

FATAWA ISLAMIC BANKING 2016

From: Valdez

Sent: Monday, January 18, 2016

Location: UK

Question: Islamic banking UK

Assalam Alaykum, I wanted to ask you if you know the Islamic bank "Al Rayan bank". Regards to opening a savings account (isa), they claim it to be a profit instead of interest as they claim to invest your money on halal activities (avoiding alcohol, tobacco, gambling etc.). I was wondering if it is actually halal to open and I am interested in the 24month/deposit,

More info can be found in this link: <http://www.alrayanbank.co.uk/savings/fixed-term-deposits/24-month-fixed-term-deposit/>

I will appreciate a response in this matter thank you Jazaka Allahu Khayran

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Valdez

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Yes, Masrif (bank) al Rayan of UK is an Islamic bank and has a Shari'ah board, I may disagree with some of their Fatwa even with that It remains an Islamic bank and you may deposit with it and earn Halal income InShaAllah.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Valdez

Sent: Monday, January 18, 2016

Location: UK

Question: Islamic banking UK

Assalamu Alaykum Dr Kahf I wrote to you a while back in regards to the AL Rayan bank in the UK which you stated to be halal Islamic banking my question to you now is can you provide evidences Islamic wise from texts to support the fact that this bank is halal I'm asking you this so that way I can show this evidence to other members in my community to support the fact that the bank in UK is halal

Your time and assistance in this matter is greatly appreciated Jazaka Allahu Khayran

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Mr. Valdez

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

There is no text anywhere in the world that states that Bank al Rayan is Halal. Your community (or maybe you) seems to be asking for the unattainable!

The website of this bank says it clearly and the mother bank website says it also clearly and it is a public info that Bank al Rayan of Qatar and all its subsidiaries commit themselves to Shari'ah and have Shari'ah board to advise them of related matters.

As I told you earlier I cannot face a person, legal or natural, who says I am a Muslim and tells him No you are not.

On the other hand, I also told you that we do not agree on all the Fatawa and practices that an Islamic bank does but we know that it does that on the basis of the opinion of its own Fatwa giving Board of Shari'ah experts.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Umaima

Sent: Sunday, April 03, 2016

Subject: Current account in IBs

Respected Dr. Monzer,

Assalam Alaykum. This is your student Umaima from QFIS. I am sorry to bother you with my questions but I really need your assistance for my queries:

1- The current accounts in Islamic banks are based on loan (Qard) contracts [Kahf, 2014, p.171] or on the basis of al-Wadi'ah yad dhamanah deposit [Rosly, 2005, p.151], and if there is any difference between the two?

Yes, there is a difference. Wadi'ah yad dhamanah means that this is a deposit in Shari'ah sense but the depositor betrayed the trust. Therefore the profit belongs to depositor and accordingly the IB pays return (interest) on current accounts in spite of the presence of Dhaman which is a characteristic of lending. Loan is clear that it has the Dhaman of the borrower but any increment is interest (Riba). to my knowledge that new regulation of Bank Negara eliminated all that and determined that current accounts deposit are only loans, this need to be verified. In other words WYD is another way to combine the Daman and the return on the deposit. Which is a gross violation of the established principle that al Kharaj bi al Daman, which means if you want return you have to own and bear ownership risk (Dhaman= liability to whatever may happen to your property=property or ownership risk).

2- What is your opinion on the gift (Hiba) that is given on the current accounts in the Malaysian banks?

It is Riba anywhere introduced. Changing name does not change reality. Saudi Arabia's SAMA did that when it used 'Umulah in place of Fa'idah.

3- Are preference shares prohibited in all cases, or are they acceptable as long as the dividends are not cumulative? (I remember reading this on a document of a Malaysian bank which I am unable to access at the moment).

The OIC Fiqh Academy placed an end to this issue: any financial preference is not permissible (2 reasons: 1) guaranteed dividend means interest, 2) treating the equal unequally). But any

managerial preference is permissible provided it is fair. I add for managerial preferences (in voting) and non-monopolistic.

Many thanks and regards,

Umaima

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Umaima

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please see my answers below the questions:

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Cyrene

Sent: Saturday, June 11, 2016

Subject: interview on Islamic finance

Dear Prof. Monzer

First of all, I wish you Ramadan Mubarak for you and your family.

I'm writing to you, Mr. Monzer, because I need you to answer to this interview, as part of my preparation of my Master degree.

I come to you on behalf of my friend Skander Chrigui. He gave me your e-mail, and told me that you would surely help by answering to my interview.

I thank you in advance for your time, and consideration.

I look forward to your reply.

