Bait Al-Mashura Journal

مجلة بيت المشورة

International Academic Refereed journal On Islamic Finance and banking

Issue (3) State of Qatar – Dhul Hijja 1436 H – October 2015

ISSN : 2409-0867 Online
ISSN : 2410-6836 Print

mashurajournal.com

Published by

شركة بيت المشورة للاستشارات المالية
Bait Al-Mashura Finance Consultations Company

بسم الله الرحمن الرحيم

(البحوث المنشورة تعبر عن رأي كاتبيها)

مجلة بيت المشورة

مجلة محكمة دولية تعنى بالاقتصاد والصيرفة الإسلامية

الجهة المصدرة

Published by:

شركة بيت المشورة للاستشارات المالية
الدوحة قطر ص.ب:23471
www.b-mashura.com

Bait Al-Mashura Finance Consultations
Doha-Qatar P.O Box 23471
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مجلة علمية دولية محكمة تعنى بنشر البحوث في مجالات الاقتصاد والصيرفة الإسلامية، وتصدر هذه المجلة مرتين في السنة.
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الرسالة

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- إتاحة الفرصة للباحثين محلياً وعالمياً للتحكيم والنشر في مجال الصناعة المالية الإسلامية.
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أحكام وشروط النشر

مواصفات النشر

أولا: شروط النشر العامة:

١. تعنى المجلة بنشر المواد المتعلقة بالاقتصاد الإسلامي باللغتين: العربية والإنجليزية، سواء أكانت بحوث أصيلة، أم تقارير عن مؤتمرات وندوات وورش عمل، أم عروض لأطاريح علمية مما له صلة بمجال التخصص.

٢. تعنى المجلة بنشر البحوث التي لم يسبق نشرها، بأيّ وسيلة من وسائل النّشر، ولا قدّمت للنّشر في مجلة أخرى، ويوثق ذلك بتعهد خطي يفيد بذلك يرفقه الباحث في آخر صفحة بالبحث عند إرساله للمجلة.

٣. أصول البحث التي تصل إلى المجلة لا تردَ سواء نشرت أم لم تنشر.

٤. لا يجوز نشر البحث في مكان آخر بعد إقرار نشره في المجلة إلا بعد الحصول على إذن خطي بذلك من رئيس التحرير.

٥. الآراء الواردة في البحوث المنشورة تعبر عن وجهة نظر الباحثين فقط ولا تعبر عن رأي المجلة.

ثانيا: شروط النشر الخاصة بالنص المقدم:

١. لا تزيد عدد صفحات البحث عن(30) صفحة من القطع العادي(A4) بما في ذلك الملخصين: العربي والانجليزي، وكذا المراجع والملاحق.

٢. حجم الخط ونوعه:

أ البحوث المكتوبة بالعربية يكون خط المتن فيها:(16)، وخط الهامش:(12)، ونوع الخط:(Traditional Arabic).

ب أما البحوث المكتوبة بالحروف اللاتينية فيكون حجم الخط:(14)، والهامش:(10)، ونوع الخط:(Times New Roman).

٣. يرفق البحث بملخصين باللغتين: العربية والإنجليزية، على أن لا يتجاوز كل واحد منهما(300) كلمة بلغة رصينة، ويتضمن كلا الملخصين: توضيح فكرة البحث والجديد الذي أتى به البحث في بداية الملخص.

٤. يُقسم البحث وينظم وفق متطلبات منهج البحث العلمي، حفاظاً على نسق البحوث والتقارير المنشورة في المجلة، على النحو الآتي:

أ المقدمة وتشمل: موضوع البحث وأهميته، ومشكلته، وحدوده، وأهدافه، ومنهجه، والدراسات السابقة(إن وجدت)، وهيكلة البحث التفصيلية.

ب متن البحث، وينبغي أن يكون مقسماً إلى مباحث ومطالب متسقة ومترابطة.

ج الحرص على عرض فكرة محددة في كل مبحث تجنباً لإطالة الفقرات والعناوين الفرعية.

د الخاتمة، وتكون ملخصة وشاملة للبحث متضمنة لأهم(النتائج) و(التوصيات).

هـ قائمة المصادر والمراجع والملاحق.

٥ ضرور التقيد بالقيم الموضوعية والأخلاقية للبحوث العلمية، ومنها:

أ إتسام البحث بالأصالة والجدية وسلامة الاتجاه علمياً وفكرياً.
ب البُعد عن التجريح للأشخاص والهيئات أثناء النقد العلمي بالبحث.
ج معالجة البحث القضايا المُعاصرة والأقرب إلى حاجة الواقع الإنساني معالجة نظرية تطبيقية.
د ملازمة الموضوعية والتجرد من الميول والاتجاهات الشخصية.
٦ حسن الصياغة العلمية للبحث، وهذا يعني مراعاة ما يلي:
أ سلامة اللغة والخلو من الأخطاء اللغوية والنحوية.
ب مراعاة علامات الترقيم والقواعد الإملائية.
ج الدقة في التوثيق وتخريج النصوص والشواهد(فيراعى ذكر البيانات الأساسية: عنوان الكتاب،المؤلف، الجزء والصفحة...الخ) حسب أصول المنهج العلمي المعمول به في توثيق الدراسات ذات الصلة، أما إذا خلا المرجع من بيانات، فتذكر الاختصارات المتعارف عليه على النحو الآتي:
بدون مكان النشر:(د. م). بدون اسم الناشر:(د. ن).
بدون رقم الطبعة:(د. ط). بدون تاريخ النشر:(د. ت).
د توضع هوامش كل صفحة أسفلها ويكون ترقيم هوامش البحث متسلسلاً من بداية البحث إلى آخره.
هـ تثبت مصادر ومراجع البحث في فهرس يلحق بآخر البحث.
و أما الرسومات والبيانات والجداول ونحوها فيراعى فيها ما يلي:
- تدرج الرسوم البيانية والأشكال التوضيحية في النص، وتكون الرسوم والأشكال باللونين الأبيض والأسود وترقم ترقيماً متسلسلاً، وتكتب أسماؤها والملاحظات التوضيحية في أسفلها.
- تدرج الجداول في النّص وترقم ترقيماً متسلسلاً وتكتب أسماؤها في أعلاها، أما الملاحظات التوضيحية فتكتب أسفل الجدول.

ثالثا: سير البحوث:

. ترسل الأبحاث إلكترونياً إلى العناوين الخاصة بموقع المجلة(info@mashurajournal.com).
. تقوم هيئة تحرير المجلة بالفحص الأولي للبحث، ومن ثم تقرر أهليته للتحكيم، أو رفضه.
. تُحكَّم البحوث والدراسات المقدمة للنشر في المجلة من قِبل اثنين من المحكمين على الأقل.
. تُعاد البحوث إلى الباحثين بعد تحكيمها لغرض التعديل إن لزم.
. إذ تم قبول البحث للنشر، فإنّ كافة حقوق النشر تؤول للمجلة، ولا يجوز نشره بأيّ وسيلة من وسائل النشر الورقية أو الإلكترونية، إلاّ بإذن كتابي من رئيس هيئة تحرير المجلة.
. تنشر البحوث على الموقع الرسمي للمجلة حال إجازتها من قبل المحكّمين وتعتبر بحوثاً منشورة من حينه وتحال إلى الدور بانتظار الطبع.
. إذا تم نشر البحث يمنح الباحث نسخة مجانية من المجلة التي تم نشر بحثه فيها.

