

***Interest Free deposit Accounts and Charity
Collection by Various Islamic Banks: A Shariah
Perspective***

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Abstract

Indeed, one of the core features of wealth is its circulation as it ensures the financial system to right off almost all the liabilities of the parties along with flat and level flow of economic power and its failure leads to severe crises like Dot.com and 2008 financial crises.

The Shariah's teachings focuses on distribution of wealth and strongly discourage the accumulation in few hands contrary to conventional system as the tool normally used by them is Interest, the real curse to humanity. The interest free banks normally claim the use of different accounts for different type of investment totally based on such principles that are in full conformity with Islamic teachings like Musharakah and collection of charity as a penalty from different clients.

The study emphasis on defining the different interest free deposits accounts to know the extent of execution of Shariah standards and the Islamic context of charity collection as a penalty practices in Islamic Banks.

Keywords: Musharakah, Charity Collection, Interest free deposits

1. Introduction

The religion Islam is everlasting religion and it gives the real and core principles of wealth. The Shariah's teaching focuses on the smooth flow of money and stops the concentration of it by any means. The Islamic transactions reflect the concept of partnership and encourage the idea of profit and risk taking. The one has the right to enjoy the profit that also faces the risk of loss. On the base of this concept the Interest free banks claims to have such deposit accounts which are working under the Shariah law and with full stream line of

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Islamic teachings and avoid from all such transaction that has interest involvement as it is real curse to the humanity. Almighty Allah says in Quran;

“Those who benefit from interest shall be raised like those who have been driven to madness by the touch of the devil; this is because they say: “trade is like interest” while God has permitted trade and forbidden interest.”¹

Pakistan too has Interest free Banking systems that are operating under Shariah law and implement the Islamic financial system. In late seventies, when there was no proper existence of Islamic Banks in Pakistan, a number of Muslim Scholars have permitted the public to use the current account of conventional banks on need basis for the reason that nature of the current account is totally different from other fix accounts.² Moreover, the current account of non-Islamic Banks i-e conventional banks and Islamic Banks are of similar nature and seems indistinguishable and alike to one another.

2. Account's Nature

In the light of Shariah the fund accepted by non-Islamic banks are considered loan apart from that the deposits belong to any account whether it is current or saving account. This is for the reason that the Non-Islamic bank assure all account holder that he will certainly collect total deposited amount of cash and all capital, the award of which is guaranteed is viewed as a loan. Now, the situation is like that, in the case of current account, the non-Islamic banks will not confer its depositors any additional money for their deposits. Rather, they are only accountable to pay back the amount deposited. This business deal of the non-Islamic bank does not go in opposition to any standard of the Shariah. Consequently, the Islamic banks deals with the same manner, current account of an Islamic Banks is also of same nature and there is no any big difference between the current account of Non-Islamic banks and Islamic banks³.

However, dozens of Islamic Banks are working in different areas of the country and almost every citizen of the country has the access to these Islamic banks. There is suggestion that by nature both the current accounts are same but for the promotion of these banks if anybody is willing to deposit some funds, he must place that fund in Islamic banks rather than

any other conventional bank for the reason that his fund use for somewhat in the product that are totally shariah based and not use for supporting the interest indirectly, as one deposit in current account of conventional bank, though he would not get any reward or return against this money but the bank will utilize this money in other transaction that are totally interest base, so this also one form of supporting the interest. Being a Muslim, the responsibility of every citizen is to participate in encouraging and supporting the Islamic banks through investment in these banks.

3. Other Accounts

Besides the current accounts, the banks deal with some other accounts of different nature and of different names. These accounts are mostly different from current ones because of the return and reward. The good example of these accounts are saving accounts or fixed deposits etc, the non-Islamic banks takes an interest based loan from their depositors. The procedure of these accounts is like that the conventional bank takes funds from the depositors and offers them this assertion that your deposited fund is safe and that after a specified phase of time you shall be given this money i-e principal amount along with an additional mark-up.

Now whether these banks earns hundred percent or more than hundred percent profits from the depositor's capital or earn something or does not earn anything, the bank is bound to award their client the predetermined rate of interest. Therefore, there is no liaison between the depositors; the one who invest money in the bank, the bank and the client; the one who acquire finance from it.