Yours sincerely,

Cirine

My Answer:

You're welcome,

Here are the questions and my answers:

We are going to clarify few points about Islamic Finance:

According to you:

- What makes the difference between sales and Riba?

Real presence of commodity and limiting finance to a max,

- It is claimed that the Islamic banking is respecting the Islamic law, except that the ethical products like those based on profit and loss sharing or charity are non-existent in Islamic banks. What is the reason that lies behind that?

This except is a wrong concept (it means the question is not accurate) because compliance does not mean doing everything in the book. It rather means doing within its boundary. The reason is risk management and protecting rights of depositors and shareholders.

- What is the nature of the Islamic banks? Are these just classical banks; purely made to make more profit and to avoid risks.

Except for a few that are specialized as investment banks, many commercial IBs make profit and avoid risks. Also Investment IBs do the same but at a different business model.

- What is the level of credibility of Islamic Finance scholars?

High, except for the low credible Fatwa on Tawarruq.

- Some argue that the Scholars' decisions about the "Inflated fees" are now introducing a so-called "Fatwa Shopping" ideology, are these fees really considered to be exaggerated?

Which inflated fees are these?

Fatwa fees paid to scholars or transaction fees charged to customers. The latter are within the limit posed by Central Banks and some of the former are high especially when the cake is big and the fatwa is Tawarruq related.

- What do you think about the Islamic windows?

They are OK, a good tool to increase competition and improve efficiency.

- How do you explain that a system rejecting usury (Islamic system) is integrated into the national conventional system?

This is the nature of this religion (in contrast to ISIS mentality): peaceful co-existence and tolerance of the 'different' or the "other."

- What do you think about Islamic insurance "Takaful"? Is it only a change of title compared to a conventional insurance?

No. It is rather a change of terms of reference and accounting system. Although Takaful-operator system hijacked the idea of cooperative Takaful, the Problem Takaful solves is prohibition of trading or sale of risks.

- What are the Islamic products that really respect the Islamic Law?

Murabahah, Ijarah ending with ownership, Istisna'/counter Istisna', Salam/counter Salam, Mudarabah (for resource mobilization) and Ijarah Sukuk.

From: Cyrine

Sent: Sunday, June 26, 2016

Subject: Are banks themselves Haram?

Dear Dr. Kahf,

I'm really honored to be answered by a great scholar like you. And I would be more honored if you answer to this question too.

Many says that the bank, itself, as an entity, is Haram, and shouldn't exist, and they argue by explaining that if it is really based on sale, then it should be called commerce, not bank (which is "a for-profit entity" and was made on illicit bases). What do you think about that?

Again, thanks a lot for your time.

Yours respectfully,

Cyrine

My Answer:

I think this is plain rubbish that needs no answer.

These people do not know finance and do not live in our age. Financial intermediation is a new economic function that cannot be undertaken by merchants who deal with commercial intermediation. FI is a necessary function in any economy that surpasses the small village community in which people know each other. It is a function that can be set in accordance with Shari'ah.

Wa Allahu A'lam
Wa Alhamdu Lillahi Rabb al Alamin
Wassalam
Prof. Dr. Monzer Kahf

From: Faduma

Sent: Wednesday, August 03, 2016

Subject: Banks offering Islamic finance for house purchase in Canada

Assaalaamu Alaykum Dr. Kahf,

My parents just recently attended one of your lectures at the Muslim Mosque in..... regarding purchasing homes in a halal way which you advised were common among the Guyanese community (from their understanding). My husband is Guyanese and he is not aware of any banks in the Toronto/Malton area that allow us Muslims to obtain mortgage the halal way. Would you be so kind as to let me know if you are aware of any banks in Toronto/Malton or even in Mississauga that cater to ways of Islam. I would love for my parents to purchase a home near my area and be closer to me.

I hope to hear from you soon.

Assalamu Alaykum,

Faduma

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Faduma

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

What I argued is that Muslims must negotiate with local banks and credit unions to offer Islamic house financing schemes. I do not know of any existing now in this area. I know that The Credit Union Assiniboine offers the same in Manitoba, so why not in Ontario?

However, the Islamic housing cooperative in Ontario offers Islamic finance and you may approach it.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Esam

Sent: Wednesday, August 10, 2016

Subject: Opening Bank Account

I'm obliged to open a bank account so that the company where I work can transfer my salary to it. Also, my pension from earlier official work, from which I had retired, is transferred to this account. Really I'm not comfortable with this. Could you kindly enlighten me if it is OK according to Islam's rulings?

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Opening a checking account that does not generate interest is permissible because you do not earn or give any interest. It has become a necessity in our times as you notice in your case. We all deal with conventional banks and we make our best to avoid interest.

