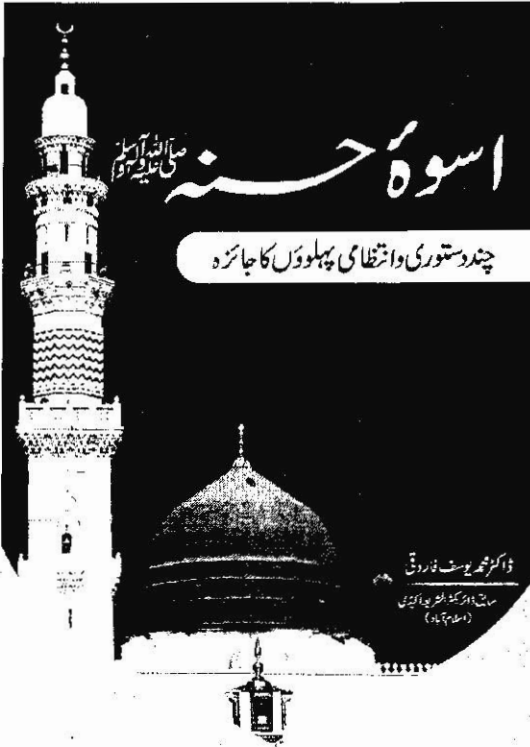


adhere to the law of the land except those in contravention to the Islamic Shariah.

Accordingly, we can classify the Pakistan laws in two categories. The first one, which comprises of the Constitution and a vast majority of laws, is in compliance with the basic principles of Islamic Shariah. The second one, particularly including the banking laws and family laws, and generally including various provisions of other laws are in contravention to the principles of Islamic Shariah and hence need not to be complied with or rather give rise to a need to get changed.



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Marketing

Marketing is the art to sell. In the commercial world, marketing has emerged as the most important and dependable segment of a business and has even surpassed the production segment. It can be rightly said that the production of good quality, generally can not and do not generate as good results for a business as marketing of good quality can.

While not denying the benefits of good marketing, we wish to draw attention of the entrepreneurs to the fact that sometimes the basic marketing techniques being used by various businesses globally, as well as, in the local market are clearly contravening the basic principles laid down by Islamic Shariah in this respect. Under Shariah principles, the marketing should be based on truth and honesty, without any false claims. There are a number of Ahadith in which it is prohibited to show better quality of commodity and to hide the negative side and to make untruthful claims regarding quality of commodity.

Similarly, for marketing and particularly advertising which is a significant aspect of marketing, it is a general phenomenon that women, sex and music are utilized at their maximum to attract the buyer. Those who do not believe in the life hereafter, may not agree, but for a Muslim it should be enough to understand that utilization of such prohibited tools to attract customers may result in ruining our Halal income from Halal activities. In this respect, we feel that it is the duty of the Muslim marketing experts to develop a code of conduct for marketing and advertisement strictly in compliance with the Shariah requirements.

Adherence to the law of the land

Adherence to the law of the land is one of the basic principles of Islamic Shariah. The only principle laid down in this respect is to

Forward Contracts

As we have already discussed in the previous chapters, forward sales and purchases, as in vogue in the business culture are not permissible from Shariah perspective. Nevertheless, Allah Almighty has been kind enough to provide us alternates to such transactions in different forms. The first form of forward contracts which are allowable under Shariah perspective is Bay Salam. However, in order to avoid the element of uncertainties in a conventional forward contract which makes it a sort of gambling, Shariah has prescribed a number of conditions that need to be followed in case of a Salam transaction. Such rules and provisions have been discussed in detail in the previous chapters.

The second form of forward sales which is allowed by jurists, is an Istisna contract i.e. a manufacturing or construction contract. Like Salam, in case of Istisna also, there are a number of conditions specified in Fiqh in order to ensure elimination of the uncertainty factor from such transactions.

