the client fully and clearly.

2.5. Anti-Trust Insider Trading

The Islamic ethical principles require upholding fiduciary duty or other relationship of trust and confidence. The Islamic banker is required to observe these fiduciary duties in relation to non-public information and refrain from taking unnecessary advantage of such information or disclosure of such information to the public. Taking advantage of non-public information by an insider is considered to be fraudulent since this is a violation of the trust or the fiduciary duty that they owe to shareholders and clients.

The corporate insider, simply by accepting employment, has made a contract with the shareholders to put the shareholders' interests before their own, in matters related to the corporation. When the insider buys or sells based upon company owned information, he is violating his contract with the shareholders. The violation of trust and confidence is condemned by the principles of Islamic law because this is considered a double standards practice or hypocrisy, taking into account that hypocrisy in Islam of two types. The first one is inner or conduct hypocrisy. The second is external and action-based hypocrisy. The antitrust insider trading falls under the second category and is severely condemned by Islam than the first category. This is because negative effect of the second category is not restricted to the committer of this action. Rather it goes further to cause harm to shareholders and other people dealing with the institution or corporation, leading to shaking the quality of the trust and confidence in persons working in the institution. For this reason, a person who violates fiduciary duties, trust and confidence is considered as an active or passive hypocrite and con.

It is reported that the Prophet, may peace and blessings of Allah be with him, said:

"آية المنافق ثلاث إذا حدث كذب وإذا أخلف وعد أخلف وإذا أئتمن خان"

"Signs of a hypocrite are three: if he speaks he tells lies; if he



promises, he fails to fulfill (his promise); and if he is trusted, he cheats".

In addition, the Qur'an put a cheater or abuser of confidence and trust in the same footing as a person who cheats Allah, the Almighty and the Messenger. The Qur'an emphasize this in the following verses:

"يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ".

سورة الأنفال: 27.

"O you who believe! Betray not the trust of God and the Messenger, nor misappropriate knowingly things entrusted to you". Surah al-Anfal: 27.

The Qur'an said:

وَلَا تُجَادِلْ عَنْ الَّذِينَ يَخْتَانُونَ أَنْفُسَهُمْ إِنَّ اللَّهَ لَا يُحِبُّ مَنْ كَانَ خَوَّانًا أَثِيمًا يَسْتَخْفُونَ مِنَ النَّاسِ وَلَا يَسْتَخْفُونَ مِنَ اللَّهِ وَهُوَ مَعَهُمْ إِذْ يُبَيِّتُونَ مَا لَا يَرْضَى مِنَ الْقَوْلِ وَكَانَ اللَّهُ بِمَا يَعْمَلُونَ مُحِيطًا. سورة النساء: 107-108.

"Contend not on behalf of such as betray their own souls, for God loves not one given to perfidy and crime. They may hide (their crimes) from men, but they cannot hide them from God, seeing that He is in their midst when they plot by night, in words that He cannot approve and God does compass round all that they do". Surah al-Nisa: 107-108.

The insider anti-trust is actually, according to above verse, cheating him or herself before any other person. This thus confirm that insider antitrust trading is an abominable act

which is categorically condemned by the sources of Islamic law, since the violating of fiduciary duty and trust is a sin and a crime and it is usually embarked on secretly with the intention to cause harm or earn at the expense of other stakeholders.. Thus, an Islamic banker has a social and legal responsibility to avoid benefiting from non-public information of the corporation. All the above principles are equally applicable to the concept of conflict of interest. The Islamic banker should not involve in activities of clear-cut conflict of interest, such as involvement of decision makers of Islamic banks in approving financing applications for companies or subsidiaries they own or are owned by their immediate families without following appropriate corporate government and risk management procedures.

An example of conflict of interest may exist in *mudaraba* transactions that are carried out by Islamic banks. In investing deposits of unrestricted investment accounts, the Islamic bank is acting as *mudarib* and is entitled to a percentage of the profit on the investment of the unrestricted investment accounts based on a pre-determined ratio mutually agreed with the capital providers/depositors. As the proportion of shareholders' equity to unrestricted investment accounts' funds is normally quite small, but the percentage of *mudarib*/Islamic bank which represent shareholders, may be quite high, leading to assigning more rate of return on shareholders' equity compare to rate of return on investors' funds. The fact that

management of an Islamic bank feel accountable to shareholders and not to depositors tends to lead to a situation in which conflict of interest between shareholders and depositors are not well managed. The mismanagement of this conflict of interest is against Islamic principle good business conduct.

2.6. Speculative Activities

It must be noted that avoiding speculative activities is a core Islamic requirement of good business conduct. The role of Islamic banker is to ensure that the bank does engage in speculative activities due to the fact they lead to dispute, litigation and spread of hate and crime in the society. To close the door in the face of all these qualities, all forms of speculation and uncertainty related businesses are forbidden in Islam, such as *gharar* (uncertainty) and speculative gains due to sale prior to owning which is classified as short selling and similar to derivatives instruments.

Among the reasons for the prohibition of all businesses and financial investments that expose participants to losses due to speculative activities are as follows:

- a. speculative activities cause damage to market and market players. It does not provide protection for the market players. It is no longer tied to real economic activities and may distort the demand and supply conditions of the real economy.
- b. speculative activities are similar in substance to gambling which is prohibited in Islam. This is because both parties gamble on the market prices without real exchange of goods and services or real trade activities.
- c. speculative activities distort the market and cause losses to others without real trade other than speculation and taking advantage of available information.

Thus, any activity or action that distorts market stability should be stopped. It is reported that the Prophet may peace be upon him used to monitor activities of the market and used to send investigators to the market as a form of market regulation, a practice which is currently practice by central banks. Umar Ibn al-Khattab realizes that selling goods at a price lower than the market price and hoarding are actions that distort price stability and lead to speculation. Therefore, he used to tour the market place. He would request that hoarders release hoarded goods to the market. The market players selling less than market price are asked to either add price to match other market players or get out of the market. An Islamic banker is required to avoid speculative activities because such an activity does not involve protection of the market players. For the protection of market players and ensuring stability of market, the Shari'a prohibits a number of activities for reasons of speculation, such as *gharar*, short selling, gambling, hoarding and any unethical business activity that aims at making profits at the expense of others. All of these prohibitions is meant to protect market players against unscrupulous activities which an Islamic banker should be aware of.

2.7. Quality of Performance

The Islamic religion requires that each individual entrusted with a task shall conduct such a task in an excellent manner. This is a general principle of Islamic business ethics. Aisha, the wife of the Prophet may peace and blessings of Allah be with him reported that the Prophet peace be upon him said:

"إن الله تبارك وتعالى يحب إذا عمل أحدكم عملاً أن يتقنه"

"Allah, the Almighty and exalted loves when one of you is performing a duty that he or she do it in the most excellent manner."

The requirement of quality and excellent performance is the cornerstone for productivity in Islamic business ethics. An Islamic banker is required to observe that this requirements pass across a wide range of business activities of an Islamic banking. It is relevant in financial matters, marketing or Shari'a compliance.

In order to carry out tasks in an excellent and qualitative manner, it is necessary that the employee comprehends rules and processes of the required job or task, because such an understanding is necessary to carry out the task in a good manner. Therefore, for quality performance to materialize, the employee needs to observe the following:

- a. knowledge of rules, requirements and process of the task entrusted with which are, in our case, Islamic banking principles, rules, processes and products.
- b. mastering the basic requirements of the task entrusted with
- c. ability to make a distinction between right and wrong procedures and rules.

In view of the above, the Islamic banking employee needs to be aware of basic principles of *fiqh al-mu'amalat* or jurisprudence of Islamic finance and master science of lawful and prohibited (*halal* and *haram*) actions. In this regard, excellent and quality performance as far as Islamic banking is concerned materializes only with the ability of Islamic banking employees to identify lawful and unlawful activities. The Islamic banker's performance appraisal should not be judged only by the number of transactions concluded or profit realized. Rather excellent performance appraisal should include mainly the tools available for an Islamic banker to execute transactions in accordance with Shari'a principles.

2.8. Treatment with Dignity and Respect

The humane treatment is strongly recommended and encouraged by Islam. A man is required to hold on ethics of good treatment and appropriate courtesy when dealing with other human beings. Therefore, clients deserve humane treatment which is a liability (and not a courtesy) on the customer services personnel either in banks or elsewhere. The Islamic banker is encouraged to deal with clients in a cheerful and smiling manner. The customer service personnel is obliged to service clients with respect, flexibility and helping hand because a client is a human being who deserves precious treatment as a number of the saying of the Prophet (may peace and blessings of Allah be with him)

alluded to. It is an established fact that looking down on, deserting, denouncing a fellow Muslim is an abominable act because there is no superiority for one ethnicity, group, tribe or colour over the other. It is therefore unethical and a great sin for Islamic bankers to treat or looking down on clients based on colour, group or ethnicity.

Umar Ibn al-Khattab, may Allah be pleased with him, reported that the Prophet peace and blessings of Allah be upon stated that:

"إذا سأل السائل فلا تقطعوا عليه مسأله حتى يفرغ منها ثم ردوا عليه بوقار ولين أو ببذل يسير أو رد جميل".

"If an underprivileged person ask for assistance, do not interfere or cut him off while begging until he or she finishes. Once he or she is done, reply with dignity, humbleness, gesture or noble response".

Therefore, kind treatment and humility are part and parcel of Islamic values. The kind treatment includes a number of conducts even if it is trivial like a mere smile. An Islamic banker who gives services to clients should not undermine impact of a smile, good demeanour and nice words on the client. The Prophet (may peace and blessings of Allah be with him) in many *hadiths* emphasise on the importance of not undermining good deeds no matter trivial they are. Such trivial good deeds and demeanour are huge in the eyes of Shari'a. The openness and willingness to make clients excited is a sign of faith or *eman*. It is reported that the Prophet (pbuh) said:

"لا تحقرن من المعروف شيئاً ولو أن تلقى أخاك بوجه طلق".

"do not despise courtesy of any nature, even if it is to meet your (Muslim) brother with a cheerful face."

The performance of an Islamic banker is not only to sell products or make good income for the bank. An Islamic banker is required to be aware of the ethics of human treatment and must be assessed on the efforts made to bring happiness in the life of clients. The Islamic banker must carefully observe that it is important that clients are approached in a cheerful manner and offered services of high standards and quality with respect and dignity. In fact, offering good treatment is in the interest of service provider. This form of demeanour leads to an appreciation and forgiveness by clients when the employee is not able to achieve clients' objective and requirements. In other words, a respectable and smiling face approach to clients is defending reputations of Islamic banks.

2.9 Knowledge of Basic Rules of Financial Dealings

It is a fact that each and every profession has basic or firsthand principles and rules. The banking and financial dealing is a profession that is so attached to human beings which necessitates adherence to certain rules and regulation. From Islamic banking perspective, such rules and regulation must be compliant to Islamic law to ensure non-involvement in non-Shari'a compliant transactions.

In this respect, an Islamic banker is required to be acquainted with the requirements and principles of Islamic banking to avoid conducting non-Shari'a compliant transactions, because when clients deposit their money with an Islamic bank their intention was that the money is invested in accordance with the principles of Islamic banking and finance. Without the knowledge of Islamic banking principles, this objective shall be surely violated. Therefore, it is an obligation that an Islamic banker comprehends and understands basic structures, instruments, acts and events that invalidate transactions, such as rules of interest transactions, participatory contracts and uncertainty. Thus, the training on *fiqh al-mu'amalat* or jurisprudence of trade and business is essential for any potential employee of an Islamic bank. This requirement is clearly and firmly confirmed by the two caliphs of Islam. It is reported that Umar Ibn al-Khattab, may Allah be pleased with him, said:

لا يتجر في سوقنا إلا من فقهه وإلا أكل الربا

"no one should do trade in our market except those who acquire knowledge of *fiqh*, otherwise he or she is bound to feed and live on *riba* (interest transactions)".

The caliph Ali Ibn Abi Talib, may Allah be pleased with him, said:

من اتجر قبل أن يتفقه ارتطم في الربا ثم ارتطم في الربا ثم ارتطم في الربا

"He who trade prior to having knowledge (of lawful and unlawful) shall plunge in *riba*, shall plunge in *riba* and shall plunge in *riba*".

Thus, knowledge of the principles and rules that will assist an Islamic banker to avoid interest-based transaction is very important criteria for the selection of Islamic banking employees. This is because this system of banking is a trust which should be hold on trust basis by those who are knowledgeable of the basic principles of products and believe in and appreciate Islamic banking system. Without believe and appreciation, the employee may not be willing to study the rules of the system, hence is bound to conduct business in violation of Shari'a.

This is logic and common sense ethical requirements which violation may lead to incurring losses by the bank. This is because the employee may engage in non-Shari'a compliant obligations which may not be enforceable in some jurisdictions or in the opinion of some Muslim scholars. This is because Muslim jurists, both the classical jurists and modern jurists, are unanimous that non-Shari'a compliant transactions are not binding outside and inside a court of law.

However, it is noted that Islamic banks do not pay attention to the necessity to recruit those with knowledge of principles of Islamic banking, claiming that any person may conduct business in a Shari'a compliant manner when he or she is given some guidelines. This argument is not totally correct. This is because non-believers of the Islamic banking system may not completely appreciate rules of the system because these rules and principles may not be compatible with their

personal beliefs, hence the possibility of violation of the principles, involvement in interest and non-Shari'a compliant transactions.

This requires that Islamic banks be wary of whom to employ and to put emphasis on training their employees on principles and rules of Islamic banking, because investments of clients are trusts with Islamic banks. This trust necessitates that investments are made in accordance with the principles of Islamic law because this is the will and objective of the clients. The conformity with Islamic requirements of investment may not be achievable until and unless Islamic bankers from the top management to the clerk are aware of the basic knowledge of what is acceptable and what is not acceptable from Shari'a perspective

In the context of the above, Islamic bankers concerned with providing advice to clients (who wish to invest in a Shari'a compliant financial products) should take a course and pass relevant examination provided by a recognized academic institution or training organization that can fulfill the following objectives:

- a. having a qualified academicians and tutors on Islamic banking and finance and who are well equipped with

business practices as well as principles and rules of Islamic jurisprudence.

- b. providing an internationally accepted qualification that will equip candidates with a practical understanding of Islamic banking and finance.
- c. providing candidates with a thorough understanding of the requirements of Shari'a in a business context and prepare them to hold key positions in the Islamic banking and finance industry.
- d. providing professional recognition for employees of Islamic banks which will demonstrate that successful candidates have undergone, for competence purposes, rigorous training and sat a professional examination that consider ethical aspects of Islamic business profession.

The above will assist the employees to advice clients to make informed choice as to whether a product is suitable for them or not.



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Ethics and Economics – an Islamic Perspective

By Dr. Mohammed Ali Elgari

Writing about the ethical aspects and religious values in the economics of Islam is no easy task. At the outset, any religion, is in fact, a framework of values and moral codes, any aspect of which is inherently ethical in nature. Furthermore, Islam, unlike any other religion, is not confined to matters of faith and the hereafter. Rather It is a system of life that teaches Muslims all aspects of living from the right side to sleep on and the way one should walk to matters of government and economics. This, by no means imply that matters of belief are not important. On the contrary, the basic part of Islam is actually the belief in the oneness of Allah and in his Messengers. From this spring all moral teachings.

Before I begin to submit some ethical aspects in the economics of Islam, it would be useful to begin with a primer about methodology

It will be of little use to speak of general human ethics, even if they find their origins in religion. Therefore, justice, equitable distribution of income and common good can't be claimed to be the specialty of any one religion. Rather they are human values. No society, no individual, no religion, no state or legal system will depart from or take exception to these aspirations, this is too obvious. It will be of tremendous use if we engage in a comparative approach concerning ourselves with the *means* to reach these cherished ends. Rather than being lost in trying to state the obvious, it is better to try to explore the novel. We all

want justice. However, religion can play a role in showing us what is just and how to reach justice .

Furthermore, when speaking about religious ethics in the field of economics, it is important to distinguish between two possible roles of religion in society: being a source of general instructions and guidance concerning individual behavior or government conduct that may help rationalize the performance of the latter or enhance the welfare of the former. These may be preached in a very persuasive way but they are followed only if the individual or the government authority so decides to follow them. The second is doctrinal or dogmatic direction which become orders and effective constraints on the individual and the state to such a degree that they have to be followed if the individual or the society wants to be a "*believer*" I submit that we should be more concerned with the second category because it is only here that the uniqueness and originality of religious values are revealed. The first category, I think, will always remain "*common sense*" indirectly related to religion. I might add that most of the ethics of Islam we are dealing with here are of the second type.

Moreover, I believe the uniqueness of every religious ethical system, and its real characteristics can be uncovered when we are faced with a situation of conflict between social objectives. How this conflict is resolved speaks a lot about the ethical system in society. Equitable distribution of income, far example is the objective of every society. Growth and development is also an objective of every society. In a lot of times these two objectives will be in conflict. Can religion and religion based ethics provide a resolution? This is the

kind of questions that will enhance our understanding of the subject and render this exercise a success. Without hesitation I can say Islam puts justice before growth.

It is clear, therefore, that we are speaking about "Setting Priorities". This is the most difficult question facing any society. Can the ethical system provide a criterion? I claim that Islamic *Sharia* is rich in this regard. It contains a "*manifesto*" for this particular purpose.

In the following pages we will confine ourselves, never the less, to the moral aspects of the economics of Islam. In particular, those aspects that do with money and banking & taxes and government finance.

The Idea of Vicegerency:

The foundation of the economics of Islam is that man owns money and wealth in regency. He is only a vicegerent, since the real owner is Allah. This basic idea introduces the justification for all the moral and ethical guidance and directives by which one has to be abided in, the formation, utilization and disposing of his wealth. If one is merely an agent, clearly he is to concede to the plans of the ultimate owner, basic among which is justice and equitable distribution. In Islam, however, we do not say that *Sharia* is just, rather say that *Sharia* itself the ultimate justice. This means that we need not elaborate and review legal codes derived from *Sharia* to make sure they are just we only make sure they are actually derived from *Sharia*

a) Owner of any type of wealth is to pay the annual obligation of Zakah.

Zakah is not a duty on the wealthy but on the wealth itself. Therefore, the institution of Zakah does not approach society as "rich and poor" nor as a "class-structured" group of people. It is due even on small amounts of wealth. Therefore, the poor will pay Zakah, albeit small, and will receive a lot more as they are in need. Members of the society will, then, feel they are all participating in a system of macro benevolence and social welfare, rather than having one class dependent on the other. Furthermore, Islam treats poverty as a temporary condition. Therefore, the dignity and basic rights of the poor must be preserved. Zakah is an obligation that is part of the basic faith of every muslim and the needy need not beg to get it. Furthermore, No one has the right to decide on behalf of the poor the ways of utilization of Zakah. No public projects, where rich and poor can make use of are to be financed by Zakah, not even mosques. Zakah is not to be transferred from one locality to another because it is the right of the immediate poor, where equitable distribution have to be carried out. While Zakah is imposed only on the type of wealth that has the potential to grow, it is calculated on the basis of total wealth and not on net-income. This means that Zakah is addressing the original source of inequitable income distribution, that is inequitable wealth distribution.

b) One is to utilize his wealth modestly, with great concern for the welfare of others and high regard for

the maintenance of the sources of wealth. While charity and almsgiving is encouraged, wealth by itself is not denounced in Islam, poverty is not praised. On the contrary, tenants of *Sharia* put no limit on wealth (given that obligation and means of accumulation are acceptable), it imposes no ceiling on profits or prices (given that monopoly and abuse are non-existent).

c) Because one is only an agent, he has the freedom to use and avail himself of his wealth, but only within the duration of his life. Upon death, the ultimate owner's (Allah) prescribed disposition must take effect. One has no right to relinquish his bequest to whomever he desires. Rather, a very elaborate pre-set formula determines such distribution, with one main objective which is to enhance equitable distribution.

