

Discussions /Dialogues – Islamic Economic Forum
Topic: Running Musharakah
Compiled by: Khalid Hasani
Date: 26/04/2017 - 04/05/2017

Summary of the Discussions on
Running Musharakah held in Islamic Economic Forum

from 26th April, 2017 to 04th May, 2017

Brief Introduction of Islamic Economic Forum:

The Group with title of “**Islamic Economic Forum**” is for Islamic Economic Professionals – Shariah Scholars, Economists, Professors, Academicians /Researchers and IFI Practitioners for the purpose of positive discussions on various issues and challenges, facing the Islamic Economic & Finance Industry in order to explore ideas and solutions, pertaining to Islamic Economic & Finance from an economic as well as Shariah perspective. Since there are already various forums devoted to Islamic Economic & Finance, this forum is expected to have more emphasis on critical analysis as well as to make ensure you're up to date with the latest market movements, analysis, and research. The ideas generated will be for the benefit of the Islamic Economic & Finance Industry globally.

Administrative Committee of the Forum:

1. Sheikh Dr. Aznan Hassan (Head of Administrative Committee)
2. Sheikh Dr. Abdul Bari Mashal (Head, Arabic Section of IEF)
3. Sheikh Dr. M. Burhan Arbouna
4. Sheikh Ashraf Gomma Ali (Head, English Section of IEF)
5. Sheikh Dr. M. Iman Sastra
6. Sheikh Siraj Yasini
7. Sheikh Ibrahim Musa Tijani
8. Sheikh Dr. Abdour Razzak Kaba
9. Mufti Khalid Hasani (Founder of the Forum)

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Preface: The discussion on the topic “**Running Musharakah**” started by an update shared by **Sheikh Syed Ehsan Ullah Agha (Jareer)**;

“Yesterday, our group member (Ahmed Ali Siddiqui) shared Meezan’s success story in Islamic Product Development using Trade-Based and Partnership (Musharakah)-Based modes of Islamic Finance specially Running Musharakah (based on Shirkat ul Aqd) instead of Tawarruq for corporate business financing. Replacing Tawarruq with real Running Musharakah in Pakistan is a giant leap for global Islamic finance industry taking it to the next level of purity. It is an amazing product which directly invests in the operations of the customer rather than the dubious commodity murabaha.

The success of this product lies in its tremendous growth during the last 5 years. As per 2016 financial report of Meezan, Running Musharakah counts for almost 25% of total financing portfolio of the bank.”

Background of the Product

Below is an abstract taken from the Book “An Introduction to Islamic Finance” written by Sheikh Mufti Taqi Usmani “Hafizahullah” which addresses Fiqh /Shariah Basis of the Product;

“Many financial institutions finance the working capital of an enterprise by opening a running account for them from where the clients draw different amounts at different intervals, but at the same time, they keep returning their surplus amounts. Thus the process of debit and credit goes on up to the date of maturity, and the interest is calculated on the basis of daily products.

Can such an arrangement be possible under the musharakah or mudarabah modes of financing? Obviously, being a new phenomenon, no express answer to this question can be found in the classical works of Islamic Fiqh. However, keeping in view the basic principles of musharakah the following procedure may be suggested for this purpose:

- (i) A certain percentage of the actual profit must be allocated for the management.
- (ii) The remaining percentage of the profit must be allocated for the investors.
- (iii) The loss, if any, should be borne by the investors only in exact proportion of their respective investments.
- (iv) The average balance of the contributions made to the musharakah account calculated on the basis of daily

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products shall be treated as the share capital of the financier.

(v) The profit accruing at the end of the term shall be calculated on daily product basis, and shall be distributed accordingly.

If such an arrangement is agreed upon between the parties, it does not seem to violate any basic principle of the musharakah. However, this suggestion needs further consideration and research by the experts of Islamic jurisprudence. Practically, it means that the parties have agreed to the principle that the profit accrued to the musharakah portfolio at the end of the term will be divided on the capital utilized per day, which will lead to the average of the profit earned by each rupee per day. The amount of this average profit per rupee per day will be multiplied by the number of the days each investor has put his money into the business, which will determine his profit entitlement on daily product basis.

Some contemporary scholars do not allow this method of calculating profits on the ground that it is just a conjectural method which does not reflect the actual profits really earned by a partner of the musharakah, because the business may have earned huge profits during a period when a particular investor had no money invested in the business at all, or had a very negligible amount invested, still, he will be treated at par with other investors who had huge amounts invested in the business during that period. Conversely, the business may have suffered a great loss during a period when a particular investor had huge amounts invested in it. Still, he will pass on some of his loss to other investors who had no investment in that period or their size of investment was negligible.

This argument can be refuted on the ground that it is not necessary in a musharakah that a partner should earn profit on his own money only. Once a musharakah pool comes into existence, the profits accruing to the joint pool are earned by all the participants, regardless of whether their money is or is not utilized in a particular transaction. This is particularly true of the Hanafi School which does not deem it necessary for a valid musharakah that the monetary contributions of the partners are mixed up together. It means that if A has entered into a musharakah contract with B, but has not yet disbursed his money into the joint pool, he will still be entitled to a share in the profit of the transactions effected by B for the musharakah through his own money. Although his entitlement to a share in the profit will be subject to the disbursement of money undertaken by him, yet the fact remains that the profit of this particular transaction did not accrue to his money, because the money disbursed by him at a later stage may be used for another transaction. Suppose, A and B entered into a musharakah to conduct a business of Rs. 100,000/-

They agreed that each one of them shall contribute Rs. 50,000/- and the profits will be distributed by them equally. A did not yet invest his Rs. 50,000/- into the joint pool. B found a profitable deal and purchased two air-conditions for the musharakah for Rs. 50,000/- contributed by himself and sold them for Rs. 60,000/-, thus earning a profit of Rs. 10,000/-. A contributed his share of Rs. 50,000/- after this deal. The partners purchased two refrigerators through this contribution which could not be sold at a greater price than Rs. 48,000/- meaning thereby that this deal resulted in a loss of Rs. 2,000/-. Although the transaction effected by A's money brought loss of Rs. 2,000/- while the profitable deal of air-conditions was financed entirely by B's money in which A had no contribution, yet A will be entitled to a share in the profit of the first deal. The loss of Rs. 2,000/- in the second deal will be set off from the profit of the first deal reducing the aggregate profit to Rs. 8,000/-. This profit of Rs. 8,000/- will be shared by both partners equally. It means that A will get Rs. 4,000/-, even though the transaction effected by his money has suffered loss.

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The reason is that once a musharakah contract is entered into by the parties, all the subsequent transactions effected for musharakah belong to the joint pool, regardless of whose individual money is utilized in them. Each partner is a party to each transaction by virtue of his entering into the contract of musharakah.

A possible objection to the above explanation may be that in the above example, A had undertaken to pay Rs. 50,000/- and it was known before hand that he will contribute a specified amount to the musharakah. But in the proposed running account of musharakah where the partners are coming in and going out every day, nobody has undertaken to contribute any specific amount. Therefore, the capital contributed by each partner is unknown at the time of entering into musharakah, which should render the musharakah invalid.

The answer to the above objection is that the classical scholars of Islamic Fiqh have different views about whether it is necessary for a valid musharakah that the capital is pre-known to the partners. The Hanafi scholars are unanimous on the point that it is not a pre-condition. Al-Kasani, the famous Hanafi jurist, writes:

واما العلم بمقدار رأس المال وقت العقد، فليس بشرط لجواز الشركة
بالأموال عندنا. وعند الشافعي شرط ... ولنا أن الجهالة لا تمنع
جواز العقد لعينها، بل لإفضاءها إلى المنازعة. وجهالة رأس المال
وقت العقد لا تفضي إلى المنازعة ، لأنه يعلم مقداره ظاهرا وغالبا
لأن الدراهم والدنانير توزنان وقت الشراء فيعلم مقدارها فلا يؤدي
إلى جهالة مقدار الربح وقت القسمة

(According to our Hanafi School, it is not a condition for the validity of musharakah that the amount of capital is known, while it is a condition according to Imam Shafi'i. Our argument is that jahalah(uncertainty) in itself does not render a contract invalid, unless it leads to disputes. And the uncertainty in the capital at the time of musharakah does not lead to disputes, because it is generally known when the commodities are purchased for the musharakah, therefore it does not lead to uncertainty in the profit at the time of distribution.)

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It is, therefore, clear from the above that even if the amount of the capital is not known at the time of musharakah, the contract is valid. The only condition is that it should not lead to the uncertainty in the profit at the time of distribution. Distribution of profit on daily product basis fulfills this condition.

It is true that the concept of a running musharakah where the partners at times draw some amounts and at other times inject new money and the profits are calculated on daily products basis is not found in the classical books of Islamic Fiqh. But merely this fact cannot render a new arrangement invalid in Shari'ah, so far as it does not violate any basic principle of musharakah. In the proposed system, all the partners are treated at par. The profit of each partner is calculated on the basis of the period for which his money remained in the joint pool. There is no doubt in the fact that the aggregate profits accrued to the pool are generated by the joint utilization of different amounts contributed by the participants at different times. Therefore, if all of them agree with mutual consent to distribute the profits on daily products basis, there is no injunction of Shari'ah which makes it impermissible; rather, it is covered under the general guideline given by the Holy Prophet Muhammad in his famous hadith quoted in this book more than once:

المسلمون على شروطهم الا شرطا احل حراما او حرم حلالا

(All the conditions agreed upon by the Muslims are upheld, except

a condition which allows what is prohibited or prohibits what is lawful.)

If distribution on daily products basis is not accepted, it will mean that no partner can draw any amount from, nor can he inject new amounts to the joint pool. Similarly, nobody will be able to subscribe to the joint pool except at the particular dates of the commencement of a new term. This arrangement is totally impracticable on the deposits side of the banks and financial institutions where the accounts are debited and credited by the depositors many times a day. The rejection of the concept of the daily products will compel them to wait for months before they deposit their surplus money in a profitable account. This will hinder the utilization of savings for development of industry and trade, and will keep the wheel of financial activities jammed for long periods.

There is no other solution for this problem except to apply the method of daily products for the calculation of profits, and since there is no specific injunction of Shari'ah against it, there is no reason why this method should not be adopted."

Summary of the dialogues - IEF:

Dr. M. Iman Sastra: Congratulations to our member ahmed ali siddique.

Can you share with us your presentation? It is good to discuss about this product in this forum. There is a room for discussion regarding this product.

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Wail Aminou: Would it be possible to have more details about this product ? Thank you

Dr. Khalil Labniouri: Salam dear brother

Excellent work

Is it a real mousharaka product !? (Pure Equity)

Ca you share with us the structure of the product please

Khalil labniouri
Commercial Director
Bank Assafa
Morocco

Syed Ihsan Ullah Agha: Bro Ahmed Ali Sidiqi will hopefully share the slides in this group. He is the master mind behind this innovative product.

Dr. M. Iman Sastra: That's going to be discussed if our brother share his product details or presentation.

There are some sharia discussion and risk discussion about this product.

Faisal Shaikh: Assalam Alikum, although I agree that this product is better than tawaruq, however, it has no match with fiqh concept of Musharakah, as profit sharing ratio is linked to KIBOR and usually very fine rate. it has been used mostly with AAA rated companies so Islamic banks have to compete with conventional banks to cut rates. Companies enjoy double benefit as they pay rate which is equivalent to conventional rate while risk of loss is parked at Islamic banks. I humbly feels that Barakah of real Musharakah can only be achieved if it is used without profit linkage to KIBOR. Some people feels that companies involved in Running Musharakah will gradually migrate to real Musharakah. May Allah make it easy for them Aameen

Dr. M. Iman Sastra: Thanks Brother Muhammad Faisal for your explanation. I received also this product proposal from our product development based on running musharakah but I myself and our ssb have a lot of questions regarding the concept of musharaka used in this product. I prefer our brother ahmed ali will share to us so that we can discuss further in detail

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Ahmed Ali Siddiqi: Assalam o Alaikum Insha Allah I will share the details of the session and slides in the group tomorrow. The title of my talk was "Islamic Product Development in Non Tawarruq Jurisdictions - Meezan Bank Experience"

One the main purpose of the talk was to show the Islamic Banking community of Malaysia that a bank like Meezan which is the largest Islamic bank in Pakistan with over 33% of Islamic banking market share can provide almost 99% financing to its Corporate and consumer clients based on Trade based, rental based and Partnership based modes.

And also to show that Shirkat ul Aqd based modes can be successfully used by Islamic banks if they have the right mindset

Amjad Bangash: Agreed with brother @Faisal Shaikh. Each transaction under this product is arranged in a way either through weightages or profit sharing ratio that a profit equivalent to prevalent LIBOR rate is achieved. However and whatever it is far better than Tawarruq as at least works for real economy.

Khalid Hasani: Shukran dear Ahmed bhai, looking forward to hear more from you

Faisal Shaikh: Sometimes I feel that the running Musharakah is great product for most of the companies. While undertaking Murabaha and Istisna islamic banks used to ask many questions to understand purchasing and manufacturing process. Every time we used to compel the companies to make direct payment to suppliers, physical inspection was required to ensure that real purchasing has been done which means lots of work for our customer but under RM they just draw cash and use it in their business in whatever manner they feel comfortable except a few most of the RM customer are indifferent with Shariah issues they use our lines as our rate is competitive now they do not have to face hassles under RM. many of our customer who were comfortably using Murabaha are now insisting for RM. sometime I feel that in our initial career in islamic banking back in 2001 we used to say Islamic banking is asset backed and the only other option is real profit and loss sharing but under RM both these characteristics are missing. Again I would like to clarify that I myself in my capacity as islamic banker provide RM based facilities to our customers as most of islamic banks (after approval from their respective honourable and respected Shariah Scholars) in Pakistan are offering this product but these questions haunt me and they need to be discussed.

