

Trading In Equities

A Sharī'a Perspective

Nizam Yaquby*

ABSTRACT

This paper reviews the current literature, all in Arabic, on the participation and trading in equities of companies, the core business activities of which are lawful but which are fraught with some prohibited transactions. It then discusses the arguments of those who allow this type of investment and those who hold that it is not permissible. A brief analysis of both pro and con arguments is provided, ending with the author's own conclusion.

I. INTRODUCTION

All praise is due to Allah, and may His peace and blessings be upon the Messenger of Allah, his folk, his companions, and those who follow his path.

The following paper, prepared at the request of the *Sharī'a* Studies Committee, concerns itself with a question of relatively limited scope. It endeavors to determine a *sharī'a* perspective on dealing with equities in which prohibited transactions constitute a peripheral part of otherwise permissible business activities.

II. JOINT STOCK COMPANIES AND CONTEMPORARY ECONOMIES

Over the past few years, capital markets have witnessed remarkable developments. Perhaps most notably, information technology has interlinked global capital markets and stock exchanges to an unprecedented degree. Joint stock companies have thus become among the most important and feasible means of investment and absorption of liquidity surpluses. Further, the Internet has largely democratized access to the stocks of global companies. Previously confined to financial investment institutions and high net and liquidity corporations, investment opportunities in these global markets have now extended to broader segments of society. From a personal computer, individuals can trade in these equities without need of a broker or intermediary.

In short, joint stock companies of limited liability have now assumed a primary role in the global economic and investment arena. They constitute an indispensable means for undertaking various construction, development, and manufacturing projects. Against the backdrop of emerging global privatization, joint stock companies play a central role in areas such as power generation, water desalination, agriculture, minerals and natural resources, transportation, medical services, and education. Such projects fulfill an important, *sharī'a*-countenanced purpose.ⁱ

These companies, of which many exist in the Muslim world, cannot therefore be ignored. They cannot, in the same vein, be left without support and direction. In this respect, the economist Dr. Mohamed Ali Elgari has noted:

“Joint stock companies have become one of the most important financial innovations in modern times. Through this innovative form, it has been possible to raise enormous capital which otherwise could not have been raised by using any other financial product. It also has made it possible to channel such funds toward viable investments and useful utilizations in the fields of industry, agriculture, real estate development, construction, and development projects. Therefore, there are many companies all over the world with huge turnover amounting to tens of millions of dollars. Yet, there are many countries whose economy is underpinned by a large number of joint stock conglomerates and colossal financial companies. There are also thousands of small and medium firms which rely on the same form of investment. For example, in Britain, there are now more than 120,000 joint stock companies, and this could not have been possible without this innovative form of joint stock companies. The most important point of strength in joint stock companies is their ability to attract capital and pool funds and savings from the overwhelming majority of the members of the public, who are mainly limited income people who constitutes of the middle class and the lower brackets of the society.”ⁱⁱ

* *Sharī'a* Scholar and Advisor, Manama, Bahrain.

Due to the lack of Islamic banks in many Muslim countries and in most of the non-Muslim world, these companies use conventional banks to finance their major undertakings. Even in countries with an abundance of Islamic banks, such banks are usually unable to provide the amount of capital needed. Thus, most companies resort to conventional sources of borrowing to raise funds and liquidity or to deposit their cash surpluses. Does the *sharī'a* allow participating or trading in the equities of these companies? If so, what guidelines apply?

III. REVIEW OF THE LITERATURE

The following Arabic literature has informed much of the discourse on this issue:

1. "A research on the ruling of trading in equities of joint stock companies by way of buying, selling, acquisition and possession" written by His Eminence Shaykh Abdulla Bin Sulaiman Al Manea, which has been also published in his book *Buhooth Fi Al Iqtisad Al Islami (Research Studies in Islamic Economics)*, Al Maktab Al Islami, Beirut 1416 A.H, pp. 219-251.
2. "A research on the ruling of trading in the stocks of joint stock companies and related restrictions and guidelines required by the fundamentals and legal principles of Islam." This is a modification of the above research which includes appendixes and useful additional ideas presented by Shaykh Al Manea in Kuwait Finance House's (KFH) 5th *Fiqh* Seminar organized in October 1998.
3. (Trading in the stocks of companies whose main objectives and business activities are permissible but extend loans or borrow from banks on a continuous basis), a paper presented by Dr. Ahmed Al Hajji Al Kurdi during KFH's 5th *Fiqh* Seminar organized in October 1998.
4. (Participation in Companies that occasionally deal with *ribā* transactions), a paper presented by Shaykh Abdulla Bin Beeh, during KFH's 5th *Fiqh* Seminar, 1419 A.H.
5. (Trading in equities of companies whose main objective and businesses are permissible, but extend loans and take loans at interest), a paper presented by His Eminence Shaykh Mohammed Al Mukhtar Al Sallami, the former grand Mufti of Tunisia, during KFH's 5th *Fiqh* Seminar, 1419 H.
6. (A research on trading in equities of companies whose objectives and businesses are permissible but extend loans and borrow on an ongoing basis from banks at interest,) presented by Dr. Mohammed Fawzi Faidhallah during KFH's 5th *Fiqh* Seminar, 1419 H.
7. (Dealing and participation in companies the business activities of which is originally lawful, but they conduct unlawful business activities), by Dr. Ajeel Jassim Al Nashmi, submitted to the KFH during its 5th *Fiqh* Seminar, 1419 H.
8. "A Ruling on participation in companies which place deposits or extend loans at interest) by Dr. Saleh Bin Zaben Al Marzooqi Al Baqmi in *Majallat Al Buhooth Al Fiqhiyah Al Mu'asirah*, issue No. 21, 1414 H, pp. 70-167.
9. Resolution No. (182) of the *Sharī'a* Supervisory Board of Al Rajhi Banking and Investment Corp., dated 7.10.1414 H and amended by Resolution No. (310) dated 6.4.1419 H. It is published as part of the resolution of the *Sharī'a* Supervisory Board of Al Rajhi Banking and Investment Corp., 1419 H Vol. 1, pp. 239-251.
10. "Participation and dealing in stocks of companies whose businesses are preliminarily lawful but may place deposits or seek loans at interest), by the writer of this paper, which was submitted to IDB, 1417H.

In addition, various memoranda, recommendations, rulings, and *fatwās* issued by the *Sharī'a* Supervisory Boards, will be referred to throughout the paper, In sha' Allah.

IV. DIFFERENCES AMONG CONTEMPORARY SCHOLARS

Contemporary scholars have differed on the permissibility of participating and trading in the stocks of these companies. Two major positions have defined the contours of this debate.

A. Permissibility

One school of thought advocates the permissibility of participating and trading in such stocks, with the condition that any profits be purged from unlawful gains. In other words, unlawful gains should be channeled into public interests and charity services according to certain rules and conditions.

Scholars who articulate this position include:

1. His Eminence Shaykh Mohammed Bin Saleh Bin Uthaymeen.
2. His Eminence Shaykh Mustafa Al Zarqa.
3. His Eminence Shaykh Abdulla Bin Sulaiman Al Manea.
4. His Eminence Shaykh Mohammed Taqi Al Othmani.
5. His Eminence Dr. Abdul Sattar Abu Ghuddah.
6. His Eminence Dr. Ali Muhiddin Al Qara Daghi.ⁱⁱⁱ

B. Impermissibility

This view argues that participation in such companies and trading in their stocks, either by buying or selling, is strictly impermissible.

Advocates of this position include:

1. His Eminence Shaykh Abdulla Bin Beyyah.
2. His Eminence Shaykh Dr. Ajeel Al Nashmi.
3. His Eminence Shaykh Dr. Ahmed Al Hajji Al Kurdi.
4. His Eminence Shaykh Dr. Mohammed Fawzi Faydhallah.
5. His Eminence Shaykh Dr. Ali Ahmed Al Saloos.
6. Dr. Saleh Al Marzooqi Al Baqmi.^{iv}

V. AUTHORITIES AND ARGUMENTS CITED BY ADVOCATES OF PERMISSIBILITY

The advocates of permissibility have cited a number of authorities. These authorities are as follows.

A. The Legal Maxim that Says, “That which is independently impermissible becomes permissible when done in conjunction with the permissible.”^v

With regard to the application of this legal maxim, advocates of permissibility cite a number of examples to clarify their position. They note, for example, the permissibility of selling the property of a slave together with his person. Ordinarily, the *sharʿa* does not permit one to sell a slave’s property, except if the conditions of the currency of exchange are satisfied. If one engages in selling the person of the slave, however, the selling of his property becomes permissible. Therefore, an otherwise unlawful act becomes lawful because of its association with the lawful act. Proponents of this view also cite the legality of selling a pregnant slave or animal together with the unborn offspring. Though the *sharʿa* does not permit selling an unborn child or offspring independently, this transaction becomes permissible when the offspring is sold in conjunction with its mother.