II. Money:

Money, in any society has two aspects, individualistic and communal. It is a store of value representing personal wealth, but it is also a social institution serving as a medium of exchange and a measure of value. For the system to be stable, just and a means for more welfare in society, the social and communal aspects of money ought not to be undermined by selfish behavior of individuals. If we are to avoid "big government" and extensive legal restrictions on personal freedoms, it has to be part of the norms and moral order of individuals to uphold these important aspects as part of their ethics & religion.

(a) The Koran condemned those who stock and lock away gold and silver, (and for our modern times paper money) because this means withdrawing money out of circulation causing the economy to shrink. In the absence of a central bank, surely this will have quite a prolific and significant effects on growth and stability.

(b) While barter may serve as a system of exchange, compared to money, barter can't support a viable economic system that is capable of sustaining growth and development. Prophet Mohamad (PBUH), ordered his companions to sell their goods and use the proceeds to buy what they need rather than barter. Not only that more monetization of society will mean the enlargement of the market, it will also lead to more equitable exchange because the existence of standard measure of value will enhance such direction.

(c) Some individuals may find it profitable to scrap every coin that passes through their hands. Little as the outcome may be, in a while they will amass a sizeable quantity of gold. Being so concerned with the well being of the whole society, this is, in Islam a sin that is punishable even in the hereafter. While this may seem irrelevant in the age of credit cards and electronic money, it surely does have important ethical implications that are quite pertinent to modern times.

(d) The most important ethical aspect of money in Islam is that which does with usurious transaction:



- (i) Usury, or Riba as it is called in Arabic, is prohibited. Certainly Riba is denounced and condemned in all religions. What is unique about the Islamic view point is that definition of Riba is so distinctly lucid and crystal clear. It is so precise that it loses no relevance or potency as monetary systems evolve and change over time.

Rather, any fungible can be subject to borrowing-lending relationship.

Furthermore, *Sharia* does not distinguish a large increase from a modest one, any increase is considered Riba.

Sharia does not stop at only pointing-at what it is to be avoided as Riba it goes many steps further prohibiting all types of transactions that lead, indirectly, to the same outcome. This further clarifies the essence of Usury in *Sharia*. For example, the rules of exchange of money are different in *Sharia* from those of other goods and services. One can use silver to buy gold (and vice versa) but exchange has to be spontaneous and delay of either is not allowed. This is also the case for example for dollar and Sterling Pound and any other currency for that matter. Reason is simply that permitting a postponement will undermine the prohibition of Riba, because the parties can conclude the deal at any price including one

that carries an interest - like addition. Another, is the prohibition of the sale of debt. As it is well known, debt swaps & securitization of debt obligations are in vogue now a days. While they introduce liquidity to the financial market, they accumulate in such a way that inflates the financial sector of the economy with no comparable real transactions. From *Sharia* point of view such sale is simply a means to circumvent of the prohibition of the Riba, it is therefore not permitted.

III. Banking:

Human societies consist, always, of two categories of people. Those who own resources in excess of their immediate needs, and those who need more than they possess now. They realized, very early in the history of mankind, that an arrangement to transfer resources from the first to the second will make society more efficient and enhance the welfare of every one. With the invention of money, this fact became more obvious. At certain points temples and the clergy played an important role in the management of such activity. With the advent of the age of specialization and division of labor, this exercise was institutionalized into an organization for financial intermediation i.e. banking establishment. Being a private enterprise this firm had to make money, therefore it adopted the form of borrower-lender relationship, where it borrows money from the first category (and pays interest) and lends to the latter (receives interest).

Islamic civilization reached its highest point in the late middle age. Clearly commerce and over land trade were the highlight of that civilization. Yet the model of commercial banking did not appear in Muslim societies although it was known in some parts of Europe since the 13th century. Reason is twofold:

- (a) on the one hand, the prohibition of Riba meant that no borrower-lender relationship can be used as an income generating activity, which meant the European model of banking is inconceivable in an Islamic society.
- (b) Conventional banking superior aspect is the fact that lender-borrower relationship reduces moral hazard, because it mitigates agency problems by separating the reward of the financier & repayment of his principal from the actual performance of the investor & his moral leaning. Partnership, on the other hand, has an incentive problem which makes it very costly since each partner needs to collect information about performance & behavior of the other side and may need to inspect or confiscate.

Moral hazard becomes a problem in contractual relationship only in a society where individuals attach little value to integrity, therefore, assuming that, fundamentally, human beings are not honest. That the rule model is not the virtuous and pious but rather the bad and ugly. Islamic theory of contractual relationship is just the opposite. Almost all contracts are based on the assumption that people are good and honest and always honoring their commitments and never cheating their fellow man. This may not



always be a facsimile of the real life. But it has an important "educational " effect compelling individuals to strive to the rule-model. If you keep telling (and treating) people that they are not honest, not surprisingly, they will soon be .

- (c) on the other hand, Muslims did have different arrangements procuring the same objective Le financial intermediation based on the tenentes of Islamic Sharia and this is where the ethical and moral aspects are most visible.

One can, generally, say that money in the Islamic Economic system can move from one individual to another for the purpose of charity and altruistic purposes, or for profit and gain in trade. What is interesting here is that borrowing and lending relationships can only be allowed as part of the first category. Investment and profit generating activities can only be financed via partnership and profit-loss sharing arrangements. *Sharia* provides many forms of contractual relationships that meet the standard requirements of the market. They cover cases where one party provides finance only and the other provides management and labor, or where many partners participate in capital etc. for temporary one deal or long-term arrangement. *Sharia* presents a very refined orders and elaborate system of profit and loss sharing, rules of establishment, work ethics, management and termination of such contracts.

This resulted in an important attribute of the economy in Muslim societies that there is no dichotomy between real & financial activities, no two-sector economy but only one. Important consequences and ethical characteristic grew from this feature:

- (a) Most important is a more equitable income distribution because economic activities are not financed by "borrowing" capital, but by participation of owners of capital in profit & loss.

In capitalist economic system, providers of money receive a fixed return in the form of interest. If the economy is prospering and high rates of profits are being made by investors, owners of capital will not share in the fortunes of this investment. Income distribution will be biased against owners of capital. In case of depression, when lower rates of profits are being made providers of capital will get their fixed return, albeit such return may wipe out all the income of investors, hence an inequitable income distribution.

No such thing will take place if profits & losses are shared by all participants in investment.

- (b) Not only that more equitable distribution will take place in the short run, a more stable economy will be the result in the long run. Because loss is being shared by providers of finance and not of entrepreneurs, the real sector will be able to resist recession and lower employment rates and get out of them quickly. This is because a lower rate of profit

will not wipe out all the income of the enterprise nor discourage new entrepreneurs from entering the market. On the other hand, high rates of profit not mean inflation because a larger portion of which (and not only a fixed rate) will be channeled to providers of finance (savers) away from investment and into consumption.

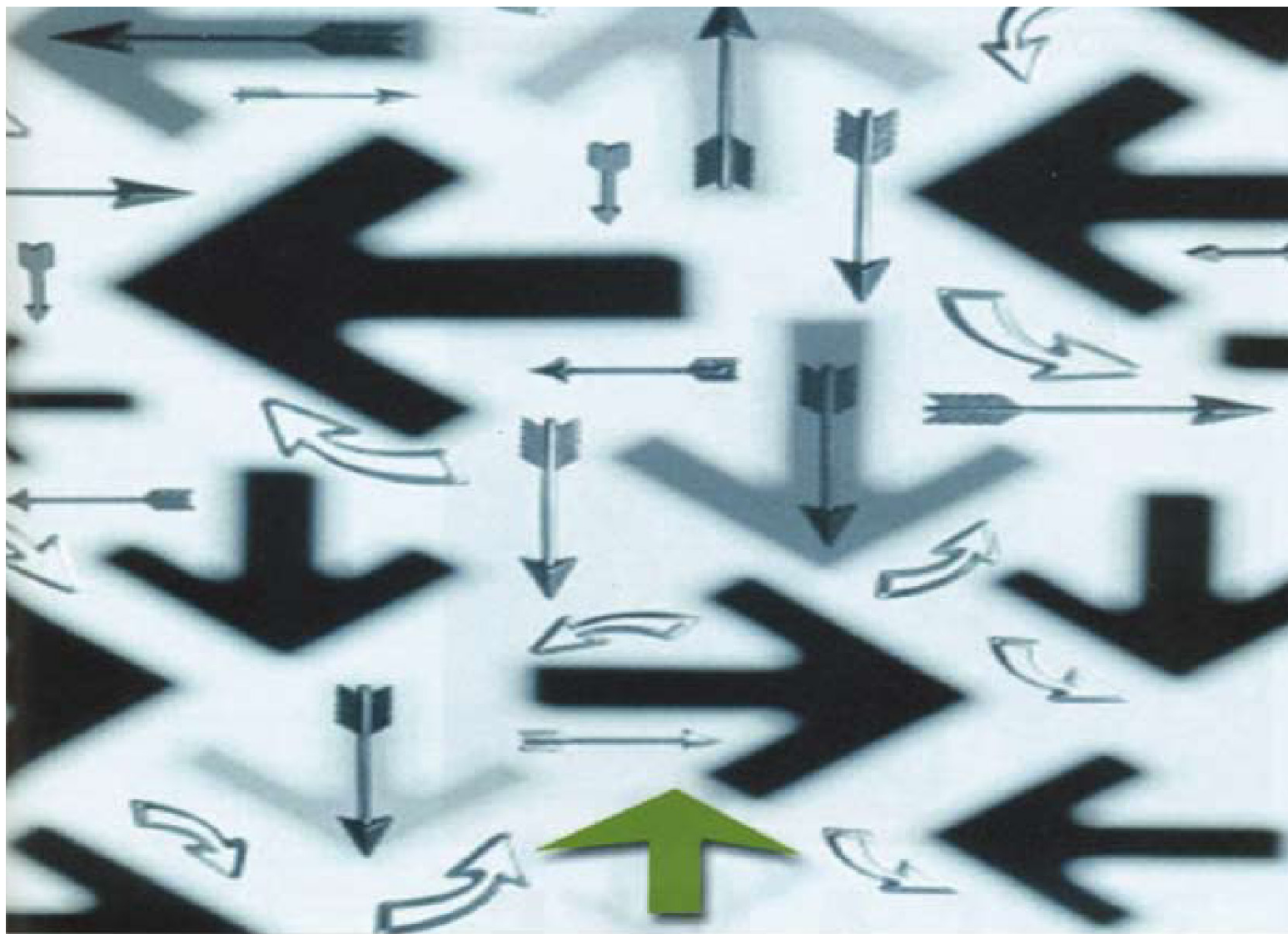
- (c) May be the most important of the inequitable distribution which results from conventional banking is the fact that banks can only lend to the rich because they always ask for collateral and guarantees. Even if one is highly qualified, chances are that he will not get financed by banks unless he is wealthy enough to satisfy their requirements. This clearly means that credit is being circulated within a narrow group in the society perpetuating the inequitable distribution and reinforcing it. Because it is based on profit and loss sharing and not lending, banks will be more interested in those who can generate profits, because members of the middle and lower classes of society will not be neglected or shunned just because they can't provide collateral, because nobody is required to do that in a participating system.

Iv. Taxation:

It would be very difficult to find a support for any tax system in the tenants of Islamic Sharia. In fact to the majority of Islamic scholars, taxes of any kind are not permissible in Islam. Prophet Mohamad (PBUH) and the Khalifs after him never imposed any taxes. On the contrary, the ruler who taxes his constituents is considered so sinful he has no hope of Allah's mercy in the hereafter. The ideal Islamic society is a co-operative one where most activities are done in mutual assistance and participation of individuals without government coercion. In Islamic Sharia basic needs of the society (i.e. certain important functions & jobs..... etc) are to be availed by some members of society. If they are not, then the whole

society is in sin, until it arranges the procurement of teachers, doctors, bankers ...etc. it is a responsibility bestowed on every one. Furthermore, the institution of Wagf, an organization reserved for social services and financed by donation, flourished in Muslim societies to the point where there were trusts for even feeding birds let alone caring for the elderly and providing for the needy..... etc. It used to be that educational and legal institutions are financed not by government but by these Wagfs, an ingenious way of preserving their independence. But surely government would still need money! Islamic scholars bent towards "smaller government" one that is in no way a burden on people. They went so long as to allow borrowings rather than taxing. They looked at taxes as a deterrent to economic prosperity. For social purposes Zakah should suffice. In case of emergency, government should call upon people to donate, it can borrow if need be. But taxes are a measure of last resort. It goes without saying that the circumstances social, political, economical and that of technology that today are completely different from that which were present few centuries ago. One may agree, that the state as we know it today can't function without taxation, proceeds of which are used not to enrich rulers & princes but to finance projects for the good of the whole society, such as law & order and economic development, social insurance & preventive health services. *Sharia* is unique in ability to remain relevant to the actual needs of society even as circumstances change. *Sharia* sets priorities & classification objectives. It very clearly distinguishes between ends & means and hence it must be judged on this scale. If the ends can be achieved with alternative means, then taxation is rejected. If the end cannot be reached without this means it becomes imperative because what we need to care about is the end.





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Head of Shariah, brings with him over 15 years expertise in matters related to the Shariah (Islamic Law). Prior to joining the IIFM, Dr. Muhammad was Shariah Advisor with Crescent Financing Company in Hamilton, New Zealand. A national of Ghana, Dr. Muhammad obtained his PhD and Master's degree in Islamic insurance and Islamic Law from the University of Malaya in Kuala Lumpur, Malaysia. He has a Bachelor's degree, in Islamic Law and Islamic jurisprudence, from the Islamic University of Madinah in Saudi Arabia. Prior to that, Dr. Muhammad studied Islamic jurisprudence and Islamic history at Al-Azhar University in Cairo, Egypt.

Islamic Economic System: Basic Principles And Fundamentals

By Dr. Ahmed Rufai Mohammed

In the previous article, the sources of Islamic legislations and how Islam completely recognized the individual independence of thought was discussed and explained. This article is meant as another contribution towards the ongoing effort to explaining things that are not known to many about Islam. The article will attempt to further explain one of the essential subjects in Islam i.e. Islamic Economic System, its basic Principles and Fundamentals, and to make it clear in the minds of readers how Islam is designed to cater for social development, people welfare and security through economic justice measures.

There is no doubt that the religion of Islam is designed to cater for human welfare through its, teachings, laws and legislations in order to establish a peaceful society, harmonious brotherhood under the economic justice.

Eradicating poverty, promoting stability, maintaining law and order, and to ensure social and economic justice are the essential functions of the Islamic economy. Thus, the philosophy of the Islamic economic lies in man's relationship with Almighty Allah (The word Allah means God, Allah is an Arabic term) and also man's relationship with other human beings, and the purpose of his life on this earth. Hence, man's relationship with Almighty Allah is by obeying His rules and commands. Belief in Him is the central concept of the Islamic society and also the organizing force without which life loses its full meaning. In this respect it is of importance to point out here that none has the right to be worshiped but Allah Almighty, therefore, to belief in the existence of one God (Allah) means the people or individuals in the society should follow the way by making use of the vast opportunities of productive enterprise afforded by the limitless bounties of Almighty Allah.

As a matter of fact the course of history has forced Muslim community to accept institutions which have developed in the western countries and yet in conflict with the values and principles enunciated by Islam and they become the victims of this situation, modern conventional banking system and conventional insurance contract system are some of the examples among the many.

However, Islam is a way of life, in matters, material as well as spiritual. The guidance of Almighty Allah extends into all parts of Muslims lives. In economics for example, Islam has given detailed regulations for Muslims. It is balanced and fair in every aspect. Muslims, however, are to recognize that wealth, earnings, and materials are all the property of Almighty Allah, and they are only His trustees, as Allah Almighty has said in the Holy Qur'an:

"It is He, Who has made you the vicegerents on the earth, and raised some of you above others in ranks so that He may test you in what He has given you. Indeed your Lord is swift in inflicting punishment; yet He

is also very Forgiving and Merciful" *Al-An 'am* (6) 165.

Sheikh Abul A'la Maududi in his comment on this noble verse said, three realities have been stated here:

- (1). "It is a reality that each and every thing in the universe belongs to the Almighty Allah and all human beings are His vicegerents on the earth in the sense that He has entrusted many of His things to them and delegated powers to exploit them. (2) Allah Almighty has ascribed different ranks to His vicegerents in regard to trusts. He has entrusted some with a large number of His things, while others with a small number and endowed some with a greater capacity for work than others. Likewise there is a difference in the powers He has delegated to them; He has even given powers to some human beings over other human beings. (3) Allah Almighty has made it very clear that this worldly life is merely a test and all the above-mentioned things and powers that have been given as trusts are the means by which man is being tested. An accurate record is being kept of how each one is making use of his trust and how far one is exploiting these things in accordance with the terms of the trust and how one is using his abilities, capabilities, etc. The result of this test will determine man's rank in the Day of Resurrection".

Thus, Islam indeed encouraged mankind to avail themselves of the vast opportunities of productive enterprise afforded by the limitless bounties of Almighty Allah, as He has provided for His Mercy all necessary resources on this earth. Man, being the *Khalifah* or vicegerent of Almighty Allah on this earth, has the responsibility to utilize these recourses for the general human welfare.

In Islam every Muslim has the right to get support from fellow Muslims under certain circumstances and situations but it is considered as the moral responsibility of the individual to cater for his own needs through his own efforts, as a matter of fact, Islam is against being dependent, parasite living on the labour of others. Islam is against the principle of *Tawaakul* which means to rely on Almighty Allah without taking initiatives and responsibilities rather it encourages initiative and responsibility as the Holy Qur'an consistently reminds people that everyone will be judged on his own merits as independent, responsible individuals as Allah the Exalted said in the Holy Qur'an:

"And be afraid of the Day when you shall be brought back to Allah. Then every person be paid what he earned, and they shall not dealt with unjustly" *Al-Baqarah* (2) 281.

BASIC PRINCIPLES AND FUNDAMENTALS OF THE ISLAMIC ECONOMIC SYSTEM

Islamic economy is composed of three basic principles and

four basic fundamental principles which can be summarized as follows:

Basic principles

- . Principle of social justice,
- . Principle of economic freedom within a defined limit,
- . Principle of ownership.

Fundamental principles

- . Payment of the obligatory charity or *Zakat*,
- . Spending in charity,
- . Inheritance,
- . Interest on money-lending and Hoarding of foodstuff.

Basic Principles

1. Principle of social justice

The most important attribute in Islamic economy is the principle of social justice. Islam indeed permits difference in wealth within reasonable limit but does not tolerate this difference growing so wide that some people spend their life in luxury and comfort, while the great majority of people are left to lead a life of misery and hunger.

In Islam, economics is considered to be related to ethics and ethics, in turn, is related to religion. Therefore, it is really the Islamic Law within which what is called Islamic economic social justice must function and find its meaning.

Obligatory charity or *Zakat*, prohibition of interest, stability on the real value of money, and state responsibility for income distribution are the original tools to carry out social justice in society.

On self-interest, Islam emphasizes that the success of both the individual and the society depend on a balance between the spiritual and the material needs of man. In this respect *Sheikh Abul A'la Mawdudi* said:

"It must sustain a right balance between the needs of the body and of the soul so that its personal interest as well as the welfare of the society might be protected. In addition, this must not be ignored that human progress necessarily depends on the successful coordination of the essential harmony existing between the spiritual and material aspects of life. When the spiritual life is detached from the economic struggle of man, the required dominant balance will be upset. Therefore, the prevalence of such a constructive balance is very crucial to the maintenance of stability in the economic structure".

2. Principle of economic freedom within a defined limit

Islam allows individuals at the economic level, a limited freedom, within the bounds of the spiritual and moral values in which Islam believes by providing the textual stipulation to forbid a group of social and economic activities, which hinder the realization of the ideals and



values adopted by Islam, such as taking or giving interest, monopoly, etc.

