

**Summary of the Discussions on Tawarruq  
held in Islamic Economic Forum  
Started on 24 March, 2017**

**Brief Introduction to Islamic Economic Forum:**

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

**Administrative Committee of the Forum:**

- Dr. Aznan Hassan (Head of Committee)
- Dr. Abdul Bari Mashal (Head, Arabic Group)
- Dr. M. Burhan Arbouna
- Sheikh Ashraf Gomma Ali (Head, English Group)
- Dr. M. Iman Sastra
- Sheikh Ibrahim Musa Tijani
- M. Khalid Hasani (Founder of the Forum)
- Sheikh Siraj Yasini
- Sheikh Abdul Razzak Kaba

**Preface:**

**Definition of Tawarruq:**

Monetization refers to the process of purchasing a commodity for a deferred price determined through Musawammah (Bargaining) or Murabahah (Mark-up Sale) and selling to third party for a spot price as to obtain cash.

**Source: AAIOFI Shariah Standard 2015**

Tawarruq consists of two sale and purchase contracts. The first involves the sale of an asset by a seller to a purchaser on a deferred basis. Subsequently, the purchaser of the first sale will sell the same asset to a third party on a cash and spot basis.

**Sources: Bank Negara Malaysia (BNM) Shariah Standard and Operational Requirement**

Literally: from wariq: silver; also dirhams, which are coined from silver. Awraqa: to become rich. Technically: Hanbalis used the term tawarruq to refer to the process of purchasing a commodity for a deferred price and selling it to a third party for a spot price in order to obtain cash. Although non-Hanbalis may not use the term, they have discussed the issue under the rubric of ‘inah sales. The majority of jurists agree that tawarruq is legal, whereas Ibn Taymiyyah and Ibn al-Qayyim prohibited it because they saw it as harmful and a legal trick.

**Source: ISRA Compendium for Islamic Finance Terms**

Appendix

Rulings on Tawarruq (**Pg 58**)

List of IEF Group members contributed in the Discussion (**Pg 60**)

## Islamic Economics Forum Dialogue:

The discussion was initiated by **Dr. Humayon Dar's** statement:

I am writing a book to be entitled "Problem With Interest-free Banking", which takes a diagonal view to respected Sheikh Dr. Daud Bakar on the matter of Islamic banks and their functions of financial intermediary. If Islamic banks do not do "real" trading but rather are involved in "financing" of trade activities in such a way that they use an interest rate mechanism (LIBOR, KIBOR etc.), then the proponents of Islamic banking and finance, including Shari'a community, admit that interest rate mechanism is the best/efficient process for price finding and its determination.

The use of an interest-based benchmark along with "non-competition" with the "real" economic players is also a soft way of saying that Islamic banking and finance has nothing (or very little) to do with the real economy.

If that is the case, then all those (including me) who have been writing about superiority of Islamic banking and finance on the basis of its possible contribution to the real economy and hence it being more stable than conventional banking and finance, have been faking.

The pure fiduciary role based banking model has all the hallmarks of an interest-based financial system, and I am sure this is not what the early advocates of Islamic banking and finance intended to see.

wa Allah a'alam bi al-sawab

- **Dr. Ugurlu Solyo:**

That's actually a good argument, you cannot ignore.

But as you know you have to differentiate between market or price mechanism and *riba*.

As far as I understand our prophet stressed the exchange of different goods as to distinguish between ribs and trade, but not the price mechanism. On several occasions he pronounced the importance of it and its freely occurring.

Thus there is no wonder that also for the *riba* system and its surrogate markets (*riba* free) the price mechanism is the most efficient system. That should not surprise.

The question is whether the real economy could act independently from the financial system. When this is given, the question would be how *riba* free Banking could contribute to that.

Presently it contributes hardly to the arise of that any alternative systems.

- **Dr. Tariqullah Khan:**

The question raised by Dr Dar is pertinent in my view. However, the financial intermediary role is dominant. I think financial intermediaries can play a key role in developing the real economy if of scholars can reduce their differences. How can a typical financial contract be halal to some and haram to others! If the scholars can agree that tawaruq etc are either halal or haram, we can progress a lot. In the early nineties the question of Dr Dar was very much

debated but the dichotomy of halal/haram was not so serious. I wrote my humble PhD in Dr Dar's Loughborough university on the same question and the thesis can be downloaded here. <https://dspace.lboro.ac.uk/dspace-jspui/handle/2134/6960>

- **Dr. M. Burhan Arbouna:**

There is no disagreement between scholars that tawarruq as a mechanism of getting liquidity is halal. the opinions takes two or more directions on whether this mechanism is relevant to banking in the way it is executed. those who sees that it is not correctly executed or it is not a product of banking sees the practices of banks for this product is nothing but a way of involving in riba hence due to end result it is prohibited. this is termed haram li ghayrihi. those who sees otherwise hold the view banks are practising it correctly uphold the opposite view. so the difference of opinion is not on the mechanism of tawarruq. It is on the execution process.

- **Muhammad Wail:**

In Morocco the national Shariah committee does not allow tawarruq for all purposes

- **Dr. M. Burhan Arbouna:**

The way I put it is the way of ibn Rushd in stating views of scholars

Then they are taking the view that it's execution is not correctly done and not relevant to banks.

- **Ihsan Ullah Agha (Response to Muhammad Wail):**

Can you please elaborate what Islamic product is used there for personal financing

- **Dr. Hurriyah El Islamy (Response to Dr. Sahar Ata):**

It does not always work that way. banks can't do what they are not allowed to do.

Take Malaysia for example. the IFSA requires deposit to be capital guaranteed or protected (the 2nd limb, however, is restricted its use factually). hence, the industry has no choice but to behave in the same way as the conventional counterpart does minus the "interest" part. In other area perhaps it's easier to 'create' and hope the regulator to support. in banking, however, we can only move within the limits allowed by law and the regulator.

I am not a big fan of tawarruq. In fact, after spending some years being the person who had to sign off for products of a bank in Malaysia, I would prefer if we can avoid it. but I am not completely against it especially when there's a need for it (necessity).

- **Yau Isah:**

But does IFSA require all deposits to be guaranteed including mudaraba deposits? I thought it's only qard and wadi'ah based deposits that are to be guaranteed and I would assume this is in line with the provisions of Shariah.

- **Dr. Hurriyah El Islamy:**

we can't do Mudharaba as deposit anymore. it will not be [Islamic Financial Services Act 2013] IFSA compliant.

- **Muhammad Wail** (Response to Ihsan Ullah Agha):

So far there is no product that serves such a purpose. The industry has just started

- **Dr. Hurriyah El Islamy:**

There's qard maal ujah, which is utilised for some specific purposes in Indonesia. Qard maal ujah is fine, although not straight forward, when the ujah part is fixed and not linked to qard sum. but when it does and there's no other more shariah compliant way to serve the public's needs, that's where I see tawarruq can be utilised. an option of lesser evil, as I call it. should not be used as primary option and should be avoided when other shariah principle could serve the purpose, but should not be completely banned.

- **Ihsan Ullah Agha:**

In that case, how can a bank determines actual service charges? Do they follow the criteria prescribed by Islamic Fiqh Academy?

- **Dr. Sahar Ata** (Response to Dr. Hurriyah):

I completely agree Malaysia is a great example of Regulation which encouraged the industry growth but if we don't have this we can start . I give you another example Islamic finance in Egypt it has started and it is growing by demand and till now no formal Regulation which will create problem in case of a disaster but there is corporate sukuk and other IF capital investment companies also few IF banks and hopefully regulation will come.

Then you have the Regulation that should be changeable and adaptable, i.e., we had in the banking industry Basel 3 as a result of the banking crisis .

**Dr. Hurriyah El Islamy:**

It [IFSA] does not say mudharabah deposit is no more legal. It provides for definition of Islamic deposit which in substance requires that for a product to be classified as deposit it has to be capital guaranteed.

**Dr. Humayon Dar:**

It is quite natural for this Forum to dwell into transactional details whenever an issue of philosophical nature or something to do with policy is raised. It is understandable because most of the members come from Shari'a and legal background. However, the issue at hand is not how and when something can be moulded to fit in the Shari'a requirements. Ma shaa Allah, the individual and collective brain of this Forum has the ability to come up with some very interesting innovative structures.

The issue is whether we should do it. If I may ask a seemingly irrelevant question:

Is it possible for all Shari'a scholars in the world to boycott Tawarruq and hence stop its practice? (a Yes or No should suffice; as I am not asking why it should or shouldn't be done).

- **Tariqullah Khan:**

Dear Dr Dar, human ego will prevail and hence the answer is "no"

- **Auwalu Ado:**

No

- **Dr. Ugurlu Solyo:**

No, as long you has no adequate other liquidity tools.

- **Ashraf Gomma Ali:**

Sharia scholars who have influence on domestic / international policy could boycott on public policy grounds but it would be very difficult or impossible for firm level sharia boards to declare it haram without policy level regulation which bans its practice.

- **Muhammad Faisal Shaikh:**

Assalam Alikum, in my humble opinion Tawarruq based transaction cannot be avoided completely, hence, we should work together to eliminate its existing shortcomings.

- **Muhammad Wail:**

The widespread use of tawarruq (even beyond cash financing) creates little incentives to look for other alternatives that have sharia credibility and that creates an added value to the real economy.

- **Muhammad Faisal Shaikh:**

Regulations should be developed to minimise its usage. Agreed, therefore it should be regulated properly.

- **Tariqullah Khan:**

Market segmentation in the fatwa horizon is the reason more than anything else. If you have an opinion against tawarruq, I can make my own market only if I can have an option for it! That's what I mean by market segmentation and it has prevailed all times in the past and hence will prevail in future. In my view this is the main reason of differences of opinions.

- **Dr. Yousuf Azim Siddiqi:**

I always wonder how Right Wing Islamic Economics Expert (like Dr. Tariquallah and Dr. Dar) follow a strange standard approach in analyzing Islamic banking products. When it comes to suggesting products which are RIBA-less then they want something which is totally different that the market. Giving the message that the majority are not sincere. The approach is rightly described as philosophy. Since it's far away from Fiqh. But I don't blame non Arabic readers for such limitations.

May Allah Guide us All.

- **Ashraf Gomma Ali:**

It would also be possible for regulations to disincentive tawarruq such as considering the brokers/suppliers as counterparties and subject to counterparty capital requirements. It may also be possible to translate the sharia non-compliance risk with tawarruq resulting from possible lack of ownership of the commodities due to operational errors into a higher operational risk weightage. Such a regulatory action may push banks to consider other modes of finance.

- **Dr. Tariqullah Khan:**

I have problem only with same thing being haram here and halal there - period. How can it be so!!!

- **Ashraf Gomma Ali:**

This goes back to the different Sunni madhabs. Each has a different approach on issues that require ijihad (scholarly judgment). If the prohibition of tawarruq was clear in the Quran there would be no discussion, but it's not. The operative ayah (and Allah has permitted trade and prohibited riba) guides those who allow it to say that it is a form of trade which is allowed and those who prohibit it do so to avoid riba and its equivalents.

- **Dr. Yousuf Azim Siddiqi:**

RIBA was Haram and is Haram. Sale was Halal and is Halal.

- **Dr. Humayon Dar:**

I like the term Right Wing Islamic Economists. I didn't know that I was a Right Wing Islamic Economist. More importantly, bracketing me with Dr. Tariqullah Khan will not please him as he knows that we have a lot of difference of opinions between us on a number of matters. BTW, I just ask to reply in Yes or No.

- **Dr. Yousuf Azim Siddiqi:**

We have Left Wing as well who believe that whatever is offered is the best n we should move ahead in developing Islamic Derivatives as well. The Moderates are small in number.

- **Dr. Humayon Dar:**

Islamic derivatives, I love these and have actually structured quite a few of them. Dr. Tariqullah Khan would hate me for that!

- **Dr. Tariqullah Khan:**

I cannot hate you!

I don't think tawaruq can be identified as Shariah risk. Shariah risk is violation of conditions of a valid contract like guaranteeing capital and calling the contract mudharabah. The case of tawaruq is different as some call it halal and others call it haram. This irresponsible tug of war is what I call "structural risk".

- **Dr. M. Burhan Arbouna (Response to Dr. Humayon Dar):**

Dr Dar, we were considering you for long period as Right Wing Islamic Economists and Dr Tariqullah as well. now perhaps we need to classify both of you as Quasi Right Wing. for dr. tariq i know the reason or closer to knowing the reason. but for Dr. Dar, being one of the innovators of various structured products based on waad and the like, it is hard to figure out the shift of horizon to critics arena. it is good to criticise because this bring about correction and development. the question that the scholars should boycott tawarruq does not look like a relevant question. the relevant question is should the banks boycott tawarruq because it is not the scholars who executing tawarruq. they are just giving view. Having said this, it may be difficult to get all sharia scholars of the world to boycott tawarruq because that boycott should have a unanimously agreed principle. now the question I am proposing which I believe is relevant is: should all banks boycott tawarruq? the answer with yes or no will depend on the damage whether from policy perspective or societal perspective tawarruq is inflicting, I. e the extent of policy risk tawarruq is creating. so this question cannot get an open ended yes or no.

- **Humayon Dar:**

Jazak Allah @Dr. M. Burhan Arbouna. I would like to sit in the Centre rather than being on the Right or Left, as the position of Right and Left change depending from what side and angle one looks at them.

- **Tariqullah Khan:**

I would like to know more about your characterization of Right- maybe I am there and maybe I am not :)

- **Mujtaba Khalid:**

Btw didn't the Prophet PBUH say something on the lines that the differences of opinions would be a positive sign for his nation? I obviously tread very carefully on citing scripture and Arabic sources because last time I did it, I was told that I needed to be an Arabic speaker to do so

- **Tariqullah Khan:**

Let me paste again for my dear Dr Arbouna and I like his theory of combination of contracts "I don't think tawaruq can be identified as Shariah risk. Shariah risk is violation of conditions of a valid contract like guaranteeing capital and calling the contract mudharabah. The case of tawaruq is different as some call it halal and others call it haram. This irresponsible tug of war is what I call "structural risk". Ya Shaikh what is your view about structural risk?

- **Khalid Hasani:**

No one called Tawarruq as Haram. If you clarify with evidence so that we come to know that tug of war.

- **Dr. M. Burhan Arbouna:**

Right wing Economist were those who were creating products and think for Islamic Banks and leave the possibility of application of the product from Sharia persoective for the scholars



to decide and respect the decisions taken by scholars and promote the product on that basis. right wing Economist were those who do cross their boundaries.

- **Humayon Dar:**

@Dr. M. Burhan Arbouna, Please review the statement above otherwise an Islamic economist will have to cross boundaries.

- **Dr. M. Burhan Arbouna:**

For me I see that tawarruq causes executional risk. it may also involve structural risk or sharia risk all of which will end up to be operational risk or reputation al risk.

