

Discussions /Dialogues – Islamic Economic Forum
Topic: Currency Salam
Compiled by: M. Khalid Hasani
Date: 10/18/2016

Summary of the Discussions on
Currency Salam held in
Islamic Economic Forum
Started on 18th Oct, 2016

Brief Introduction of Islamic Economic Forum:

The Group with 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 to make ensure you're up to date with the latest market movements, analysis, and research. The ideas generated will be for the benefit of the Islamic Economic Industry globally.

Administrative Committee of the Forum:

Dr. Abdul Bari Mashal (Head of Committee)

Dr. M. Burhan Arbouna

Sheikh Ashraf Gomma Ali

Dr. Yousuf Azim Siddiqi

Dr. M. Iman Sastra

Sheikh Ibrahim Musa Tijani

M. Khalid Hasani (Founder of the Forum)

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Preface: The discussion on the topic "Currency Salam" initiated by Ali Raza Nemati

Ali Raza Nemati: Dear Forum Members, Assalam o Alaykum ,

We are in the phase of developing a course on "currency salam". Other than the mechanism & process flows currently followed at Bank Alfalah, i am adding the practices followed across the globe for currency salam as a product. Would appreciate if you share your views.

Dr. M. Burhan Arbouna: Currency Salam is FX transaction and shall be problematic.

Dr. Humayon Dar: There are scholars in Pakistan who consider currency as commodity.

Ali Raza Nemati: Currency is dealt as a commodity but not with same currency. E.g \$ to € is possible but not \$ to \$ and € to €.

Dr. M. Burhan Arbouna: Currency as commodity is sometimes considered commodity if you want coins to measure goods and you rent it to measure and return it. but to make a trading tool. not at all. perhaps there is a problem. I have read a lot on Salam alnuquud and have tried to introduce it but find it difficult.

Sheikh Mufti Irshad Ahmad Aijaz: Currency is not a commodity but it is an independent type of medium of exchange. There is a famous debate on it.

Majority of Arab scholars consider it a substitute of gold/silver and for this reason they apply rules of Bai Sarf [بيع الصرف] on its exchange. As a result of it they don't allow credit sale of currencies.

And because the opinion of subcontinent's scholars (and some Arab scholars too) on currencies is different, they do not consider its sale as Bai Sarf. Therefore, they allow its credit sale.

Salam in Fuloos (metal coins) is an old debate of Fuqaha and it is famous in books of Fiqh.

Believe me it has nothing to do with blind Taqleed nor it is a matter of considering currencies as commodity.

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Dr. M. Burhan Arbouna: fuluus in fiqh is an impaired currency , i. e. currency that has become like a scrub. we should not confuse the term fuluus with currency. the debate on fuluus is the currency which the state stopped it's use. in this case it becomes like some form of scrub which can be bought and sold. it is not then used as medium of exchange , where fuluus is considered as currency it is not allowed.

قال في مجمع الانهر: وأما الفلوس أن كانت رائجة ألحقت بالثمن والا فبالسلعة the price those days is either fuluus which if in use is considered currency and if not in use it is considered commodity.

Almir Collan: Buying currency or money on credit with money is riba an naseeah. Difference of opinion does not arise from money for money or (currency) but when exchanged item eg gold is considered as commodity and not currency. This is not case with modern currencies but if we accept this argument it only applies to commodities like gold and silver which technically could be used as currency in one transaction and commodity in another side. So some scholars differentiate gold sold in form of jewellery from its monetary form. Ibn Taymiyah says:

The sale of gold and silver jewelry for gold and silver is permissible without being conditional upon the quantities being equal. The excess is considered to be in lieu of the craftsmanship. It does not matter whether the sale is immediate or deferred, as long as it is not intended for monetary purposes. [al-Ba`li, al-Ikhtiyārāt (112)]

Mufti Irshad Ahmad Aijaz: I will share a nice write up on this topic of Salam in currencies in a while but this is in Arabic. Anyone can read this topic in recently published book of Sheikh Taqi Usmani [فقه البيوع] vol ii, page 715 to 750, chapter Bai al Sarf.