Investing in shares from an Islamic Point of view
الاستثمار في الأسهم من منظور إسلامي

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MSC Islamic Finance
(سلّم البحث للنشر في ٢٤ /٨/ ٢٠١٥م ، واعتمد للنشر في ٢٢/٩ / ٢٠١٥م)

بسم الله الرحمن الرحيم

ملخص

إن أحداث القصور والفشل بشكل متكرر في أسواق مالية مقترنة بمخاطر أخلاقية أدت إلى خلق طلب لنظام متبادل يخص بأسواق مالية في كل من كيانات مسلمة وغير مسلمة في الغرب والشرق. وهذه الورقة تبحث عن إمكانية تطبيق مبادئ التمويل الإسلامي على فرص متوفرة للاستثمار أمام جاليات مسلمة تعيش سواء في البلدان المسلمة أو غير المسلمة ولكن تحت سيطرة النظم التقليدية في مجالي الاقتصاد والتمويل، كما أنها تدقق في آراء العلماء حول موافقة مبادئ التمويل الإسلامي للاستثمار في أسهم شركات مختلطة من حيث أن الورقة تختبر دور التمويل الإسلامي ودور علماء الشريعة في تقديم فرص استثمار لمن عندهم فائض مالي مع فرص محدودة للاستثمار بسبب قضايا شرعية. والورقة أيضا تبحث بالتفصيل عن دور العلم الحديث في تيسير حياة الناس الاقتصادية من خلال تطوير التقنيات التي تساعد في استجابة متطلبات لموافقة الشريعة. وتتخلص الورقة بتطبيق منهج المقارنة على الأساليب وتقنيات تم تبنيها في إعداد مؤشرات تصنيف الأسهم كمتوافقة مع الشريعة أو العكس، وفي النهاية تكتشف الورقة عن نقاط القوة في تلك المؤشرات وتبين الفجوة فيها من حيث بيانها موافقة الأسهم للشريعة.

Abstract

Consecutive shortcomings and failures of financial markets along with the moral hazards have created a demand for an alternative system for financial markets in both the Muslims and non-Muslim secular societies in the West and East. The paper investigates possibility of applying Islamic finance principles on investment opportunities available to Muslim communities living in either Muslim or non-Muslim countries which are predominated by conventional secular systems economically and financially, it takes stock of the views of contemporary scholars regarding the consistency of Islamic finance principles for investing in shares of joint stock companies, it examines the roles that had been played by Islamic finance and Shari'ah scholars to present the investment opportunities for those who are with surplus funds but with limited opportunities for investment due to Shari'ah concerns, it details the role of modern science in easing the economic life of people by developing techniques catering to the Shari'ah compliance requirements. Eventually, the paper applies compare and contrast approach over the methods and techniques adopted for devising the indices classifying the shares as Shari'ah compliant or otherwise, the paper concludes on finding the points of strength as well as gaps in the existing indices for Shari'ah compliance of shares.

Introduction

Islam being an absolute methodology of life has been continuing applicable to contemporary society in all aspects of life including economical and financial dealings which are not only charitable but indeed regarded in many cases as obligatory and necessary. Numerous verses of the Holy Qur'an and the texts of the prophet (PBUH) encourage trade and investment activities, for instance, Al-Qur'an explains: "Allah has permitted trade and forbidden interest" (2:275). Trade in this case can involve all forms of legitimate commerce including investing and trading of company shares. Similarly, the Messenger of Allah said: 'Whoever is entrusted with money of an orphan should trade with it and should not leave it sitting to be used up by charity'(1), which urges the trustee on the property of people who cannot manage their own property due to age (or other reasons), to invest it in order to yield a return and make it grow until they are in a position to do so themselves. Hence, the financial investment activities have been given exceptional relevance by the pure texts of Islamic Shari'ah.

Despite the fact that trade and investments activities are of crucial importance since the sources of the Shari'ah are continuing encouraging the need for it, it is no less an importance to a Muslim to put the tenets of Islam into practice in all his business transactions. They are subject to any limitations that may have been laid down by applicable Islamic jurisprudence and hence a Muslim investor has to abide by them as the Holy Qur'an emphasizes: "In whatever business you may be, and whatever portion you may be reciting from the Qur'an and whatever deed you may be doing We are witnesses thereof when you are deeply engrossed therein."(10:61)

1. Islamic Criteria for Investment in the Stock Market

1.1 Criteria applicable to the Stock Markets' behavior

The norms and ethics of Islamic finance with regard to the market behavior are well known and long established by the scholars in the light of the pure texts of Islam's main sources, in particular, that of describing the rights and obligations of each market participant. Hence, the stock markets also abide by the same, some of which are the following:

a) Freedom to contract

Islam provides a basic freedom to enter into transactions. The holy Quran says: Allah

(1) - Narrated by Thirmithi et al. Despite the weakness in the series of narrators of this Hadith, its meaning seems to be correct.

has made trade lawful (2:275). Further, no contract is valid if it involves an element of coercion for either of the parties. The holy Quran also says: let there be among you traffic and trade by mutual goodwill (4:29). However, this basic norm does not imply unbridled freedom to contract and may be sacrificed when there is a trade-off with other norms requiring specific injunctions as in the case of the framework for conventional finance.

b) Freedom from al riba

All forms of contracts and transactions must be free from riba. This implies that there is no reward for time preference and under conditions of zero risk. The question of riba has been addressed in a large body of literature and there is a general consensus about the meaning and implications of riba.

c) Freedom from al gharar (excessive uncertainty)

All forms of contracts and transactions must be free from excessive gharar. This implies that contracting under conditions of excessive uncertainty is not permissible. Islamic scholars have identified the conditions and highlighted situations that involve excessive uncertainty and consequently, disallow a contract.

d) Freedom from al-qimar (gambling) and al-maysir (unearned income)

Contracting under excessive uncertainty Or gharar is akin to gambling (al-qimar). And uninformed speculation in its worst form is also akin to gambling (al-qimar). The holy Quran and the traditions of the holy Prophet explicitly prohibit gains made from games of chance which involve unearned income (al-maysir). Here it may be noted that the term speculation has different connotations. It always involves an attempt to predict the future outcome of an event. But the process may or may not be backed by collection, analysis and interpretation of relevant information. The former case is very much in conformity with Islamic rationality. An Islamic economic unit is required to assume risk after making a proper assessment of risk with the help of information. All business decisions involve speculation in this sense. It is only the gross absence of value-relevant information or conditions of excessive uncertainty that makes speculation akin to a game of chance and hence, forbidden.

e) Freedom from price control and manipulation

Islam envisages a free market where prices are determined by forces of genuine demand and supply free from any artificial elements, such as Ihtikar[2] and Najash[3]. There should be no interference in the price formation process even by the regulators. It may be noted here that while price control and fixation is generally accepted as un-Islamic, some scholars, such as, Imam Ibn Taimiya admit of its permissibility. Such permissibility is subject to the condition that price fixation is intended to combat cases of market anomalies caused by impairing the conditions of free competition..

f) Entitlement to transact at fair prices

Prices that are an outcome of free play of forces of demand and supply without any intervention or manipulation are believed to be fair. However, in some instances, pricing is based on a valuation exercise. In such cases the difference between the price at which a transaction is executed and the fair price (as per the opinion of valuation experts) is termed as Ghabn. The presence of Ghabn makes a transaction unethical.

g) Entitlement to equal, adequate and accurate information

Islam attaches great importance to the role of information in the market. Release of inaccurate information is forbidden. The concealment of vital information (ghish) also violates the norms of Islamic ethics and gives the option to annul the contract to informationally disadvantaged party. The traditions of the holy prophet (PBUH) which emphasize on the information for valuation of the commodity are obvious.