Dr. M. Iman Sastra: Thanks Brother Muhammad Faysal,

May I know what is the reason this product approved by the sharia board? If you have any idea behind

Please explain in detail how your partnership based in running musharakah?

Ahmed Ali Siddiqi: Dear Br Dr Imran, this product is based on Shirkat ul Aqd where bank is investing in the company in the business operations and sharing profits as per agreed ratio. So it

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is 100% in compliance with the rules of Musharakah which the scholars and Islamic bankers were desiring for a long time.

The higher or lower share of bank's profit is a pure commercial issue and allowed as per all fiqh schools that it can be decided mutually. It does not make a Musharakah much pure or otherwise if a banks is asking for a higher share of profit or lower.

This is to say that if Murabaha is done at just 10% profit rate (IRR) with a whole seller by the Islamic bank after taking 100% risk of asset ownership and allowing the whole seller who normally earn around 150%-200% IRR is less pure then if the bank charges at least 75% IRR on Murabaha to make it pure.

I think we are confusing the commercial return aspect with the product permissibility.

Dr. M. Iman Sastra: Thanks Brother,

I have a question, how do you calculate your partnership in that musharakah, let say the customer need financing of 1 million, while the total asset of the company is 100 million?

Second, how you calculate the profit sharing ratio? Second, The profit calculation Is it on monthly basis, quarter or semi annual basis? Let say if the actual profit is less or more, how you treat it?

Are you calculate it by system or manually by excel?

Ahmed Ali Siddiqi: InshaAllah will share the related slides so you can understand the concept.

Briefly we calculate total Musharakah investment needed for operational business activities and then calculate bank's Musharakah share using the balance drawn from the Musharakah account and then subtract bank's average Musharakah share from total Musharakah investment to get customer share

Secondly the profit sharing ratio is equal to Investment ratio upto a ceiling say first 100 million and then it is agreed at a lower ratio at the start.

Profit calc is based on the agreed tenure it could be monthly, quarterly, semi yearly or annually.

Depending on the mutual agreement between the two partners as the customer needs to provide related financial statements, income and expenses for the period.

Based on the actual results the profit is calculated if it is less then our projections bank will get lessor or if it is higher then bank also get higher.

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In case of loss it is shared between both parties as per the investment ratio.

There is no guarantee of profit or principle nor a rate is fixed. It depends on the business results.

Dr. M. Iman Sastra: Means you calculate profit manually for each period? Not by system
[27/04 09:19] **Amjad Bangash:** On the surface it looks fine. Any idea in the past ONE YEAR: 1. How many cases where bank earned more profit and customer did not object to it as rate was more than normal market prevailing rate? 2. In how many cases, the bank earned less profit rate as compared to market? 3. Is there any total loss case happened?

Ahmed Ali Siddiqi: Yes, we have to do final manual calculation based on the actual results as we take on account profit every month but it is subject to final adjustment based on actual financial results

There are both type of cases where bank earned more and less profits and. In one case we had a loss situation but Alhamdulillah overall we were good as. We try to do Musharakah after proper due diligence and after understanding the risks and business dynamics

Amjad Bangash: What will happen if Meezan bank closed its annual accounts but customer couldn't. For example, meezan bank published annual results as of 31st Dec and mentioned income from Musharaka was 250 M. However one of the Musharaka partner finalized the statements or came to know the actual profit on 31st January which was less and as per that the Musharaka profit should be 245M in meezan books. How this will difference will be covered in Meezan bank Financials?

Dr. M. Iman Sastra: Another question: how come meezan bank already take the expected profit (with your fixed calculation) while you dont know how much the actual profit earned at that point month?

Ahmed Ali Siddiqi: Brother it is very simple, as we are using accrual based of accounting and this is similar to what happen when we invest in shares. If the dividend is announced but not received it is taken as income.

Moreover as we know that business is making profits so we taken on account profit (it is allowed in Musharakah to take provisional or On account profits) but it is subject to adjustment based on actual results.

Dr. M. Iman Sastra: Taking provisional or profit in musharakah is debatable brother. In some point you said the profit is not guaranteed, but using this method you are trying to fix the rate which means "guaranteed"

Second, who will make sure the provision profit is the same with actual one? RM or CAD or

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who?

Amjad Bangash: Brother I understand this. Provisional and then actual adjustments. My question is more of accounting and regulatory nature in terms of balance sheet and income statement. No Income is prepared and published based on provisional profit. In the financial Statements actual results come. If you can tell me that Meezan bank has published balance sheet and total profit was 10 M including 3 M from Musharaka based on provisional result of customer. Now customer came to know it is just 1 M. So in this case actual profit to be 8 M but the books are published. How to cater this overstatement of profit of Meezan bank?

Ahmed Ali Siddiqi: As the companies are going concerns so based on the accounting principles of conservativeness and materiality it is Ok to record this provisional profits just like interm dividends for stock.

Our accounting firms and regulators has no issue with these basis
Also external audit firms like PWC / KPMG are also Ok on it

Prof. M. Ayub: Sorry to say that the new shirkah al aqd based product as alternative to conventional OD is equally dubious as organised tawarruq - simply a way to finance the corporate sector on a relatively lower rate for their working capital needs and getting return on cash.

In RM, it is agreed in the agreement, in the very begging, that over and above the target rate equivalent to the OD rate, the bank will reduce its share in profit to the extent of 0.00001 giving 99.9999 to the corporate client (as it happened in case of wheat purchase by the Food Department Punjab, Pakistan for which Islamic banks provided 'credit lines' for so called musharaka.). As per AAOIFI's standard, it is riba, not Musharaka. See for detailed analysis: editorial, JIBM June 2016 ['Running Mushārahah' by Islamic Banks in Pakistan: Running from Mushārahah or Moving back to Square One] at the following link:

[http://www.jibm.org/sites/default/files/files/3_%20Editorial%20-%20Running%20Musharkah-%20Running%20from%20Musharakah%20\(26-7-16\).pdf](http://www.jibm.org/sites/default/files/files/3_%20Editorial%20-%20Running%20Musharkah-%20Running%20from%20Musharakah%20(26-7-16).pdf)

Amjad Bangash: To me This is incorrect. It means whatever is provisional profit is actual profit since financial statements are based on this without taking care what happened to actual business

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of customer (to those cases where bank has published the financials without waiting for customer to tell actual profit) or in other words provisional profit is a guaranteed profit as stated by brother @Iman Sastra

Ahmed Ali Siddiqi: Dear Ayub sb please refer to AAOIFI standards on Musharakah and you will find it that AAOIFI even allows to pass the pass all amount over ceiling.

Also please quote the exact clause where AAOIFI has declared the ceiling on profit in Musharakah as Riba.

Amjad Bangash: This news is also true. I call this as Cosmetic managing fixing profit rate equal to interest rate. We here worked on running wakalah product of all banks and then spent almost 2 years to develop product which does not allow to change profit ratios once agreed to avoid fixing of rates to market rates.

Ahmed Ali Siddiqi: Brother This could be your personal view.

It is not a guaranteed return. In case of lower return based on actual numbers it reduces next month's income

Prof. M. Ayub: Respected Ahmed bhai, what AAOIFI allows is at the time of distribution, not to agree abinitio.

Amjad Bangash: Yes my own view. Brother Ahmed I was just asking if Meezan bank Financials are published and closed the year and then a Musharaka customer told you that actual profit is less than provisional, which means Meezan bank statements based on provisional are having overstated profit for the year. And this is simple.

Ahmed Ali Siddiqi: Dear Ayub sb Islamic Banks are also not allowing at the start that all profit will be given to him. Also how does it become Riba - we need to be very careful we start giving fatwa of Riba on permissible transaction.

Ayub sb also please give the exact reference of AAOIFI that declares profit on Musharakah as RIBA ?

Prof. M. Ayub: All details with respect to AAOIFI standard are given in the editorial referred to above.

Amjad Bangash: Please have a look of AAOIFI standard on Musharaka which does not allow finalization of accounts based on expected or provisional profit rates. Clause 3/1/5/10 There are many other queries as well on RM so it will be good to discuss this product in next couple of days. One thing which is my experience that each product on the surface is very fine but actual issue is its correct implementation.

Dr. Kaleem Alam: Br Ahmed Ali, With mention of Murabaha, the picture is clear to me now. Thank u.

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Dr Kaleem ALAM

Dr. M. Burhan Arbouna: Taking profit on account is a normal practice. I do not know any view of modern scholars objecting to profit on account. Again all the discussion after explanation of the product is much related to technical issues and accounting entries. Announcing a profit which appear to be less letter in the new year is occurring although rare does not affect the musharaka as such.

Prof. M. Ayub: A stipulation, in shirkah agreement, that one partner will get as profit share a lump sum from the profit or a percentage (e.g. 5%) of the capital renders the shirkah void (AAOIFI Shariah standards on shirkah; 3/1/5/8). All partners should be sharing the profits meaning that one partner cannot say that after certain earnings and profit distributed at that level, he will be getting all profit over and above that level (Mufti M. Taqi Usmani, Introduction to Islamic Finance: 35-41). It might be because of the reason that practically it would mean one party taking fixed return as in case of ribā. This, as per AAOIFI's Standard (clause 3/1/5/7; Also see Sharī'ah basis in Appendix B to the Standard) renders such partnership contract void.

Although giving hibah by a partner to the other at the time of distribution of profit is permissible as per AAOIFI's Standard, but if it becomes a norm to the effect that one party gets a fixed return by formal understanding, it becomes ribā based activity. The stipulation that the parties will share profit in first tier in the ratio of their investments is meaningless and of no effect because the bank gets a fixed rate without fail and the major part of the profit goes invariably to the industrialist / client. Also, this is against the philosophy of Islamic banking as explained by Hazrat Mufti Usmani M. Taqi sahib [He contends that borrowers from conventional system generally earn huge profits and only a small proportion (e.g. 8 or 9 %) is taken by the bank as interest; out of which a small part goes to the depositors. The net result is that all the profits of the enterprise is earned by the persons whose own capital does not exceed 10 % of total investment in a business or project, while the people owning 90 % of the investment get no more than the fixed rate of interest (Usmani M. Taqi, Pp. 20; 238-246)]

Another point: Getting a fixed benchmarked rate and forfeiting the remainder for benefit of big corporate entities without explicit authority of the depositors is not allowed under the law of mu ḥārah. Islamic banks manage the deposits on basis of mu ḥārah, so they cannot make a gift or charitable donations without clear consent of the depositors (AAOIFI, Standard on mu ḥārah, Clause: 9/6). RM leads to forfeiture of the right of the depositors to get profit. For wheat purchase operations for 2016 harvest season, more than a dozen Islamic banks provided finance. It was agreed for RM between Punjab Food Department and an Islamic bank [for wheat purchase operations) that bank's share, after the fixed target rate (for example, 3MKIBOR-0.5% p.a.; around 5.30% p.a.) would reduce to 0.00001 giving 99.9999 % share to the client. It meant that for additional profit of only 100 Rupees for the bank, the additional profit

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of the Musharaka has to be Rupees One billion. In this respect, another point worth consideration is whether all financing banks are one party and the Food Deptt Punjab the other; or each and every bank has executed separate Musharakas with the Punjab Food Deptt. It is important because in the former case all wheat would be taken as one project's assets, while in latter situation wheat of all banks has to be separated for deciding risk and reward in each Musharaka.

Ahmed Ali Siddiqi: Just to clarify again, in the Running Musharakah product the profit is not fixed as a percentage of capital nor in lump sum.

So it does not apply here.

I would repeat that the actual profit is shared as per agreed ratio. And if there is no or low profit then we will get less or no profit.

Dr. Tariqullah Khan: The issue is that the ROE to shareholders is 14 to 18% but the rates given on Musharakah Mudharabah deposits rarely reach 2%! Indeed these rate differentials are Halal. But this much being Halal is not enough. The business model of the Islamic bank supported by our great scholars must create opportunities for the lesser privileged segments of the society by organizing the institutions of compassion- Qard, Zakah, Forbearance, Awqaf, Sadaqat etc and must incorporate in its business model the Maqasid somewhere also called ESG, SDG etc concerns!

Ahmed Ali Siddiqi: Yes We are in compliance with this clause as we do not allocate final profit on expected or provisional on account payments but wait for actual accounts of the company to calculate the final profit

Amjad Bangash: In case actual accounts of the company are not finalized but your bank closed the final accounts for the year? What will happen?

Dr. M. Iman Sastra: They are taking provisional profit every months based on their expected profit (fixed number). Which not based on percentage ratio of profit.
Is it ok?

Amjad Bangash: It will affect the Musharaka since profit on account is not an actual Profit rather it is a fixed rate over the money invested like a conventional bank lends loan at some fixed rate. Therefore when actual realized profit will be taken care instead of profit on account then it will not affect Musharaka. Though it's an accounting and technical matter but it is important to have Musharaka and not fixed rate lending on the money invested.

Dr. M. Iman Sastra: Please let us know also in aaoifi sharia standard on musharakah, which clause you referring to?

Dr. Yusuf Azim Siddiqi: I can confirm that Sharia Boards of EIB n Dubai Bank approved giving Profit on Account in Wakala Investments provided the final amount is adjusted against

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the actual performance with no obligation on the investment manager of PoA.

Dr. M. Iman Sastra: We are talking about profit sharing mechanism in musharakah

Dr. Yusuf Azim Siddiqi: I have gone through *Running Musharaka* presentation by Br. Ali Siddiqui. I guess the paper I am referring is an old one but still my comments are as follows:

1/ I agree with Key features of the product. However no mention was made of major issues like:

a- qualification of the client to be a Sharia compliant entity.

b- calculation of profit in large corporations.

c- segregation of customer's business from the Musharaka pool of assets.

Having said that - I would like to highlight that I am not opposing or questioning the solution.

And it was long back proposed by Dr. Osaid Kailni for construction project financing and it was presented by Dr Abdulsattar in Al Barakah Conference. Also Dar Al Sharia came up with Points of Mudaraba for overdraft facilities.

