

has arisen because of the changes in attitude of the general Muslim public and their wish for Islamic products. Let us not be fooled by these banks into thinking that they are keen for Islamic products to come into our market. If this was the case our government would have prohibited interest a long time ago and not just performed a name-changing exercise to PLS and markup not to mention the number of Islamic banks I have spoken to who actually do not care what is Islamic as long as a scholar has said so. Have you ever wondered why the same scholars appear on the Shariah committees of different Islamic banks? Could it be that only a few are available to endorse these products and the ones that do not are reduced to nothingness? Very similar to the way governments in Muslim countries consistently approach the same scholars to justify their miserable existence and pro-Israeli policies really.

We should become well versed in Islamic rules relating to Islamic economics and investments and demand truly Islamic products, that way the Islamic banks will have no option but to restructure themselves. Islam is a complete way of life and I hope that some of this way of life has been communicated through this article as a result of the detail Islam gives in relation to partnerships. Another important point to bear in mind is that Islam is not to be applied gradually. To leave one part of Islam and implement the other is oppressive. For instance, to apply the rules of hudood without ensuring that each and every individual of the state is not hungry through the administering of proper Islamic economic policies would be a serious flaw on our part. Similarly, Islamic banking needs rules and laws in place which will allow it to thrive. This may even mean removing un-Islamic avenues of investments such as the KSE because having both systems run in parallel is a serious compromise and reflective of a society that has no clear direction.

انگریزی ترجمہ تفسیر نور العرفان

حضرت علامہ مفتی احمد یار خان نعیمی رحمۃ اللہ علیہ کی تفسیر نور العرفان

کا انگریزی ترجمہ مع ترجمہ کنز الایمان نئی شان سے شائع ہو گیا ہے۔

یورپ، افریقہ، امریکہ و انگلینڈ میں رہنے والے احباب اس ترجمہ سے بھرپور استفادہ کر سکتے ہیں

رابطہ: مفتی محمد اکبر ہزاروی صاحب، دارالعلوم پریٹوریا، ساؤتھ افریقہ

share in the interest income of those advances, and if the liabilities are loans, then the assets owned by the shareholders will be used to pay off the loans before any residual amounts find their way back to the shareholders. How many of us would be content to unwind our assets to pay off interest especially in light of the Ayat and ahadith pertaining to this topic?

If further convincing is still necessary then let us consider the profit sharing agreement. As mentioned above, the profit ratios between partners are agreed beforehand. They do not change unless unanimously agreed by all partners. Dividends represent the profit share of the shareholders, however, these are not a fixed percentage of the bottom line profit and may vary year to year.

Still not convinced? The rules which dictate how much say each partner has in the running of an Islamic partnership are very different to the concept of one-share one-vote. For example, in mudharabah one could argue that the effort partner has the biggest say with little input from the capital partner. When there are many partners and they have all contributed capital the principle is not 'the greater equity holder has the greater say'. In fact, the capital should become so mixed that each partner has a right to use of it without distinction. This is not a minor point because it has long lasting effects upon the manner in which the Islamic business is conducted. By no means is the say of a partner diminished simply because he has contributed less to the equity of the business.

There can be no doubting that the form of Islamic banking that exists today must be questioned in light of the ample evidence highlighted above. Not only do most Islamic banks invest in stocks and shares listed on stock exchanges, they constitute a large proportion of the investments that are undertaken. In Pakistan, for instance, under the new Prudential Regulations, scheduled banks cannot invest more than 20 per cent of their capital in shares whereas Islamic banks can invest 35 per cent. A bank has just launched their Shariah-compliant fund which invests in the KSE. There is also a Dow Jones Islamic Index, FTSE Global Islamic Index Series and I even once heard a prominent person in the Islamic banking circle in Pakistan mentioning Islamic stocks on the NYSE.

The Islamic banking community can continue to devise products which are consistent with conventional banks and portray them as Islamic if they wish, however, it is the duty of every Muslim to ensure that his money is invested Islamically. After all, the need for Islamic banking

the company. Accordingly, interest is acceptable as long as it is insignificant. Other scholars which once again sit on Shariah committees of Islamic banks go further and propose anything less than 5 per cent is acceptable. This is in respect of the profit and loss account. No divine evidence is offered.