However, if there is an Islamic bank in your area, it is much better to deal with it because even when you have only a checking account the bank may use your money anyway.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Omar

Sent: Thursday, December 22, 2016

Subject: بعض الأسئلة حول المرابحة في البنوك الإسلامية

السلام عليكم ورحمة الله
جزاكم الله على الندوة القيمة و الشيقة
كان لدي سؤال حول البيع بالمرابحة:
- ما هي الشروط التي يجب أن تتوفر كي يكون البيع بين البنك و البائع مكتمل شرعا؟
أن يكون البائع مالكا وقابضا وأن تكون السلعة مباحة. أما بين البنك والمشتري فيشترط تملك البنك بعقد شراء صحيح وأن يقبض البنك السلعة بنفسه أو بواسطة وكيله قبل إجراء العقد مع الزبون.
-هل يجوز للبنك أن يضع بند الفوائد في حالة التماطل في الأقساط و إذا كان غير جائز بماذا تعوضه البنوك الإسلامية؟
بكل تأكيد لا يجوز بند الفوائد. وهناك بند غرامة التأخير وتكون عالية بقصد ردع المدين عن المطل أو أي تأخير. ولكن ينص العقد دائما على أن البنك لا يستفيد منها بشيء سوى التعويض عن أية نفقة فعلية إضافية يتسببها التأخير للبنك(أرجو أن تلاحظ الكلمات المختارة بدقة).

My Answer:

بارك الله فيكم و السلام عليكم الأخ المكرم عمر
السلام عليكم ورحمة الله و بركاته
أرجو أن تنتظر في الأسفل عند الأسئلة
مع أسمى التقدير وأعز التحية
أ. د. منذر قحف

From: Omar

بارك الله فيكم
أرجو أن يتسع صدركم لي حتى أتمكن من فهم الموضوع
هنا فقط تصحيح فهما خياران: بالنسبة للمسألة الأولى إذا فهمت البنك يجب أن يقبض السلعة هو أو من وكل عنه و بعد ذلك يمضي عقد البيع مع المشتري أو أن عقد البيع يكون ممضيا سلفا قبل القبض مع بند يعلقه بالقبض
بالنسبة للمسألة الثانية كيف للبنك ان يضع غرامة مرتفعة كي يردع المماطلين وفي نفس الوقت لا يستفيد منها، إذ المنطقي أن الغرامة تكون على قدر الضرر مثل الخسارة المترتبة على عدم استثمار القسط المتأخر في المضاربة أو غير ذلك وفي هذه الحالة ينظر في ربح المضاربة في الفترة التي تأخر فيها القسط ويغرم العميل.
1) تسترجع بالملك وقد حصل ذلك عند البيع أما أن تسترجع من خطأ الآخر وهو التأخر فلا مبرر لذلك،

2) الغرامة لها هدفان الردع والتعويض، للردع ينبغي أن تكون كبيرة والتعويض هو فقط بقدره وليس أكثر منه.. فماذا نفعك بما يزيد من الغرامة عن التعويض؟ لا يرد لدافعه لأنه بذلك يفقد المقصد، إذن يعطى للفقراء شأنه في ذلك شأن أي مال في يدك هو ليس لك ولكن ليس له مستحق أيضا،

3) في المضاربة أيضا لا نأخذ عند التأخر أي زيادة افتراضية، لا في مضاربة ولا في مرابحة ولا في إجارة، من قال ذلك؟
4) لا يجوز أبدا أخذ زيادة مقابل عائد متوقع قد يحصل وقد لا يحصل بمعنى أنه لو كانت عندنا النقود لاستثمرناها فكان عائدها كذا مثل عائد أمثالها.. هذه فرضية وليست حقيقة. لأنه يمكن أن لا نستطيع استثمارها أو أن لا تدر ذلك العائد. هذا من مقتضى مبدأ الحقيقة REALISM في الاقتصاد الإسلامي عموما وفي التمويل خصوصا.

هناك أحوال قد نأخذ فيها زيادة مقابل عائد حقيقي فقدناه بسبب التأخير، مثاله: في عقد استصناع مع صانع ينتهي بالتأجير المنتهي بالتمليك مع الزبون، والزبون محدد وعقد الإجارة معه موقع على الصفة والأجرة فيه معروفة. إذا تأخر الصانع أخذنا من الغرامة بمقدار ما فاتنا من الأجرة لأن التأخر على الزبون بتسليم المنفعة يرفع وجوب الأجرة عنه.

بارك الله فيكم

السلام عليكم

My Answer:

أرجوك النظر إلى الأجوبة عند الأسئلة في الأسفل

Best Regards

Dr. Monzer Kahf