Proponents of permissibility draw an analogy between such examples and participation in stock companies with occasional dealings in prohibited transactions. “These stocks may be reconsidered under this legal maxim because lawful methods are prevalent in the investments activities of these companies. The unlawful dealings, such as borrowing from banks or extending loans to them at interest are very negligible in the face of their lawful stocks or dealings and thus the participation therein is consequential lawfulness that is not lawful independently.”^{vi} In other words, the *sharʿa* strongly condemns independent dealings with interest-based transactions. But if these transactions are mixed with lawful means and those lawful means significantly outweigh the unlawful, then lawfulness will prevail.

Advocates of the impermissibility of participating in these stock companies critique the forgoing analysis. Namely, they argue that the cited legal maxim does not apply. “Because what is intended by remissibility or neglectfulness (*yugtafar*) as regards to impermissibility to dispose of incidental rights by sale or otherwise when they were separated from the principal right is because of being part of the principal and being attached to it. In other words, one cannot sell, for example, services or a particular benefit attached to things as inseparable part of the intended thing separately. However, since it is permitted to dispose of the principal, such incidental right or services or benefit is automatically included in the contract of sale. The incidental right per se thus is not intended but the principal as in the case of slave and his property, and the sale of the pregnant slave maid. The purchase contract is concluded on the slave or slave maid and not their properties, which follow them with the conclusion of the contract to buy them. Thus, the permissibility here is governed by the permissibility to contract on the original. As such, the application of this legal maxim in the case at issue is out of context. Because the interest per se, if we consider it as *tābiʿ*, i.e., not intended, is not permissible by itself even though it is incidental in our issue here and one cannot dispose of it as a lawful income. The fact is that it is hardly possible to legalize secondary financial transactions that are attached to a process of lending in contingent on usury, which is unlawful by itself. In other words, there is a

vast difference between contracting on incidental rights, the selling of whose principal is lawful, and dealing with secondary transactions, whose principal is unlawful *ab initio*.^{vii}

B. General Need Takes the Ruling of Specific Necessity^{viii}

Advocates of permissibility have also argued that prohibiting the sale or purchase of such stocks will lead to an imposition of undue hardship. In support of this principle, Ibn Taymiyyah, may Allah have mercy on him, has argued that “necessity permits things that are otherwise impermissible as in the case of permissibility of a barter sale or exchange between ripe dates for unripe dates, namely (بيع ال عرايا).^{ix}

The invocation of this principle has also been met with skepticism, however. It is argued that the notion of necessity should be considered in light of the legal maxim that “whatever is permitted for reasons of necessity should be measured or practiced according to the magnitude of such necessity.”^x Therefore, because the need in question only applies to a few members of society, advocates of impermissibility argue that this principle cannot be applied.^{xi} They note that the public at large should be in need of the transaction in order for this legal maxim to apply.

C. Mixture of a Negligible Unlawful Part with the Lawful Major Part^{xii}

Advocates of permissibility have argued that “[t]his legal case is mentioned by the scholars of *fiqh* and Islamic jurisprudence and the majority of them have reached a conclusion that it is permissible to use these mix funds provided that the unlawful part is negligible, whether by way of sale, purchase or any form of usage which the *sharʿa* has sanctioned. The stocks of companies, which are the topic of our discussion, are of this type. Although some of the earnings of these companies consist of unlawful parts that come from *ribā* financing or borrowing, the major part of the income earned is lawful.”^{xiii}

Detractors of this view have asserted that the cited legal maxim actually points to impermissibility, because if an unlawful act is mixed with a lawful act, the former prevails. This finds support in established legal principles of the schools of *fiqh* and the rulings of the scholars of Islamic jurisprudence.^{xiv}

Moreover, it is noted that the authorities and cases cited by those who argue for the permissibility only apply in cases of doubt, such that one cannot distinguish between the unlawful and lawful, although one is aware that the unlawful exists. However, no such doubt figures into this question. Rather, specific knowledge and deliberate intention characterize the participation in stocks.^{xv}

D. The Legal Maxim that Says, “Majority has the ruling of the whole, or the majority counts”^{xvi}

This legal maxim posits that if lawful elements constitute the majority, then the legality of such a transaction prevails despite the presence of unlawful elements. In this respect, advocates of permissibility cite a number of precedents and provisions of *fuqahāʾ* to establish their position.

It has been argued that “[d]ue to the fact that the stocks, the subject of the discussion, are predominantly lawful, and that unlawful acts in them are negligible compared to the permissibility of their majority, and so the application of this legal maxim ruling of dealings in these stocks, by way of buying, selling and possession, to the issue of the ruling applicable to the majority is clear, and does not need any further discussion.”^{xvii}

Those arguing for impermissibility reply that the legal maxim that “the majority counts” is applicable only in customary practices. In other words, this maxim concerns acceptable conditions of customary practices that are fraught with illegal practices, which are the conditions of domination and majority.^{xviii} Moreover, this maxim can be rebutted by another legal maxim that holds “if the lawful and the unlawful are mixed, the unlawful prevails.”^{xix}

E. The Legal Maxim that Says, “What is Inescapable is Tolerable”^{xx}

Generally speaking, this can be considered under the legal principle of general need or necessity.^{xxi} Under the rubric of this legal principle, supporters of permissibility cite many legal positions of the *fuqahāʾ*. For example, they cite Al Bahooti, may Allah have mercy on him, who says: “What cannot be drained, like the sewers of Mecca, does not become impure by urine, or by anything else, until its color or look is changed.”