So it's a good solution but expectations to be managed. And can't be seen as the product for everything or even game changer.

Nabeel Kat: Similarly, is it allowed to take profit on account for Wakala investment financing??

Dr. Yusuf Azim Siddiqi: If it's PoA then no issues

Dr. M. Burhan Arbouna: Profit on account means mudaraba or musharaka distributed profit based on valuation. This is not an issue. It is extensively discussed by fuqaha. The only condition is that when actual profit is clear an adjustment should be made or mubaraa concept should apply. Of course in distributing a profit one will at the end get fixed amount based on the ratio agreed upon. If I said profit is 40:60. It means when profit expected is 100, one person will get 40 on account and the other 60. When actual appear to be 80 an adjustment should be made and some debit and credit will take place. All these will be managed by the agreement. I appreciate the discussion because some may not have experience this kind of business model. In this case you try to learn and not to give judgement as to whether it is halal or haram.

Dr. M. Iman Sastra: What you are saying is correct Dr, our discussion here is where the bank charging based on 7 % for example times the financing amount. This is how they practice We have discussed also this matter with the sharia board, and they are disagree with this provisional fixed rate

Amjad Bangash: That's is right and we all know. And this was my question which was unanswered. What will happen if bank has closed and publish its balance sheet but one of the Musharaka customer finalized his statement later with less profit? How this will be done? If undone it means the closed Financials of the bank was on provisional rate and not actual profit.

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Moreover in the accrual based profit the ratios are not considered rather a fixed percentage say 5% is taken care to calculate monthly installment

Dr. M. Iman Sastra: I am not saying is halal or haram, we need more discussion on this

Amjad Bangash: We also understand this Dr. we have even developed this product which many of islamic banks don't have it. The issue is that calculation of profit or installment etc is calculated as per fixed rate of 5% etc and system can not do it based on 60:40 etc

Dr. M. Burhan Arbouna: Not an issue I guess. When you put your ratio you make sure the end result of the ratio gives 7% as expected profit. For example a ratio of 80:20 will give us 8%:2% because there is a need to convert this ratio into percentage format for accounting and recording of income purpose.

Amjad Bangash: But it does not happen in this way actually. May be if you can check the system calculation of Musharaka financing

Dr. M. Iman Sastra: That will give us rate of 8% if we calculate the actual one

Dr. M. Burhan Arbouna: May be it is not happening in your practice.

Dr. M. Iman Sastra: I have check their calculation method, not based on actual 80:20, but rather kibor plus margin

Amjad Bangash: Do your bank have this product of Musharaka Financing?

Do your bank have this product? Have you checked the calculation?

Dr. M. Iman Sastra: Dr Arbouna, what we are discussing here is what meezan bank practice on running musharakah. Have you read and analyzed their practice?

Dr. M. Burhan Arbouna: We have profit on account concept

Amjad Bangash: Based on Musharaka?

Dr. M. Burhan Arbouna: I am talking about profit on account

Amjad Bangash: But since morning we are discussing Musharaka

Dr. Burhan Arbouna: Based on wakala

Dr. Iman Sastra: We have also here based in wakalah Dr

Amjad Bangash: Ok. Then this is not under discussion.

Dr. Burhan Arbouna: Musharaka yes but some one said profit on account is not acceptable

Dr. Iman Sastra: *on

We agree on one thing now

Amjad Bangash: No it is said profit on account is not acceptable if it is not adjusted which is not happening in case banks Financials are closed

Ahmed Ali Siddiqi: 1. It was done with shariah compliant businesses only

2. Only done with those clients who agreed to share their P&L accounts

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3. proper segregation is done either in whole business or we identified in the SBU.

Siraj Najbuddin: Just to clarify my self

When you say 80% and % 20% its based on profit to be generated but if we convert this into 8% and 2% to apply in the system, this rate will be linked to principal amount right ? It cannot be linked to profit because it's not known yet

If we linked this rates to EPR in the system, than it should be monitored closely and reversal to be done once actual profit received which may lead to operational risk in big banks

Amjad Bangash: Great @Ahmed Bhai I am aware about your outstanding academic career and then outstanding professional career. The best Islamic Banker with the Best Islamic Bank, Meezan Bank under Sheikh Taqi Usmani Sahb supervision. Just I am learning from you through this forum and my questions are just for my benefit.

Dr. Iman Sastra: This one of my question above, who will monitor the actual rate? Is it CAD department, relationship manager or whom?

Amjad Bangash: Absolutely right. It is linked with principal amount and cannot be to actual profit as actual is unknown. Sometimes it may take more than a year time to know actual Profit. When actual profit is known than it is shared according to ratio. Before that it is percentage of capital amount which is all provisional and for calculation purpose only.

Ahmed Ali Siddiqi: In Meezan Shariah team & CAD monitor the calculation of every case and final close out

Siraj Najbuddin: Dear brother yosuf

As I know one of IFI in SriLanka have same product and in addition to above conditions, RM financing will be given only for listed companies in stock exchange who supposed to realise their financial quarterly basis and to the corporate who's management accounts are acceptable to the bank

So in the interim period, profit will be shared on account basis and it will be adjust once the financials are release and as I aware it was the duty of relationship officer which will be monitored by sharia

Dr. Yusuf Azim Siddiqi: Very good control

Dr. Burhan Arbouna: Strange conclusion. How it cannot be linked to profit but to the principal. It may be relevant to put any percentage of the profit which in the end may give you 8% of the principal or 2% of the principal. What is stated is just an example. If I need a profit of the 2% of the principal I might say the profit distribution ratio is so and so in such a way to give me an expected profit of 2% of the principal but I may get 4% or 1% of the principal when adjustment takes place. Hope it is clear. We need accountant to help us as to whether this is possible, the adjustment. If yes this should be monitored to avoid abuse.

Amjad Bangash: Brother @Ahmed we all know about profit adjustment when actual profit known , what is profit on account , fixed percentage to Principal at start since system can not calculate something linked to unknown etc. Profit adjustment etc are very simple things and does not need science. I was asking very different. I will again repeat my question: Example. Meezan

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bank has given Musharaka to Party A in November. Based on ratio the percentage of profit to Meezan was 10 %. Now on 31st Dec, Meezan calculated provisional profit at 10% and assume it was 4 M. Now Meezan bank balance sheet has total bank profit of 20 M which includes 4 M from this customer. Meezan bank Financials are closed and even published. However customer's Financials took time and Customer in march came to know that actual profit is 2 M instead of 4 which means Meezan profit was 18M instead of 20. Now what will happen to this difference if 2 M. Please note that Financials are closed and published. Thanks

Ahmed Ali Siddiqi: We will return the 2 M profit back and adjust our next quarter accounts and pool working accordingly

Also it would be good idea that Meezan Bank can also add a note to the accounts to explain it.

Siraj Najbuddin: Dear Dr, my exposures in Islamic banking is nothing compared to you.

However. Just to highlight as you say "

It may be relevant to put any percentage of the profit which in the end may give you 8% of the principal or 2% of the principal"

It's not possible to do in the system as per my knowledge. Industry experts may comment on it.

In the system there is no way you can put an amount as a profit and % of it to be taken to P&L and what about the remaining profit as its customer share but total was mentioned in the banking system

Unless and otherwise you put a exact figure as anticipated profit it linked the EPR to principal amount

Prof. M. Ayub: Dear brother Ahmed, I had given the rate charged in actual case of wheat purchase financing; 3 months KIBOR - 0.5 SAY 5.5 % pa. In the second step banks got only 0.00001% and practically it was the final charge. All banks did this. Can any one term it shirkah al aqd?

Ahmed Ali Siddiqi: Dear Ayub sb, In case of Punjab food if you review the agreements signed between Meezan bank and client. The agreement clearly state that upto the ceiling the profit would be shared in the ratio of investment. And above ceiling the profit ratio is very low as it was a government entity and was not willing to share higher profits.

Also there was no guarenteed profit any where.

let me ask if the company had made a loss how much profit the Islamic bank would be entitled to as per the Running Musharakah agreement with this client ?

Please find copy of my Presentation given in IBFIM Session in KL Malaysia on "Islamic Product Development in Non Tawarruq Jurisdiction - Meezan Bank Experience & Case Study on Running Musharakah"

Dr. M. Iman Sastra: Thanks for the sharing Brother Ahmed Ali 🙏🙏🙏

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Nabeel Kat: Dearb Br. Amjad,

This standard is about final allocation of profit of Musharaka, not the finalization of Bank's accounts.

Amjad Bangash: Yes I know. Look at my last example. If bank will not consider this or adjust it in the next year than the practice will be against this clause.

Nabeel Kat: Agreed to discuss this in details, including Wakala product also.

Syed Ehsan Ullah: This practice is also permissible according to BNM Musharakah standard as it states:

G 16.4 The partners may agree on a PSR based on a specified profit threshold.

In the event that:

- (a) the actual profit is equivalent or below the threshold, the profit shall be shared based on the agreed PSR.
- (b) the actual profit exceeds the threshold, the excess amount may be:
 - (i) distributed based on a different PSR agreed by the partners;
 - or
 - (ii) paid to any of the partners as agreed.

Dear Ayuub Sb, this would be still considered as shirkah alaqad, since it does not violate the conditions of musharakah. This practice is also validated by BNM Musharakah standard which clearly mentions the actual profit exceeds the threshold, the excess amount may be:

- (i) distributed based on a different PSR agreed by the partners;
- or
- (ii) paid to any of the partners as agreed.

Amjad Bangash: Ok that's good. Here some queries arise. 1. Is there any footnote in bank balance sheet for depositors/public that Musharaka profit is provisional and actual may be different? 2. The excess profit paid in the next year means the depositors of first year get more due to provisional profit. Will this be settled as well. Same in opposite case when depositors were paid less as Musharaka actual profit was higher than provisional. 3. The year where adjustment of profit will be done, will there be any disclosure about this adjustment 4. The year where excess profit like above example of 2 M to be paid to Musharaka partner, this 2 M will be deducted from customers income part or income or bank's part 5. The depositors normally get profit based on provisional profit or based on actual realized profit.

I have seen the balance sheets of different banks but didn't find such disclosures. I am sure a company who obtained Musharaka finance in December or even in November won't be able to

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reach to final audited profit that to be paid to islamic bank. Also in the account opening forms or in deposit application forms this fact is not disclosed that due to Musharaka financing the depositors profit might be different etc.

Ahmed Ali Siddiqi: My apologies to the group members that all day other topics got sidelined due to the discussion on Musharakah Product at Meezan Bank

Khalid Hasani: The topic being discussed is much needed ☺☺

Prof Ayub: You may please tell us as to how such financing can be termed as musharaka. Almost all Islamic banks in Pakistan practically changed fixed rate on billions of rupees, if we are honest to ourselves, it becomes a market norm of financing on fixed charge that is equal to OD RATE charged by conventional banks. Anyone will term it interest based lending. But if we are to deceive ourselves we can do whatever we wish.

Dr. Iman Sastra: Actually I am more interested in discussion how you calculate profit sharing. From how you calculate the average stock in trade, average trade receivables etc and then process flow on how you calculate the gross profit
Dr Muhammad Ayub has some point also on determining the kibor plus margin/basis point. But need some more detail discussion on that. We have to go to the actual case. Otherwise we cannot go on detail

Khalid Hasani: Indeed, it's one of the most difficult product,for sharia team to monitor it ... And accounting entries

Dr. Iman Sastra: Next, the process flow on how you calculate the profit on that. I have discuss also this product with ex meezan bankers. Its a bit tricky by the way. Yes sheikh Khalid, It needs good qualified sharia compliance and sharia auditor to check it either it works in a proper way or not.

Dr. Hurriyah El Islamy: I wonder why no one is looking at the way musharaka practised in Indonesia. Its quite interesting how they do it there. Musharaka does not have to be muqayyadah. Even if the financing is used for specific purpose, the parties can agree that the contribution is meant as part of the overall capital of the business. Then the return could be based on the overall revenue as opposed to returns from specific activity. Despite periodical returns, actual profit sharing can be adjusted when the company has calculated its total revenue.

Dr. Tariqullah Khan: Dr, Why this will be called Musharakah and not Mudharabah! The Indonesians have a lot of compassionate finance and the expectation is that the product will be highly genuine!

Dr Hurriyah El Islamy: We have mudharabah too
Mudharabah - purely capital provider

Musharakah - it should give some rooms to the bank to 'recommend' the way the capital being utilised (despite the shirkah is not restricted)

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Dr. Tariqullah Khan: If it is Musharakah it shall be term finance certificate not deposit!

Dr Hurriya El Islamy: We are not talking abt deposit here. In both context as financing

Dr. Tariqullah Khan: Then makes sense!

Can we change the name of Islamic Finance to Compassionate Finance? What the scholars will say?

Dr Hurriyah El Islamy: They use mudharabah usually with cooperative entities who will then use murabaha in providing the needs for its members. Here we talk abt real murabaha, not tawarruq.

Dr. Tariqullah Khan: No I am serious! A genuine Mudharabah or Musharakah would be better described as compassionate driven contracts as Riba and greed are removed!

Dr. Hurriyah El Islamy: Two days ago a potential PHd candidate talked to me what he thinks as crazy idea, world without bank. i told him the idea is not crazy. He has some ideas abt alternative method of meeting the needs without having to yo have banks.

But the word also connotes qard hassan, giving without expecting any returns. That's truer 'compassionate'

Auwalu Ado: Dr what will likely be that option? A world without a bank!

Dr. Tariqullah Khan: In all our discussions above and in this forum of great scholars we are tilted to safeguarding the interests of shareholders in earning up to 18% ROEs and no one even bothers to mention about the 0.5% paid to depositors - this whole approach is not compassionate I am worried!!

Dr. Hurriyah El Islamy: Someone in this forum is more qualified than me to talk abt it. Its not my idea and I am not completely buying it (yet) but I won't call that idea crazy anyway. But the more the topic was discussed the more it makes sense

Wow! Seriously? 18% roe?