OK. let me put this way, they do not indulge themselves in sharia matters. I respect Dr. Chapra for this.

- **Dr. Tariqullah Khan:**

I understand Monzer, Siddiqui, Chapra- all these Right wing people don't keep high respect for tawarruq,

[Quote regarding Tawarruq posted by Dr. Tariqullah Khan]

Praise be to Allaah.

Firstly:

Tawarruq may be permissible or haraam. The permissible kind is that which involves buying an item from a trader by instalments, and selling it for cash to someone else. We have discussed the permissibility of this kind of tawarruq and its conditions in the answers to questions no. 45042 and 36410.

As for the haraam kinds of tawarruq, there are two kinds:

1 – Where you buy an item by instalments and sell it to the one from whom you bought it. This is what is called bay' al-'eenah, and it is called al-'eenah because the exact product ('ayn al-sal'ah) that he sold goes back to him. This is haraam, because it is a trick that is used to get a loan with interest, and it is haraam for that reason according to the majority of scholars.

2 – Tawarruq through the banks or organized tawarruq, which means that you buy an item from the bank by instalments – and in most cases it is muraabahah (profit sharing), then you delegate the bank to sell it for cash, and this transaction is also haraam.

A statement issued by the Islamic Fiqh Council held from 19-23/10/1424 AH (13-17/12/2003 CE) states that this transaction is haraam, and warns banks not to exploit this transaction in ways that are not Islamically acceptable. In it, it says:

After listening to the research presented on this topic and the discussions concerning it, it is clear to the council that the tawarruq done by some banks at present means:

That the bank, in a regular procedure, buys an item (that is not gold or silver) from the global market or otherwise for the mustawriq (the person who is engaging in this transaction of tawarruq to obtain cash) and sells it to him for a price to be paid later on, on the basis that the bank will commit – either as a condition of a contract or according to custom – to sell it on his behalf to another purchaser for a price to be paid immediately, and it will hand over that price to the mustawriq.

After examining and studying the matter, the council has determined the following:

Firstly: Tawarruq in the form discussed above is not permissible for the following reasons:

1. The seller's (i.e., the bank's) commitment in the tawarruq contract to act as the deputy in selling the item to another purchaser or arranging for someone to buy it makes it akin to the 'eenah transaction that is forbidden in sharee'ah, whether this commitment is stipulated clearly or is assumed on the basis of what is customary.
2. This transaction frequently leads to a failure to fulfil the condition of taking possession of goods, which is essential according to sharee'ah in order for the transaction to be valid.
3. This transaction is in fact based on providing finance with interest from the bank to the customer, and the process of buying and selling is illusory in most cases.

This transaction is not the genuine tawarruq that is known to the fuqaha'. In its fifteenth session the Fiqh Council stated that it is permissible with regard to genuine transactions and subject to specific conditions which they described. That is because there are many differences that were discussed in previous statements.

Genuine tawarruq is based on the real purchase of an item for a price to be paid at a later date, which enters into the possession of the purchaser, and he acquires it in a real sense, and he becomes responsible for it, then he sells it for cash because he needs the money, and he may or may not be able to get it. The difference between the price of purchase that is deferred and the sale price does not come into the bank's possession, and the bank is only introduced into this tawarruq transaction in order to justify getting more for the loan that it gave to that individual by means of transactions that are illusory in most cases.

Secondly: The Fiqh Council advises all banks to avoid haraam transactions, in obedience to the command of Allaah.

Whilst the Council appreciates the efforts of the Islamic banks to save the Muslim ummah from the calamity of riba, it also urges them to make use of the genuine transactions that are based on the rulings of sharee'ah, without resorting to illusory transactions that are essentially pure financing in return for extras that benefit the financing party. End quote.

Shaykh 'Abd al-Rahmaan ibn Ibraaheem al-'Uthmaan (may Allaah bless him) said:

The reasons why we say that organized tawarruq as done by the banks is not permissible are as follows:

1. Riba – as stated above – in the report of Sa'eed ibn al-Musayyab (may Allaah have mercy on him).

2. (Which is similar to what we have mentioned above) the mustawriq is not interested in the product per se, rather he is interested in the money, and the sale in question is an illusionary sale. The whole issue boils down to obtaining cash immediately, to be paid for later on with a greater amount.

What indicates that this sale is something illusionary is the following:

The bank does not take possession of the product purchased from the global market in any real sense, and it does not receive any original receipts from the warehouses where this product is kept; the product is traded on the stock market and moves from one purchaser to another until it ends up with the final consumer, who is able to take possession of what he has bought.

In the case of the mustawriq it is even worse: he does not take possession of the product in a real sense or even on paper. Hence he is selling something that he has never acquired and that is not even specified, because what the bank sells to its customer is something that is owned by the bank, which is defined by a number used to identify the product, and this number does not refer to small quantities of the product, but it is a number that is used for the big unit that the bank divides among those who seek tawarruq.

3. Appointing the bank to act on behalf of the customer in the case of bank-type tawarruq is contrary to what is expected of the agent, because what the bank is doing in its role as agent is contrary to the interests of the mustawriq, which is selling the product for a lower price than that for which the mustawriq bought it. (If there is any aim to be achieved from a contract in the true sense of the word, and there is a condition stipulated that contradicts this aim, then this contract is self-contradictory in that it both affirms and denies the aim of the contract, so nothing can be achieved and this kind of condition is invalid.) Appointing the bank as one's agent in this tawarruq is one such condition, even though it is not stipulated. If there was no such appointment, the mustawriq would not have bought from the bank in the first place.

4. Giving guarantees to the last purchaser. The bank makes a deal with an independent party that commits to buying the product that is being used in this transaction. This commitment ensures that the selling price will not go beyond a certain limit as a protection against fluctuation in prices. In return for this assurance, the bank is committed to selling it for him, in the sense that the bank is not entitled to sell the product in the open market even if the price rises above the price agreed upon with the second purchaser. Thus these assurances come from both parties: from the bank which commits to sell to the second purchaser, and from the purchaser who agrees to buy it at a certain price.

5. Organized tawarruq differs from the kind of tawarruq which is permitted by the majority of fuqaha' in several ways, such as the following:

(a) The bank is in charge of selling the product that was bought from it, to whomever it wants, whereas when the mustawriq is the one who is in charge of selling when he enters into a tawarruq transaction by himself, and the first seller has nothing to do with the sale of the product to the final purchaser.

(b) There is prior agreement between the bank and the final purchaser which guarantees that he will purchase whatever the bank offers at the price for which the bank bought it, as stated above, whereas in individual tawarruq, the mustawriq is the one who sells the item for the price that he paid for it, or more or less.

6. Organized tawarruq comes under the heading of bay' al-'eenah which is haraam, because the bank is the source of cash for the mustawriq in both cases. Cash is acquired via the bank and through its mediation; if the purchaser did not know that the bank would give him cash later on, he would not have embarked on this transaction in the first place.

7. Organized tawarruq through the bank is not the same as bay' al-'eenah which is permitted by al-Shaafa'i, because he stipulated that there should be no connection between the two sales, and that one should not show any intention of acquiring cash; neither condition is met in this case.

8. It nullifies the aims of Islamic banking in many ways:

(a) It imitates the riba-based banks in offering financing and insurance.

(b) It limits itself to this and no other forms of investments. Tawarruq now represents 60% of the bank's financing services.

(c) It creates confusion between Islamic and riba-based banks.

(d) It negates the efforts to encourage Islamic banks to offer financing in the form of investments via musharakah (partnerships), mudaarabah (profit sharing), and so on.

9. It causes Muslim money to leave the country, because tawarruq transactions take place in the global market, so Muslim money leaves the country in order for others to benefit from it.

From the Muslim.com website.

Secondly:

With regard to the questioner's comment that this transaction is permitted by senior scholars, that is not correct. Those who said it is permitted are the sharee'ah committees in Islamic banks, or the Islamic departments in riba-based banks! It should also be noted that not all of them regard this transaction as permissible.

Many of them have refuted the view of these sharee'ah committees that it is permissible. Shaykh Khaalid al-Mushayqih has undertaken comprehensive research on the prohibition of this transaction. See *Majallat al-Buhooth al-Islamiyyah* (73/234-237). There are also refutations by Dr. 'Ali al-Saloos, Dr. Saami Suwaylim and Dr. 'Abd-Allaah ibn Hasan al-Sa'eedi – who have all presented research on this issue to the Fiqh Council – as well as Shaykh 'Abd al-Rahmaan al-'Uthmaan and Dr. Muhammad ibn 'Abd-Allaah al-Shabaani. Please see Muslim.com website.

See also the answer to question no. 60185.

With regard to your own situation: so long as you trusted those committees and followed their opinion, and you did not know that their view is weak, then we hope that there is no blame on you, but you should resolve not to do it again in the future.

We ask Allaah to guide you to all that is good and help you to pay off the debts that you have.

And Allaah knows best.

- **Dr. Tariqullah Khan:**

Please forgive me I have heard about this Tawarruq resolution which prohibits organized tawarruq but have not analyzed it

- **Dr. Yousuf Azim Siddiqi** (Response to Mujtaba Khalid):

رحمة امتي اختلاف This isn't a Hadith. It's a saying by one of the Tabeen تابعين ...

- **Ikram Rehman:**

Why don't we simply analyze whether an Islamic bank can afford practicing any Tawarruq other than the Organized Tawarruq? In my humble opinion and practically speaking, the answer is "NO" simply because the Risk Framework of any Islamic Bank is not different from its conventional counterpart.

- **Amjad Bangash** (Response to Muhammad Wail):

In Oman, the High sharia supervisory authority (of Central Bank of Oman) disallows Tawarruq as well.

- **Dr. Yousuf Azim Siddiqi:**

Because Islamic banks are not, currently, then main competitors in the industry. Once they grow in size then I am sure they will accept it with "reservations" and "restrictions"...

- **Mughees Shaukat:**

It is debarred of the above. It vry strictly banned n is being ensured it stay banned, something tht wud be strengthened further in few days

- **Ibraheem Tijani:**

With much respect, I wish to add my humble and amateur answer to the following:

The question asked by Dr. Dar was: Is it possible for all Shari'a scholars in the world to boycott Tawarruq and hence stop its practice? (a Yes or No should suffice; as I am not asking why it should or shouldn't be done).

My answer will definitely be "NO" and this has nothing to do with ego. Once we understand the Shariah, then we will understand the Shariah scholars' limitation. The magnitude of saying something is Haram, which there is no clear authentic proof that is Haram is too heavy for some Shariah scholars to carry, which we highly respect them for. Tawarruq, as much as it is being abused in the industry, as a whole cannot be considered haram being that it's a legit Shariah principle and can be found in any classical Fiqh book. However, Shariah

scholars can tackle it based on implementation basis, I.e., similar to how OIC Fiqh Academy banned organized tawarruq.

It's better to work with regulators on how to deal with proper implementation of tawarruq in the industry, the scholars have already mentioned what is permissible and what is not.

- **Mujtaba Khalid:**

Asalam'Alaikum, I was recently asked by a Muslim businessman based in the UK regarding pensions for his employees; he employees both Muslims and non Muslims and under UK law there has to be mandatory participatory pension plans, they also have a Shariah compliant option. His question was - when a non Muslim employee wants to get his pension through the non Shariah compliant plan, is that ok? Or should be force his non Muslim employee into the other plan - the non compliant one is slightly better performing and less risky

Also another question from another business person, who is a wholesale trader - he has an arrangement with manufactures and producers that he'll get delivery of goods on bulk and any leftover items are taken back by the producers at the cost price agreed

Is this true trading vis e vis the Islamic concept of risk ownership? (Dr. Hurriyah El Islamy response: yes, true trading)

- **Dr. Hurriyah El Islamy** (Response to Ikram Rehman):

I think the answer is yes if the regulator allows. but marketing the product will be a challenge. Customers may not be willing to take risk of end up having commodities. To address that, banks may arrange for ready buyers to be available. whether having third party (ready buyers) available with prior (blanket) MOU will tantamount to 'organised' too.

- **Dr. Hurriyah El Islamy** (Response to Mujtaba Khalid):

en sha Allah it's okay. the obligation on the part of the employers is to pay the wage when its due (before the sweat dries). in older time, there was only wage, employers paid that to the employees. how employees would like to use it, its their discretion although of course we, as moslems, are encouraged to order 'amar ma'ruf nahi munkar'

Now the authority requires employers to contribute towards pension funds of their employees. that becomes the right of the employees too and usually factored as part of the cost in every head count. it should be treated the same way as wages/salary as far as the duty of employers to pay is concerned. If employees choose one scheme over the other and they are given such right by law, employers are to abide by the request. unless if the employers have policy restricting the options (bear in mind the risk that such policy may be challenged in court) and employees have agreed to such policy or conditions as part of his terms of employment. without that, employers cannot force the employees to do something that the law gives them the right or option. including to have one scheme over the other. and that is not limited only to non moslem employees. even to moslems employees, the employers cannot force its preference when the law permits and in the absence of company's policy opting one scheme over the other.

wallahu'alam bisshawab

- **Dr. M. Burhan Arbouna** (Response to Mujtaba Khalid):

It should operate as iqaala if the cost price is the same amount the trader pays to take the goods at the inception.

- **Amjad Bangash:**

With much respect, can I amend the question asked by Dr. Dar as: is it possible for all Shariah Scholars in the world to boycott organized Tawarruq or the Tawarruq being in use in Islamic Banks or the islamic banks where they are serving as Shariah Advisors whether in Shariah Board or Shariah Departments, hence stop its practice? ( a "Yes" or "No" should suffice)

- **Dr. M. Burhan Arbouna** (Response to Amjad):

what public damage or policy damage the tawarruq is inflicting and the percentage of that damage. if this damage override the interest by far perhaps it should be boycott from this angle not from product angle keeping in mind that tawarruq is just a term and it is not a product per se. the product leading to creating a situation of tawarruq is the murabaha or a normal sale and resale. should we boycott murabaha , ijara muntahia bittamleek because in all these products there are scholars who says they are haram and there are others who said they are halal. if we apply halal from one end and haram from another concept we need to do away with various products. what we need is to boycott malpractices which are available in all activities of life. our efforts should be channelled to bring out malpractices of structures approved by our great classical and modern scholars and push for getting rid of these malpractices.

- **Amjad Bangash:**

I was just asking for Yes or No? Without here and there?

- **Dr. M. Burhan Arbouna:**

I have already as a scholar you cannot answer a blank yes or no. you say if this is the case "yes" if this is the case "no". if a state choose only one approach we **الخلاف يرفع الحاكم حكم**

- **Dr. M. Burhan Arbouna:**

this kind of question was posted in Arabic section few months ago but no answer. when it was put into perspective people start to answer yes or no.

