INTEREST-FREE BANKING IN ISLAM

By BAQIR AL-SADR

English Version
MOHAMMAD R. ABID

Publication

In Submission

With the advancement of the civilization, a financial institution called bank has emerged and risen to take a key role in the economy. This bank seems to be an invention of a basic need of the society, to get rid of the money lenders' trap. The bank in a way institutionalized the money lenders' business and rationalized the rate of interest to lessen the social bane of usury. In course of its' development, the bank has furthered to such a varied typed of useful activities as wealth management, money transfer, foreign exchange business etc. and sometimes issuing money. Thus the bank has occupied such a position in the society today that one can't imagine to afford avoiding a bank.

The bank's main business still revolves around interest only which has become lifeline of banking. This interest, as a matter of fact, has been main tool in the hands of the 'grand old men' (mahajan) money lenders for exploitation of the masses. The interest still has all the potentiality to become a curse for the society. Interest in the form is prohibited in Islam which is a comprehensive way of life more than just a set of some beliefs and a few rituals. Thus an individual or an organization committed to Islam cannot have a connection with the present day's interest-bound banking. Does it not mean that a muslim is caught between the devil and the deep sea? So it posed a big problem for the muslim individuals and muslim states as well how to get along without banking or to find out some

way by which one can sail through banking comfortably without being trapped in any inclemency under Islamic laws. In the way it remained a challenge specially for muslim clergy to find some way out till Baquir al-Sadr came forward with his celebrated work, 'Al-Bank la Ribawi fi al-Islam' (in Arabic) whose English version is presented here.

Hailing form a visible family held in high esteem due to its imtellectual base, Sayied Muhammad Baquir al-Sadr (25 Zeeqada 1353 AH/1-2 March 1935 –19 Jamadul Ula 1400 A.H./9 April 1980) is a highly revered religious scholar-jurist, a prolific writer, a distinguished researcher and an esteemed teacher who rose to conduct and guide 'Dars-e-Kharij' (highest 'class' of seminary type of study and research).

He belongs to the rare (almost extinct) species of Islamic religious scholars who ventured into the field of modern learning. He achieved command over modern philosophy and economy as evident by his celebrated works, Falsafatuna (Our Philosophy) and Iqtisaduna (Our Economics). Besides it, he penned many other articles and books of equal importance in various topics. To name a few :

1. Al-Tafsir al Mauzui lil Quran al-Karim al-Mudrasa-al Quraniyyah (Thematic Exegesis of the holy Koran, the Koranic School)

2. Al Insan al Mu'asir wa al-Mushkilah al-Ijtima'iyyah (Contemporary Man and Social Problems)

3. Ahl al-Bayt : Tanawwu' ahdaf wa wahda Hadaf (The Prophet's Progeny Variety of Objectives Toward a Single Goal)

4. Al-Usul al Mantaqiyah lil Istiqra (Logical Basis of Induction)

5. Ghayat al-fikr (The highest Degree of Thought)

With his so multidimensional personality he was a an idealistic political thinker and activitis also. He put his own political theory of 'Wilayat-al- umma' (Governance by people) and founded a political party, Hizbul Dawatal Islamiya (Islamic Call Party). It was propbabily his political thinking and activity that attracted his persecution and torture by the Iraq's communist government, ultimately leading to this execution along with his sister Bintul Huda. His execution has been unanimously regarded as martyrdom to a noble cause (intellectualist but Islamic thinking and idealistic activity).

It was his profound knowledge of modern economics with his deep insight in Islamic jurisprudence that the Kuwait Government commissioned him to suggest ways of managing the country's oil wealth within Islamic framework. This lead to the incredite research work founding Islamic banking. Seeing its all out importance, its English rendering has been strongly felt since long. But any initiative in the direction could not see dawn of the day in face of the doom shrouding the whole of the atmosphere as access to the original work remained an illusion. So, for its English version, there was no option but to depend on its Urdu translation by Syed Zeeshan Haider Jawadi. The fact, that the Urdu translator is himself a renown scholar-writer in the field of Islamic studies and a disciple of the

author, takes the Urdu translation's graph of dependability and reliability towards higher side.

But for its English version, I don't know why it was zeroed in on me and I was entrusted with the job. Translating a work of specialized research, that too, from a translation is in itself a thorny challenging task. Anyhow, it was just at the instance of and on the insistence by my friend, Shadab Husain of Word Islamic Network (WIN) T.V. together with the persistent assertion by another colleague of mine, Syed Qaem Mahdi Naqvi 'Tazheeb' Nagrauri that I had to take up the job, though reluctantly.

What I could render is presented herewith. I regret much that the time taken in the English rendering and subsequent computer typing stretched much beyond a reasonable limit. I even don't think that taking this much time has done anything good to this English version.

Lastly but not leastly. I shall be highly obliged if shortcomings, mistakes and vies cropped in this English version due to my personal equation are pointed out from any quarter.

Thanks.

Lucknow
Dated April the 6th, 2011.

Mohammad R. Abid

CONTENTS

INTRODUCING INTEREST-FREE BANKING

FOUNDATION OF NEW THEORY

In the name of ALLAH, the most Beneficent, the specially Merciful

All the praise to Allah, the Lord of all the worlds, the best of blessings on the noblest of the creatures, Mohammad and his holy progeny.

In outlining theory of interest-free banking, it would be proper to hint at an important basic point that before initiating discussion, we have to differentiate between two types of stand and to decipher their respective responsibilities :–

1. A stand of a person, willing to establish interest-free banking in all the walks of life and all the sections of society, who holds leadership of whole system of the life and has control over all the of walks of life and wants to evolve interest-free banking system also as a part of making different walks of life, Islamic with the society and bank being Islamic.

2. Another stand is of a person willing to set up interest-free banking different from laws of the society with no section of life under his control and has to lead his life in the same vicious society and un Islamic community and has to set up banking where business of interest is prevalent everywhere in banking and non-banking establishments and where capitalist system is ruling over the finances, thoughts and morals, rather all the walks of life.

Apparently there is basic difference between the two situations. In the first situation, it is only to apply laws of interest free banking in an Islamic society, and it is not concerned with reform of the society which is already Islamic. Here the law of prohibition of interest can deliver all the benefits, for which the law had been formulated. No confrontation with other sections of life can be developed. The aim of every section of life is same as that of prohibition of interest, the spirit of each one is the very Islam which is the spirit of this law. I have already explained in my book, Iqtisaduna, (Our Economy) that the Islamic laws is such an aggregate whose all the elements have mutual relationship with each other and each element makes the way for the other one and makes opportunities available for their perfect utilization.

The difficulty of one whose destiny is the second situation, contrary to the first, is that he wants to apply prohibition of interest to a bank whereas all the other banks and financial institutions are based on interest and the Islamic rules and commands are in a state of suspension in all the sections of life.

This indifference of the situation obviously cannot produce all the results which can be in an Islamic society and which are very much easily achievable when Islamic commands rule the society. But it does not mean that every man is excused and is free from the Islamic rules and has to be content with the running system.

The Islamic commandments are bound to be adopted in full and duty of every muslim is to implement the whole of the commandments in the society. If at a stage, one becomes helpless

and excused, this does not mean that the need of applying rest of the Islamic rules ceased to exist. There will however be the need and one will have the concern for applying the rules to the extent possible. May be this way makes room for the other rules.

It becomes clear here that there is every possibility for the person of case I, setting up interest-free banking that he might take full Islamic advantage from the banking and that there might emerge the main objective of the Islamic economics, the collective balance and fair distribution etc without interfering other section of life, since Islamic laws govern each and every sections of life and the whole society is obeying it in letter and spirit.

There is evidently neither contradiction nor interference between different sections of a life system. It is something different if some problems are faced due to interconnection with other non-Islamic Societies.

But it is totally different from the case II where the stand itself has developed the constraints in the situation while the society raising hindrances. The theory of interest free banking in the situation will not be easy to apply while it will be easier for if to explore better means for the application, as all the means are under control of aliens (to Islam) and the ‘interest’ system rules over the society. Hence even an Islamic bank is forced to adopt, for its existence, such a method of working that could provide the means of existence in the atmosphere on the ground and could keep connection with the other bank following interest system.

PHILOSOPHY OF THE NEW THEORY

We would discuss the interest-free banking system as in the case II mentioned earlier since the situation of the time cannot be changed and the circumstances have set up fully in economic, social, Intellectual and political fields.

Apparently if we had been in the situation of case I and the society had been under our control, our style would have been different altogether. But under present situation, it is our duty to search out rational religious form of interest-free banking.

There are three conditions for success in the search. Without taking these condition into consideration, a correct formula cannot be evolved:–

(1) The new banking should not be against the Islam Commandments.

(2). The banking should have so much capability that it should be successful while living in the worst type of the society and 'interest'ridden community. In its course, there should not develop such a situation that the religious form comes in collision with the present system and it has no chance to progress.

This problem is obviously not present in the case I where we had power there to close down all the organizations dealing with the interest and to remove out such system altogether.

The society, its economics and its think bank were in our control and we were in a position to operate the interest-free system satisfactorily. There was no possibility of other laws to interrupt the way. Every law was to cooperate and every section of life was to pave way for progress and development.

It could have been apprehended that whole of the problem is not to formulate interest-free banking and to explore its principles. Much more grave problem is to develop such a circumstance that could not make collision with the present system and to adopt such a method that pace of progress and development is not halted, nor the success transforming in to face of failure.

(3) The Islamic nature should not make the interest-free bank merely a business enterprise where trading is carried out with yielding recurring profit, but such a style should be adopted that the bank should be called a bank. Its form and nature be that of a bank. It should carry out all the functions that other banks of the world usually do. There, money should also be deposited and money should also be given to big business on loan the commercial and industrial establishments should be given support, there should also be system of cheque etc and such condition should be developed that people should use to deposit their wealth in the bank .

Besides all these, banking has a visible share in a nation's economy and has an equal share in the industrial development.

Bank in the world plays very important role in the country's economy and is regarded as a basic financial source.

Summary

A brief outline of the details of terms and conditions is as below:

1. The bank should not be against the Islamic commandments and rules.

2. The bank should have such a power that it might survive in the worst society but its position and reputation should remain as a bank.

3. The Islamic nature should not make it a commercial establishment.

Remaining as a bank it should carry out all the functions which world's other banks do. It should promote the economic life, develop the industry and help and support every developing organization systematically.

On the basis of above-mentioned policy, it is our duty to have Consideration of all the three conditions and develop concept of a such a bank which can carry out all the above-mentioned functions. After it, we would have no restriction whether to opt the way the commercial banks work or the style in which co-operative banks function.

Our job is not to copy it but to formulate a bank that could fulfill all the needs of the bank and at the same time be free from the curse of interest.

BASIC POINTS OF THE NEW POLICY

The basic policy fixed for the new system whose terms have been discussed earlier are summed up in the following pointed.

1. The importance of human factor should be expressed and it should be made known that human labour like capital is a regular source of income .

   Interest-based bank presents itself as a capitalist and thus arranges its own income while interest-free bank presents itself as a labour and manages its income through it.

   This ideology would on one hand give interest a form of wage and labour charges and would invoke the interest-free bank to expand circle of its income on the basis of wage and on the other hand would avoid taking interest by making the profit of the loan as wage of the capital.

2. It should be tried that the bank's position remains as a link between depositors of the money and the traders and its legal position should not cross beyond one 'medium'. The prevalent interest system might often hinder on the way of these efforts and would try to make the bank a dealer by taking it out of its position as a link. But these cannot make our efforts unsuccessful and the interest-free bank will keep Islamic roots intact is a way other and will keep on invoking muslims to keep on moving on the paths of interest-free system whether

just theoretically stead of practically, since the bank being interest-free is a privilege that muslims would use to receive in recompense of abiding by the Divine Commandments.

3. Those propagating the Islamic spirit in the interest-free banking have to offer scarifies in the way of new experiment and have to face some difficulties also. Such persons should be prepared to sacrifice some interests in propagating the holy system or to face some risks in the way.

It is not an ordinary act to present new system before the world and to inspire Islamic spirit in it. The duty of one taking on this responsibility is that he should have a prophetic spirit and faith (committed) motives and instincts also along with commercial aptitudes and he should think all the time that his job is not merely a commercial business wherein eyeing profit only but it is also a holy struggle (jehad) to take on burden of Divine message and to renunciate the society from the non-belief and atheism. A crusade wants sacrifice at all and a crusader has to give something or other.

A duty of the interest free bank is to keep this point in view in order to take up the burden of the Great Divine Message in the world full of interest that the profit here should not be accounted merely on the basic of fiscal data but profit should include the great interest that appears in form of applying the highest divine message to the earth.

This thinking and this sacrifice can be expected from a muslim only. This act is not that of those commercial people who are

not familiar with the prophetic nature of the bank and are ignorant of running some grand life system under veil of the bank. They are not blessed with the elevated soul that has inspired those devoted to of interest-free bank to carry out such a big experiment and to present a new system of interest-free banking.

4. The interest-free bank has to find out such a way also by following which it could accomplish its individual task and fulfill a pious duty of lending without interest in the world full of interest.

In search of the way, the interest free bank has to adopt a distinct manner in its dealings and to find out such dimensions off the course of general banks' dealings where such a trading could flourish.

This course is very much difficult in the way that the bank, on one hand, has to give loan to individuals and groups without making profit (say taking interest) to save itself from curse of the interest and on the other hand, it has to deposit its money in those banks which are not in agreement with this principle and trading of interest is continued there since they are not Islamic.

As if this bank has to adopt such a trend where it not does charge interest on loans given by it but there should be permissibility of taking interest when its money is deposited in the other banks since (as a rule) one has to take interest, as whole of their business is running on interest only.

The rational permissibility of such a trend is this that the compulsion of taking interest by the interest-free bank has emerged out of the system of the present day banks, hence there comes no responsibility on it and it has right to take all the money which opposite party is ready to give on its own. But there are many considerations as regards to its religious laws (shari'ah), most significant of them being the Islamic jurisprudential problem that it is permissible to take interest while dealing with a non-zimmi non-believer and there is no objection as per shariah (religious laws). It is this problem that besides all the Shia scholars the Imam of Hanafi School also agrees on it.

PRESENTING THE INTEREST-FREE BANKING SYSTEM

The interest free banking system will be discussed in two stages.

1. Basic points of discussion is to find out the way that when adopted might cause salvation of the interest free banking from the trading in interest. This trading in interest is to take profit (Interest) on depositing money in modern day's banks and to give interest on taking loan that has given rise to the confrontation and conflict between Islamic and non-Islamic banks

   To get rid of trading in interest and the conflict between the two types of the banks, we must necessarily evolve a formula by which such a relation should be set up between the depositors of money and the traders that could salvage from the present system of taking interest on deposit and giving interest on taken loans.

2. By presenting the details of basic functions, services and facilities of the present days bank, it would be expressed what opinion, based on the Islamic laws, is about problem

---

(1). It may be mode clear that in we have taken a deviation in the order off the current trend since the sources of income of the banks are discussed first in the current trend, followed by the spending then. We have given up the trend. This trend may be settable to banks of interest system but not favorable for the interest free banks.

and what behavior a interest free bank should adopt in the matters(1).

The problems of deposits in the interest banking come under 'income' while the problems of lending money and taking loan come under 'expenditure'. Here of receipt of money is a function while giving the money for business and trading is another one. But it is not so in the interest-free banking where in the functions cannot be separated from one another. But both the income and expenditure are two aspects of a single function . It is called "Mudariba" (trading to earn profit) in terms of Islamic laws. The member and elements of mudhariba cannot be separated from one another. To separate income from trading and to discuss the two as regular ones is not possible here.

With these points in view, we have evolved a new innovative method of discussion and have taken a course off the current trend

The elements and members of the mudhariba ae mutually related and interconnected. To separate them will be literally to finish the spirit of the real matter.

In the first stage, we would present the formula that should be made order of the day in the interest free banks and in the second stage, we would discuss about the derails of present day banks so that an Islamic view could be expressed about them.

FIRST STAGE

RE-ORGANIZATION
OF RELATIONSHIP

A NEW ORGANIZATION RELATIONSHIP BETWEEN DEPOSITORS (FINANCERS) DEPOSITORS AND BUSINESSMEN/TRADERS (AGENTS)

The finances of a bank usually comprise two things :–

1. The money on which bank is established. It goes on increasing . The increase becomes banks property and is not distributed amongst depositors.

2. The deposit in the bank that forms major part of the bank's income

The biggest trading of the bank is to accept deposits on the condition of giving or not giving profit, then award them to its own lendees/traders award them to extract maximum of the profit out of them.

The real profit of the bank has in the difference between the interest taken and interest given or that taken from traders or businessman but not given to the depositors.

The biggest importance of interest bank in economic life is that it does not let the money be idle or suspended with the people but it makes recovery of money be alluring people on profit of morale. Then it does not let the money idle with itself but lend it out to the factory owners and traders so that they could give their business and trading a boost and could run their factories.

In the light of this, it is made clear that the double relationship with the depositors and borrowers results summarily in that bank becomes a link economically between the two with its function being just to take money from a party and to pass in or to the other party and that is all. There is not more position of a bank in the commercial world.

As far as its legal position is concerned, it is regarded differently. The capitalism has taken support of two regular laws for giving legality to the double relationship.

In one law, the relationship that bank has with depositor or financer has been taken in view. Here bank has been supposed as borrower and the financers as lenders while in the second law, the relationship with traders has been eyed. Here bank takes position of a capitalist and traders position of borrowers.

It clearly means that the bank is not only a link between capital and business/trading in capitalist lows but it is centre of two regular laws. Keeping this position in view, the connection between capital and operation does not last and a depositor is separated from the trader/ business man. Both are related to bank. It becomes borrow for one while and lender for the other. It gives profit to the depositor in the position fo the borrower (it their money is not withdrawable all the time) and takes profit from the traders in the position of lender. The whole of interest system emerges out of this combination of loan and deposit only. This interest has been made prohibited by Islam.

Our aim is only this that bank should be run on Islamic principles and it should salvation from whole the system of interest. So it is our duty to divide the deposits into two parts: (a) Fixed Deposits (b) Current Account

We would establish a new relationship between the deposits and the trading by making above mentioned legal form of the fixed deposits null and void. In our system deposit and trading shall have direct concoction legally between then and both would be regarded a party of the deal with respect to one other. Bank's position shall be as a link only whose function will be to take money (capital) for a party and to pass on to the other and that is all. It is the actual position of the bank.

If all the relations of the bank are viewed as separated from their light forms. Its function is to pass on the money to the business which cannot be done without money. As if money needs trader and trader needs money. The bank has fulfilled both the needs and it has mediated in between them for transaction of the money.