Islamic scholars are of the opinion that a transaction must be free from jahalah or misrepresentation to be considered Islamic. The institution of a transparent market is, thus, quite important and transactions should be executed within the market after taking into account all relevant information. It may he noted that the holy traditions that deal with the issue, refer to a commodity transaction. In case of a commodity transaction, the commodity in question is subject to inspection and both parties can be reasonably sure about the benefits that are going to flow from future possession of the commodity. Unlike a commodity, however, the benefits from possession of a stock are in the form of expected cash flows. These expected cash flows are also subject to continuous revision as new events occur. Hence, Islamic ethics requires that all information relevant to expected cash flows and asset valuation should be equally accessible to all investors in the market. It is consistent with the investors' right to search information, freedom from misrepresentation, and right to equal information.

h) Freedom from Darar (detriment)

Darar refers to the possibility of a third party being adversely affected by a contract

(2) - attempts to influence prices through creating artificial shortage of supply

(3) an action of bidding up the price without an intention to take delivery

between two parties. If a contract between two parties executed with their mutual consent is detrimental to the interests of a third party, then it may enjoy certain rights and options. A case in point is the pre-emptive right (al-shufa) of a partner in joint ownership. This pre-emptive right may be extended by analogy, to a situation where existing minority shareholders are being adversely affected by any decision of the controlling shareholders, such as, to sell additional stocks to the public, to effect a change in management, asset sale, mergers and acquisitions etc.

i) Maslahah mursalah (unrestricted public interest)

There may be certain areas however, which are "unrestricted" by Shari'ah. In such cases the principle of "Maslahah mursalah" can be used in order to establish a guiding principle for prioritization between areas. For instance, it is quite possible that investors may lack information-processing ability and even if all relevant information were made available to them, they would not be in a position to absorb and interpret this information and take rational investment decisions. Similarly, investors may overreact to information and behave in an irrational way. In such cases, can the regulator deny permissibility to specific transactions? How would the nature and extent of intervention by the regulator be determined? problems such as above may be resolved in the framework of maslahah mursalah or "unrestricted" public Interest, which is a valid framework of Islamic legislation. Maslahah consists of "considerations which secure a benefit or prevent a harm but are, in the mean time, harmonious with the objectives (maqasid) of Shariah. From the means of the objectives, facilitating fair trade and lawful exchange of goods and services in the community is concerned. Any measure which secures these values falls within the scope of maslahah and anything which violates them is mafsadah (evil), and preventing the latter is also maslahah". Thus, the framework essentially involves a comparison of benefits and costs at a macro-level.[4]

1.2 Islamic View on holding shares of a company

In a stock company, a stock represents a shareholder's share in the company as a documental proof of his/her ownership to a portion of its wealth comprising its paid-up capital, assets and retained profits. By holding such a share the holder becomes a partner in that company and gives authority to its management to do its business on behalf of him/her and to benefit, even if the share was bought for the purpose of capital gain. This practice is viewed by the contemporary Islamic Jurists who agree on the permissibility of participating in the stock market, within the Shari'ah concept of

(4) See: Seifuddin I. Tag el-Din, Characterizing the Stock-Exchange from an Islamic Perspective, with comments of M.Obeidullah, J.KAU: Islamic Econ., Vol. 12, p. 56.

Mudarabah[5] or concept of Sharikat al-'inan.[6]

There are several types of socks: a common stock, which is subject to profit and loss, a preferred stock, which earns part of its share in the profits realized at a known pre-fixed rate and the loan stock, which earns its profit at a fixed rate of interest. Our concern is about the ordinary shares/common stocks, since their acquisition is permitted by Islamic jurists, which are similar to the shares in a legal Mudarabah, to the exclusion of the other shares since their violation of sharing principle.[7]

With regard to their activities in relation with the Shari'ah compliancy issues, the common stock companies are of three major categories:

I. Fully fledged Shari'ah compliant stocks

These are companies engaged in lawful business or businesses such as Islamic banks and Islamic insurance companies and do not borrow money on interest, or do not keep its surplus in an interest bearing account and deals only in limited cash holdings and receivables. Stocks of such companies can be purchased/invest in, held and traded without any hindrance from a Shari'ah perspective.[8] In practice, such stocks are very rare in all contemporary stock markets and almost all the companies quoted in the present day stock markets are, in some way, involved in activities which tend to violate the injunctions of Shari'ah.

II. Companies whose activities are absolutely prohibited

There are companies that involved merely in impermissible businesses hence, the stocks of which are should not be invested into nor exchanged/traded because, it will entail the direct involvement of the shareholder in that prohibited business. These include, but not limited to; conventional banks and insurance companies, companies that heavily speculate on future prices, companies that have high percentages of non-permissible income or assets used in non-permissible investments or depend heavily on interest-based borrowing, alcohol/liquor, tobacco, pork related products, non-Halal foods, destructive businesses like weapons manufacture, non-permissible entertainments such as hotels, brothels, casinos, gambling, cinemas, pornography and the like, Similarly, the exclusion covers the stocks of companies which unfairly treat their employees violating their legal rights, pollute the environment and that of

(5) - This form of partnership involves payment of one partner (called rabb-ul-maal, capital owner) to another (called Mudarib, manager) to invest it in a commercial enterprise for an agreed common share in the profit realized.

(6) - In this concept, the partners authorize each other to act independently in making business decisions and agree to be bound by such decisions, whether made in the presence or absence of the partners who made them.

(7) - See: Monzer Kahf, Fatawa, Stocks, Shares, Sukuk, Commodities, Options, etc. 2006 (http://monzer.kahf.com/fatawa.html) and Seif E-Din, Towards an Islamic Model of Stock Market, J.KAU: Islamic Econ., Vol. 14, p.5.