- **Amjad Bangash:**

Thanks. My question is Organised Tawarruq?

Oman banned Organised Tawarruq. Started Islamic banking in 2013. Their growth of Islamic banking As per Thomson Reuters report of 2015 showed the growth of Islamic banking in the world is no 3, crossed many GCC countries and other countries islamic banking growth where Islamic banking is more than a decade and organized Tawarruq is the backbone of

Islamic banks. This gives an innovation to islamic bankers in Oman. They started to develop and implement profit and loss sharing modes like mudaraba and Musharaka. And these are successfully in use now.

- **Khalid Hasani:**

Valid question is what Sheikh Dr Arbouna shared earlier

: .....question that the scholars should boycott tawarruq does not look like a relevant question. the relevant question is should the banks boycott tawarruq because it is not the scholars who executing tawarruq. they are just giving view. Having said this, it may be difficult to get all sharia scholars of the world to boycott tawarruq because that boycott should have a unanimously agreed principle. now the question I am proposing which I believe is relevant is: should all banks boycott tawarruq? the answer with yes or not will depend on the damage whether from policy perspective or societal perspective tawarruq is inflicting, I. e the extent of policy risk tawarruq is creating. so this question cannot get an open ended yes or no.

- **Amjad Bangash:**

Since the question is being asked here in this forum and it is NOT being asked or referred to Islamic Banks. Question is being asked here to shariah Scholars or to shariah advisors who are in this forum and who are in shariah boards or departments of Islamic banks. What is their stance on boycotting Organized Tawarruq which is disallowed by OIC as well? Definitely if Scholars will say organized Tawarruq should not be used I don't think the islamic banks will use. Islamic banks use whatever is allowed by shariah advisors.

- **Amjad Bangash:**

This is good. Do shariah scholars in the boards or in the departments review each and every type of personal finance transaction based on Tawarruq? Do they review each and every type of credit card transaction based on Tawarruq? Do they review each and every case of Tawarruq and decide which one is the real situation or falls under necessity? Or is it a blank approval of organized Tawarruq?

- **Ibraheem Tijani:**

Thanks Br Amjad for rewording the question, however your question reminds me of the joke among students of knowledge that some questioners would try to word their question in a particular manner to ensure they get the exact fatwa/answer they expected. Please re-read your questions and ask if this was ask about anyone else in the industry (bankers, lawyers, policy makers, etc.), could the answer be "YES".

- **Dr. Humayon Dar:**

With all due respect, even the original question did make all the sense, as the emphasis was on the word "possible". The answer could have been a simple Yes or No. As the question couldn't fetch any meaningful number of answers, it shows the reluctance of the members to answer unambiguously.



- **Ikram Rehman:**

Do you think Doctor Dar that my answer was also ambiguous? Let me put my answer this way: NO, NO, NO

- **Amjad Bangash:**

Respectful Dr. Dar. Your Question is perfect and straightforward and the answer should be Yes or No like what OIC did for organized Tawarruq.

Let me reword my answer as well. The Answer should come Yes or No for organized Tawarruq like what Brother Ikram replied.

- **Dr. Muhammad Ayub:**

Prof Dr Monzer Kahf's answer to this question on organised tawarruq is NO. I got a chance to discuss this with him last month. As such serious scholars are normally busy in academic pursuits , they may not be taking part in discussion on Whatsapp [Dr. Monzer Kahf is a member of the Islamic Economics Group].

- **Auwalu Ado:**

I also confirm this view of Monzer kahf. He is the chairman of my bank shariah board Jaiz bank. His stance on organized tawarruq is NO.

- **Mohammed Paracha:**

Salam all. I would like to give a lawyers practical experience to the discussion on tawaruq. As some people may know, I was fortunate to be a member of the Bank of England committee on Islamic finance in the early 2000s when we were trying to make London a hub for Islamic Finance. We were able to pass legislation that allowed Murabaha, ijara and musharakah to be used without any additional taxation consequences. However, from a practical perspective the structures have not been widely used outside of home finance. There are two main reasons for this:

1. Most property financing for example involves the purchase of a property that is the subject of an existing lease. Whilst it would be possible for a financing bank to carry out a sale and leaseback of such an asset, in practice we find that this is not possible from a sharia standpoint because of the existing lease causing the usufruct or manfa'a to be with the current lessee. Due to quiet enjoyment covenants in the lease, banks and customers are unable to terminate that lease in order to reset the usufruct for the purposes of the sale and leaseback financing.

2. Another common request is development financing. In this type of structure, an asset such as a building is being constructed or being developed and there is no income until flats have been sold towards the maturity of the financing. In practice, this means that it is very difficult to structure a rental formula if a bank carried out an istisna/forward ijara financing and it would be equally difficult to structure a musharakah if it's on a shirkat ul milk basis.

Just taking these two examples which are fairly common property financing examples into account, it has had the unfortunate effect in the UK of most financing being structured using commodity Murabaha because of the inherent flexibility and similarities it has with conventional loans. From a personal perspective, this is disappointing because of my own involvement in creating the alternative forms of financing in the UK. Some of the problem is to do with market participants defaulting to this structure and being lazy about considering alternatives. However, a lot is to do with the practical aspects also.

I thought I should share the legal perspective because we consistently run into these difficulties and I would welcome any alternatives of course. Now I am based in Dubai, it is pleasing to see some banks using proper forms of financing when undertaking trade finance and other activities such as financing assets generally. However, it is also correct to say that there is a prevailing trend for commodity Murabaha to be used a default.

I'm sorry if some of my observations are not relevant to the discussion that is ongoing but I thought I should share this perspective.

Mohammed Paracha (Partner, Norton Rose Fulbright)

- **Almir Colan:**

Thanks for that write up. Appreciated. Question: when you say some banks are using proper forms of financing when undertaking trade finance - which banks are you referring to and are you saying they buy assets in a genuine way (genuine as in proper sale with proper ownership transfer)?

- **Khaled Ibrahim:**

I think what Mr. Mohammed Paracha shared from his observations is relevant in terms of "Murabaha Commodity" which is used instead of "Tawaruq" but applying the same mechanism ending with cash.

I wonder if banks in Oman where the central bank is prohibiting tawaruq are using Murabaha commodity.

- **Mohammed Paracha:**

I would prefer not to identify specific banks. But I do mean a proper asset Murabaha.

The type of transaction I am referring to here is:

1. The request by a customer got finance through Murabaha
2. The purchase by a bank of metals/commodities from broker 1
3. The sale of those commodities to the customer on deferred payment terms
4. The appointment of the bank as the on-sale agent to 'en-cash' the commodities into cash thereby organising the transaction from inception.

I hope this clarifies.

- **Khaled Ibrahim:**

Thank you Mr. Paracha for the clarification. This is exactly the Tawarruq mechanism.

- **Amjad Bangash** (Response to Khaled Ibrahim):

No. Regulation in Oman say Tawarruq by whatever name whether commodity murabaha or whatever is not allowed. And there is not a single transaction of commodity murabaha or Tawarruq whether for liquidity management or for financing, whatever be the type, banks are not allowed to do Tawarruq.

- **Ashraf Gomma Ali** (Response to Mohammed Paracha):

Thank you very much for this insightful and practical comment. Indeed one of the reasons why tawarruq is so attractive to banks is the flexibility that it offers with minimum commercial and sharia restrictions. On the other hand, it is possible that scholars have taken positions on some other (more islamic) modes of finance that are much more stringent, thus leading to making them less attractive. For example, diminishing musharaka may not be attractive if scholars demand purchase of the bank's share at market price and sharing of all expenses, so people will prefer tawarruq or murabaha. Sale and leaseback of leased properties may not be attractive if scholars insist on breaking the existing leases; although there are some classics scholars who allow leasing a property that is already leased with certain conditions. So, people will perfect tawarruq. My point is not the specific examples but that there may be a need for scholars to consider relaxing some of the classical conditions related to the more authentic islamic forms in order to decrease the attractiveness of tawarruq. And Allah knows best.

- **Dr. Yousuf Azim Siddiqi** (Response to Amjad Bangash):

By the way - it's a classic case of "How To Curb Growth of Islamic Banks in Oman". Regulators seem to use Sharia principles to ensure that above happens.

How Islamic banks will provide liquidity management solutions to individuals?

And how Islamic banks will place excess liquidity with conventional banks once Islamic banks are not accepting it.

Time will prove whether Tawarruq will be allowed (hopefully non-organized) or Islamic banks/window will receive a hit for something which is allowed if done correctly.

A food for thought

- **Khaled Ibrahim:**

Dear brother Amjad. I did not say that regulation in Oman do not ban Tawarruq but I said that what Mr. Paracha explained is Tawarruq. If you go to the contract level you will find that it is a Murabaha Commodity only but taking it together with the side on sale agency agreement you will see clearly the Tawarruq transaction.

- **Amjad Bangash:**

Growth of Islamic banking in Oman was at number 3. First Malaysia, then UAE and then Oman..crosses many countries. And the Islamic banks were having excess liquidity as well but this makes a positive impact. Islamic banks tried to invest or finance as much as possible in real economic activities instead of fixing in commodity murabaha to get less profit rates. Islamic banks also evolved Musharaka and mudaraba modes of financing and they are working well. So all is going well alhamdulillah without organized Tawarruq.

Yes I understand. But both organized Tawarruq and commodity murabaha are same. Banks in Oman use murabaha where customer actually wants to purchase goods and not metals for its business. Commodity murabaha is a specific known term and it can't be mixed with Murabaha to purchase order.

- **Dr. M. Burhan Arbouna:**

No problem. In Oman or Morocco, if the bank sold a car or goods to the client on murabaha basis, is there a restriction on the client to sell such an asset by himself and get cash? unless such asset is a collateral the possibility of individuals doing tawarruq is there I guess. what is not allowed in these countries is that the bank cannot sell or arrange to sell for the client. but I think there is no prohibition if the client can sell by himself without involvement and knowledge of the bank.

- **Nabeel Kattakath:**

In Oman, there is no restriction to sell Murabaha asset by the client without involving bank.

- **Amjad Bangash** (Response to Dr. Arbouna):

No this is not possible. Car is mortgaged and it cannot be sold until Customer settles to bank. For goods they are real goods to be used in business or personal use. In all of the transactions, the Islamic bank must pay cash to supplier owner or third party with evidence of funds. No cash to be paid to customer. This is not allowed even in sale and lease back modes to give cash to customer. Cash is always given to 3rd independent party.

- **Nabeel Kattakath:**

Keeping mortgage over Murabaha asset is required from credit risk perspective . If customer provides another security the mortgage will be removed./waived. Then customer can sell the Murabaha asset.

- **Amjad Bangash:**

This is also fine. At least transaction is made for the car and not for the metals. Mortgage of car will be done in any case since any other security should be something that can be mortgaged? So his another car? His house? No way to do this.

- **Dr. M. Burhan Arbouna:**

Again we are not talking about bank paying the price to the vendor. that the bank should do and get asset. we are talking about selling the goods to the client and the client after receiving the goods decide to sell the goods on spot payment basis and keep on paying for the bank. I

do not think there is any prohibition by the regulators. this is tawarruq by the client. the client is cashing the goods. if the bank put a restriction on what the client should do with the goods the client bought then I am afraid the bank is violating the principle of Muqtada alaqd or bay wa shart. I am afraid the regulators had open a door for car dealers and commodity sellers to agree with clients to purchase goods they bought from banks at lower price and resell it again to the bank in another deal because tawarruq can be done without the bank involvement. this is the normal form of tawarruq. when I own an asset I have the right to sell it again.

- **Dr. Yousuf Azim Siddiqi:**

What about Murabaha of Shares? If the Purchaser on Murabaha has the liberty to hold or sell.

Do you consider shares as car or commodity?

- **Amjad Bangash:**

With all due respect, I disagree. We are talking about deferred sale. Money or sale price is due with the customer which he suppose to pay at agreed time so bank can put a condition that since customer owe money he will pay or settle his dues than he can sell the asset. This is also allowed in Shariah.

I also disagree on the point to buy at lower price from the dealer. For new cars it is the market price as mentioned on invoice. For used cars, valuation is must by the regulator that to know the market price. One cannot fix its own price. So there is no chance. Secondly we are saying regulator is for banks and not for customers. They stopped banks from doing organized Tawarruq.

- **Dr. M. Burhan Arbouna:**

Unless the asset is collateral how you can you make sure he does not sell.

When you buy something that goods may be collateral or another collateral. the one that is not collateral can be sold by the client. in any case in my examples tawarruq is possible in Oman if not involve banks

- **Amjad Bangash:**

Regulator is for people or for banks? We are talking about regulators banning Islamic Banks to do Organized Tawarruq. If a customer withdraw cash from an islamic bank ATM and buy Alcohol, we can't say Islamic bank should also check what he is doing with money or islamic bank is allowing people to do prohibited things. But we are talking if ( just an example) islamic bank itself is buying Alcohol then this is something not to be done.

- **Nabeel Kattakath:**

If the underlying asset is not mortgaged, Bank may take undertaking from customer not to sell the asset without bank's permission until the settlement of Murabaha/Ijarah

- **Dr. Tariqullah Khan:**

Global Apex Shariah Board- the need for a global industry specific Shariah Board whose resolutions should be legally binding for all is needed. But some people will argue that such an Apex Board will prevent innovation and may hurt the industry. All of us are concerned with the genuineness of the industry otherwise it will not be sustainable that is the issue.

- **Mujtaba Khalid:**

Don't AAOIFI Shariah Standards achieve the same objectives

- **Dr. Tariqullah Khan:**

What are AAOIFI Shariah Standards about organized tawarruq?

- **Ikram Rehman:**

In fact, it is the Organized Tawarruq which became the main obstacle to innovation in Islamic banking industry.

- **Dr. M. Burhan Arbouna:**

Perhaps islamic world bank or Islamic imf is more needed.

- **Dr. Humayon Dar:**

Let us bury our egos and accept what makes sense.

My dear friends, we have many a times discussed and the esteemed Shari'a scholars guiding the industry have shown their opposition to the organised form of tawarruq. All of us are looking for an alternative to the organised tawarruq, including those who are favouring it on this Forum. Forgive my language but tawarruq in the Islamic finance industry happens to be like a child born out of wedlock. If we like it, it shouldn't be because we love bastards but because it is a human being.

I am sorry to bring the above analogy to the discussion but this is what it is. All of us who advise Islamic banks would like to see something better than tawarruq. When that happens, we should remain hopeful, in shaa Allah.