The bank has the very same position in our new theory. There is direct relationship between the depositor and trader here and bank acts just as a link.

The position of current account is a bit different from it. Our outlook regarding it would have a style different from that regarding fixed deposit.

We would discuss about the fixed deposit in the beginning and would make it clear how direct relationship could be established between the depositor and the trader.

After that we would discuss the current account and throw light on its details.

It is necessary that the meanings of fixed deposits and current accounts be considered in depth at first hand so that there should be no difficulty in following a detailed discussion.

BANK DEPOSIT/ACCOUNT

FIXED DEPOSIT

A fixed deposit is that money whose owner gives it in custody of the bank and thence evolves a special relationship with the bank and keeps on to getting profit regularly after that.

The objectives of such depositors are different. Some aim at that money remains with the bank to have continuous profits. Some people withdraw it at time of their need for which they save the money.

CURRENT ACCOUNT

In a current account, the money is kept with an eye on to withdraw a the part of it any time when desired. Thus the current account is formed. This money is generally deposited by businessmen and traders who always need to withdraw the money.

There is no question of gain on such deposits. The responsibility of the bank is just not to offer any objection in giving the money back as and when needed. This is not the case with the fixed deposit where bank gives profit necessarily but does not take liability to give the money at the time (of the depositor's need).

SAVING ACCOUNT

There is a third type of deposit which is called saving account. It has qualities of both the above two types of deposits and can in a way be connected to both of them. There is a regular account for

the money and a separate ledger is maintained in which all the accounts is recorded.

It is connected with the current account because there is provision of withdrawal of the money anytime and the bank is liable to pay the amount as and when asked. It has connection with the fixed deposit since there is possibility of gain from it and the bank uses to give profit regularly.

Regarding such type of deposit, bank declares that the depositor can withdraw his money anytime and the depositor expects his money to be safe with the bank for it, the bank has found out a way of public interest that the depositors' accounts are maintained regularly and recorded (in the respective account of the account holders). Thus the depositor is satisfied that his money gets increase.

These three types of the deposits can be contracted into two with a slight change: (i) The deposit whose money is ever in demand and it can be withdrawn any time (ii) The time bound deposit wherefrom withdrawal is not possible all the time.

The type(i) is current account and type (ii) can be further divided into two (a) Fixed deposit and (b) Saving account (Growing deposit). Thus second and third types of the earlier classification have been grouped into one.

Our discussion is primarily concerned with the former two types. The third one shall be discussed at the end of the discussion on fixed deposit when difference before them would be deciphered by throwing light on the characteristics of the two.

MUDHARIBA (BUSINESS) : BANK'S FRESH RELATIONS WITH RESPECT TO FIXED DEPOSIT

The procedure of deposit in the banks' fixed deposit passes through two stages: First the bank accepts the money from the depositors as a loan and then the bank hands it over to the business people in a later stage so that they could deliver profit for the bank by doing business.

Both these functions may be recorded under a single relation in the light of Islamic Laws. The bank has a dual relationship in the general interest-based banking, one with depositors and another with borrowers. These two relationships take a form of a single relationship in Islamic laws when money lender (depositor) becomes directly related with the borrower leaving just a position of a link for the bank. It is called Mudhariba (Trading/business) in religious terms.

MUDHARIBA IN ISLAMIC JURISPRUDENCE

The meaning of mudhariba in Islamic jurisprudence is altogether different from that of business/trade in modern economics. The mudhariba in Islamic Jurisprudence is that particular agreement which is made between owner of the money and trader with the condition the trader shall do business on commission by taking money from the owner (financer/investor) so that the money belongs to a party

and labour to another, while the profit should be shared by both the parties according to the respective percentage. If there is profit in the business, it shall be distributed between both the parties on the basis of share-percentage agreed. If there is zero profit (no profit, no loss), the financer shall get his money back in full while the labour of the trader shall go in vain, Likewise the financer only shall bear loss in the capital, if it occurs, with no liability on the trader(commission agent) who shall have to pay no more penalty or compensation for the loss except that his labour going in vain.

However if the money is given as loan to the trader, the compensation for such loss may be demanded since the loss (in business) does not affect the outstanding loan. But in such a situation, nothing can be claimed as a profit since taking such a profit on a loan is interest which is prohibited in Islam.

(Vide appendix for detail of this difference and its Islamic jurisprudential reasoning.)

MEMBERS OF MUDHARIBA

The members of such a mudhariba of this new Islamic concept are as follows :–

(i) One who offers (invests) his money for trading (financer/investor)

(ii) The trader who becomes (commission) agent

(iii) The bank that stands as a link between the two and lends out money of the investor to the agent in capacity of being attorney of the investor.

All the conditions for running the bank on the basis of mudhariba through fixed deposits must be understood which are necessary for being members of the mudhariba and without which the rights could not be fixed and renewed.

CONDITIONS FOR THE MEMBERS OF MUDHARIBA

The bank cannot act as mediator being a link between the financer and the agent unless and until the financer and the agent fulfills some specific conditions as detailed below:

CONDITIONS FOR THE FINANCER (INVESTOR)

It is duty of the bank to take the following conditions with respect to the financer into consideration before channelizing his money on his behalf in capacity of his attorney and should not take the responsibility of mediation without it :–

(i) The financer should pledge in accordance with the religious laws that his money will remain in use by the bank for at least six months, otherwise he will not be made a party to the mudhariba and the bank will not accept his attorneyship.

(ii) The financer should agree with all the terms and conditions, fixed by the interest-free bank for the fresh mudhariba, which would be explained since the very beginning

(iii) The holder of a fixed deposit shall also maintain a current account with the bank.

The last condition could be changed under circumstances and the bank can take its ease according to its needs. It may even

withdraw the condition at all at the time of the need of the fixed deposits as to attract people to hold more accounts (with the bank).

There is no need of fixing some specific quantum for the fixed deposits and deciding to accept only huge amounts for the fixed deposits after these conditions. Even such minimum amount that alone cannot set up a mudhariba can be accepted because mudhariba of a single person is not in practice in the bank's dealings but it is the collective amount that is invested in the business (mudhariba). All the deals are connected with an infinite ocean of money which comprises money from innumerable persons. Obviously under the circumstances a party's, money being petty or humble obviously cannotaffect main mudhariba

CONDITIONS FOR AN AGENT

Some conditions for an agent of the mudhariba like those for financer are also necessary. Without them, the bank can neither act

on his behalf, nor can provide capital to him. These are as under :–

(1) An agent must be honest. At least two person known to the bank should testify his honesty and trustworthiness

(2) The bank should have sufficient evidence that the agent has capability to invest the money borrowed from the bank in the ways of minimum risk or at least the bank should have good expectations about him and it should have such past record of dealing will him that could have generated satisfaction.

(3) The likely trade/business in which the agent wants to invest the money should be limited and known.

(4) The persons having record of dealing with the bank and also having fair record should be given preference.

(5) The agent should be committed to all the terms and conditions, as fixed by the bank, e.g. :

(i) The terms and conditions related to the profit distribution,

(ii) The agent must keep his contact with the bank throughout the period of the deal and has to hold his current account will the same bank,

(iii) The agent must keep all the record utilizing the mudhariba money maintained properly, but at times, the certificate by a charted accountant (registered by the Government) may be necessary(i).

---

(1)It does not mean that the interest-free bank would not like to have dealing will such businessmen who do not keep their accounts properly or whose profit accounts are not audited properly as is usual in developing countries, but the bank shall have limited connections with such persons. If any of such persons demands any amount to purchase (say) wheat to sell later on at some suitable time, the bank should maintain his record limited to the deal properly, whether there should be no record of his other deals. But if a person whishes to start a formal enterprise based on Mudthariba, it is bank's duty to maintain record of his all the deals (and accounts properly).

As far as question of legal auditor is concerned it is easy at the places where some regular firm is established and corporate business is running is government or private venture.

The difficulty is with those small businessmen and traders who have limited deal with the bank. But, for it, the bank from its end may possibily appoint an auditor whose fees could be drawn from the gross profit (of the business).-Author

(iv) The bank should prepare separate record of all the particulars concerning the mudhariba for each of the mudhariba. The mudhariba deal shall be the first document of the record. It shall be obligatory for the agent to keep the bank informed of each and every while of the course of his business right from the beginning till the end of the mudhariba. The bank must keep on recording what the material had been purchased, what the changes are occurring and what could occur in the market price and what is balance between sale and purchase price etc.

The sources of supplying these data to the bank shall be initiated from the bank's end. It may specify certain indices and guidelines for it. It may even give option of supplying regularly information regarding the deal by telephone. Besides it, there may be other conditions related to the circumstances and the nature of the work and those cannot be initiated formally before time.

The bank shall start its job of mediating and counseling after all the conditions are found in the financer (depositor) and the agent (businessman). It's duty is to study the trade/business and its utility, for which the capital is sought and shall handover the money to the agent after thorough study.

It is also the bank's responsibility that it should itself keep on trying for the successful mudhariba and not keep the people's money idle and suspended. It is also not proper on part of it to act lazily in exploiting opportunities of successful mudhariba just to keep the money in its treasury or to prefer mudhariba out of its own capital over those out of other people's money.

RIGHTS MUDHARIBA PARTNERS

FINANCER'S (INVESTOR'S) RIGHTS

The first member of mudhariba in banking appears in form of the financer/investor. Financer means all those people with whose money the banking business is run. In the other words, it may be put like it that an apparent difference between the interest bound bank and the interest-free bank is in that the money is taken from the depositor as on loan and then after taking it in its ownership, the bank does business while it is not so in interest-free bank wherein the money remains in the ownership of its owner and the bank, taking money from the depositors with their permission, does business in capacity of a trustee only. It is something different here that the deposits are not kept separated but are mixed up with the permission of the depositors (owners of the money), thus making the ownership of the whole money joint and collective. The money is collective and the owner is joint. In each and every portion of the money there is right of every depositor in proportion of his respective share of money (deposit) and he is regarded as owner of his respective portion of money. Even all the new money pouring in would be put into the ocean of the money with its respective owner regarded as rightful owner of the respective proportional share of the collective money.

In defining the rights of the first member of the mudhariba i.e. the depositor, two points are extremely necessary :–

(a) These rights should be in harmony with Islamic rules and should not be object of mutual contradiction and confrontation.

(b) The rights should be such as to excite a zeal among other people to deposit their money in the bank, otherwise the interest-free bank shall die on its own if there remains this shortcoming in it and the interest-bound banks are attentive towards the point with the result no body attracted towards the interest-free bank.

According to the study and research, the following things may attract people to deposit their money in the bank:–

(i) Security of the deposit : The requisites of the interest-bound banks is that they take money as on loan so they are its surety.

(ii) Gain : It is the interest that the banks give (to the depositors) on the loans

(iii) Power to the depositors : The depositor may withdraw his money or part of it as and when he wishes as per the agreement.

[These points may be dealt by the interest-free bank in the following way.]

(i) Security of the deposit : The interest-free bank may give surety to the deposits for their money in the deposit with the bank not because the deposit is a debt wherein there is surety necessarily, not because the businessmen are liable for the money as their position is as an agent and agents cannotbe

made liable for the money (capital) in the view of Islamic Laws. But the bank itself shall give the surety to the effect that value of the whole money (deposit) shall be paid in case the money is lost. There is no restrain according to Islamic Laws, in such surety. The objectionable condition as per Islamic Laws is when the agent is made liable for the capital because the agent is not liable for the capital according to Islamic viewpoint. His job is to do business. It is well and good if there is profit in the business otherwise he is not liable.

Obviously the bank is a just a mediator, not an agent. There is every possibility for a mediator to give surety to depositor for his money so that he may not hesitate to hand over his money to the bank and functioning of the bank be running in full pace. It is immaterial if the bank has to adopt such a course that the depositor gets satisfied according to Islamic laws that his money wont go waste and the bank will remain surety (guarantor).

(Vide appendix for details of the problem)

(ii) Gain : Another element of banking on whose confidence people entrust their money to the bank is the expectation of gain. This problem has to be remedied for the interest-free bank, otherwise all the people will entrust their money to those bank where gain uses to be got and the interest-free bank will be a flop.

Its easy way in the interest-free business is that the financer (depositor) should fix profit according to percentage and realize it

accordingly from the bank at the end of the deal since the banking business is Mudhariba in Islamic legal terms. Owner of money uses to fix profit percentage with his agent in mudhariba and it attracts no objectionability though there will remain a difference between this profit and the gain (interest) in the interest-bound banks. One would get gain (interest), after all in case of the interest -bound bank irrespective of rise or fall in the business. But it is not so in case of the interest free bank in which the business runs as mudhariba. Mudhariba's principle is that it is well and good if there is profit, otherwise none will get anything. Only the financer's money i.e. capital will be secured. The agent's labour shall go in vain. This speculation is only a theoretical one. It is usually just impossible that there is no profit in such a huge business. The style of the bank is not that of smaller shops in which probability of loss is stronger. In the bank, hundred of deals run simultaneously and capital of all (the investors) is mixed up in a fashion of joint enterprises. If there is no profit in a deal, there might be in the second one. If there is no profit in the second deal also, there might be in the third one. So on so forth, there might be profit in one or another deal. The profit, if there is in some deal, shall be distributed over all the investors (depositors).

Being no profit under such circumstances means that there is loss only in so many deals with no traces of profit. This can be postulated theoretically but is non-existent in the practical field.

Seeing the present days' circumstances surrounding the interest-free bank, I personally opine that the profit percentage to be earned in case of the interest free bank should not be less than the

interest being earned in the interest-bound banks, otherwise the people would hand over their money to the interest-bound banks with the interest-free banking system being a flop.

There is a way of its' presentation. At first the rate of profit in business under prevailing circumstances should be estimated approximately, then the profit percentage proportionately to the whole of the capital (whole money of the depositors) may be assessed and the depositors (and would-be depositors) should be told about the quantity of the profit that should not be less than the interest as given by the interest-bound banks. For example, if the bank's total money is Rupees one hundred thousand (100,00), the estimated profit in the business with such an amount under the present circumstances is 20% and interest usually given by the interest-bound banks is 5%, then the interest-free bank has duty to announce the rate of profit somewhat more than this rate of interest. It is immaterial here that the interest rate is fixed according to the amount of the deposits in the interest-bound bank whereas gain is distributed keeping all the profit is view in case of interest-free bank. The rate of gain should necessarily be more than the interest so as to generate attraction among people who would be encouraged to deposit their money in the interest-free banks, otherwise there is no possibility of success for the interest-free bank if the rate of profit is even equal to the interest rate since the interest is guarantied in those banks and every depositor is satisfied that his is safe and secured whether the business goes in loss or is profit. It in not so in case of the interest-free bank where there does remain a probability that the profit (for depositor) might be burnt out if there is loss in the business.

In view of these risks, the maximum portion of the profit should be distributed over the investors (depositors) so that the people be excited more and more and the bank records consistent progress and development.

There remains a question how much this profit should be more than the interest rate. But it cannotbe obuiously reconsructed wholly. The only measure of it is being to compare the probable's of profit with those of the loss. In there is more probabilities of gain, the profit should be made more. It the probabilty of loss is more, the profit should be made (declared) low.

It may be put so in clear words that there exist the probabilities of gain and loss both in a business and the profit distribution revolves around the two. As the probability of the profit increases, the gain would go on increasing. As the probability loss increases the profit would go on decreasing. Since these matters are related to circumstance, it's exact calculation is not impossible.

For example suppose the rate of gain is 5% in the market and the risk of loss is 10%, it means the average profit will be calculated in the following manner :–

5101
..
100 100 200

After it, the profit to be given to the investors can be estimated in the following way :–

To explain it in word, capital is Rupeas one thouseand (1000/ -). And expected profit in 20%, it means the profit is 200/-. The amount to be distributed the basis of earlier calculation is 55/100. The percentage of money to to the investors (depositors) would be calculated in the following manner :–

55 x 100 = 27.5% or 275
2001000

Before the Business

Even after managing the profit equal to or more than the interest being paid by the interest-bound banks, we feel that there is still a weakness left in the interest-free bank. It is that the fate of the money in the interest-bound banks starts to be visible since the very first day and the investor (depositor) starts to calculate gain on his money. But it is not so in case of the interest-free bank in which the money must necessarily put to the course of business for the profit percentage since question of profit does not arise before putting the money into business. After all, it is definite that the money is not put into business as soon as it is deposited in the bank, but there would certainly be a short period when the money is held up with the bank only waiting for a suitable time when it would be invested in some business.

This weakness must be remedied, otherwise people would never deposit their (hard earned) money in such a bank but would entrust their whole money to such interest-bound banks which give interest immediately.

We would throw a detailed light on the point under discussion of profit distribution and would explain how the people could entrust their money to the bank even in face of these risks.

OPTION OF WITHDRAWAL

It is also one of the interest-bound bank's particularities that every depositor has option to withdraw his money in certain period and may take benefit out his money under specified conditions as and when he desires. It is needed that such facility should also be provided in the interest-free bank and the depositor should also be given power to withdraw their money, though the task is extremely difficult at this point. The money is invested in different enterprises and is not just a sort of a debt that might be advanced or withdrawn as and when wished. Even then the interest-free bank may possibly fix a period of six months from the date the money is deposited in the bank, after which the depositor could exercise his option to withdraw the money. He shall not have such option before the period is over.

A condition could even be put in case of withdrawal that cash equivalent, not his own money would be given (if partial withdrawal is sought). For example, it is just impossible to separate out a person's share of business capital even after six months when the money (of all the depositors) is invested in business. But of course, cash equivalent
of his share may certainly be paid (to him as and when he demands). The banking business could not be run without it.

Withdrawal of his money by a person legally means that he has cancelled the mudhariba agreement and that he wants no more to continue with the agreement.

The following points must be taken into consideration regarding the power of withdrawal after six month :–

(i) The term of all the money may not necessarily be matured at one and the same time but for different money, the term of the six months may end at different point of time. Suppose one money would complete its six months, term today and a not after after two months.

(ii) It is definite under normal conditions that in repaying the money at the completion of different terms at different times, the bank has to shell off only a meager amount that may not be more than 1/10th of the whole money.

(iii) The money which depositor wants to withdraw after six months is not invested in a single enterprise so that its withdrawal would weaken the enterprise, but it is made part of an infinite ocean of (money) deposits. Its withdrawal would not affect in such a manner that could shock the business .But all the tradings would extend their support to overcome the weakness and the working of banking would continue.

(iv) Each and every plant where the money is invested will be liable to deposit a certain portion of the cash in the bank and to hold such current account with the bank.

It is for the plants which are not seasonal. For the non seasonable plants, the bank shall fix such a time when cash is usually accumulated and shall lay the condition that it opens a current account of its cash also with the bank whose quantity shall not be less than a specified quality.