Dr. Tariqullah Khan: It could be Sadaqa House of Dr Abdul Haleem Ismail

But indeed bank is highly useful for society for maturity and size packaging and these can be driven by compassion instead of greed

There is a lot of discussion in Malaysia about Sadaqa Houses offered by the founding CEO of Bank Islam Malaysia

You can develop hybrid of Indonesian and Malaysian ideas - Bait Tamweel Ta'awuni in Indonesia and Sadaqa House in Malaysia- non banking indeed

Dr. Burhan Arbouna: Dr. Tariqullah 18% ROE ? Perhaps this is relevant to investment banking not a commercial one. In that case 0.5% is not an ideal or fair distribution. But if the receiver is happy what is our issue? If there is coercion to invest and get little then only injustice is committed. When some companion requested a price fixing the Prophet rejected that and said "let people be benefited from each other". USUALLY compassionate philanthropic approach is

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an individual choice. It cannot be imposed. The idea of Sadaqa Houses is intriguing not in the business arena although there are ethics for doing business.

So also we can call for more zakat houses

Muhammad Siddiqi: Very true and realistic indeed. JazakAllah

Ahmed Ali Siddiqi: Dear Ayub sb

Alhamdolillah all the major Shariah Advisors has not only approved this Product in Pakistan but almost all Islamic banks are now adopting the Meezan Bank's product as it is according to the principle of Musharakah.

I also suggest you to please read the contracts again and the criteria for Musharakah is not it return but based on the principles of sharing profit and loss.

Also please answer my query if the Musharakah made a loss or made a profit below ceiling what would be the treatment, because in an OD the interest is guaranteed irrespective of loss or lower profit. This point is enough to clear your query.

Faisal Shaikh: While I agree that shariah scholars have approved this product and Shariah requirements of Musharakah are mostly satisfied however we need to acknowledge (and most of the shariah scholars agree) that this product is without Essence (Rooh) of Musharakah. It's like prayer without khshu. We have avoided riba which is an achievement but it is only a first step and cannot be claimed as something which can achieve Barakah of Musharakah.

Jarir Syed: Thanks for your concerns. Can you please elaborate what is spirit (rooh) of a musharakah contract ? With special reference to Shariah sources.jazakallh khaira.

Faisal Shaikh: It's also against basic principles of risk management. Islamic banks in Pakistan are taking risk of loss but charging same profit rate of conventional banks OD. Depositors are taking risk of loss without proper compensation. may Allah protect us and our depositors
Aameen

Ahmed Ali Siddiqi: Br Faisal if higher return is the Soul of Musharakah then our Murabaha transactions are also without Soul.

It is not true it is a process Musharakah is perfectly fine even at low return but yes we must try to improve it.

Dr. Tariqullah Khan: RoE 16% to 18% for Islamic Banks is normal. Which is excellent indeed! Here is snapshot for Meezan Bank- please forgive me if I am reading wrong and I am only appreciating this high RoE. It should be associated with a compassionate approach towards society- Microfinance, SME finance etc etc come to mind in which Meezan is emerging excellent and more is needed indeed! Here is RoE figures for Meezan if I am not wrong which is

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18%

http://www.scstrade.com/StockScreening/SS_CompanySnapShot.aspx?symbol=MEBL

It could be on their investment management portfolio perhaps!

They can verify

Faisal Shaikh: I have personally heard Mufti Muhammad Taqi Usmani that equitable distribution of wealth can only be achieved through a financial system based on Musharakah and Mudaraba wherein businesses share actual profit/losses with their partners. In this product there is just sharing losses but no profits. Again I agree with brother Ahmed that this product is shariah compliant and shariah requirements are satisfied however we need to do a lot more to make it according to the real wisdom behind declaring Musharakah as most Afzal mode of finance

Ahmed Ali Siddiqi: Dear Dr Tariqullah

ROE sometime is quite misleading as well. ROE is calculated per share assuming the share par value which was PKR 10 but now at the Share value of PKR 70 this ROE of 18% will be actually $18/7\%$ i.e 2.57% at current share price value

Faisal Shaikh: Indeed meezan bank performance is great as ROE for shareholders is above banking averages which is really commendable. May Allah make it more successful Aameen. However depositors of islamic banking (all islamic banks) are getting below inflation rate.rate for small saving account holders is lowest in the Indus even lower than conventional banks. This is really painful for us. May Allah give all of us hidayat and make islamic banking more beneficial for common man Aameen

ROE is always on equity, P/E is something different

Dr. Tariqullah Khan: Brother Ahmed, RoE and PE discussion someone can do better. I am fond of Meezan but I am more fond of Islamic Bank Bangladesh Limited! Business must be halal plus with great responsibility to society! Right now Halal is the only criteria and responsibility to society Maqasid are missing from the IB business model! That is why I am urging scholars to speak more about compassionate approach to business model. It's core part of Sharia compliance which is overshadowed by being Halal! Being Halal is essential not sufficient!

Jarir Syed: No one would disagree with the statement given by Shiakh Taqi Usmani... and I believe we all are striving to establish that fair financial system. However, in case of RM, there is still the element of loss sharing although it's magnitude might not be significant after the profit threshold. What you call the soul of musharkah is know in Shariah as مقتضى العقد (Requirement of the contract), which is evident in RM.

Faisal Shaikh: I think most of us agree with this statement

In Pakistan minimum rate for small saver is over 4% in conventional banks while islamic banks

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pays less than 3% to small savers

On saving accounts

This is despite exponential growth in Musharakah financing

Dr. Tariqullah Khan: Even if they are paying lesser and maximizing RoE if their business model can be more society oriented - Microfinance, SME finance portfolios etc etc -they can proudly outperform the conventional banks

Prof. Ayub: On Islamic banks income and what they are paying to depositors, please read the editorial of the JIBM vol. 6 Issue 2 (Focusing on Shariah governance in regulating the Islamic banking institutions at www.jibm.org can be searched on Google.

Dr. Tariqullah Khan: Dear brother, can you kindly write your expectations from Shariah Governors here for their and our benefits to serve society as key stakeholder.

Prof. Ayub: Discussed to some extent in the Editorial referred above.

Amjad Bangash: How you can say it is from theory point? Unrestricted does not mean that you can pay less or more profit to Mudaraba partners or different from what is agreed 1. You paid profit to depositors based on provisional profit from running Musharaka RM but later actual realized profit from RM was more or different then why bank will not pay this excess profit to depositors or adjust the difference or even disclose and get consent from depositors...Why bank don't disclose in account opening forms or In deposit forms about this fact? How can you call it not as not mandatory while bank is depriving depositors from their profit amount. This is also same like Deduction of reserves amount from depositors money invested high disclosed in the applications. In your bank RM is in place since around 6-7 years and I can't imagine there won't be a single event of this difference post closure of bank's Financials.

Faisal Shaikh: In my humble opinion this issue is operational in nature, this issue is not restricted to RM it can happen with Murabaha as well wherein u accrue profit over a period but in the end Murabaha payment is not received. Solution to this problem is simple, if depositor is still part of pool he will get his share in positive or negative whatever the case may be. If he is not there, he has sold his share to another deposited or equity who/ which will enjoy/suffer benefit/loss. It's like selling ur stock/share just before announcement of financial results after holding it for full year, announcements of result can increase or decrease values of ur stock, whosoever have purchased that stock will enjoy/suffer benefit even though he held share for a short time period

This issue has been dealt in similar manner in majority of islamic banks

Amjad Bangash: Dear brother may be I disagree. There is a difference between Debt based modes and RM. in Murabaha etc the bank knows its profit and price at day one. Here what is paid is some fixed percentage of principal amount which is not an actual profit. In murabaha o Ijarah you have earned profit at the time of sale or lease so that is fine. Why we disclose PER

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and IRR? As it is not allowed to eat some one property unlawfully. Similar is the case here.

Faisal Shaikh: I think we agree to disagree ☹

Even in debt based modes profit is distributed in accrual basis without confirmation of its actual receipt. The bank may not receive payment at actual payment date even then it doesn't recall already paid profit. Similarly, if a provision is made during a period it's effect is passed on to depositors. However, when the provision is reversed in another accounting period benefit is passed on to depositors of that period. This practice is done almost in every Period. No difference in RM or debt based modes in this regard.

Amjad Bangash: This is my point. In murabaha you know your profit the day you disburse but in RM you don't know it☹. Secondly you get customer consent that some reserves will be deducted but here in RM why bank don't get it that profit can be paid on provisional basis might be less great etc. Receiving payment or not in Murabaha etc is different because when you sell something the profit is known at the time of sale but in RM it is not yet known. This is also he difference. My point is profit and not the payment.

Dr. Burhan Arbouna: The issue is:

Are actually technical

Corrextion : The issue is on 31st December there are profits that are not received for the transactions of previous year keeping in mind murabaha financing and other modes of financings are done using depositors money. However depositor will receive profit only for the closing year or closed financials although part of the profit which their funds are used to fund is not yet received. Although I know my profit in advance in the current year I may not receive it until the following year when the depositor perhaps had departed. So all these discussions are actually technical. It is NOT affecting the general acceptability rule of RM or mudaraba. I realise in the discussion some concentration on Pakistan experience. Perhaps there are some arguments going on between our brothers in Pakistan which we do not know. That practice is not to be generalised for all jurisdictions as far as RM is concerned.

Amjad Bangash: In our RM based product, we have developed a mechanism like provision of foot notes about provisional and actual profit in both the years Financials in above case of our knowing the actual profit later on. Also to disclose such matte s in Deposit applications and to have customer's consent to difference of their profit due to above technical nature as brother Faisal, Dr. Arbouna and Brother Ahmed mentioned. Just for the sake of transparency as one of the important aspect of Islamic banking.

Dr. Tariqullah Khan: Assalamualikum wrbt dear esteemed members of this great forum! I will InshaaAllah not get tired in appreciating the useful and beneficial nature and activity of this forum. It provides us with the opportunity to respectfully criticize our scholars to remind them the diverse perspectives. Islamic Economic Studies is one of the credible open source Journals which encourages diversity with dignity and credibility. Here is a link to the Journal for your

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critical study and sharing with others. Warm regards

<http://iesjournal.org/english/journalarticles.html>

Amjad Bangash: To me profit part on Running Musharaka RM is done. If we can move to next parts like 1. Audited or unaudited Financials of RM customer is taken to know actual profit or unaudited one or the ones prepared by Customer itself are taken. 2. The whole business of a customer is considered (upto Net Profit level) or upto Sales less of Cost of sales (Gross Profit level). 3. Any Screening criteria or parameters in selection of firms before doing Running Musharaka. For such matters brother @Iman Sastra will also be more interested. Also it is upto the admin or group members to discuss something different for a current discussion. Thanks

Prof. Ayub: Totally agreed with brother Bangash. Hence the correct position is that genuine murabaha and ijara are far better than RM as being practiced. It has distorted the whole Islamic banking operations in Pakistan. The minimum regulators need to ensure is that such financing should not be reported as shirkah / partnership based product.

Ahmed Ali Siddiqi: Sorry Ayub sb, I respectfully would like to say that

We cannot agree with your conclusion and it is in my view an incorrect conclusion, almost all Shariah Advisors have given their approval for Running Musharakah and we cannot consider personal views over Qualified scholar views. There could be some limitation of accounting practices but these are not material.

Secondly it does not render the Musharakah transactions invalid.

Hence I can say that we may agree to disagree but in the end we will take Shariah Views from Shariah experts and we consider and welcome academic views but these can be taken for discussion purpose but not as a decision.

Khalid Hasani: The regulator have to accept what Sharia Scholars of its Sharia board say, and there's no difference of opinion regarding RM as Musharaka

Totally agreed @ahmed

Everyone have their own views, but we cannot impose what we consider, Sharia Scholars have to follow Sharia stream line

Dr. Tariqullah Khan: I agree with this position of brother Ahmed. Moreover, Through Ijarah and Murabahah you cannot give cash. The original idea was to replace tawaruq in providing cash!

Prof Ayub: Can we get fatwa from scholars outside Islamic banks. Also, there are many dissenting scholars even in sharia boards. Further, approval for such products is taken by saying

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that as other banks are using it, this board may also allow.

Khalid Hasani: We have respected Sheikh Dr Qasim (who is on Sharia board of SBP) and also Our respected teacher Sheikh Mufti Zubair Usmani Sahib , can confirm this

Prof. Ayub: Dear Dr Tariqullah, How to ensure that essentials of musharaka are fulfilled? Have you gone through the whole process? I tried my best but did not find satisfactory.

Dr. Tariqullah Khan: Brother Ayub do you mean the contract not Musharakah but loan or do you mean there is terrible gharar involved? I have not fully followed your objection! Brother Ahmed initially presented this as an alternative to tawaruq and I think it is commendable in that spirit.

Dr. Kaleem Alam: Dear All, Assalam Alaikum,

At first i was confused about RM, one of the reason was it only discussed 'profit'. But as soon as Br Siddiqui mentioned usage of 'Murabaha' the picture was clear to me. Which i did express earlier.

I think now the dispute is on the 'Nomenclature' of the structure. Thank you.

Dr Kaleem ALAM

Dr. Burhan Arbouna: Diversity requires that respectful criticism goes to anyone in any industry that serves humanity not only scholars. Educationist and university professors should fear Allah and do their job with sincerity for the sake of human lifting. The same goes to bankers and others such as scholars. So the journal should be open to any one. I really do not understand what have done to deserve all these criticism and humiliation in the name scholarly criticism. But the meat of scholars is very very bitter as a note.

This question of getting fatwa from scholars outside banks is really unwarranted. It shows the level of thinking of some members in the forum. If other scholars outside the banks have a different view, they can voice it and no one is deterring them. If they did not voice it it is either they hide knowledge which is not acceptable or they agree. It is totally unacceptable to say that scholars in the banks are selling their religion for few bugs and that is why they agree on certain matters.