At least those who do not know the academic and Fiqhi debate on this issue will be able to know the "other side".

This book can be downloaded from this link:

<https://archive.org/details/FIQHULBOYUVOL2>

Dr. Humayon Dar: @923345427992 Can you please share the Fatwa issued by your Shari'a Board on Salam Currency. I think the members of this forum would like to see the rationale behind such an important Fatwa. This will also be a good test to see if economic analysis is relevant to the juristic thought.

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Dr. Yousuf Azim Siddiqui: Quickly reviewed the paper, my thoughts:

1: Salam of currencies is not permissible.

Refer to Section 3/2/4 of Sharia Standard 10, which says:

لا يجوز أن يكون المسلم فيه نقوداً أو ذهباً أو فضة إذا كان رأس مال السلم نقوداً أو ذهباً أو فضة.

I guess rulings on الفلوس في السلم confused some people. Fuloos are metal currencies prior to their trading. No doubt metals of coins can be subject of Salam but not currency notes and coins.

2: the mechanism will not be acceptable even by Hanafi jurists who allow delay of one currency since rulings of Saraf do not apply to them. It was clearly mentioned by Sh. Taqi Usmani that incase delivery of one currency was delayed then it should be settled on the market rate of its settlement date in order to rule out any way to RIBA. This restriction is clearly missing. If it's there then it's not Salam!

3. There are other ways to tackle usance financing which are acceptable to Sharia.

Dr. Humayon Dar: I concur with Brother Yousuf. If we accept Salam on currencies then why can't we have bai' mu'ajjal on currency and more so why not Murabaha? In the latter two cases it will be nothing but Riba.

Dr. Yousuf Azim Siddiqui: Exactly - the phrase to stop such ideas is

منع الاحتيال على الربا

Dr. Humayon Dar: The tendency of using what I call "Shari'a hangers" is not respecting the Jamhoor. We try to find one or two minority views in the books of Fiqh and hang our new products on them to buy permissibility, which should be avoided.

Dr. M. Burhan Arbouna: not necessary. waad structures are not jomhoor view and many others

M. Abdullah Nadvi: I think the demand for innovation in Islamic Finance cannot be met sufficiently except by adopting and applying minority views of classical jurists in different aspects of different products. Application of majority view in all the minute aspects of any given Islamic product can be possible only in an ideal situation, which seems missing for the time being in most of the jurisdictions.

Ahmed Ali Siddiqui: I sometime see confusions when some of the learned economist try to judge the Shariah rulings from their lens of economic benefit theory. The Shariah ruling holds valid based on

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permissibility and prohibition based on the sources of Shariah. Even if apparently no or even negative economic benefit is visible. Because saving from Riba and providing a Halal alternative is the main benefit which is 1000 time better than just economic benefit that even Riba based transaction could have.

Khalid Hasani: not only CM product can be miss-used. It also goes to any products, if the usage is not fulfill the requirement acquired in order for it to be Shariah compliance.

Ahmed Ali Siddiqui: Regarding What is referred as Currency Salam is not in fact a Salam in classical sense. It is buying of one currency say 100 USD against today's Ready market rate of PKR say 106. And banks pay 10,600/- at spot and give time to the client to pay 100 USD say after 10 days. The rate has to be what is the current day ready market rate.

Dr. Yousuf Azim Siddiqui: This is not acceptable by the Jurists who permit delay of currency. On the settlement date, it should be checked what's the current PKR rate against USD

Ahmed Ali Siddiqui: But top Hanafi Jurist allow this transaction.

Dr. Yousuf Azim Siddiqui: As per Sh. Taqi Usmani:

ينبغي أن يقيد جواز النسبية في بيع العملات أن يقع ذلك على سعر السوق السائد عند العقد

wherein the exchange rate on the Transaction Date should be the prevailing market rate of T+0

Dr. Abdul Bari Mashal: ولكن كما قرر سماحة الشيخ تقي العثماني في المنتدى العربي أنه لا يكون بشرط سابق

Jarir Syed: I don't think this condition is violated in Salam currency. As mentioned by Bro Siddiqui, the prevailing market rate of 100\$ مسلم فيه is already determined at transaction date. So the condition is to be determined on transaction date not delivery/ Settlement date.