3. Principle of ownership

Islam acknowledges and accepted different forms of ownership, individual ownership, state ownership, and public ownership. But as mentioned earlier, real ownership belongs to Almighty Allah. Therefore, acquisition of property as well as its use and disposal are subject to limits set and should be guided by the norms laid down by Allah the Exalted. Absolute ownership of man is a concept alien to Islam, as it belongs to the Almighty Allah alone the Master of the heavens and the earth and all that is in them.

Fundamental Principles

1. Payment of the obligatory charity or Zakat

Zakat is the third pillar of Islam. Every Muslim who owns wealth more than a certain amount to meet his or her needs must pay this obligatory charity to the poor and needy among Muslims, so that the gap between rich and those in need will be narrowed, and to make sure that the basic needs of everyone's are met, thus, the society will live in peace and harmony, and the chances of social disorder will be reduced.

1.1 Essential Elements of Zakat

Zakat has two essential elements, one is spiritual aspects and the other is a material aspects.

a. Spiritual Aspects

The spiritual aspects are referred to what Almighty Allah has said in the Holy Qur'an:

"Take (O Muhammad) *Sadaqah* (*Zakat*) from their wealth in order to purify them and sanctify them with it, and invoke Allah for them. Verily! Your invocations are a source of security for them; and Allah is All- Hearer, All- Knower" *At-Tawbah* (9) 103.

Paying a certain fixed proportion of the wealth of the each and every kind of the property liable to *Zakat* for the benefit of the poor in the Muslim community is a cleansing process for the wealth and its owner. Allah Almighty not only promises reward in the Day of Resurrection, but also to bless the business of the person who pay *Zakat* seeking Allah's Countenance, so that it becomes more profitable. As He said in the Holy Qur'an:

".. but that which you give in *Zakat* seeking Allah's Countenance, those, they shall have manifold increase" *Ar-Rum* (30) 39.

b. Material Aspects

As for material aspect, *Zakat* is the major economic means for establishing social justice and leading the Muslim society to prosperity and security, because the share of the poor and needy in the wealth of the wealthy is been granted by Islam.

2. Spending in charity

In Islam unlimited praise has been bestowed on those who do deeds of righteousness and come to the aid of others, in fact the best of men are those who make a sacrifice and prefer others to their own selves.

Spending in charity is highly encouraged in Islam; it has great impact from the economic point of view. According to *Sheikh Abul A'la Maududi*:

"If the rich people of a society spend money in buying their own necessities of life and those of their dependants and distribute a part of their wealth among the needy to enable them to buy their necessities of life, or if they lend it to businessmen without interest or invest it in business on the basis of partnership or lend it without interest to their government for national service, then obviously, commerce, industry, agriculture etc., will thrive to a very high standard. The standard of national prosperity will rise higher and higher and the production of its wealth will become larger as compared with the country where interest is lawful".

Likewise extravagance and waste of wealth are discouraged in Islam. Every Muslim when he or she spends should be responsible in his or her spending and be moderate. A Muslim should restrict himself or herself while spending to his or her basic needs only and think always of helping those who are in need among the society. He or she should not be among the spendthrifts as spendthrifts are considered in Islam to be brothers of the devils as Allah Almighty has said in the Holy Qur'an:

"Verily, the spendthrifts are brothers of the devils, and the Devil is ever ungrateful to his Lord" *Al-Israa'* (17) 27.

3. Inheritance

The third fundamental principles of the Islamic economic system is inheritance which is the entry of living persons into possession of dead person's property and exists in some form wherever the institution of private property is recognized as the basis of the social and economic system.

The main consideration of the Law of inheritance in Islam is to break up the concentration of wealth in individual and spread it out in society, respect the property right of ownership of an individual earned through honest means, hammer in the consciousness of man the fact that man is not the absolute master of wealth he produces but he is its trustee and is not, therefore, authorized to pass it on to others as he likes, consolidate the family system which is the social unit of an Islamic society and finally, to give incentive to work and encourage economic activity as sanctioned by Islam.

As regard to the orphan's properties, Islam has emphasized on protecting their property in various verses of the Holy Qur'an. According to Islam guardians

must sincerely look after the property of orphans, and release it to them when they perceive that the orphans have become capable of looking after their own affairs. It is hateful for a guardian to eat up or waste an orphan's property unjustly. Such act is considered in Islam as a great sin which will lead to the blazing fire in the Hereafter as Allah Almighty said in the Holy Qur'an:

"Verily, those who unjustly eat up the property of orphans, they eat up the only fire into their bellies, and they will be burnt in the blazing Fire!" *Al-Nisa'* (4)10.

"And come not near to the orphan's property except to improve it, until he attains the age of full strength. And fulfill (every) covenant. Verily, the covenant, will be questioned about" *Al-Isra'* (17) 34.

4. Interest on money-lending and Hoarding of foodstuff

The issue of interest on money-lending and its impact on society spiritually, morally, socially and economically from the Islamic perspective will be discussed in details in the next article under the topic of unlawful forms of business transaction in Islam.

Hoarding of foodstuff and other basic necessities are absolutely forbidden under the Islamic Law, Islam has totally condemns those who withhold goods in the market from the poor people driven by greed to accumulate wealth at the expense of others. Such a selfish hoarder of foodstuff who is only aim and ambition to become rich at the expense of the helplessness of the poor people was denounced by Prophet Muhammad (peace be upon him) as a sinner in his saying narrated by *Ma'mar* that the Prophet Muhammad (peace be upon him) said:

"He who hoards is a sinner". And also said: "No one hoards but the sinner". *Muslim, Kitaab Al-Ba'i*.

However, Islam allowed good and natural competition in the market place and given freedom for individual to involve in doing business according to Islamic Law. Those who serve the public interest by selling their commodity for a reasonable profit indeed they will be blessed by Allah the Exalted. But those devoid of human feelings who withhold the commodity from the market for the purpose of creating artificial scarcity and then take undue advantage of the helplessness of the poor people, Allah Almighty is not unaware of what they do, therefore the recompense of these group is a disgrace in the life of this world, and on the Day of Resurrection, the day whereon neither wealth nor sons will avail, but only he (will prosper) that brings to Allah Almighty a sound heart, they shall be consigned to the most grievous torment.

Conclusion

One may absolutely conclude that Islam has provided a complete guidance to its followers in all phases and activities of life. The Holy Qur'an has mentioned and explained the

basic teaching of the Islamic economic system and its policy in the most unequivocal terms.

Constant progress of the human livelihood by the domination and exploitation of all the things that Allah Almighty has created and made it to be of service to them is obvious to everyone. Hence, if one compares human to the rest of animals one sees that they (the animals) have changed nothing in their livelihood ever since Allah Almighty has created them. Therefore, it was necessary for every progressive civilization to impose certain duties on its members, and to recommend certain good deeds so that the society at large will benefits and prosper.

On this fundamental principle the economic system of Islam has been constructed. The rich who are the minority in the society have to pay obligatory charity or *Zakat* in the interest of the poor majority, and they (the rich) prevented from practicing immoral means of exploitation, hoarding and accumulation of wealth through unlawful ways. There is no doubt that the main objective of Islam in its principles is to establish a just society wherein everyone will behave responsibly and honestly.

One may argue from the above mentioned elaborations also that Islamic economic system is the solution in dealing with all economic problems of life through its principles and teachings. Eradicating poverty, promoting stability, maintaining law and order, and to ensure social and economic justice are the essential functions of the Islamic economy. Islam absolutely recognizes the right of ownership for individuals and acquisition of wealth through the lawful means. Thus, any methods of earning which are morally or socially harm have been declared unlawful under the Islamic Law. For instance, selling, purchasing, possession and manufacturing of wine i.e. *al-Khamr* and other intoxicants i.e. *Muskirat* and drinks which spread evil and immorality, bribery, stealing, gambling, speculation, business based on fraud and deceit, hoarding and holding back the necessities of life with the intention of raising the prices, monopoly of the means of production by one or several persons which narrows down the field for others, all these methods of earning are absolutely unlawful under the Islamic Law i.e. *Shari'ah*.

To sum up, the society at large in Islam is based on the concept of humanity and brotherhood of the Muslim community. Hence, Muslims in their minds must have a sense of awareness of mutual rights and obligations binding each individual of the society in their faith. And the Islamic way of life can be best understood by the practices of organized community that is governed in accordance with the Islamic doctrines and tenets.



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Muhammad Zubair Usmani

Mufti Muhammad Zubair Usmani completed his Doctorate in Islamic Finance from Karachi University. He is also the Fazil Takhassus (specialist of Islamic Fiqh and Fatawa) from Jamia Uloom Karachi and is also a research scholar and teacher. He is also working as Shariah Advisor at Muslim Commercial Bank since July 2000.

The concept of Mudarabah

By Mufti Muhammad Zubair Usmani

less than 75. This kind of exchange falls within the definition of "riba" and is not allowed. Similarly, if the price of the share, in the above example, is fixed as 75 dollars, it will not be permissible, because if we presume that 75 dollars owned by the share, no part of the price can be attributed to the fixed assets owned by the share. Therefore, some part of the price (75 dollars) must be presumed to be in exchange of the fixed assets of the share. In this case, the remaining amount will not be adequate for the price of 75 dollars. For this reason the transaction will not be valid.

However, in practical terms, this is merely a theoretical possibility, because it is difficult to imagine a situation where a price of the share goes lower than its liquid assets.

Subject to these conditions, the purchase and sale of shares is permissible in Shariah. An Islamic Equity Fund can be established on this basis. The subscribers to the Fund will be treated in Shariah as partners "inter se." All the subscription amounts will form a joint pool and will be invested in purchasing the shares of different companies. The profits can accrue either through dividends distributed by the relevant companies or through the appreciation in the prices of the shares. In the first case i.e. where the profits earned through dividends, a certain proportion of the dividend, which corresponds to the proportion of interest earned by the company, must be given in charity. The contemporary Islamic Funds have termed this process as "purification."

The Shariah scholars have different views about whether the "purification" is necessary where the profits are made through capital gains (i.e. by purchasing the shares at a lower price and selling them at a higher price). Some scholars are of the view that even in the case of capital gains the process of "purification" is necessary, because the market price of the share may reflect an element of interest included in the assets of the company. The other view is that no purification is required if the share is sold, even if it results in a capital gain. The reason is that no specific amount of price can be allocated for the interest received by the company. It is obvious if all the above requirements of the halal shares are observed, the most of the assets of the company are halal, and a very small proportion of its assets may have been created by the income of interest. This small proportion is not only unknown, but also a negligible as compared to the bulk of the assets of the company. Therefore, the price of the share, in fact, is against the bulk of the assets, and not against such a small proportion. The whole price of the share therefore, may be taken as the price of the halal assets only.

Although this second view is not without force, yet the first view is more cautious and far from doubts. Particularly, it is more equitable in an open-ended equity fund because if the purification is not carried out on the appreciation and a person redeems his unit of the Fund at a time when no dividend is received by it, no amount of purification will be deducted from its price, even though the price of the unit may have increased due to the appreciation in the prices of the shares held by the fund. Conversely, when a person redeems his unit of the Fund at a time when no dividend is received by it, no amount of purification will be deducted from its

price, even though the price of the unit may have increased due to the appreciation in the prices of the shares held by the fund. Conversely, when a person redeems his unit after some dividends have been received in the fund and the amount of purification has been deducted therefrom, reducing the net asset value per unit, he will get a lesser price compared to the first person.

On the contrary, if purification is carried out both on dividend and capital gains, all the unit-holders will be treated at par with the regard to the deduction of the amounts of purification. Therefore, it is not only free from doubts but also more equitable for all the unit-holders to carry out purification in the capital gains. This purification may be carried out on the basis of an average percentage of the interest earned by the companies included in the portfolio.

The management of the fund may be carried out in two alternative ways. The managers of the Fund may act as *mudaribs* for the subscriber. In this case a certain percentage of the annual profit accrued to the Fund may be determined as the reward of the management, meaning thereby that the management will get its share only if the fund has earned some profit. If there is no profit in the fund, the management

will deserve nothing, but the share of the management will increase with the increase of profits.

The second option of the management is to act as an agent for the subscribers. In this case, the management may be given a pre agreed fee for its services. This fee may be fixed in lump sum or as a monthly or annual remuneration. According to the contemporary Shariah scholars, the fee can also be based on a percentage of the net asset value of the fund. For example, it may be agreed that the management will get 2% or 3% of the net asset value of the fund at the end of every financial year.

However, it is necessary in Shariah to determine any of the aforesaid methods before the launch of the fund. The practical way for this would be to disclose in the prospectus of the fund on what basis the fees of the management will be paid. It is generally presumed that whoever subscribes to the fund agrees with the terms mentioned in the prospectus. Therefore, the manner of paying the management will be taken as agreed upon on all the subscribers.





Taqi Usmani

Mufti Muhammad Taqi Usmani is one of the leading Islamic scholars living today. He is an expert in the fields of Islamic Jurisprudence, Economics, Hadith and Tasawwuf. Born in Deoband in 1362H(1943 CE), he graduated par excellence from Dars e Nizami at Darul Uloom, Karachi, Pakistan. Then he specialized in Islamic Jurisprudence under the guidance of his eminent father, Mufti Muhammad Shafi, the late Grand Mufti of Pakistan. Since then, he has been teaching hadith and Fiqh at the Darul-Uloom, Karachi

Conditions for Investment in Shares

By Mufti Taqi Usmani

In the light of the forgoing discussion, dealing in equity shares can be acceptable in Shariah subject to the following conditions:

1. The main business of the company is not in violation of Shariah. Therefore, it is not permissible to acquire the shares of the companies providing financial services on interest, like conventional banks, insurance companies, or the companies involved in some other business not approved by the Shariah, such as the companies manufacturing, selling or offering liquors, pork, haram meat, or involved in gambling, night club activities, pornography etc.
2. If the main business of the companies is halal, like automobiles, textile, etc. but they deposit there surplus amounts in a interest-bearing account or borrow money on interest, the share holder must express his disapproval against such dealings, preferably by raising his voice against such activities in the annual general meeting of the company.
3. If some income from interest-bearing accounts is included in the income of the company, the proportion of such income in the dividend paid to the shareholder must be given charity, and must not be retained by him. For example, if 5% of the whole income of a company has come out of interest-bearing deposits, 5% of the dividend must be given in charity.
4. The shares of a company are negotiable only if the company owns some non-liquid assets. If all the assets of a company are in liquid form, i.e. in the form of money that cannot be purchased or sold, except on par value, because in this case the share represents money only and the money cannot be traded in except at par.

What should be the exact proportion of non-liquid assets of a company for the negotiability of its shares? The contemporary scholars have different views about this question. Some scholars are of the view that the ratio of non-liquid assets must be 51% at the least. They argue that if such assets are less than 50%, the most of the assets are in liquid form, therefore, all its assets should be treated as liquid on the basis of the juristic principle: The majority deserves to be treated as the whole of a thing. Some other scholars have opined that even if the non-liquid asset of a company or 33%, its shares can be treated as negotiable.

The third view is based on the Hanafi jurisprudence. The principle of the Hanafi school is that whenever an asset is a mixture of a liquid and non-liquid assets, it can be negotiable irrespective of the proportion of its liquid part. However, this principle is subject to two conditions:

First, the non-liquid part of the mixture must not be in a negligible quantity. It means that it should be in a considerable proportion. Second, the price of the mixture should be more than the price of the liquid amount contained therein. For example, if a share of 100 dollars represents 75 dollars, plus some fixed assets the price of the share must be more than 75 dollars. In this case, if the price of the share is fixed as 105, it will mean that 75 dollars are in exchange of 75 dollars owned by the share and the rest of 30 dollars are in exchange of the fixed asset. Conversely, if the price of that share fixed as 70 dollars, it will not be allowed,

because the 75 dollars owned by the share are in this case against an amount which is the prices of the shares held by the fund. Conversely, when a person redeems his unit after some dividends have been received in the fund and the amount of purification has been deducted there from, reducing the net asset value per unit, he will get a lesser price compared to the first person.

On the contrary, if purification is carried out both on dividend and capital gains, all the unit-holders will be treated at par with the regard to the deduction of the amounts of purification. Therefore, it is not only free from doubts but also more equitable for all the unit-holders to carry out purification in the capital gains. This purification may be carried out on the basis of an average percentage of the interest earned by the companies included in the portfolio.

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Interview with Dr. Abdul Latif Jassim Kanoo

Founder and Executive Chairman of Beit Al Qur'an

By Alberto Di Gennaro

Dr. Abdul Latif Jassim Kanoo, Founder of Beit Al Qur'an, is a serious collector of Islamic manuscripts and art in general. Dr. Kanoo's keen sense of history and his immense pride in Islamic faith and heritage motivated him to collect Holy Quranic manuscripts first, and later Islamic art in general. He was inspired by the heritage he saw during his travels in the Arab and the Islamic world and by the rich collections of Islamic art in celebrated museums visited during his study period abroad. Dr. Kanoo's personal journey into the collectors world acquired later a very serious purpose, for as his collections of Holy Qur'ans and Islamic manuscripts expanded to a substantial size, he felt a heavy responsibility as its keeper. The responsibility of holding these great manuscripts transcended the concept of ownership to the concept of custodianship.

Dr. Kanoo subsequently donated his collection of Holy Quranic manuscripts to Beit Al Qur'an and this formed the nucleus of its Al Hayat Museum collection which can now lay claim to be one of the most important of its kind in the world.

Q: Dr. Kanoo, what does Beit Al Qur'an represent in the world of the Islamic art and of the Islamic Culture? We are enchanted to know the history of this great Islamic cultural institution.

Beit Al Qur'an is an Institution that is located in Bahrain, a very important and prominent place that has been built by the people of the Gulf as a whole. People of Bahrain have contributed tremendously to make Beit Al Qur'an become a reality. The whole of this Institution has been built by donations from the public, people who donated a small amount of money and people who gave us plenty of money. For instance, the child who gave us half a dinar is as good as the one who gave us a hundred thousand dinar and everybody has contributed and if you have the chance to come here you'll see all the names of everyone who contributed to Beit Al Qur'an in the register of the names, the one who gave us half a dinar and the one who gave us a





hundred thousand dinar.

And I am very pleased for many reasons. First of all, the whole of this Institution has been built by the people, for the people, for the Holy Qur'an.

And not only this. We are proud that the building of this Institution is the latest design in the engineering field.

We have copies of the Holy Qur'an from the period when the Prophet came and the Qur'an had been recited until the modern times. We have translations of the meaning of the Holy Qur'an. In addition to all we also have a modern way of writing the Holy Qur'an, especially by artists who use color, so you have all the combinations that are related to the Holy Qur'an.

In addition of that we have a library that consists of many volumes in three languages: Arabic, English and French and this library is open to the public and you can borrow any books available in the library for use.

Besides the library and its content, we have a special section for the Bahraini editors or Bahraini writers. Of everyone who writes a book, we have two copies: one is for lending and one as a permanent store.

So really we are doing a lot of things to preserve and hold the

Bahraini writers and anyone who wants to see their books comes and sees what we have in Beit Al Qur'an.

In the library there is also a special section, the children section, so that the children come and borrow the books.

We also have a conference hall, and within it we have speakers who speak about many fields, not necessarily Quranic fields: culture, arts, history. And this is what makes Beit Al Qur'an a library all the way.

It is open to the public free of charge and we are open from the morning until 2 o'clock everyday and not only this: people will also be guided through and they will be explained about the sections.

In Beit Al Qur'an we have three main sections; we have Makka Hall that contains the Holy Qur'an from the earliest period of the Holy Qur'an, that has been written on parchment, on the skins and that is the early Arabic calligraphy called "Kufic calligraphy" and this is really rare and very famous, you do not find it anywhere except in the top museums like the Metropolitan Museum, the British Museum and this is the rarest Holy Qur'an that you can find. Normally it is in sheets, small sheets and large sheets written in very early Arabic calligraphy. This is what we have



in Makka Hall.

The second one is Medina Hall. In Medina Hall we put the Holy Qur'an in the most beautifully illuminated zone with many melted colors and many detailed examples of calligraphy, large size, small size, the various styles of calligraphy.