Also, in his *al-Majmooʿ*, al-Nawawi, may Allah have mercy on him, is quoted as saying: “The principle is that the *gharār* (uncertainty) sale is null and void in view of the clear-cut *@adīth*. But the unlawfulness meant therein is the sale that involves an apparent *gharār* that can be avoided. However, a sale that cannot be avoided due to compelling need is lawful although it might involve some degree of *gharār*. An example of this is the *gharār* relating to disclosure of the strength of the foundation of a house purchased. One cannot surely disclose the strength of pillars of the house and this inability to disclose is *gharār*, but it is tolerable because it is unavoidable. Equally important is the disclosure of the nature, sex, and number of the fetus of the pregnant slave maid introduced for sale. There is uncertainty in this sale with complete ignorance of the number, sex and nature of the fetus in the womb but

this uncertainty is tolerable for the same reason. So, also, uncertainty as to whether the udder of the goat purchased for its milk really contains milk or not, is not affecting the sale contract. Uncertainty with regard to all these cases and the like is tolerable because it cannot be avoided and such a sale is needed. This view is unanimously agreed upon by the *fuqahā'*.^{xxii}

Those who argue for impermissibility note that this legal principle applies only on things or acts that cannot be prevented or avoided and yet they constantly and continuously occur. This is certainly differs from usury. Usury can be avoided and lawful dealings in lieu thereof are sufficient. Moreover, it is generally accepted and agreed upon that legalizing an act based on general need and hardship is lawful only if there is no explicit provision prohibiting it. If there is an explicit textual source prohibiting an act, the principle of general need and hardship is inapplicable. In this respect, Ibn Nujaym says: "Hardship and inconvenience are used as a justification in matters where there are no express provisions, whereas when there is a provision to the contrary, they cannot be used as justification for unlawful acts."^{xxiii}

VI. AUTHORITIES AND ARGUMENTS CITED BY ADVOCATES OF IMPERMISSIBILITY

Those who argue for impermissibility cite the following sources:

A. The Qur'anic verses that generally prohibit usury, such as: "O you who believe! Fear Allah, and give up what remains of your demand for usury, if you are indeed believers." (2:278)

It is argued that all the prohibitions of Qur'anic verses as regards usury are clear and straightforward. Thus, all that Allah has forbidden is unlawful and therefore should be avoided completely. There is no forgiveness or excuse for committing any of the prohibitions, particularly usury. The stocks of companies that place deposits, or take loans, at interest are included in these prohibitions, and as such should be avoided completely.^{xxiv}

One may respond to this by saying that the advocates of permissibility to participate in these stocks acknowledge that usury is unlawful, whether in the form of stocks or otherwise. That notwithstanding, the sale and purchase of equities is lawful, because the business activities of these companies are primarily lawful and the unlawful part generated from a usury-based income can be purged.

B. The *ʿAdīth* of the Prophet (Allah bless him and give him peace).

1.

"Every form of usury from the pre-Islamic era is rejected. You shall have your capital sum and do not deal with injustice nor should you be reciprocally dealt with injustice. O my nation, have I conveyed the message? And the Prophet repeated this three times and they said, 'Yes.' The Prophet said, 'May Allah bear witness with me, that I have delivered the message,' and this was also repeated three times."^{xxv}

If this is the case, how then can one ignore the *ʿAdīth* of the Prophet (Allah bless him and give him peace) that "Every form of usury from the pre-Islamic era is rejected..." and boldly declare that usury, if negligible or overwhelmed by the prevailing lawful activities, becomes permissible?^{xxvi}

The advocates of permissibility reply that they do not hold usury to be permissible. Rather, they argue that the large part of the businesses of these companies are lawful, and that any negligible usury involved in these dealings should be set aside and donated to charity and the public interest of Muslims.

2.

"One usury-based *dirham* income that is knowingly earned by a person is more unlawful and worse in degree than thirty six adulteries." Narrated by Aʿmad and al-Tabarani.