- **Ikram Rehman:**

Dear Dr. Parcha thanks for useful note. In relation to reason No. 1 pertains to the leasing of leased asset there is a solution which simply requires few substantial amendments in a normal Ijarah contract in relation to the lease commencement with customer. For example, in a purchase and lease back structure, if a lease is on, then the property can be leased to the customer at the same time because the bank is the owner of the property. However, that lease contract shall commence only on the expiry of the current lease or its termination whichever comes first. During this period the bank, being the owner of the property, will be entitled to receive the actual rental from the third party lessee. For this purpose bank may appoint its customer as its agent for rent collection. If the actual rent collected by the customer is less than the EMI bank may ask the customer to pay the difference as an Advance Rental under the signed lease contract.

The downside of this structure is the termination of the contract before its commencement in which case bank would require to return any advance rental paid by the customer to cover up the shortfall. This can be easily mitigated by adding this figure in the Exercise Price.

Allah knows the best.

- **Ismail Ebrahim Desai:**

I agree Dr Dar. We need to move to more original concepts and align that in practice. We are currently in my opinion not fulfilling the Maqasid of Shariah through such border line transactions.

This is permitted since a Dayn is created. See Mufti Taqi [a member of the Islamic Economics Group] book on Islamic Finance.

Good initiative but not practical for following reasons:

1. Shariah is not based on conformity or majority based decisions. It is based on solid academic views.
2. Legal enforceability will not occur as this is seen as a conflict with individual jurisdictions say non-Muslim majority countries.
3. We need more an aligned vision and practice from both scholars and practitioners.

- **Dr. M. Burhan Arbouna:**

Organised tawarruq versus non organised which one makes sense? use of mafhuum mukhalafa means non organised tawarruq is acceptable. secondly Dr. Dar did not read my posts for sure. he just made comment of sense and non sense. I did use the term organised tawarruq in all my posts neither do he used it in his yes and no question.

I did not use the term organised tawarruq

Tawarruq is tawarruq and qualifying a term had a connotation.

- **Dr. Tariqullah Khan:**

Actually scholars and bank practice and marketing professionals are already on one page, be it organized tawaruq or Sukuk with repurchase and other promises. However, few independent scholars and most Islamic economists are not on the same page. In our classrooms most students are frustrated about the products of convergence with conventional finance. Therefore, the way the industry is transforming to converge with conventional finance, 90% organized tawaruq, I don't think we need to continue offering separate degrees in Islamic finance - sadly!

- **Dr. M. Burhan Arbouna:**

In addition, I did not know that only cars are used for tawarruq. clients are the ones using tawarruq and they do it outside the arena of banking. they can buy from banks and sell for cash. if they want to do this they can get the car not mortgaged and the bank will agree depending on customers.

- **Amjad Bangash:**

Something is always understandable. For wise only indication is enough. Definitely discussion was for that type of Tawarruq which is in use and which is organized. There is no debate on Non pre planned or non organized Tawarruq which is fine. Since the issue is with that type of Tawarruq which is being in use by islamic banks and which is organized and which is under conflict.

I think you are mixing Organized Tawarruq with Trade. It is a normal trade, people buy cars on cash and sell it with profit margin. People buy cars or any other goods on credit and sell these goods or cars in market, get cash, some cash is paid back, some is used for their living and some is used for buying more goods and sale. All this is Trade. It should not be mixed with organized Tawarruq where bank arranges metals through brokers and without possession or transfer of ownership, a transaction is executed on Paper.

Well said. I think you should appreciate Oman whose islamic banking sector is without any kind of Tawarruq for the last five years and also Morocco who just started islamic banking without Tawarruq.

- **Mujtaba Khalid:**

What short term liquidity management tools are used by Islamic banks in Oman instead?

- **Amjad Bangash:**

Interbank wakalah with islamic banks inside and outside oman, Sukuk, Shariah compliant shares etc. The last option is not yet used but I am working on it.

- **Mujtaba Khalid:**

There's enough supply for Sukuks? And with the Wakalah, what do the Wakeel banks invest in? Or how does that work?

- **Amjad Bangash:**

At start all islamic banks were liquid enough but now due to decline in oil prices there is no liquidity available. The banks whose financing is more than deposit then a gap is filled from a bank whose deposit is more than financing and vice versa. However this is also fact that due to banned organized Tawarruq, Islamic banks focus a lot on liquidity management techniques closely and wisely which on the other hand is helping islamic banks in this area. Also it rise to Musharaka and Mudaraba financing models which is actively participation in other businesses so overall the liquidity management matter is not an issue

- **Dr. Ugi Saharto:**

Salam. I have a small question hoping to get answers from any scholars or practitioners here. When we are not allowed to sell grapes to wine makers, does not it tell us that parties involved in transaction do matter in Shariah? Now we have money lenders involve in tawarruq. We know the intention of money lenders. If they claim that tawarruq is a sale contract and fulfilling all the requirements of a sale contract, is it not the same as a contract of



selling grapes to wine makers? I sincerely hope to get answer from honourable group members. Thank you.

- **Yerlan Bidaulet:**

Excellent practice

- **Dr. M. Burhan Arbouna:**

No problem. In Oman or Morocco, if the bank sold a car or goods to the client on murabaha basis, is there a restriction on the client to sell such an asset by himself and get cash? unless such asset is a collateral the possibility of individuals doing tawarruq is there I guess. what is not allowed in these countries is that the bank cannot sell or arrange to sell for the client. but I think there is no prohibition if the client can sell by himself without involvement and knowledge of the bank.

- **Amjad Bangash:**

Why are you copying paste the same thing again? I already replied, please don't mix Organized Tawarruq with Trade. This is common, people buy goods and sell and this is trade. We are talking about the organized Tawarruq where bank arranges metals and where there is no actual possession and ownership of metal happen rather everything done on paper.

I assume we should know what is organized Tawarruq and what is trade.

- **Sukrija Ramic:**

The main question for Shariah scholars in their respective Islamic banks should be: what the money which goes out of the bank is doing? If that money activates real halal business activities which add new value and brings profits, if that money brings halal services which are worthy to pay for it, then you can coin a product you want implementing well known Shariah principles.

However, if behind the money you don't have real successful, profitable businesses and useful halal services, whatever an Islamic bank earns, it is actually taken from people's pockets for nothing.

- **Amjad Bangash:**

Regulator is for people or for banks? We are talking about regulators banning Islamic Banks to do Organized Tawarruq. If a customer withdraw cash from an islamic bank ATM and buy Alcohol, we can't say Islamic bank should also check what he is doing with money or islamic bank is allowing people to do prohibited things. But we are talking if ( just an example) islamic bank itself is buying Alcohol then this is something not to be done.

- **Sukrija Ramic:**

People are free to do what they want with their money in the bank, but not with banks money they ask for.

- **Dr Muhammad Iman Sastra:**

Clarification for Brother Amjad:

in Oman sale and lease back using ijarah muntahia bittamlik is allowed, the customer will get cash.

For Dr Arbouna and others:

In Oman, up till now commodity murabahah and tawarruq is not allowed by CBO and high sharia supervisory authority.

For me, this is because Islamic banking market in Oman still new which began in early 2013.

I have no idea either this prohibition will stand in case the IFI assets will increase and compete with conventional.

In Indonesia, previously we prohibited tawarruq, then in 2012, we allowed commodity murabahah "we called it komodoty syariah" only for interbank.

High Sharia Supervisory Authority (HSSA) allowed sale and lease back with a condition that the property shall be registered under the bank's name, as per fatwa of HSSA. CBO allowed this sale and lease back only for business purposes.

The registration shall be made in ministry of housing where 3% fee will be applied

- **Amjad Bangash:**

I am sure Organized Tawarruq is not sale and lease back and organized Tawarruq is also not murabaha and getting cash in sale is a feature of sale and trade so there shouldn't be mixing of trade, sale, murabaha, sale and lease back etc with organized Tawarruq.

- **Dr Muhammad Iman Sastra:**

I agree with you brother amjad, we cannot mix organized tawarruq with trade. And CBO regulation is for the bank not for the customer.

I think Dr Arbouna just try to dig up detail information on how we practice murabahah, our practice is purely murabahah, not commodity murabahah as implemented by islamic banks

- **Ahmad Sanusi Hussain:**

In the earlier years, many Islamic banks in Malaysia were using Bai Al Inah for the purpose of personal financing (in order for customers to get cash).

Then Islamic banks in Malaysia were told that Tawarruq is more acceptable to GCC Syariah scholars. Islamic banks from GCC operating in Malaysia like AIRajhi & [Kuwait Finance House] (KFH) were the first to introduce Tawarruq as an alternative to Bai Al Inah.

Islamic banks (IBs) in Malaysia followed the step by making mass hijrah (migration) from Bai Al Inah to Tawarruq. IBs spent millions of \$ in the migration process (for consultation, documentation, IT etc).

Now we are telling IBs that Tawarruq is not acceptable too.

The question: what's the most suitable and acceptable form of financing or contract to be used (other than Bai Al Inah & Tawarruq) for meeting customer's cash need (personal financing) in the light of Islamic banking practices.

- **Amjad Bangash:**

Goods Murabaha to be used for buying goods by the bank from dealers, shop keepers etc and then sell of these goods to Customers on Murabaha. Real sale and purchase of goods/goods to be used for personal finance.

- **Mohammed Paracha:**

That's a very good question and goes to the heart of this discussion. Unfortunately as an industry we have not been able to find a suitable alternative that also gives the banks the same relationship of creditor and debtor. We certainly need more R&D in this area!

- **Amjad Bangash:**

Definitely a customer needs cash to buy something. He does not want it to be kept in his pocket. So bank should fulfil his need by buying things for him.

- **Almir Colan:**

So fundamental question for Islamic bank is: 1. Should bank supply money for customers who have other needs or 2. Should they be trading houses that sell commodities or makes investments? What are Islamic banks intermediary in?

- **Yau Isah:**

I like these healthy and thought provoking discussions on tawarruq(organized and unorganized).

The contributions by our respected scholars, practitioners and academics are much appreciated.

My contribution is this: must IFI mimic the conventional in every step including providing cash to its customers?

I think the industry should try to maintain its unique and gratifying identity, we are an asset-based system that try to link financial intermediation with real economic activities.

Remember over leveraging was identified as one of the causes of the recent global financial crisis.

As was observed above, clients need money to either buy some goods or services which the IFIs have enough products to provide.

I suggest IFIs should try to avoid things that try to circumvent riba and focus more on its values.

We should use Qardul hassan to meet genuine clients need for cash on a case by case basis

- **Humayon Dar:**

@Yau Isah's last sentence is the solution. Don't tell me that Qard Al Hasan isn't practical in the contemporary banking and finance. Qard al Hasan is a bad product only for the mind nurtured by interest-based banking model. It can be used as a product not for making money but as a tool for customer loyalty and reward programme. The banks must cross sell on the back of it.

All these Islamic banks that think that an interest-free loan is not feasible will one day mimic conventional banks when they start offering such a product. Islamic banks and their advisors will not take a lead. This is what one can sense from the general thinking prevailing in the market.

- **Dr. Farrukh Habib:**

I can't agree more

- **Dr Muhammad Iman Sastra:**

If I may suggest to Dr Dar and Mr Yau Isah, can you please establish first your Islamic bank to do this kind of alternative, then you can share with us after five years implementation.

I would love to hear the experience of this Islamic bank.

- **Dr. Humayon Dar:**

@Dr Muhammad Iman Sastra. The practice is already there but we don't want to think out of the box. Akhuwat in Pakistan has emerged as the largest interest-free loan programme in the world with default rate next to zero.

Also, don't the Muslim users of conventional credit cards get slapped hard on their faces when they enjoy almost two months of interest-free credit (as transacted)? If these examples cannot shake our minds then asking someone to set up a new institution is nothing but a lame excuse.

- **Mujtaba Khalid:**

Indeed Akhuwat is a great model in terms of implementation

- **Dr Muhammad Iman Sastra:**

In Indonesia we have also Baitul Mal Muamalat (not islamic bank), they have the product the same like Akhuwat in Pakistan, interest free loan.

- **Umar Munshi:**

Another excellent model is PBMT / BMT group in Indonesia, a group of microfinance institutions and coops that have millions of low-income clients

- **Dr Muhammad Iman Sastra:**

Please note also Dr Dar, akhuwat gives interest free loan for poor people

- **Dr. Humayon Dar:**

@Dr Muhammad Iman Sastra. Let me remind you that voluntary contributions of these poor people and collections run the whole organisation, as almost all the administrative expenses of running operations are taken care of by collections.

- **Yau Isah:**

Indeed banks both Islamic and conventional are established by their shareholders to maximize profits.

My suggestion on meeting clients need for cash is that IFIs should continue meet their clients financing needs using the non controversial products, while they use qard hassan to meet up clients need for cash.

An IFI can decide as part of its CSR to dedicate a certain percentage of its total portfolio or total profit after tax to give qard hassan to deserving clients with genuine need for cash.

- **Dr. Muhammad Iman Sastra:**

This is practical. Depending their shareholders decision

- **Dr. Tariqullah Khan:**

Excuse me, does anyone know about any conflict between AAOIFI standard on Tawarruq and the OIC Fiqh Academy Resolution on the subject! If there is a conflict between 2 Apex bodies, then we have a serious problem. These are Apex bodies not individuals; differences between individuals is something different. This crisis is not an issue of our preference for one or another contract, it is an issue of institutional crisis. I hope I am misinformed and there is no such conflict between the 2 lead institutions.

- **Dr Muhammad Iman Sastra:**

Dr Tariqullah, AAOIFI also prohibits organized tawarruq, there is no conflict so far. The permissible of tawarruq by AAOIFI which is genuine has some sharia parameters on that.

- **Dr. Tariqullah Khan:**

If both AAOIFI and OIC FA are on one page against organized Tawarruq, then why most Islamic banks are doing it? I am baffled.

- **Dr. Mehmet Asutay:**

Because what determines Islamic banks operations is market not Shariah! They use Shariah as part of instrumental reasoning not for substance! Market is hegemony for them not islam's moral world!

- **Dr Muhammad Iman Sastra:**

Sharia comes to accommodate the people's need. When Allah prohibit riba, the exchange of it is al bay'.

- **Dr. Yousuf Azim Siddiqi:**

In Treasury, 100%. Interestingly [Dubai Islamic Bank] (DIB) has one of the biggest books of International Commodity Murabaha Receivables. Although it does not allow the same in Retail. Also it does Tawarruq of National Bonds for Retail.

- **Amjad Bangash:**

What about Pakistan? I think in Pakistan it is only in use in treasury only and not in any other business?

- **Dr. Muhammad Ayub:**

Yes. Dr Tariqullah Khan, practically no difference between the two, AAOIFI's standard allowed non organised tawarruq with additional condition that Liquidity is not provided to conventional institutions and that there is actual trading and delivery.