After it, when the season is over, the bank shall entrust the responsibility of the cash money to those plants and trades whose season[i] is not fixed and keep on running throughout the year .

It is obvious that the plant committed to these rules may certainly get the money in cash in a limited quantity at a specified time of the year.

(v) The bank shall not necessarily be bound to give out of actual capital to the depositors on their demand after expiry of the term, but it may offer the value of its capital to the investors.

The value shall be managed through following means :–

(a) The fixed deposits that could not be invested in business but are in form of cash with the bank.

(b) The current deposits that the bank has got right to keep reserved with it and makes out of it the compensation for its losses.

(c) The primary cash assets (capital) the bank has kept safe to face these demands. If the bank has apparently paid up the value from the fixed deposits, there won't be any trouble in the distribution of profit, nor there will be any change in the deal.

(i) Prof. Dr Khaleel Samma' while studying the book 'Bank La Ribawi' has added the point that it is better to lay a common condition to each and every plant than to fix separate liabilities for different trades after categorizing them into seasonal and non-seasonal ones. The condition be: All the enterprises dealing with the interest-free bank shall be committed to deposit some of their cash money with the bank, how small be the quantity of money, but it must be deposited. It is of the sort of transferable security as prevalent in the commercial banks in USA.

But if the cash is given out of the current accounts or the primary assets (capital), it would affect the distribution differently, since the bank would take over position of the financer (ex-depositor) due to continuing its business and would have right of the share for period between the withdrawal and when the deal is over. Thus the bank has to deal with the fixed deposits along with its own finance as will be explained in details while discussing the profit distribution.

In nutshell , the theory of interest free-banking has found out such points where all the three components of 'interest' banking viz security of deposit, profit and option of withdrawal are present together while getting rid of curse of the interest.

After that, the responsibilities of the bank would be discussed.

RIGHTS OF THE BANK

The second important member of the banking business is the bank itself. But if considered deeply, it is neither a member. It is neither a financer nor agent but only a mediator between the two. The only advantage, it presence has, is that trader or businessman has not to beg alms from each and every financer. All these troubles are borne by the bank only. It gives all the money accumulated to the traders in lump sum. They have dealing with the bank only and the agreements are made with it only.

To carry out the big task is apparently an important service of the bank that deserves all the right to take charge for the same. It can demand all the charges as per agreement.

The bank's agreement could be of two forms:–

(a) It takes fixed labour charges, to be decided by the expected difference of the money between that to be advanced to the businessmen and that to be withdrawn by the depositors. The excessive portion, given to the investors in promoting deposits in the interest free bank, might be separated out.

If seen separately out, it is this excess money being the difference between the interest charged on one hand and that given on the other hand which forms the primary source of income (gain) for an 'interest' bank.

This quantity of the profit is not enough for the interest-free bank and this difference only won't be sufficient to support life of the bank since there is a basic difference between the 'interest' bank and interest free bank. All the liability of the deposit goes to the bank which is responsible for the money of the financers (depositors) while it is not so for the interest banks where businessmen who take money as loan from the bank are liable for the money.

It is obvious that the borrower and not the lender is responsible for the money (loan). But the trustee (of the deposit) is responsible after all whether to keep the money with himself or to entrust it to someone else.

Under the circumstances, the fees being taken by the interest-free bank should be more than that being charged by the 'interest' banks.

(b) Another aspect of the bank's charge is that traders should also be asked to pay charges other than the labour charges to the bank and certain percentage out of the businessmen's share be made to be given to the bank which should be made partner of the business with certain percentage of the share.

The charge can be assessed through charges for the security of two types of the capitals. To assess the charges, commercial markets doing business in interest should be surveyed avoiding Islamic markets and found out what is standard of charges for the deposits there.

In the interest markets where the money is secured, a bank demands a fairly good amount of profit from the traders. In the commercial markets, where money is always at risk and is not secured, financer co-shares the profit on percentage basis with the trader by having deal as a mudhariba (business contract) with the trader. It is generally seen that this profit as received on the percentage basis is more than the interest fixed by the banks since charges taken charges taken for the money for money secured has to be compulsorily less than that for the money not secured.

In the interest free bank, the difference between these two types of labour charges would be surrendered to the bank and would be regarded as its recompense for the labour (service). This Ju'ala(i) (reward deal) of the bank can further be explain in the way that there is a maximum and a minimum limit of the service changes for the money in the markets where transaction of money is done with both the capital and the profit guaranteed and secured. The minimum limit is that which is surrendered to the bank against the loan taken from it. There is another third type where the money is secured but not the profit such as the deposits in the interest-free bank where the value of the capital can be guaranteed but not the profit which is to be decided only at the conclusion of the business. There may or may not be profit. It is also possible that the profit might reach the maximum limit or not even to the minimum limit.

(i)Ju'ala is a sort of promise by declearing some (specified) reward or prize for some particular work or service. It becomes obligatory, under Islamic laws, on the part of one declaring such a ju'ala to give reward/prize once the work is acemplished though it is binding on non to take up the work inlike that in ijara (hiring for labour)

It is obvious that recompenses of money transaction which is fixed on percentage of profit basis should be more than that of the money with guaranteed and secured capital and profit. But this excess can be guessed only after speculation of profit and non-profit.

At this point there can be another fourth type when neither capital nor profit is guaranteed. Its example is that a person invests his money in the mudhariba of pure Islamic rules and takes no guarantee of the capital. Apparently there is no guarantee of the money nor of the profit since Islamic mudhariba is independent of the both and the investor always faces the risk.

It is obvious that the wages for such money (such transaction) should be more than those mentioned earlier and one should get the percentage of profit that should be more than all the wages fixed earlier.

It may be clear that we are not eying at Islamic laws while discussing the wages for guaranteed and secured money, but we are talking according to rules of the 'interest on cash' markets. For such things we are forced to take support of interest and commercial markets.

A study of these markets reveals that money deposited with the interest-free bank is totally unsecured according to the traders. They are guarantors of neither the capital money nor its profit, but of the wages only that bank charges for the service which has no link with the capital or its trading transaction. It has direct link with the bank's labour in which is service or labour is in view, not the trading .

The bank has taken responsibility of the capital and the financers/investors have taken the risk for the profit, otherwise it was much easier for them to deposit their money in the interest banks where gain (interest) is secured. Under the circumstances, it is responsibility of the traders that they should pay so such recompense that is equal to that of such free money in the general markets. They can decrease it by such amount that they have given to the bank as regular service fee (labour charges).

After it, the bank's account begins. It will take account of such money in which both the value and profit are guaranteed. It will add the charges for the risk of profit to the minimum limit of the recompense after estimating it and shall give sum of the two to the depositor; the rest of the money will be its propriety that it has earned as service charges.

But it should be remembered that all this responsibility of the traders is not concerned with their personal money but with the business profit since they are not liable if there is no profit in any business deal. The bank can only demand its wages (service charges) which has been already fixed irrespective of the profit or loss in the business and it would be approximately the amount that is difference between the interest taken from the traders and that given to the depositors.

The calculation of the wages to be earned by the bank should be done at the beginning of the trading when the proportion of profit to be shared by the bank and the depositor be fixed but it should be taken into consideration that this proportion should not

be equal to whole of the wages (service charges) that is charged for the money at the risk regarding its value (capital) and the wages, in general commercial markets, since if it is equal to the wages and the recompense in the markets as loan is 70%, it means the trader are liable to give more than recompense of the capital at risk to the bank. They would give money equals to recompense in proportion of the profit, the service charges being separate. After it the very existence of the interest-free bank would be in trouble. It is needed that while deciding the profit percentage it should be reduced by such an amount that trader could give wage (services charges) also to the bank.

It should also be clear that proportion of the amount being made to be awarded to the bank to face the risk apart from the service charge cannot be fixed nor it can be formulated equally is all the business or trading. But the bank has power to fix the percentage by gauging the risk from the businessmen in each case. There is no standard for risks. It makes difference with regards to the circumstances, feelings and the dimensions. So the profits being fixed on their basis will differ.

Under such circumstances, the interest-free bank will distribute the profit on the basis of the agreements reached in the respective deal irrespective of other deals. It will take its share, as agreed upon, from the agent in each deal. These shares will be accumulated slowly till the profit of collective amount in accumulated and the bank will distribute it among the depositors (investors) and itself. Its details would be given while discussing the profit distribution.

BANK'S OWN MUDHAARIBA (BUSINESS FOR PROFIT)

When it is possible for the bank to do business out of the fixed deposits, it is also possible for it to invest its own money in the business

The bank's own money is in the following forms :

(a) The part of the capital money allocated for business as mudhariba by the bank.

(b) The part of the current deposits which the bank keeps reserved on the basis of its own knowledge and specific information's so that it could pay to meet the demands of the people in their needs (withdrawals from the current deposits).

These current deposits belong to others but are regarded as bank's property since the bank has acquired them as a loan, not as a deposit (in trust) and the bank has power to keep a portion of them reserved to repay to the depositors on their demand. There is no objection in spending the rest of money in the mudhariba.

The only difference in it is that in doing business from its own money its right shall be limited to the profit which is being earned as a recompenses (service charges) for the 'guaranteed money'. There is no right to fixed recompense i.e. service charges since what

the bank labours is in his favour only and not as someone's agent. There is no question of service charges in ones own deals.

It is different matter that bank's duty under such circumstances is to give preference to mudhariba of fixed deposits over its own deals. It should not happen that it starts business and the deposits from the people are left as such (unattended). The business from its own should be done when the money to the extent of the mudhariba could not be yielded from the fixed deposits.

RIGHTS OF THE AGENTS (TRADERS)

One who manages profit by investing money in the mudhariba (business) is called amil (Agent)

In mudhariba deals the actual propriety of the profit after giving off the rights of the bank and the financers (depositors),goes to the agent only like in the interest banking, proprietor of all the profits after paying the interest is the businessman or trader who takes money on loan from the bank and invests in his business or trade.

In both the situation, it is the profit that motivates the agent to the business and that is left after paying the bank's right in the interest-free banking and that after paying the interest in the interest banking. If considered deeply the interest given to the bank in the interest banking is more or less same as the depositor's percentage share and the service charges of the bank taken together. There is

no difference in this regards between the interest-free bank and the interest bank. It is certain that bank in the interest-free banking gets the usual difference of the amount between the wages of the guaranteed (secured) and non-guaranteed money from the agent. The agent pays this enhancement because the bank has taken responsibility of his money on his behalf and has saved it from the risk of being lost while it is not so in interest based banks where agent (business) himself is guarantor of his own money.

RISK OF JUGGLERY BY AGENTS

It is clear from the past statements that the most part of total gains of the depositors and the income of the bank is obtained through the profit that uses to come through the gains from the main business. Thus even all the securities of the bank is linked with the actual pace of the business since the bank shall have to be accountable to the depositor as and when there is some loss in the business and shall have to pay the value of the money. Its aims is being the every style of the pace of the business, rise, and fall, loss and gain, all these affect the bank's reputation and the depositors' gain.

It is necessary under such circumstances that the bank must not enter into any mudhariba unless and until it makes correct estimation of loss and gain by evaluating the whole nature of the job. But it is even must for the bank that it should assess the information's given by the person with whom the agreement is being made together with his basis expertise so that the risk of loss be minimized.

However there is certainly a possibility that businessmen play jugglery and hide out the profit or put all the responsibility on the bank while claiming loss and thus saving themselves from giving the percentage share of the profit.

It is needed that the bank should arrange immunity from the jugglery and should take such sureties after which the possibilities of the disinformation and jugglery are washed out. These sureties can be in the following forms:

(i) The past honesty and trustworthiness of the agent should be gauged and it should be seen how much transparency he keeps in his deals. The bank may open a regular section for the task that should keep on providing the relevant data and thus saving the bank from every possible loss.

(ii) On the basis of past statements ,it is necessary for the bank itself that it should have total information about the extent of the agent's activity and should be aware of the trade secrets of the business (mudhariba) being done with its money. It means, the bank may take stock of all the situations and conditions which if changed make difference in profit and loss.

The bank should necessarily supervise all the affairs and keep on carrying out its duties in due manner, so that the agent might not play jugglery and thus the money is not gone to waste.

(iii) The bank may also impose restriction on the agents that they must keep on providing all the informations to the bank and intimate at once, about the situations whenever the material is forced to be sold at a price less than buying price or whenever reasonable profit is not earned, and provide evidences also regarding fairness in their business

Besides this, the duty of the interest free bank also like the other banks to set up a section called 'Economic Research' whose functions should be to provide informations about the position of the market, rise and fall of the prices and the business opportunities so that future course of action should be decided in the light of such informations and it should be seen which business or industry is favourable at which time.

A significant advantage of the section would be that the bank could decide on the very first day the results of most of the mudhariba and other deals in light of its information and could assess the amount of gain in any mudhariba and judge which of the steps by agents is appropriate and which is not. Consequently it would be impossible for the agents to claim for such a loss that the bank may not apprehend.

These conditions are for those deals where business is done on the limited scale. But where a full-fledged enterprise or a commercial center is set up and the connection of the mudhariba is with the regular establishment of the center or with its co-operation, there is only a way that the bank should also appoint its representative (resident) who keeps on taking stock of the situation since the very first day and keeps on watching in what fashion the centre is being set up

(iv) The bank should, since the very first day, fix such parameters without which loss or gain cannot be proved and no claim should be entertained unless and until scoped without parameters of such nature.

A significant one of these parameters is safekeeping of the papers as prescribed by the bank for its agents' accounts. If someone doesn't take proper care of these papers and claims such a loss that is not correct in the light of these papers, decision should be taken by declaring his claim null and void that there is no loss in the actual capital and even there was partially gain whose magnitude of percentage proportion is at least equal to the amount which depositors are paid as interest in the interest banks.

(Vide appendices for details)

PROFIT AND ITS DISTRIBUTION

[Means of finding out the profit and method of its distribution]

The bank apparently gets all the gains fixed under mudhariba pact from its agents (businessmen) and the distribute it among its depositors and itself.

It should be clear that the bank cannotrecord all these gains and profits under head, 'basic capital' (in its Balance Sheet) but there is another different head under which profits and their distribution is recorded. But there arise two important questions at this point :–

(a) It is the bank's duty to go on recording the profits obtained from different mudharibas during the year and record its aggregate at the end of the year. But sometimes it also happens that accounts of some deals is not closed at the year end and there remains some or the other head incomplete. What will be the way to record the profits from the deals and how could the bank do account for the total annual income ?

(b) If supposed that the bank has fixed the profits from mudharibas and deals ending within the year and consequently found out the magnitude that the businessmen/traders should leave in favour of the bank which should distribute it among the depositors. But how is it possible that the bank could

separate out profits from every deposit and distribute it to their respective owners (proprietors).

METHOD OF CALCULATING THE GAIN

An answer to the first question is that those doing business by taking capital money from the bank are of two types: Some do business of limited type and sell out on the spot the commodities purchased from outside. Some set up a full fledged commercial center where the goods keep on producing regularly and are being sold.

In the first case, the money is invested in a particular field whose result appears soon. If it could not be known at the beginning it is after all known till the clearing of the bank's accounts at the year end.

If this period gets so lengthy that of the bank's year ends before its' completion and its profit could not be known, even then it is possible for the bank to make an estimation of the profit and continue the work in its light.

Guessing the profit is very much easy because the bank has full information about the agent's working and is also aware of the pace of the business. What is then difficulty to apprehend the result and starts working in its light as would be known by the coming details.

In the second case also, it is possible for the bank to ask the enterprise (commercial centre) being set up with its loan to follow the financial year as is followed by the bank.

It would be extremely easy when the commercial centre is set up with the bank's money on the basis of mudhariba or bank is made regular partner of the commercial center (enterprise) and it may be possible for it to make its financial year according to that of the bank by changing it.

But there are some such situations whenever this much is not possible. Suppose the plant is already established and the financial year has been fixed and it is not possible to change it. Or else the business is seasonal and trading of such a material is being done that peak season coincides with the closing of the bank's financial year. Under the situation, giving trouble to the traders to make their financial year as according to bank's fiscal year is unreasonable. It is needed that such a way be found out that the problem is solved without taking such steps.

A common solution for both the case might be that the profits to emerge by the end of the year may be accounted during the year itself. In the situation, the accurate calculation of profit will not be possible in the first year but the problem would be solved in the coming years. The profit to be accounted in the coming year would be brought back to the year and the profits as accounted in the last year would be added to it. As regards to the depositor, one of the following stands has to be taken:–

(a) Wait till the next year .When the profits from these plants during the year that could not have been known in the last year are known , then all the profits like the profits of the last

year may be distributed proportionately as per agreement and everybody gets his actual right.

(b) The depositor makes agreement with the bank at the amount as estimated to be the profit in the next year and withdraws himself after taking away his share as per the agreement. Later when the actual profit is assessed at the end of the year, it will be regarded as the property of the bank since it has already paid off due shares of the profit to the respective depositors as per agreement.

The bank may also fix the amount for the agreement even at the beginning of the work and the tell the depositors that agreement would be made with them for such amount if the profit is anticipated in middle of the year. Thus the depositor will get his share and the bank will get rid of the trouble of adjustment of the account.

It should be kept in mind that the bank may adopt same method, as that fixed for those depositors whose money is invested in big plants and whose accounts are not finalized with the closing of the bank's financial year, with those depositor whose money is invested in limited business and short deals and whose profits can not be expressed in till the accounting for actual balance in bank sheet of the bank.

Under such circumstances, the only possibility for the bank is to make agreement with the depositors at a limited quantity of the profit in the light of its informations in case they cannot wait, thus by paying the amount to them, making them unworried of waiting for the profit to appear

METHOD OF PROFIT DISTRIBUTION

The second basic question is which principle will govern the distribution and what will be the means that share of the profit on every deposit be separated out and given according to the percentage share to its proprietor, depositor (say investor).If all the fixed money had been invested at a time in business (and) for a limited and fixed term, the reckoning of the gain (profit) would have been much easy. The interference by the time during the year is similar in position for all the money. Only the matter of the quantity is left. To reckon it would not have been much difficult task. The ratio of every deposit to all the deposits together could have been determined and the profit distributed proportionately.

But it is obviously not so. It is only a supposition. The case is factually opposite. It never happens that a bank invests all the money deposited into a business at a time. Even the timings are different and so the types of the business. If this restriction is also imposed on the bank that all the deals should be completed within a particular period, it is not possible for the bank. For it, unlimited efforts have to be made and countless money has to be wasted. No bank will ever be ready for that.