The point here is that this *ʿAdīth* is a clear-cut source that does not distinguish between minor or major as far as the prohibition of usury is concerned.^{xxvii}

However, as previously noted, the advocates of permissibility acknowledge that usury is unlawful. Instead of allowing profit gained from such usury, they recommend purging one's wealth by spending such usury for the interests of Muslim society at large. In addition, the chain of narration of this *ʿAdīth* is not free of criticism and allegations of weakness. Indeed, Ibn al-Jawzi listed and categorized it as fabrication.^{xxviii}

VII. COLLECTIVE *Ijtibāds* (PERSONAL REASONING)

1. The resolution passed by the Jeddah-based Islamic *Fiqh* Academy, during its 7th session, which states as follows:

“As a principle, it is impermissible to participate in companies which occasionally deal with prohibited transactions, such as usury, and the like, although their main business activities are primarily lawful” (Resolution No. 64/1/7, subsection (1) (c) of the first clause)

2. The resolution issued by the participants in a seminar on “participation in equities of a joint stock company dealing in usury,” held at IDB in Jeddah under the auspices the Jeddah-based Islamic *Fiqh* Academy on 22.10.1413 H, in which they confirmed the preceding resolution.
3. The recommendation issued as part of the recommendations of the Second Seminar on Stock Markets, held in Bahrain, which states as follows: “The principle is that it is unlawful to participate in companies that occasionally deal with prohibited transactions, such as usury, and the like, although their business activities are basically lawful.”^{xxix}
4. The recommendations issued by the participants in a workshop on “participation in joint stock companies which occasionally deal in usury,” held in response to a joint invitation extended by the Jeddah-based Islamic *Fiqh* Academy and the Islamic Research and Training Institute (IRTI), affiliated to IDB, in which more than one hundred scholars and researchers took part (27-29 Muharram 1419 A.H.).

Due to the importance of these recommendations, it is therefore relevant to provide the text of these recommendations as it is considered the latest resolution issued by an academic institution so far.

VIII. RECOMMENDATIONS

The participants in the workshop are of the view that it is necessary to confirm the resolution adopted by the Islamic *Fiqh* Academy, which was passed during its 7th session held in Jeddah 7-12 Dhi al Qi’dah H, which states as follows:

“The principle is that it is unlawful to participate in the equities of joint stock companies which occasionally deal with prohibited transactions, such as usury, and the like, although their main business activities are basically lawful.”

The participants suggest that the following be excluded from the preceding principle:

1. Participation, in the referred companies, for those who are capable of making such companies eschew dealing with unlawful activities right after participation in the first meeting of the general assembly of the company, provided that such persons should withdraw from participation if they are unable to make any changes.
2. Permissibility to participate in the stock companies operating in Islamic countries so far as their objective is to manufacture and produce necessary goods, or to provide basic services related to public utilities that the individuals cannot make it without their production. This rule applies whether these companies are private owned (private sector) or public companies (public sector). But this rule is subject to the company being uninvolved in seeking interest financing, except in situations of dire need to seek such financing or loans. This rule is also subject to unavailability of similar companies that operate on lawful fundamentals.
3. Taken into consideration the role played by IDB in promoting development in Islamic countries and communities, it is permissible for the Bank to participate in shareholding companies in Islamic countries and societies, which companies occasionally deal with usury, provided that there should be a specific program drawn up by these companies to rectify their position to comply with the provisions of the *sharī‘a*, and such program should be approved by the Islamic *Fiqh* Academy’s *Fatwā* Committee.

In all cases, a Muslim and an Islamic institution is obliged to purify its funds and purge them from any usury earned from these companies, in accordance with certain guidelines set by the *Sharī‘a* Economic Committee of the Islamic *Fiqh* Academy.

The participants hereby recommend that a committee be formed, comprising a number of *sharī‘a* scholars and economists, by the Islamic *Fiqh* Academy in collaboration with IRTI in order to look into the following matters:

1. Conducting research on the operational limitations on the application of need in *sharī'a*, particularly public need and its effect on permitting the prohibited act.
2. Undertaking research on the characterization of joint stock companies, their corporate identities, the relationship between the shareholder and the management, their legal liability for their acts, and the ruling on the acts performed by them from a *sharī'a* point of view.
3. Conducting a thorough research on the topic of limited liability in joint stock companies in order to complement the resolution issued by the Islamic *Fiqh* Academy in this respect during its 7th session.

The participants recommended that research centers of Islamic banks should seriously endeavor to find alternatives whereby Islamically acceptable financing can be provided for joint stock companies, as well as finding lawful channels to invest the surplus cash available to them.

