

## **Islamic Finance in View of the *Shari'ah***

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### **ABSTRACT**

Islam governs all aspects of a believer's life, and the concept of worship in Islam is broad and comprehensive in meaning. The struggle for one's livelihood is thus also an act of piety. Wealth in Islam must be earned through permissible means. This rule is in keeping with the faith's balance between worldly and spiritual concerns. Islamic banks were conceived of by Muslim scholars decades ago, and gained momentum following western interest in Islamic finance. *Shari'ah* committees play a central role within Islamic banks. These committees review articles of association, review financial contracts, and place in-house *Shari'ah* auditors to oversee *Shari'ah* compliance.

### **I. INTRODUCTION**

Islam means "total submission to God." As the Qur'an says, "To Him submitted all creatures in the heaven and the earth willingly or unwillingly." This total submission to God requires obeying His rules and commands, and this obedience to God is an act of worship. The term "worship" (*ibadat*) has a very broad meaning as Shaykh ul Islam Ibn Taymiyyah defined it. He says, "Worship in general terms encompasses all acts and utterances that please God." The commands of God, which are to be followed and obeyed, are not restricted to rituals and prayers or confined to mosques. They are very comprehensive and cover almost all areas of life. Even the specific teachings in Islam find their basis in general principles derived from the Qur'an and the *Sunna*. Therefore, a Muslim must subject all of his life, activities, and actions to God. The Qur'an clearly states, "Say that my Salah, my sacrifice, my living and my dying are for the sake of God, Lord of the Aalameen (all that exists and all creatures)."

Indeed, one who reads the Qur'an and the *Sunna* finds guidance in all aspects of life—social, political, economic, etc. Earning our livelihood is one of our most time-consuming tasks. Usually, we spend much more time and effort during work hours (i.e. in the office), than during Salah, which is only a few minutes a day, or fasting, which is one month in a year. It follows that our jobs must be done in accordance with what God has ordained. Furthermore, according to Islam, working hard to earn one's own living and sustain one's dependents is in itself an act of worship if done with the right intention. Food so earned is the most blessed source of income: the Prophet said, "Hands that are always busy in earning that which is *halal* are very far from the hell fire."

### **II. MONEY AND WEALTH IN ISLAM**

Struggling for money is believed to be as pious work as struggling for the faith. The hand that gives is better in the sight of God than the hand that takes. However, the *Shari'ah* lays down conditions on business and financial transactions that must be fulfilled in all aspects. The Prophet informed us that on the Day of Judgment nobody will be able to move from the place he/she is standing without answering four questions. First, what did you do with the life provided by God? Second, what did you do with your youth years that were provided by God? The Prophet emphasized the youth years because they are the most productive ones. Third, what did you do with the knowledge that God gave you? You are born from your mother's womb without any knowledge. Therefore you gain knowledge in the world, and God facilitates this learning. Did you do good with it? Did you learn? Did you teach? Did you do whatever God commanded you to do with it or not? Finally, how did you gain your income and means of subsistence, and how did you spend it? Did you spend it wisely in accordance with the teachings of God?

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It is clear from this *Hadith* and many others that the means of income must be *halal*. This concept of purifying the source of subsistence and source the income (*al-kasb al halal*) is very important and is very deeply rooted in any Muslim's education and psychology from the beginning of childhood. God says in the Qur'an, "O mankind, eat of that which is lawful and good on the earth and follow not the footsteps of the Satan. Verily he is to you an open enemy."

Those who disobey God's commands go astray, do not care about *halal* and *haram*, and do not care about what is allowed and what is prohibited in their sources of income will risk the punishment of burning in hell on the Day of Judgment. As another *Hadith* records, "The body that is nourished by unlawful means, is better to be in the hell fire." Even the prayer and supplication of those who do not purify their sources of income are not answered by God. When one of the companions approached the Prophet and told him, "I want my supplications, my prayers to be answered. I want God to answer my supplications," the Prophet replied, "Purify your sources of income and God will answer your prayers."

Obviously, money or wealth in itself is not degraded or demeaned in Islam. In fact, money in the Qur'an is called with the beautiful term *khair*, which has the beautiful meaning in Arabic of blessing and goodness. God states clearly in Surah Kahf, "Wealth and children are the adornment of the life of this world," but it should not be the only aspiration because the life here is but limited to a few days and there is no eternity here. And so the verse in Surah Kahf continues, "But the good righteous deeds are better in respect of hope in the hereafter."