Under the circumstances, if accounting should be done in favor of every deposit for every period passing from the first to the last day as in being done in the interest banks, this would be miles away from the Islamic mudhariba.The idea of Islamic mudhariba is this that the profit should be visible by investment of the money and the

business with it, not that the money is kept idle as such and the gain (interest) is earned with respect to some other business. It might be possible for interest banks but not for the interest-free bank. The calculation could be done on the very first day in case of interest banks since the money is advanced on loan and the each and every fraction of time is counted. But it is not possible in case of the interest-free bank where profit is earned through mudhariba. Apparently mudhariba does not even start on the first day.

To solve this problem, some new formula in needed to be found out as such that the profit could be distributed but the mudhariba should not become interest.

A new formula in this connection can be such: the bank may enter into an agreement on the very first day that the accounting of any deposit in the bank shall not be started before two months of the business (this period of two months is just an approximation. It can be increased or decreased according to the business position and the people's interest). The profit of one whose money remains deposited after two months shall be calculated after the period. Such depositor, if withdraws money after two months, shall get the profit as per his respective share . That means the accounting of profit of such person will begin. But it should be borne in mind that the person withdrawing the money after four months of deposit shall be given profit of two months only, not of four months. Two months has already been excluded by the bank (as per agreement).

The accounting shall start after two month to give a reasonable chance to the bank to channelize the money and to invest it into the business. Now the depositors have certainly the right to demand the profit percentage share of their money.

The style of work would also solve bank's difficulties and would not be distanced away form the Islamic mudhariba. As regards to permissibility of the exclusion of the two months under Islamic laws, it can be in the way that the bank while making mudhariba agreement with depositors may include a condition that they shall have to give up two months' share of profit out of the their actual share of profit is favor of the bank. If the money is invested only after two months, the condition shall remain a condition otherwise it will be the best way to get rid of the complicated accounting.

For example, Mr X and Mr. Y have deposited equal amount in the bank which has invested both the amounts in business. Incidentally Mr X's money is invested at the start of the second month of its deposit and Me Y's money at the beginning of the fourth month. At the end of the year, the profit of Mr. X should be more than that of Mr. Y. But the bank has already put the condition to maintain account that depositors have to give up, in favour of the bank, the excess of the amount of profit earned over the fixed quantity of the profit. Thus the problem of distribution will be easy and there won't be any difficulty in accounting of the money.

Summarily, all the profits of the bank shall be distributed in proportion of amount of the money and the period of the deposit minus the period as supposed to be pre-business time.

To achieve the objective, suppose amount of profit from all the deals during the year is20,000/- while capital was 1,000,000/- the bank should divide the sum of 20,000/- into two parts: the first sum of 10,000/- to be distributed equally over whole of the capital irrespective of the period being more or less and the second sum of10,000 to be distributed over periods a person getting his share in proportion of length of time for which his money was with the bank while deducting first two months from the calculation as per the agreement. But in this distribution, only the length of time, not the amount of money shall be taken into account. [It be remembered that aim of this arrangement is not to make mudhariba profit nearer to the interest by including the amount of time into the profit (calculation) since the statement is just an indication towards a method of distribution .There is no regard of the trader's agreement whereas the spirit of mudhariba is this agreement only while the amount of profit shall be fixed according to the profit as obtained from the plant. It can not be fixed earlier to it. This dealing of mudhariba will separate the profit from the interest. In interest period, not the agreement is a factor while in mudhariba it is soley based on the agreement. It is something different that in distribution of amount of all the profit over different deposit, both the amount of deposit and the period of deposit are to be taken into consideration. It's nothing concerned with the interest. -Author]

When the first sum of 10,000/- is distributed over a sum of 1,000,000, every rupee will earn a profit 1/100.Then share

of every deposit will be calculated separately in the way that amount of deposits will be multiplied by 1/100.Its product will be the share of profit of the deposit.

The calculation of the second sum of Rs. ten thousand will be as such that all the amount will be distributed over whole the period excluding the two months and share of a day, a fortnight, a week, or a month may be found out. this may be made the basis and is to be multiplied by the period for which the amount remains with the bank.

I personally opine that while fixing the basis, such a period as a month, a fortnight or a week should be considered that has possibilities of profit in general and no share should be kept for a period less than that, otherwise there won't be any use of making a day or half a day as basis. In such a short period, no profit is obtained usually.

The mode of distribution is absolutely clear after fixing up the basis, for example a weak is made basis and the period of keeping the deposit is 3½ weak, then share of 3 weeks should be determined leaving out the share of half a week.

The quotient as obtained from the division of half of the profit by the amount of the deposit and half of the profit by the period of deposit, is to be multiplied by the amount of the deposit and the period of deposit, then the actual amount of the profit can be known.

As regards the problem of distribution of the gross profit between the bank and the depositors, its solution may be as follows :–

It has been explained in the past mentions what the minimum limit of ascertaining the recompense of the secured money is i.e. the interest of the such money as found out from interest market be multiplied by the probability of the loss. The Equation shall be as follows :-

551055

+·=

100 100 100 1000

This amount might be converted into the ratio according to the bank ‘s expectation , that was supposed earlier to be 20% and consequently decided that the share of every deposit in the profit shall be 27.5%.

In the light of these statements, the bank shall distribute all of its profit over the total amount according to the amount and period, and shall take out the share of every deposit from it and shall pay to the depositor as per the mudhariba agreement and shall reserve the rest of the proportion for itself..

But it should also be clear that the percentage share of the depositor as yet decided has been calculated according to the aggregate profit from the whole of the amount (capital) without giving any consideration to the share of the bank or of the depositors. If willing to give consideration to it, the equation shall be changed as below:-

Suppose the depositors' profit is equal to 70% of the total profit of depositors and the bank. It should be to be reduced by 5% being the bank's labour (service) charges for such money whose value nor profit is guaranteed, in general markets. Thus the percentage of profit comes out to be 65% which is to be distributed over both the depositors and the bank. while 27.5% would go to the depositors as per past calculation and the bank's service charges would be 5%.

Given below is method of finding out how the bank's service charges (wages) be converted into percentage profit so as to deduct it from the percentage profit from unsecured, not guaranteed so that traders and businesmen are not burdened more than the general wages (interest) :-

Suppose, bank's permanent service charges is 1% and the capital is 1000/-.It means the service charge is 10/–that is the equal to the difference between the types of profits viz, the interest and business profit. Now suppose the profit from the business is 20% i.e 200/-, Then the ratio of service charges to actual profit is 10:200 i.e. 5% of the capital money.

So the common share of both (the bank) and the depositors is 70% – 5% =65%

IF THE BANK NEEDS MONEY

Sometimes it so happens that the pace of the business in the market is fast and the businessmen and traders demand from the

bank more than what is with the bank in the present situation. Under such circumstances, bank will be in need of taking more and more deposits to meet demands of the people. Its only way is that bank declares Ju'ala (prize or incentives) for the deposits with the bank and makes a general announcement that it will offer some particular amount over the fixed profit to the person who deposits his money with the bank for the mudhariba and accepts bank's mediation and services in the way.

The validity of this Ju'ala according to the Islamic laws is because of that bank's carrying out the duty of mediation by the bank is a permissible act and being agent by with accepting this mediation is also in itself a permissible act which wages/service charges can be given or taken. There is no objection by Islamic laws if bank gives wages for this agency. It obvious that one will have right of as much large agency fee as the large amount for which the agent is authorized.

The payment of this wage (agency) is made out of the wages (service charges) that bank uses to receive from its clients in the same way as the calculation of interest on the deposits that is counted from thedate of the deposit of the money is paid in the interest banks out of the profit (interest) the bank receives from its clients (borrowers).

It must be clear that this wage (service charges or agency fees) cannot be regarded as interest since the agency is itself a permissible job for which wages can be given. But in spite of it, my

personal opinion is that interest-free bank should not adopt this style of working, but instead should take use of other methods to attract deposit from the people. This style has more similarity with the interest. Thus there is apprehension defamation of the interest-free bank's.

A better way is to increase the rate of profit by itself, since the more demand from the side of the businessmen means that business conditions are much more favourable and there are much better probabilities of the profit in the market. These conditions when can incite businessmen to take more investment, can also attract people to deposit their money. The bank's duty is to make people well aware of such conditions and tell them that this season is very much favorable for the profit. The awareness will obviously attract the people, who are not able to do business directly, to come to the bank and increase their money by making the bank its medium.

SAVING ACCOUNT

After rescheduling its stand with respect to the fixed deposit, it is needed that the bank's stand with respect to the saving account may also be defined.

Apparently, these deposits like the fixed deposits are also included in the mudhariba as an investment into the business. But there are two kinds of differences between the two types (of the deposits).

In case of fixed deposits, the interest-free bank has an option to force the depositors not to withdraw their money before six months from the deposit. But in these deposits, there is no such option for the bank. There is a condition in it since very beginning that the depositor can withdraw his money when he need it and the bank would not have any right to raise an objection to it. So, as if the account is a current account for the purpose with only difference that the money is included in the mudhariba and the business is also done in the light of all the past rights, terms and conditions.

The question is what would be done if the depositor demands the money after it is invested in the mudhariba. Its solution may be that bank, may decide from the beginning that the depositor can have right to withdraw a portion only out of their money and rest has to be kept with the bank. For example, the amount that can be withdrawn from the bank is $1/10^{th}$ of the total money; the bank's

duty would be to separate 1/10th of the total deposit in the saving accounts, treat this amount as current account and reserve it with itself in cash to meet the demands from time to time. It is another matter that there is no question of profit from this 1/10th portion; since it is not invested in mudhariba and there is no question of profit (interest) on the loan in the interest-free banking.

There won't be any difficulty after the above condition is imposed. A portion of the deposit has been separated aside to meet demands of withdrawal from the depositors and it wont be counted in those deposits .Whenever there is demand of withdrawal, it could be fulfilled and the bank itself would be officiating in the mudhariba on behalf of the depositors.

CURRENT ACCOUNT

It is obviously difficult to treat the bank's assets formed by the current account deposits with the past style, since these are always in circulation and are never fixed. Under the situation, it is almost impossible to invest them in the mudhariba as the mudhariba wants stability while a current account wants flow and circulation.

We think that these amounts should be taken as loan and regard them as its property since the day one as the interest banks do, but with the condition that it will pay off the value of the money as and when the depositor demands but with the difference that no profit can be given on such money. It is not troublesome since the interest banks also do not give interest on such amounts.

Only the question is what would be their utilization by the bank. Its simple solution may be this that the bank may divide them into some parts on the basis of its general policy.

(i) A portion which the bank reserves with it in current form to control the transaction of the current account and to meet the people demands all the time and also the demands of those who are not current account holders but whose term of blocking withdrawal is over and their money is invested is the mudhariba.

There is no rule about what the magnitude of this portion should be. It is matter of bank's discretion. It can reserve the amount to the tune of its need by reviewing its conditions and the demands.

(ii) The second portion shall be entrusted to some businessmen or trader as a mudhariba with bank the itself being direct investor to the business without being agent of someone so it could regard itself as proprietor of whatever amount is received as profit instead of distributing it over the depositors.

(iii) The third portion shall be reserved to advance loan to its associated parties. The philosophy behind the loan policy would be such that facilities would be provided to the associated parties so that their relationship with the bank be stronger and stronger. Every facility cannot obviously be provided on the basis of mudhariba but at times loan has to be advanced. If the bank decides otherwise that the money shall be given only as mudhariba ,it means, the relation with the people in need would be severed to let them take some other course.

The interest-free banking is aimed only at carrying on its all the dealings on mudhariba basis on the principle of profit sharing so as such dealings get famed in the market and the businessmen may evolve habit of such type of dealings. But, at times, circumstances develop that the facility as being demanded by a businessman cannot be provided on mudhariba basis, for example, he wants to repay some of his loan or to pay wages or salaries to workers employed in his business or some other need of the sort, which has no scope of mudhariba.

But even with all these, the bank has to take into consideration of keeping the relation with the people of the business and see that

they do not get so much of facilities by the way of loan that they keep on carrying out their business only with loan and close down the mudhariba deals.

TERMS & CONDITIONS FOR THE LOAN

Under the above circumstances, the bank has to take following terms and conditions into consideration for advancing loan to borrowers:–

1. The borrower must be honest and trustworthy, must have a good and fair conduct in the light of the past dealings and relationships, must have a good reputation in the market and at least two persons must give testimony to his honesty and trustworthiness.

2. He must be financially competent and capable of repaying the loan. It shall be assessed by the bank through review of the financial and commercial establishment of the borrower.

3. The term of loan should not be more than 3 months.

4. The amount of the loan should be more than the maximum limit of what the bank has provided for the facilities to its associates/clients.

5. There should be some mortgage for the loan so as to ascertain repayment under all the conditions.

The condition no. 3 & 4 are aimed at that there should be possibility of converting the deal into the mudhariba if the amount is larger and term is longer.

DOING AWAY WITH THE INTEREST IN THE PROFIT

In elaborating the stand of the interest-free bank with respect to obtaining profit (interest) earned by the interest banks from the loan advanced to different businessmen, it is necessary to find out first the roots of this profit in the capitalistic economy and to see whether the interest-free bank can be independent of this profit or not .

There are three components of the profit in the capitalistic economy:–

(i) The amount which bank takes in the name of compensation for the dead loans. The banks data is evidence of it that most of its loans are eaten away and the borrowers do not repay the loan. It is needed that the bank should keep such an amount with which it could compensate for such losses.

(ii) The amount which the bank takes in the name of its expenses, the employees' salaries etc.

(iii) The interest of the absolute capital.

First Component:

It can be said about it that the interest-free bank does not need any such compensation. It demands, right from beginning, property's security in place of personal confidence and does not give amount to anyone without being satisfied fully. So there is no question of its loan being eaten away.

If by the way it is supposed that such loans would have to be accounted for and in spite of being completely choosy, such persons not going to repay their loans might appear, the best way to deal with such a situation is that its loans be made insured. The insurance company does insurance of loans also like the external (material) things.

There would be two forms of this insurance:–

(a) The first form being that bank itself gets the loans advanced by it insured and bear all the expenses of the insurance since more and often it is better than to compensate the losses from the dead loans that bank should itself the bear the insurance charges (premium) .

(b) The second form may be that the bank imposes condition on the borrowing party that it will advance the loan on surey form the insurance company. It is apparently a valid and permissible demand that every possessor of money (creditor) can put. After all the creditor has right to say that no loan shall be advanced unless and until there is no surety of loan repayment.

It does not mean that the money lender is refusing to advance loan without increase so as to make it prohibited under Islamic laws by declaring it as interest. But it is a valid demand under Islamic laws, on which no restriction can be imposed.

Under the circumstances if the bank makes it conditional with the surety from the insurance company, the party's obligation is to

develop its contact with the insurance company directly or through bank and bear its expenses by giving its surety for the loan since the responsibility of giving surety lies on the party, not on the bank . He who takes some work of his interest from someone else has to bear himself the expenses of the work whether it is by means of the bank only. The bank is not taking profit of its loan but is taking the wages of the (insurance) company just to deliver it to the company and nothing else.

It is of course a great difficulty to estimate the expenses of the borrower's insurance. The insurance company insures all the loans together and receives the expenses of the all in lump sum. It is very difficult to make estimation of what would be expense on individual loan.

Second component

The stand of the interest-free bank about it, is this that it can demand all such wages (service charges). Its permissibility under Islamic laws (shariah) is that the laws has asked while stating the rules of the loan that the loans should be recorded (scripted) and obviously anyone doing writing has right to take his wages (service charges). Recording is a valid and permissible act and wages for it can be demanded. Everyone has a right to say that he will not render service free of charge.

Now there remains a question whether the expense of recording shall be lender's responsibility or the borrower's. The bank has right to say that it wont bear the expense and that one in need

should bear it. Thus the bank has got right of claiming wages at par with recorder's charges in general and it shall keep all the accounts maintained by recording all the loans in return of the wages (service charges).

The interest-free bank otherwise cannot claim that it has kept the deposit safe, it should get its right as is claimed in the interest banks and the share of this service is taken from the businessmen and given to the depositors as interest, since in Islam, it is a duty, not a service. There is no legitimacy of taking wages/charges for a duty.

Third Component:

The interest free bank's stand about it is very clear. This gain is purely an interest that is at all prohibited in Islam and that has no allowance in the interest-free bank. But that the interest-free bank can adopt such a stand that makes it independent of first and second components also.

The basis of the stand may be such that the bank puts a condition on each and every borrower at the time of advancing loan that he shall have to give to the bank a loan of as much amount as it has got loss due to invalidation of the first and the second components, for a period of five year. There is no hindrance in it as per Islamic laws. It is even possible that this condition may be put under the 'necessary' (binding) pact so that its fulfillment be obligatory. Thus the bank would get on loan as much the amount as the loss suffered due to giving up of the first and the second

components. It is a different matter that the bank will not be proprietor of the amount without compensation but its' compensation has to be given. Now it would be possible for the bank to deposit for five year the amount being obtained thus as loan, in such a bank which is used to give interest and, on withdrawing the money in full after the five years, give the amount its depositor keeping the interest with it. Thus the interest-free bank shall save itself from the prohibited business like interest and shall get the profit in an amount equal to the loss suffered.

It may be kept in mind that this procedure will not have any bad effect on those who deal with the interest banks, but it will have good effect since all the parties are already accustomed with the such gains in the interest banks. They can get the money five, They will be encouraged further when would come to know that they will get back the money, that used to get lost completely, though they would get back the money after five years.

I personally opine that this style of working will develop a wonderful attraction towards the interest-free bank and the borrowing parties will be attracted surprisingly towards it since it is human nature, he will prefer to take loan from the bank that, at the time of repayment, demands such an amount which is to be got back after five years, ignoring such bank that takes away additional money (interest) at the time of loan repayment and never returns it.

When such a situation arises that people start demanding loan heavily, the bank may even adopt a policy to divide its parties into two categories: Category I and Category II.

Those who have been repaying their loans promptly without any laxity in the past, and instead of lending to the bank, have given the same amount as assistance to the bank at the time of repaying the loan may be grouped into Category 1. The rest may be grouped into Category II.

The method of the categorization might be as follows : The bank should announce forehand that people of Category I would be given preference over those of Category II and the categorization shall be done on the basis of past experience and on the assistance rendered to the bank instead of the loan. The people, who have advanced money to the bank free of charge, will be given loan first. If the money is left after giving loans to the people, other people may also be considered.

The aim of this announcement by the bank is obviously not a condition of profit on the loan, that could be termed as interest, but it is sort of favour on which no law can impose any restriction. The interest is prohibited but favour cannotbe put to restriction.

When such conditions develop and the bank gives preference only to those who have in the past rendered free assistance to it, the people will develop such liking also and will offer free assistance to the bank or will at least give conditional loan.

But if someone has taken loan and has not rendered the free assistance in time, the bank will have no right to say anything to him, since bank's foundation is interest-free and there is no justification of the interest in the interest-free bank.