(8) - Monzer Kahf, Ibid.

which engaged in biotechnology using aborted embryos and human cloning etc. The same rule applies to the subsidiaries of such companies if they follow their mother companies' unlawful businesses.(9)

III. Joint stock companies whose main business is lawful but occasionally deal with prohibitions.

Joint stock companies are a type of worldwide companies. They represent the most important and feasible means of investments as well as the predominant feature of the modern economic life the world over. Rather, they not only form the backbone of the contemporary life undertaking and executing development, production and manufacturing projects and public utilities but also, have become an indispensable tool for such purposes. For instance, power generation, water desalination, industries, real estate development, agriculture, minerals, natural resources, transport, medical services and education are some of the projects undertaken by these conglomerates. Further, there is large number of countries whose economy is backed by a large number of joint stock companies. For example, in Great Britain only there are more than 120,000 joint stock companies. An interesting feature of these companies is that their ability to attract the capital and pool funds easily from the majority of saving units including those who are with lower income.

These companies resort to conventional financial institutions to seek finance for their major operations as well as to deposit their cash surplus both on interest basis. This may happen due to either the lack of Islamic banks in many countries or in case of Islamic banks' incapability to finance such huge capital they need.(10) Similarly, the firms also may exercise a small portion of transactions made through contracts which violate the Shari'ah principles as in case of most companies in the Islamic world.(11)

For Islamic jurisprudence, these types of joint ventures/partnerships between Muslim and non-Muslim investors are with much hard evidences whereby the Muslim partners are liable to assume the managerial role to ensure that the conducts of the partnership are compatible to Shari'ah principles. In modern terms, this assurance can be documented in Articles of Association and Memorandum of Association respectively. However, the above scenario has changed significantly with clearly segmented investment activities and open ownership of the companies publicly at large and their consequences. Therefore, in the absence of Articles of Association that will uphold the Shari'ah principles in many of these publicly listed companies, the question arises on the conducts of these companies, financial or otherwise, necessarily

(9) -See: Yaqubi, N. Participation and trading in equities of companies which main business is primarily lawfull but fraught with some prohibited transactions, p.21 and Monzer Kahf, ibid.

(10) - Yaqubi, N. Ibid, pp.4-2.

(11) - Ali Al-Qarahdhaghi, Researches in Islamic economy, p.165.

to ascertain whether these companies are compliant to all Shari'ah requirements which are documented in the body of Islamic substantive law or not.[(12)]

The contemporary Islamic jurists, in view of the permissibility of participation and trading in the stocks of these companies, have opined two major views:

a) All these stocks are not permissible

This decision represents a majority of the scholars including the OIC (Organization of Islamic Conference) Fiqh Academy that includes Fiqh Scholars representing the 53 Muslim countries in addition to other experts selected on their scholarly reputation. The OIC Fiqh Academy resolved:

"The basic principle is the prohibition of participating in companies that deal at times in prohibited things such as Riba etc. even though their main activities are permissible."[(13)]

Among the scholars who are of this view are Shaikh Abdulla Bin Beyyah, Dr. Ajeel Al Nashmi, Dr. Ahmed Al Hajji Al Kurdi, Dr. Mohammed Fawzi Faydhallah, Dr. Ali Ahmed Al Saloos, and Dr. Saleh Al Marzooqi Al Baqmi etc.[(14)]

Their basic argument is that every share-holder of a company is a partner of the company on the basis of Musharaka in which a mere purchase of a share embodies an authorization from the shareholder to the company to carry on its business in whatever manner the management deems fit. Accordingly, if it is known to the shareholder that the company is involved in an un-Islamic transaction, but decides to continue holding the shares of that company, then this means that the shareholder has authorized the management to proceed with the un-Islamic transaction. In this case, the shareholder will not only be responsible for giving his consent to an un-Islamic transaction, but that transaction will also be rightfully attributed to him because the management of the company is working under his tacit authorization.

Moreover, when a company is financed on the basis of interest, its funds employed in the business are impure. Similarly, when the company receives interest on its deposits an impure element is necessarily included in its income which will be distributed to the shareholders through dividends.[(15)]

b) Participation is allowed provided the rules and conditions are implemented

A number of scholars are against the aforesaid conservative rigid position since the

(12) - Daud Bakar, Mohamed, Jurisprudence of Screening in Contemporary Islamic Finance Architecture, Dow Jones Islamic Market Indexes - Quarterly Newsletter, September 2010 , p.7.

(13) -RESOLUTIONS AND RECOMMENDATIONS OF THE COUNCIL OF THE ISLAMIC FIQH ACADEMY (2000-1985), No.7/1)63) of 7 to 12 Dhul Qi'dah 1412 H (14-9 May 1992).

(14) - Yaqubi, N. Ibid, p.7.

(15)- Muhammad Taqi Usmani, An introduction to Islamic Finance, p.94.

application of the prohibition principle excludes most companies worldwide and leaves very small room for reasonable investment hence; it creates hardship for all Muslims. The rule in Shari'ah that hardship, whenever it relates to a large number of persons, call for relaxation of prohibition as much as necessary to remove such a hardship, the rule of Shari'ah is that whenever it is harsh or very difficult to abide by a prohibition and such a hardship applies to a large number of people, the prohibition is relaxed to the extent that make normal living activities reasonable done with no difficulty.(16)

Among the scholars who have opined this are, Shaikh Mohammed Bin Saleh Bin Uthaymeen, Shaikh Mustafa Al Zarqa, Shaikh Abdulla Bin Sulaiman Al Manea, Shaikh Mohammed Taqi Al Othmani, Dr. Abdul Sattar Abu Ghuddah, and Dr. Ali Muhyiddin Al Qara Daghi etc.(17)

They have cited a number of Shari'ah Maxims and authorities that justify their argument, such as:

1. "What is independently impermissible is permissible when done in accompany with permissible"
2. "The General need Takes the rule of specific Necessity"
3. "Mixture of Negligible Unlawful Part with Lawful Major Part"
4. "Majority Has the Ruling of the Whole, or the Majority Counts"
5. "What is Inescapable is tolerable"

The opponents counter argued and replied to these maxims that they have been cited and taken not in their places and inappropriate circumstances besides quoting the verses from the Holy Qur'an and the Hadith of the prophet (PBUH) that generally prohibits the Riba, rather every form and any quantity of it, such as,

"O ye who believe! Fear Allah, and give up what remains of your demand for usury, if you are indeed believers"(18)

And the Hadiths like,

"Every form of usury from the pre-Islamic era is rejected"(19)

"One usury-based dirham income that is knowingly earned by a person is more unlawful and worse in degree than thirty six adulteries"(20)

However, the advocates of permissibility also had responded clarifying that the income generated from unlawful sources is not to be spent by the investor but rather

(16)- Monzer Kahf, Fatawa in Shares, Stocks, Commodities, Options, Bonds, etc (2007), (www.monzer.kahf.com)

(17) - See: Yaqubi, N. ibid.

(18) -Al Qur'an 2:278

(19) - Narrated by Imam Muslim et al.

(20) - Narrated by Ahmad et al. But this is a weak fabricated Hadith according to Ibn al-Jawzi.

can be purged, set aside and spent for public interest and charity activities.(21) Also, Islamic Shari'ah is rationale; failure to apply the majority ruling may result in the application of minority ruling whereby the rationality of this religion is damaged. The small/little portion can be overruled by the majority preferably, in particular, with the possibility to calculate and purify the portion which cannot really to be owned by that particular investor.