The opinions of several *sharī'a* supervisory boards also discuss the permissibility of involvement in the equity of otherwise lawful firms that deal with some unlawful business:

1. The *fatwā* of the Al Baraka's 6th Islamic Economy Seminar (6/5) on "Purchase of Equities in Joint Stock Companies with Lawful Objectives but occasionally deal with usury-based banks by way of extending, or seeking loans." The opinions of the majority of the participating *fuqahā'* appear to be in favor of permitting such purchase.
2. The *fatwā* of Al Baraka 7th Islamic Economy Seminar (7/8) on the subject thereof.
3. A memorandum issued by the unified *sharī'a* committee of Al Baraka Group in reply to a letter sent by the Chairman of the Board of Directors of Dubai Islamic Bank, Hajj Saeed Lutah, in respect of investment in equities and carries the signature of their eminence: Shaykh Yousuf Al Qaradawi, Shaykh Mohammed Al Mukhtar Al Sallami, Shaykh Abdulla Bin Sulaiman Al Manea, Shaykh Mohammed Taqi Al Othmani and Shaykh Abdul Sattar Abu Ghuddah. The said memorandum permits investment in these equities.
4. The resolution issued by the *Sharī'a* Committee of Al Rajihi Banking and Investment Corporation in respect of equities of joint stock companies (No. 182), dated 7.10.1414 H, on page 13, signed by the Chairman of the Committee, His Eminence Shaykh Abdulla Bin Abdul Aziz Bin Aqeel, amended by resolution No. (310), dated 6.4.1419 H.
5. The *fatwās* of the *Sharī'a* Supervisory Boards of each of the following are noteworthy: Dar Al Maal Al Islamic (DMI), Abu Dhabi Islamic Bank, First Islamic Bank (Bahrain), City Islamic Bank and Jordan Islamic Bank. The *Sharī'a* Boards of these banks adopted the view of those who argue for permissibility.
6. The *fatwās* issued by the *Sharī'a* Supervisory Boards of the investment funds of international equities, such as, Al Hijra Fund, Fleming Fund, American-Saudi Bank Fund as well as the *Sharī'a* Supervisory Boards of stock index companies, such as the *Sharī'a* Supervisory Board of Dow Jones International Company.

IX. EVALUATING THE LITERATURE

In considering the arguments on both sides of the issue, the view of permissibility seems closer to the truth for the following reasons:

1. The strength of their sources from jurisprudence (*fiqh*) provisions and legal principles.
2. The backtracking of some advocates of impermissibility that can be found in the recommendations of the workshop on "participation in joint stock companies which sometimes engage in usury-based transactions." 27-29 Muharram 1419 H. Some participants in this workshop who previously argued for impermissibility now concluded otherwise.
3. The adoption of permissibility serves the common interest of Muslims by facilitating vital business activities.
4. The position of permissibility has led to vast potential for Islamic banking activities on world markets. As a result, some global companies are now paying due attention to Islamic requirements and rules of investments. In fact, some Jews have recently asked experts of Islamic investment funds to set guidelines for them from the Jewish religion. A Dow Jones periodical has recently published an interesting article about Islamic investments in stocks and about religious and ethical guidelines, which was unthinkable only a few years ago.^{xxx} Thus, this is not only an investment or economic issue, the permissibility of such transactions has opened a door for *da'wa* and the propagation of the message of Almighty Allah.
5. Islamic banks have been deprived of many of the short-term investment instruments and vehicles, and they are finding it increasingly difficult to cope with the situation. They are also prevented from underwriting

treasury bills issues and other related usury-based bonds and bills, owing to the unanimous ruling by Muslim scholars on their unlawfulness. Therefore, if we prohibit them from investing in equities, which are originally permitted and lawful, we impose a gross injustice on them, and force them to be confined to *murābaʿa* sales and transactions and international markets dealings (commodities and metals), most of which are known to be spurious.

6. The issue is a contemporary one, which is related to personal reasoning, and no explicit provisions make this kind of transaction prohibited.

X. *SHARĀ* REQUIREMENTS

Sharā Supervisory Boards have laid down certain parameters that should be complied with in order for these stock companies to become lawful. The parameters are as follows.

A. Exclusion of the Categorically Prohibited

As a matter of absolute principle, companies engaged in prohibited business activities must be avoided. This rule also applies to the subsidiaries of such companies if they deal with unlawful activities. Examples include conventional banks, insurance companies, alcoholic-beverage companies, gambling, pork, brothels, and pornography-related companies. Other companies recommended against include those that unfairly treat their employees, cause environmental pollution, and engage in biotechnology projects such as using aborted embryos and participating in human cloning.