This strategy of the bank would be termed as 'conditional loan policy' or 'policy of converting loan into gift'.

The bank will have full authority to put a condition of loan as much as the first and the second components due to the fresh policy and to prefer, after it, those who offer gift instead of loan and are regarded in the Category II. Thus both the components would be made inert while there won't be any loss to the interest-free bank.

SOME NOTES

(1)

In my view, interest-free bank's own capital should be far more than that of an interest bank since only the basic capital takes care of all the particulars of a bank and provides it power to face losses. These are not concerned with the depositors or the businessmen.

The basic capital safeguards the bank's reputation and credibility that causes its doors open for everybody.

It is because of the deep relation between the loss compensation and the basic capital that governments have regulated that there should be a particular ratio between the loan given to someone and the basic capital, even the ratio between the deposit and the basic capital asset must be safe.

When there is so much importance of the capital and so significant objectives are attached with it, the basic capital must obviously be as more as the liabilities of the banks are and risk of loss is so that it can be used as a testimonial.

There are more liabilities on the interest free banks due to losses. It guarantees values of all the deposits, so it has to watch these risks and has to take support of more capital to safeguard its stand. But it should be kept in the mind that limit of even addition to the capital should be fixed so as to secure objective of the profit in

the banking functions, otherwise its very position as a bank could be finished if its capital becomes so huge that it is prepared to take on business (directly) from its own capital instead of doing banking.

Though it is fact that bank's profitable working is renewed only through managing bank's income, its capital and fixed deposits. It may be like this : suppose the fixed deposits have been increased to ten times of the basic capital. Then the bank has to decide whether it be more useful to carry out mediation as interest-free bank or to jump into the field of direct business with its own capital. Its correct method would be like this :first suppose an approximate ratio of profit on the total capital, then make an estimation of expected gains by business with its own capital and estimate the profit through fixed deposits on working as inter mediatory like bank at percentage. By comparing these two profits, it can be estimated how much the rate of the profit by working as bank on percentage rate is more as compared to the profit by direct business. As much as the proportion would be high, the working as intermediary would be more useful. It will be then easier to decide the limit up to which the basic capital should be kept to be more profitable than the direct business. Otherwise if the equation is changed and the amount of deposits equals or becomes more or less to the basic capital, it means the direct business is more profitable than working as intermediary (banking), thus the bank's aim would be finished. The bank's job is to mediate in mudhariba business, not to do its own business with its capital.

In determining ratio of profits from own capital to the fixed deposits, consideration of some points is necessary. There may be

quite possible that own capital may be insignificant in mutual proportion of the two, but bank's working might weaken after considering other dimensions, for example, those gains are to be accounted that interest-free bank gets in mediating as wages (service charges) and gifts and that cannot be availed when taking on direct business.

Those gains which can be obtained through mudhariba with a part of the capital and current deposits, have to be considered alongwith the proportion of gains from fixed deposits.

Apart from it, the personal capabilities of the bank's authorities have to be examined as to how much they have business abilities and how they can take part in the field of trade or industry.

After taking all these particulars into consideration, it must be reviewed whether the mediation would be more profitable or business. If own business seems to be more profitable, the basic capital shall have to be reduced to safeguard the basic nature of the bank.

(2)

I think that the interest-free bank can support developing economy of the country immensely on the basis of the aforesaid formula and can render full help in fulfilling real needs of various institutions.

This bank's potential is much more than that of other interest banks. The bank does not advance loan just on the basis of that borrower has repaying capacity and has given such surety that the money would not be lost but it gives loan when the bank examined

all the work to be carried out by the borrowers and then guides them properly towards trade/business.

It can be put in the other words that a interest bank is interested in its money only , it has no attachment with the business promotion or national development but the interest-free bank is concerned with the general economy and the national development.

That is why the reason that the interest-free banks keeps an eye on the business profit also along with the recovery of loan. It is aware that loss in the business shall affect it only or reduce its own profit. It does not advance its money for those businesses which are not expected to record profit or are so weak that there are possibilities of even the capital being sucked.

(3)

INTERNAL ARRANGEMENT

As regards to the internal arrangement, there is no basic difference between the interest-free bank and the interest banks. Both shall have management body, with different managers, both shall have sections of accounting, personnel, loan data (collection) and research and analysis. But the following points should be taken into consideration in as regards to the interest free banks:–

(a) There should be a special section called ‘mudhariba’ which would undertake mediating between the depositors (investors) and the businessmen. The section will manage the bank’s working policy. This section has more significance than the other sections of the bank. Its management should be directly under control of the bank’s General Manager.

(b) The interest-free bank in its working style is concerned with gains through different commercial and industrial functions. So its managing staff, higher authorities, even the middle level officers should have such capabilities that are must to supervise and to control all these functions. The general manager should be closer to the market, having contacts with the businessmen and be completely aware of conditions and pace of the business trade and industry.

(c) For the management of the interest-free bank those people should be selected to the maximum possible extent who are honest, trustworthy, liberal minded towards theory of the interest-free banking and should have good understanding of the importance of interest free banking and should be in total agreement of its spirit so that they might co-operate with the bank's founders with a sense of responsibilities and lead a life of high objectives.

This outlook would correct the course of action and will ever keep the work pace alive. But if the sense is awakened in the employees that the interest-free banking theory should be a success, they would keep all the business people pleased and would deal with them with kindness and hospitability.

If the such a pious character and spirit of brotherhood is developed among the responsible persons, the agents would automatically start to be attracted and bank's circle of relationship would be expanded more and more.

SECOND STAGE

THE BANK'S BASIC FUNCTIONS

THE BANK'S BASIC FUNCTIONS

In the Light of Modern Thinking

After the formula of interest-free banking has been presented, it has become easy to decide what stand of a interest-free bank should be by having a look on the basic functions of the banks the world.

For it, the banks' functions shall be divided into some types:–

(i) The bank's general services which the bank performs in interest of its clients and takes charges for these services.

(ii) Gains obtained from the business organizations (corporate) on the loan

(iii) To invest a part of bank's income into business for monetary papers (bonds).

These will be dealt in detail in coming discussions.

FIRST TYPE OF FUNCTIONS : BANKING SERVICES

In the modern time, a bank performs some types of services: accepting different types of deposits, getting cheque on the basis of the deposits, hawala (money exchange), accepting promissory notes etc. Apart from these, it performs useful and effective services for its clients. It sells and purchases bonds, does business of letter of credit, undertakes dealings in securities. If these papers and letters are supposed to be not ad volarem but are more than the value, this service becomes a banking facility.

BANK DEPOSITS

In the present days, the deposits which a bank takes from its clients can be divided into two parts according to the choice of returning the money to the depositors. One is current account where the deposit is 'under demand' and there is always right of withdrawal anytime.

Second one is called 'Fixed Deposit' where deposit has to be kept for some fixed term. 'Saving Bank account' is also a type related to it.

In interest banks, the different forms of the deposits mean the cash money that is entrusted through some way or other to the bank and returned directly to the depositors or on their order when demanded or after the maturity of the term, as under the agreement between the bank and the depositors.

Bank deposits are generally regarded as imperfect trust since the cash in not safe here in its real form, and the bank is neither liable to return back the same cash on demand. Its only liability is to give back an amount of the same quantity in the currency of the time. The depositors have no right of putting any objection over it. In reality, the deposits (which are called amanah in Arabic; this word otherwise means trust, entrusting something in good faith) cannot be regarded as amanah, neither imperfect nor perfect in terms of Islamic jurisprudence. It is a sort of debt whose repayment from

time to time (in parts) or at a certain time is binding. Thus the effects of ownership of the respective owners get lost totally from the money so deposited and the bank gets full right to use it. An amanah cannot afford this liberal use. It is a character of the debt only that an object of debt comes into ownership (of debtor) only to give him right to use it at his will. These deposits are called amanah (in Arabic) because in the early history of banking its position was as a trust only. But with the passage of time and experience, change has been being occurred in the nature of these deposits.

Now it has been established to accord status of debt to these deposits as the banking cannot be run without debt. The interest-free bank's stand with respect to these deposits would be clear when the money is divided into two parts.

The bank accepts the deposits under demand, as debt with no profit given on those accounts. Fixed deposit are also accepted as amanah (trust) but not in the fashion that bank is made responsible for security only with the money being necessarily stagnant but in the manner that the bank is made 'counsel' (manager on their behalves) to invest their money in business through mudhariba deals and the profit being shared by both of them as per respective shares.

The deposits in the interest-free bank is as if regarded differently with respect to the fixed and current accounts. Current deposits would become debt while the fixed deposit would be 'trust' and borrowings. There won't be any profit in the former type but there would be profit is the latter type through mudhariba terms according to percentage share.

CURRENT ACCOUNTS

As per the present banking system, current account is name of the mutual debts (credit-debt exchange) running between the depositor and the bank which keeps on recording it in its documents. The deposit works as a certificate, and on the basis of the certificate there is no problem in withdrawing money (in any portion at anytime). The money being withdrawn is regarded as loan advanced on the surety of the present amount in deposit. Due to this, the account holder becomes indebted to the bank.

According to the west's 'economic practice', the current account is such an agreement the at a bank makes with its depositor that his cash money will lose all the characters of the cash currency and will take a position of an accounting element which would take, on the expiry of the term agreed upon, a position as a debt deed and its repayment will be binding. For the reason, the current deposit is not divisible.

The treatment of these deposits by the interest-free bank is almost the same as by the interest banks since it also accepts the current deposit as a debt and do not give interest to the depositors but give only the right to the depositors that an account be maintained in the bank with recording in two columns, one for debit and another for credit.

It is some different matter that the jurisprudential nature of accounting as in Islamic laws is different from that in the western practice.

The current accounting as in western practice is a regular agreement where individual rights lose their positions and on the basis, it becomes connected with the problem of two debts being adjustable against one another which the western economic practices think that this adjustment should also have legal justification i.e. it would be not valid unless it is put up before a court and judge gives his judgment on the adjustment. But slowly with the increase in concern for the debts being adjustable against one another, the portion of court's action has been taken off.

Even then two schools of thought emerged in the west. A school thinks that there should be prior declaration that accounting of the both the debts would be settled mutually. The second school opines that there should be legality in it whether not under general system but at least to the extent that one who has interest should initiate and move this arrangement.

Based on these ideas of the western practice about the mutually adjustable nature of the debts, losing of the specific character of the individual rights and perishing of the currency (coins) nature due to current account is, in some way or other, dependent on a pact or settlement without which no such arrangement (mutual adjustment) can be possible between the two parties.

As per Islamic jurisprudence, there is no need of a new agreement to interpret the 'current accounting' after the loss of individual characters of the two parties since withdrawal by the depositor has been supposed to be the bank's debt and deposit is

also a debt, thus there the mutual debt shall necessarily emerge. Under these circumstances, it shall be a forced mutual adjustment of the 'debts' with no need of a fresh agreement.

The religions scholars of Imamia and Hanafi etc have consensus on the point that the muqasa (mutual adjustability of the debts) becomes 'compelling' if the conditions are met for which no agreement between the parties is needed. Even if the two parties want to drop the right , it cannot be possible. Its not upto their choice to keep it at their will or break it off as and when they wish.

Under the circumstances, the debts of the depositors and the bank will keep on continuously conflicting and mutually dropping (adjusting) against one another after losing distinction of individual rights in the light of current accounting, so there wont be any need of any agreement or a pact. But, of course, one once called a lender (creditor) will be a debtor second time. There wont be difference other than it.

All these things are for such a time when withdrawal of money is regarded as debt and both the functions are supposed as 'confronting debts'. But if the withdrawal of the money is supposed as repayment of the debt instead of confronting debt and this withdrawal of money by the depositor, having money in the bank, is regarded as recovery of the debt, not a fresh borrowing, then there wont two columns in the current account (ledger), but there shall be two such ledgers, one for recording depositor's lending to the bank (credit) and other one to record the gradual recovery of the loan (debit).

In my view, this interpretation of money withdrawal is more appropriate. Every withdrawal of money, when the depositor's money is still in the bank, should be termed as 'recovery'. But, if the money demanded is more than the balance in the account (overdraft) i.e. bank is not indebted to the withdrawer and the amount being withdrawn cannot be regarded as loan recovery and it would be stated about it that a fresh case of lending is started when bank is creditor and the withdrawer is borrower.

The reasons behind giving preference to my idea will be clear later when it is known that idea of creating fresh loan is developing many difficulties as regards to the Islamic laws and to over come these difficulties, taking support of the interpretation is very much necessary.

OPENING OF A CURRENT ACCOUN

The bank has to do some formalities at the time of opening a current account. The depositor's signatures are taken on different papers and are kept safe so that the signature may be crosschecked when needed and non-genuine cheque could not be got cashed.

Apparently there is no objection according to Islamic laws in these functions since everyone has right to be cautions and on the safe side.

Current Account function begins with the rights being established between the bank and the depositor. The beginning sometimes is from the current deposit by someone thus making the

banks his debtor. Sometimes it starts with advancing some money by the bank to someone without any past claim, thus making him bank's debtor.

In present days' banks, there is such arrangement that a person opens different current accounts and uses each one for some specific purpose. The question is what the purpose of opening different accounts. It is not objectionable if its purpose is that the account holder wants to have grip over the extent of each business and the overdraft. If the purpose is that each account maintains its own characters and different accounts of an account holder be regarded as regular and distinct so as the mutual adjustability is not possible, it is just meaningless since the adjustability is 'compelling' with no choice of dropping it. So it is not not possible that the bank or depositor puts a condition that the debts from one account can not be debit able and adjustable against debts from another account. The adjustability shall keep going on till both the accounts remain related to a person and the ownership of both the account is regarded to rest with a person.

There is no need of supposing money trust in the interest banks profits(interest) are given to big parties on opening of their accounts only but in interest-free bank, this cannot be possible as it can not give profit(interest) on the loan.

Adopting some other means to attract the parties is something different but the loan should always be given without interest. There is no such possibility where the question of interest crops out.

DEPOSITING

There are different means of depositing money in an account. The most significant of them being in cash. Its method is that the owner of money himself or through his authorized person/counsel deposits some amount in the bank treasury and gets its receipt which shows the amount in its credit column.

A second way of depositing is that the owner of money brings a cheque drawn in favor of him or of the bank and requests the bank to get the cheque cashed and transfer and credit the amount to the account of the bearer of the cheque. It's like that there are two persons, one creditor and one debtor. The debtor wants to repay his loan and has issued a cheque for an amount equal to the loan amount in favour of the bank and gives it to his creditor. The creditor takes the cheque to bank and demands it to credit the amount equal to the amount of the cheque in his account. It means that the owner of the money has got the amount deposited in his account. There is only a difference that he has adopted cheque medium instead of cash. This way of depositing is also connected with withdrawal of the money from the account of one issuing cheque. It is of course, its offshoot, so it can be discussed when discussing about the problem of the cheque cashing as per Islamic laws and deciding Islamic jurisprudential position of money withdrawal, though the method shall be proved as correct with no objection under Islamic laws.

The third method is that bank makes cashing of the cashable promissory notes/bonds deposited with the bank by the account

holder and credit the amount to the account of the depositor. If the person issuing the note has an account with the bank, the amount equal to the bond will be debited from his account instead of cashing the bond and credited to the account of the depositor.

It is also a permissible form of depositing the amount that is not objectionable according to Islamic laws.

Besides these means, there is other types of recording in which the amount is credited to the account of the account holder who gets no information about it unless and until the bank statement or specific information is not delivered to him. It is usually done when some draft in favor of the accounts holder comes to the bank from abroad or from within the country. It might be some business money or some other amount. The bank debits the amount from the account of drawer of the draft and credit it to account of the account holder (in whose favour the draft is issued), thus the amount (balance) of the account holder increases automatically.

It is permissible according to Islamic laws but with the conditions that bank should have permission from the account holder to accept the drafts so that it as his attorney might accept on the basis of his permission and the amount of the transfer, after debiting from the account of the drawer of the drafts, could be transfered to the account of the payee thus a new form of the deposit comes into existence.

With the discussions, it is clear that the direct steps by the account holder is right also as the measures in his favour by the bank are permissible under Islamic laws.

WITHDRAWAL OF MONEY

Withdrawal from the account is also through various means:

The most significant one is the account holder delivers to the bank a cheque under his signature and the bank pays the amount to him (after deducting the same amount from his account).

The second one is through a letter (of advice) by the account holder to the bank to transfer an amount from his account to so and so bank or some other place, whether inland or abroad. So the bank shall treat the money accordingly under intimation to the account holder. It is called ‘advice’.

Another mode of withdrawal is to order the bank in writing to procure bonds ets of certain amount out of his account or if someone approaches the bank with some promissory note issued by the account holder under his signature and marked as ‘payable on claim’ the bank should pay the amount to the bearer and debit it from the account . The amount thus paid to the bearer of the note shall be treated as withdrawal.

Now we come to the most significant part i.e cheque. The withdrawal through money transfer shall be discussed while discussing the havala(money transfer) in banking services. The procurement of bonds etc. shall be discussed under this sort of banking services. As regards to withdrawal by the promissory note, it shall be discussed in details under the havala since it is returnable to the havala whose term is fixed.

The use of cheque at the time of money withdrawal is ussally as a debt as if the drawer of the cheque is debtor and the payee (user) is a creditor. The debtor writes down cheque in the bank's name to deliver the money to the creditor by withdrawing the amount from the account (of the one, issuing the cheque).

The debtors issuing the cheque are also of two kinds : (a) one whose deposit is as much as to suffice the need (cheque) and he issues the cheque relying on the deposit only (b) one whose accounts lacks the amount needed and who issues the cheques as an overdraft. We have to discuss both types of persons and circumstances.

(a) The first type : where deposit is as much as or more than the amount of the cheque and the account holder wants to withdraw his money by the cheque i.e. to recover his debt from the bank.

As told already about, that it can be interpreted in two ways:

According to an interpretation, it might be regarded as recovery of loan as if the depositor is getting back his money (advanced to the bank as loan).

According to another interpretation, it might be regarded as a loan on part of the bank which automatically results in the two parties becoming debtor and creditor.

As the first interpretation, the cheque means that a debtor has referred his creditor to the bank to recover his loan by

recovering the debt of one issuing cheque from the bank. This sort (of dealing) is quite permissible under Islamic laws .It results in the in debtor becoming free of the debt burden and bank becoming free of its debt burden by giving cash against the cheque.

We have given priority to the interpretation of the cheque as 'Fulfilling the debt' for the interest-free bank, and has shown its reasons.