Dr. Yousuf Azim Siddiqui: It should be determined at the prevailing market rate on the Transaction Date...

Why can't it be simply structured as FX Spot Sale on Transaction Date.

And then Islamic Bank takes back the Delivered Currency as Qard due for the client (Facility on Demand). This amount will be delivered on the Settlement Date...

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Mufti Irshad Ahmad Aijaz: @ahmed ali siddiqui This is not the case. It is salam. Salam is permissible in homogeneous items.

Dr. Yousuf Azim Siddiqui: If it's Classical Salam. Then what can be the Salam Price? Can it be any price as agreed between the parties?

Mufti Irshad Ahmad Aijaz: I think the major reason for confusion on this matter belongs to understanding the reasoning of prohibition of specific deals i six commodities.

@Shiekh yousuf the condition of 'current market rate' is for Sadd-e-Zareeah and nothing else.

The reasoning for Riba i six commodities is very important to understand this view point.

The write up of Shaikh Taqi hafiza-hullah is very good on this issue because it is a recent write up

Mufti Irshad Ahmad Aijaz: First of all we need to understand why many scholars do not consider trade in currencies as Bai Sarf and the logic behind advance or deferred sale can be discussed.

Theoretical debate should not be mixed up with practices because the practices can be more diligently improved.

I have seen lot of criticism on practices in today's discussion. We don't endorse any wrong practice nor I'm advocating these careless implementation of any 'right concept'.

Request to all for theoretical understanding of the issue.

Unfortunately, I am busy in broad meetings and seminars so could not find time to even present basic points of this debate in English.

Trying to do this with help of some colleagues. After that will explain our view so that everyone can understand that this view is not a baseless or illogical view.

Six commodities: Gold, Silver, Wheat, Barley, Dates and Salt

Dr. M. Burhan Arbouna: I think we have discussed this in the Arabic forum and Sheikh Taqi Usmani's view was that this transaction is a forward currency trade done on condition that exchange takes place

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now but one of the counter value is delayed and hence not acceptable. perhaps Sheikh Khalid Hasani will go back and bring us that view.

please sheikh Khalid bring us the write up of Sheikh taqi on this in the Arabic forum.

Mufti Irshad Ahmad Aijaz: فهذا لايجوز لأن الثمن لا بد وأن يكون متعينا ومعلوما في جميع البيوع والسلم كذلك.

وأما المسئلة التي أشرت إليها فهي اتفاق المتعاقدين على سعر أكثر أو أقل من سعر اليوم. فهذا جائز في السلم العادي ولكن الشيخ العثماني حفظه الله يميل إلى اشتراط الاتفاق على سعر اليوم في بيع العملات - السلم في العملات وفق مصطلحنا

Dr. Yousuf Azim Siddiqui: The point raised by you is supported in Point (beer) of the Fatwa. Salam Price to be equal to Market Rate ...

Mufti Irshad Ahmad Aijaz: مفتي ارشاد: فهو لا يرى الاتفاق على غير سعر اليوم مناسباً وذلك سدا للذريعة وميلاً إلى رأي المالكية

مفتي ارشاد: في بيع العملات (بتأجيل أحد البديلين) فقط

This was discussed in Arabic forum as Dr Arbona said

There two different issues:

- 1). What should be the pricing in currencies trading? Current market rate OR any agreed rate?
- 2). What should be the pricing of currencies in deferred sale?

Shiekh Taqi Usmani hafiza-hullah is of the view that pricing should always be the current market price (keep in mind different markets - another big issue). So he doesn't like other than current pricing in currency trading whether it is a spot sale or deferred one (salam).