In addition to the above mentioned forms of forward sale transactions, most of the jurists have considered allowable to enter into a unilateral promise to buy or sell a commodity in future and such promise may or may not be binding on the promising party. Nevertheless, the same shall be considered merely as a promise and can not be accepted by the counter party at the stage of promise. There are a few other conditions also applicable to such transactions, particularly, that the promising party should be in position to provide the commodity or make the payment as of the promised date, as the case may be. Similarly, the matter transfer of risk and reward of the commodity shall be finalized once the actual transaction will be consummated as of the future agreed date.

should not be done on deferred delivery basis and the same should be made on a hand to hand basis.

It would also be interesting to note that a relatively small school of thought contends that the currencies prevailing in the modern day market are not real Thaman and accordingly, the principles applicable to Thaman should not be applied thereto. In view of such jurists, a sale of currency against other currency can be made on deferred delivery basis and at any price that may be mutually agreed. Such jurists also allow a Salam transaction for foreign currencies. Any person having commonsense can easily understand that such practice can open doors for earning interest under the shelter of foreign currency transactions, and accordingly, most of the jurists have strongly opposed such treatment. This debate is a bit tricky and complex in nature. However, being prudent, it is advised that all the foreign currency transactions should be carried out on a spot basis.

In view of practical difficulties, jurists have allowed that the time lag in clearing of cheques, shall not be considered a deferred payment for this case and instead, the same shall be considered a spot payment. Similarly, it has also been consented that a debit or credit note issued by a commercial bank or financial institution, evidencing a money transfer or conversion shall also be considered to be a spot payment for this purpose.

Investment in foreign currencies, for hedging of risks or with a motive to earn profits from increasing currency rates, is also allowed in Shariah without any further conditions. However, the marginal trading of currencies as generally prevalent in the forex market, as well as, short-selling or selling without possession of the same are also prohibited because of the general principles applicable to sale – purchase transaction. Similarly, forward sale and purchase of foreign currencies are not allowed, although a unilateral promise to buy and sell currency at an agreed rate on a future date is considered permissible by majority of jurists.

that an honest and fair Muslim cannot tolerate distorting his faith just to evade taxes and getting some benefits in this worldly life.

The fifth element, which also has similar significance, is the involvement of corruption in case of evasion of taxation. You would agree that in order to evade taxes, one has to incur some additional cost which is a type of bribe or Rishwat (رشوت), by whatever name called. Here we are not discussing the costs that, in our culture, are still to be incurred to get the assessments finalized and to get the refunds assessed. Such cost might not be termed as harsh from the payer's perspective, if the same has to be incurred to get someone's right, irrespective of all the truth and fairness in the disclosure of facts and presentation of accounts and returns. It would be worthwhile to recall that the Messenger of Allah, SAAWS has cautioned in a well known Hadith that the person paying the bribe and the one receiving the bribe, both are destined to the Hell.

In view of the above, it may be concluded that a Muslim businessman should be fair and honest enough to disclose his accounts to taxation authorities. If this approach is developed, this will also contribute towards improvement in the Islamic banking system, particularly in the product being offered under Musharaka and Modaraba modes, because at present, the bankers generally hesitate in investing under these modes because of a general phenomenon of untruthful presentation of accounts, mainly with an objective of evasion of taxation.

Dealings in Foreign Currency

Dealings in currencies are allowed by Shariah with certain conditions. According to majority of jurists, sale of currency against other currency is a Sarf transaction i.e. similar to a transaction of sale of gold against gold and silver against silver or gold against silver. In such transactions, it is a clear Shariah ruling that the transaction should be done on a spot basis and same commodity can not be sold against a different quantity. Based on the same principle, dealing in currencies

The first ground is that even if the government is not Islamic and may not be following all the principles of Shariah in running its affairs, it has a right under Islamic Shariah to levy taxes for running its affairs and to provide facilities to general public. For details, the readers may follow the old books of Fiqh, particularly Kitab-ul-Khiraj by Qazi Abu Yousuf, who was one of the two most brilliant pupils of Imam Abu Hanifa. Those who feel that there is no tax in Islam other than Zakat are at a mistake because even in the history, at the time of Khilafat-e-Rashida, we can find a number of taxes which were levied in different manners on different classes of people and on different activities.