Contrary to this, the funds that an Islamic Bank received in the accounts that produce profits is accepted on the basis of introduced modes of financing, mudharaba or musharaka and in the light of shariah, these capital are held as a trust with the Islamic Banks. Moreover, if these funds by whole or a fraction of it are destroyed without the inattention and negligence of the bank then the bank is not suppose to pay back and will not be accountable to return the invested money to the clients.⁴

4. Funds Clarity and Transparency

Secondly, the Islamic banks, after receiving cash from their depositors, do not put a cover on these funds. Rather, they make a policy to attach their depositors in partnership in investment plans and projects. In this partnership, the depositors are known to be the *rabbul maal* (capital investors) or sleeping partners and the Islamic Bank is known to be the *mudharib* or working partner. The Bank confers a relative share of the earnings to its depositors from its different variety of financing such as *Murabaha*, *Salam*, *istisnah*, *ijara*, and *musharaka* etc. This profit and loss distribution policy is pre determined like that whatever income the Bank earns will be divided between the client and the Bank on 30, 70 ratio or on a fifty fifty basis and both the parties will be mutually agreed on it. By this way a chain is formulated among three parties, these are; the depositor, the bank and the client, the one who acquire finance from this concerned bank. This chain or it may called the triangle has great importance because whatever the profit received by the bank with the help of client or from the client through any financial activity has a big impact on the depositor's profit. These all are linked with direct proportion, so if the Islamic banks finance the depositor's money at higher rate, consequently, the depositors will receive the income at higher rate and same wise, if they finance at low rate, the depositor will also affected by it and this is the beauty of such partnership that only one party is not in position to accumulate the entire profit to itself and other parties remains deprived and this is what shariah teach us.

5. Profit Fixation

One of the most important point about the Islamic banking practice of Islamic Banks is that it never ever fix the profit at the time of agreement or prior to that. Beside this they also never ever guarantee the depositor about the return and reward because their activities are totally transaction based and return can only be confirmed after the completion of the project or financial year. Especially in the light of shariah it is not permissible that the bank announce the profit in relation to the

depositor's invested capital. Let's suppose that the Islamic Banks announced that we will confer the profit of 10 % on the capital invested, such specification is totally Haram and restricted and this act will lead the entire transaction towards non-Islamic and it becomes void. However, after the completion of project or at the end of any specific term, the bank calculate the actual profit earned and distributed among the parties according with the predetermined ratios and then by comparison they realize and announced that we earned that much percent profit on relation with such investment, such announcement is permissible and doesn't violate any shariah principle.⁵

6. Contextual aspect of Charity Collection

Collection of charity is the activity of Islamic Banks in order to make certain the payments recovery from the client side. In this regards it is taking a sum of money from the client in the case of his defaulting or delaying in payment. It is actually undertaking of the client of the bank that he would pay a specific amount to the charity fund if he makes the due installment late without any valid reason.⁶

In order to assess the matter in detail there is dire need to know the context of the subject. For this purpose it is important to discuss the background of Charity fund or collection of sadqa. Whatever the transaction, whether it is transaction of Ijara or Murabaha, there is undertaking of the client of the bank that he would pay a lump sum amount to the charity fund if he makes the due installment late without any valid reason, this undertaking is because of valid reason. It is clear that is no relaxation in shariah principles regarding increasing the installment amount if the client fails to pay it in time and there is also unavailability of alternative to force the clients not to delay the payments intentionally and make the due payments in time as per schedule of the agreement. In order to get benefit from this situation, number of clients made the installment late and some even did not pay the entire installment for several months and there was no penalty on them from bank side. They not only violate the terms and conditions mutually set but also exploit the right of those thousands account holders.

The money that the bank has, these account holders are the actual owner of it. For the purpose to ensure the payments from

clients sides in order to protect the bank from heavy loss and to make safe the account holders money, this step was taken after a several discussions of shariah board and make it the part of policy of the bank. This is the reason of imposing this undertaking of clients about the collection of charity.⁷

The practice that occurs in Islamic Banks is as under;

*'The Client hereby undertakes that where any amount is required to be paid by the Client under the Principal Documents on a specific date and is not paid on such date without a valid reason to be determined exclusively by the Bank, such amount shall be payable by the Client with in fifteen days of amount becoming overdue where such payment is not paid during the aforesaid period of fifteen days the Client shall be liable to pay a delayed payment amount, for the amount overdue towards the Client as per Schedule of Charges of the bank, and such delayed payment amount shall be used by the Bank for the purpose of charity, as approved by the Shariah Supervisory Committee.'*⁸

7. Gray Areas and its Explanation

In order to know the extent of accordance with shariah 's teaching or to get assurance that this activity of Islamic Banks is not contradicting any kind of Islamic principle, this purpose requires some depth analysis of the situation. If one consider, then in certainty three queries arise here regarding it.