According to the second interpretation, the cheque is a sort of debt resulting in emergence of mutual debts. The rules of debt must be taken into consideration as to accord to the Islamic laws. There is a condition for debt in Islam that the debtor himself or his counsel (agent) should take possession. A debt without possession is not valid. Under the circumstances, the possession by owner of the money himself or by his counsel is if the cheque is regarded as debt taken from the bank. Without it, there is no chance of validation of the debt and the basis of the present system is that the bank is not made counsel/ agent for the possession, but more often the account is transferred from one register (ledger) to another. Owing to it, there is no possibility of validation of the case since the conditions for the debt are lacking, hence the debt is invalid. No question of the one issuing the cheque being absolved of the debt arises when the debt in invalid. That is why we have regarded the money withdrawal from the bank as 'Fulfilling the debt (pledge)' or repaying the debt and have opposed

the modern theory of debt since possession would be necessary in a fresh debt and the possession is possible in all the situations.

Second Type : When the account is not to tune of the need i.e. the amount of the cheque being more than the balance in the account. The creditor approaches the bank with the cheque as to the recover the debt by getting the money in cash from it or to transfer the amount to his account by registering him as its debtor, and thus making it a part of his ownership account.

At this stage, there is a trouble to be faced as already hinted, since if the money withdrawal from the bank means debt which is conditional with the possession and there is no question of possession in the case. If cheque means referring the creditor to the bank by the debtor, this reference is valid as already discussed under first type. It is something different that the bank was debtor of the reference holder (transfer seeker) and the reference was made only on its basis and in this case the bank is not indebted that is 'free reference' in religious terms. But there is no objection in this reference or transfer also. Accepting the reference means that the debtor is freed of the obligation of what amount of the debt he vowed and the bank becomes indebted in his place and the person issuing the cheque has been regarded as indebted by the bank.

The basis of being the person issuing the cheque indebted is not taking any debt but is the acceptance of bank's transfer

that is different from the debt. Since the bank was free of obligation since beginning it shall become “obliged” (indebted) and has to pay the amount of the reference with the result the person issuing cheque (account holder) would be regarded as indebted to the bank.

Till the stage, it has been made clear that use of cheque in repaying the debt on the basis of the reference i.e. transfer is valid under Islamic laws, whether it is issued relying on the account or as an overdraft.

Beside this, there are some other debts in the liability of the account holders that are recorded in their accounts without intimating to them e.g. different service charge, postal charges, expenses on documentations etc.

These debts are valid according to Islamic laws since the bank carried out all the service on clear direct or indirect instruction by the account holders and the records are being intimated through post for information. Then the account holder is responsible to bear the expenses and pay for this permissible jobs what is usually paid for such jobs.

It is a different matter that the bank would not receive the dues in cash but due to mutual indebting, debit from the account of the account holder.

COMBINATION OF QUALITIES

Sometimes a single person issuing cheque on the bank combines in himself the positions of both the utilizer and utilized, for example the position of the person issuing cheque for his purpose is as withdrawer as well as user. Under Islamic jurisprudence, it means that the account holder wants to recover the part of the loan (advanced to the bank)equal to the amount of the cheque. The cheque has been issued just as a proof for the bank to reserve for record so that it can prove how much the debit has been taken back.

Its secondary function might be as if the cheque is issued in favour of the bank. The bank in this case is withdrawer and utilizer at the same time. Under Islamic jurisprudence, its interpretation may be like that withdrawer of the money has become indebted to the bank for some or other reason and the bank's past position of the indebtedness and new position as creditor takes on muqasa (mutual adjustment) and nothing due remains to none.

The use of cheque might be a proof of muqasa (mutual adjustment) that compulsory muqasa has occurred between the bank and the account holder that is a valid function under Islamic laws. There is no objection to it.

FIXED DEPOSIT

These are those amounts whose keeping in the bank is aimed at just to earn interest (gains) and the owner of the money does not need it in near future. A withdrawal from it is not permissible unless and until its term of maturity, as agreed mutually between the bank and the depositor, is complete. On expiry of the term, both the parties have option to extend the term also if they lik so and to get it renewed.

These deposits are actually called as loan on intrest and an interest-free bank cannot accept them. But the interest free bank has under its working policy, invested them off the position of debts and has given them the meaning of formal “trust” (deposit) as if the depositor gives the money in the custody of the bank so the they may be invested in mudhariba (business) and profit be earned as discussed in details in preceding pages.

SAVING ACCOUNT

It is the account which is recoded in a certain ‘pass book’ that has to be presented at time of every deposit and withdrawal. It is, in fact, a saving deposit but the account holder has option to withdrawal money (out of it) at times or with certain conditions.

The interest-free bank would accept these amounts very openheartedly and give full option, to the account holders as in case of interest bank and utilize it by investing it like other deposits in business as mudhariba. But as indicated earlier, there are two types of differences between fixed deposits and saving accounts in the interest-free bank, as summarized below.

Withdrawal from saving account is possible any time but bank has to put a condition with the party that deposit shall be in the bank (say) for at least six months. Only after that period one would have option to withdraw.

The interest-free bank after separating out a part of the saving account would reserve as loan and remaining cash would not be included in the mudhariba to face every incurring losses due to it.

SAFE LOCKERS
(Real Trust Custody)

These are the things which their owner apprehending theft, fire or destruction etc. give them to the custody of the bank so as to get back in their original state as and when needed. The banks makes various lockers available for safe custody of these things and charge for letting them on hire (for the safe custody)

Actually these are the amanat (custody/trust) which can be called so in terms of Islamic jurisprudence where safe custody of the thing with its original state is must and the bank has right to take charges for custody only on this basis, whether regard it as rent of the lockers or expenses on security of the lockers.

ECONOMIC IMPORTANCE OF THE BANK DEPOSITS

It has been clear from the discussion till this stage that the bank deposits have immense importance in the economic world. Their importance can be summed up in the following three points:

(i) Bank deposits are regarded as an important mode of money payment despite having no more importance than recording in the bank's documents. There are innumerable securities of the bank's confidence and its reputation around them. These securities use to enhance their importance many times though government laws do not recognize their importance as cash and accord position no more than a document. Impact of their non-recognition by laws of course is that these papers may not necessarily be accepted in repayment of loans and creditor may demand cash. But even then, their dealing importance is undeniable. Their ownership keeps on changing through cheques and the country's commerce and industry keep on progressing.

(ii) Bank Deposit represents mostly those money which are generally left unutilized in the country and are set on the track of production and profit through being deposited in the bank. The businessmen and industrialists take them as loan and cause the country's economy progress on the path of commerce and industry.

(iii) The Bank Deposits energize the bank so that it migh build its reputation through these deposits and attract more deposits through the reputation. Thus the deposits would develop reputation and the reputation would develop deposits, resulting in the resource development and accelerating the pace of business.

It is needed to explain the viewpoint of Islamic laws about these points and to tell what the stand of the interest-free bank would be in such cases.

BANK DEPOSITS AS MODE OF PAYMENT:

The best way of repaying loans etc through the bank deposit is use of cheque since the actual mode of payment is bank deposits, not the cheque which is just a means of withdrawal of the depositor's money reserved with the bank as a 'debt'. Making these deposits as mode of payment may be permissible only in the such conditions under which the use of debt in place of cash and making it a mode of payment is permissible.

This problem itself is to be investigated under what circumstances a debt can be made a mode of payment.

Its details is here. There are two ways of of dealing through debts

i) The debt is made mode of repayment of another debt and the reference be made on the basis of the debt i.e. a debtor refers his creditors to his earlier debtor so as to recover his

debt ,thus making the debt as mode of repayment of another debt. The cheque is used here as mode of payment.

It is not objectionable according to Islamic laws.

ii) The credit be made centre of main settlement and dealing and the dealing be made on its basis only. For example, something is purchased against a debt or is gifted to someone else, such a deal is valid under certain circumstances and invalid under certain circumstances. The detailed problem is :–

If a thing being purchased with the debt is in itself not a debt and is readily present there i.e. the things is in cash, and its price is credit, there is no objection in such a dealing. But if the thing itself is not readily present, the deal is wrong. According to the Islamic laws, dealing of a credit with another credit is not permissible .One or the other should be in cash.

Likewise gifting of debt (writing off his credit) by a creditor is permissible under Islamic laws but with the condition that the debtor only should be gifted. If someone else is gifted, it will not be valid in the opinion of those experts in Islamic jurisprudence who regard ‘possession’ by benificiary is must in ‘gifting’ and none other can take possession since gifting to one other than ‘gifted’ is invalid, though there is no harm in possession by a counsel of the beneficiary whether the ‘other one’ is indebted himself.

It means that there is no Islamic legal restriction in making cheque a mode of payment. Such dealing with it that actual price

is bank deposit or the money present with the bank and not the cheque, makes the deal sometimes permissible and sometimes not. But making it subject of the deal permanently and total overlooking of bank deposits make the deal totally wrong (impermissible) with the condition that the drawer of the cheque is not having account in the bank since the things through which the purchase is made effective, has no reality. Just record of debt in a bank is nothing. There must be possession that is not available for the moment. But it may be made clear that the use of cheque in usual running of bank is only as a mode of payment. There is no objection to it according to the Islamic laws and can be practiced regularly in the interest-free bank.

THE INTEREST-FREE BNAK AND SUSPENDED (INOPERATIVE) MONEY

The second point of discussion is what method of collecting the suspended money, in the country and invest it in to the business, the interest-free bank should adopt.

There is apparently no difference between interest-free bank and interest bank in this regards. Both take money and invest in the business. The only difference is that interest banks advance loans to businessmen while interest-free bank invest the money on the basis of profit sharing (as a shareholder).

CONFIDENCE MORE THAN DEPOSIT

The third point of discussion is that in the interest banks, confidence is built more than the amount of the deposits and liability of debts is taken. What would be the interest-free bank's stand in this regards? Can this bank advance loans more than the present amount of its deposits.

Its reply is that interest-free bank can also undertake these functions, but with the conditions that there should be some valid reason under Islamic laws, without which no such function can be taken up.

To differentiate between the valid and non-valid reasons, under Islamic laws, the following three cases have to be considered:-

FIRST CASE

The present deposit with banks amounts to (say) Rupees one thousand. Two persons approach the bank asking loans of rupees one thousand each. Now the bank knows that both the debtors would deposit their debts with the bank only and won't ask to withdraw at a time. It is easy for the bank to oblige both, thus to become creditor of 2000/- ₹

SECOND CASE

The present amount of deposits with the bank is ₹1000/-. A person comes and ask for a loan of 1000/- which the bank gives. After getting the amount , he gives it to his creditor who deposits the amount again in the same bank. After ₹

sometime, another person comes and asks for a loan of ₹1000/-.The banks gives th same amount ,which it already has .Thus the bank's actual capital is ₹1000/- but its credits amount to ₹2000/-.

THIRD CASE

The deposit with the bank amount to ₹1000/- and the bank gets transfers of two persons who do not hold account with the bank but the bank speculates that it won't have to face embarrassing position of paying at a time. Under the circumstances, accepting both the transfers means two persons have become the bank's indebted by ₹1000/- each but the bank's own money does not exceed ₹1000/-.

An analysis of these three cases reveals that in the first case, there is credit of ₹2000/- against a money of ₹1000/-. It is due to obligation of credit of ₹2000/-. None has handled credit, just got it recorded in the respective accounts, though for a credit, possession of the money is necessary in Islam; without possession, a credit is not permissible. The bank would be regarded creditor of that amount only which has been taken possession by the debtor.

In the second case, crediting of the bank is due to the two credits. But both the debtors have taken possession of the respective money. The bank has been credited again by their creditors not by them. So both the credits are lawful (in Islam) and the bank will be regarded as creditor of ₹2000/-

In the third case the bank's upper handedness of ₹2000/- is due to acceptance of the transfers. There is no question of credit. The transfer in itself is valid. So the bank will develop a right of ₹1000/- each on both the credit while its own money does not exceed 1000/-

Hence it has also been known that obliging by bank for an amount more than its existing money is a permissible matter under Islamic laws, provided that its valid reasons are present (under Islamic laws). So if there is a credit ,it should be taken possession of (as supposed in the second case) or it should be in form of a transfer (as in the third case)

But there is no point of validity if there exist no valid reason (under Islamic laws), and the credit has not been taken into possession, or no transfer has been given.

Earning right of ₹1000/- each on two persons by recording it in its documents, while its own money not exceeding ₹1000/- can neither produce credit, nor creditor nor debtor. At this point it should be known that being no possession in the first case, the credit has been regarded invalid and wrong. But this possession does not mean that money should be taken out of the bank and be separated from it forever. There is even possibility that the account holder asking a credit of 1000/- (one thousands only) takes possession of that much amount through cheque then deposit it again in the bank.

Though an objection can be made over the matter that depositing back in the bank means crediting to the bank. It implies that the depositor has become creditor to the bank, making the credit bilateral. The bank first becomes creditor to the needy person, them the needy person becomes creditor to the bank with the result both the credits are cancelled by adjusting against each other, thus finishing the bank's position of ownership. After it, there might not be a possibility of saying that the bank has become right holder of ₹ 2000/-against the amount of 1000/-.

But its reply is that a person taking loan directly or indirectly from the bank after all, becomes the bank's debtor. But if he has deposited the amount back in the bank and has earned the right of ₹ 1000/- on the bank, there can't be confrontation of the two debts for any mutual cancellation of them, since what the debt the needy person has taken is termed (loan) generally and the 'debt' as advanced to current account has no 'term' and is under demand all the time, thus making a debt 'instant' and another one 'delayed'. There is obviously no possibility of mutual cancellation between such debts. For the mutual cancellation the nature and type of the dbt must be same. If it is not the case, the bank's position as a creditor would be safe and the needy person will be called debtor unless and until the term of the debt matures and the two debts meet mutual cancellation, and the account is cleared.

CLEARANCE OF THE ACCOUNT

Accepting different types of deposits by the bank is such a function, after which various types of responsibilities of account

clearance come on the bank automatically, whether it charges for the service or delivers free service. Now it is its' duly to clear the debts and to transfer the accounts thus saving itself from the hardship of transferring huge amounts in cash as such. There is no taking of burden nor facing a trouble, nor any risk of theft or damage in it.

There are some forms of account clearance in the banks: cashing of cheque, cashing of promissory notes, receiving letters of credit, accepting cheques and promissory notes.

CASHING CHEQUE

As explained while discussing the current account, it is also a way of deposit in the bank that an account holder gets a cheque drawn in his favour by some party of the bank and deposits it in the bank, which then credits the amount to the account of the payee of the cheque after debiting it from the account of the drawer of the cheque.

Preliminarily a visible verification of the cheque is necessary. It must also be seen whether the drawer of the cheque has an account with the bank.

The cheque is sometimes drawn on the same bank or even on the same branch where it is submitted for cashing. Sometimes, it is on some other branch and sometimes it is on some other bank even.

In the first case cashing the cheque is a function only. The drawer of the cheque has referred his creditor to the bank where he already holds an account.

In the second case, there is just a transfer as the bank with all its branches is regarded as one unit. The responsibilities of the branches are as if those of the main unit.

In the third case, the debtor has given reference of his bank but bank for cashing is other than it. Now if supposed that the latter bank wants to receive the amount of the cheque from the former bank in such a way that it has recorded the debt to the extent of the (cheque) amount and wants to clear the accounts by adjustment. It means that the former bank has become indebted to the bearer of the cheque and, to repay the debt, it has made the latter bank responsible to cash the cheque either under the dealing or on charges. The deal is fulfilled with two transfers. In the first transfer, the debtor by drawing the cheque has transfer his creditor to the bank. In the second transferred, the bank has transferred it to other bank as a routine. The idea of transfer to the other bank originates because the bank would not accept and cash the cheque if it has no agreement with that bank.

There is also a possibility in the deal that it may be given a form of one transfer and one sale instead of the two transfers. Hence the drawer of the cheque has transferred his ‘beneficiary’ to his bank thus the drawee of the cheque has become owner of the amount of the cheque in the bank. The drawer of the cheque whose ‘cost’ is established on the bank through the transfer, has in turn sold it to the second bank as if he is getting back his cost of credit through cashing the cheque.

Whether the matter is given a form of two transfers or one sale and one transfer, both the forms are permissible without any hassle according to the Islamic laws.

The only problem is whether the bank can charge for the service of cashing the cheque or not.

To answer it, we have to look into the three past cases. In the third case, there is no objection in taking the charges. Since the function is completed in two references or transfers that means the cashing of the cheque is the bank's responsibility to get the cost of its amount from the bank on which the cheque is issued. It is a service for which taking a fee is not objectionable in the same way as the drawee of the cheque has to pay the service charges if he himself approaches the main bank (on which the cheque is issued).

In the first case, there are two situations as the drawer of the cheque sometimes issues cheque of the amount which he has in his account with the bank and sometimes issues for overdraft.

If the cheque is drawn for an amount less than the balance in the account with the bank and the transfer is in favour of his debtor. The acceptance of transfer to the debtor is not conditional but it has to be accepted. The bank becomes debtor of the payee of the cheque as soon as the cheque is issued. Thus the cashing of the cheque is as if he is recovering his debt or crediting to his account. Under such circumstances, the bank has obviously no right to get wages (service charges). This charge means debtor asking charge to repay his debt that is unlawful, through there could be a

permissibility of taking wages at this point if the bank takes concurrence from the account holder on the very first day that taking permission from the bank shall be necessary in transferring ownership of the credit and that transferring of credit without bank's permission shall be charged. After the agreement the bank has full power to drop the condition on taking charges for accepting the transfer.

But if the amount of cheque has exceeded balance in his account with the bank of the drawer of cheque, the cheque means a transfer to one free of liabilities that is valid according to Islamic laws. An organization with no liabilities towards drawer of the cheque has full right to demand 'wages' for accepting the liability of the reference and not to undertake the job without wage. This wage cannot be termed as interest since interest is that amount which a creditor demands from the debtor. The wage in this case is that amount which debtor is demanding from the creditor so as to accept the debt as a result and to become debtor of the drawee of the cheque .

Summarily the demand of wage for cashing the cheque is permissible in two forms: (i) when the cheque is deposited in a bank where the drawer of the cheque has no account (ii) when the account has a balance less than the amount of the cheque and the cheque is cashed on overdraft. Apart from this condition, the bank has no right to ask wages or service charges in case the bank is same and amount of the cheque is less than the balance in the account unless and until it is not a term in the agreement to the effect that service charge shall have to be paid if the cheque is drawn in favor of other than the account-holder.

Until this point, the rules regarding the two cases have been stated. The first case being that when the cheque is cashed from the bank or any of its branch, on which it is drawn.