The second ground is that even if the government is not investing the taxation money exactly in the same way and the same manner in which the same should ideally be invested, it is being invested in the benefit of the general public as a whole e.g. in development of hospitals, roads and schools, in providing subsidy for the basic necessities of life e.g. wheat, in defense of the nation and so on. If someone feels that the overall distribution of resources for various categories of expenditure is not adequate, it does not release him from his social responsibility to pay taxes.

The third ground is the abidance of the law of the land. According to a majority of the jurists, one has to abide by any law imposed by any government, in whose jurisdiction he lives, unless the same is at war with the Islamic government i.e. Dar-ul-Harb (دار الحرب), barring the situation whereby such law is against any basic provision of Shariah.

The fourth and the most crucial of these grounds is the matter of truth and fairness which is a part of our faith. You would agree that in order to evade taxes, incorrect financial reporting, untruthful representations with regard to details of income and wealth, and dishonest record keeping become a prerequisite. Even if we disagree with the first three grounds, this ground alone is that much significant

the importer in time or if the Nostro account of the Bank is debited before the importer has made payment to the Bank. The permissibility of charging fee for agency-related service in L/Cs is based on the concepts that the amount constitutes payment for services provided by the Bank. However, such fee shall not be directly linked with the period and amount of exposure and should not be increased if, for any reason, the period of exposure or the amount of exposure exceeds the initially agreed period and amount.

In import L/Cs, generally the arrangement is made for an immediate Murabaha transaction. The Islamic Bank acts as buyer of goods, and the invoices and documents shall be in its name or in the name of the customer under an agency agreement. The Islamic Bank should take the delivery, physically or constructively as an agent, and sell the goods to the client at a cost plus mark-up (Murabaha). However, negotiation of the bill drawn against the LC and reimbursement of the negotiating Bank's claim shall be similar as in conventional banking systems. In case of commercial importers, an even better arrangement can be made as a Musharaka transaction in which the Islamic bank and the customer will be joint owners of the goods and will share the profit on their sale, in the agreed proportion.

Taxation

Shariah perspective regarding modern day's taxation system is a very complex issue. A few jurists are against the system as a whole, whereas a few call it a mandatory duty. In Pakistan, there are a number of honest businessmen, who are not that much honest in discharging their liabilities to the society in form of taxation on the ground that it is an unjust levy and the same needs to be abolished. This matter has key significance and has already been debated on various forums, and a comprehensive study of the same needs considerable time and effort. Since the same is not the core subject of our study, we will just discuss a few grounds on which the majority of jurists have concluded that taxation, particularly levied by the government of a Muslim country shall be paid honestly and justly.

majority of scholars do not allow recovery of commission and conclude that only the secretarial expenses incurred on such charges can be recovered. In such case, the overall expenses are estimated and allocated on the expected amount and number of guarantees generally issued, and then slab rates are determined for allocation of such expenses to the respective customers. In such case, no profit margin should be built in such fee.

Letters of Credit

A Letter of Credit, generally referred to as L/C, is a written commitment to make payment by a Bank to the seller as per the buyer's request or for the Bank's own use within a certain period of time, on various agreed conditions. These are generally issued by commercial banks and financial institutions in favour of their customers to guarantee the amount of payment in case of trade and services, particularly in case of import purchases. These have certain characteristics in their mechanism which are not allowable under Shariah principles.

L/Cs are issued by the Islamic Banks based on the principal of "Wakala" or "Agency". Wakala means to appoint another to act in his stead or as his representative. With the increase in the volume and scale of businesses, the role of agent has increased manifold and also the concept of agency have become an important element of Islamic partnerships. Even in modern law and business customs the nature of the relationship between partners is known as a principal-agent relationship. Proposal and acceptance of a position in an L/C transaction is considered as the appointment of an agent (Wakil). Permission to act on someone else's behalf also amounts to appointment as an agent.

Islamic Bank can collect various charges (such as documentation charges, correspondence, account maintenance, credit assessment charges etc.) for the purpose of opening LC. However, the Islamic Bank cannot charge any profit in case the LC is not settled by

impermissible from Shariah perspective. Such prohibition is generally on two grounds i.e. (i) the wording and legal applicability of such guarantees; and (ii) the fee charged for providing guarantees. We are, anyway, fortunate enough that now Shariah compliant alternates are available and the Islamic banks are issuing guarantees under Shariah principles.