And then we have the Hall of this unit in which we have the unique Holy Qur'an from different countries, there is nothing like it except from what you can reach in Beit Al Qur'an.

We have the Holy Qur'an written on a seed of rice; we have the Holy Qur'an written on small pieces of parchment.

The important thing is that you can find everything that is related to the Holy Qur'an in these three Halls.

In addition then we have the translation of the meaning of the Holy Qur'an in all the languages, including Hebrew, Chinese and African languages.

After all that we have a very unique translation of the Holy Qur'an that has been translated in Europe in three languages: in Arabic, French and German, all these three languages put in one copy, and it is very rare to have the three translations in one book.

This is the list of what Beit Al Qur'an contains.

In addition to this we have the Hall of the Mosque, to be used five times a day for prayer and then we have a Lecture Hall and it is very very important: many people come to lecture in it, including scholars, male and female.

We are open to the public and we do not charge anything for any of our activities.

More than anything else I would like to invite everybody who comes on the island to come and visit Beit Al Qur'an. This is a cultural visit, not necessarily a religious visit, you see the development of the calligraphy, you see the various materials that have been used in the calligraphy, you see the beautiful building that is this House and you can enjoy our Beit Al Qur'an and the time will pass very quickly.

Beit Al Qur'an is located centrally and anyone can direct you to it.

More than anything we like that the children that come from the schools, girls and boys, come and visit Beit Al Qur'an. We have this arrangement with the Ministry of Education. We have about five/six visits everyday from schools from different parts of Bahrain, not only Government schools but also private schools.

And this is very important, especially for the school, for the children point of view; they come here and the teacher asks

them: "You visited Beit Al Qur'an. Can you write about Beit Al Qur'an, can you write what you have seen, can you copy the calligraphy you have seen?". So this is an educational Institution, in addition of being a religious Institution.

But more than anything else I have to thank the Government of Bahrain, particularly the King, the Prime Minister and the Heir Apparent.

All the visitors when they come to Bahrain they come and visit Beit Al Qur'an and they are very delighted to come and see it not because it is an Islamic Institution but because of the way we present the things ,the way we meet people and the way we explain them.

I remember Mrs. Margaret Thatcher, the former Prime Minister of the United Kingdom. She said: "I would like to thank you for taking me to see Beit Al Qur'an. I have learnt a lot about Islam and about the Qur'an through your

conversations, more than what I have learnt from Ambassadors and visitors that came to me" and that was a very very nice and gentle speech from a world-known Lady. I feel to invite everybody to come and visit Beit Al Qur'an and if they are coming here they only need half an hour. If they are resident in Bahrain they ought to visit it; if not, they must! And any visitor that comes is more than welcome.





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Muhammad Ayub

Director Research & Training at Riphah Center of Islamic Business (RCIB), Riphah International University. Mr. Muhammad Ayub is a globally renowned scholar-teacher-trainer in Islamic banking and finance. His book 'Islamic Banking and Finance: Theory and Practice' was published by the State Bank of Pakistan in December 2002.

His encyclopedic work, "Understanding Islamic Finance" published by John Wiley & Sons in October, 2007 is serving as a text book on the subject and as a guide for researchers, financial engineers and practitioners.

Difference between Interest and Trade Profit

By Dr. Muhammad Ayub

For last four decades, since inception, Islamic banks operations are based primarily on the trade related modes although *Shirkah* (*musharakah*, *mudarabah* or their variants, commonly known as PLS modes) are believed to be ideal alternative for the interest based financing with complimentary effects on the economy. Almost all theoretical models of Islamic banking and finance are based on PLS which can support and develop the real sector, stabilize the financial system and curb inflation, since it can improve direct interaction and risk sharing between fund owners and entrepreneurs. But, practically, use of PLS modes for financing by Islamic banks is minimal in all parts of the world. It is due to a large number of factors including lack of awareness and commitment, moral hazard, taxation systems in vogue, business community unwilling to share their profits with financiers because of easy access to debt based finance, lack of suitable institutional and legal framework, some unwarranted perceptions and more importantly the existing fiscal and public debt raising policies and practices.

As Islamic banking in vogue is not in position to impart benefit of economic justice and broader level development of economies, some people have started questioning the validity of trade based modes like *murabaha*. According to them, profit on credit trade by Islamic banks is *riba*. Recently, Mr. Salman Ahmed Shaikh, in a note captioned, "Difference between Interest and Trade: Weakening Justifications" has raised the above issue. Below, we shall try to explain the difference between the permissible profit and the prohibited *riba*. But, before discussing the subject, this author would like to make a few clarifications:

- 1) The mainstream Islamic banking approach and the scholar in general do not defend such trade practices of Islamic banks in which essentials of *Bai'* are ignored (like *Tawarruq* and *bail al 'Inah*); all advise that Islamic banks should involve in real sector trading, taking business risk, adding value and thus earn profit;
- 2) There were the people of *Makkah* who, as per the Holy Quran, considered that trade and *Riba* were alike, while it is crystal clear that both are different: former valid and *Halal* and the latter invalid and *Haram*. The Quran has not only referred to the rationale and logic for prohibiting *Riba*, but also indicated a sound principle on the basis of which all exchanges and transactions can be adjudged as *Haram* or *Halal* (Verses 275, 278 and 279 of *Surah Al Baqarah*: trade allowed, *riba* prohibited; and that whatever is over and above the principal of a loan or debt has to be given up)
- 3) Islamic banks have to take the price risk and the market/commodity risk for valid profit; otherwise their income/profit margin has to go out of their P/L account. The purpose of this article is to reiterate that while Islamic Shariah accepts profit margin or 'mark-up' in both spot payment and credit trade, it rejects interest due to its being *riba*. The difference between the spot and credit prices of a commodity that gives fixed profit margin to the seller and shows that time may have value when taken as a part of pricing mechanism is the main factor that creates doubts about Shariah position of *Murabaha* or 'cost-plus' sale of goods by Islamic banks.

There is a consensus among the jurists and the Shariah scholars that credit price of a commodity can genuinely be more than its cash price provided one price is settled before separation of the parties. Accordingly, the Islamic Fiqh Academy of the OIC

(that has representation of Shariah scholars from all over the world) and Shariah boards of all Islamic banks approve legality of this difference. This is tantamount to acceptance of time value in pricing of goods. What is prohibited is any addition to the price once mutually agreed due to any delay in its payment, as commodity once sold, even on credit, becomes property of the purchaser on permanent basis and the seller has no right to re-price a commodity that he has sold and which does not belong to him anymore.

The above stance is discernable from the *Nass* (clear text of the Shariah). The Holy Quran has reported non-believers saying, "Verily, the *Ba'i* is similar to *riba*." Their objection was that they increase the price of commodity in the original transaction of sale because of its being based on deferred payment and it is treated as a valid sale; But if they add to the due amount after the maturity date and the debtor is not able to pay, it is termed as *Riba*, while the increase in both cases is similar. This argument has been specifically mentioned by the famous exegetist *Ibn-Abi-Hatim* (d. 327 AH) (*Tafseer al Quran*, 1999, Vol. 2, p. 545) and also by some others. The Holy Quran's explanation to the above thinking of non-believers is that if they say that interest in loans / debts is same as the profit earned in a trade deal, then "Allah has permitted trade and prohibited interest" implying that whatever one earns in the market over his investment is not interest and hence is permissible. *Jalaluddin Sayyuti* and *Ibne Jarir Tabari* have reported the similar situation of *Riba* involvement in which a person sold any commodity on credit; when the payment was due and the purchaser could not repay that, the price was enhanced and time for payment extended (Sayyuti, *Lubaab al Nuqool*: 1423 and Tabari, *Jami al Bayan*, Vol. 6, p. 8).

The great *Muhaddith Tirmidhi* has reported that the Holy Prophet (pbuh) forbade two sales in one contract. Jurists have explained it to mean that if a person offers someone to sell a piece of cloth on cash for ten and on credit for 20 (*Dirhams*) and at separation, one price is not settled then it is a case of two sales in one contract and so prohibited. If one of the two prices is settled, it is not prohibited (*Tirmidhi*, 1988, No. 1254). *Tohfatul Ahwazi, Sharah Jam'i al Tirmidhi*, explains that if a seller says that he sells the cloth for 10 on cash and 20 on credit and the buyer accepts any of the two prices; or if a buyer says that he purchases for 20 on credit or the parties separate on any of the prices, the sale will be valid (vol. 2, p. 236). *Shukaani* explains the above Hadith of the Holy Prophet (pbuh) by concluding that if purchaser in such situation says, "I accepted for 1000 on cash", or "for 2000 on credit", it would be alright. He adds that '*Illah* (effective cause) for prohibition of two sales in one is non-fixity of the price (*Nail al Awtar*, Vol. 5, p. 12). Shah Waliullah (RA) in *Musawwa, Sharah Al Muwatta*, writes that if parties separate after settlement on one price, the contract is valid and there is no difference of opinion in this regard (Vol. 2, Pp. 28, 29). Among scholars of the present age, the late Shaikh Abdul Aziz ibn Baz, the grand Mufti of Saudi Arabia, in line with the Hambali Fiqh permitted the installments sale wherein the credit price could be higher than the cash price (Abdul Aziz ibn Baz, *Fatawa*, Urdu translation, KSA, 1995, P.142).

Jurists allow the difference between cash and credit prices of a commodity considering it a genuine market phenomenon and practice. It is quite logical and natural that in the market credit price of a commodity be more than its cash price at a point of time while in contracts of *salam* (purchase of goods to be delivered in future against spot cash payment allowed by the Holy Prophet) the price paid upfront would be normally less than the anticipated price at the time of delivery of the goods by the seller to allow a margin of profit for the buyer. In the words of eminent *Hanafi* jurist *Sarakhsi*, "*Selling on credit is an absolute feature of trade.....We hold that selling for credit is part of the practice of merchants, and that it is the most conducive means for the achievement of the investor's goal, which is profit. And in most cases, profit can only be achieved by selling for credit and not selling for cash.*" He further observes, "*A thing is sold on credit for a larger sum than it would be sold for cash*" (*Al Mabsut*, Vol.22, P. 45). The comments of Abraham L. Udovitch on the views expressed by *Sarakhsi* are worth mentioning, "This statement makes clear as to why there was a greater profit to be derived from credit transactions..... The difference in price between a credit and cash sale also helps explain why the prohibition against usury, to the extent that it was observed, did not exercise any crippling restriction on the conduct of commerce..... (Udovitch, 1970, p. 80).

Islamic economics has the genuine provision of converting money into assets on the basis of which one can measure its utility. Earning even a single penny on a loan of Rupees one million is *Haram* while building a house with one million rupees and then leasing it on rent is permitted. While Islamic economics concedes the concept of time value of money when taken as a component of pricing mechanism in credit sale, it does not uphold generating rent to the capital as interest does in credits and advances leading to a rentier class in the society. As per the principles of the Shariah, the aspect which matters is the conversion of \$ 1000, for example, into an asset in which case that 1000 \$ asset may be worth more or less in future leading to profit or loss. This conversion into assets is subject to well articulated rules governing profit/loss sharing, trading and leasing.

The concept of time value of money in the context of Shariah is also established from the fact that Shariah prohibits mutual exchange of gold, silver or monetary values except simultaneously. This is the consensus view of the jurists and Shariah scholars based on an explicit Hadith of the Prophet (pbuh). No difference of opinion among the traditional and the contemporary jurists has been reported in this regard. The rationale behind this principle of *bai al sarf* is that while a person can take benefit by use of a currency / purchasing power which he has received, he / she must give its counter value forthwith and without any delay so that the other party could also take the benefit. If time had no value in *Muaamlat*, the Holy Prophet and the Companions might not have stressed so forcefully for instant exchange of the counter values in *Bai al Sarf*. It further transpires that time valuation is possible only in business and trade of goods and not in exchange of monetary values and loans or debts. Loaning is considered in Shariah as a virtuous act from which one cannot take any benefit. Therefore, no time value can



be added to the principal of a loan, or a debt after it is created or the liability of the purchaser stipulated. Hence, while margin in credit or forward trade is permissible being profit, any addition on the amount of a loan, or a debt emerging from any credit transaction, is prohibited being Riba.

It is imperative to observe that trade credit in the form of credit or forward sale may perform an important function of facilitating intermediation between the resource surplus and the resource deficit units with the consideration of the business provided Islamic financial institutions take into account the ownership related risk & reward structure of Islamic finance. It may provide employment to the resource-less and working capital to the producers in commodities sectors and generate economic activity, and remaining within the Shariah imposed limits, could boost the real sector business. It may be reiterated, however, that the regulators must not allow using trade based modes merely as a stratagem or subterfuge without fulfilling the trade conditions.

It is clear from the above discussion that while time value of money is acceptable in respect of pricing of assets and their

usufruct, it is not acceptable with regard to any addition to the principal of loans or debts. Valuation of credit period based on value of the goods or their usufruct is different from the conventional concepts of 'Opportunity Cost' or the 'Time Value of Money'. As such, profit and rent are permissible provided Shariah rules relating to trade and leasing are adhered to, but interest is prohibited due to being increase over loan or debt.

Towards conclusion of the article, it is reiterated that while Shirkah based modes are preferable to debt creating modes based on trade and *ijarah*, the permissibility of the latter category of modes is beyond doubt. The permission of charging 'mark up' in *murabaha* is subject to fulfillment of trading rules and conditions set out by the Shariah for such transactions. It goes without saying that the mark-up technique, or for that matter any Islamic modes, should not be used as a back door for allowing interest.





Dhafer Salih Alqahtani

a recognized visionary, futuristic and strategist figure. Professionally; Mr. Alqahtani is senior banker with over two decades of diverse and extensive experience with reputable financial institutions in the Gulf region, where the most recent 12 years were in the Islamic banking industry in leading executive roles (e.g., CEO, Co-CEO, COO, CIO & GM) covering finance, investment and asset management. Mr. Alqahtani is well-published author who conceived many articles and editorials on Islamic finance and investment.

Leaping forward amid the crises toward more genuine Sukuk

By Dhafer Salih Alqahtani

As 2012 unfold and while waiting anxiously for a nerve racking volatility and uncertainty to settle at an acceptable and tolerable level for doing business as well as bringing back a runaway confidence in the global financial sector and the world economy, in the same time, hoping that the indecision over the European sovereign debt crisis that is driven by a short sighted political agenda to reach a resolution to avoid escalating and spreading the already crumbling Western European economy and resolve the euro zone fiscal and debt calamity. In addition to that, ending the protracted agony of US economy which is being dominated by bickering politicians to get in its way to recovery. Unfortunately, All this add up to a bigger fear, that the urgency of reaching a workable long-term solutions to those crisis in both side of the Atlantic to avert sliding into a global recession is not getting serious and timely attention thus reducing the options for solutions and escalating further the global economy deterioration with austerity measures spreading like fire all over the globe, leading to incomprehensible level whose implications are profoundly negative and if that was not enough, rating agencies were rushing into downgrading sovereigns debt thus adding insult to injury.

What ironic about all of this depressing picture, is the fact that sovereign debt was created specifically to solve economic problems and to stimulate market economy, instead and in due course the solution (i.e., sovereign debt), becomes the problem its self, accordingly we now have two major problems, which raise a question about if capitalism particularly the western version is in self denial about what it promised to deliver through its interest based system, and the only thing to show for it are over-leveraged economies and over-borrowed countries not to mention the over distressed individuals who are struggling to make both ends meet and their situation will not get any better after their countries enforce their own austerities plans. In the same time, funding resources are drying out and become more expensive forcing governments, banks and corporate alike to seek an alternative outside the interest based system, thus shifting the attention to Islamic finance and its crown jewel (i.e., Sukuk) to attract surplus liquidity particularly from oil rich countries(i.e., GCC countries).

Meanwhile, with the financial crises tremors are still being felt in the background, MENA region was predominately occupied by two events of the same nature developing in the same time under the Arab Spring umbrella that is sweeping the MENA region, on one event; certain countries are yet to recover from the after the math of the Arab Spring revolutions which is still "Work In Progress" as it continue to harvest tyrants and installing Islamists who are promising to embrace democracy after decades of dictatorship. As the first fruit of this harvest is permitting Islamic banking to flourish in those countries starting with Oman, passing by Morocco, Libya, Tunisia, Egypt, Yemen and soon Syria after decades of suppress and rejection, thus adding new markets and a new players as well new challenges. However, those countries and their newly elected governments inherited a huge

deficits and infrastructure in shambles with major needs for liquidity and huge unemployment to resolve under a troubled macroeconomics times that requires serious navigation. Logically, Sukuk will be the favorite to tackle most of those issues among others considering that Islamists hold the majorities on those newly elected governments. Parallel to that; the second event was mainly unfolding in the gulf region countries that took a clue from the unrest in the streets outside the gulf countries, and forged ahead with its infrastructure development and social programs through expanded budget spending thus meeting most of the demands of the streets and the social media campaigns with minimum confrontation. Those measures did stimulate the economy in the gulf region specifically Sukuk which closed 2011 at record issuances year with soaring prospect for 2012.

With such market conditions and its eventual impacts that are overshadowing everything around us, Islamic Finance and its Institutions are intricate part of this unsympathetic economic cycle and unstable political atmosphere. Hence, they are not isolated from its impact and progression. Accordingly, Islamic Finance should rise above the situation and leap forward to take advantage of this turmoil and come forward as solutions provider for the crisis, with rapid adaptation to a myriad of changes in the market place. Beside its already demonstrated resiliency and sustainability, Islamic banking and finance should be able to see and capture opportunities in the crisis while preserving and defending the authenticity and genuineness of Shari'ah compliant products in term of structures and executions particularly Sukuk, without losing sight of the higher goals of Islamic finance and economics (e.g., fairness, equality, sharing wealth).

In view of the foregoing, no dialogue or intellectual discussion about Islamic finance and banking as a whole will be complete without discussing one of the mainstays and pillars of Shari'ah-compliant investments instruments (i.e., Sukuk) even though as an instrument it is only less than two decades old in existence. Nonetheless, during its remarkable growth in such short time and its major comeback in 2011 with high expectations for 2012, Sukuk has witnessed long waited corrective and intensive scrutiny about being a workable real Islamic financial instrument in particular the conflict between the Sukuk documents and the governing law of the Sukuk, predominantly in the case of cross borders Sukuk, aside from the transfer (recourse) of the underlying asset to Sukuk's units holders through the trust in case of default which differentiate true Sukuk (equity Sukuk) from so-called complaint ones (debt Sukuk) that is; asset backed vs. asset based. Such counteractive and others that already have been highlighted by the standards setting bodies (i.e., AAOIFI) or will crop up by the lingering financial crisis and the recently increasing issuance of Sukuk are needed to push the envelope further for refining and tuning Sukuk structures and documentations then and now.

The rapid growth and mounting global interest in Sukuk will bring with it a new and innovative structures also more complex ones will emerge, consequently bringing with it new challenges and concerns while the core issue remains

unsolved nor tackled at least by the scholars who are suppose to be The Gate Keepers, that is; shifting toward more asset backed Sukuk instead of debt Sukuk (it's a case of Substance over Form). Accordingly, and under the present market conditions with the intimidation of possible global slow down if not recession, the time is ripe for the Sukuk to move to the next level of its development and advancement, as well as carving a place for true Sukuk in the global financial market while correcting the way Sukuk are being issued, structured and administered.