Now over to the case whether service can be charged if cheque is cashed from the some other branch of the same bank on which the cheque is drawn. Suppose cheque is drawn on Lucknow branch and cashed from Delhi branch of a bank. The detail of the case is as follows. When a bank opens various branches, all the branches act on the authority and on behalf of the main branch and the function of every branch is deemed as that of the bank. A person depositing some amount (say) in Lucknow branch, has not credited to only that branch but has developed right of credit to main unit i.e. the bank under which all these whose branches are working.

When a cheque is drawn on Lucknow branch, it does not mean that only that branch is liable but in fact bank as a whole is liable to pay the amount in cash. Despite it, the main bank is not liable to cash the cheque from every branch but it has its discretion to cash at the very branch on which it is drawn. Nobody can have a right to object to it.

It the payee of the cheque wants to cash the cheque drawn on Luckow branch from Delhi branch of the same bank, the branch has every right to charge for the service. The charge for the service is not permissible when some liability is established on someone and he fulfills his obligation. But when there is no liability on someone or on some entity, fulfilling other's liability can be charged.

CASH CERTIFICATES

A person exporting something abroad eyes apparently some guarantee from the importer so that it could be exported on its credit. But sometimes exporter, instead of demanding personnel surety from importer, takes his promise to pay as and when the documents of the thing (to be imported) reaches.

The exporter submits these documents to the bank mutually agreed on between him and the importer. The bank sends the documents to another bank in the city so as to deliver them to the importer after taking payment from him. After taking the amount, the bank's duty is to intimate to the other bank to the effect that the amount has been received and recorded in its current account.

It is obviously a permissible service that the bank undertakes for business facilities and its purpose is to take payment from there on delivering the documents through the other bank since bank there credits the amount to the account of the bank here that means the exporter's bank has become indebted to the exporter through the other bank and now it wants to repay it by cash or credit to the account.

The bank has full right to take up this mediatory service and to charge this service of delivering the document abroad and bringing back the money but even it can credit all the expenses incurred in this connection such as postal charges etc. to the account

since it has been spent with the permission of the exporter. The responsibility of expenditure incurred with the permission or at the instance of someone else rests on the person ordering.

Likewise there is no harm if the bank makes the importer liable for all the interest usually borne by the bank in taking the payment for the exporter's bank during the period between when the things is exported and delivered to the importer, since when the responsibility comes to the bank of foreign country through mediation, whether how much the reasons behind their interest be impermissible under Islamic laws, the bank has right not to accept the mediating unless and until the importer undertakes himself the responsibility of all the losses incurred in this connection not making the bank liable for it.

INLAND MAIL TRANSFER

A person, living in a city if becomes indebted to one residing in some other city, has option also to take course of bank transfer instead of sending the cheque by post. He may send a letter to the bank to effect that the specified amount be paid to some specified person in some specified mode. The branch or the bank shall intimate the person concerned that so much amount of him is in its safe custody and that may be collected or else the amount is credited to his account if he has the same in the bank and intimate him accordingly.

The Islamic jurisprudential reasoning of this business can be made in some ways:–

1. It may be a medium of recovery of the account holder's debt on the bank that he, instead of demanding amount in cash immediately, asks bank to pay to the concerned person and be free of his debt and thus he would also be free from the debt of the other person.

2. It might be a step by that bank as to get its party rid of the debt by paying through its branch or concerned (associated) bank. It is immaterial that it has been initiated by the account holder through his order. So it shall be indebted for so much amount that the bank pays and both the credits shall be adjusted mutually. The bank shall be free from his debt and he be free from the bank's debt.

3. The deal may be directly made a case of lawful transfer/ exchange. It can be interpreted as such the person ordering transfer/exchange is indebted and the person benefited is creditor. Now the indebtor entrusts repaying his debt to the bank which itself is indebted to him (by way of his account). It is the valid exchange under Islamic laws that an indebted person in repaying his debt refers his creditor to such person who is already indebted to him. Since the bank, on accepting the transfer becomes indebted to the person benefited, so it refers its creditor i.e. the person benefited to another to recover its debt. It is another transfer.

   But if the bank transferring has its branch in the other city, it cannot be termed second transfer as the bank with all its branches is regarded as one entity. An entity has no right to effect transfer within (its two branches) under Islamic laws. It is although apparently a transfer, yet not actually

4. The deal is supposed to be a valid reference under Islamic laws but the bank itself, not the account holder is supposed to be referrer. Which being indebted to the account-holder wants to repay its debt through some other bank.

After referring to the bank, the second bank automatically becomes indebted to the account holder and will refer its earlier creditor to the bank to recover the credit and shall make its bank responsible to intimate to the bank.

Actually only the third proposition among all the four is according to present day's circumstances. The other three are just

supposition. In the first and second proposition, no right of the beneficiary of the transfer is made over the bank in the other city, neither the bank is supposed to be his debtor. He is given so much choice that he can receive, the amount equal to his credit from the bank. He has no right to transfer the amount into his account without taking its possession since choice of receiving is given and not that of transferring.

The third proposition has no such defect. In it, the bank in the other city is supposed to be indebted to the utilizer and has both the choice connected with the indebted one i.e. the amount can be taken in cash or transferred into the account.

This very defect in the fourth proposition is enough that whole the deal and all the transfer becomes invalid if the second bank is a branch of the first bank.

After all, there is no doubt that the actual process based on the four propositions is right and there is no objection as per Islamic law in it.

THE WAGES FOR TRANSFER

Now it is the question whether the bank can take wages or fees for such transfer. As already explained the problem earlier that it has full choice to take the wages if the bank cashes cheque of other branch or other bank or branch. But it has no right to take wages if cheque to its own credit is encashed, except in the particular circumstances where condition is already made that there is no right to issue cheque in favour of other person without the bank's

permission, otherwise cashing of the cheque shall be charged. There is no objection, as per Islamic laws, to take wages whatever the reasoning or interpretation is made of the transfer in the light of the problem.

Now taking the problem in detail : If the bank wants to get rid of the party's credit by getting the amount paid to the creditor of its party (as is supposed in the first proposition), even then it has right to take the wages account holder. The bank, is though indebted to the accountholder, has no liability to pay the amount as and where demanded. As a debtor has no right to take charges for repaying the debt, The bank has no right to take wages if the account holder demands the money where he has deposited. But now he wants to transfer the money to other place, the bank has every right to take wages for this transfer.

If the nature of the problem is such that the bank itself wants to get rid of the debt of the beneficiary from its account holder (as is told in the second proposition), it is a great service that the bank does in the favor of its account holder, and has right to take the charges for the service, though the gravity of the service charge is just that the burden of one making order is lessened, his debt is paid off and he has just to bear the expenses of paying it at another place, otherwise he would have been under burden of many types of expenses if he had himself gone to the place to repay his credit.

If Islamic legal aspect of the problem is seen (as is in the third proposition), it means that the person ordering has referred his creditor living in other city to his bank. Now there are some types of this transfer also.

(i) The amount for transfer is so much that is not present in the bank.

(ii) The account is running since before, or

(iii) In the amount is deposited at the time of the reference as to make right of transfer and to transfer the amount through the bank.

If it is the case as in (i) it would be a transfer to one free of liability.

It it is case as in (ii), it is a transfer to an indebted one. But in both the cases, the bank has right to take wages for the service. Since an indebted person is not liable to pay off the debt at a particular place. His liability is just to pay off the debt at the place where he has taken the debt. If the payment is in some other way, one has to bear the expenses on transfer.

Now the case (iii), here the person ordering pays the amount beforehand. On making right, he makes the bank responsible for the transfer. In the case, the bank has right to make a condition at the time of the deposit that he cannot transfer any of his creditor to the bank without its permission and if he does so, the bank will charge for the transfer. This condition is just and valid under Islamic laws since it is in the interest of the debtor, not the creditor. The interest is forbidden when it is in the creditor's interest.

If the basis of the transfer is the fourth proposition when a designated bank itself refers its account holder to another bank in another city. Then it has right to take wages there also since the bank though is indebted to the account holder but has no liability to repay the debt at some other place .This is an extra demand, the charges for it can be taken under Islamic laws. There is no wrong in it (vide details in appendices).

TRANSFER IN OWN'S FAVOUR

It so happens sometimes that a person needs some money in other city. He deposits the amount in a bank in his city so as to get the money from its branch or from some allied bank in the other city.

In this case, the transferor of the money is the bank which has becomes indebted to the person after taking the amount and now he wants to repay its debt in other city.

There are two forms of the transfer: Either the bank transfers to its own branch or to some other bank. If the transfer is to own branch, it means that it is a particular mode of repaying the debt and nothing else as if a non-creditor has taken assurance that his debt shall be repaid through so and so branch and it shall have no connection with the transfer. If the matter of transfer is concerned with the other bank, it is clearly a valid transfer under Islamic laws as if the bank has referred its creditor to the other bank. Now if the bank is indebted to the first bank and has some account there, then it would be transfer in favour of indebted one otherwise in favour

of one free from liability. In both the cases, the transfer would be just and fair at all. But the bank would have right to demand its service charges (wages). It may put a condition from the beginning that it shall take charges for the transfer since this condition is right according to Islamic laws. It is a (Islamic) legal liability of one agreeing the condition to fulfill it.

TRANSFER FOR NON-CREDITOR

It is also a mode of transfer that a transfer is affected free or to make some person living in some other city indebted whether he himself is not already creditor i.e. he is not having an account in the bank.

This transfer is right. It is immaterial if the transferee would not be owner of the money before receiving the amount. This transfer is not a custodial transfer in terms of Islamic jurisprudence.

Another form of transfer is that the transferee is given only and only the right of using the amount being transferred. In this case the amount wont be excluded from the ownership of the transferor, just the bank in the city would inform the bank in the other city that so and so person be paid so much amount and the bank would act accordingly as per its agreement.

CASHING PROMISSORY NOTE :

The bank carries out another service apart from those mentioned above. It is called ‘encahsing promissory notes.

It often happens that the bank intimates the number and date of the promissory note to the indebted person some days before the expiry of the term of the note and credits to the account of the creditor on receipt of its value while deducting just its expenses, whether the receipt of the amount means receiving in cash or transferring from account of the person issuing.

If the service is concerned with cashing of the notes and there is no interest business behind it, obviously service can be charged as per Islamic laws, whether the receipt of amount means receiving in cash or transferring from the account of the person issuing promissory notes into that of the creditor as if the person issuing the promissory notes refers his creditor to the bank.

There, in the same manner, is also that promissory note signed by the account holder being presented to the bank in which it is seen whether the some amount as specified can be withdrawn at the 'right time' as if the person issuing promissory note is referring his creditor to take back his debt from his account in the bank.

There is a difference between the earlier note and this one. The earlier note has been presented after the completion of the term and this note is reserved since before but its honoring is conditional with completion of the term. But it does not affect the permissibility of main transfer.

The mode of cashing the promissory note is to transfer the specified amount into the account of the creditor by debiting the amount from account holder's account or paying him in cash.

But it is necessary to differentiate between the two types of promissory notes.

A type of promissory note is that one which is not preliminarily referred to the bank whoe? but its payee approaches the bank with the note as he wants to encash it. The bank has right to take charges for its service in such a type, since it makes contact and puts demand to repay the debt, whether in cash or by bank transfer.

But where the beneficiary (payee) comes with the note that is primarily referred to the bank which is instructed to pay from the account of the account holder (debtor), the bank itself becomes indebted to the beneficiary and there is even no need of accepting it since the debtor has his account with the bank so he has right to refer to the bank, the bank has no right to take charges for repaying its own debt since in this case the bank itself has become indebted.

In such promissory notes, the bank has right to take charges for the service unless and until its is in bank's favour. There is no question of charging the repayment of the debt. But it is possible that the bank puts a condition on the very first day, with its account holders that they have no right to refer to the bank transfer without the bank's permission otherwise they have to pay to drop the condition.

BANK'S GUARANTEE FOR PROMISSORY NOTES AND CHEQUES :

A debtor issuing the promissory note sometimes wants to give the weight age to this commercial document by bank's guarantee which is of two types:–

(a) When the bank make itself responsible against the beneficiary (payee of the promissory note/cheque)

(b) When there is no responsibility with bank. It only verifies that the drawer of the note has account in the bank and it can pay off the amount anytime.

We will discuss the both respectively:–

(a) It is a permissible act for the bank to accept the promissory notes etc. as to become responsible against the beneficiary. It is not based on the surety to the debt. Its guarantee is that the debtor shall payee off the debt. Its legal (Islamic) impact is that the payee (beneficiary) shall have right to approach the bank to get the amount if the debtor fail to clear off his debt. But he has no right to demand from the bank if the debtor is ready to pay the debt. Thus the bank has taken responsibility for the debt's repayment, not the debt.

(b) It is also a permissible act if the bank vouches the promissory note as such that there is payable amount present (in the account of the drawer). No liability comes to the bank by it. Bank's job is just to attest the document. It has right to demand the wages for the sevice and deny it without the charges since the drawer of the promissory note does take advantage of the attestation whether the bank pays or not.

As for promissory note, there are two types of accepting the cheque :–

1. The bank accepts the cheque so that it gives weightage to it by its signs and thus enhancing the liability and also take responsibility that it will accept whosever uses it for recovery of the debt that means, the bank should be ready all time to honour the transfer of the payee of the cheque whether it is issued signed in favour of a certain person or issued unnamed.

   The cheque being issued in favour of a certain person means that the bank is responsible to the particular person as if it has accepted first type of promissory note so its impacts will be like the first type of promissory note but unspecified cheque means responsibility to an infinite group for which the bank cannot be forced.

2. Accepting cheque, in the sense that bank has no responsibility but it just verifies that the person(s) issuing the cheque has (have) account in the bank and can pay anytime, is also a permissible act whether it is concerned with a particular individual or an unknown group. The bank has right to charge the service as in the past cases. It has done a permissive service that should be paid.

FINANCIAL PAPERS

Financial papers mean shares and certificates

Share is an indicator of share in the capital of a corporate company.

Certificate is that signifies the credit of government or any formal or informal organization.

These papers are issued for a nominal face value but its value changes as that of other market commodities.

The people are attracted towards them since they have profit in difference between their sale price and purchase price.

Sometimes bank itself does the sale and purchase and thus earns substantial profit. These papers also act as a sort of cash hence there is profit through them also.

This point shall be discussed under the bank's utilities. Presently the bank's mediatory services are being discussed and it is being seen how the bank does sale and purchase of these paper as its associates desire.

The position is such that the owners of the papers surrender them to bank for marketing and the bank after examining all the pros and cons, the verification of the signatures etc, seeing owner account or debtor certificate, takes them in its custody.

It speculates the market price by contacting the experts. Then it undertakes the sale or purchase after seeing the suitable price.

This mediation by the bank is directly connected with the sale and purchase of these papers. There is no question of the custody of the amount or sale and purchase (of the amount) that is hidden in it. So the deal may be proper in the form that the sale and purchase of these papers are permissible otherwise the deal is wrong and impermissible as also taking charges for the service.

'Wages' is only for permissible services. The wage for impermissible and prohibited job is also impermissible and prohibited.

Now the question whether the sale and purchase of these paper is permissible or not, shall be discussed in the light of Islamic jurisprudence under the bank's own business, since the bank does business of these papers also by side of mediatory job and regards them as source of income.

SECURITY OF THE FINANCIAL PAPERS

Sometimes people associated with the bank (clients) gives their (valuable) papers for safe custody and other services. The bank gets large strong trunks for it and keeps the papers in them safe. It charges for the services. Apart from the recompense for the service, the bank gets another advantage out of it by increasing contacts with the people who deposits their money regularly in the bank.

Since the security of these papers is a permissible act, the bank has right to take wages for it. Even all the related services such as guaranteeing the papers whose term has expired, their cashing and purchase of the fresh paper etc are permissible. Hence there is right to take the wage for these (services).

There is another service related to it i.e. purchase of coupon that the bank undertakes for its associates. Whether it is permissible to take wages for it or not is related to the permissibility of the profit from the coupon. If the profit is commercial / business profit as in the shares etc, there is no objection in it. But if it is related to the interest instead of business profit as in the case of loan bonds, then it is impermissible and prohibited.

The bank, apart from purchasing these papers, also pays amount of the companies on their behalf of them. Many companies enter into agreement with the bank that the profit (dividends) of shareholders be distributed by the bank, for which the company deposits the amount of all the coupons in cash or gets the amount adjusted against its account in the bank.

It is a permissible act of the bank to pay the amount (of coupons) on behalf of companies but if the profit is also permissible as receiving amount of the coupons deposited by the concerned persons in the bank. When the main act is permissible, taking wages for the service by the bank is also permissible and it has right to take wages from the companies for the distribution of the amount, since the company either has it account already in the bank and

orders for the distribution on the basis of the account, or the company pays instantly the amount to be distributed and wishes it to be distributed by the bank or the company's aim is that the bank pays all the amount as debt and records it in the company' account accordingly (as overdraft).

In the first case the bank has no fundamental right to take the wages as it is bound to pay the credit i.e. transfer the amount as per order of the owner of the money (account holder in this case). But if it has made a condition since beginning that there won't be a right to transfer the amount without the bank's permission, the bank has formal right to take the wages for accepting such a transfer. There is also of permissibility in it if the bank does not regard the wages as for paying the amount but demands for the troubles it takes preliminarily such as informing the concerned people, arranging to gather them since the bank as a debtor is liable to pay off the credit but not to inform or gather the creditors.

In the second case when the bank pays the amount instantaneously and wants to distribute the amount, the bank has valid option to take wages for accepting primary amount and delivering the amount to the people if the company aims at delivering the same amount as such to the share holders. But if the bank aims otherwise, the bank as if has become indebted and the company wants to pay off its debt. In this case, the permissibility of the wages is only in such a condition that the bank makes agreement on the day one that transfer will not be entertained without charges (wages or commission).

In the third case, when the bank is made to pay to the company's shareholders as a debt to the company and the amount is paid to the bank later on, it is permissible to take wages for such a position since the bank takes responsibility of distributing a predetermined amount after allocating it for the company. This responsibility in not included in it fundamental duties. The responsibility of a debtor is just to pay off the debt and not to follow the creditor's instructions. The bank has right to take wages for the service not compulsory when it carries out the same.

UNDERWRITING THE SHARES

Sometimes, the bank undertakes the mediatory job of recording (underwriting) the shares of some companies and makes agreement with company issuing the shares that it shall issue the shares on behalf of the company.

There may to two forms of the agreement :-

In a form, the bank issues the shares but does not guarantee it in the sense that the bank shall take wages for the services for the number of shares sold but does not take responsibility that all the shares are sold.

In the second form, the bank also guarantees the issue that it shall purchase the share left unsold.

Apparently there is no objection primarily but if the company in itself is objectionable under Islamic laws . Only difference is that in the first case, the bank shall be attorney for the issue of the shares

and shall leave the scene after taking its wages. In the second case it can be assumed that the bank has been hired to sell the shares but there is a condition in the deal that bank itself shall be responsible for the unsold shares.