So, it is not fair to abolish a tremendous investment opportunities that are more essential to the society such as in health, social funds, technology, environment sector, energy, etc. But rather, such companies can be divided in two segments; permissible and non-permissible depending on their involvement in prohibited transactions.

Hence, the levels of income generated from non-Halal activities or interest earned by the company, the level of interest-bearing debt that the company owes (leveraging), and the level of cash and receivables (including interest bearing securities) in the company's balance sheet are some of the factors need more clarification in a tolerable way in accordance to what is perceived to be needed to remove the hardship. From this point of view the creation of jurisprudence of screening as a new chapter in Islamic law evolved in the second generation theory of Islamic Banking and Finance industry between the2000-1992.(22)

1.3 Screening the Shari'ah Compatibility of a company

1. Innovation of Screening

The foundation for introducing stock screening process was laid by the Shari'ah scholars under the Islamic finance point of view which gives a guided freedom in innovation of financial products/services; means all business transactions are permitted unless expressly prohibited by the primary sources of Islamic law and provided that the innovation should not lead to violate the core principle of Islamic Finance such as risk shifting instead of risk sharing although the attitudes of the people toward the risks are different.(23)

Initially, the motive was to only screening such companies to check whether they are compatible to Shari'ah principles or otherwise in absolute terms. Those companies which are screened as non-compliant are not eligible for Muslim investors, to invest into. This was the end result of the screening exercises. The scholars may have various

(21) - See: Yaqubi, N. ibid, pp.16-6, for the detailed argument.

(22) - Dr.Tariqullahkhan, Lecture notes, Islamic Banking and Finance; Theory and Practice, distributed on: 2010/12/10.

(23) -Dr.Tariqullahkhan, Ibid.

methodologies and apply different ratios for a same purpose but the ultimate aim was to arrive at this conclusion. For all intents and purposes, the jurisprudence of screening ends here.

A follow up undertaking by some Muslim scholars to put a certain benchmark of tolerance for some activities, be it financial or otherwise, is not integral to jurisprudence of screening. This aspect deals with another aspect of jurisprudence which is related to the issue of doctrine of 'hajah' or 'essential needs of the society' or some other doctrines which are subsequent to the result of screening.

2. Coverage of the Screening

screening has been used not only in relation to the actual screening of the activities but also in the context of the application of some tolerance benchmark of non-compliant activities of selected companies to reflect the reality of the situation where there are many companies that are compliant from a business activities standpoint but may not be complaint overall unless certain tolerances were applied from the financial standpoint.(24) Consequently, set of criteria have been outlined by the scholars within the screening process in order to examine:

1. The financial nature of the companies.
2. Capital structure of the companies.
3. Extent to which a company may be involved in Riba and other Haram income.

Or in other word the following issues are to be examined:

1. The main line of the business/industry of the company.
2. Income generated from the unlawful sources like interest etc.
3. Assets of the companies that are suspicious to be interest based, i.e. cash and receivables.
4. Leverage level of the company (i.e. debt/equity ratio).(25)

Looking at the first factor, it is for exclusion of certain lines of businesses that are out of the subject of tolerance since the core activities of such companies are based on absolutely prohibited income generation as discussed earlier in the second category of share holding companies.

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(24) -Dr.Daud Bakar, M. ibid, pp.8-7.

(25) -Dr.Monzer Kahf, Ibid

3. Rationale of the tolerance levels

a) Tolerable ratio of impure income %15-%5

Coming to the income earned by the company through unlawful ways either by interest for their bank deposits or any other Haram income, it is tolerable when it is negligible as low as possible applying the principle little involvement may be tolerated. What is little is a matter of argument and discussion. A few scholars put certain criteria to determine this portion and their interpretation for minor/little/negligible extends from %5 to %15 according to the nature of the matter involved in and purified later on. This is because, the lower the percentage, the more a company is producing lawful income as well as the realizing a lawful profit cannot be achieved unless the deduction is negligible.

b) Tolerable ratio for suspicious assets (cash+receivables) of a company

Companies that have high percentage of assets those are suspicious to be interest based in normal western practices are to be excluded. These assets are total of receivables and cash. The reason is that debt is not tradable to a third party; similarly currency exchange also should be on the spot and at face value. Hence, equities of a company are tradable if only the debts and cash do not exceed the other real assets as per above rule. However, the scholars differ in estimating the majority/portion here as it lies between %50-%33.33. But most of them are of view of majority rule that if the real assets go down (i.e.%49) to the cash and debts (i.e.%50), such companies are excludable.

c) Tolerance level in leverage of a company (Debt/Equity)

Companies that are exercising the interest based borrowing at a high level must be excluded from the investment since the paying interest also an unlawful activity not only gaining interest. Hence, the Shari'ah boards consider the ratio 3/1 to the share holders' equity[26] as a high level based on some Shari'ah rulings on the determination of minimum and maximum limits as in many issues that what is less than one third is the criterion of a small percentage. The determination of this ratio inferred from a Hadith of the Prophet (PBUH) regarding the Wills: "one third, and one third is too much".[27]

This approach has been strengthened and approved by the above cited Shari'ah maxims, reasons, authorizations and judgements resulted from the collective Ijtihads

(26) - Determination of the value of the share holders' equity may differ from company to company whether it is market value or paid capital or net asset value etc.

(27) -Yaqubi, N. Ibid, pp.24-21, Monzer Kahf, Ibid and IRTI, Ten Year frame work and strategies, p.38.

done by the number of scholars and Shari'ah boards of the prominent Islamic finance institutions, stock indexes companies and investment funds such as Al-Baraka group of banks, Al-Rajhi bank of Saudi Arabia, Dar Al-Mal Islamic of Switzerland (DMI), Al-Hijra Fund and Dow Jones (stock indexes) International company etc[(28)].

As for OIC resolution, it has come in compromising language in order to create consensus. It says "in principle" which means "al-Asl" in Arabic, which one can interpret in different ways: either "this is in principle and there are details" or "this is the only and final principle".[(29)] This can be understood right by the suggestions of the participants that exclude some cases from the application of the principle such as in case of a capable person's participation in a conventional company with the objective of change them to do lawful/Islamic business and permissibility for participation in a joint stock company which is in essential need of society but unfortunately in dire need for interest based financing or loans provided the unavailability of such companies with lawful business.[(30)]

d) Income purification criteria

The flexibility of the Islamic Shari'ah while being harmonic with the investment opportunities in the companies that deal marginally in unlawful ways it does not mean in any form eating Haram / allowing one to enjoy incomes earned by prohibited ways. Because, the interest itself is not your own but unjust gained for you. In such an event Islamic Shari'ah explicitly stands rationally by easing the life of people, but at the same time the Shari'ah never fails in its well established truthfulness, applicability and credibility. Neither the investor can eat Haram nor can the bank utilize it more and more to strengthen the interest based economy. Hence, its guidance for a Muslim investor in a secular environment also discovered. The amount of income (net profit i.e. dividends + capital gain) should be purified preferably monthly or quarterly in case of inconvenience, either by the bank itself or by the investor in a suitable methodology. The resulted amount set aside preferably to a Muslim charity recommended by the Shari'ah boards.[(31)]

The income purification could be done by a respective methodology of the following:

Dividend purification:

1. ***Number of Shares*dividend paid out* purification ratio.***

Dividends * (Non Permissible Revenue / Total Revenue)[(32)]

(28) -See: Yaqubi, N. Ibid, pp.21-16. For full details of the bodies issued Fatwa agreeing on this issue.