ISLAMIC FIQH COUNCIL took back permission in 2009 on the ground that IFIs were not doing and cannot do juristic tawarruq as they replicate to get profit by compromising on Shari'a conditions. Money raised by IFIs for Islamic banking is being provided to conventional banks that are doing arbitrage, 3 to 5 % in case of Pakistan, that I think is a disservice to Islamic finance in addition to breach of trust with the depositors.

- **Amjad Bangash:**

Can anyone from Qatar Kuwait and Bahrain tell us about use of organized Tawarruq?

- **Mujtaba Khalid** (Response to Dr. Muhammad Iman Sastra):

You do realize what VC's are right? They take equity share in businesses most times of multiple companies in the same sector. Now an equity share entails profit and loss sharing

- **Dr. Yousuf Azim Siddiqi** (Response to Dr. Muhammad Iman Sastra):

Dr Tariqullah was referring to 90% of banks using Tawarruq and not Tawarruq being 90% of the asset book.

- **Mujtaba Khalid:**

So a VC can "own" multiple tech companies but still startups do present to them sometimes with detailed financials to get seed funding. Regarding the capital requirement under Basel III, I was told this by partner risk management EY London.

- **Tariqullah Khan** (Response to Dr. Muhammad Iman Sastra):

Data, no! On annual reports it will appear Murabahah, but the practice will be organized tawaruq and in few years from now everyone will call it Murabahah- and we will gradually forget the word tawaruq!

- **Dr Muhammad Iman Sastra:**

Are you saying Murabahah is same as like Tawarruq Dr. Khan?

Interesting Dr Hurriyah. Thanks for the thought

- **Tariqullah Khan:**

Anyways thanks for reassuring that both Apex bodies are on one page against tawaruq, but seems regulators and banks like it and Shariah advisors are going against Apex bodies! Shall that be the conclusion? Or what's the conclusion?

No, tawaruq is reported as Murabahah done as tawaruq

- **Dr. Yousuf Azim Siddiqi** (Response to Dr. Tariqullah Khan):

I don't think it's the same. If you allow me sometime then can run a comparison of Tawarruq rulings of OIC, Fiqh Academy Makkah and AAOIFI.

- **Tariqullah Khan:**

Excellent! Let's get to the bottom of it. The 2 Apex bodies should and must have one voice! Otherwise the credibility of both would wane. If they are on one page, then everyone should agree with them and should follow.

- **Khalid Hasani:**

There's no conflict between two bodies, we had explained long ago in the forum [see previous discussion Commodity Murabahah for more details]

- **Servet Bayindir:**

Dear respected group members as salamu alaykum. Regarding organized tawarruq in My opinion we should focus on the characteristic aspect of the transaction. Whether it is real transaction or credit agreement. As we know it has credit character. It is the main rule in Islam that credit can't be used as a profit tool. YGS we know so many scholars allow it. But we'll give our hesab to Allah not others in hereafter. If the Banks follow it I think they'll Murabaha, leasing etc. At the end they'll start to minimize their personals. Because tawarruq does not need so many workers, and doesn't cost as normal instrument.

- **Dr. Tariqullah Khan:**

I agree, the 2 themes were totally different. About Tawaruq - we need an answer - are the 2 apex bodies - AAOIFI and OIC FA on the same page or they have different view about tawaruq? Please someone - can you answer this critical question. As far my information, the 2 apex bodies have different views - AAOIFI market driven and OIC FA independently academic!

- **Dr. M. Burhan Arbouna:**

On Dr. Tariq question. both are on the same page. the difference is that OIC fiqh academy took a stand that tawarruq is not or it is impossible to implement it correctly and hence their prohibition decision. OIC looks at possible maal or end result. AAOIFI looks at it practical point of view and opened a door for it's usage with some conditions. AAOIFI approach opened the door with conditions and if these conditions are not met the Shariah boards may take a decision to qualify the deals as loan with interest as part of Shariah audit. AAOIFI approach is mostly what you can see in fiqh where fuqaha will say it is acceptable provided

so and so is done. this is the approach taken by AAOIFI keeping in mind that most of AAOIFI members are members in OIC fiqh academy.

In addition AAOIFI approach take into account the legal and regulatory sphere in which Islamic banks operate where there a real need to manage liquidity requirements. this is very clear in clause 5 of the standards.

- **Dr. Tariqullah Khan:**

Thanks indeed, now this question- is the practice of tawaruq in conformity with AAOIFI stipulated conditions? What conditions are violated in practice if any?

Darura- law of necessity justifies tawaruq and violation of stipulated conditions!! Strange argument because the driving force is convenience not law of necessity!

- **Dr. M. Burhan Arbouna:**

From our audit we see some conditions are violated such description of the commodity, establishing ownership for the bank and mismatch between offers and acceptance. This kind of violation may represent at maximum only 10% of the total tawarruq done. In this cases warnings are given and profit for these violations are channelled to charity.

There are a lot of hadiths allowed certain transaction based on necessity. what do you think Dr. Tariqullah? A strange position. right?

- **Dr. Tariqullah Khan:**

I am not taking this position or that position and I am not qualified to do that either. Qualified people like your good self need to come forward and show the common person like me that tawaruq is different than commercial lending. For God's sake, which customer of an Islamic bank is genuinely interested in buying a piece in metal market? It's only perplexing and mind blowing to imagine that people are interested in metal and when in fact people are plainly interested in cash! Indeed after few years all people may get used to tawaruq and indeed after another few years all people may get used to interest as a better and straight forward alternative to tawaruq! I don't know, perhaps a neutral person like me is born to remain confused in this world of tricks!

- **Auwalu Ado:**

But I learnt the tawarruq involving palm oil in Malaysia has evidence of taking ownership. Can any member with practical experience share that with us.

- **Mujtaba Khalid:**

Instead of organized Tawaruq, my question to the esteemed scholars is; if a customer buys on deferred basis, will the bank allow the customer to take possession of that asset if the customer says he/she is getting a better rate from outside?

Is the bank in a position to even give a physical asset to the customer?

- **Dr. M. Burhan Arbouna:**



Good argument. However, the issue is that it is a requirement that one needs to have interest in the goods bought to make profit or get cash by reselling them before the profit or cash received can be classified as halal. I may buy goods but my interest is not in the goods themselves but in the proceeds of the goods when sold. this is why I need to buy goods that are required in the market - fast moving in order to make money. so the argument of interest in the goods is not holding. we see this argument always. In my article which is Arabic published in Dubai Islamic Bank journal with a "Signs of Controlling prearranged contracts of Islamic financial institutions" I have explained and rebutted the "issue of interest of holding goods" in order for the profit to be classified as halal. I have also an Article presented in a conference titled " No Blame on Scholars who say a Seller can act as buyer to resell the sold commodity". I have cited almost 12 fiqh principles in various schools of fiqh why the bank can act as agent to resell the commodity.

- **Dr. Tariqullah Khan:**

My smiles will always remain open for you - a smile at the face of your brother is sadaqa! What a beautiful life guidepost!!

- **Amjad Bangash:**

This never happens. Tawarruq is used only as a Hiylah to get cash. No party is interested in goods.

Moreover organized Tawarruq is the biggest hurdle in establishing innovative products. AAOIFI has now more than 50 standards that talk about several products but few of them are used in Islamic banking due to heavily use of organized Tawarruq.

- **Dr. M. Burhan Arbouna:**

Theoretically, it may happen if the client needs the goods. the local market tawarruq this is happening and it happened a lot.

- **Servet Bayindir:**

I totally agree with brother Amjad. We should focus on new Shariah based contracts.

- **Dr. M. Burhan Arbouna:**

Encouraging doing something else does not derailed an existing. it is a wish to have new products. we are here talking about principles. The fact that we have too much divorces does not mean we should stop marrying because divorce is evil and create disfunction of the family.

- **Amjad Bangash:**

Like I got one proposal to review from Shariah side. It was for construction and development of one airport. I am not naming the location or details. I worked on it by using some connectors of *Istisna*, *ijarah mawsufah fi dhimma*, some sukuk as well. It was a mix of different Islamic modes and that was a step towards real economic way and answer to people queries who say both Islamic and conventional are same. But unfortunately, both the bank

and Customer did Tawarruq mode of buying and selling commodities or metals at LME in minutes of time and got enough cash to be used for that airport.

If organized Tawarruq is used for necessity it was fine but when we use it for every purpose like personal loans to travel around world, loans to buy luxurious goods etc then question arises is it used for necessity or luxury?

- **Servet Bayindir:**

Dear M Arbuna if tawarruq is Shariah suitable marriage, then it is ok. But unfortunately it isn't.

- **Dr. Tariqullah Khan:**

Nice example - this transaction is convenience driven and not Darura - let brother Arbouna tell us whether such practice is in conformity with AAOIFI standards of tawarruq.

- **Dr Muhammad Iman Sastra:**

So Dr Khan, according to your opinion tawarruq is not Shariah compliance?

- **Amjad Bangash:**

Like a poor person can't get cash for his necessities as he does not fulfil bank's criteria to get cash, we don't use the concept of necessity? A person if he does not have minimum balance amount required to open account, he cannot enter the Islamic bank, here we also don't use concept of necessity.

- **Dr Muhammad Iman Sastra:**

Previously we have discussed which one is allowed and which one is prohibited.

- **Dr. M. Burhan Arbouna:**

Sheikh Amjad this product offering deficiencies. when a client is in front of you provide him your products encourage him and at the end of the day you tell you have three bottles of water: one is a mineral water extracted from stones; the second is sea water filtered and 3rd is recycle water. All the three are drinkable but from differences and their quality, Shariah quality, is different. Now it is the choice of the client which water he decides to take. it is really wrong to tell the recycled water is not drinkable or contaminated since it is in the market.

- **Dr. Tariqullah Khan:**

I am not earning from giving opinions, I don't have the legitimate scholarly status to say Shariah compliant or not compliant!

- **Dr. M. Burhan Arbouna:**

Necessity is two way?

- **Yousuf Azim Siddiqi:**

From Shariah perspective - If Tawarruq isn't permissible in luxury then it's Haram even in necessity. Although we should encourage products which create less debt but the fact that Istisna, Ijarah and Auto Murabaha all create debts!

- **Amjad Bangash:**

It is one way and which one will result into death of someone. Definitely a poor will die without food but not a rich who has already own millions of money.

- **Dr. M. Burhan Arbouna:**

I think your question is out of context. concentrate.

- **Amjad Bangash:**

Here the difference between Tawarruq and organized Tawarruq arises. Tawarruq is allowed in case of necessity while Organized is not. My own view.

- **Dr Muhammad Iman Sastra:**

Sorry Dr Khan, it was mistake, that from Mr Servet.

- **Dr. M. Burhan Arbouna:**

But AAOIFI standards see that the bank may need it. when banks collapse people loose their job and have to go to jail for not having means to pay them. no jobs. what do you think? is this equivalent to death or not?

- **Amjad Bangash:**

Like if I marry a girl and give him talaq. And then I arrange a boy of my ex wife so I can marry her this is what organized way and not allowed. But if my ex wife got married as normal without the intention to marry me and again got divorced then it is fine she can marry me again. And this is not organized so it is fine.

- **Amjad Bangash:**

Agree to this point. That is the necessity and here it is same to that poor man who will die without food so we can use Tawarruq. But in normal circumstances we should mur use Tawarruq for rich who will not die without it

- **Dr. Tariqullah Khan:**

With request to Dr Arbouna to analyze this transaction. This is most important case.

- **Dr. Abu Umar Faruq:**

According to Shaikh Nizam Yaqubi organised tawarruq is also permissible. Please see:

<https://www.google.com.bn/amp/s/ifresource.com/2009/07/23/organized-tawarruq-is-permissible-sheikh-nizam-yaquby/amp/>

- **Dr. M. Burhan Arbouna:**

If you get the chance to read my article **الإسلامية المالية المؤسسات عقود في التواطؤ ضبط إمارات** I have cited the same example and analyse it. your ex wife boyfriend arrange it without your knowledge and pre-agreement to make her halal for you because he knows you love her then I am assuring you that you can marry her after he divorce her.

- **Amjad Bangash:**

Definitely Dr. Arbouna, my respectful ustaz. In-sha-Allah. I always learn from you. Why I debate with you because we have difference of opinion which is good for my learning. I can't debate someone who agrees to me and I agree to him. And I really appreciate your work and research in Islamic banking.

- **Dr Muhammad Iman Sastra:**

Can you share your article Dr Arbouna?

- **Amjad Bangash:**

That is a general example. If you can google BBC news about Halala. As per them it is now a big business in UK.

- **Dr. Abu Umar Faruq:**

Shaikh Yaqubi said:

"All these Islamic finance tools have certain amounts of organization and we must know that (given) modern contracts within the existing frameworks, legal structures, it is very difficult to do something which is not organized"

Source: the above mentioned link.

- **Yousuf Azim Siddiqi:**

Is it personal view or based on jurisprudence view?

- **Amjad Bangash:**

Personal view. As to me sometimes we don't need for fatwa. Your heart tells you or heart is the first one who tells you wrong and right. To me organized Tawarruq is wrong

- **Dr. Humayon Dar:**

The use of tawarruq is not a "life-saving" Durura. Those who argue for the use of Tawarruq on the principle of necessity are like those who say protein is an important requirement for human body. In the absence of halal meat, pork must be consumed to meet this Durura. No Islamic bank is going to collapse if tawarruq isn't used. Its profitability may possibly be affected but then so what?

- **Dr. Tariqullah Khan:**

I am worried our scholars are avoiding to comment on this potential abuse of tawaruq. So basically this is my core concern!

- **Amjad Bangash:**

Very real comment. Excellent.

- **Dr. Abu Umar Faruq:**

A well thought comment indeed.

- **Dr. Hurriyah El Islamy:**

Tawarruq is not "a new kid on the block" in Malaysia. The industry had used it for some time now after they realised BBA (which's in practise more to Bay Inah) is highly criticised by international scholars, not acceptable outside Malaysia and it lacks commercial flexibility too.

However the usage (of tawarruq) has intensified post IFSA because IFSA imposes the applicable conventional banking products characteristic to IBs products and services.

Staying as intermediary is okay for conventional banks because they can set interests based on capital lent but IBs cannot set ujah that way and the only other alternative (without PLS or trade) will be tawarruq.

To say so equals to saying let's turn all IBs to houses of tawarruq.

Wallahu'alam

- **Dr. M. Burhan Arbouna:**

There is no application of durara here. it is the dire need principle which is used not necessarily when one is about to die. الضرورة منزلة ينزل التي الحاجة . we need to translate it well.

The problem with tawarruq is that we do not have in many Islamic banks adequate and well qualified personnel to identify the abuses. Still Shariah audit department lack some basic knowledge to control these abuses.

- **Dr. Tariqullah Khan:**

Another question- how and why tawaruq is preferable to interest based commercial lending?