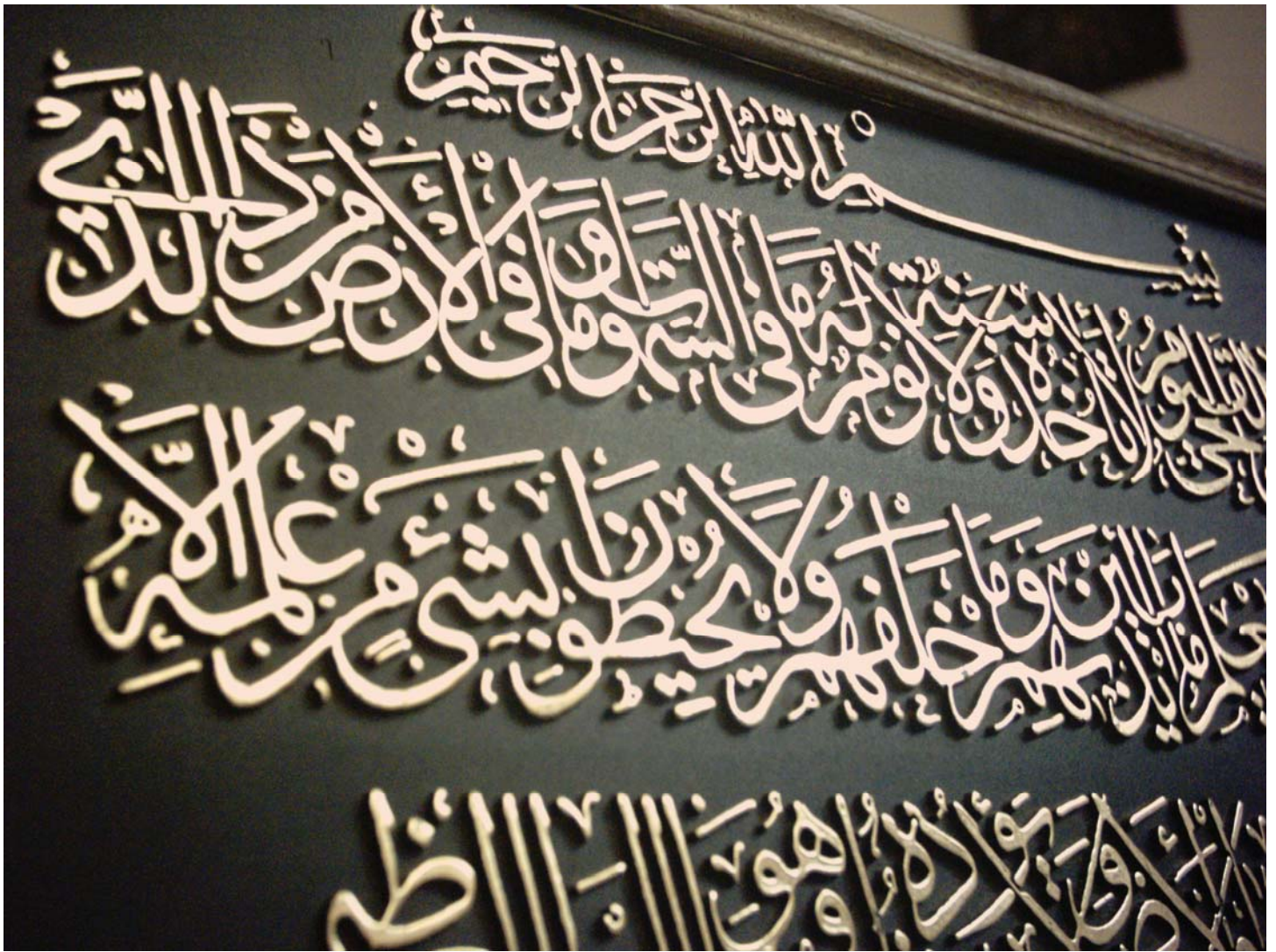
With that said, and out of fear and concern of where Sukuk industry might be headed in term of structure and format by drifting toward more debt Sukuk or what is correctly called "Islamic bond" and before it's too late and costly for corrective actions, I would like to contribute and share my views and suggestions which have been outlined and discussed through different venues on the past as I reflect on my own experiences as well as others on the subject with in-mind the present market conditions, thus I am pointing out a few pointers on how can we make Sukuk more genuine and appealing while holding to its creditability and conformity to Shari'ah in the new world order of the global financial market as well as to our direct markets, in view of that those pointers are;

I start with the most important part of any Sukuk development as **(First)** that is; Shari'ah Supervisory Board (SSB) and Shari'ah scholars who I call "The Gate Keeper", their duties and mandates should go beyond issuing a signed and sealed Fatwa for Sukuk or any product for that matter, SSB must be fully responsible and accountable in addition to being a proactive, from the concept level passing by structuring and Fatwa process to implementation and execution, and eventually the attainment of the maturity for the instrument or security. (This role should apply to all related Shari'ah compliant structures, securities and products) where the Shari'ah Compliance and/or audit Officer should spearhead such crucial functions under a direct mandate from the Shari'ah board.

(Second); All SSBs, individually or collectively, should encourage if not enforce asset backed Sukuk (equity Sukuk or investment Sukuk) with clear and well defined recourse for investors while discourage asset based Sukuk (debt Sukuk) with the objective to eventually minimize if not eradicate debt Sukuk

(Third); Introduce Sukuk at the retail level (distribution of wealth) by allocating sizeable tranches to the retail segment thus expands the trading platform of Sukuk to augment accessibility, consequently expanding secondary market. In the same time adding another attractive and viable asset class for investors (i.e., Sukuk) beside the traditional equity and real estate, even though real estate as an asset class are becoming too expensive to acquire by the regular investor which give all the reasons to push for Sukuk as an alternative asset class for Muslim investors who have limited choices

(Fourth); contribute to the expansion of the secondary market by issuing larger Sukuk to address the volume concerns, which will enhance its liquidity and marketability.



(Fifth); increase the number of Long Term Sukuk (+ 10 years) which will enlarge diversity and attractiveness of the Sukuk, particularly for long term investors (e.g., asset managers, pension funds and takaful companies).

(Sixth); advance and encourage issuance of Sukuk for the other two terms (short/medium) to expand the breadth and depth of secondary market as well as number and diversity of Sukuk.

(Seventh); Governments as an issuer to promote Sukuk as a saving instrument option for individuals through allowing them at the retail level to participate in major issuances through creating a retail portions for private individuals.

(Eighth); Sukuk issuance cost to be driven down, thus allowing cash starving Med-Cap businesses to become issuers to finance their expansion and growth to fulfill one of their vital role in the economy primarily jobs creation, this could come mainly through more standardization in term of Sukuk generic structures and types that is lead by AAOIFI and other standards setting bodies for Islamic finance (e.g., IFSB, IIFM).

(Ninth); infrastructure development and mega projects originators and issuers both governments and quasi-governments should utilize Sukuk for financing its needs

instead of using their surpluses, thus expanding the volume of Sukuk market while directing those surpluses to more needed and pressing issues at the social level like education and healthcare.

(Tenth); explore and encourage innovative features and structures that is hybrid in nature beyond the 14 Sukuk types of AAOIFI to enhance versatility and adaptability in meeting issuer's complex needs and situations.

(Eleventh); encourage new asset classes as the underlying asset other than the traditional assets (i.e. Real estate and IFIs) such as infrastructure, railroads, airports, manufacturing, power generation, education, and health care sector thus widen its diversity as well as the risk profile. Similarly encourage more issuances in local currencies beside the dollar.

(Twelfth); we should call things by their correct names; those debts Sukuk should be called "Islamic Bonds" and stop using the word "Sukuk" from all the debt Sukuk, thus separating debt from equity since Sukuk as we know it are deep in the equity side and not debt.

(Thirteen) Last but not least; significantly improve the disclosure and transparency of Sukuk structures, pricing, fees and uses of the funds.

Considering those pointers and recommendations which mainly address the creation of vibrant secondary investment Sukuk market as well as accessibility, will enhance the growth and reinforce confidence in Sukuk and attract sizeable share of the liquidity surplus by opening a new window for private individual's savings which an area that yet to be developed. By the same token, give more choices and flexibility to asset manager for better asset allocations as well as developing more innovative products in the fixed income products sector with different tenors, returns and risks profiles involving investment Sukuk, particularly Sukuk fund that is battling to gain market share in the mutual and fixed income funds sector as well as the difficulty in attracting investors due to the lack of breadth and depth caused by the shortage in diversity and volume in the Sukuk issuance, on top of that the low variety of sectors in relation to the underlying assets in Sukuk issuance in addition to currencies mix. Fortunately, Sukuk funds can be now re-energized on the basis of the Sukuk issuances record for 2011 and its prospects for 2012 and beyond.

On another front which is the issuance side, governments through its central banks will have a stable tool to manage the money supply as well as the fiscal and monetary budget. In the larger picture, governments of Islamic countries should also foster the growth of Shari'ah-compliant products in addition to issuing regulations by utilizing Islamic finance instruments (i.e., Investment Sukuk) to finance major infrastructure developments, power grids, bridges, transportation projects, housing and mining projects, and at the same time allowing its citizens at the individual levels (retail segment) to become Sukuk unit holder (wealth distribution) with clear recourse to the underlying assets thus investing in financing those projects through those Sukuk while getting reasonable returns on their participation alongside having the comfort from knowing that they are investing in genuine Sukuk, in addition to the pride those citizen will feel knowing that they are owners of a mega project in their country for their benefit. Allowing the individuals participation in Sukuk, will eventually create products for preserving wealth and encouraging savings for its citizens, while gradually developing a vibrant secondary market.

The unprecedented growth of the Sukuk rise many red flags and requires all of the parties involved to step aside from what they are doing and take the time to evaluate, analyze and examine its merits and virtues, its impact on the industry as a whole in particularly its integrity, reputation and creditability, not to mention its authenticity. It's the responsibility of all of us practitioners, lawyers and regulators, with particular focus on scholars where this responsibility and accountability should go beyond the race of introducing another debt Sukuk while blinded by the fees they will earn from those issuances to the market, as those debt Sukuk undoubtedly will backfire on the industry. In short, debt Sukuk "an accident waiting to happen" let us prevent it from happening and be vigilant of such trend.

With the aforementioned, the rush of many sovereign and conventional financial institution both investment and commercial banks to Sukuk issuance is mainly driven by the surplus liquidity in the gulf region and some parts of Asia, as we all know a large sum of this liquidity is starved and in most cases constrained to Shari'ah compliant instruments and securities, such demand and supply jointly with the wrong intentions and purposes (camouflaged greed or need) would be a recipe for disaster. Accordingly, despite the sprouting interest motives and aims in Sukuk, it should be welcome while in the same time it must be challenged and scrutinized especially by The Gate Keepers (i.e., Shari'ah scholars) until the establishment of universal regulatory body to supervise and scrutinize Sukuk to guarantee the conformity and adherence to Shari'ah guidelines at all times, thus preventing any threats to the authenticity and integrity of Sukuk and the Islamic finance alike, while serving the essence of Islamic economy in term of fairness and equality, in the same time contributing to the balanced growth of the industry without any major setbacks.





A Shariah Compliant Fund Platform For Emerging Managers

By Dr. Chris Buchan and Dr. Fawaz Elmalki

Introduction

The recent uprisings in certain countries in the Middle East have highlighted the need for fund managers and investors in these countries to seek stable fund domiciles. They seek jurisdictions which offer effective legal regimes, tax neutrality, accessible and pragmatic regulators and experienced service providers that are responsive, timely and thorough. As one of the leading offshore fund domiciles in the world, Bermuda meets these requirements.

Bermuda is a British Overseas Territory which has been self-governed since 1968. It has its own legal system which is based on English common law with rights of appeal to the Privy Council of the House of Lords in England. The principal corporate legislation, the Companies Act 1981, is updated regularly to keep pace with international commercial developments. It is internationally recognised as a one of the leading offshore jurisdictions for investment funds.

One of the principal attractions of Bermuda is its reputation. It has been an established financial centre since the 1930s and its client base includes a majority of the Fortune 500 companies. Bermuda has a free market economy and is tax neutral with no income, profit or capital gains taxes. It is on the OECD's "White" list and has signed tax information exchange agreements with all G8 countries and many others including India and China and it recently enter into a double taxation avoidance agreement with Bahrain.

The Investment Funds Act 2006 and supporting regulations provide the legal and regulatory framework for the authorization, operation, regulation and supervision of investment funds in Bermuda. The principal regulator is the Bermuda Monetary Authority. The BMA was established in 1969. It authorises, supervises, regulates and inspects investment funds operating in of from Bermuda. It is a full member of IOSCO.

Bermuda has no legal or regulatory impediments to the offering of Islamic investment funds. The Bermuda government has promoted the development of Islamic finance in Bermuda and there has been steady growth in the development of Shariah-compliant private equity funds, infrastructure funds and alternative investment funds domiciled in Bermuda, in addition to the traditional real estate funds.

Shariah -compliant funds can be established in the same manner as conventional



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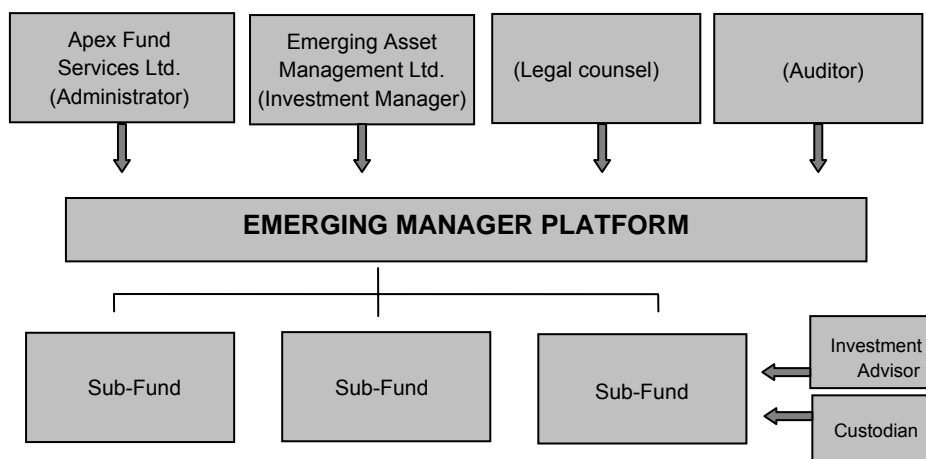
Fawaz Elmalki
(Conyers Dill and Pearman Limited)

investment funds. The Shariah element essentially operates as an extra set of rules layered on top of the existing regulations that are aimed at a specific group of investors.

The BMA last year issued Guidance Notes that facilitate the establishment of Shariah - compliant investment funds in Bermuda. The Guidance Notes apply to open-ended funds such as mutual funds and hedge funds. The Guidance Notes aim to recognise certain unique features of Shariah-compliant funds and provide guidance on a number of issues which these funds need to consider, including the appointment and role of the Shariah Supervisory Board, required disclosure in the fund's offering document (such as risk factors and conflict of interest disclosure) and in the Fund's constitutional documents (such as investment restrictions) and notification of material changes to the offering document.

The Emerging Market Platform - A Shariah - compliant funds solution

Recognising the increasing number of emerging fund managers in the Middle East and the need for a cost effective platform for these managers, Emerging Asset Management Ltd., a Bermuda incorporated investment manager, has established the Emerging Manager Platform.



The Emerging Manager Platform is a Shariah compliant structure, established as an open-ended fund and a segregated accounts company which will be regulated by the Bermuda Monetary Authority.

A segregated accounts company provides a legal structure for investment funds that allows the assets and liabilities of each segregated account, which can be set up as a separate Sub-fund, to be legally segregated or “ring-fenced” from those of the other Sub-funds on the Platform and from the Fund's general account. Each Sub-fund may invest in the same or separate asset classes but it operates independently of the other Sub-funds. The manager of each Sub-fund is able to establish its own track record. This is important as a successful track record can provide the manager of the Sub-fund with the credibility to subsequently launch its own independent fund.

Each Sub-fund on the Platform will issue a separate offering document containing its specific investment objectives and restrictions. It will have its own fee structure, subscription and redemption terms and it may engage its own Shariah board or the Platform may engage one Shariah board.

The Emerging Manager Platform offers all the benefits of a regulated fund and a quick, flexible and cost-effective way for managers with investment objectives and strategies that meet Shariah requirements to launch their funds in a recognised offshore jurisdiction without incurring the high costs and commitment of management time and resources required for the establishment of a stand-alone fund.

Service Providers

The following service providers and professional advisers have participated in the launch of the Emerging Market Platform.

Investment Manager: Emerging Asset Management Ltd. (“EAM”) is the investment manager to the Emerging Manager Platform. EAM is incorporated in Bermuda. It currently manages fund platform companies in various recognised offshore jurisdictions, including Bermuda and has approximately 35 sub-funds with approximately US\$80 million in assets under management.

Administrator: Apex Funds Services will provide administration services to the Sub-Funds on the Platform. Apex Funds Services is an internationally recognised funds administrator with a global network of offices, including offices in Bermuda and the other major offshore financial centres. Apex Funds Services has approximately US\$20 billion of assets under administration.

Auditors: PWC Bermuda. PWC is an international firm of accountants with global coverage and has expertise in advising on Shariah compliant investment funds and Islamic finance.

Bermuda Fund Counsel: Conyers Dill and Pearman Limited, one of Bermuda's leading law firms, has been appointed as the Bermuda legal counsel and is advising on the Bermuda law aspects and documentation. Conyers' Islamic finance practitioners are recognized by Islamic Finance News and have considerable experience in offshore Shariah compliant structures and Islamic finance.

Conclusion

Bermuda is committed to attracting international business by offering political and economic stability, a legal system based on the common law, sophisticated professional service providers and an efficient regulatory system for the investment and financial services industry. Identifying a stable and cost effective domicile which welcomes Islamic finance is important for an emerging manager who wants to establish a Shariah compliant fund. The Bermuda domiciled Emerging Market Platform offers an innovative new structure for such managers which provides them with a quick, flexible and cost-effective way to launch their funds.





Bermuda Premier jurisdiction

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With long-standing, solid regulatory standards and a position of transparency and cooperation, Bermuda has become a world-leading jurisdiction in the financial services sector. Bermuda's extensive TIEA network and our position as Vice Chair of the OECD Global Forum are testament to our robust and effective regulatory policies. Bermuda is a prudent and profitable place to do business.

For more information visit businessbermuda.org





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Goldman Sachs: genuine or Ribawi Sukuk in the making?

By Dr. Paul WOUTERS

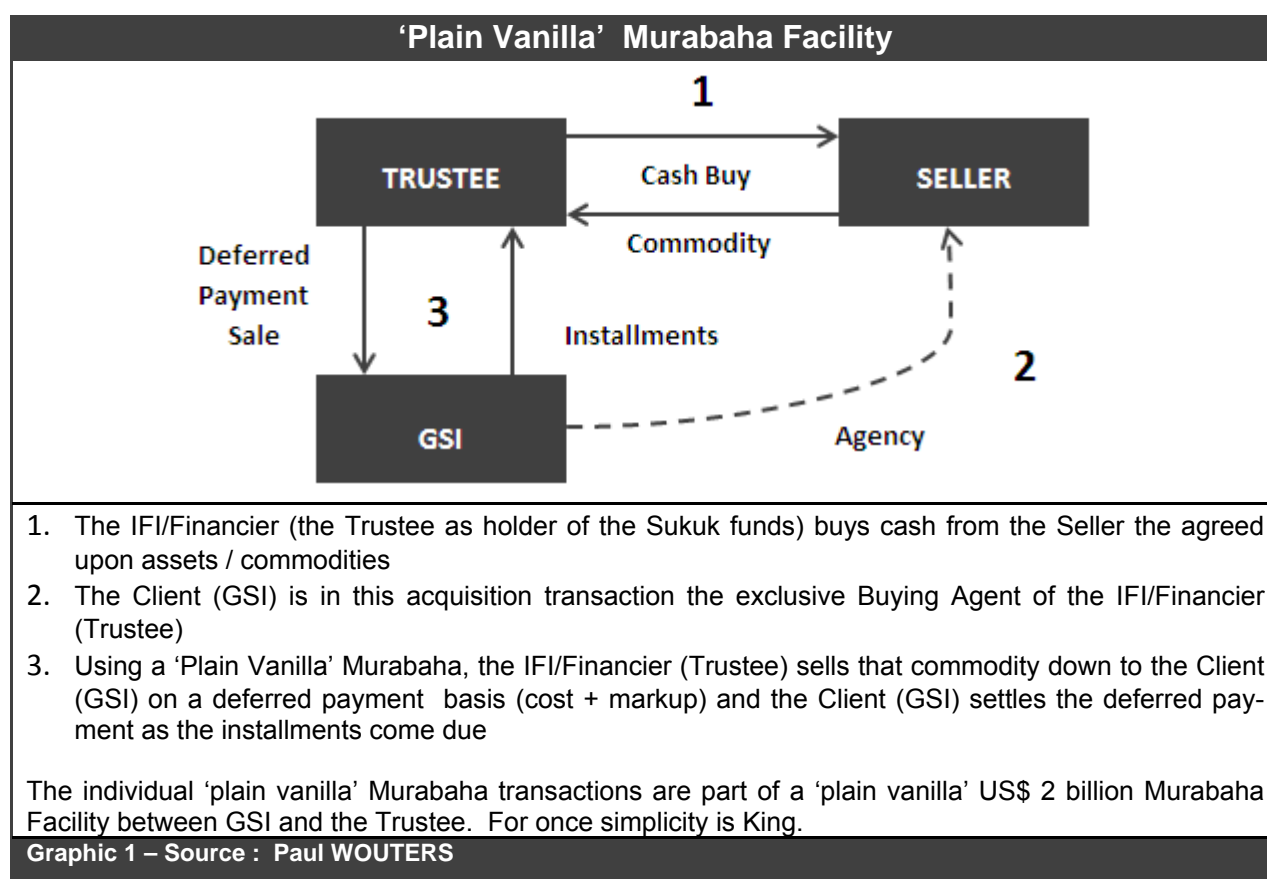
A. The deal on paper : a plain vanilla Murabaha Facility

The graphic below reflects the most used practice of the Murabaha-to-the-Purchase-Order. The reader will be familiar with this.