Prof. Ayub: Respected brother Dr. Tariqullah sahib, I would like to humbly submit that mission of all of us is to evolve the Islamic system in its true spirit by avoiding the prohibitions like riba, gharar, short selling, gambling, etc . But, practically RM is taking us increasingly away from our mission, just like tawarruq - it is a loan contract by all means; in the market, it is being taken as debt. Neither any identified objects or assets are required nor the financier has to face commodity and market risk. It gives the clients freedom to use the Limit as they wish without

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any requirement of proof regarding the use, for which they pay a pre-fixed return equivalent to conventional OD rate. This is why, the issue of Capital adequacy ratio (CAR) in terms of BASEL guidelines has not arisen. This dilutes the basic philosophy of Islamic banking that all financing has to be backed by any identifiable real sector transaction.

Further, RM is not being used only as an alternative to Tawarruq as has been claimed. Tawarruq is increasingly being used, side by side with RM, for earning cash from cash. By last year, tawarruq was for clean lending to the conventional banks by way 'commodity Murabaha' and Sukuk based tawarruq, also called inter-bank bai Muajjal of Sukuk. But when it caused CAR problem, a Bank started collateralized tawarruq financing against interest based T. Bills, PIBs etc. Other banks tried to follow. Hence the money mobilized by Islamic banks for Islamic business is being diverted to conventional banks that are doing arbitrage by investing in interest based government securities. Now, sukuk based Tawarruq and RM are the main products of IBIs with decreasing trend of real asset based financing as per requirement of the Shariah. What is required is that IBIs should finance the real business of SMEs, micro and agriculture sector by way of all permissible modes of business.

Dr. Tariqullah Khan: I agree with you on the sentence Brother Ayub and that the main point of responsibility to society our scholars are not telling to the banks they are advising! When we are raising this legitimate concern they are feeling offended! Being Halal is essential but not sufficient! About the rest of your analysis, it is an issue of evidence which I haven't studied concerning the Pakistani Islamic banks. My view is that let the halal/haram be decided by the Shariah Boards and let us the economists keep try to remind our respectable scholars concerning the reminders to Islamic banks about their responsibility to society- develop Microfinance, SME finance portfolio etc., help in integrating forbearance, Qard, Sadaqat, zakah, awqaf into the financial system. This way the IBs will improve their relevance and credibility. Otherwise if people like your good-self and my humble self who spent all lives in this mission can be disenchanted, what to expect from the younger generations!!

Dr. Tariqullah Khan: Dear brother Arbouna, I am not the person who will imagine to disrespect any human being and indeed scholars have a much higher status for all of us! We can sincerely remind you that shareholders are not the only stakeholders, society is the main stakeholder! Halal is essential but not sufficient! Your esteemed professional colleagues can do better by emphasizing *halal-plus*! If you are being offended by this advise, we can stop from participating here. The reason of participation is not to offend you but to cooperate with you in your good deeds. That should be the spirit of discussion, may Allah bless all of us!

Dr. Burhan Arbouna: Let's we agree with this. We need beloved brother and sheikh to give us his direct observations with an explanation as to why he sees that as a loan. Then he needs to provide some practical solution. Without this approach we will end up saying all Islamic products are loans in a sweeping statement way.

Dr. Tariqullah Khan: Dear distinguished members - please for your kind information Shaikh

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Dr. Arbouna is my best friend and younger brother seems now upset with my maturity :) perhaps. We discovered him in 2002 while organizing our path breaking pioneering conference on Islamic Financial Architecture: Risk Management and Financial Stability with Bank Indonesia in Jakarta - linked below - one of the best conferences out of the literally hundreds of conferences that we organized to promote ideas in Islamic Finance to make a difference for the world not only for shareholders. Dr. Arbouna's paper on "Combinations of Contracts", please see chapter 26 page 523 of the linked book, is a pioneering paper and one of my best choices! However, of late, disenchanted from tawaruq etc etc etc - I changed career to become free and speak my mind in a respectable way! Shariah scholars are our brothers, Dr. Arbouna is my younger brother. I keep the right to tell him my sincere opinion and in the interest of all of us - please don't try to shut-off divergent opinions and please at the same-time express your views with respect and don't please select your words carefully. I have been shown stop signs in this forum by the administrators, despite that I am continuing to participate. Here is the paper of Dr. Arbouna on combination of contracts - excellent paper - please go to chapter 26 page 523.

<https://drive.google.com/file/d/0B-cZ0KbRr4LkRHMwTkhjVIBqLU0/view?usp=sharing>

Dr. Burhan Arbouna: Dear Esteemed and mentor Dr. Tariqullah I have a great respect for you and your scholarly discussion. If you can see I usually ignore many comments but when you comment I find it good to engage knowing that this is just a discussion. It has nothing to do with personal sentiment. My issue was very clear. I do not see any relevance why Sharia scholars should be responsible for giving loan sadaqa or zakat by Islamic banks. Therefore, I had to do my own interpretations for argument purpose. That interpretation may be refuted as well in a scholarly manner. But I am ensuring you that any word used is not meant for any disrespect. I had the good opportunity to learn from your papers. But what you mean "I changed career to become free and speak my mind". Do you mean your mind was directed in your previous career? Just a question for continuity and put behind other issues.

Dr. Tariqullah Khan: I am sure by joining a university you will find that tawaruq is nothing except commercialization of loans and can talk openly about it. In a bank one has its job commitments! :)

That's the answer to your question frankly!

I want to write a paper with you on the to topic "Halal is essential but not sufficient to be a true Islamic bank", are you ready?

IKRAM THOWFEEK: Great proposition and combination, to add value to the industry. InShaAllah.

Dr. Arbouna is much more than a scholar, a practitioner too. Dr. Tariqullah Khan is much more than an economist, a great writer too.

May Almighty Allah bless you all profusely.

Dr. Aly Khurshid: Islamic Banks are a commercial bank practice Islamic tools that have minimum RISK for the bank, whether the bank client adopt the Halal products or not is not the

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bank concern, the Islamic bank concerns only if the client is able to repay and maintain the agreed arrangements and keep afloat

Ahmed Ali Siddiqi: Sorry I fail to understand your point.

Islamic banks are concerned for Halal product and business first and then comes profit. So it is not business at all cost but Shariah compliance is supreme over business

Dr. Masum Billa: Salam Dear Dr Aly Khurshid, how far your allegation against Islamic banking practices in its financing culture are justifiable? Perhaps needs a further clarification

Prof. Ayub: My very respected and learned brother Dr Arbuna, my humble submissions are as below (and it could be my last posting on the subject):

When in a market of 23 Islamic banks, it becomes a norm that banks and a corporate entity enter into an agreement stipulating that up to the target / required profit rate on amount availed [e.g. 3 months KIBOR +/- 1.00, p.a. normally equivalent to conventional OD rate] on the amount availed out of the LIMIT approved the PSR will be this, and beyond that, the PSR will be 0.0001% and 99.999% for the bank and the client, respectively, it will practically by all means a loan for which bank agrees in advance that you give me so much and whatever is over and above that would be your's. Honestly speaking, shariah scholars of two banks were asking each other by way of joke – your RM is of 2 zeros, 3 zeros or of even 4 zeros. Earlier when banks reduced their share to one/two whole digit [2 :98], they gave hiba in case the actual profit was more than the required profit. Shariah scholars prohibited hiba practice and the banks reduced their share to 2, 3 and even 4 zeros.

Further, the clients are not usually interested in providing all details of expenses, etc as they get a line/ limit on relatively low rates; and claim for any loss is subject to availability of audited accounts that is generally after a few months. Any client might hardly be prepared to offer its books of accounts for scrutiny while it has availed of the bank's capital at so cheap rate. Hence, market takes this specific product as a credit line – loan at OD's rate.

Secondly, in case of partnership based financing specific risk weights have to be assigned as per BASEL requirement. There is nothing such requirement imposed by the regulator because the banks as well as the regulator know that practically it is a credit line given to the corporate entities, so no need of risk weights.

As regards indicating the alternative, I would like to submit that giving OD Limit is the function of the conventional banks, not obligatory for Islamic banks; they can provide cash financing for real and identifiable needs of the producers by way of Salam and Istisna, and working capital by way of Murabaha, leasing, etc.

The last point made by you: with that approach “all Islamic products are loans”, I may not agree because the bai or ijarah based products may culminate into genuine debts and carry valid returns/profits for the banks. In lease or murabaha, no money is advanced by the financier; rather goods / assets are purchased by the bank and sold / leased to the clients. Further, all such

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financing has to be for clearly identified objects. Financier has to face commodity and market risk, in addition to the credit risk in murābaha and ijārah on account of which it becomes eligible for profit / rent; in ijārah, the financier has to bear the loss if the leased asset is destroyed without any negligence by the lessee. In RM, on the other hand, huge amount of cash is given to the client who can use it at own will; neither any identified objects or assets to yield the possible return are there, nor the financier has to face commodity and market risk. It gives the clients freedom to use the Limit as they wish, without any requirement of proof regarding the use.

Investing through RM implies that depositors indirectly become partners in the business of the client's corporate business; the idea may be valid theoretically; but practically, it is not so, bank gets invariably fixed charge. The formula is being applied arbitrarily and neither the joint assets are properly identified nor the profits are fairly shared. Business people are increasingly demanding only running mushārahah instead of murābaha or other modes; so much so that even Islamic bankers or personnel of their Shari'ah departments are hesitant to allow them. In the words of a senior Islamic banker, 'business people fight with them and even with Shari'ah scholars to allow them RM facility'.

This is why, I understand, RM, instead of reforming, has resulted in derailing the process of transformation of the system to the principles of Islamic economics and finance – which is the objective of evolving the new system. Wassalam and Allah Hafiz.

Dr. Burhan Arbouna: Yes. Istisnaa and Salam may work but I am afraid if we allowed them to use it without giving them a direction that we feel is correct that we will later on again criticise them on the way they do it. What is needed is to put a correct process along with the suggestions. In the past people are calling for musharaka and now it is having a problem. We therefore should not suggest anything by name without giving details on the implementation process. We need to see how practical is our suggestions so that we will not later on criticise salam and istisnaa. I understand your concern on RM in terms of assets in which it was used. However, if it is a company we assume that the funds will be used in the operation of the company and no need to identify an asset. the concern is very valid when it is given to individuals.

Dr. Yusuf Azim Siddiqi: It's true ...

that's why when Islamic banks tried something other than debt products (like Murabaha or Istisna which were capital protected n profit guaranteed) then the industry experienced major operational issues (like in Running Musharaka) and adverse Sharia compromises (like in Sukuks n Ijarah).

Dr. Hurriyah El Islamy: I disagree there. I cannot speak on behalf of others so let me give my situation as example.

My mind was free even when I was in the bank and I believe that's the case with professionals.

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I encouraged tawarruq during my first decade in Bahrain because as the legal counsel I saw the product poses least risks to the bank (and I had to give the bank the advice for its best interest) and after all sale is not riba as per quranic injunction. The use of tawarruq was not abused. It was done on need basis then.

My concern grew when I worked in Malaysia - when I saw how it is abused and overused and that many insist on offering tawarruq even when other products such as ijarah is available and ready and specifically requested by customers.

Tawarruq, love it or loathe it. There's no end to the discussion.

Nonetheless we should refrain from making assumption that others 'sell' what they believe for the sake of career. Had I gone to academic line 13 years ago, I would still be who I was because that was the believe I had.

We do what we do because we hold to some ideas, not to serve career purpose.

And we should not rule something halal as haram and impose that views on others even if we personally loathe it.

@AlyKhurshid The statement has some truth in it frankly speaking but its not wholly true because there are people who work in the industry with the objectives to promote shariah banking and at the very least those who serve shariah advisory, shariah risk and shariah review functions (as well as governance) are there to ensure the notion of minimising the risks is not limited just to the credit and market risks but also shariah non compliant risks

On operational aspects of Musyarakah (no detail given on money used) that a matter of bank's requirements. By right, as musyarik it should concern itself with the manner and extent of money disposal too (hence in my earlier msg the difference in practise between mudharabah and musyarakah) at the very least to ensure compliant with shariah and facility t&c. That product governance issue and is area to be improved.

Dr. Tariqullah Khan: "Sale" most Sharia scholars Not working for Islamic banks - OIC Fiqh Academy, for example, don't apply that word for tawaruq! They apply the R word for tawaruq!

Dear doctor Hurriyah!

Dr. Hurriyah El Islamy: Then again we also need to see the purpose of financing. Salaam and istisna are not practical for all sorts of financing (eg working capital).

Well its sale in substance and its sale (albeit monetisation purpose) for those who believe it as such and riba for those who believe it as such.

I was and am still in the first category although I am now not encouraging its use except on need basis.

Not for the reason shared by those who believe in the latter but because its overuse and abuse deprive the usage of other shariah principles that can best serve the shariah economic purpose.

If I may make analogy, 13 years ago I believe tawarruq is halal just like marriage is (there was no reservation as to its use). I still believe its halal but as of 3 years ago to me its halal like but like 'divorce' - you can do it but you should avoid it unless it is a better option than other alternatives.

Prof. Ayub: Jazak ALLAH sheikh, only point I can add is that keeping in view the effort made by hazrat Mufti M. Taqi usmani sahib, may he live longer, for development of Islamic finance and his level of knowledge, I am sure that he himself might not be satisfied with what banks are doing as he wouldn't like to see efforts of so many pioneers like him going waste. Secondly, we have objection on musharaka culminating to debt, not on musharaka per se.

Ahmed Ali Siddiqi: On the concluding notes about topic

I have asked our dear Br Ayub to let me know what would happen in a RM in case of company suffer a loss or earn lower profits.

Let me answer the above query as it clears the OD argument completely

Lets assume we set a profit ceiling of 100 million profit (based on Kibor +2 = 7% IRR) and upto the profit of 100 mn, Bank and customer will share in the ratio of investment.