1. According to the above discussion that in number of transaction, while the client interact with the Bank in order to perform any activity, has to make the payments in specified dates and time. There is always chance of late payments and no payments from the client side. For the purpose the bank invite the client to undertake that if he did not pay the certain amount or any liability of the bank with in the specified time period the he will pay certain sum of cash to the charity fund. This is one of the checks from bank side on the client to make payments in time according to the scheduled documents. To offer charity or charity is every one personal matter, neither any individual nor any institution of bank force on any one to undertake like that. It is same like a vow that one takes vow by his own

willingness. The practice of Islamic Banks reveals that there is no any option for client not to undertake if he wants to deals with the bank. The situation reflects some like compulsion on the client to offer charity so the question comes in the minds that such practice of the bank is acceptable in shariah or not.

2. Other restriction is that after undertaking to offer charity and to fulfill his commitment when he is going to pay the charity must follow the instruction or directions of the bank means that he will not pay to any charity fund but he must use the medium of bank. This condition is how long accord to the shariah.⁹
3. If the client fails to execute his undertaking, the Bank further utilizes the support of the court in order to fulfill the promise by the client. What are the shariah's teachings about the fulfillment of the promise via court?

The above mentioned areas are indeed important to explain and in fact these questions seem valid at first sight but the Shariah's teachings are very clear about it. In order to give the transparent and clear picture to the public in the light of Shariah here it is discussed in detail.

The shariah teachings reveals that there are two types of rights i-e Rights relates to Almighty Allah (حقوق الله) and the rights relates to the people(حقوق العباد) . The beauty of the religion Islam is that it has flexibility and rulings about different activities vary according to the situations. If anybody did any mistake by violating the right of Allah and impose charity upon his self for example the one undertake to give hundred rupees to charity fund of masjid if he did not offer any of five prayers. In such situation no one else force him to take such undertaking or promise. The Shariah's teachings permit him to impose something upon his self by his own choice.

On the other hand if he did any mistake related to the right of people then the rulings changes accordingly. In this situation if he undertakes that by doing any mistake that harm other people, he will pay certain amount in charity. For example

few people are living in a room and all of them undertake not to harm other people, in case if anyone fails to do so he will give certain amount to charity. There are certain situations in which one can make a person take such a promise. E.g. Zaid has a vehicle. Both are Zaid and Bakar travelling in it. Bakar wants to drive and he asked Zaid to permit him. Zaid says that he may drive on this condition that he would drive very cautiously. Bakar makes this promise. For further security Zaid says that you are allowed to drive my vehicle on this condition that you make a further promise that if you are incautious you will give a certain amount of money in charity. Bakar accepts this condition as well and makes the promise.

It is clear that just as it is permissible for Zaid to make Bakar take the first promise it is also acceptable that Zaid make Bakar take the second promise, as the object of both promises is to protect oneself from potential loss.

An Islamic Bank is part of the banking industry. A fair amount of the funds it has are of those depositors that have deposited their lifetime savings with them. The Bank uses these funds to finance their clients. If the Bank does not impose an effective method to avoid delayed payments there would be a very strong chance that its clients would keep on delaying their payments. If this becomes the case, Islamic Banks would face numerous economic problems. In fact, there would also be the danger of the Bank becoming bankrupt. Similarly according to Maaliki School of thoughts there are some clear narrations reflects the ruling of shariah about the promise fulfillment through court but the promise cannot forced to fulfill by the client according to Hanfi Jurists.

As Banks have the requirement and need that they can only enforce their transactions through a court of law, there seems to be room for the Maaliki opinion to be adopted in this situation. Especially when the matter under discussion falls under the category of commercial dealings, regarding which Hazrat Thaawi (R.A.) has allowed one to adopt the Maaliki view in some commercial transactions in Imdaad-ul-Fataawa.¹⁰

8. Conclusion

It is concluded from the above explanations that shariah status of the deposits invested in current account is the loan, not

trust or security and the deposits of other accounts are considered trusts and all the terms and conditions of the shariah ruling about it will be regarded. The performance of the bank regarding these accounts according to this study is up to the mark and follows the shariah teachings along with detail results of research reveals that the procedure regarding charity is not opponent to Islamic teachings as discussed in detail. Whatever the objections rose that the charity fund is contradicting the shariah principles is not valid and away from the fact. Therefore in the light of cited above explanations, the entire measures and procedures of all shariah compliant Islamic Banking Division of Islamic Banks are running under the proper supervision of Supervisory Shariah Committee which consist of renowned experts and well experienced. In short, in the light of this research it can be easily concluded that shariah rulings about different accounts and the activity of collection of charity for the specific purpose is clear and transparent and not contradicting the shariah principles.

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