From judicial perspective, the guarantees issued by Islamic financial institutions are generally based on the principles of Kafala and Rahn. Kafala means the responsibility, amenability or suretyship. In Kafala a third party becomes surety for the payment of debt, if unpaid by the person originally liable. It is a pledge given to a creditor that the debtor will pay the debt, fine or any other liability. Suretyship is creation of an additional liability with regard to the claim, not to the debt.

In contract of Kafala, a third party becomes surety for the payment of debt, but in Rahn, the debtor hands over something as pledge to ensure payment of debt. Mutual consent is the basis for validity of both the contracts, as in other business transactions. In Kafala the degree or scope of suretyship should be known and should not be with preconditions. It is not permissible to give surety to an unknown degree or scope.

When issuing a guarantee, the Islamic financial institutions generally obtain a counter guarantee from the customer unless the customer enjoys good reputation and financial position enabling the Islamic financial institution to have recourse to the client in case of need.

Regarding the guarantee charges issue, a few jurists have allowed that Islamic financial institutions may issue guarantees on behalf of their clients, for which they can charge commission or service charges. The amount of commission can be a fixed amount worked out as a certain percentage of the guaranteed amount or on the basis of slab rates, irrespective of the period of guarantee. However, a

Even for defined benefit plans, the tax benefits for the employer and the employee are increased if these are approved by the taxation authorities and these are further increased, if the same are funded. For a funded defined benefit plan, the provisions regarding investment of funds as prescribed by the company law and taxation law are similar to those applicable to a provident fund scheme. Accordingly, same options shall remain available for these funds, as discussed above in the case of provident fund.

Insurance

Insurance, as prevalent in the modern commercial culture, is considered to be against the principles of Shariah by the consensus of the majority of jurists. A conscious Muslim should always avoid entering into insurance contracts, unless either a government regulation or a situation of compulsion or Iztirar requires entering into such contract. Even in such case, our attitude should be in line with the condition laid down by Allah Almighty for any Iztirar i.e. eating Haram in case of Iztirar should not be done by disobeying or desiring.

Alhamdulillah, now the concept of Islamic alternate to insurance i.e. Takaful is very much in operation throughout the world and even in Pakistan, the first company is commencing operations on the principles of Takaful.

Since Insurance and its alternate require our further attention, we will discuss them in detail at a later stage in this study.

Bank Guarantees

Different forms of guarantees are a necessity for running businesses in the modern world. By definition, a guarantee is an agreement whereby the guarantor assumes responsibility for the discharge of the other person's obligation in the event of failure by other person in discharging his obligation. The general guarantees issued by the conventional commercial banks are considered to be

investments, besides eminent opportunities for good profits, the risk of loss does exist and the trustees and the members of the fund should be well aware of such risk. Such investments can be made in public securities and Musharaka TFCs etc. subject to conditions laid down by law.

Second option is investment with any Shariah compliant investment account offered by an Islamic commercial bank or Islamic banking branches of conventional commercial banks. Needless to mention, according to the company law and taxation law, investments of provident funds, as well as, gratuity, pension and superannuation funds can be made with any scheduled bank and accordingly, no question can be raised on legal permissibility of such investments. Nevertheless, their return is generally slightly lower than the government securities and any conscious Muslim should be ready to bear such opportunity loss with the corresponding opportunity to please Allah Almighty for a better return in the life hereafter.

Third option, which is presently not available at a large scale, but hopefully will be available in near future, is investment in government securities issued on a Shariah compliant basis e.g. Sukuks.

Defined benefit plans

Defined benefit plans, as in vogue in Pakistan, generally include gratuity and pension plans. Gratuity is applicable in most of the cases because of a legal requirement, although a few enterprises pay gratuity in addition to a provident fund scheme. Pension is not so common except for most of the government enterprises and a few multinational companies that have introduced a few lucrative pension plans in order to attract competent employees for developing long-term career with them. Pension schemes are generally funded, however, in gratuity a number of schemes are unfunded or even, we can easily conclude that, a majority of schemes is unfunded.

of continued service. Almost similar is the case of gratuity where the commitment to pay gratuity should not be less than one month's last drawn salary for each completed year of service.