B. Permissibility Excludes Companies Whose Debt and Cash Money Form 50% of Existing Assets

It is established in the *sharā* that a debt cannot be sold to a third party. Likewise, selling cash for cash is an exchange transaction that should comply with the conditions of currency exchange as sanctioned by the *sharā*. Therefore, contemporary scholars stipulate that the equities of companies, the business activities of which are lawful, may be traded if the total cash and debts in their balance sheets do not exceed the total value of other assets. In other words, real assets, and not debts and cash, should constitute the majority of their assets. Contemporary scholars, however, differ on the estimation of this majority, or percentage, but most of them agree that it is achieved if it exceeds half the assets (50%) as stated in the *fatwās* issued by the 2nd Al Baraka Seminar, *Fatwā* No. 5).

For this reason, the equities of companies in which debts and cash are more than other assets should be excluded from permissibility.

C. Permissibility Excludes Companies with Debt-to-Equity Ratios over 30%

It is noticed that many joint stock companies sometimes resort to leverage at a certain interest for expanding their business activities or to meet their emergency cash requirements. This involves paying interest to the lending parties. Although the dividends of these companies do not include explicit interest payments (because in this case they are paying interest), they are still dealing in unlawful usury-based loans.

Hence, the ratio of debt to the shareholders' equity should be as low as possible. From practical experience, and from an extended survey of many joint stock companies, it has been found that the ratio between debts and shareholders' equity is sometimes as much as sixteen times as high.

For this reason, the Religious Supervisory Boards argue that a percentage of not more than 30% is considered to comply with this requirement. This has been deduced from some of the *sharā* rulings on the determination of minimum and maximum limits. Scholars have been accustomed to the rule, in many issues, that what is less than one third is the criterion of a small percentage. This inference is analogous to what is reported from the Prophet (Allah bless him and give him peace), who said, "One third, and one third is too much."^{xxxii}

Some *fuqahā*' have drawn an analogy from this provision and apply it to many issues, which include exempting the purchaser from spoiled fruits if they amount to one third and permitting exclusion from the sold commodity if the excluded commodity constitutes less than one third.^{xxxiii}

It should be clarified here that the opinions of researchers differ on shareholders' equity, as to whether it means the market value of the stocks, the paid capital, the net asset value (NAV), or the total assets. In my opinion, companies themselves differ on this, for each company has its own criteria.

D. Permissibility Excludes Equities of Companies Whose Interest Income or Unlawful Gains Exceed 5-15%

Many joint stock companies deposit their extra liquidity with conventional banks at interest, and this interest is mixed with the revenues earned from their lawful business activities. *Fuqahā'* have investigated the legitimacy of investing in the equities of these companies, and have suggested the following guidelines.

It is a necessary requirement that the ratio between the interest, or unlawful earned income (or both combined), to the company's total income, should be negligible and as low as possible, for two basic considerations:

1. The lower the percentage, the more a company is tilted toward producing lawful commodities and services.
2. Realizing a lawful profit for the investor cannot be achieved unless the percentage deducted from the dividends is negligible.

Researchers and *Sharī'a* Supervisory Boards differ on the acceptable minimum of this percentage, but they agree that it should range between 5% and 15% for any company, which seems to be a bare minimum. However, practical experience has revealed that profitable and economically viable stocks can be traded at far smaller than this percentage, by the grace of Almighty Allah.^{xxxiii} However, the opinion that it should not exceed 5% of total revenues has gained wide acceptance. This is what the Dow Jones Islamic Index follows, for example.

XI. CONCLUSION

Joint stock companies play an important role in the modern world economy and are popular investment vehicles that have facilitated the individual's access to capital markets. Since joint stock companies play a significant role in the development of Islamic countries and—in the absence of Islamic financial institutions that can provide large amounts of capital and can manage surplus funds—have been forced to rely on conventional financial institutions, Muslim *sharī'a* experts have been faced with the question of the permissibility of transacting in the shares of companies whose primary business is lawful but that occasionally enter into unlawful transactions.

A survey of Arabic research papers by Muslim *sharī'a* experts confirms that there are two opinions among contemporary Muslim experts on this issue: one group holds that transacting in the shares of companies whose earnings come in part from interest-yielding bank accounts and interest-bearing loans is lawful, provided certain conditions are met, while the other group holds that such participation is unlawful.

The scholars who hold that investing in these companies is lawful base their arguments on several legal maxims and argue that since the primary business of the companies is lawful, transacting in their shares is also lawful. Those who hold that it is not lawful to invest in such companies cite texts from the Qur'an and Sunna that prohibit usury and argue that the legal maxims used by those who regard such transactions as lawful do not apply.

In the view of the author, the argument of those who hold that this type of investment is permissible is stronger than that of those who hold the opposing view. One indication of this strength is that some of the scholars who once held the opposing view have since abandoned their opinions and joined those who permit the transactions in question. The position on those who permit the transactions in question is also more beneficial to the development of Islamic finance.