The Base Prospectus stipulates repeatedly: *“whereby the Trustee will, at the request of GSI, use the proceeds of the issuance of the Series to purchase certain commodities from a third party Seller on immediate delivery and immediate payment terms and will immediately sell such commodities to the GSI on immediate delivery terms but with payment on a deferred basis.”* And further Mr. Asim Khan - MD and head of structuring for Dar Al Istithmar – stated that the paperwork *“clearly shows that Trustee, as seller, sells the commodity to GSI, as purchaser. That’s it....”* and further that: *“Once the commodity is sold to GSI, it’s then at GSI’s discretion to do what it wants to with the commodity”*. This looks like a plain, even boring Murabaha Facility. Yawn.

Mr. Khan further states that: *“the legal documents ... have been reviewed and approved by leading scholars in the Islamic finance industry ...”* and suggests that Mr. Mohammed Khnifer did not fully read or grasp the contents of the available documentation. It is however clear that Mr. Khnifer did read the documentation sufficiently and that he did grasp the implications thereof very well. Actually, Mr. Khnifer voices a concern of a not unimportant part of the industry.

Simple review of legal documentation is hardly convincing. One must go have a look at the intentions of the parties concerned and their factual behavior. It was this look that originated the *‘Tawarruq-debate’* in the first place.



B. Is this an unlawful Tawarruq?

GSI most likely has no intention to keep for US\$ 2 billion commodities on its' account – that actually makes no sense - but likely intends sell them immediately down and use the proceeds in its' day-to-day business: ***"USE OF PROCEEDS - The net proceeds of each Series issued under the Programme will be applied by ... GSI ... for its general corporate purposes and to meet its financing needs"***.

It is clear that there is a second leg attached to the Murabaha and since we talk about the sale of US\$ 2 billion, it would be rather naïve to say that this is not premeditated / organized seamlessly. But would that mean it is unlawful? As Mr. Khan opined: *"Once the commodity is sold to GSI, it's then at GSI's discretion to do what it wants to with the commodity"*. As it would be the case for any other Client, for that matter. So it seems.

In a Regular Tawarruq, the Client (GSI) buys the commodities / assets from the IFI/Financier (the Trustee) with a deferred payment but with the explicit intention to immediately re-sell them for cash. The Tawarruq actually is a simple cash generating structure whereby money is converted to an asset / commodity and then back to cash with a deferred payment. This is deemed lawful as such by most scholars. The OIC Fiqh Academy has declared it however unacceptable for IFI to organize such cash-structures.

Since the Client usually is not familiar with commodities markets, the IFI indeed used to offer this structure as an organized package. The Client had nothing to do but be there at the set date and sign some paperwork in order to walk out with cash and a deferred payment at a cost. The IFI often even imposed a Selling Agency on its' behalf to make sure that all would go as to plan. The client was reduced to a mere spectator *'with benefits'*.

There is no dispute that the IFI is involved in the second leg of this type of structure: after the Murabaha: it operates as agent for the Client in order to sell the commodity down to the Buyer.

Now let us have a look at the probable intention hidden in the GSI-variation.

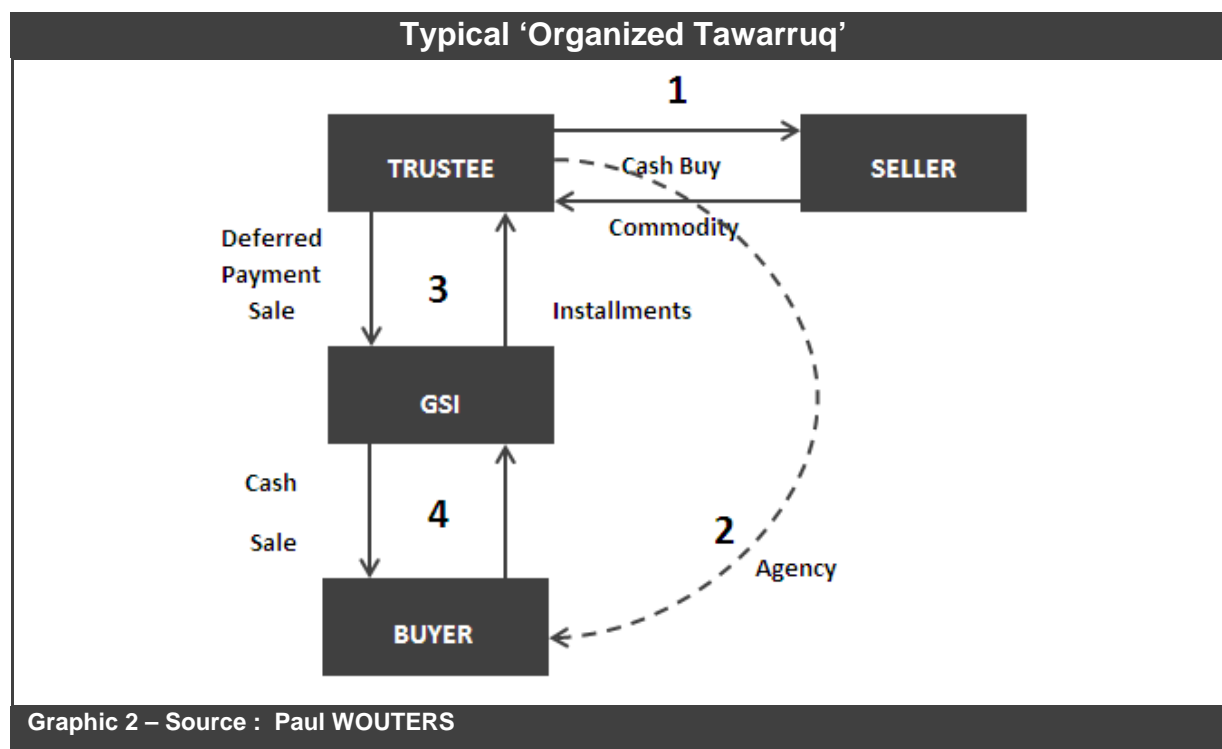
Here, the IFI (the Trustee) is NOT involved in the second sale. But there also is another difference. Except for the legal issues

(signing of papers and legal title), the Trustee is not even involved in the first buy ... that operational right is exclusively transferred to the Client (GSI) : choice of Seller (it is not a buy in the market), negotiation of price and quantity .. Though it is the same as in a Murabaha-to-the-Purchase-Order (usually for individualized assets), it evidently feels different in this particular setup (genus commodities) and obvious the intention of re-sale. Where is the need for the GSI to interfere: the Trustee could simple buy the genus commodities in the market and then sell down to GSI. Unless if GSI actually is 'organizing' the two legged structure by itself and wants full control? It is the old substance-and-form debate bubbling up again.

Let us use a different visual approach and 'walk' through the structure.

The Trustee is only there because GSI has incorporated him and then tied him down: GSI has dictated the Murabaha Facility, the Murabaha conditions and the exclusive agency. If it were not for the formal Shariah compliance only, the Trustee would not be there at all. GSI is professional enough to run both legs of the structure all by itself (buy / sell). Actually, the structure is superfluous. Instead of walking over the conversion cash – commodity – cash, GSI (already in FULL control) could simply take the money from the Trustee at a cost and book it into its accounts for further use... We hereby assume that GSI will not keep the US\$ 2 billion commodities in its accounts, but that it will sell them down in order to use the cash.

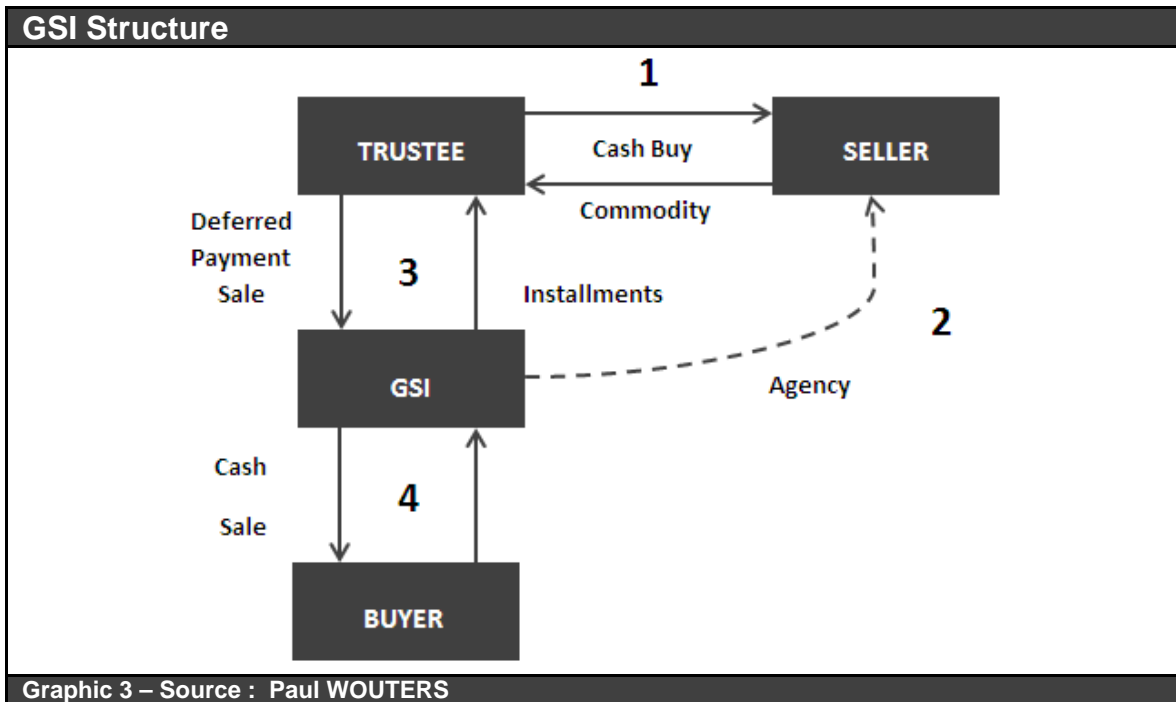
This inversion of powers and organization is moreover fundamentally different from the regular Murabaha Facility where the Financier / IFI is in control, and where Client / IFI will use the proceeds to extend compliant financing to its underlying clients or the Client / Company either uses the proceeds to buy real economy assets or to generate cash for use in its real economy operations. Then again, GSI is a conventional Ribawi lender without Islamic window, also through its clients involved in financing haram industries against interests, so special caution is needed.



The 'organized' Client/GSI became the 'organizer' and the Financier/Trustee is painstakingly aware of that, being reduced to a mere puppet for signatures only, but nevertheless plays along. The community and time will tell if such inversion in the organization, surrender and declared innocence are sufficient to escape the OIC Fiqh Academy ruling and if the rest of the Scholarship are willing to validate.

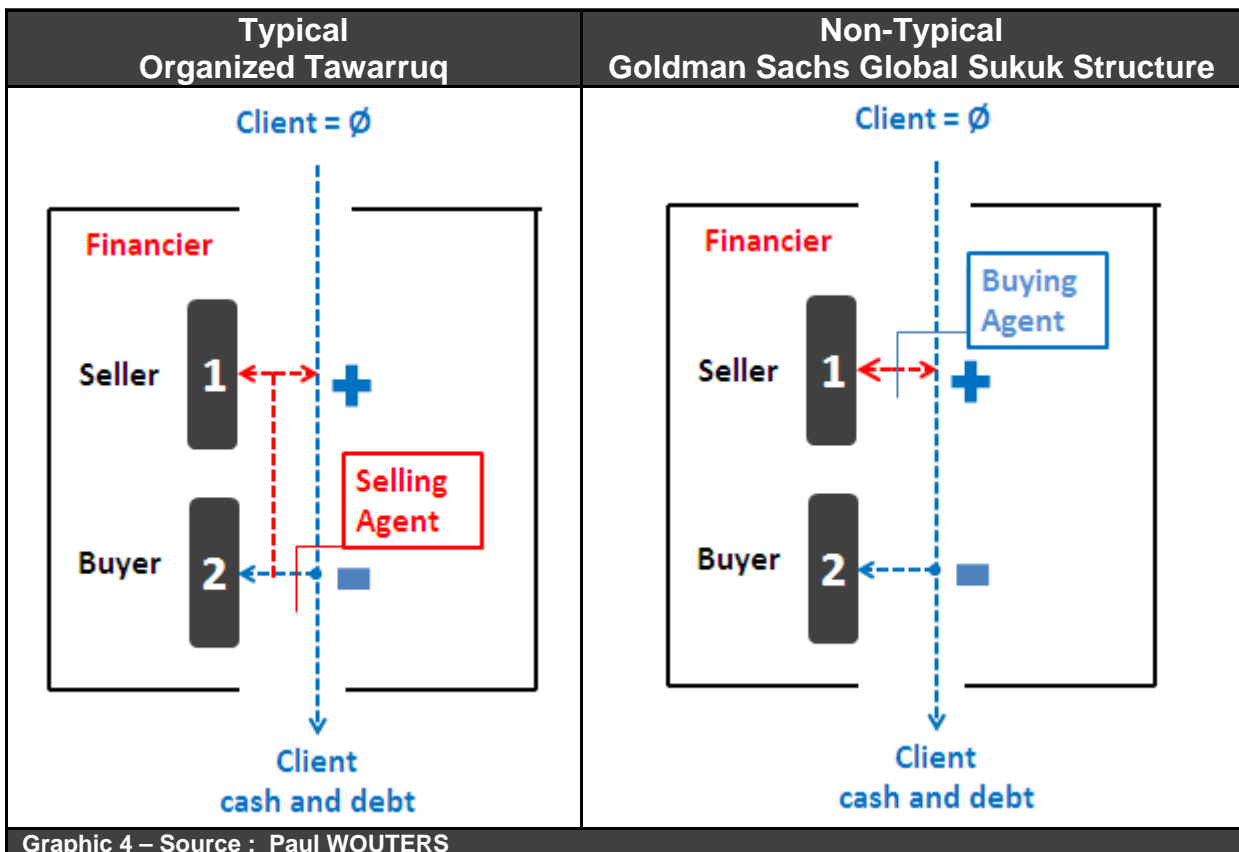
C. The use of the proceeds

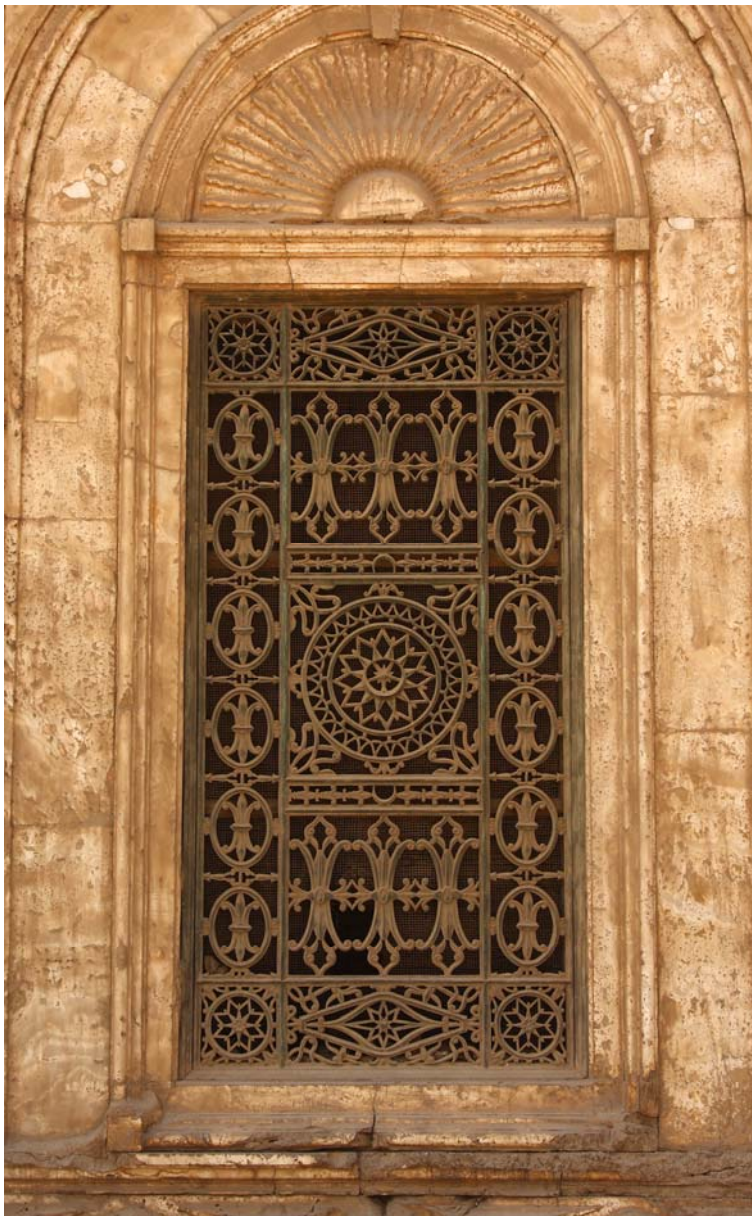
But what happens afterwards with the proceeds of that cash? All that we know is that US\$ 2 billion disappears out of sight into the cellars of the accounting and wheeling's and dealings of a conventional banker, to be used *"only, for its general corporate purposes and to meet its financing needs"*. *"That's it."* Whatever that may be: the acquisition of furniture, the paying of rent or salaries of



personnel to even granting end-of-year bonuses. With some flexibility, that might however also be conventional financing against interests, even mixed with haram industries. Without suggesting any intentional wrongdoing at GSI from an Islamic compliance point of view at all, it does not take rocket science to evaluate the possibilities for a creative mindset, even acting in good faith.

1. Certainly when we take the seeming absence of isolation in an Islamic window/unit into consideration, that vagueness causes concern, next to the fact that the writer did not find in the Base Prospectus:
2. A written commitment of GSI to treat the proceeds of the transaction in a fully compliant way and/or to fully isolate them





out of the day-to-day routine as a conventional banker

A statement from the Shariah Board that there is constant monitoring, reporting, isolating, cleansing ... at the level of GSI. The statement that whatever happens with the commodities after GSI walks out of the Murabaha is their business, is worrying in this respect. The seeming absence of ring-fencing of the monies inside a conventional financier could create a situation where there is no guarantee that the Sukuk and subsequent the Sukuk holders will not be serviced with Ribawi revenues (eventually even originating from haram industries). The simple fact that the question can be posed at all rests problematic for any Islamic investor. This could have been avoided.