Islam teaches us how to maintain this balance between the material, temporary world and the next spiritual and eternal life without moving the scale (*mizan*). God says, "But seek with that wealth which God has bestowed on you the place in the hereafter and for that *waqt* (time) have a portion of the wealth in this world. And do good as God has been good to you and seek not the change in this land. Verily God likes not the *mufsideen*—those who commit great crimes and sins are tyrants, mischief makers, and are corrupt." It appears that this emphasis on *kasb al halal*—on purifying the source of income—is not very prominent in all religious teachings. It is surely present, however, in Judaism and Christianity. A recently published book by Rodney Wilson, *Economic Ethics and Religion in Jewish, Christian, and Muslim Economic Thought*, demonstrates the fact. It does seem, nonetheless, that the principle of pure income is not emphasized and adhered to strongly enough in other faiths. Muslims, by contrast, need only look to the hundreds of questions that the *muftis*, the scholars of Islam, receive every day regarding these matters. Is a given transaction *halal* or not *halal*? Can we invest in this bank or not? It is a very pressing issue for the Muslims, and I personally receive ten to twenty calls each day about this subject. Many scholars throughout the Islamic world likewise receive such questions. If this concern is understood, it is easy to realize the demand to have Islamic banks and financial institutions that facilitate investment and financial transactions in accordance with Islam.

### III. THE RISE OF ISLAMIC FINANCE

For more than 12 centuries, Muslims had their own system of banking. It is mentioned in many books (for example, Udovitch's *Book of Fiqh*) and is abundant in the details of *fiqh al muamalat*. The *fiqh* relating to Islamic business and financial transactions is much more comprehensive than that relating to *ibadat*. Also, for the forms of contracts there are books of *shurut*.

During the modern era, the western system of banking, along with many other systems, was introduced in Muslim countries. But Muslim jurists, traders, and most of the public never accepted these systems, even if they had to deal with them. A substantial number of Muslims today, including some in the United States, hold their earnings outside financial institutions. Some Muslims who are obliged to deal with banks have their own conditions attached to the application forms. In fact, some time ago Muslim merchants opened an account with HSBC and specifically mentioned that they do not take or give interest and follow the *Shari'ah*. During the 1960s and 1970s, Islamic economists and *Shari'ah* scholars floated the idea of banks or financial institutions based on *Shari'ah* principles.

When such banks later came into existence, few people thought they would succeed. Critics argued that Islamic banks were idealistic, that banking without interest is like conservation without water. A great scholar in Bahrain, when the Bahrain Islamic Bank was established in the late 1970s, responded to the conventional banking community's objections by saying that when western bankers form Islamic banks, they would try to follow the originators' footsteps. This has indeed happened. When large western banks showed interest in Islamic banking, conventional banking started to follow in their footsteps.

#### IV. THE ROLE OF SHARI'AH COMMITTEES

Islamic banks and financial institutions have many elements unfamiliar in conventional ones. The essential element of Islamic banks is *Shari'ah* supervision and a *Shari'ah* supervisory board: this is unheard of in the conventional banking system. It is useful to highlight what *Shari'ah* boards do because students and even professionals are sometimes confused about the actual work that *Shari'ah* committees do.

The *Shari'ah* committees usually consist of top Islamic scholars who are well-versed in Islamic law as well as in financial transactions laws. The first things a committee does are look into its bank's Articles of Association and Memorandum of Association to ensure they comply with the *Shari'ah* (if the bank is in the beginning stages). If, however, the *Shari'ah* committee comes into being after the bank's establishment, the committee will amend these articles in accordance with the *Shari'ah* and a general assembly meeting will be held on the amendments. Second, the committees develop and write all the Islamic contracts of transactions that the banks and institutions are going to work under. They also review every form and bank application. The contracts are reviewed by *Shari'ah* standards—a long process. For example, the Abu Dhabi Islamic Bank was established more than a year ago, but because of all the preliminary *Shari'ah* processes, it will only soon begin operations. After drafting the contracts and examining all these forms, committees monitor the *Shari'ah* compliance of the transactions to see whether their requirements are really applied rather than being merely ink on paper.

Many *Shari'ah* boards have instituted the procedure of having internal *Shari'ah* auditors. Boards themselves take random samples, but having internal *Shari'ah* auditors permits constantly following up transactions on a day-to-day basis. Another role that *Shari'ah boards* play is to educate not the staff of the banks and the institutions, as well as the wider public, through books and *fatawa*, conferences and meetings, and *khutbas* (sermons). These scholars are very social within the Muslim community. They are *imams*, they are *khateeb*s, they are judges—enabling them to teach the general community about the benefits of investing and the benefits of Islamic finance. They have even been published on the Internet (in so-called “cyber *fatawa*”).

In the future of *Shari'ah* boards, there is an emphasis on the ramifications of their *fatawas*. Ramification is not important to board members, but “authentication” is. That is, that the legal rulings and contracts be authentically and genuinely based on the Qur'an and the *Sunna* and the *fiqh* of our great scholars. They ought not to contradict these teachings.

Although authentication is important, not everything has to be uniform. There are things that are static and things that are dynamic. For instance, things such as *ibadat* (prayers) are not subject to change, while in other areas with a wide range of reasoning and *ijtihad*, it is possible to have differences of opinion. Disagreements can be found throughout Islamic history, and its appearance, at least is found in every system of thought. Even conventional banks and financial institutions have hundreds of contracts that are different and not standardized. Finally, it is important to have widely accepted *Shari'ah* boards. The OIC *Fiqh* Academy, although accepted by all the *Shari'ah* scholars, does conduct research on several matters pertaining to Islamic finance.