Finally, it should be noted that the scholars who permit the transactions in question require that certain conditions be met in order for these transactions to be permissible. These conditions include that the company not engage in certain types of businesses (such as conventional finance), that the company's real assets be greater than its cash and debt, and that the revenue that it derives from usury be kept to a quantifiable minimum.

May Allah's peace and blessings be upon our Prophet Muhammad and his folk and companions.

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- ⁱ Malaikah, Saleh J. *Al-Musahama fi sharikat tata'amal ahyanan bi-al-muharramat* (Participation in Companies That Sometimes Deal with Prohibited Transactions). Dallah Al Baraka Group. p. 3.
- ⁱⁱ Elgari, Mohamed Ali. *Mubarirat l'adat Al-Nazar fi Mas'alat Al Istithmar fi Ashum Al Sharikat Allati Yakumu Aslu Nashatiha Mubahan Walakinnaha Tata'amal Bi-alfawa'id Al Masrafiya* (Justifications for Review of Investment in Companies the Business of Which is Originally Permissible, but Which Deal in Banking Interest). Research paper submitted to the Islamic Development Bank (IDB), Jeddah.
- ⁱⁱⁱ Yaquby, Nizam. *Al Musahama Wa al-ta'amul*. pp. 4-8; Al Marzooqi, Saleh. *Hukm Al-Ishtirak*. pp. 73; Al Manea, Abdulla. *Hukm Al-Mutajarah*.
- ^{iv} Al Marzooqi, *supra*. pp. 76-77; Al Nashmi, Ajeel. *Al Ta'amul Wa al-Musharakah*; Al Kurdi, Ahmed. *Al Mutajarah Bi-ashum Sharikat Gharaduha Wa'amaluha*; Fawzi Faydhallah, Mohammed. *Al Mutajarah Bi-al-ashum*.
- ^v Refer to the general rule in Al Nadawi, Ali Ahmed. *Mawsoo'at Al-Qawa'id Wadhawabit Al Fiqhiya Al Hakimah Lilmua'malat Al Maliyah Fi Al Fiqh 2*. Al Rajhi Banking and Investment Corp. and The International Investor, 1419 H. p. 505.
- ^{vi} Al Manea, *supra*. p. 10.
- ^{vii} Al Nashmi, *supra*. p. 4.
- ^{viii} For more details, refer to Al Nadawi, *supra*. 152.
- ^{ix} *Majmoo' fatawa Shaykh Al Islam Ibn Taymiyah* 29. p. 480; Al Manea, *supra*. p. 11.
- ^x Al Nashmi, *supra*. pp. 6-7.
- ^{xi} Al Marzooqi, *supra*. p. 121, with slight modification.
- ^{xii} Al Nadawi, *supra*. 468.
- ^{xiii} Al Manea, *supra*. p. 14.
- ^{xiv} Al Nashmi, *supra*. p. 14.
- ^{xv} Al Marzooqi, *supra*. p. 126.
- ^{xvi} IslamiQ Financial Daily. <http://www.islamiqdaily.com>.
- ^{xvii} Al Manea, *supra*. p. 17.
- ^{xviii} Al Marzooqi, *supra*. p. 133.
- ^{xix} Ibid.
- ^{xx} Al Nadawi, *supra*. 420.
- ^{xxi} Al Nashmi, *supra*. p. 17.
- ^{xxii} Check these quotes and the sources in Al Manea, *supra*. pp. 18-19.
- ^{xxiii} Al Nashmi, *supra*. p. 19.
- ^{xxiv} Al Marzooqi, *supra*. p. 95.
- ^{xxv} Narrated by Imam Muslim, Abu Dawood, Al Tirmidhi, Ibn Mājah, A@mad (in his Musnad), and others.
- ^{xxvi} Al Marzooqi, *supra*. pp. 95-96.
- ^{xxvii} Al Marzooqi, *supra*. pp. 96-97.
- ^{xxviii} Ibid. p. 141.
- ^{xxix} Ibid. p. 76.
- ^{xxx} "A New Stock Index for Muslim Investors." *Dow Jones Global Indexes, Quarterly Review Issue 1* (With Kr 1999). pp. 5-10.
- ^{xxxi} Narrated by Al Bukhari in his *Sahih*, "Book of Wills."
- ^{xxxii} Cf. *Sharh Al Kharshi Ala Mukhtasar Khalil* 3/131.
- ^{xxxiii} These guidelines are derived from a group of Islamic mutual funds and the *fatāwā* of their *Sharī'a* Supervisory Boards.