D. Listing on the Irish Stock Exchange

The same casual approach is displayed in the Listing on the Irish Stock Exchange. The official position is brief: *"...the offering circular clearly states in several places that the certificates can only be traded on a spot basis and at par value if they are to be Shari'ah compliant ... hence the listing can, practically speaking, only have a taxation and regulatory benefit without impinging on Shari'ah principle in any manner."*

This appears to be – with all due respect – slightly beside the point. Indeed, the only 'practical' intention and result from a listing is that financial instruments actually get traded. And we know for sure that the 'practicality' will materialize where non-compliant Sukuk holders will trade supposedly non-tradable Sukuk on the Irish Stock Exchange at a discount and hence Ribawi. We do not

even want to imagine a compliant investor submit to the temptation to buy/sell at discount on that market. Here is a strong precedent that might set the pace towards new horizons, *"to boldly go where nobody has ever gone before"*.

Before long non-tradable Sukuk might be tailored for non-compliant investors, maybe even targeting haram business and for monies used in Ribawi and non-compliant purposes and we might even see parallel markets develop. With the non-compliant Sukuk market (sic!) in non-tradable Sukuk (sic!) outgrowing the real Islamic market (limited to tradable Sukuk and subject to all the other Shariah impediments) and maybe even setting the pace and trying to dictate conditions (given their potential volume). Such parallel universe can hardly be the intention of Islamic finance.

The writer is not a Scholar or regulator so the reflection and decision on this issue is not his to make. But the prima facie feeling is that that door should be closed. Non-compliant investors should accept all the pre-set conditions of Islamic finance or stay out. To keep the market consistent, it appears to be unacceptable that the rights and duties of parties should depend on their religious conviction. Those rights and duties should be incorporated in the paper and Issuers and Investors should abide by those rules and not offer non-compliant solutions, whatever the cost.

E. Conclusion

At first sight therefor and without having had access to the full documentation it will be clear that Goldman Sachs has delivered a controversial structure, specifically measured towards the needs of the non-compliant Investor and ditto Client and that is to be regretted, since it would not have been too difficult to find common grounds for the industry as a whole:

- a. On paper, the structure indeed is a plain vanilla Murabaha Facility, following which GSI for its own account enters into what

could be seen as a non-organized (and therefor for most Scholars permissible) Tawarruq ;

- b. De facto however, this resembles strongly to a non-typical variation of a an Organized Tawarruq- where the power balance got distorted, shifting the usual control of the Islamic banker / financier towards the underlying client whilst the Islamic financier decides to play along; As said : the market will be divided on its' acceptance or refusal;
- c. The seemingly non-guaranteed isolation of funds in the hands of a conventional banker appears to be even more troublesome. The Sukuk holder may be serviced by the revenues out of unclear income streams that hence might be Ribawi or even stem from haram industries;
- d. The listing on a stock exchange of non-tradable Sukuk maybe is the most interesting '*milestone*'. To open the door to parallel Sukuk markets for the sake of tax advantages might end up to be highly controversial and is potentially extremely consequential. Here lies an even more fundamental debate;

first published in Business Islamica, Volume 6, issue 1, January 2012





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The Role of the Shariah Advisory Board in Islamic Finance

By Dr. Andreas Jobst

Definition

The *shariah* board is a key element of the structure of an Islamic financial institution, carrying the responsibility of ensuring that all products and services offered by that institution are fully compliant with the principles of *shariah* law. The role of the board also involves the reviewing and overseeing of all potential new product offerings. Additionally, the board may be called on to make a judgment on individual cases referred to it, relating to whether specific customer business requests are acceptable to the institution. Given that *shariah* law is derived from studies of both the Qur'an and the Sunna, inconsistencies can occur in the interpretations of precisely where the boundaries of compatibility lie, with the result that some *shariah* boards may deem unacceptable proposals that may be approved by other boards.

With demand for *shariah*-compliant financial services growing at a faster rate than mainstream banking, the board can also play a vital role in helping to develop new procedures and products to position the institution to adapt to industry trends, and customers' expectations. The board should also be closely involved in overseeing *shariah*-compliant training programs for employees. Board members also participate in the preparation of an annual investors' report on the bank's balance sheet, with particular reference to its compliance with *shariah* principles.

Given the importance of the role of the *shariah* boards in ensuring the conformity of the institution's offerings, boards typically include acknowledged experts, such as contemporary Islamic scholars. It is common for such scholars to sit on the *shariah* boards of multiple institutions; some senior scholars may sit on the boards of 15 or more institutions. The activities of individual boards are supervised by an independent body, the International Association of Islamic Bankers. This association's Supreme Religious Board examines the judgments, or *fatwas*, of individual *shariah* boards to ensure conformity to *shariah* law.

Advantages

- The board's role is well defined, in ensuring that the institution's activities are fully compliant with *shariah* law is its responsibility.
- Given the speed of change in the financial services industry, the board plays a

vital role in advising the institution as to the feasibility of potential new products and services.

- *Shariah* audits can also be undertaken in conjunction with the board to give greater reassurance to customers.

Disadvantages

- *Shariah* law is highly subject to interpretation, particularly in relation to its significance in the demand-driven financial services industry.
- Inconsistencies occur between different boards in their interpretations of what is and what is not permissible.
- Precedents are not binding in Islamic jurisdictions, with the result that personnel changes to a board may shift the balance of collective opinion over time.

Action Checklist

- Some Islamic investors may seek reassurance that products and services which have been approved by *shariah* boards outside their own jurisdictions are truly compliant with their own *shariah*-compliant objectives.
- Given the complexity of some Islamic *sukuk* structures (the arrangements established to create the Islamic equivalent of a bond), it is important that *shariah* boards are given the considerable resources needed to ensure the true compliance of these instruments.

Dos and Don'ts

Do

- Institutions must ensure that *shariah* boards have a high level of autonomy and independence, protecting them from commercial pressures.
- *Shariah* boards must be well resourced to ensure full compliance with both legal and religious requirements.

Don't

- Don't expect every board member to be an expert on every aspect of Islamic finance. While *shariah* boards require a range of members with a diverse range of religious and financial knowledge, institutions should not expect individual board members to be experts in every aspect of their wide-ranging brief. However, board members with specialized knowledge of particular aspects can work very effectively on sub-boards related to particular initiatives or projects.
- Don't overlook the need to ensure that *shariah* board members are well informed about developments and trends in the global financial marketplace.





Abdullah Hasan

Abdullah Hasan graduated with an Imam Diploma, BA and Ijaza Aliyah in Islamic Studies from the European College for Islamic Studies (Wales). He holds a diploma in Arabic from Zarqa Private University (Jordan) and studied with some of the Scholars of Jordan including Shaykh Ahmad Hawwa [son of the late Scholar Syed Hawwa , Syria], and Jamal Ud Din Basha.

Maqasid al-Shari'ah and the Language of the Friday Khutbah

By Abdullah Hasan

Does the Friday Khutbah (sermon) need to be in Arabic?

Q3) What Language should the Friday sermon be delivered, do you have to deliver it in Arabic...and is the Khutbah going to be valid if it's not in Arabic?

Introduction:

According to the overwhelming majority of the *Fuqaha* (Jurists/Scholars), the Friday prayer (*Salatul Juma'ah*) is mandatory upon all able, adult and sane male Muslims. Part of fulfilling this obligation is that they encourage the people to listen to the sermon which is delivered by the *Imam* before the actual prayer that consists of two units of prayer. These two obligatory units of prayer take the place of the noon prayer (*dhuhr*). It seems from the writings of the (classical) *Fuqaha* (Jurists) that they all agree that it is preferable to deliver the Friday sermon in Arabic, however, they differed whether that it is a condition of the sermon with the exception of the recitation of the Qur'an among those who say that delivering the sermon in Arabic is a *rukun* or a pillar of the *Khutbah*. This will be clarified in the course of the proceeding discussion on this issue.

The Objective of the Friday Sermon:

One of the main *maqсад* (objectives) or wisdom of the sermon is to admonish and remind the audience of their responsibilities towards their Creator and to each other, and to remind them and admonish them of the Hereafter. Thus the Friday sermon acts as an educator for the audience.

Imam al-Qarafi wrote, 'Since the hearts become rusty due to forgetfulness and sins, like iron becomes rusty, Divine Wisdom has decreed that once in a week one receives an admonition, and that the community gathers together so that the rich may get an admonition (reminder) from the poor, the strong from the weak, and the pious from the impious. For that same reason, people are asked to come from all corners of the world to gather for the pilgrimage once in their lives'.

The Dilemma:

The controversy surrounding the language of the *Khutbah* (the permissibility or not of delivering it in a language other than Arabic) has been discussed by the scholars in the past and continues till today and it seems it will not cease very soon.

To discuss and learn about this matter and adopt any of the opinions expressed by our scholars is welcomed and encouraged. However, unfortunately; the discussions in some Mosques, university and college Islamic Societies tends to, quite frequently, compel people who hold opposing views to harbour animosity against each other.

Even though our scholars, past and present, have held and have espoused opposing views in most of the issues pertaining to Islamic jurisprudence (*fiqh*), they did not hate or vilify each other as is the case with some students and eager Islamic

workers today. All the scholars showed respect and loved one another. And this should be the condition of all Muslims especially since loving and wanting good for one another is an obligation in Islam.

Therefore, we should respect one another even if we disagree on these matters, and try our best to sincerely search for the best position which serves our interest as Muslims striving to uphold the religious duties and also propagating the message of Islam to others, Muslims and non-Muslims alike.

Answer:

The scholars have expressed three main views in regards to the permissibility or not of delivering the Friday *Khutbah* (sermon) in languages other than the Arabic language. The proceeding paragraphs clarifies the position of the scholars of each school of thought along with a brief analysis of the evidences presented and finally concluding with the opinion I view is most sound and correct in our context and circumstances in the U.K.

First view:

For those who are able, it is a requirement that the sermon is in the Arabic language.

However if all the audience do not know the Arabic language, the Imam should deliver the *Khutbah* (sermon) in the language understood by the audience.

This is an opinion in the *Shafi'* school of thought. It is also an opinion expressed by some *Hanabilah* (Hanbali school of thought).

Evidences provided by this group:

1. They said it is impermissible to deliver the sermon in another language other than Arabic even with the ability to do so, and their reasoning is the following: They made *Qiyas* (analogy) with the Qur'an, the Qur'an is not to be recited except in Arabic, so is the sermon, and it must be delivered only in Arabic.

Analysis:

The words of the Qur'an are immutable and it is a proof of the message of Islam. The Qur'an's miraculous nature cannot be achieved in any other foreign language. Its *i'jazis* in its wording and structure. The objective (*maqsad*) of the Friday sermon is to remind, admonish, praise Allah, and to send salutations upon the Prophet (peace be upon him); and because the Qur'an is only considered to be valid in its wording and structure without the meaning, it cannot be recited except in Arabic.

However, the sermon is valid by conveying the meaning; therefore it can be delivered in any language.

Also the Prophet (peace be upon him) did not have a prescribed sermon he would deliver every week. The words were relevant to the context he delivered the sermon.

2. They also argued that it is permissible to deliver the sermon in another language other than in Arabic without the ability deliver it in Arabic because the objective of the sermon is to remind and admonish, and this can be achieved in any language other than Arabic.

Analysis:

If the objective (*maqsud*) of the Friday sermon is to remind and admonish the listeners it would be permissible to deliver it in a foreign language even with the ability to deliver it in Arabic and even if the listeners do not know the Arabic language. Therefore, the proof is against them.

Second view:

It is a requirement that the Friday sermon is in the Arabic language even if the audience do not understand the Arabic language.

This is the opinion of the *Maliki* school of thought. It is also the famous opinion of the *Hanbali* school of thought.

Evidences provided by this group:

They predicated their view on the following evidences:

From the Sunnah:

The Prophet (peace be upon him) said, 'pray as you have seen me pray'.

They said that the Prophet (peace be upon him) commanded the companions to pray as he prayed, and he would deliver the sermon in the Arabic language, therefore the Friday sermon must be delivered in Arabic in accordance with this commandment.

Analysis:

The *Khutbah*(sermon) is not part of or a condition of *Salah*. Therefore, it can be delivered in any other language. Also, if this hadith is used as evidence at this instance then we have to make obligatory many of the other actions (which are not essential) compulsory. For that reason, this hadith cannot be used as evidence in this instance.

From the Athar (practice of the Salaf):

They said that the practice of the *Salaf* and the *Khalaf* was to deliver the Friday sermon in Arabic and therefore this must be continued.

Analysis:

The action of the *Salaf* is not a proof in *Shari'ah*. It has been reported that some of them delivered the *Khutbah* in a different language. The predicament would be who among the *Salaf* do we follow?

From logic:

They argued that the *Khutbah* is a prescribed reminder and it is a condition that it is delivered in Arabic like *tashahud* and the *takbiratulihram*.

Analysis:

The *takbiratulihram* and *tashahud* have prescribed wordings in the *Shari'ah*, as for the sermon there are no prescribed sermon handed down to us from the Prophet (peace be upon him). As mentioned above, the objective of the *Khutbah* is to remind and admonish and this can be achieved through any language.

Third view:

It is preferred that the Friday sermon be delivered in the Arabic language.

This is the opinion of the *Hanafi* school of thought; they allowed the sermon to be delivered in other than the Arabic language. It is also an opinion of the *Shafi'* school of thought.

The evidences provided by this group:

The objective of the Friday sermon is to remind and admonish the audience and that can be achieved through



any language. Therefore, it is perfectly valid for an Imam to deliver the Friday sermon in the language that people will understand and hence achieve the overall *maqsad* of reminding and admonishing

Analysis:

It may be argued that the Arabic language is more eloquent and more succinct in achieving the objective of admonishing. However, this would seem strong if the audience understand the Arabic language otherwise listening to the *Khutbah* in their mother tongue would achieve more benefit and achieve the overall *maqsad* successfully.

Summary of arguments proposed by the opponents:

The main cause of differences in this regard stems from whether the *khutbah* is considered to be equivalent to the two *raka'ah* of prayer or that the *Khutbah* holds a status like the prayer. After analysing the evidences provided by the various

scholars it appears that those who view that the *Khutbah* is different from prayer are more correct and sound. Following is a brief summary of their arguments:

1. A person can have a valid *Jumu'ah* prayer even if he or she misses the *Khutbah*, as long as the person catches at least one *rak'ah* of the prayer. Thus, hearing the *Khutbah* is not essential for the validity of the *Jumu'ah* prayer.
2. The Messenger of Allah would occasionally interrupt the *Khutbah* to speak to a member of the congregation or descend from the pulpit to attend to an issue and then

return and complete the *Khutbah*. Such acts are not permitted during the prescribed prayers.

3. Allah states: "Never have We sent a Messenger but he has addressed his people in their language that he may fully expound his Message to them." (14:4)

This encourages advising the people in the language they understand. There would be no benefit in them listening to an Arabic *Khutbah* which they do not understand and cannot take any lessons from it to practice and implement in their daily lives.

4. The Messenger of Allah sent letters in Arabic to the rulers of other nations. He knew that they did not speak the Arabic language, and he knew that they would have those letters translated into their languages so they could understand them.

The standing Committee for Academic Research and the Issuing of Fatwas in Saudi Arabia have ruled: 'The Imam giving the *Khutbah* should do that which best suits the interests of the people he is addressing. If it is best to give the *Khutbah* part by part, in Arabic and then translated into another language, then he should do that. If it is best to translate the entire *Khutbah*, after giving the *Khutbah* in Arabic or after the prayer, then he should do that. And Allah knows best.

Correct position:

The most correct view, and Allah knows best, in this matter is the opinion of the *Hanafi* school of thought and the *Shafi'* school of thought (in one opinion) that, although it may be

preferable to deliver the Friday sermon in Arabic, nevertheless, it is perfectly permissible to deliver the sermon in any language which is conducive to achieving the overall *maqsad*(objective) of admonishing the audience. If, for example, the preponderance number of the audience only understands the English language, the sermon should be delivered in English. If the audience speak and understand only Bengali, the sermon should be delivered in Bengali and so on and so forth.

Conclusion:

As with other issues (especially the *furū'* - subsidiary issues) in Islam there is and will be the inevitable issue of people differing with each other. Differences occur due to the different levels of understandings, intellectual capacity and ability amongst individuals and scholars. Differences took place between the Angels, the Prophets, in the Prophet's (peace be upon him) and the Companions era, it took place between the first three generation, between the illustrious schools of thought, and the situation will be thus until the Day of Judgement.

As believers we must overlook these valid differences and endeavour to develop love and unity even with these differences between us as Imam Rida stated:

نتعاون فيما اتفقنا فيه ويعذر بعضنا بعضا فيما اختلفنا فيه

"We must cooperate in matters wherein we agree and excuse one another in those wherein we disagree." (*Overlook legitimate differences*).

Finally, I'll conclude with a beautiful statement and incident that took place between Imam *Shafi'* and another scholar he disagreed with which exemplifies how the scholars of the past dealt with differences:

Yunus As-Sadafi said:

ما رأيت أعمق من الشافعي، ناظرته يوماً في مسألة ثم افترقنا، ولقيني فأخذ بيدي
يا أبا موسى ألا يستقيم أن نكون ثم قال:
إخواناً وإن لم نتفق في مسألة؟

"I have never seen a more intelligent (wiser) man than Al-Shafi'i, I was arguing with him one day about an issue and then we departed each other. Thereafter, he met me (another day), held my hand and said: "O Abu Musa is not proper that we be brothers, even if we disagree about something?"





Sayyid Muhammad Rizvi

Born in 1957) is a Twelver Shi'ah scholar, a speaker, as well as an author. He is the second-born son of Sa'eed Akhtar Rizvi. In 1972 he went to Qom for religious studies and in 1982 he returned to India. He moved to Ontario, and since 1996 he has been the Imam of the Islamic Shia Ithna Asheri Jamaat of Toronto.

Khums in the Holy Kuran and History

By Mufti Sayyid Muhammad Rizvi

Khums" literally means "one-fifth or 20%". In Islamic legal terminology, it means "one-fifth of certain items which a person acquires as wealth, and which must be paid as an Islamic tax". The Qur'ân mentions it in the following verse: Know that whatever of a thing you acquire, a fifth of it is for Allah, for the Messenger, for the near relative, and the orphans, the needy, and the way-farer...(8:41) In this verse, the word "ghanimtum" has been used which has been translated as "you acquire". As explained above, it means "certain items which a person acquires as wealth." What are these certain items? According to the ahâdîth of the Imams of Ahlu 'l-bayt, the items which are eligible for khums are seven:

1. the profit or the surplus of the income.
2. the legitimate wealth which is mixed with some illegitimate wealth
3. mines and minerals
4. the precious stones obtained from sea by diving.
5. treasures
6. the land which a dhimmi kâfir buys from a Muslim
7. the spoils of war

However, there are some people who interpret the word "ghanimtum" as "whatever of a thing you acquire as spoils of war," thus confining the obligation of khums to the spoils of war only. This interpretation is based on ignorance of the Arabic language, the history of khums, the Islamic laws and of the interpretation of the Qur'ân.

To make this point crystal clear, I would like to quote the following arguments from my father, 'Allâmah Sayyid Saeed Akhtar Rizvi. In reading the following paragraphs, remember that the word ghanimtum has been derived from al-ghanîmah.

(A) The Meaning Of "Ghanimtum"

"The famous Arabic dictionary of al-Munjid (by Father Louis Ma'l-f of Beirut) says, 'al-ghanim and al-ghanimah means: (a) What is taken from the fighting enemies by force. (b) All earnings generally...Furthermore, the saying al-ghunm bi 'l-ghurm means that the profit stands against expenses, i.e., as the owner is the sole proprietor of the profit and nobody shares it with him, therefore only he bears all the expenses and risk.' This implies that in Arabic language al-ghanîmah has two meanings: one the spoils of war, and the other 'profit'. The above quoted proverb also proves that 'profit' is not the uncommon meaning. When a word in the Qur'ân can be interpreted in more than one way, it is incumbent upon the Muslims to seek guidance from the Prophet and the Ahlu 'l-bayt. Otherwise, they would be guilty of tafsîr bi 'r-ra'iy (interpreting the Qur'ân according to one's own personal views); and this is a sin which pushes the sinner into jahannam.