Dear Dr brother Arbouna, you are extremely well qualified Ma-shaa-Allah but you are using all your intellectual potential to justify tawaruq indeed with all good intentions! So it is not about non availability of scholars the problem is with availability of scholars rather I think!

- **Dr. M. Burhan Arbouna:**

I mean Shariah auditors. but believe me most Islamic banks are willing to send money to charity if they are told to do so with good justification.

- **Dr. Humayon Dar:**

Once late Dato' Razif (may Allah bless his soul) termed Tawarruq as an inefficient form of bai' al 'ina. I am inclined to extend his argument to state that tawarruq is an inefficient form of

interest-based lending/borrowing. If no one is even remotely interested in the commodities being bought and sold, then paying a few bps extra is nothing but deadweight loss.

- **Amjad Bangash:**

Once I have been given a task to inspect Tawarruq based transaction. It was for millions of Pakistani rupees and to place excess liquidity into conventional bank. There were thousands of bales placed with one broker. My role was to go and see the availability of bales and number of bales of cotton. One day I went, I started to count. The broker asked what are you doing, I said I want to see total numbers weight and price. He smiled and said for what? I said it is a Shariah requirement. Then he said ok do it. I tried my best and did the task after hours of struggle. Next day again there was an inspection. And then on 3rd day. Everyday same bales with everything same. Every time the broker along with his staff, our bank staff and conventional bank staff normally smiled on my inspection. 3rd day, the broker asked me why you are getting tired. These bales are mine and will remain mine. You just go and check the dates and quantity and amount in those sale and purchase papers which has pre planned data. The conventional bankers advised me in the local language: you go and add interest income of our bank into yours bank halal money and enjoy).

- **Servet Bayindir:**

In This (hiyal) implement commodity there is, but to day's most of the implementations even commodity there isn't.

- **Dr Muhammad Iman Sastra:**

Thanks for sharing of your joke tawarruq brother amjad. But each country has their different in term of implementation. We don't do that in Indonesia.

- **Yousuf Azim Siddiqi:**

So true. Also is the problem in execution? Or in the contract of Tawarruq?

If it's execution then we can also have Organized Tawarruq without agency like Shares Murabaha.

- **Dr Muhammad Iman Sastra:**

I make one research on tawarruq implementation with Dr Aznan, in comparing komodoti syariah Indonesia and Bursa suq al sila malaysia. You can read if you want

- **Dr Muhammad Iman Sastra:**

This tawarruq for liquidity management

- **Yusuf Suliman:**

The implementation is different in othe jurisdictions. In South Africa, we use shares. Majority of the time the banks that buy the shares hold it till they earn dividends on them. They do not purchase merely to sell off in the market.

- **Dr. Humayon Dar:**

No one has to be a Shari'ah scholar to assess fakery of a Tawarruq transaction. I challenge all the proponents of Tawarruq to present to 10 kids of their choice the interest-based lending and Tawarruq and ask them which one is fake. In Urdu, we say: you will be able to differentiate between milk and water, in shaa Allah.

- **Amjad Bangash:**

This is not the organized Tawarruq. This is banks investment in shares. If excess liquidity is invested in businesses then it is not Organized Tawarruq

Shares murabaha again is not organized Tawarruq if bank buys the shares in security markets. Change the ownership to bank name in the security market and sells in open market. Then this is business or investment business cannot be termed as organized Tawarruq

- **Yousuf Azim Siddiqi:**

But it will generate cash! Is it Halal as per Dr Humayon? And as per regulators of Oman n Morocco?

- **Ahmad Sanusi Hussain:**

Let's also discuss on permissible & practical solutions or alternatives to tawarruq & bai al inah in a constructive engagement.

- **Auwalu Ado:**

I sincerely agree with the last comment. Let us find a reliable solution that will be acceptable to majority. Solution pls rather than counter arguments.

- **Yousuf Azim Siddiqi:**

In UAE, NASDAQ Murabaha, DMCC n National Bonds were created. They addressed all issues of Commodity Murabaha.

I guess - Qatar also came with fund thing ...

- **Amjad Bangash:**

Cash generation also happens in business. When a cloth merchant buy and sell cloth, this is called trade and generates cash. This is different from organized Tawarruq where sale and purchase happens on paper in minutes on table..

- **Yusuf Suliman:**

This is Tawarruq. Used as liquidity management tool. Whether organized or not is a different discussion. Bank A that has excess liquidity buys shares from the market, obtains transfer and risk. Bank A sells the shares to Bank B on a credit basis with a mark up. Bank B holds the shares to earn dividends. After earning dividends, Bank B sells it in the market.

Could be seen as an alternative as requested above

- **Amjad Bangash:**

That looks fine. I hope bank will wait for at least year to get the dividends and shall also bear the risk of decline in value of shares (if happened) or even loss of value of shares as I assume sale and purchase are happening on Open market/standard stock exchange of the country and not on the papers.

- **Auwalu Ado:**

I find this very interesting which means the stocks have to be screened to ascertain its sharia compliance.

- **Yusuf Suliman:**

They dont have to wait a full year for dividends. Dividends are also paid during the year. They participate in the risk of the share. The sale happens in an open market.

The stocks are screened for Shariah purposes

- **Amjad Bangash:**

What about inte bank wakalah or interbank Mudaraba that are used for liquidity management? Are these also called Tawarruq? Definitely not. Liquidity can be managed even by murabaha ijarah, etc.

- **Amjad Bangash:**

What about decline in value of shares? Banks bear that loss?

- **Yusuf Suliman:**

Bank B will bear the loss after purchasing from bank A.

- **Amjad Bangash:**

Great. Excellent. It is both Tawarruq and Islamic banks investment in shares.

- **Yau Isah:**

There's regulatory issue here not all central banks would allow banks to deal in equities in their trading or banking books because of the volatility in the prices of equities and the inherent risk.

Also the arrangement does not seem efficient to me what does Bank B stand to gain by paying for shares at a price above d market rate if it could obtain same shares in d market at its current mkt rate, please clarify.

- **Yusuf Suliman:**

Thats correct. No regulatory issue in South Africa. Bank B purchases from Bank A as they purchase the shares on credit, so it makes sense to buy from Bank A

- **Amjad Bangash:**



The arrangement given by brother Yousuf Suliman to manage excess liquidity is excellent and if it can be implemented, is the solution of organized Tawarruq. Jazak Allah Khair.

- **Auwalu Ado:**

If I may ask sheikh Yusuf how long does bank A hold the shares before selling to bank B.

- **Yusuf Suliman:**

They hold until they take possession and risk. Scholars have differed as to whether Bank A has to wait Till T3 or can they sell immediately after purchase and when does possession a and risk transfer.

Apologies for spelling mistakes. Typing quickly, in Haram. May Allah accept all our efforts and grant us sincerity in our actions.

- **Dr. Mahbubi Ali:**

The problem is not so much about the essence of the contract; rather it is the way how tawarruq is structured and transacted. The overwhelming majority of classical jurists from four established schools have generally approved tawarruq in its traditional form.

I believe we have a variety of shariah contracts/concepts. that can be structured to replace tawarruq. Ijarah al khadamat is one of them. An Islamic bank in malaysia has recently introduced education financing based on ijarah al-khadamat. The similar approach has been also adopted by some islamic banks in middle east.

- **Dr. Humayon Dar:**

Simple solution for liquidity management is for an excess liquidity bank to put the excess money with another bank in a say one-month unrestricted investment account (which should offer early redemption option). Such unrestricted investment accounts offer expected rates of return (which are published in advance).

The liquidity deficit banks need funds for specific purposes and they know the expected returns from the activities they would like to use the funds. They can always publish such expected returns to attract the required funds from the excess liquidity banks.

This is as simple as it sounds.

Why Islamic banks don't want to do it? Simply because they want to earn definite, certain and fixed returns on the pretext that any variable return will not be approved by their risk managers. The risk managers don't approve such arrangements because they say it's costly to do so. They deem it costly because they have to factor-in the risk associated with the variables returns.

The teams working with Shari'a scholars tell them that if they adopt the above proposal their cost of funds will be higher than their conventional counterparts and hence they will be less competitive. Shari'a scholars are convinced that this is "hajah that must fall under the category of dhurura" borrowing the words of Dr. Arbouna (who has already told us that this is a very difficult concept).

My dear friends! Banking is not as a complicated business as many of us pretend to present. Bankers and regulators don't want to allow any thing that doesn't fit well in their conventional banking frameworks. They keep on insisting on bringing "viable" alternative solutions. When people like me present alternative solutions, they reject them because they are not "viable."

My brethren, if you want to play football and keep on insisting playing football, and if someone objects to it. You say bring me another viable solution. When that someone brings a solution, you reject it because "it is not football." Similarly, as long as Islamic bankers want to play banking on conventional turfs, all the alternative solutions will be rejected because "they are not banking."

- **Amjad Bangash:**

True. It is not the contract. It is the execution.

- **Dr. Humayon Dar:**

The real problem is not scarcity of alternative solutions. Rather, it is playing on common turfs with conventional banks. I call it "sleeping with enemy." The managers of subsidiary Islamic banks of conventional banks (e. g., in Malaysia) face tremendous pressure from their conventional bosses to have exactly the same cost structure as in the conventional business. If these subsidiary Islamic banks are less profitable than the conventional business, even the CEOs of such banks face prospects of redundancy.

We must look into complete segregation of conventional and Islamic banking markets. No valve should be kept open for any kind of arbitrage or competition. Perhaps it's time for us to reconsider Qatar's ban on conventional banks doing Islamic business.

I must read Hujjatullah Al-Baligha again to understand "fakku kulla nizam" as proposed by Shah Waliullah (rahimah Allah alaih)

- **Dr. Hurriyah El Islamy:**

Interesting discussion. among the things that became apparent is this: there are ways people do islamic banking not necessarily in the way we know of and regulators do not impose the same restrictions across the globe. that's commendable. and thus, trying to impose ideas or views that one may deem not working in one jurisdiction due to some characteristics in certain jurisdiction may not be the best idea. to do away with PLS, to trade or not to trade, real trading and not real trading. anyway, what's real trading and whether it is foreseeable in near future for a bank to transform itself to a 'real' trader. one thing regulators wont allow and the other even shareholders and management won't either for that would defeat the very purpose of its constitution as a bank in the first place (let's not undermine the governance structure within the bank). so, it if is not even a real threat, why create the fear that efforts to comply with the spirit (not just letter) of shariah have to be perceived as futile? why should we succumb to conventional standards? who set the objective? have we differentiated the objective from the function? what's the real purpose the institution is created in the first place anyway? I am not asking those questions. just points to ponder and I hope I send the message across. because the fact is this: what was said as not workable is proven works fine (and growing) in reality, may not be in one jurisdiction but yes in others.

wishing you all the very best and may Allah always bless us all en sha Allah.

- **Dr. M. Burhan Arbouna:**

This discussion is making some inroads to accepting tawarruq of shares although it is an organised one. there is some shift in the discusdion. it is clear from Dr. daud and Dr. Dar's [see. Discussion on Daud Bakar's thesis] posts that the regulators and shareholders have agreed long a ago to bluff the community. the regulators are aware that the Islamic banking concept does not fit in their regulatory framework but since some people want to call it Islamic they allow it but will force them to do real banking stuffs. I think it is time then to bring these regulators together and ask them why you allow Islamic banks who should act in certain ways as traders to get license of banking that is only a form of financial intermediation and lending and borrowing with a pure guarantee. if this is the case then there may be a good case against regulators and shareholders.

- **Khaled Ibrahim:**

I agree with Dr. Arbouna

- **Dr. Hurriyah El Islamy:**

Well brother, the statement is not wholly true. its about perception and how the regulator or even a nation treats the Islamic banking concept.

#1 - the statement could be right if the starting point "we have banking, let's do Islamic banking and have shariah trying to fit in in the former"

#2 - as opposed to : " we have banking. the moslems are not accepting it. they have 'banking' needs. Let's serve the needs in a way allowed by shariah and call that Islamic banking."

not every regulator or nation adopts the first approach.

Let's take Indonesia as an example. regulators and majority people do not perceive Islamic banking that way. conventional standard, especially for products and services, are not used as starting point. Shariah is.

Malaysia was too during the IBA period as the framework then used Shariah as the standard for Islamic products and services (de jure#2). unfortunately during that period (pre IFSA) the industry were more interested in developing 'shariah compliant' alternatives (de facto #1).

- **Dr. Hurriyah El Islamy:**

Assalamu'alaikum all,

I am not for tawarruq but I am not completely against it either.

I feel it should be regulated and controlled.

I put some ideas in writing and intend to have it published as my April IFN contribution in-sha-Allah.

Please take a look at the write up and kindly share any views or ideas, dissenting or otherwise or any other parameters you think we should include.

Many thanks.

note: due to words limitation I have not included discussion on tawarruq for liquidity management.

- **Amjad Bangash:**

Well managed brief article. I wonder a credit card based on Tawarruq, how it will distinguish between travel in need and travel in leisure, laptop in need or ease. To me if you can finance anything like travel package or medical or school under services ijarah or goods murabaha, one should go for it instead of Tawarruq. And if a situation arises when there is no alternative available and as a last resort, then Tawarruq may be used as an option.

- **Dr. Hurriyah El Islamy:**

Actually the context I hv in mind is retail financing. thanks for highlighting the credit card issue. most countries use ujah for credit card but some use qard + tawarruq and the tawarruq only kicks in when the sum is not paid in full on CC payment date

- **Amjad Bangash:**

Ok thanks. In case of late payment, after cc date, the amount goes to charity or becomes bank income in case of Tawarruq based card?

- **Dr. Humayon Dar:**

The issue of late penalty money going to charity should be debated here. Increasingly, Islamic banks are keeping more and more for themselves on the pretext that they incur a lot more administrative expenses. Money going to charity is becoming less and less in proportion.

- **Dr. Hurriyah El Islamy:**

Depends on which country regulation you are interested to know. in malaysia, late payment fee has two components: ta'widh and gharamah. ta'widh goes to banks, gharamah is to be routed to charities

Agreed. Among the point to discuss. whether the IFIs should disclose the source of money when they give for social courses. To what extent Shariah no compliant breaches could be tolerated ("forgiven errors").

social courses = social causes

point = points

Ok. Thanks for the clarification.

- **Shiekh Riaz Ahmad:**

The issue of late penalty money going to charity should be debated here. Increasingly, Islamic banks are keeping more and more for themselves on the pretext that they incur a lot more administrative expenses. Money going to charity is becoming less and less in proportion.

- **Amjad Bangash:**

Here in oman, there are no administrative charges etc to be deducted from late payment charges. Whole late payment amount will go to charity without any deduction.

- **Yousuf Azim Siddiqi:**

That should be preferable way to address any misuse by banks.