(29) - Monzer Kahf, Ibid.

(30) -See: Yaqubi, N. Ibid, pp.18-17.

(31) -Monzer Kahf, ibid.

(32) -S&P Shari'ah Indices Index Methodology, November 2010, p.10.

2. ***Earnings Per Share Purification : # of Shares*EPS*Purification ratio***
3. ***Increase in Net Asset Value (NAV) purification :(MV-market value- sell) -(MV buy)+quantity*dividend*purification ratio***

Investment purification : sum of non permissible revenue per share per company[33]

2. Overview of selected Islamic Market Indexes

The initial efforts to provide a list of Shari'ah-compliant stocks as an early part of the development of the Islamic capital market were undertaken by Bank Islam Malaysia Bhd. in 1983 which was later followed by the introduction of a list of Shari'ah compliant stocks in June 1997 by the Securities Commission of Malaysia. The implementation of a process to identify Shari'ah compliant stocks facilitates the establishment of Islamic indices. The first Islamic equity index was introduced in Malaysia by RHB Unit Trust Management Bhd in May 1996. This was followed by the launching of the Dow Jones Islamic Market Index (DJIM) in February 1999, the Kuala Lumpur Shari'ah Index (KLSI) by Bursa Malaysia in April 1999 and the Financial Times Stock Exchange Global Islamic Index Series (FTSE-GII) by the FTSE Group in October 1999[34]. Various global, regional, and country specific Islamic Indexes have been introduced since then by these companies and other companies as well. For instance, S&P Global Shari'ah Indices Series, KMI30- of Meezan Group in Pakistan, MCSI Global Islamic Indices, Parsoli Corporation's Islamic indices (for Indian stocks), HK Islamic Index (of Hong Stock Exchange), GCC Islamic index, Jakarta Islamic Index, Russell-Jadwa Shariah Global Index etc.

In case stocks of the companies whose core business activity violates Shari'ah restrictions there is consensus for non permissibility of trade in those stocks and they are classified as negative in due process of screening by all Shari'ah screens. However, when it comes to mixed activity businesses then different jurisdictions and stock exchange players apply different criteria for screening of stocks. The DJIM global and KMI30- use criteria that screen not only source of income (income statement) but also use balance sheet composition bench marks to validate re-trading them whereas in Malaysia, only income statement bench marks are used, no debt or liquidity ratios taken unless as a second best arrangement. However, the objective is the same as in other practices.[35]

(33) -Dr.Tariqullahkhan, lecture notes, Islamic Capital Market & Institutions, fall 2010, QFIS, QF.

(34) -Syed Ali, Salman, Islamic capital Market Products, p.18 and IOSCO, Islamic capital market fact finding report, 2004, p.28.

(35) -Syed Ali, Salman, Ibid, pp.19-18.

A- Universe Creation And Stock Selection

i. Dow Jones Islamic Market (DJIM) Indices

Since the launch of DIJM global in 1999, the DJIM family has expanded to provide a wide variety of benchmarks tracking Shari'ah-compliant securities including indexes for 69 countries, across both developed and emerging markets. The family also includes regional, industry sector and market capitalization indexes, as well as specialized indexes and custom measures as to cover approximately %95 of the float-adjusted market capitalization of the underlying market including all securities in the index universe that pass the screens for Islamic compliance. Currently, the DJIM family consists of the broad DJIM Index with the following regional and country indexes: DJIM Asia Pacific DJIM Asia Pacific ex-Japan, DJIM ASEAN, DJIM Developed Markets, DJIM Developed Markets ex-Japan, DJIM Emerging Markets, DJIM Europe, DJIM GCC, DJIM GCC ex-Saudi, DJIM greater China, DJIM MENA, DJIM Canada, DJIM China offshore Hong Kong, DJIM Japan, DJIM Kuwait, DJIM Pakistan, DJIM Turkey, DJIM UK, DJIM US and DJ DFM (Dubai Financial Market) indexes(36).

ii. Securities Commission (SC) of Malaysia (KLSI)

The universe for SC is limited only to those stocks or securities that are listed in Bursa Malaysia. This includes those securities listed in the First and Second Boards as well as in Masdeq.(37) As for November 2010 it includes 846 Shari'ah compliant securities which are %88 of the total listed securities.

iii. FTSE-GII

The FTSE Shari'ah Global Equity Index Series family covers 150 multinational indexes in all regions across both developed and emerging markets from Americas, Europe, Middle East, Africa and Asia Pacific to create a comprehensive Shari'ah indexing solution. FTSE Shari'ah screening includes the following: Global Developed Equity Index, Asia Pacific Developed Equity Index, EMEA (Europe, middle East and Africa) Developed Equity Index, Americas Developed Equity Index, Global Emerging Equity Index, Asia Pacific Equity Index, EMEA Emerging Index, Americas Emerging Index, Japan 100 Shariah Index, Bursa Malaysia EMAS Shariah Index, Bursa Malaysia Hijrah Shariah Index, DIFX Kuwait 15 Shariah Index, DIFX Qatar 10 Shariah Index, SGX 100 Shariah Index, JSE (Johannesburg Stock Exchange) Shariah All Share Index, NASDAQ

(36) -Guide to DJIM indexes, May 2010 : http://www.djindexes.com/mdsidx/downloads/rulebooks/Dow_Jones_Islamic_Market_Indexes_Rulebook.pdf

(37) - Alhabashi, Syed Othman, STOCK SCREENING PROCESS, INCEIF,p.3.

Dubai Index series, FTSE SET Shari'ah indices and TSEC Taiwan Shari'ah indices.[38]

iv. Standards & Poor's Global Shari'ah Indices Series

In 2006 S&P initially applied Shari'ah screens to three headline indices – the S&P 500, the S&P Europe 350 and the S&P Japan 500. The results are the S&P 500 Shariah, the S&P Europe 350 Shariah and the S&P Japan 500 Shariah indices. In 2007, Standard & Poor's followed with the S&P GCC Shari'ah and the S&P Pan Asia Shari'ah Indices, to cater to the demand for a benchmark Shari'ah product for those regions. Currently, Standard & Poor's boasts the most comprehensive series of Shari'ah indices in the industry. This was accomplished in 2008 with the completion of the review of the S&P Global Broad Market Index (BMI) Index, which consists of over 10,000 companies worldwide, for Shari'ah compliance. The result is the S&P Global BMI Shari'ah index, comprised of nearly 4,000 constituents, along with 10 sector and 45 country and regional sub-indices.