At the end of first quarter, the ratio of investment was 40% Bank and 60% customer.

Case 1: Company earn 100 mn only

Bank will get 40 mn and customer get 60 mn. Bank IRR comes to 7%.

Case 2: Company earns 80 mn

Bank will get 32 mn and Customer gets 48 mn. Bank return in terms of IRR drops to say 5% (Very Important difference)

Case 3: Company makes a loss of 40 mn

Bank will get zero profit and same for customer

Banks lost its capital of 16 mn and customer losses 24 mn. Loss is shared in the ratio of investment.

So it should be clear to everyone that it is sharing of profit & loss.

Now I would like to pose an Academic Challenge.

1. Please show me at least 3 real life conventional overdraft loan products in any part of the world with the above features of profit and loss. If not then we cannot take this argument seriously which has no factual support.
2. Please convince at least 3 conventional banks to change their OD to the above features of profit and loss and tell them it is the same. Let me know how many conventional banker's got convinced.

Once we have factual data only then we can take this OD argument seriously.

However there are points and areas to further enhance the Shariah Compliance, return enhancement, accounting disclosures etc which will made this product more successful in the future.

Dr. Iman Sastra: Brother ahmed ali, From your explanation here for sure that is sharia compliance.

However the detail discussion is more useful if, for example we bring one of your real case example of your running musharakah in your bank including your real excel sheet calculation (delete the name of the company). Then it will accommodate the queries of the example from Dr Muhammad Ayyub paper

Amjad Bangash: This is good. I am reviewing you bank last 2 years Financials 2015 and 2016. Please tell us cases of 2015 and 2016 1. Is there any single case of RM where your bank has booked loss of capital I.e amount of RM finance 2. Is there any case where your bank profit in RM was less than Prevailing KIBOR? If it was then did bank make changes in profit ratio or weightages to make it equal to agreed rate 3. When agreed profit was more than the agreed rate, did your bank forego extra profit to customers as Hiba or as incentive? 4. When the profit ratio is agreed sat start of one year RM, do your bank changes the ratio in the middle to adjust profit rates? 5. When profit is higher than agreed rate of KIBOR, do RM customer give the extra profit to bank or bank make changes in weightages and ratios to bring the profit equal to agreed KIBOR rate? Please provide it based on 2015 and 2016 and not of past.

Ahmed Ali Siddiqi: Let me check but there are cases

Amjad Bangash: Agreed with @Iman Sastra. Also provide an offer letter to see that says this or no: 1. In of loss, the bank will be responsible for loss 2. In case profit is higher then bank will give extra profit to customer as hiba 3. The profit ratios agreed at the time of booking RM will remain same for whole term or they will be changed in the middle. These points are important as what the offer letter says. Thanks

Dr. Iman Sastra: Do we have sharia auditor of meezan bank here? Or sharia department of meezan bank who reviewed the RM transaction on yearly basis on the adjustment of profit (actual profit) ?

Its good also to hear from their experience

Ahmed Ali Siddiqi: The point 1 is clearly mentioned in our agreements which are the main binding document.

Points 2 is not at all present

Point 3 is not like this, the profit ratio is agreed for a period (it could be a month, quarter, semi yearly or annual) and cannot be changed unilaterally.

@Iman Sastra! Yes, Our Head of Shariah Audit Br @Farhan Ul Haq is here

Amjad Bangash: 1. Agreements have several pages and I know this but what about offer letter? Does this say bank will be responsible in case of loss? 2. It means in the middle of RM the ratios can be changed Bilateral..Ratios are changed to make the profit equal to agreed LIBOR profit rate or for some other purpose?

Dr. Iman Sastra: Good.

Because it is challenging for them to ensure it in accordance to sharia compliance

Ahmed Ali Siddiqi: Offer letter does not contain details term anywhere so why should we have it for RM

Secondly if Shariah allows that by mutual consent partners can change the ratio so why we put a restriction ?

You are most welcome to design such detail offer letters but in our view they are not needed.

Amjad Bangash: 1. Bilateral change is what @Ayub Ripha sahb is pointing as to do some arrangement of paying profit equal to the case of OD lending of KIBOR rates. If it is Musharaka let it do as per agreed ratio at start to bear low profit, gain high profit or bear loss. 2. If offer letter can talk about profit it should also talk about loss as this the essence of Musharaka

Mufti Irshad Ahmad Aijaz: What is the meaning of sharing of loss in participatory modes? Possibility of loss or probability?

This is important because lot of people judge principle of loss sharing on basis of *probability of occurrence of loss* which is not correct, it is *possibility of loss* which is required.

It is possible that there will not be any loss in thousands of RM transactions but it doesn't mean it is not Shariah compliant transaction.

Ahmed Ali Siddiqi: Please show me your bank's offer letter does it for Murabaha does it state in detail about the risk of loss of Murabaha goods if no then it means it is a very serious Non compliance and makes that Murabaha equal overdraft.

Brother thing do not work on wishful thinking but on rules and facts.

If you can prove that it is a Shariah Requirement that all terms are mentioned in the offer letter in addition to agreement then only we can consider your point.

Amjad Bangash: Please differentiate between murabaha and Musharaka. For murabaha I can show when I will be in office as there is a process flow with steps and the loss part in case goods destroyed in bank possession. However we have just three cases of working capital murabaha as we do it in car financing only. To me Musharaka definition is incomplete without loss portion. My respectful teacher and mentor. Running Musharaka as being used is 100 percent Shariah Compliant. I like this product very much as it is of a real islamic product.

Dr. Tariqullah Khan: I think brothers Ayub and Amjad are making excellent points for considerations of Meezan Bank for improvement on future disclosures but it's too much to have internal auditing of a bank in a discussion forum like this. My most serious concern is LIBOR/KIBOR protection of the financier in a Musharakah or Mudharabah; such was approved only in sale contracts including Ijarah.

Dr. Burhan Arbouna: Yes. But my concern is that one cannot label musharaka as leading to debt on grounds that are not really matter. The fact that an asset is not identified when musharaka is extended to corporate is not a good reason to say it is leading to debt. The pricing mechanism is not a proof either. We only need to explain the basis of our concern on fiqh grounds and direct the execution process. But personal sentiment that are based on the fact since these scholars are working with the banks they approve it due to career requirement is really strange. Of course all of us like to see improvement of ummah in all aspects of life not only banking. But we should not be like the analogy giving by the Quran on woman who makes a nice weave of cloth and after she completed and it's about to be sold she unweave it solely to the last. I am afraid this is what we are doing now after the success of Islamic banking.

Amjad Bangash: @Irshad Ahmad Aijaz Dear Sir, I have one query. Please pardon me of my limited knowledge. There is a concept Al maroof kal mashroot. What is famous is a condition. Like in murabaha discounting can be done but it should not be norm. Profit or hiba or something extra not pre agreed can be given on qardh sometimes but it should not be practice as everyone will know of getting extra in any case. Question: What is your view about changing agreed profit sharing ratios or weightages later or in the middle of Running Musharakah or even payment of hiba in every case to make the profit equivalent to current OD rates or Prevalent LIBOR rates? As customer will also know that I have to pay this much in any case whether I earn more or less? I am asking just for my learning and consider me as student. Thanks

Ahmed Ali Siddiqi: Yes there are some good operational points.

However I would also eagerly wait for for the answer to the Academic Challenge from our respected Brothers.

Dr. Burhan Arbouna: During the musharaka period the parties are entitled to change profit rate at any time OR at least on the end of each period of musharaka agreement. CHECK AAOIFI on Musharaka. The same is applicable to mudaraba. So it will be normal that on the end of the period the bank or the client request change of rate depending on market and kibor or labor are market price determinants by customary practice today at least in the banking industry.

Dr. Tariqullah: Is LIBOR etc approved for Musharakah and Mudharabah? Dr Arbouna please help on this question!

I think we need not waste our times what conventional banks are doing! Dear Brother Ahmed, sincerely and most humbly Meezan Bank or any other IBs' services will be judged on the basis of what differences these banks made in the society? Do you have micro and sme finance strategy, do you have strategy for successful responsible business promotion, do you have scholarship facilities, haveyou worked on institutionalizing Qard, Sadaqa, zakah, awqaf etc for building society, do you have environmental and social awareness drive!!! For our surprise many ethical banks are differentiated on the basis of such holistic approaches in which main stakeholder is the society! Indeed the shareholders and bank executive leadership has to drastically change its overall business model. Our academic worry is that the shariah advisors are not buying such an approach and the result is to follow the ROE driven approach in a narrow halal way! I think IBs can learn a lot from IBBL and from ethical banks! That is the academic perspective. Kind

regards

Dr. Burhan Arbouna: LIBOR is just a mechanism to determine a profit rate on an Islamic product before commencement or at the end of each period of the facility. For example if we enter into an understanding to provide musharaka funds in the next 3 months, we can agree that in the next 3 months if you decide to availed the facility my profit rate for the musharaka will be determine based on the outcome of LIBOR at that time. Once we conclude musharaka based on the known pricing based on LIBOR, we then through away LIBOR. Say our musharaka arrangement is every 6 months, after each six months we may review the rate and not profit rate is determine based on the market performance. To determine new rate we need to a mechanism that is agreed upon by both parties and is a norm. Here come LIBOR only to agree on the rate for the next six months and so on. The academic challenge is that academicians are not able to provide a human resource that understands technics of Islamic banking and finance.

Ahmed Ali Siddiqi: Yes Dr Tariqullah

We have a comprehensive product offering and strategy for SME clients.

Infact our SME & Commercial financing grew by over 40% last year.

We have also launched Islamic version of PM Youth financing scheme for youths where Meezan Bank is providing financing for these young entrepreneurs

Also please check out Ihsan Trust @ ihsantrust.org for Qard e Hasan for education and other social aspects - a modern application of Waqf

IKRAM THOWFEEK: ☺☺

Indeed to the point. Dr. Khan.

What value addition or difference IBs or IFIs made too the society at large.

This is the question to ponder and ask ourselves every time. Either in developing shariah compliant products or operating shariah compliant institutions.

Dr. Tariqullah Khan: ☺☑those are the parameters that will make a difference indeed now all Shariah advisors to IBs shall make this the driving force of their advisory and compliance services! Then we can become one team and focus our shared services on helping IBs to serve the society and in the process create value for shareholders!

Remember this cry; *Halal is Essential not Sufficient* kindly please quote me while talking to any policy maker, any great Shariah scholar, any great product developer, any great teacher, any student who want to learn and deserves to be future leader!

Dr. Burhan Arbouna: The academic perspective is that academicians and I am one of them are not able to give the students the technics of Islamic banking and finance. Even the values they are called for were not clearly understood by the students in the content of Islamic banking and finance. This really an academic challenge. Today what we see in the academic field is only to learn how to refute tawarruq or others but we do not see students of vision to innovate in Islamic banking and finance. This is where the input of academicians and universities are needed.

It is a good question. But we also need to ask what value the conventional banks who have being operating in our territories for centuries have contributed to the society. What our educationist have contributed to ensure a system of equality and justice is done in all aspects of life. So far what we see is that our academicians are teaching our students that there are no difference between the two system. This is an academic failure to create our own identity.

Dr. Tariqullah I like the topic but I have observation on the term "true Islamic". Is there any false Islamic?

Dr. Yusuf Azim Siddiqi: As per Right-wing Islamic Economists, any thing they don't understand or haven't practiced in their previous or current organization will be labeled as "False Islamic Finance".

Such shortsightedness is result of lack of Fiqh knowledge, no Arabic fluency n working in non-related environment.

Amjad Bangash: This is right. AAOIFI allows it. But I think it also says this should not be a practice. I might be wrong. I concur to you on this.

Dr. Hurriyah El Islamy: A non moslem senior banker in one of the largest Islamic bank asked me this question last year: "whether in my view there's a true Islamic bank".

I trust we don't have to make any judgment or infer bad intention when people show 'demand' for 'true' shariah banking.

Such notion arises from the common perception that what Islamic banks do is nothing more but changing the label, ie, the exact same thing offered bu conventional banks but we change the products name (label) either by arabic name or by same name with the word islamic before it.

We don't have to take offence to such notion, we should instead try to improve ourselves.

Its often that we have products compliant to shariah but our staffs explain the products to the public in conventional manner. Sometime they themselves do not understand the concept either. Here we identify the need for proper training (to the staff) and creating public awareness (so the public know the substance of our products and services)

Islamic bank industry also tries to mimic the conventional counterpart on the pretext - we have to be competitive. That way, we are 'contributing' to the notion and in a way 'affirm' that yes, what we do is just another banking.

As for intellects' call for 'true' islamic banking, its actually a positive challenge, asking the Industry to be more creative, to leave behind the perception that we are still at the state of infancy and many things are allowed on 'maslahah' basis.

We have more than 4 decades of Islamic banking experience; we should have been able to identify the needs, the demands, and its high time that we do what Shariah would like us to do. To make real contribution to economy and to depart from conventional mould, to serve the people needs in shariah ways. To change the approach from let's do banking/financing and make it shariah compliant - to - let's do shariah business in serving the people's banking/financing needs.

In practice though, we are being mindful abt changing the ratio. It has to be based on mutual consent and known at the outset (ie, before the change will be effective). And if the parties have agreed at a given ratio and the bank tries to change it during the term, the customer has the right to reject and the proposed ratio wont apply (and vice versa).

Dr. Burhan Arbouna: They want applying the notion of practising Christian and

nonpractising. In Islam you have to be a Muslim or non Muslim. The relevant question is: is there an Islamic bank without execution mistakes? The answer is no. But this question is not similar to "true Islamic". True Islamic means you know that this is not Islamic and you are doing it hence you are not true Islamic. It means you are going against basic tenets of Islam hence you are not true Islamic. Even in this case I cannot label one as true Muslim and the other is not true Muslim. This dichotomy is dangerous.