When considering the balance sheet, Yusuf Qaradawi, a very famous scholar in the Arab world, is willing to accept a company which is 30 per cent geared. In other words 70 per cent equity financing and 30 per cent debt financing. Unlike those scholars who propose the 5 per cent threshold, Yusuf Qaradawi actually attempts to back his conclusions with divine evidences and has done so in much the same fashion that Bill Clinton did once when he read verses of the Qur'an in defence of the peace steps taken between the PLO and Israel. The evidence used is:

Narrated in Bukhari, Sa'ad Ibn Waqqas said -- "I was once ill in Makkah to the point I was approaching death. The Prophet (S.A.W.) came to visit me. So I said: 'Messenger of Allah I have great wealth, and nobody inherits from me except my daughter. Can I bequeath two-thirds of my property?' He (SAW) said 'No'. I said 'Half of it?'. He (SAW) said 'No'. I said 'One-third of it?'. He (SAW) said 'The third is big (enough). It is better to leave your children rich than to leave them poor and begging from the people'."

From this hadith, Yusuf Qaradawi concludes that a third is much and accordingly the debt to equity ratio should not exceed 30 per cent but is better if it is lower. I am not a scholar, but even if this hadith is in some shape or form linked to the issue of the activities of a business by applying the general rule of 'one-third is enough', then surely a glass consisting one-third alcohol and two-thirds milk should be permissible!!

The problem unfortunately is the blind acceptance of these scholars who sit comfortably on the Shariah committees of Islamic banks and the years of neglect given to the development of Islamic economics due to the secularization of Islam.

If, after all this, some sincere Muslim still believes that stocks and shares are permitted in Islam as suitable investments, let us consider exactly what share-ownership entails. Shareholders are owners of the business. They are the owners to whom the company has a legal obligation to return a profit and have a claim upon the assets of the company. If these assets are advances, then each shareholder has a

Furthermore, companies listed on stock exchanges do not even conform to the rules of partnership in the West: Indeed, they are not even considered partnerships, they are public listed companies with their own corporate laws in place. Each shareholder is unaware of the other and shares exchange hands thousands of times a day with each shareholder none the wiser as to whom the others are. This contradicts the basic laws of Islamic partnership where each partner must know the other.

Another vital condition missing from the company structure of listed shares is the presence of an effort partner. Even the scholars who preside over the shariah committees set up to approve or reject securities for investment cannot reply to this burning issue. Public listed companies, if anything, are partnerships of just capital. Shareholders are owners of the listed company and have a claim upon the residual assets of the company. However, the persons charged with the affairs of running the firm are the directors. They have a duty to the shareholders and according to company law are carrying out the task of stewardship. A director is an employee, he is not a partner but he contributes all his efforts in running the business. The absence of an effort partner casts further controversy over whether stocks and shares are Islamic and is itself a convincing argument against investing in listed stocks and shares.

Another problem facing scholars when deciding whether a stock is appropriate for an Islamic fund to invest in is the interest element. There are few companies which do not have any form of financing on their books. Interest payable and interest receivable always form a part of the balance sheet of the company and also contribute towards the profit/(loss) account. Once again the scholars sitting on the Shariah committees find themselves pressurized by overzealous investment bankers (Muslim and non-Muslim) to find a way out of this predicament. In response the scholars collectively have only been able to muster up, unfortunately, a seriously deficient response as follows:

The Securities Commission's Shariah Advisory Council of Malaysia has stated in its list of approved securities:

"the core activities of the company must be activities which are not against the principles of Shariah..... Furthermore, the haram element must be very small compared with the core activities".

This effectively means that not only interest but all non Islamic business practices must be negligible compared to the core activities of

Islamic company law is predominantly a law of partnerships. Musharakah, a well known Islamic term applied to a number of Islamic banking products, is not actually a term used by classical scholars in discussing partnerships. It linguistically means sharing, partnership much in the same way that the inheritors of an inheritance each have a share in it. Partnerships in Islam take the following forms: mudharabah, al abdan, al inan, mufawadah and wujooh.

These partnerships involve the mixing of capital and effort. In the case of Mudharabah, the partner who contributes capital to the business does not take an active role in the day-to-day running of the business but does play a key part in the development of strategy for the business. The effort partner contributes effort and becomes immersed in the day to day mechanics. Both are partners and both agree to share the profits in an agreed ratio at the outset. There is also a principle that the one who owns the capital bears the loss of capital. Accordingly, since the effort partner has not contributed capital, only his efforts are lost if the business fails. The other partnerships involve both partners contributing capital and effort, or both contributing effort with no capital (offering services). There can be any number of partners but the most important conditions of such partnerships are that there has to be at least one effort partner and that the partners know each other.