For instance, S&P/TOPIX 150 Shari'ah (150 the large cap bellwether of the Japanese equity market), S&P/TSX 60 Shari'ah (60 the leading tradable Canadian index covers approximately %73 of Canada's equity market capitalization), S&P BRIC Shari'ah (which covers the leading companies from the emerging markets of Brazil, Russia, India, and China), S&P Global Healthcare Shari'ah (represents the largest, most liquid and most representative healthcare companies in the developed markets of three regions), S&P Global Infrastructure Shariah, S&P GCC Shariah, S&P/IFCI Large-MidCap Shariah, S&P Pan Arab Shariah, S&P Global BMI Shari'ah with its various sub indices like S&P Country BMI & Regional Shariah indices (currently with 45 Shari'ah compliant country indices which include both developed and emerging Markets) and S&P Global BMI Sector Shariah indices (composed of 10 sectors, Consumer Discretionary, Consumer Staples, Energy, Financials, Health Care, Industrials, Information Technology, Materials, Telecommunication Services and Utilities) etc.[39]

v. The Karachi Stock Exchange Meezan Index (KMI30-)

KMI30- tracks the 30 most liquid Shari'ah-compliant companies listed at the KSE was introduced in September 2008 based on free-float capitalization of which constituents shall be capped in relation to the overall capitalization of it at %12 on the first day of composition.

(38) - http://www.ftse.com/Indices/FTSE_Shariah_Global_Equity_Index_Series/index.jsp and http://www.islamicfinancenews.com/listing_FTSE.asp

(39) - S&P Shari'ah indices Index Methodology, Nov.2010.

The following criteria are mandate for a security for inclusion in KMI 30:

1. The company which is on the Defaulters' Counter and/or its trading is suspended, declared Non-Tradable (i.e. NT) in preceding 6 months from the date of re-composition shall NOT be considered for inclusion in KMI30- Index.

2. The Company will be eligible for KMI30- Index if its securities are available in the Central Depository System; The Company should have a formal listing history of at least two months on KSE;
3. The company must have an operational track record of at least one financial year and it should not be in default(s) of the Listing Regulations;
4. The Company should have minimum free-float shares of %5 of total outstanding shares;
5. The Company will be eligible for KMI30- Index if its securities are traded for %75 of the total trading days; Mutual Funds (both Open-Ended and Closed-Ended) are ineligible for inclusion in the KMI30- Index;[(40)]

B- Screens for unacceptable and acceptable business activities

i. DJIM Index

Based on the DJIM Index Shari`ah Supervisory Board established parameters, the businesses listed below are inconsistent with Shari`ah law, hence, income from the following impure sources cannot exceed %5 of revenue.

1. ***Alcohol***
2. ***Tobacco***
3. ***Pork-related products***
4. ***Conventional financial services (banking, insurance, etc.)***
5. ***Weapons and defence***
6. ***Entertainment (hotels, casinos/gambling, cinema, pornography, music, etc.)***

Sub categories of the above such as brewers, distillers & vintners, food products, recreational products/services, food retailers & wholesalers, broadcasting, media agencies, restaurants & bars, insurance brokers, property & casualty insurance, reinsurance, life insurance, consumer finance, specialty finance, investment services and mortgage finance also to be excluded.

(40) -KMI30- Index Broucher, pp.4 ,1. http://www.kse.com.pk/

ii. KLSI

Core Activities: The Companies will be classified as Shari'ah non-compliant securities if they are involved in the following core activities:

(a) Financial services (interest based).

(b) Gambling and gaming;

(c) Manufacture or sale of non-Halal products or related products;

(d) Conventional insurance;

(e) Entertainment activities that are non-permissible according to Shari'ah;

(f) Manufacture or sale of tobacco-based products or related products;

(g) Stock broking or share trading in Shari'ah non-compliant securities; and

(h) Other activities deemed non-permissible according to Shari'ah.

Mixed Activities: For non-permissible activities of permissible business, the Shari'ah Advisory Council (SAC) considers two additional criteria:

(a) The public perception or image of the company must be good; and

(b) The core activities of the company are important and considered maslahah (benefit in general) to the Muslim ummah (nation) and the country, and the non-permissible element is very small and involves matters such as `umum balwa (common plight and difficult to avoid), `uruf (custom) and the rights of the non-Muslim community which are accepted by Islam.

iii. FTSE-GII

Companies involved in the following activities will be considered to be non permitted business sectors:

a) Conventional Finance (non-Islamic Banking, Finance and Insurance, etc.);

b) Alcohol;

c) Pork related products and non-Halal food production, packaging and processing or any other activity related to pork and non-Halal food;

d) Entertainment (Casinos, Gambling, Cinema, Music, Pornography and Hotels);

e) Tobacco;

f) Weapons, arms and defence manufacturing.

iv. S&P

Business activities related to the following are excluded:

1. Advertising and Media, with the following exceptions: Media and advertising companies generating revenues in excess of %65 of total income from the GCC countries, News Channels, Newspapers, Sports Channels

2. Alcohol

3. Cloning.

4. Financials, except: Islamic Banks, Islamic Financial Institutions, Islamic Insurance Companies, defined as a company having: Shari'ah Committee to supervise all activities, All products are Islamic, All investments of the company are Islamic and Passes accounting based screens

5. Gambling

6. Pork

7. Pornography

8. Tobacco

9. Trading of gold and silver as cash on deferred basis

v. KMI30-

Core business of the company must be HALAL and in-line with the dictates of Shari'ah. Hence, investment in securities of any company dealing in conventional banking, conventional insurance, alcoholic drinks, tobacco, pork production, arms manufacturing, pornography or related un-Islamic activities is not permissible.

C- Screens for acceptable financial ratios

1. DJIM

To remove companies with unacceptable levels of debts or impure interest income, all of the following must be less than %33:

- Debt to Assets: Total debt divided by trailing -24month average market capitalization; (Total Debt = Short-term Debt+Current portion of Long-term Debt+ Long term Debt)
- Liquid Assets to Total Assets: The sum of a company's cash and interest-bearing securities divided by trailing -24month average market capitalization; (Monthly average market capitalization = ≤ %33)
- Receivables to Assets: Accounts receivables divided by trailing -24month average market capitalization. (Accounts receivables= Current receivables + Long term receivables)

2. KLSI

The screening criteria of SAC of the SEC are mainly based on activity or income. No debt or liquidity screens are used for any restrictions. Hence, to determine the tolerable level of mixed contributions from permissible and non-permissible activities towards turnover and profit before tax of a company, the SAC has established several benchmarks based on ijtihad. If the contributions from non-permissible activities exceed the benchmark, the securities of the company will be classified as Shariah non-compliant. The benchmarks are:

a. The %5 benchmark; is limit for exposure to clearly prohibited such as riba (interest-based companies like conventional banks), gambling, liquor, and pork.
b. The %10 benchmark: is limit for exposure to the element of "umum balwa" which is a prohibited element and difficult to avoid like income from conventional bank accounts. This benchmark is also used for tobacco-related activities.
c. The %20 benchmark: is used as limit for such payment from Shari'ah non-compliant activities such as the rental payment from the premise that involved in gambling, sale of liquor etc.