Dr. Humayon Dar: Requirement of agreement on the current market price in case of the contended Salam on currency doesn't make sense for someone who is looking for hedging in the wake of payments in future in a foreign currency. If as a hedger I need \$150 on T+10, for example, then if the only option available to me is the current market price then why should I give £100 today to receive \$150 at T+10. I should rather buy \$150 spot today and keep the foreign currency with me to meet my payment obligations at T+10. Entering into a Currency Salam (with the current market price as Salam price)

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doesn't make sense for me. So for the hedging purposes a spot transaction now makes more business sense. As this is more in line with the widely held view on the currency trading, this should be the preferred Shari'a position. Allowing deferment of the delivery of the foreign currency will open door for all kind of conventional derivative products, especially for those who are looking for shorting a targeted currency.

Almir Collan: I think that some of the hanafi scholars in Pakistan allow for delay in settlement of currencies and this is why they allow this currency Salam. They don't believe that delay in exchanging currencies is riba naseeah. It is strange position in my view because they selectively make rules an analogy from gold to money- in this way they allow delay in exchange but in terms of riba al fadl they would not allow it. This is problematic and not consistent. Rules of gold should apply on paper currency just as same.

Some of them think it is allowed so it does not matter for them how many days. For those who don't believe in delay when exchanging money it will be riba naseeah. And for those who say paper money is not like dinars they will allow this delay. My opinion is that rules for gold is same as paper currency. Both

Ahmed Sanusi Hussain: Wherever/whenever ulama accepted currencies as ribawi items (by way of qias or ijma'), then exchange of currencies must be done on the spot (hand to hand). Delay in the exchange will lead to riba nasiah (naseeah).

Mufti Irshad Ahmad Aijaz: @ Dr Dar:

First, short sale or shorting is not gambling although it is prohibited sale.

Secondly, possibility of shorting is there in advance or credit sale. Therefore salam and Istisnaa are considered exceptions from general rules.

@ Br Almir Colan:

The reasoning of six-commodities prohibition is a debatable issue. I will try to present a summary of this Fiqhi debate in this forum soon inshaaAllah.

Also, the point is that are natural and fiat money both same in rulings?

So let us see the difference of opinions of Fuqaha on this issue.

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Almir Colin: I would say it is invalid sale as one is selling what they do not own, but instrument of shorting is speculative in its nature and one is in fact gambling that price will drop. Their return is not linked with profitability but guessing. This is why it could be called gambling as well.

On another note, In fact I would argue that all day-trading is similar speculative act and non productive operation because it is purely designed to guess price movement instead of benefiting from underlying business output. And so investment is only way to go... error many make is to look at day-trading (that is often just nano seconds long) as some buying and selling like people did in olden day markets... it is far removed from that... in olden days someone ended up buying and using things so it was win:win situation... today speculators guess and try to outsmart each other... it is win:lose situation and one can only profit at expense of other... real business is either win:win or lose:lose - win:lose with profit is only possible in gambling.

And the worst of all this are high frequency traders (HFT) and their algorithms that are destroying function and purpose of stock exchange.

Mufti Irshad Ahmad Aijaz: Short sale is an invalid sale no one differs.

Speculation (in literal sense) is not always gambling but the apposite is true i.e gambling is speculation

Almir Colin: Selective in a sense that they allow riba naseeah but not riba al fadl... if rules of riba do not apply on fiat currency then both riba types are void.

In investment there are only two types of people - investors and speculators - so I am talking in investment context where there make these instruments... investors profit from real economic activities and speculators profit from guessing and at expense of counter party ... in investment all win, in speculative shorting one only wins if other party loses. So it is definition of gambling that ones gain is someone's loss... there is no gain in shorting unless someone takes a loss from opposite position. Only other area of life where that is true is casino.

Dr. Yousuf Azim Siddiqui: I guess, some people think that RIBA Al Nasiah being not applicable in the Currencies is a modern Fiqh innovation.

To understand rulings of RIBA, we need to look at Causes of RIBA علة الربا.