Ikram Rehman: This arises when a scholar literally states saying I know the structure is wrong but I approve it as Sukuk because I don't want a country, custodian of two Holy Mosques to issue a Bond.

Dr. Hurriyah El Islamy: Agreed and we should refrain from 'calling' or 'labelling'. the point is this - it is no longer just abt 'mistake in execution' (and continuous effort to mitigate that) but also the need to shift the direction/approach. We've done good, we can be better. Ultimately its not abt the shape, its abt serving the purpose in the most effective (including cost factor) way irrespective of form (and hence the shift to technology based 'financing' options.

The deeper one looks into shariah concept and understanding the market (not fixated by the banking industry) the more one will realise the beauty of shariah and the truth is what we have is more superior than the conventional concepts.

Let me share one example. A BU approached me once to seek approval for a structure using multiple tawarruq in order to achieve similar process as the conventional counterpart. It becomes clear that the whole idea is for the bank to act as agent, to purchase sukuk on behalf of customer and to make several payment to the customer with respect to the profit payable under sukuk. wakalah can achieve the same result and serve the purpose. Simpler than the conventional one.

☺- do you believe there's any among the scholars who approved the structure thought that way?

If I may change the topic, just a point to ponder: if it is wrong for A to sell something to B then B sells it back to A (bay' inah) then why is it right for A to sell the land to B then B leases it to A with undertaking that A will buy it at the end of lease term? (Sale and Lease back)

For many years I knew the answer, reasons and justifications including from Shariah view point but somehow that thought started to bother me since last month.

Dr. Tariqullah Khan: true IB is based on aspirations of society (Maqasid), lesser true is driven by ROE but Halal (IBs now) and least true is banks driven by ROE only and not even Halal (conventional) - it's a progression to ideal with compassionate spirits!

Amjad Bangash: Though I have many more points on current RM and I do not want to change the topic but can you please tell me what is that botheration thing. As I am sure you well know that in first form the bank as seller transfers the ownership risk to buyer immediately while buyer purpose is heela to get cash while in later case the bank as seller is responsible for the loss for the whole lease term. In our case we also put one condition that bank will not sell back before one year and that undertaking is applicable after one year.

Dr. Mohd Daud Bakar: Dr Tariq, may I know the authority from either the Quran or the Sunnah that a true Islamic bank is based on aspirations of society (maqasid)? afterall, there was no Islamic bank before. who can decide in the society of something of maqasid or otherwise? Is being free from riba not of maqasid?

Dr. Hurriyah El Islamy: The fact that in reality the legal documents would have shifted the

risks to the lessee or the property manager who is also the lessee. In other words, the risks faced by lessor in the latter become factually the same as the risks faced by the seller in the former.

Amjad Bangash: I agree but it depends mainly upon the shariah department and execution process. I can give our example. 1. We have only sale undertaking means bank is responsible to sell the asset and it is not binding on customer. This is like in case total loss of asset or pricing/value of asset, the bank bears the loss. 2. We don't have purchase undertaking which forces the customer to buy the asset when market price gets lower or in default cases or any mishap. 3. You will see in many banks both the undertakings are there so there is no risk for the bank. 4. In our ijarah agreements it is also clear that the asset belongs to bank and bank is responsible for it. 5. We have also put one condition if no early termination before one year so bank to take risk for at least one year and to avoid inah. 6. I also faced some resistance in not having both the undertakings but I managed it and let me see how long can be sustained. May be if I can mentioned what is your current concern.

Dr. Hurriyah El Islamy: ﷺ. Well, a good lawyer will draft an agreement that best protect the employer's interests. I was the one who made sure all risks that can be legally and shariahwise transferred are so transferred to remove and/or mitigate the risks. The purchase undertaking is the part that bothers me and not having it exposes the bank to an asset that customer may abandon when the value depreciates.

Its this purchase undertaking that bothers me most. But you don't have it. So good. But how do you mitigate the risk? Say, three months after the execution of the contract there's new policy issued by the government that caused the value of real estate plunged.. Now the customer does not want the asset anymore (for the same sum he could get a much better asset now) and he chooses to terminate the contract. What will you do?

One customer may not cause much effect to the balance sheet but how abt hundreds or thousand of them? They come forward saying they want to terminate the lease and they do not want to purchase the property.

Amjad Bangash: 1. Look when we read islamic banking books and when we practice it, for example, when we accept deposit based on Mudaraba etc then we mentions that depositors will bear the loss except if it happened by bank negligence etc 2. When we read books, all books say islamic banking is different from conventional as it has risk sharing concept etc. Owner is responsible for the asset etc. in interest based system, the bank is not taking any risk while in islamic it is the bank responsible etc etc. 3. So in your example, it is the genuine risk and it is what we call business. As I am owner so I am responsible. I can mitigate risk upto something which is in my control after that it is business has the feature of all this and this is what a message of islamic banking to be. So if customer declines to pay anymore, the bank will go and sell the asset in the open market and recover the market price and will book the difference as loss if there is any. This is what happens in business and this is what called Islamic Finance. My own view point.

Dr. Tariqullah: Dear respected brother- I am aware about your valuable contributions and thought leadership role in Islamic finance. Excellent work and much appreciated. What is bothering is that all Islamic finance are serving population segments in big urban centers while the actual Muslim masses are in the villages and peripheral areas where Islamic finance finds it inconvenient to reach. This disparity means that something may have gone wrong in our understanding of the original and greatest sources of our Din. To me that something which has

gone wrong is our own inconvenience with respect to compassion which is imbued in those greatest sources of guidance. The extreme example of compassion is Qard and forbearance. Correct me if my understanding is wrong, these two are very clear in the greatest sources of wisdom but these are inconvenient to the conventional financial system. As we know commercialization of Qard is the heart of conventional banking. Now tawaruq is the heart of Islamic banking - core deposits are tawaruq, and core financing are also tawaruq! The disturbing problem is the fact that OIC Fiqh Academy doesn't approve tawaruq, and considers it commercialization of lending. AAOIFI approved some version <http://ifikr.isra.my/documents/10180/16168/blp-isra%20sep%20bulletin%20Tawarruq.pdf> and that version is not practically implementable. So our hopes rest on scholars like your good-self on one hand and perhaps the aspirations of the masses who are waiting IF services yet to reach them on the other hand. If Maqasid cannot explain those aspirations to give hope, then again we have to turn to you to find another framework which can represent the aspirations of the Muslim society- surely it's not tawaruq, surely it's not the disagreements among Apex bodies and amongst great scholars that can represent such aspirations.

Dr Hurriyah: I beg to differ. The tawarruq we did in one retail bank in Bahrain fulfilled all requirements set out in AAOIFI standards so its not true to say its not practically implementable.
UmarMunshi: Dear Dr Tariq, do you really mean Islamic Finance (in general), or specifically Islamic Banking?

To a large extent your sentiment here is echoed by numerous individuals in good positions in Islamic Banks when I meet them.

It was quite shocking to me when just recently a CEO of an international IF institution explained to me how they facilitate commodity murabaha transactions and he feels it's a huge farce.

When I asked why he's doing it if he felt it's wrong, he said at the time he started (15 years ago), he was idealistic. Now he knows (yes is still there).

I'm not judging or even opining, as I have insufficient knowledge to do so.

But such encounters happen too often.

Dr. Yusuf Siddiqi: I agree.

Even DMCC Tawarruq n NASDAQ Certificates have complied with all the requirements of AAOIFI.

Dr. Mahbubi Ali: The AAOIFI standard does not permit tawarruq as deposit and financing products. It can only be used as a last resort when an isalmic bank faces liquidity shortage. Do bahrain Islamic banks comply with this requirement as well?

Dr. Tariqullah: Good point, Dr Hurriyah, kindly please if you can benefit us!

Ahmed Sanusi Hussain: I would say many Islamic banks are using tawarruq for deposit & financing products. So IB's are not abiding to AAOIFI standard?

Could bro. pls highlight the exact clause (or reference) in AAOIFI standard prohibiting tawarruq for deposit & financing products.

Thank you.

Sanusi KL

Dr. Hurriyah: Brother mahbubi you need to differentiate the control measure. No 4 is for tawarruq where banks are not the beneficiary (hence applicable to financing) and No 5 is what you were referring to, that is when the bank will be the beneficiary. I notice some DSN members have the same view as you expressed so I pointed out the two sets of measures. We don't read 4 and 5 but 4 for financing and 5 for liquidity management

Dr. Tariqullah: So basically AAOIFI standards allow tawarruq primarily for liquidity management by IBs!

Amjad Bangash: Which clause is talking about Tawarruq as financing product? The different sub clauses of main clause 4? is this not the procedure of Tawarruq or in other words buying and selling of commodities which are normally metals? And by this procedure islamic banks can put their money with conventional banks?

Dr. Hurriyah: And I wasn't referring to BIsB. The bank I referred to complied with all control measures in 4 (corporate financing. They didn't use tawarruq for retail) and during my time I don't recall if it used tawarruq for liquidity control. Wakalah was more popular then (for liquidity control)

It could be for customer for which the control measures are set out in 4 or for institution (the bank itself as beneficiary of tawarruq) for which the control measure sets out in 5

Amjad Bangash: And what does this clause 3/2 is saying: it means islamic banks can not place their excess liquidity with conventional banks through Tawarruq??

What is the global practice of Islamic Banks of placing their excess funds with conventional banks through Tawarruq?? And the applicability of this clause which I think not allowing islamic banks to do?? I am asking this as I have one very sad happening related to Tawarruq and after that happening I shifted from accepting Tawarruq.

Dr. Hurriyah El Islamy: Perform is not just about placing its own liquidity. It has wider context. But I believe the objective is that islamic banks should not assist for conventional banks to have tawarruq when the purpose is to be used for non shariah compliant activities.

Amjad Bangash: Do conventional banks also perform shariah compliant transactions? What will be the percentage? Lending based on interest is absolutely not a shariah compliant

Dr. Hurriyah: I was aware of such practise in GCC in the past but that was due to the regulatory restrictions (risk concentration limit) and limited number of shariah compliant options then. Nonetheless, the regulators in some other countries on the contrary forbid Islamic banks' liquidity placement in conventional banks regardless the mode of placement (tawarruq or otherwise).

Oh yes. In some jurisdiction the law allows conventional banks to undertake shariah compliant transactions within their license be it commercial banks or investment banks.

Amjad Bangash: Ok so now islamic banks don't place their excess deposit with conventional banks?

Dr. Hurriyah: Not in countries where the regulators do not allow them to but in other jurisdiction some may still do for the reasons stated above

Amjad Bangash: Thanks. But this is a shariah matter and not regulatory. Definitely if regulators allow islamic banks to provide riba based loans, islamic banks can't offer. I am not saying that Tawarruq is riba based loan I am talking about conventional bank's loans.

Dr. Iman Sastra: This is sharia reason why islamic bank cannot place the fund in conventional bank although in the form of tawarruq

Dr. Burhan Arbouna: Dr. Tariqullah asked about LIBOR. Please refer to AAOIFI sharia

standards on indexes. There is detailed rules on this.

Dr. Hurriyah: You are free to classify it as you deem fit. I was just sharing the reasons for the same. Imagine you are in a country where there're only a few islamic banks and at the same time the risk management regulation dictates your single exposure limit is 10% or 15%

Dr. Iman Sastra: Yes Dr Hurriyah, some Islamic banks faced this situation. Especially in advanced Islamic banking market

Amjad Bangash: Agreed. I don't want to say any more thing on Tawarruq as this is damaging my image in this group

Why I am against it while I was in favor of it in past. This happened in past when I was explaining the difference between current account of Islamic Bank and Current Account of conventional bank. When I said though on surface it looks both are same but in conventional current account, the customers are supporting interest based system so it should be avoided....before I go further a person asked me..

More than 10 billion rupees of islamic banks are placed in conventional banks so is this not the support of interest based system?

Customers are keeping their money with islamic banks to avoid riba but then islamic banks are keeping with conventional banks....

I explained many things like necessity, contract, regulation etc..But from that day I shifted my mind from Tawarruq.

I spent around 50 percent of my time with liquidity management and pool management team..Though I am head of Shariah Department but I still worked for this so we don't need to even think about Tawarruq. Believe me by robust deposit pool management and liquidity management one can also avoid it. We have the lowest cost of funds in the whole country because we monitor deposits at minute levels. We have not a big book but profit spread is good and liquidity is finely managed. I am sorry but I am unable to discuss Tawarruq any more.

Yau Isah: Brother Amjad don't feel offended by other people's comments we are all in this to make the industry better,remember it is he who strives that makes mistakes,the onlooker only laments and wails.

Constructive criticism only brings the best out of any situation we found ourselves.

I would encourage u especially from practical aspect to share ur misgivings about Tawarruq and share your experiences on how ur bank had been able to successfully manage its liquidity without the use of tawarruq.

Liquidity management is one of the major challenges facing IFIs would appreciate if you could share ur experience about it pls

Dr. Tariqullah: ☑☑If core deposits are tawaruq and core financing are tawaruq that means Islamic banking is mechanical replacement of interest based lending with tawaruq! The alarming question is what difference it makes then? The answer of Dr Arbouna and his colleagues is that tawaruq is Halal and Interest haram! But OIC Fiqh Academy which is more independent says that tawaruq is prohibited ☑ layajuz! So we still have a good chance to follow OIC Fiqh Academy and avoid tawaruq InshaaAllah!

Munshi Azhan: Really IF industry still an infancy stage as we are still discussing on basic

fundamental of it, "whether is halal or haram" ..Sigh

Amjad Bangash: Thanks. Though it's quite detailed one and lengthy and this topic is not under discussion but few things I can share.

1. Banks consider liquidity management as placing extra money somewhere. To me it is not the case. From my practical experience once I audited treasury deals and came to know that there were several cases where bank accepted deposits say on 4% but placed it with other banks at 2%. Even there was a difference in same term like one year deposit at 4 % was placed with other banks at 3% for one year. The only reason being told to me is that managing liquidity means any excess to be placed. (Here I advised treasury to provide reasons in writing whenever he will be placing higher rate with lower rate or reasons of long term deposit in short term placements etc and vice versa. Now the treasury teams are quite cautious in doing all this.