- **Munshi Azhan:**

unlimited uses of tawarruq becoming conv bank

- **Dr. Tariqullah Khan:**

Don't worry that's an arbitrage opportunity for Shariah advisory firms and they will reach there with tawaruq chasing

- **Amjad Bangash:**

Let's us see though it is 5th year of islamic banking without Tawarruq here.

- **Dr. Tariqullah Khan:**

Interesting- UNDP had opened senior Islamic finance positions in New York office and this could be game changer but please don't offer tawaruq. Search UNDP Islamic finance

- **Amjad Bangash:**

Ok. Thanks. Since growth is well so I don't think of any Tawarruq in future as well.

- **Yousuf Azim Siddiqi:**

That's great to hear that Oman got rid of Tawarruq. I hope after completing half a decade, it will start thinking of getting rid of Sharia issues in Sukuk n Ijarah financings. Sukuk functioning as debt instruments. Ijarah as Bai Al Wafa. Food for thought.

- **Yousuf Azim Siddiqi:**

I am waiting for full details. But Hybrid Structure works as follows:

51% of Sukuk issuance is against tangible assets of the Obligor which is managed for the Sukukholders by the Obligor on Mudaraba basis.

49% of Sukuk issuance is used for Commodity Murabaha between the Obligor and the SPV (i.e. Sukukholders). Murabaha is revolving and redone on Biannual basis.

Sometimes Murabaha Price is equal to Cost (=49%) and Profit (=51%). This way even if Exercise Price of Mudaraba (being Fair Value of tangible assets) is equal to zero then also capital is protected.

I am not sure about Exercise Price n Murabaha Profits. But will share with you once I have details.

- **Yousuf Azim Siddiqi:**

True. But they keep a window of 49% because of tangible assets start liquidating then also a sufficient window is there which doesn't breach Tangibility Ratio.

- **Dr. Tariqullah Khan:**

Thanks indeed! Please share the structure if and when available. I wish life in Islamic finance was as simple as conventional finance! However conscious efforts in avoiding Riba are much appreciated!

- **Amjad Bangash:**

Please also inform Is this 49% is normal murabaha or Commodity Murabaha (Tawarruq)?  
Thanks

- **Yousuf Azim Siddiqi:**

Commodity Murabaha.

Because the Obligor isn't a financing institute which has an existing portfolio of Murabaha debts ...

- **Hajeh Rola Ramlawi:**

Maybe my comment is late for tawarruq.

My concern is a client in particular who needs a bridge loan for 1 year. He has asset that is being sold, the process will take around 1 year. Meanwhile he needs liquidity. Many local commercial banks already proposed him financing at competitive rate. While he insist on Islamic banking solution

The only possibility I thought of was commodity tawarruq which wasn't seen favorably by our sharia committee. I would appreciate any proposal.

Our committee agree on tawarruq only if there was an original correct murabahah and things went sour. So we might use it to solve a problem.

- **Dr. Tariqullah Khan:**

I am not a fatwa granting authority. In my humble view if it is totally inevitable interest-based loan shall be preferred over tawaruq. Firstly, the purpose is to get cash which is the same in the two. Second tawaruq has additional financial cost. Third tawaruq pollutes Islamic finance. Fourth tawaruq is simply tricking oneself! So the company shall opt for interest-

based loan and pay to charity some amount knowing that Shariah has been violated under distress!

- **Hajeh Rola Ramlawi:**

How about using this on the asset he intends to sell anyway

- **Dr. Hurriyah El Islamy:**

Neither am I but if I may quote what one of CEOs in Malaysia said (in Malay, translated into this) " I can't understand people who choose 'hell' over 'paradise' because they are worried it may not be 'paradise'.

- **Amjad Bangash:**

Why he wants to sell the asset? These are the last assets he own? He does not have any other assets? If he does not have any assets, how your bank risk will allow clean financing without any security?

- **Mohammed Paracha:**

We regularly use sale and leaseback in Dubai or you could think if a shirkat al milk based musharakah would work (without or without an ijara component).

- **Dr. Hurriyah El Islamy:**

He was referring to conventional products as neraka = hell; and Islamic ones as surga = paradise.

Injunction prohibiting riba is overwhelming while tawarruq, in original hukm is halal, despite many preference to avoid it.

- **Amjad Bangash:**

This is also fine. In oman, the legal title of asset is transferred to bank name in ministry of Housing

- **Dr. Hurriyah El Islamy:**

The giver and taker equally sin. as the taker, company already paid interest. to purify, does it mean he has to pay the same amount of interest in charity? perhaps this sum will be more than the cost to undertake tawarruq

- **Yousuf Azim Siddiqi:**

Your suggestion might be operationally n financially better. But it is simply against the rulings of Fiqh. Organized Tawarruq can't be equated with Borrowing against Interest!

- **Yousuf Azim Siddiqi:**

Isn't a form of Bai Al Wafa which was rejected by OIC Fiqh Academy? Ijarah is done for giving money n the Lessor has no right or risk of the Leased Asset.

- **Amjad Bangash:**

Excellent. It is for this query: customer has assets but he wants to sell those assets to some 3rd party? If I am not wrong? If yes, perfect idea.

Can you explain this for my understanding. Since the idea is for the sale of asset so company shall provide wa'd to buy asset on certain date? Which assets? Those which are already sold to bank? But I think both bank and customer owned assets are already sold to 3rd party...the only thing left is the amount due with company who can pay under installment plan..pardon me if I couldn't get your point.

- **Hajeh Rola Ramlawi:**

I don't know about forum ruling regarding this discussion and if we need to move it to private.

I wanted to discuss it to have fresh ideas and feedback about practice elsewhere so I have proposal for my committee for their ruling.

1) The client asset to be sold are shares in a company (not compliant with shariaa ruling making our bank buying it unacceptable in principle).

2) The sale of those shares will be to a third party

3) Client has other assets to take as collateral

- **Dr. Hurriyah El Islamy:**

1. Please clarify why buying the shares are not "compliant" with shariah ruling. is it because of the objective of the company? because of so, the bank should not provide finance either. if it is not as per the bank's risk appetite, tgen we should note that while proposing suitable form of financing.

2. (as assumed)

3. Can't the same asset be used as underlying too? any legal or commercial restriction?

- **Dr. Tariqullah Khan:**

I need cash, can you please buy on my behalf something and sell it and give me the cash and I will pay you in future! Is this organized tawaruq for a lay person?

- **Yousuf Azim Siddiqi:**

I need cash, can you please:

1) sell something (you own) on a mark-up

2) I appoint you as agent for on-ward sale.

3) transfer me the cash proceeds once sale is done on my behalf.

4) I will pay you price as per Step (1) in future!



This is organized tawaruq for a lay person...

- **Dr. Tariqullah Khan:**

"You own" is noisy because bank is not supposed to own anything on its balance sheet for selling. Bank will buy for the cash hungry client and sell it for them.

- **Yousuf Azim Siddiqi:**

"You own" means when you will be signing Murabaha then bank will be in the possession of the same.

- **Amjad Bangash:**

Brother Yousuf with due respect, is there any step before point 1 above, I mean, I don't have any asset at all. first bank arranges an asset for me. I become owner of that asset. Now this asset i sell to bank and bank then acting on agent sells back to the original owner?

- **Yousuf Azim Siddiqi:**

So how less noisy is Auto Murabaha? No banks keeps car on its Balance Sheet... AAOIFI also calls Murabaha as Murabaha to the Purchase Order?

I guess the concept of Murabaha to the Purchase Orderer is missing to some members?!

The bank when will sign Murabaha it will be its Sharia owner.

By the way Promise to Purchase is Organized Tawarruq is less obligatory than Auto Murabaha. Because bank easily sells the purchased asset to another customer or back to the supplier

- **Amjad Bangash:**

In murabaha to purchase order, the bank arranges something which I need? I need car and bank arranges for me. In organized murabaha, bank arranges for me which I don't want as I want cash that is why bank pays cash into my account? So is there no difference?

- **Yousuf Azim Siddiqi:**

That sounds strange! The term Tawarruq actually means monetization.

So I need an asset which can be easily liquidated.

- **Amjad Bangash:**

In murabaha to purchase order, my promise is to purchase car which I take under murabaha once bank buys it. In organized Tawarruq, my aim

Is to get cash which bank gives me. In murabaha to purchase order, a car comes to me while in organized Tawarruq, cash comes to me... so still they are same

If both are same then why there is different AAOIFI standards for both?

- **Yousuf Azim Siddiqi:**

Good so they are the same. Organized Murabaha of car or a liquid asset.

I am referring to Purchase Order

- **Amjad Bangash:**

In murabaha to purchase order, I don't make bank my agent to sell my car while in organized Tawarruq, I make him my agent to sell and give me cash...how can you mix two in one?

- **Yousuf Azim Siddiqi:**

Why Tawarruq required a separate standard?

To avoid misusing Murabaha as In'ah Sale ... Tawarruq Standard was created.

U r mixing the point

- **Amjad Bangash:**

I am talking about full process from first step to last step... we can not say half steps of Tawarruq are like murabaha so they are same

- **Yousuf Azim Siddiqi:**

I never said that agency post Murabaha Sale is same as Auto Murabaha

- **Amjad Bangash:**

Inah is different from Tawarruq..

- **Amjad Bangash:**

Murabaha to purchase order start with promise to buy goods once bank bought..and I buy those goods in any case. Transfer of ownership transfers to my name. In organized on the same time I appoint bank an agent to sell those goods and give me cash. In murabaha to purchase order I fulfil my promise to purchase while in Tawarruq it is not done.

- **Yousuf Azim Siddiqi:**

I need cash, can you please:

1) I promise (usually non-binding) to buy a Sharia compliant asset.

2) The bank buys the asset from Supplier-1.

3) The bank sells the asset on a mark-up to me.

4) I appoint you as agent for on-ward sale.

5) the bank transfers me the cash proceeds received from Supplier-2 once sale is done on my behalf to Supplier-2.

4) I will pay you price as per Step (3) in future!

This is organized tawaruq for a lay person...

A bilateral Tawarruq is In'ah.

- **Dr. Tariqullah Khan:**

I need cash, can you please buy on my behalf something and sell it and give me the cash and I will pay you in future! \*So this is plain vanilla tawaruq\*

- **Yousuf Azim Siddiqi:**

That's wrong! The bank never buys on my behalf!!!

I suggest @Amjad Bangash and @Dr. Tariqullah Khan go through my 5 steps Tawrruaq which included P2P.

- **Amjad Bangash:**

That's good. So murabaha to purchase order is upto point 3 and organized Tawarruq is from point 4 to 5. This is simple.

- **Dr. Tariqullah Khan:**

MPO if non-binding was approved in 1977 but gradually it also became binding, tawaruq is reverse MPO

- **Yousuf Azim Siddiqi:**

In Tawarruq - there is no need for MPO to be binding

- **Dr. Tariqullah Khan:**

I think so, no problem for me

- **Yousuf Azim Siddiqi:**

Except in Shares Tawarruq where banks are exposed to potential price risk

- **Amjad Bangash:**

In Inah, I own asset and I sell to bank on spot and buy back the same asset on deferred payment basis. In organized Tawarruq, I don't have an asset and I ask bank to arrange an asset for me.

- **Yousuf Azim Siddiqi:**

No. In'ah is a Sale between 2 parties for the same asset where deferred sale price being more than spot price. Pre-ownership or no-ownership has no relation to In'ah

- **Dr. Tariqullah Khan:**

Inah is sell for cash and buy back for credit, tawaruq is buy for credit and sell back for cash. Amjad, do you agree?

- **Amjad Bangash:**

I read 5 steps Tawarruq. Upto first three steps is murabaha to purchase order. From 4 to 5, is organized Tawarruq. Because I want cash which can be done in step 4 and 5 called organized Tawarruq by bank. Yes I agree [with you Dr. Tariqullah].

Sale is not possible if one is not owner. Definitely I own something so I can sell and buy back means two parties means inah. If I don't own something, I came to bank to arrange and then bank arrange and I made to become owner so can sell so there are three parties, an organized arrangement to get cash so called organized Tawarruq.

- **Almir Colan:**

Could someone supply actual documentation for tawaruq and describe precisely actual backend workings so we can analyse this bit more rigorously.

- **Mohammed Paracha:**

Please see attached the typical workings for a commodity Murabaha / tawaruq structure.

- **Almir Colan:**

Thanks, what about actual documents and contracts that customer signs etc...

- **Mohammed Paracha:**

It describes a structure with a parallel conventional loan so please ignore that bit.

- **Dr. Hurriyah El Islamy:**

There's difference. murabaha is 'true' sale, tawarruq = monetization

- **Dr. M. Burhan Arbouna:**

I think the issue of tawarruq whatever is its evil is not comparable with interest. The statement that interest is better than tawarruq is indeed a mock and not in my view a scholarly or academic discussion. this is affecting the sentiment of the participants in this forum.

- **Amjad Bangash:**

Yes this is more important. Especially the steps, date time etc of parties becoming owner of commodities? Also the price of the commodities? The wordings of promise whether in the same promise customer is promising to buy certain goods upon bank acquiring ownership and in the same promise to appoint bank as an agent to sell as well, and regarding possession etc

- **Mohammed Paracha:**

This is for an Asset Murabaha. You can see the differences clearly from each case study.

- **Almir Colan:**

What I am after is to see how they actually do these step. Case study describes what happens but documents will show better insight. That is for a start. Then I would like to see what

happens truly at the back end of the operations - from brokers side and banks. Etc... Eg., in tawarruq when does client sign letter for broker 1 and when for broker 2? And so on...

- **Hajeh Rola Ramlawi:**

The company objective is not. Thus the reason the client is selling. Bridge loan will be to finance other receivables and project while yes those shares are to be used for repayment. (Using this proceed wouldn't be permissible u mean?)

- **Amjad Bangash:**

Yes I understand. That is in response to brother Yousuf Sidiqui one comment says that concept of murabaha to purchase order is missing to some members... That's is why I was explaining that murabaha to purchase order ends when goods are sold to customer while Tawarruq starts when customer appoints bank to sell goods and provide cash to customer. I know the difference which simply is to get Asset for which I promise (murabaha), to get cash for which I asked bank to organize (organized Tawarruq).

- **Dr. Tariqullah Khan:**

Is there any legal system that recognizes organized tawarruq as a distinct financial contract? Is there any economist who can show organized tawarruq is different than interest? Murabahah is definitely different than interest because the client owns an asset. I have to teach in my class to MSc Islamic finance students the difference between organized tawarruq and interest-based loan. Dear Dr Arbouna please solve my problem- what difference I shall show to my students? You are saying it is different- the client's needs cash and he gets it in both cases, the client has to pay extra amount and he pays it in both cases, the client gets indebted without any asset base, he gets indebted in both cases! So what is the difference? Interest is better in the sense that we know it is a sickness and we have to struggle against it which is not the case for organized tawarruq because you are using all your valuable intellectual capacities to justify it! It will eat up Islamic finance from within that's the worry, so please wake up to your best self and we are your followers InshaaAllah!