As per Imam Abu Hanifa and IMAM Ahmad (popular opinion), the cause of RIBA in Gold and Silver is its kind and weight.

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As per many Sharia scholars, currency notes are debt owed by the Issuer (the Government) since it's not backed by actual gold or silver. Hence

1: the currency can't be sold against another debt; 2: Zakat is payable on it.

I guess no one can deny the fact that this is the real economic picture post Breton Wood era.

Almir Colin: Not sure which one of my points does this disputes? I don't disagree with this. What are you proving?

Dr. Yousuf Azim Siddiqui: That not all the rulings of Gold and Silver will be applicable to the Currencies. One of such rulings are RIBA Al Nasia...

I am just sharing juristic opinion favoring this stand.

Is there any evidence which says RIBA Al Nasia isn't permissible in currency notes?

Almir Colin: Why stop on naseeah only then? Why not even allow fadl ?

Sheikh Mufti Ahmad Suleman: Many Ulama across the globe, especially India Pakistan etc have not given paper currency the status of gold and silver. They refer to gold and silver as **ثمن خلفي** and paper currency as **ثمن عرفي**

There is no explicit نص on how paper currency should be treated hence the door for Ijtihad is open. Naturally this will lead to difference of opinion, which we should respect.

And Allah knows best

Almir Collan: Yes but by that logic riba al fadl should also be allowed

Mufti Ahmad Suleman: There could be other principles that are applied to disallow riba al fadl, eg

سد الباب و سد الذرائع Etc

Almir Collan: And that is why it is strange opinion as it prohibits one type of riba and does not prohibit other one as that same ijthad should give same ruling in both cases

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Back to the main point- when we talk about currency Salam we should understand background and why some institutions would make it halal... especially if they don't believe in a first place that delay in currency enchanted is riba al naseeah..

Mufti Ahmad Suleman: Definitely not strange, a mujtahid considers all the principles before arriving at a conclusion and does not look at the case at hand in isolation.

Based on the view of ثمن عرفي

What is the reason for the prohibition of salam in currency?

Almir Collan: We don't follow customs in prohibitions. Delay is prohibited when exchanging money for money. If you don't believe fiat currency is money and RIBA naseeah is ok then you will have to allow for al Fadl because they both come from same principle.

Dr. Humayon Dar: Simple reason. There is no country in the world where gold or silver based currency is the legal tender. Only paper currency is the legal tender. If you create this distinction between thaman khalqi and thaman urfi then without avoiding a selective approach we cannot enforce even Zakat applicability on paper money.

Almir Collan: That is right. And that goes into discussion what is money. Gold and silver was accepted because it was in the circulation at that time. Nothing special about gold and silver. Muslims after wanted to make money from animal skin and they were only afraid for animals not that it was prohibited. So nothing wrong with money today in terms of Islamic rules. (Yes manipulation like quantitative easing etc makes it unethical practice, but that is not our discussion here)

Mufti Ahmad Suleman: These quotations do not speak of paper money

Khalid Hasani: MashaAllah, I Guess some people become Mujtahid in this forum although they are not capable in fiqh but rather than economic perspective. There's no room for our kind of Muqallid to mock on one Mujtahid's opinion, which is based on an old debate of Fuqaha regarding Currency ie whether it represents and substitute of Gold/Silver or not. While some other Jurists despite having variant opinion still they understand and respect counter view.

Sheikh Mufti Yousuf Suleman: The above document posted by Sh Khalid Hasani explains the views quite clearly and responds to the queries and discussions posted above. A very good article

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Dr. Humayon Dar: The above document is very clear and what it substantiates is very clear as well. This means no deferment of any counter values in exchange of currencies.

Mufti Yousuf Suleman: @DR Dar. The 3rd view allows for deferment of one countervalue if different currencies are exchanged

Zia Akhtar: Can we pay zakat through fuloos?

Dr. Hurriyah El Islaami: I assume you refer to fuloos as cash.

which zakat? mal? I see why not.

Fitrah? there are some views on this including one that prohibits the payment of zakah fitrah by way of cash absolutely.