2. Fine pool management. Making of separate pools in one pool. Like if bank want to pay good rates on deposits to selective customers then bank should create separate pool. That pool must have those financings where rate is high and quality customers is good (no default no late payments) so the link is made.

3. Similarly the pool to be divided into short medium and long terms deposits. Then the short term finance goes to short term financing and so on.

4. Business teams must be robust enough to tell branches when to take deposits and when not. Normally branches will continue to accept deposits as they have targets. Similarly the corporate teams should work for short term working capital financing and treasury team to ensure that short term pool
Is used for that short term financing.

5: Then interbank wakalah with islamic banks, sukuk, securities, foreign exposure etc

This is just a brief. The important thing is the robustness of treasury teams, pool manager and shariah interactions.

Dr. Munir Daud Lalmahmoud: Assalamualaykum - After going through the debate on RM and Tawaruq, I must admit that Im learning from the learned Scholars. On the topic, may I share in my humble view our intervention how we avoided Tawaruq with CB. As the only Islamic bank here, our excess was placed with CB, however when I was appointed I opted for another means. It may not have the best options since I had a retired banker/treasury expert as ind. director and the BoD was not in my favor. Our strategy was to disburse short term Murabaha facility - they were mainly 1-3 months government agencies tenders and our clients and the final buyer (agencies) agreed to make proceeds in our favor as part of the security conditions. It worked well and the rate was better than the daily overnight rate offered in Tawaruq. Is this a sustainable model - no it is not but the best remedy for me. We then explore how we could replicate this approach for SMEs and their private final buyers such as Telco, Hotels and other distribution companies. Certainly the amount of works/risk is more. Our next approach is to explore RM with SMEs, on the contrary this will allow us to charge more profit which against involves a higher risk. Although we are a participative member for SMEs Guarantee scheme with has a low profit rate (repo + 1.5%). In conclusion, this matter is a sharia & business matters without

compromising the main objectives of the Sharia. I have even recalled during a meeting with central bank on liquidity management, it was my view that I could not beat CB when it comes to placement - it is a quick and fundamental business gain for CB which may not necessarily work for IB unless a proper instrument is used. On the same topic, I must admit that many clients especially individual clients don't get the logic in Tawarruq. It's also a challenge to explain to clients on the use. Fi amanillah.

Prof. Ayub: Clause 3/2 of Sh. Standard No. 30 on tawarruq requires that liquidity must not be provided through tawarruq to the conventional banks. Is your bank fulfilling this condition? (Assuming that it fulfilled all conditions relating to ownership and risk transfer in all process, fulfilling this condition is crucial)

Dr. Yusuf Siddiqi: We can't ignore the fact that any Sharia Standard comprises of
i- Operational Procedural: how to execute the deal;
ii-Over-all Policy: whom to extend or not to extend.

Rulings related to not doing Tawarruq with conventional banks are related to Shari'a Policy. No one can deny the fact that the Islamic bank (as seller in Tawarruq) which is fulfilling all the operational procedures will be not committing any Sharia breach if over-policy was over-sighted by Sharia Resolution of its own bank.

Now to answer your question- it was evident in 2009 that the biggest Tawarruq book with conventional banks among

UAE Islamic banks was of Dubai Islamic Bank. I am sure they might be taking care of Operational Procedures but Sharia Policy is surely over-ruled by their own Sharia Board.

Dr. Munir Daud Lalmahmoud: This remains of a client who walked into our bank and said a local CB (not even a window) is offering Islamic Finance - the contract is 100% sharia complaint !!!!!

Dr. Yusuf Siddiqi: So how can you question Sharia permissibility of the contract done between a conventional bank and the customer if it has fulfilled all the Operational Procedures?!

Dr. Munir Daud Lalmahmoud: There is an anecdote back home - A non Muslim Chef in Restaurant said my chicken is Halal and I have slaughtered it.

Dr. Yusuf Azim Siddiqi: Sorry unrelated example!

If Non-muslim chef obtains Halal chicken n cooks it so surely there isnt any Sharia objection. Although الورع is a matter beyond Fiqh.

That's why I clearly said "fulfilling all the Operational Procedures".

Amjad Bangash: Islamic banks also fulfill all the operational procedures but still they need Fatwa from sharia board...They must have Shari'a Board, Shari'a Department...All these are missing in a conventional bank...

Dr. Yusuf Siddiqi: Sharia Governance bodies (as mentioned by you) are the ones which confirm fulfillment of Operational Procedures.

In conventional bank financings- Sharia Advisors are appointed.

Amjad Bangash: Which conventional bank in the GCC, And Asia has a shariah advisor? Please name it. Please avoid naming islamic windows of. Conventional banks.

Dr. Yusuf Siddiqi: Invest Corp.

For Islamic deals - they appoint at least 2 advisors

Amjad Bangash: Only one? Is this a bank? So all Islamic banks place their excess liquidity with investcorp via Tawarruq?

Dr. Yusuf Siddiqi: I guess - my answer was whether a conventional bank can enter into Islamic transaction or not.

Nothing to do with Tawarruq with this bank ☹

Amjad Bangash: Please think before writing....we are talking about placement of funds via Tawarruq...read again Professor Ayub message..☹

Dr. Yusuf Siddiqi: My response was to Dr Muneer whether Conventional Bank can offer Tawarruq n still consider it permissible.

Amjad Bangash: @يوسف صديقي please get up from Tawarruq food and look at this message of professor @Ayub where you first responded. We are only talking about this clause ☹☹

Dr. Yusuf Azim Siddiqi: Re-sending my message:

We can't ignore the fact that any Sharia Standard comprises of

- i- Operational Procedural: how to execute the deal;
- ii-Over-all Policy: whom to extend or not to extend.

Rulings related to not doing Tawarruq with conventional banks are related to Shari'a Policy. No one can deny the fact that the Islamic bank (as seller in Tawarruq) which is fulfilling all the operational procedures will be not committing any Sharia breach if over-policy was over-sighted by Sharia Resolution of its own bank.

Now to answer your question- it was evident in 2009 that the biggest Tawarruq book with conventional banks among

UAE Islamic banks was of Dubai Islamic Bank. I am sure they might be taking care of Operational Procedures but Sharia Policy is surely over-ruled by their own Sharia Board.

Amjad Bangash: This is what your response of fulfilling operational procedures about the clause of AAOIFI on placing funds with conventional banks via Tawarruq..please read it carefully. It will help you insha Allah

Dr. Yusuf Siddiqi: So that's why Sharia Policy can be over-ruled by Sharia Resolutions of the particular IFI.

Banks have to observe Operational Procedures as compliance to AAOIFI Standards.

As I said it before - recent Tawarruq solutions made huge endeavor to fully comply with Operational Procedures of SS No.30.

Amjad Bangash: Good. Then we should not say that AAOIFI allows it so we can do this and we can't do that..we should say our Shariah board allows and that's all. Very good suggestion from your side indeed..

Dr. Yusuf Siddiqi: That's the reason why AAOIFI was never accepted as Rule Book in the Court of Law because it comprises of avoidable Policy plus non-compromising Procedures.

*By avoidable policy I meant a policy which can be deviated by SSB of the IFI.

Amjad Bangash: Sooper.. so no one should object on @Dr. Tariqullah as well who follows Islamic Fiqh Academy ruling in Tawarruq.. no one should say AAOIFI allows so why you stick to other views. If brother Iman says there bank shariah board does not allow profit on account or

provisional profit then no one has the right to say...what is this..it is allowed..what are you saying..you gave me a very good idea to follow what my shariah board or the shariah body I like is saying..

I think the forum should come back to the original discussion which was on running Musharaka. Please.

Dr. Yusuf Siddiqi: Till the time - AAOIFI Standards are not thoroughly reviewed on periodic basis - we can't assume Sharia practices of each bank is in line with SS.

Amjad Bangash: This was the last message on this topic from my side. If we can discuss it in next couple of days from tonight, it will be very good..Thanks.

Dr. Yusuf Siddiqi: That's what I said before ... RM or Points Mudaraba are good solutions but implementation is highly critical ...

Dr. Hurriyah El Islamy: Non moslem (or non ahli kitab) slaughter is not halal even if it calls is so and even if he follows all other requirements for halal slaughtering.

Now, that statement is uncalled for and unwarranted. That's not how it works with the judiciary. If the regulators say aaoifi standards apply to islamic banking in the country or the parties adopt it in the contract then the aaoifi standards bind the parties and the court shall apply the standards while deciding the case.

In Malaysia, SAC is the centralised shariah board whose fatwas are binding on the industry. At internal level, institutional shariah board may impose further restrictions usually in operational aspect which may not be restricted in SAC fatwa. That does not mean SAC fatwa is wrong, rather the bank adopts more restrictive approach and that's fine.

As for individuals' view on any matter, this is free world and each of us is entitled to what we believe. We respect each other and each other's view.

Dr. Burhan Arbouna: I think we had discussed tawarruq extensively. To add what brother yousif is saying is that aaoifi standards had permitted tawarruq with certain conditions in relation to Islamic bank proving finance to others usually. When it comes to an Islamic bank itself the standard does not encourage dwelling on tawarruq for investment purposes or requesting financing when it can use musharaka or mudaraba to mobilise funds. The way the standards is designed need some insight. The majority of the clauses of the standard are very clear on tawarruq. The one clause is discouraging not prohibiting. The English version may not be understood well. we need to analyse the Arabic version. The standards disallowed reappointment approach which some call organised except where the practice is that the client cannot resell by its own. The reason for this is because in such a situation there is a genuine intention not to involve in riba transaction. This is what we call qareena that shows good intention. This standards was extensively discussed by great modern sharia scholars and this version of the standards was the one acceptable to all including sheikh dareer who was very critical about even ijara muntahia bit tamleek. I was then part of the aaoifi team and all the discussion papers for the standards were done. So all these discussions were not new to the scholars but the maslaha and practicality was the theme of the discussion. Whether we agree or not is something else but nothing was missing.

Were done by me.

Prof. Ayub: It may mean that Islamic bank has placed a sign board "don't put money with interest based banks as it is war with Allah..." but has opened a front office to get money from Muslims for chaneling it to interest based banks. What a joke, rather hypocrisy!

We are accountable not only to Allah SWT, but also to depositors who give us money avoiding

riba.

Dr. Tariqullah: Congratulations! This forum so far reaching the conclusion that Shariah governance in Islamic banks requires drastic reform. It suggested that the one point agenda of this reform shall be “Halal is Essential not Sufficient”.

Almir Collan: Did we agree on halal part? I think we are reaching the point where Islamic banks are too big to ~fail~ change.

IKRAM THOWFEK: I think 'Islamic banks are too small to make a real impact' managing \$2-3 trn in assets, whereas the global wealth stands at \$255 trn. (4 decades only 1% reached) Have to grow bigger to see a significant impact on individuals, corporate entities and the governments at large.

Dr. Munir Daud Lalmahmoud: Perhaps yes and not at the same time. You might ended in a mess. For instance, having most of financing through Murabaha or Tawaruq on your balance sheet later may be very difficult to sell them. I go back to my proposition, the essence of promoting Halal and Islamic Finance does not fall only under IB, companies should be encouraged to use Islamic Financial instruments, if you are a car rental - use Ijarah, if you are selling - use Musawama or Murabaha, if you are a farmer, enter into Salam contract with your buyer. That's way, the Islamic economy (based on Halal elements) will grow. At the same time, why these Standards such as the AAOIFI be extended to cover transaction between two parties other than financial institutions.

Dr. Yusuf Siddiqi: True.

Sadly achieving all goals of islamic economy became responsibility of Islamic banks.

In best scenario - Islamic commercial banks should have played a minor role of credit circulation. Major things like Asset financing, funding projects, endowment financing should have been done by specialized organizations working in accordance with Sharia.

IKRAM THOWFEK: Indeed sadly everyone wants to make the Islamic banks responsible to uplift but the onus is on all of us to make a difference to fellow human beings thru Islamic finance propositions/solutions.

Amjad Bangash: True but we started business in the name of Islam. Islamic banking is the name which we use and defend so we shall have everything what Islam says. Many businesses traders etc do business according to Islam but they at least don't name it islamic. We name it..we have to prove it..

Dr. Yusuf Siddiqi: Sorry to say but your call for Halal is misleading. The reasons are below:

1/ if someone follows a ruling of competent Sharia scholars which might be not in line with OIC Resolutions then that is also Halal provided it is based on juristic reasoning and no one claims that our Tawarruq is in line with OIC!

2/ The cry for Halal is restricted to Tawarruq of OIC.

What about Ijarah financing?! Please refer to OIC's Sharia Resolution issued in 2012:

ثالثاً: إجارة الأصل على بائعه

لا يجوز بيع أصل بثمن نقدي بشرط أن يستأجر البائع هذا الأصل إجارة مقرونة بوعد بالتملك بما مجموعه من أجرة وثمن يتجاوز الثمن النقدي ، سواء كان هذا الشرط صريحاً أو ضمناً، لأن هذا من العينة المحرمة شرعاً ، ولذا لا يجوز إصدار

صكوك مبنية على هذه الصيغة.

I can assure you no active Islamic bank is abiding by such requirements.

Islamic banks are following Halal because Sharia Board putting efforts to issue Fatwa after considering all the aspects of juristic reasoning.

Dr. Tariqullah Khan: I agreed! Specially that I am not qualified to make things Halal or Haram. But what I am saying is that at least the Apex institutions should transcend their differences and agree on what is Halal. Even if that is done my position is that *Halal is Essential not Sufficient*

IKRAM THOWFEEK: Yes agreed. We means. Starting from you and I. Then others to follow.

Amjad Bangash: Thanks