(B) The History Of Khums

"Khums is one of those things which was introduced by 'Abdu 'l-Muttalib, the grandfather of the Prophet, and continued in Islam. Acting upon a command of God given to him in dream, when 'Abdu 'l-Muttalib rediscovered the well of Zamzam, he found in it many valuable things which were buried in it in the very remote past by the Ismailites when they feared that their enemies would usurp them.

When 'Abdu 'l-Muttalib found that buried treasure, he gave away one-fifth (literally, khums) in the way of God and kept the remaining four-fifths to himself. Then it became a custom in his family; and after the hijrah of the Prophet, the same system was incorporated in Islam. Thus the first khums was not given from the 'spoils of war', but from a buried treasure (which is one of the seven items eligible for khums.)

(C) The Islamic Laws

"Not a single sect of Islam confines the meaning of ghanimah to the 'spoils of war'. In addition to the 'spoils of war' the following items are subject to khums:

(a) Minerals: eligible for khums in Shî'ah and Hanafi sects. (b) Buried treasure: eligible for khums in all Muslim sects (that is, Shî'ah, Hanafi, Mâlîki, Hanbali and Shâfi'iy).

(D) The Interpretation Of The Qur'ân

"As mentioned earlier, the interpretation of the Qur'ân must be based on the teachings of the Ahlu 'l-bayt. The word ghanîmah in the verse under discussion has clearly been interpreted as 'al-fâ'idatu 'l-muktasabah — the earned profit' by our Imams.

"To conclude, we can say that the word ghanîmah was never treated as being confined to the 'spoils of war' by any sect of Islam; and as far as our Imams are concerned, it meant many things besides the spoils of war right from the day of Imam 'Ali (peace be upon him), as the authentic traditions show."

What has been quoted above can also be substantiated from the practice of the Prophet of Islam himself. For example, when the Prophet sent 'Amr bin Hazm to Yemen, he wrote instructions for him in which, among other things, he says, "...to gather the khums of Allâh

from the gains [of Yemenis]." And when the tribe of Bani Kilâl of Yemen sent its khums to the Prophet, the latter acknowledged it by saying, "Your messenger has returned and you have paid the khums of Allâh from the gains (al-ghanâ'im)." It is interesting to note that the Bani Kilâl obeyed the Prophet's order and sent the khums of its gains to him while no war had taken place between the Muslims of Yemen and the unbelievers. This is a clear indication that khums was not restricted by the Prophet to the spoils of war.

The importance given by the Prophet to the issue of khums can also be seen in his advice to the delegation of Bani 'Abdu 'l-Qays. It seems that Bani 'Abdu 'l-Qays (which was a branch of Rabi'ah) was not a very strong tribe. Moreover, in order to travel to Medina, they had to cross an area inhabited by the Muzar tribe which was against the Muslims. Consequently, the Bani 'Abdu 'l-Qays could not travel safely to Medina except during the months in which warfare was forbidden according to the Arab custom.

Once a delegation from Bani 'Abdu 'l-Qays came to Medina and said to the Prophet, "We cannot come to you except in the harâm months [when warfare is forbidden], and there are between us and you the unbelievers of Muzar. Therefore, please give us some advice that we may give to those whom we have left behind and that we may enter the Paradise [by acting on it ourselves]." The Prophet advised them to believe in One God, establish prayer, pay zakât, fast in the month of Ramadhân, and "to pay khums (one-fifth) of whatever you gain." The circumstances of the Bani 'Abdu 'l-Qays —they were weak and small in number, and were thus prevented from travelling safely to Medina— leaves no room for interpreting the application of khums in the above hadith on spoils of war exclusively.





Adnan Khan
Writer and Journalist

Islam and Spirituality

By Adnan Khan

The origin of the use of the word 'spirit' is found in the discussions that took place between people who believe in the existence of God, frequently using words such as 'spirit' and 'spirituality' to articulate the effect of a creator.

One of the most misunderstood areas of Islam amongst the Ummah is this very topic of spirituality with the Muslim Ummah today holding a wide range of varying views on what spirituality is and how it is to be interpreted.

It must however be asked as to whether the issue of spirituality in Islam is something that has always existed. Is the discussion of spirituality part of Islam or a separate universal topic?

Spirituality: Past and present

The first time spirituality was discussed amongst the Muslims was when they encountered Hindu philosophy. Hindu philosophy advocates ascetism and renunciation of the world. Comparisons were made with zuhd (pious austerity), a well-known status which has been reported in several ahadeeth. It is from this comparison that the 'Sufis' emerged.

Throughout the medieval ages, spirituality came to be defined, due to the history of Christianity, in Europe. The Christian Church maintained that man embodies both spiritual ascension and physical yearning and that life includes both the materialistic and the spiritual aspects. They advocated that the tangible reality contradicts the unseen, and that spiritual ascension cannot be together with physical yearning, and that matter is separate from the spirit. They contended that these two sides are separated from one another due to their fundamental contradiction in nature.

This understanding led to an historic conflict in Europe which eventually saw the removal of the Church as an authority and its replacement by man-made system and laws. This in turn led to the industrial revolution where vast leaps were made in technology, allowing mass consumption on a scale never seen before. It is no surprise, therefore, that this has created a world where material gratification is seen as the ultimate ideal. The materialisation of society has led many to accumulate vast amounts of wealth and still unable to fulfil their spiritual void, famous examples being Madonna turning to Jewish asceticism and Tom Cruise turning to Scientology. Both these personalities are considered to have achieved the ultimate level of sensual pleasure.

Islam and Spirituality

Scholars in Islamic history did not write at length about spirituality as it was never a discussion. Some discussion did take place when Islam came into contact with Hindu philosophy due to elements of the new thinking i.e. Hindu asceticism being espoused by some.

The issue of spirituality can only refer to two matters, either the reality of the created i.e. who created all the creation and the relationship between the creator and the created, or it can be the ruh, translated often as 'soul'.

The ruh definitely exists and is proven in the definite Qur'anic texts, and hence Muslims are obliged to believe in it. The word spirit or 'ruh' is a common term like the word 'ein' in Arabic, a word that has multiples meaning; such as 'water source', 'eye', 'spy', 'gold', 'silver' amongst others. The word ruh appeared in the Qur'an with numerous meanings, such as the secret of life;

وَيَسْأَلُونَكَ عَنِ الرُّوحِ قُلِ الرُّوحُ مِنْ أَمْرِ رَبِّي وَمَا أُوتِيتُمْ مِنَ الْعِلْمِ إِلَّا قَلِيلًا

"And they ask you about the ruh. Say: The ruh is one of the commands of my Lord, and you are not given aught of knowledge but a little." [Al-Israa, 17:85]

In Islam, spirituality is defined as the linking of actions to the purpose of life. So for instance, a Muslim's purpose of life is to worship Allah, hence spirituality in this sense is linking the actions of an individual to the purpose of their life. Actions on their own, without using this framework, are just that - actions. They are material constructs of time, space and objects.

So somebody could pray their salah without ever thinking about the words they are reciting and with these words having no impact upon them. This prayer cannot then be described as spiritual because it has become robot-like. It is just the same as eating a certain meal, or going on a train, as there is no link to the purpose of life. A Muslim is he who does actions to seek the pleasure of Allah and to draw nearer to Him. By this definition, all actions undertaken for the pleasure of Allah are spiritual because they link the material action with the purpose of life.

This why sexual relations within marriage, the most material of actions, becomes a spiritual action when linked to Allah سبحانه وتعالى commands. Spirituality has often been seen as an intangible sensation, based on the Christian precept of the Holy Spirit inspiring morality and hence, actions. This understanding is wholly inconsistent and at complete contrast with the way Islam views spirituality because this view is subjective, whereas the Islamic view is objective because it is from Allah.

There are two extremes of practising spirituality. Firstly, there are those who are highly influenced by and inclined to emotional spirituality and to ignoring the aspects of life perceived to be 'materialistic', preferring the spiritual value over the materialistic one. So they accordingly turn to prayer (individual ibaadah) and renounce the material world and its aspects; they neglect life because it is material and under such a common definition and understanding, it becomes obvious that religion is bound to be a personal matter in every sense of the word. When this becomes common in people's thoughts, the standard of living in the society they

live in declines as they seek only to perfect their character and morals. On the other extreme are those who are highly influenced by the material world and are taken over by their whims and neglect the spiritual value, preferring the materialistic value and making their purpose in life to achieve it.

When Islam speaks of zuhd (living an austere life) in this world, this means that one should not take the world as one's goal in life, for example setting the procurement of wealth as the highest goal. It does not mean that Muslims should not enjoy the good and halaal aspects of life. This is contrary to ascetism and renunciation of the world, both of which require the abandoning of pleasures and delights in life despite having the ability to attain them. This contradicts Islam.

It is also wrong for Muslims to evaluate actions from a deen-and-dunya perspective (matter and spirit). Instead they must be evaluated by their Creator who is Allah سبحانه وتعالى. The Shari'ah or laws of Allah has demonstrated the solutions to life's problems through obedience to Allah's commands and prohibitions. Allah has also shown Muslims the action that achieves the spiritual value which is the Fard (obligatory) and Mandub (recommended) worships.

The best example we have of this is that of the Sahabahs or Companions of the Prophet. They took part in wars, governed the lands of the Muslims, engaged in business and trade and all these actions came under the banner of spirituality. If we begin to separate matters into 'deeni' and 'dunya' matters, we run the risk of compartmentalising Islam and at the very least losing out on the reward of everyday actions. At its worst, this mentality will lead to secularism where we completely separate our actions from our purpose of life, leading to a compromise of our religion.

Inevitably we must realise our relationship with Allah سبحانه when undertaking any action, whether it is spiritual or material, thus making sure that our actions are in accordance to the commands and prohibitions of Allah سبحانه وتعالى and ultimately attaining his pleasure.





The Art of Islam

The art of Islam is essentially a contemplative art, which aims to express above all, an encounter with the Divine Presence. The origin of Islamic art has often tried to be explained through tracing it back to some precedent in Byzantine, Sassanid, Coptic or other art, yet what is lost sight of, is the intrinsic and original unity of Islamic art and thus the 'seal' that Islam conferred on all borrowed elements.

In order to understand the essence of Islamic art it is first necessary to realise the different conceptions of art itself. From the European point of view, the criterion of an artistic culture lies in its capacity to represent nature and even more in its capacity to portray man. From the Islamic point of view, on the contrary, the main scope of art is not the imitation or description of nature - the work of man will never equal the art of God - but the shaping of the human ambience. Art has to endow all the objects with which man naturally surrounds himself - a house, a fountain, a drinking vessel, a garment, a carpet - with the perfection each object can possess according to its own nature. Islamic art does not add something alien to the objects that it shapes; it merely brings out their essential qualities.

In traditional art, beauty and use go hand in hand; they are two inseparable aspects of perfection, as envisaged by the Prophetic tradition: 'God has prescribed perfection in all things.' It is connected with the concept of *ihsan* as set forth in the **Hadith of Gabriel**, whereby the religion rests on three fundamental principles: Islam (submission to the Divine Will), Iman (faith), and Ihsan. Ihsan may be translated as 'spiritual virtue' or simply virtue, and includes the ideas of beauty and perfection. More exactly it means inward beauty, beauty of the soul or of the heart, which necessarily emanates outwards, transforming every human activity into an art and every art into the remembrance of God.

If we consider inward beauty and outward beauty, we find the latter has its origin in the former. To the extent that human activities are integrated into Islam, they become a support for beauty - a beauty which in fact transcends these activities because it is the beauty of Islam itself. This is particularly true of the fine arts, as it is their role to manifest the hidden qualities of things. The art of Islam receives its beauty not from any ethnic genius but from Islam itself and just as Islamic science has its roots in the Qur'an and hadith, so the typical forms of Islamic art are rooted in the spirit of Islam.

An important lesson that Islamic art provides is in challenging the notion that works of art from earlier centuries need to be studied as historical 'phenomena', which belong to the past and have very little to do with the future. Against this relativistic point of view, for the Muslim, the great mosques of Kairawan, Cordoba, Cairo, Damascus, Isfahan, Herat and so on belong as much to the present as to the past, insofar as it is possible to realise the state of mind of those who created them, and thus what is timeless in the art of our spiritual ancestors is the roots in Islam itself. (Source: Burckhardt T, *Mirror of the Intellect*)

CALLIGRAPHY

"Wisdom reveals herself in the dialect of the Greeks, the craftsmanship of the Chinese, and the language of the Arabs."

(Arab Proverb)

For nearly 14 centuries, calligraphy has been the most important medium of artistic expression in Islamic culture. This is due to it being the noblest of the visual arts in the world of Islam, for it is the writing of the Qur'an that is sacred art *par excellence*. It plays a part more or less analogous to that of the icon in Christian art, for it represents the visible body of the Divine word. Thus calligraphy itself was



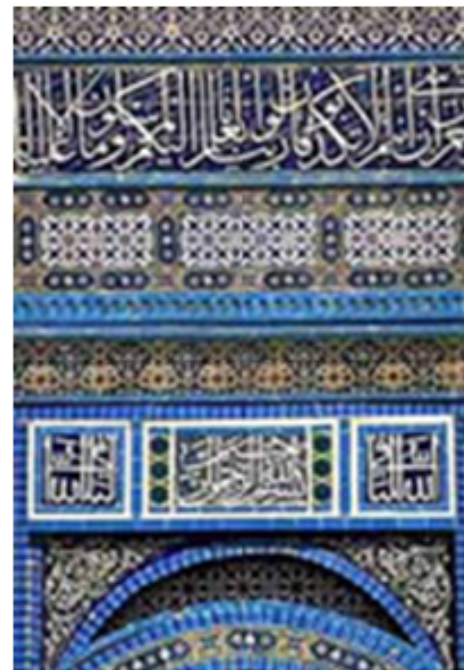
considered a major art - great calligraphers, who introduced new styles of forming the script, were more famous than great painters, and calligraphy was not only the affair of the craftsman, it was also practiced by many learned people and even by sultans.

Arabic is the language of Islam. It is the language in which the Holy Qur'an, Islam's sacred scripture, was revealed to the Prophet (pbuh) by God; thus, daily Muslim life vibrates with its sacred formulae. Quranic inscriptions, whether engraved in stucco, carved in wood, or chiselled in ceramic tiles, has something of the holiness of the Quranic words which passes over into the writing that embodies them. Arabic is written from right to left; this is as much to say that the writing runs back from the field of action towards the heart. It is the language which binds Muslims of all times and places together in a single cohesive brotherhood.

Over the centuries, many different scripts have evolved in various regions of the Muslim world. Its smooth linking of its characters when forming words has added to the sense of continuity of design, which parallelism of form has already produce. A band of arabic writing marching across

a door or circling around a platter could thus replace a border in creating the impression of an integrated unit but without putting an end to its sense of indefinite extendability. The friezes of inscriptions crowning the inner walls of a hall of prayer, or surrounding mihrab, recall to the believer, as much by their rhythm and their hieratic form as by their meaning, the majestic and forceful current of the Quranic language.

This preoccupation with beautiful writing extended to all arts-including secular manuscripts; inscriptions on palaces; and those applied to metalwork, pottery, stone, glass, wood, and textiles-and to non-Arabic-speaking peoples within the Islamic commonwealth whose languages-such as Persian, Turkish, and Urdu-were written in the Arabic script.

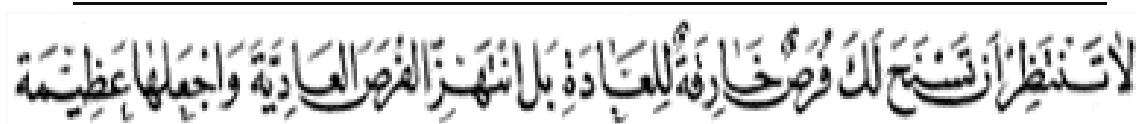


Kufic Script



The term Kufic means "the script of Kufah," an Islamic city founded in Mesopotamia (modern day Iraq) in AD 638. Kufic is a more or less square and rectilinear script characterized by its heavy, bold, and lapidary style. Its letters are generally thick, squat, and unslanted, and it was particularly suitable for writing on stone or metal, for painting or carving inscriptions on the walls of mosques, and for lettering on coins. Professional copyists employed a particular form of Kufic for reproducing the earliest copies of the Qur'an that have survived. The writing is frequently large, especially in the early examples, so that there may be as few as three lines to a single page. The script can hardly be described as stiff and angular; rather, the pace is majestic and measured. With the high development of Arabic calligraphy, Kufic writing became an exceptionally beautiful script. From it, there were derived a number of other styles, chiefly medieval, in North and Central Africa, Spain, and northern Arabia.

Naskhi Script



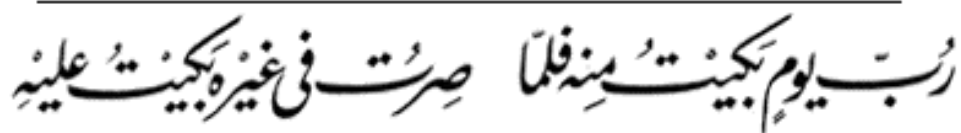
Naskh, which means "copying," was developed in the 10th century, and refined into a fine art form in Turkey in the 16th century. Since then it became generally accepted for writing the Qur'an and has remained to be perhaps the most popular script in the Arab world. It is a cursive script based on certain laws governing the proportions between the letters. Naskh is legible and clear and was adapted as the preferred style for typesetting and printing. It is a small script whose lines are thin and letter shapes are round. Naskhi was always employed chiefly for writing on papyrus and in time, it evolved into innumerable styles and varieties, including the ta'liq, the rika', and the diwani scripts, and became the parent of the modern Arabic writing.

Thuluth Script



The Thuluth script was first formulated in the 7th century during the Umayyad caliphate, but it did not develop fully until the late 9th century. The name means 'a third' -- perhaps because of the proportion of straight lines to curves, or perhaps because the script was a third the size of another popular contemporary script. Though rarely used for writing the Holy Qur'an, Thuluth has enjoyed enormous popularity as an ornamental script for calligraphic inscriptions, titles, headings, and colophons. It is still the most important of all the ornamental scripts and was used on some of the functions of the early Kufic script; it was used to write surah headings, religious inscriptions, and princely titles and epigraphs. It was also used for many of the large copies of the Koran produced from the 13th century.

Ta'liq Script



The term ta'liq means "suspension" and aptly describes the tendency of each word to drop down from its preceding one. Designed specifically to meet the needs of the Persian language, Ta'liq was used widely for royal as well as daily correspondence until the 14th century, when it was replaced by Nasta'liq.

Nasta'liq was the predominant style of Persian calligraphy during the 15th and 16th centuries. Nasta'liq is a combination of naskhi and ta'liq. Like ta'liq, this is a fluid and elegant script, and both were popularly used for copying Persian literary works.

Diwani Script



The Diwani script is a cursive style of Arabic calligraphy developed during the reign of the early Ottoman Turks (16th-early 17th century). As decorative as it was communicative, Diwani was distinguished by the complexity of the line within the letter and the close juxtaposition of the letters within the word. Diwani is excessively cursive and highly structured with its letters undotted and unconventionally joined together with no vowel marks.



Issue 2

Spring 2012 | Quarterly

Publishing House

Shirkah Finance Ltd

www.shirkah-finance.com

Edited by

AL WARRAQ FINANCE Ltd

www.alwarraq-finance.com

Headquarter

SWITZERLAND

World Trade Center - via Lugano, 13

6982 Agno (Lugano) - P.O. Box 317

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Design & Layout

Shirkah Finance Ltd Lugano

Printing

Multimediapublishing (Milano)

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Consulting & Publishing

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World Trade Center
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