In any case, usage of cash is customary and deemed acceptable, either on its own strength or to be used to purchase staple for zakah payment purpose. wallahu'alam bisshawab

Ali R Nemati: SBP guidelines are followed.

In order to provide financing for the immediate financing needs of the exporters Banks offers an alternative to export bill discounting where instead of providing loan against the export order, Banks keep the export bill as security and extends a fresh Murabaha financing facility to the customer or purchases FCY against Pak rupees from the customer on Salam basis at spot rates to cater to the financing requirements of the customer.

Mufti Irshad Ahmad Aijaz: Very good document. If the translation is posted it would be very useful for this heating up debate.

Dr. M. Burhan Arbouna: in the article shared it was clear that sheikh taqi is saying if currency will be paid for another currency the parties should agree on the value of the currency to be paid in the future. in other words, I am giving you 100 USD now which is today equivalent to 10000 rupees today but you will pay me 10000 rupees in two months. this is more like qard of USD which will be paid in rupees that are known now. For Salam to occur in currencies it should be in the following manner:

this is 100 USD for 10000 units of a currency which value is not known now. once I receive that units I will use them in the monetary form and their value may give me ten thousand cash rupees or less or more. this is the concept of salam. if this is not the case I doubt whether Salam in currencies is possible.

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again one of the principle of salam is that the muslam fih cannot be identified. it should be salam in currency without mentioning the type of currency. salam should be in such a way if i did not get usd i can provide saudi riyals. if money or currencies can be bought and sold in units and that will later be converted to value to acquire goods then perhaps we might get Salam in units of currencies. we are trying to rationalise currency Salam assuming is workable.

The reason why I said units is to estaisih ikhtilaaf aljinse that allows Salam. because there is ikhtilaaf aljinse that allows tafadhul but both currencies should be received in majlis alaqd such as dollar to rupees. ikhtilaaf aljinse that allows Salam is currency and it's units and that may not be possible unless such units are tied to measurable commodity such as gold. such as saying salam in currency which is equivalent to so and tone of gold.

Sheikh Ashraf Gomma Ali: My translation of the paper. Please excuse any errors as I was trying to finish it quickly for the sake of the discussion. I also did not include the fiqh academy resolution on paper money which was embedded in the document since it is easily accessible by the members.

Professional Indemnity

Mansoor Danish: Respected Scholars and Consultants,

I recently was asked an opinion on Professional Indemnity. It appears to me that this may be put under similar ruling as a non-life insurance for protecting one's own interest and hence it may be prohibited and Allaah knows best.

I have seen a few Islamic Financial Institution allow it though I am not aware behind the rationale used by them. To me it appears if it is forced by law, it is permitted but if it is voluntary then it must be eschewed.

Can the learned men here please share with me what are the different opinions on Professional Indemnity?

I am from India where this is still not mandated by the law but many professionals including medical practitioners and practising lawyers are increasingly signing up for this product in order to protect their financial interest.

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Dr. Masum Billa: Professional indemnity: it's also known as professional liability. It's covered by a professional liability insurance policy. It allows a 3rd party claim against any loss or damage caused by an unpredicted / accidental / negligently act or omission of a professional in carrying his / her duty. The objective of such policy is to protect the professionals from any 3rd party claim against any damage resulted from any negligence or unintentional act of the professional in issue. Such policy is not unlawful, is justified by Shari'ah principles of Daman.

Dr. M. Burhan Arbouna: agreed if based on takaful.

Dr. Masum Billa: My humble book on Shari'ah standard of Quantum of Damages in insurance may provide some details. The cover page of the book is enclosed here.

Dr. Hurriyah El Islami: protecting one's own interest is not something prohibited, legally or even under shariah (hence, the prophet ya'qub's instructions to his children to use from different entries/doors).

thus, creating a product to protect's one interest is not prohibited on that sole basis.

of course insurance is not shariah compliant but that doesn't mean we can't have shariah compliant product (takaful) covering professional indemnity.