Without these two vital conditions being met, the partnership is not Islamic. People may query the condition that a partner must be known citing this as unreasonable and illogical. However, a quick glimpse at partnerships in the US or UK such as the big accountancy firms reveals that in order to qualify as a partner, intensive partnership training programs exist in order to ascertain whether or not the individual fulfills the conditions of partnership. It is a very personal affair because a partner represents the business, its character, its integrity and an access to the funds. Therefore, the partners have to agree whether or not they wish to promote a senior manager to partner or not. All the partners must agree before accepting an additional partner and any one of the existing partners has the right to veto. Similarly, partnerships in the West are not perpetual as are corporations. Each time a partner dies, the partnership is effectively dissolved and reformed and Islamic partnerships are no different. Therefore, we should not jump to the conclusion that Islamic partnerships are not practical today, some of the key conditions do exist today and are implemented by partnerships in the West. The confusion arises when we seek to apply the rules of partnership to stock and shares. The sheer desire to make these stocks and shares Islamic has led the market to interpret the divine texts in a manner so as to justify such investments.

banking that need to be adhered to before we can say that we have achieved that which we had set out to do. The issue of stocks and shares is one such example.

Have we ever wondered why western financial institutions are so happy to offer Shariah-compliant products? Is it because they have an overwhelming moral obligation to provide Muslims Islamic rights? Probably not given the recent banning of headscarves in France under the banner of secularism. Is it because they feel an inherent flaw in their own destructive economic policies and wish to see a better world with wealth circulating all strata of society? Probably not given the one way distribution of contracts for reconstruction in Iraq. The answer to such a key question is two-fold. First, the market for Islamic banking products is a natural money spinner with no fixed rates of return and a seemingly endless deposit base. Secondly, and this is the true driving force behind this move, the current forms of Shariah compliant products do not possess significantly different risk factors to the conventional interest based products.

To elaborate, many American and European investment banks have initiated so-called ethical funds. High net-worth individuals with a moral conscience are demanding that their money not be invested in producers of weaponry, unethical companies such as gambling institutions or companies which have environmentally unfriendly policies. Shariah-compliant funds which invest in 'Islamic stocks' can be likened to such ethical funds where the underlying trade of the company cannot involve gambling, alcohol production or have interest income which constitutes a significant proportion of total earnings. To this end, launching Shariah-compliant funds has not required any further research or development of risk management policies or even investment in human resources. Is Islamic economics so closely linked to capitalist thinking that conventional banking products and Islamic financing are interchangeable except for a few alterations to the existing legal documentation?

Before approaching the subject of investing in stocks and shares a few issues require clarification. When viewing the divine Islamic texts it must be understood that they are complete and applicable to all times and ages. Furthermore, the divine texts should not be approached in a manner which aims to distort the Islamic injunctions -- in other words a finance specialist should not first decide upon a product he wishes to introduce and then go in search of any evidence that can be twisted to justify it. Rather, he should see what Islam has to offer regardless of the existing economic systems in place.

Can stocks and shares really be Shariah-compliant?

There are very clear principles in Islamic banking that need to be adhered to before we can say that we have achieved that which we had set out to do. The issue of stocks and shares is one such example

By Zia Faruqui

There can be no doubting the explosive arrival of Islamic banking as a dominant force in the financial industry. Islamic banking has grown in recent years to such an extent that most conventional banks are in the process of launching their own Islamic banking arms if they have not already done so. The key is to grab as great a part of the huge market for Islamic products (which is estimated currently at \$200 billion and still growing) and surprisingly it is not only Arab banks that are leading the way but also western financial institutions.

The phenomenal growth in this market can be broadly attributed to 9/11, but more importantly to the growing discontent with the interest-based financial system and a desire for Islam to play a greater role (other than spiritual) in the lives of the one billion or so Muslims in the world. The words murabaha, musharakah, mudharabah have become buzzwords amongst Muslim students, commercial enterprises and large corporations owned by Muslims and banks are queuing in line to receive them with open arms.

There has never been such a demand for Shariah scholars with technical knowledge of economics, financial instruments and Islamic financing techniques as Islamic banks rush to get their products rubber-stamped by these scarce scholars. Indeed, these scholars are commanding very attractive pay packages.

Unfortunately, I am not gripped by all this euphoria. There are positive signs to this financial revolution which is undoubtedly the fact that Muslims are demanding Islam in their political and economic lives, by no means something to be underestimated. However, the products on offer need to be scrutinized properly to ascertain their validity. My basic philosophy is that there are very clear principles in Islamic