A simple solution to such issue is to avoid defined contribution plans to the maximum extent possible and instead go for unfunded defined benefit plans. This is particularly suitable for small businesses. Anyway, this solution would not be suitable for large businesses. Similarly, a number of finance professionals would disagree with this solution as it is always considered prudent to have funded retirement benefits in order to ensure payment to the employees in case of a business failure. In addition, since the defined benefit plans are generally linked to ever increasing salaries, the business's liability on this account increases in geometric progression and consequently, results in increased expenditure in the later years of an employee's services. Similarly, this also discourages high increments and consequently, at times, these result in lesser capabilities to retain competent employees.

For defined contribution plan, two basic Shariah compliant investment options are available. First option in this respect is investment in Shariah compliant listed securities. According to the rules devised under the company law and the taxation law, the provident funds, as well as, other employee benefit funds can invest 30 percent of their investments in listed securities, with certain conditions. In previous chapters, we have discussed in detail the rules and principles for making investment in various securities. The same principles shall be applied for investments by any defined benefit fund. If a prudent and effective fund management practice is applied, these can provide very good returns. As an alternate, investment can be made in Shariah compliant mutual funds to the extent of limits specified by law. In such case, the matter of assurance of Shariah compliance of the respective securities and effective and efficient funds management rests with the management of the mutual fund, and the trustees of the provident fund remain least bothered regarding such issues. It should, well be kept in mind that in such forms of

discriminate between domestic servants and commercial employees for the purpose of following the principles laid down by Islam.

Our religion has clearly defined a set of principles for employer-employee relationship. In this respect, the author requests the some individual or a group of like minded people within the HR management and consulting community to contribute to this topic, as the author realizes his lack of knowledge and resources in this respect.

Retirement benefits

Retirement benefits may be termed as a benefit introduced for employees by the West. In early days of Islamic philosophy no need was considered for retirement benefits of employees because it was understood to be the responsibility of the State to provide basic necessities to the old and retired people. However, in the current scenario we can generally term these a valuable gift from the West.

Retirement benefits are not only a benefit for the employees. These generally have given a few benefits to the employers also. The basic retirement benefits that are provided by the employers (including governments) are generally divided by accountants in two categories i.e. defined contribution plans and defined benefit plans. Defined benefit plans are such plans in which the employer commits to provide a specific benefit to the employee at the time of retirement. Such benefits include pension and gratuity.

Defined contribution plans

Defined contribution plans are normally funded, and here is the stage where a practicing Muslim concerns. According to Pakistan Labour laws, every employer who has at least 20 employees in case of a commercial establishment or 50 employees in case of an industrial establishment is bound to pay either gratuity or provident fund to each of its employees. These rules generally define that the contribution to provident fund should not be less than one month's salary for a year

INSURANCE AND TAKAFUL

Omar Mustafa Ansari

In this chapter, we will discuss a few general business matters that have significance in day to day affairs of a business, particularly from financial perspective.

Employees' Relations

In the known history, it was the first time when the Islamic law devised and implemented the basic principles for employee's relations. Although various such principles are also found in thoughts of various philosophers from Greece but it is clearly evident from history, that such ideas always remained on paper and no dynasty had the courage to implement such principles in real life. The basic reason behind such controversy can be easily understood when we consider the matter in view of the ideologies of modern days' *Mutrafeen* (مترفين). *Mutrafeen* is a Quranic definition for those who have more wealth than general public. Even in this so called modern and civilized reign, you can find the situation not very much different from the days of any emperor of old roman dynasty.

Another misfortune we are facing nowadays is that the employers who are, by any mean, brought into the net of labour laws as applicable in Pakistan are somehow following such laws to some extent. Nevertheless, they generally understand that after having fulfilled the requirements of labour law as applicable in the country, they are relieved from the basic duties that have been levied by Allah Almighty on them in respect of their employees.

Another basic misunderstanding which has been observed, even in a number of religious minded people, that they generally