- **Yusuf Suliman:**

Some of the classical Jurists within the Hanafi Mazhab have written regarding practicing Inah: it is *الحرام عن الفرار لمكان اجره*. The reason is: *ماجور*.

The opinion regarding Inah above depicts the length to which one should go to abstain from interest.

I find it difficult to understand statement that interest is better than Tawarruq.

- **Ashraf Gomma Ali:**

Islamic Finance as a mercy to humanity

I once asked Dr. Umar Chapra what he believed the goal of Islamic finance/Islamic economics was and he said: "To make the financial system a rahmah for humanity." I thought about this and felt that the current industry practice may be kind of far from this lofty goal.

But today I would like to put forward some thoughts that despite the use of tawarruq, there are integral elements in Islamic finance practice that represent a rahmah for humanity both on a societal level as well as an individual level.

At a societal level:

- The prohibition of financing or investing in prohibited industries/activities is an integral element of Islamic finance and something that is agreed upon. This represents a rahmah for society since each of these prohibited industries/activities represents a net harm to society.
- This prudential limitation does not exist as an integral value underpinning the conventional system.

At an individual level:

- The prohibition of financially benefiting from late payments is an agreed upon concept. Even those who allow tawidh consider it a form of only compensation against loss and not a net financial benefit. This is a built in prudential measure against burdening someone with excessive debt. This is not present in the conventional system where late payment fees are a major source of revenue.
- The agreed upon Sharia requirement to give more time to a debtor who is in financial difficulty and who does not have any assets to repay the debt with. This is agreed upon in the Islamic industry and it does not have a parallel in the conventional. This is also a built in prudential measure against excessive debt.
- The prohibition of automatically revolving a debt upon non-payment without the consent of the customer. Although scholars debate the concept of revolving debt (qalb al dayn), even those who allow it in cases of credit cards / variable long term tawarruq... all require the customer to consent. This is different from conventional credit cards which continue to accrue interest regardless of the consent or financial situation of the customer.

At the contract level:

- we can debate which contract is the most Sharia compliant and which best embodies the concepts of Islam, but it's important to realize that much of this is ijtihaad and subject to scholarly debate. The above mentioned ethical and moral values are clear cut and to a large extent, matters of scholarly agreement, and they may be more suited to form the basis of Islamic finance, not merely which contract is used.

Yousuf Azim Siddiqi:

Both [Tawarruq and inah] are "true Sale"

Tawarruq means seeking Wareq which is sliver.

So even if a classical Tawarruq is done then also parties know the intention of getting cash.

In Organized Tawarruq - agency element is added which is not accepted by OIC Fiqh Academy.

I guess that's an economists problem who haven't studied Tawarruq despite its Sharia distinct identity

- **Ikram Tawfeeq:**

MaShaAllah learnt a lot on Tawarruq from all respected scholars, practitioners, academics and other stakeholders whilst awaiting a response from Sheikh Arbouna on Dr. Khan's response to his students. I just thought of sharing my take on tawarruq to teach the students is that: Tawarruq is million times better than a strongly prohibitive direct interest based loan to get cash for any purpose from a conventional bank (may be for necessity, emergency, luxury, mobility, consumption etc.) But getting cash through a Tawarruq transaction must be only used for real necessity or emergency (where the customer is neither willing or unable to take a Qard Hassan nor become eligible as one of the Zakat recipient due to his dire situation) but capable of paying back. Therefore there is an alternative product for this unique purpose of urgency, necessity etc. Unfortunately IBs are misusing it as an all purpose product justifying its approved by the Shariah scholars and also demanded by the customers for each and every need. Many IBs, even regulators and Sharia auditors as part of the documentation are trying to stop the misuse by asking for genuine documents to prove the necessity or the emergency. Unfortunately this is also not working some clients fake that too.

I am not sure who is responsible to ensure Tawarruq product is used only for the specific purpose it has been approved for? Otherwise IBs can live with this only product to cater for all needs of financing and fundings and no need for any other complex shariah compliant products.

- **Yousuf Azim Siddiqi:**

Also I want to know what will you tell your students about Auto Murabaha's economic identity in case the customer sells his car to third party before settling his the price to the bank and offers a substitute pledged asset? Will the Murabaha turn into loan? .

By the way - this is not a hypothetical question. It's very common in UAE.

- **Amjad Bangash:**

I think still it has trading element of trade of cars in the open market of UAE and will have an impact in their economy. It is not like trading of metals in LME in organized Tawarruq where no impact of their sale and purchase to UAE economy

- **Yousuf Azim Siddiqi:**

Ok. So what about DMCC's Tawarruq which has local commodities of UAE? So will you accept it as "True Sale"?

- **Amjad Bangash:**

Murabaha is used for goods, cars, cloth and so. Many business needs, most of the time the purpose is real business. It is different from small. Part of DMC commodities which are sold and purchase again and again without even coming to the real businesses. We are talking about globally.

You may tell your students that in most of the auto murabaha cases the cars are actually fulfill the need which is a basic principle of economics that it is need which results in demand and then supply come in picture. The person uses the car for his business purpose, for family matters, cars consume fuel and this is all economic activity. Metals does not do any of above.

I agree. It's enough on Tawarruq. Everyone's view is there. I also don't want to be known as against Islamic banking while here in the same forum and in general, alhamdulillah wins many debates in favor of Islamic banking against those who don't believe islamic finance. Just on Tawarruq and re-scheduling/restructuring, my views are different from most, however, I always accept and act upon decision of our respectful shariah scholars as it is though may be I personally have different opinion. Now no more from my side on Tawarruq. Jazak Allah Khair.

- **Shiekh Riaz Ahmad:**

Very useful discussion on Tawaruq.

- **Amjad Bangash:**

Very useful thoughtful points. No doubts, islamic finance is working excellent against the evils of interest. As a student, I have to ask few things if you can further guide me. 1. At a societal level: prohibited industries, I am just asking this also means to avoid financing to those hotels which have pubs, dancing clubs, mix swimming pools and sell alcohols? And banks especially shariah team to check from hotel website, feasibility, to that such hotel is not involved in such activities? 2. At individual level: late payment charges, how it is different from individual point of view as for his the late payment amount to bank is the same as if he suppose to pay to conventional bank? 3. Providing grace over time in case of non payment, do you mean if an ijarah based customer is unable to pay and come for extra period, say previous finance term was 10 years and now he wants 2 years extra time, so for this extra time, bank should not charge anything?.

- **Almir Colan:**

I don't think discussion on tawaruq was finalised or properly analysed. There is lot to be said. But due to complexity and importance it might not be the best to do it via WhatsApp. Also, all discussion was simply about steps in vacuum - without actually looking at specifics and real case analysis. We actually still did not even began to talk about most fundamental question of tawaruq.

Question of what is true trade is much more important that what is true sale. And trade is what is allowed. And synthetic sale is not trade.

Remember: True sale is happening in einah as well but it is synthetic trade that is the problem. What was classical tawarook back in the days and how we do it are two different concepts... in classical tawarook back then asset ended up in Economy - it became live. No dead.

This is why these concepts need more face to face discussion so we get to the reality of it cleared up. See you at AAOIFI conference insha'Allah to talk more on this



**Yerlan Bidaulet:**

Fully agreed Bro. Real trade brings a real value added (margin over a real good cost) into the real economy. Synthetic "sale" shows indirect sale deal and brings a money value added (that looks like a hidden interest income). As discussed by Group members, the exclusion for tawarruq could be given only for liquidity tasks of banks, but for business clients tawarruq is to be limited to avoid all above doubts and to focus on their business targets. Let's say that if in 2011 the quasi-sovereign Kazakh institution would have done not unfortunate Tawarruq Sukuk in Malaysia, but direct Ijara or Mudaraba Sukuk, we could not observe what happened until now with that wrong Sukuk: for 3 years all money proceeds were accumulating interest incomes on deposit accounts of local banks, for 3 years the non-experienced managers were not able to put all this money according to Sharia and finally after getting the special legal amendments invested by Ijara into railway stock. As a result of such wrong picture, the current CEO of that institution recently talked that between Islamic and conventional modes there are no any difference. Some brothers and sisters (Dr. Humayon, Br. Mujtaba etc) observed this situation recently at the IFN Forum in Astana. So it would be great if we finally would differentiate this interim mode like Tawarruq from implementation in real business/projects, except banking liquidity issues.

• **Dr. Mohd Ma'Sum Billah:**

Salam to my dear friends! Let me share with you my humble understanding: 1. Tawarruq, Bai al-Ina', Bai al-Dayn & BBA had perhaps been used to abuse the true growth of Islamic finance within the spirit of Maqasid al-Shari'ah. 2. After more than half a century, at least it might be the right time to say goodbye to those undesirable devices like Tawarruq & others. 3. Simultaneously, the industries demand an alternative way out (mechanism) recognized by the Shari'ah. 4. Followings may be among the options: (a) Bank shall not act as a mere financier, but shall involve in the trade / deal with risk sharing culture. (b) financing shall be subject to agreed management charges. (c) financing on asset backed project where the financier's participation shall be required. 5. The issue may not simply resolved through online discussion, but sharing of group's thoughts in the WA is good to digest the issue. 6. To resolve the issue, followings are suggested: (a) an international Shari'ah Scholars Forum may be held. (b) the Forum may facilitate the followings: (i) presentations on main issues (ii) Q&A. (iii) panel discussion on concerned issues. (iv) Round table discussion among the lead scholars. (v) Resolution. 7. Publication of the Resolution. 8. Producing relevant Standards / Policies / Guidelines based on the Resolution made during the Forum. May Allah (swt) guide us to contribute for the Ummatic benefit. ma'Sum

**Discussion Ended on April 9, 2017**

## Appendix

### Rulings on Tawarruq:

The International Council of Fiqh Academy, which is an initiative of the Organization of Islamic Conferences (OIC) rule on Tawarruq:

Resolution 179 (19/5) in relation to **Tawarruq** : its meaning and types (classical applications and organized *tawarruq*)

The International Council of Fiqh Academy, which is an initiative of the Organization of Islamic Conferences (OIC), in its 19<sup>th</sup> session which was held in Sharjah, United Arab Emirates, from 1 - 5 of Jamadil Ula 1430 AH, corresponding to 26 – 30 April 2009, decided on the following:

Having reviewed the research papers that were presented to the Council regarding the topic of *tawarruq*, its meaning and its type (classical applications and organized *tawarruq*), a resolution were passed. Furthermore, after listening to the discussions that revolved about the applications of *tawarruq*, the resolutions were presented at the International Council of Fiqh Academy, under auspices of the Muslim World League in Makkah.

The following were the resolutions:

First: Types of *tawarruq* and its juristic rulings:

- Technically, according to the Fiqh jurists, *tawarruq* can be defined as: a person (*mustawriq*) who buys a merchandise at a deferred price, in order to sell it in cash at a lower price. Usually, he sells the merchandise to a third party, with the aim to obtain cash. This is the classical *tawarruq*, which is permissible, provided that it complies with the *Shari'ah* requirements on sale (*bay'*).
- The contemporary definition on organized *tawarruq* is: when a person (*mustawriq*) buys a merchandise from a local or international market on deferred price basis. The financier arranges the sale agreement either himself or through his agent. Simultaneously, the *mustawriq* and the financier executes the transactions, usually at a lower spot price.
- Reverse *tawarruq*: it is similar to organized *tawarruq*, but in this case, the (*mustawriq*) is the financial institution, and it acts as a client.

Second: It is **not permissible** to execute both *tawarruq* (organised and reversed) because simultaneous transactions occurs between the financier and the *mustawriq*, whether it is done explicitly or implicitly or based on common practice, in exchange for a financial obligation. This is considered a deception, i.e. in order to get the additional quick cash from the contract. Hence, the transaction is considered as containing the element of *riba*.

### The recommendation is as follows:

To ensure that islamic banking and financial institutions adopt investment and financing techniques that are *Shari'ah*-compliant in all its activities, they should avoid all dubious and prohibited financial techniques, in order to conform to *Shari'ah* rules and so that the techniques will ensure the actualization of the *Shari'ah* objectives (*maqasid Shari'ah*). Furthermore, it will also ensure that the progress and actualization of the socioeconomic

objectives of the Muslim world. If the current situation is not rectified, the Muslim world would continue to face serious challenges and economic imbalances that will never end.

To encourage the financial institutions to provide Qard Hasan (benevolent loans) to needy customers in order to discourage them from relying on Tawarruq instead of Qard Hasan.

Again these institutions are encouraged to set up special Qard Hasan Fund.

The International *Fiqh* Academy for Muslim World League Rules on Tawarruq:  
Rules of Tawarruq:

Answer:

The International *Fiqh* Academy for Muslim World League, in its 15<sup>th</sup> session, which was held in *Makkah al-Mukarramah* on Saturday, 11 *Rajab* 1419 H.A, looked into *tawarruq*. After discussing, the Academy decided, as follows:

1. Firstly, *tawarruq* is the purchase of asset, which is in the possession of the seller, on deferred payments and then selling it to another party on the spot, in order to get cash (*al-wariq*);
2. Secondly, *tawarruq* is permissible in Islamic law, as mentioned by the majority of scholars. This is because the origin of sales is permissibility, as Allah says in *Surah al-Baqarah* (... and Allah has permitted sale and forbidden usury). In *tawarruq*, usury does not appear, either intentionally or in form, because it is a financial tool that is necessary for the settlement of one's debt or matrimonial expenses or others;
3. Thirdly, the permissibility of *tawarruq* is subjected to the buyer not selling the asset for less than its original price which he had bought from the first seller, either directly or indirectly. If he does that, then he has done a sale and buyback transaction (*bay' inah*), which is forbidden in Islamic law, as it consists of a trick that leads to usury. This makes the contract of *bay' inah* unlawful;
4. Fourth, the Academy recommended Muslims to deal with what Allah has permitted for His slaves, from the tool called benevolent loan (*qard hasan*), from their pure properties. This act will purify themselves. In order to get Allah's consent, subsequent to the provision of the loan, do not constantly remind the debtors or cause injury to the debtors. *Qard hasan* is a type of act that involves spending money in the way of Allah. Other similar acts include help, sympathy and pieties towards each other and relieving the grievances of other Muslims, as well as helping them to settle their problems. It is a way to protect debtors from entering into unlawful transactions. There are many texts in the sources of Islamic law that encourage people to give benevolent loans. However, the debtor must also remember that he is obliged to settle his debts as soon as possible. A good debtor is one that pays without delay.

Issuer: The International *Fiqh* Academy for Muslim World League; 15<sup>th</sup> session held in Makkah, 11-15 *Rajab*, 1419 A.H.

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