The %25 benchmark: is the level of mixed contributions from the activities that are generally permissible according to Shari'ah and have an element of maslahah to the public, but there are other elements that may affect the Shari'ah status of these activities like hotel and resort operations, share trading, stock broking and others, as these activities may also involve other activities that are deemed non-permissible according to the Shari'ah.(41)

3. FTSE-GII

Only those companies that pass the following financial ratios will be considered Shari'ah compliant:

a) Debt is less than %33 of total assets;

b) Cash and Interest bearing items are less than %33 of total assets;

c) Accounts receivable and cash are less than %50 of total assets;

d) Total interest and non compliant activities income should not exceed %5 of total revenue. This ratio calculates the recommended purification amount to be paid by the investor.(42)

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(41) - Dr.Tariqullahkhan, lecture notes, Islamic capital market & institutions, fall 2010. List of Shariah-compliant Securities by the Shariah Advisory Council of the Securities Commission Malaysia, affected from 26 November 2010 and Syed Ali, Salman, Ibid, pp.20-19.

(42) -Ground Rules For The Management Of The Ftse Shariah Global Equity Index Series, Version 1.4 September 2010, P.9.Http:// Www.ftse.com/Indices/Ftse_shariah_global_equity_index_series/Downloads/Ftse_shariah_index_series_ground_rules.pdf.

4. S&P

Three areas of focus are leverage, cash, and the share of revenues derived from non-compliant activities. All of these are subject to evaluation on an ongoing basis.

Leverage Compliance: is measured as: Debt / Market Value of Equity (36 month average) < 33 %

Cash Compliances: with reference to cash holdings;

1. Accounts Receivables / Market value of Equity (36 month average) < 49 %;

2. (Cash + Interest Bearing Securities) / Market value of Equity (36 month average) <%33

Revenue from Non-Compliant Activities: In certain cases, revenues from noncompliant activities can be tolerated, if they comply with the following threshold:

(Non-Permissible Income other than Interest Income) / Revenue < %5

Dividend Purification Ratio: to investors for purification purposes, it is calculated as: Dividends * (Non Permissible Revenue / Total Revenue)[(43)]

5. KMI30-

Debt to Total Assets: Debt to Asset ratio should be less than %40. Debt, in this case, is classified as any interest bearing debts. Zero coupon bonds and preference shares are, both, by definition, part of debt.

Non-compliant Investments to Total Assets: It should be less than %33. Investment in any non-compliant security shall be included for the calculation of this ratio.

Non-complaint Income to total revenue: It should be less than %5. Total revenue includes Gross revenue plus any other income earned by the company. This amount is to be cleansed out as charity on a pro rata ratio of dividends issued by the company.

Illiquid Assets to Total Assets: The total illiquid assets to total assets should be at least %20. Illiquid asset, here, is defined as any asset that Shari'ah permits to be traded at value other than the par.

Net Liquid Assets to Share Price: The market price per share should be greater than the net liquid assets (current assets-current liabilities) per share calculated as: (Total Assets – Illiquid Assets – Total Liabilities) divided by number of shares.

Valuation of assets is by market capitalization not by book value.[(44)]

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(43) -S&P Shari'ah Indices Index Methodology, November 2010, p.10.

(44) KMI30- Index Broucher, pp.4,5, and Syed Ali, Salman, Ibid, pp. 22-21.

Comparison between the financial ratios applied by some Indexes:

Index	Total Debt/ Total Assets	Liquid Assets/ Total Assets	Receivables/ Total Assets	Total non-compliant income/ Total revenue	Non-compliant investment/ Total Assets	Net Liquid Asset/ Share price	Illiquid Asset/ Total Asset
DJIM*	<33%	<33%	<33%	<5%			
FTSE	<33%	<33%	<50%	<5%			
S&P#	<33%	<33%	<49%	<5%			
KMI-30	<40%			<5%	<33%	Share price should be greater	Should be 20%

* MV Average = 24 months   # MV Average = 36 months

There is variation of the percentages adopted by different indices. This is based on the differences of personal assessment of tolerance and structures of the markets. Within the selected indices Malaysia's KLSI does not take in account issues relate to liquidity and debt since, there is no limitation has been imposed for Malaysian institutions. Trading of debts is allowed by the Malaysian authorities inside the country. The indices screened by SAC of SEC are selected from out of the securities listed in Kualalumpur stock market only. Consequently, it doesn't matter much to an International Muslim investor.

Another important point is that the computation of the ratios should be based on the company's most recent (and preferably audited) financial information. The screening companies must be having constant monitoring of the company's subsequent financial behaviour to ensure that it remains within the given thresholds. This assumes constant availability of financial information about the company analysed by a competent person. Accordingly, the indices publishers review the process periodically in order to delete the companies those become non-Shari'ah compliant at the time of revision and add new companies instead.

D - Frequency of Periodic Review Process

	Index	Frequency of Review & Announcement
1	DJIM	Quarterly announced (Mar, Jun, Sep& Dec)
2	KLSI	Semi-annually announced (May & Nov)
3	FTSE	Quarterly by regions (Mar: Asia Pacific ex Japan, Jun: Latin America, Emerging Europe, Mid. Est. & Africa, Sep: Japan & Developed Europe, Dec: North America)
4	S&P	Monthly
5	KMI -30	Semi annually (Dec & Jun)

Conclusion

To sum up with the results of above written points, Islam while encourage the people to develop the economic stability in their life, promotes a culture of earning in Halal ways. Islamic principles are obvious on the characteristics of the sources of income. The opportunities and instruments for successful investment and hence, earning income may vary from time to time. But, Islamic Shari'ah principles are rationale and from the originator of the human beings and the ideas they have. Consequently, the evolution of share holding companies to cater the people's needs and necessities of life on a joint venture basis and the stock market mechanism whereby the joint ventures are undertaken conveniently, are in fact, an aspect of the common means through which the common interests are preserved and secured. Since, the conventional economies has predominated the world economy, they are playing the roles of price makers others price takers, decision makers-others decisions takers etc. the story also same in the stock markets' behavior the world over.

Due to the ethical and Shari'ah non-compliant issues, financial participation of the conservative Muslims was not done well in the conventional financial markets over past decades. Henceforth, the jurisprudence of stock screening was discussed by the scholars and opened the doors that were closed until then. During last 15-10 years various indices have been appeared and covered the whole regions of the worlds in order to ease making investment decisions by the Muslim investors.

Really, this practice has given a new dimension for Islamic jurisprudence. However, there are issues require the scholars' as well as investors' concerns. While screening process is being done with all types of assets some activities embedded the stock market transactions are in need of more efforts and clarifications since, they have been practiced even through the screened stocks but non-Shari'ah compliant earnings. For instance, greedy speculative transactions like day trading, buying stocks on future delivery or on a loan from broker etc.

Another important issue arises with regard to stock screening is that major indices are technically managed and run by the western mega index providers although they have Shari'ah boards consisting of prominent Shari'ah Scholars, which is a gap has to be filled up by the Industry owners. It should be noted however, finally, that the stock screening process only, may not lead to a healthy Islamic stock market and pure Islamic investors, unless more considerations are realized quoted above.

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