Under the Islamic laws, there no objection in the condition whether both the parties may not guess how much shares might be sold and how much left unsold.

LETTER OF GUARANTEE

Letter of guarantee means an agreement to the effect that it shall pay specified amount to the person for whom the guarantee has been taken if he deviates from the agreed terms and conditions. The letter of guarantee may be of two types :–

1. Letter of guarantee for commencement,

2. Letter of guarantee for completion

The guarantee for commencement means that government or non-government institution declares at the time of giving out contracts that the person entering into contract has to deposit certain amount before the work, and he instead of paying the amount arranges bank guarantee that the bank shall be responsible to pay the amount if the person does not take up the contract and does not start the work.

The guarantee for completion means that the government or non-government institution demands the guarantee that certain amount shall be paid if the work is not completed within the stipulated time, and the contractor instead of paying amount in cash gives bank guarantee that bank shall be responsible to pay the amount. This guarantee is called guarantee of completion, since the work has become duty of the contractor and guarantee is for its completion.

Such letters are needed basically as government (or other agency) feels that all those bidding for the tender for some work or some sale or purchase should endorse some guarantee that the work shall be started or shall not be left uncompleted after the start so that the government should not be in more trouble or in loss. So the government demands (guarantee) from the participants (in bidding) first, then the tender is opened. Hence it demands another guarantee from the person winning the tender to deposit the money in cash proportionate to the certain reasonable percentage to make it guarantee for the situations when the work cannot be completed and government has to face some loss.

The contractor instead of blocking their money arranges to give the bank guarantee that the bank shall pay the specified amount if the contract is not fulfilled so that government shuld not face any loss.

This is called letter of guarantee (L.G.) and it works like depositing the money in cash after that the contractor is bound to complete the work. In case of non-fulfillment, the government realizes the money from bank which in turn realizes from the contractor.

We begin our discussion from the guarantee for its completion followed by the initial guarantee.

LETTER OF GUARANTEE (COMPLETION)

Before issuance of the L.G. (completion), an agreement is made between the party using the L.G. and the person asking for

it. After it, the contractor vows to work for the party and the party becomes owner of a reasonable percentage of the total contract amount if the contractor does not fulfill the condition and does not carry out his job.

Apparently if this condition has been fixed under Ijara (hiring someone for some work) etc., it is permissible as well as bound to be executed sincerely and also makes the right for the party to take certain portion of the amount of the contractor. This right is verifiable and certifiable also from the third party. So taking guarantee of the contractor to fulfill the condition is proper and valid as of a debtor to pay out the debt.

This guarantee is right and it means that the bank has become responsible to pay the contractor's dues like the guarantee of a third party debt. As in the debt guarantee, there is a right of demanding from the guarantor, there is right of demanding from the bank if the condition is not fulfilled (by the contractor).

Since the bank has taken the responsibility at the contractor's wish, it is his responsibility to compensate all the losses of the bank. It has even right to demand the wages apart from the amount paid. The bank has through the arrangement enhanced the creditability of the contractor's words, and his reliability. It is a permissible work and the wages for it can be lawfully taken.

LETTER OF GUARANTEE (COMMENCEMENT)

It is also issued by the bank but there is no way of it being mandatory under Islamic laws, since the person asking for the

guarantee has not made any deal with the party so as to make a condition under it that could be bound to be followed. It is a guarantee for commencement and condition for commencement, whose fulfillment is not obligatory. Under Islamic laws, to follow a condition is obligatory only when the condition is under a 'necessary or binding contract1'*. So that the condition also becomes necessary and mandatory with the necessity of the contract. Otherwise the condition as such has no status.

---

* A necessary contract as in term of Islamic laws is such a contract that cannotbe broken without certain valid reason such as Nikah (permanent marriage), business contract etc.- M.R.A.

LETTER OF CREDIT

Letter of credit is the best means of payment in foreign (international) business.

Letter of credit means guarantee by the bank on the demand of purchaser for paying the price of the material supplied by the seller. It implies that bank would pay the price on seeing the papers if the purchaser fails to pay.

Letter of credit may be of two types:

1. For export 2. For Import.

It is exporter who opens credit for import so that the exporter in other country is in confidence and continues to supply material due to the confidence on the bank. Importers open credit for export so that the material should be exported out of the country.

There is only difference of a relation between these two types of credits, otherwise there is, in fact, no difference.

Its purpose is the binding on by the bank to pay the amount of the user (of the L. C.) when needed. The purpose of the bank's credit is only that it becomes responsible for the seller's debt to the buyer and the buyer is promised that the bank shall be responsible to pay the price if the buyer fails to pay it. With this setting, credibility of the buyer's word is increased. The bank's job would be to give the price to the seller after receiving all the commercial documents,

if there is an agreement between the seller and buyer to the effect that the right of price shall emerge as soon as the material is sent. In contrary, if the agreement is to the effect that price cannot be taken in advance, the bank shall not pay the price unless and until the buyer intimate that the material has been received.

To open the door of credit and to guarantee, the payment of the seller's amount instantaneously or after the receipt of the material in deliverance of the service by the bank is legal act under Islamic laws. To pay the price due to this guarantee is also permissible whether it is paid from the buyer's account or from its own money; the buyer shall become indebted to the bank if it pays and has to repay the debt to the bank.

The advantages that the bank gets out of this credit are of two kinds:–

(i) The wages for issuing the letter of credit and for paying the amount to the people after making contact with them.

(ii) Another advantage is that the bank gets from the buyer for the amount paid. The bank claims for the service charges since it has repaid his debt out of its money and the money has been blocked for so much time in his way. It is actually 'interest' but it must be molded according to the principles of the interest-free banking.

The advantages under (i) above are absolutely permissible but those under (ii) are absolutely prohibited (haram) .

Besides this, there is another profit that the exporter's bank charges from the importer's bank which in turn charges from the importer. It is the profit of the amount which is related to the time taken in receipt of the amount from the concerned bank in the other country.

Its legal (Islamic) reasoning can be made in following ways: If the exporter makes a condition in the 'sale-purchase deed (contract)' with the importer that importer shall have to pay such amount per day till the payment after which the buyer and his bank shall be responsible for the payment. It will not be an interest since the interest, mean to take profit on advancing loan for the period it is not repaid. There is no loan in this case. The profit (commission) is out of the agreement under business deal. It is obligatory to fulfill each and every condition of a contract under business.

SAFE CUSTODY OF THE GOODS

A bank sometimes does the job of keeping goods safe by setting up big godown inside or outside the custom only to handover them as and when concerned people approach with the necessary documents.

The most part of the goods is stored when the customer delays in taking the delivery or refuses to accept the good. The bank keeps the good safe in interest of its clients and waits for their instructions. Thus the bank keeps those goods also safe for which it has entered into pact for paying the price after checking the documents. It is something otherwise that this safety goes in favour of the buyer, not of one who has already received the price by showing the documents.

In the first case, the safe custody by the bank is a permissible matter for which commission (wages) can be taken but if the bank undertakes the job due to direct or indirect (clear or subsidiary) instruction from the concerned person.

To keep goods safe in the second case is also permissible and the bank can take wages from the buyers but with only condition that the safety should be demanded by the buyer or should have been agreed on secondarily while opening the credit that the bank shall keep the goods safe when it reaches and it shall get commission (wages) from the buyer.

FOREIGN CURRENCY BUSINESS

As a citizen of a country is indebted to another citizen, likewise citizen of two countries can be indebted one to another. This debt is due to usual sale-purchase when buyer becomes indebted of goods' price and the seller creditor.

At such places where there is no system of banks, the repayment of foreign debt is made through those means which are adopted for that within the country. If it is agreed on in the business that the price would be paid in the currency of the buyer's country, the buyer after purchasing the currency equal to the price, would send the price in his country's currency to the seller to clear off his debt (due to the purchase).

If the price is to be paid in the currency of exporter as agreed upon, the buyer's duty is to deliver in the currency of the seller's country to his country after getting them in the required quantity from the market and clear his debt off. It was the territory ruled by the currency traders (money-changes) who were controlling prices Until the banks entered into the arena and have introduced significant means replacing the cash payment by designing it. Now cheques and transfer have replaced the cash payment. With the development of the business, it has been easy for a bank to dominate over whole business by replacing the currency changers and it has started the work also.

In discussing about the foreign exchange business, talking about bank's means of payment, business of these currency notes would be discussed first, to be followed by discussion on business of currency.

BANKING DEVELOPMENT IN REPAYMENT OF THE DEBT

Due to the banking advancement, the debt repayment has made it possible that the debts and other dues are repaid without cash transfer and one gets no trouble.

An easy way of this business is use of those commercial papers which a bank uses for such works. An advantage of those papers is that an Iraqi importer, if indebted to an Indian exporter and wishing to pay price for some import, needs not to get Indian currency to pay his debt, but he may repay his debt through banker's cheque. An Iraqi bank might issue the cheque in favour of some Indian bank and the businessman would send it to the concerned party or if an Iraqi creditor of an Indian businessman has got cheque issued on an Indian bank from the Indian businessman, the first businessman, after purchasing the cheque from businessman would send it to the Indian businessman who would get it encashed through the Indian bank. There is no question of cash transfer in either of the cases. The problem is how to interpret it in terms of Islamic jurisprudence. In the first case, it may be interpreted as based on two transfers; the first one is affected by the Iraqi importer through the cheque issued, on the Iraqi bank, in favour of the Indian exporter who has got right of the price of his material through it. After that, the second transfer is from the Iraqi bank to its counterpart Indian bank so that the

Indian party could get his amount from the Indian bank. Both the transfers are valid and lawful under Islamic laws. There is no objectionability in it as per Islamic jurisprudence.

The second case may be interpreted as based on one transfer and one purchase. The transfer is in the form of the Iraqi importer buying debt due to the Indian businessman and thus himself becoming creditor to the Indian businessman. After it, the Iraqi businessman transfers his debtor to another Indian exporter, against whom an amount is outstanding due to the first purchase. This purchase in this manner as well the transfer is valid. There is no objectionabiliy to this banking advancement as per Islamic jurisprudence.

As far as the matters taken up by the bank are concerned, they need to be discussed in detail. In the discussion, it has to be assumed by examining foreign exchange and the pace of development in the means of payments that the foreign exchange business is concerned with the government currency notes. After that the currency would be discussed and the Islamic ruling regarding the rest of the coins/currency would be discussed.

FOREIGN CURRENCY BUSINESS

These days, banks pay substantial attention towards sale and purchase of foreign currency. Thus they have foreign exchange with them for their clients' needs. There is profit also under the conditions when sale price is equal to or more than the purchase price because the bank thus uses to get opportunities of purchase without loss. That is why bank purchases all the foreign currency

from the foreign tourists and its country's natives returning from abroad. The method of buying foreign currency for the national currency is to exchange them with the national currency by finding out the formal value of the foreign currency in required quantity. This sale-purchase deal is permissible in Islamic laws, whether it is in cash or in loan of a fixed term, as the bank practices both. Sometimes it is such an agreement with the party that sale-purchase of foreign currency shall be done but a term shall be fixed. It is done when some account-holder of the bank imports some material and there is a term of (say) one month for its' price under such condition that the price should be paid in the currency of the exporter's country and the importer apprehends the foreign exchange market might perhaps change resulting in that he might have to pay more than that at present. Under such circumstances, he requests his bank to purchase the currency of that country in quantity required and also to ask for one month's time in paying the price, thus the price of the material paid should not be more than that quoted earlier let the market value of the currency change.

This practice is permissible under Islamic laws but if the price for which the currency in purchased must not be on deferred payment (debt), otherwise if it is purchased on deferred payment it shall be 'debt for debt' business that is invalid (and unlawful) under Islamic laws. A buyer should not enter into an agreement in the contract wording to defer the payment if one has to do, but, instead, after the completion of the sale-purchase, he should ask for some more time for the payment, otherwise the deal shall be difficult (and objectionable under Islamic laws).

TRANSFERS ISSUED BY THE BANK

As an account-holder issues cheque or an order is written for the bank to transfer certain amount to his 'creditor', likewise bank itself does the practice same way. This is even regarded as the safest method of the transfer. It is said that an importer, if indebted to an exporter abroad, should request his bank to transfer the amount to any of its branch there or to its allied bank there so that the exporter gets the amount there only. Obviously the bank has to hold account in the branch or in the allied bank for the purpose and the amount of the transfer shall be debited from the account after that the concerned person would pay the amount of transfer in his country's currency whether is cash to the bank or credit in his account and the bank would take its commission for the transfer. This transfer is lawful under Islamic laws. It may be interpreted as any of the past four interpretations. Just the difference between inland and foreign transfer has to be taken into consideration. In case of inland transfer, the amount in the bank's account of the account-holder asking for the transfer is in same currency of the country as the amount to be paid on transfer, while in case of foreign transfer the amount to be paid on transfer is in foreign currency.

It may be interpreted like that the bank wants to get rid of its debt by paying the debt of its account-holder in foreign currency. For permissibility of paying the debt in different type of the material (currency), the bank has necessarily to take permission from the creditor.

It may also be interpreted in the way that the account-holder transfers his creditor to the bank. This transfer is that of one free of liability', since it has liability to pay in the country's currency, not in foreign currency. But this transfer may even be made in favour of the debtor in such from that it is at first sale-purchase in which the account –holder seeking transfer purchases foreign currency for the amount in the country's currency due to the bank (his account in the bank). He makes the bank his debtor when it becomes liable towards foreign currency, and then makes transfer to his creditor. The bank would become debtor in foreign currency with the sale-purchase and the transfer would be in favour of the debtor. Its' fulfillment shall be necessary.

Another interpretation of the transfer is also possible. It is as if the bank sells its foreign currency in foreign bank to its account holder for the local currency in value and quantity needed and the account-holder on making his right over foreign bank, transfers his creditor directly to the bank. It would be a business of the currency of his bank due to the foreign bank and transfer between the countries for himself.

All these kinds of transfers are valid and permissible and taking wages for such services is also permissible. Their reasons have already been stated while discussing the inland transfer. Only a point may be added here. When it is interpreted as such that bank has sold its debt to the other bank and the account-holder has transferred the same debt, there is a possibility for the bank from beginning to make its commission a part of the price. Thus there won't be a separate problem concerning the commission.

INCOMING TRANSFER TO THE BANK

If the transfers incoming to a bank's bank or to an allied bank are seen as accepting the transfer as per its account-holder's wish, there won't be any difference between the transfer issued and the transfer incoming. As a transfer comes to any branch of the bank or its allied bank, it shall pay the amount in cash to the drawer or credit the amount to his account or transfer to the other bank, thus acting as he desires. The practice is permissible under Islamic laws but if permissible form of the transfer continues and the exporter makes the bank to which transfer is directed, its debtor just because of accepting the transfer so as there remains possibility of the transfer in the light of the debt, otherwise if the transfer is an order only to pay so much amount, exporter cannot become (rightful) owner of amount of this transfer due to the concerned bank unless and until he himself takes possession of the amount under transfer, or someone else or the bank on his behalf takes possession. Without it, the exporter has no right to ask to credit to someone's account in the bank or to transfer to other account.

BANKER'S CHEQUE

Like a current account-holder issues cheque on the bank, the bank itself sometimes issues cheque in favour of any allied bank in other city for its account-holder who then approaches to the other bank and gets the amount as mentioned and the bank debits the amount from the account of the bank issuing the cheque.

There are two types of the persons using such cheques. Sometimes, there is required amount in the inland bank's account

issuing the cheque. At times the bank issues cheque but there is not enough amount in the account of the account-holder

The first situation may be interpreted, as per Islamic jurisprudence, in the following way :

1. The bank transfers its account-holder to the other bank as to recover his debt from the bank. This deal is valid as per Islamic laws. The only defect in it is that the debt is repaid in another currency. But there is no restrain because debtor himself is agreeing.

2. Like that in the situation (1), the bank issuing the cheque transfers its creditor (account-holder) to other bank for repaying its debt but not in the other currency since the creditor has already done sale-purchase of the local and foreign currency. The bank has sold its foreign currency to the foreign bank for its local currency and the account holder has purchased them. There is no objectionability in it even like that in the first situation.

3. The bank sells its debt in amount equal to that the foreign bank owes to its creditor account-holder for the amount in local currency and he is purchasing the debt. It means that the deal terminates at a sale-purchase only with no need of any transfer.

In the other situation, the Islamic jurisprudential position of the deal is that the cheque is an ‘order’ to the foreign bank by the local bank asking to pay to the bearer (payee) of the cheque an amount equal to the amount of the cheque as a debt and that it becomes surety towards paying the debt, or that the payee is given the

amount out of the bank's account as a debt, or that the one issuing the cheque sells his credit with the foreign bank to the payee for an amount equal to the cheque amount to the foreign bank and the payee purchases it with only difference that the payment is not in cash. The position of the problem is that if deferring the price is agreed in the main deal, the deal is invalid since it is sale of a debt for a debt that is invalid and impermissible in Islam. But if the deal is made simply but it is agreed on separately that the payment of the price would be deferred, there is no hindrance in it.

After all, all the forms are right under Islamic laws and taking wages for it is also permissible. The wages may be interpreted with different reasons which have already been indicated

LETTERS OF PERSONAL CREDIT

These letters are those which a bank issues to its account-holders in such a fashion that they could take payment from any of the allied banks listed on the back of the letter. The banks generally take the amount in full as well as its commission at the time of issuing the letter only. This may be interpreted, according to the Islamic jurisprudence, in two ways if the person using the letter holds an account in the bank or deposits the amount at the time of issue of the letter :

(i) The letter is regarded as the bank's authorization or attorneyship in favour of the person using letter to take payment of its credit to the bank from any of the mentioned bank. There is only a defect in it i.e. payment in other type

(currency) but it could be removed if the concerned person agrees so.

(ii) The letter confers option to its holder to transfer his credit from local to a foreign currency as and when he wishes so, or transfers the bearer of the letter (payee) to other bank which accepts the transfer.

The person seeking the letter sometimes desires it in the foreign currency only so that he hands off by paying the value at the current rate of foreign currency, thus is saved from the risk of increase in the rate of the currency. An interpretation for it under Islamic jurisprudence may be such that it is a sale-purchase in which the bank purchases foreign currency for the local currency and gives option of taking payment out of the currency already purchased by it from any of the allied bank.

The bank has got full right of taking wages for the business that may be interpreted in the following ways :–

(a) If the bank is already indebted to the person getting the letter, the wages are regarding the repayment of the debt at some other place which is not a liability to any debtor.

(b) If the person in whose favour the letter is issued holds no account in the bank and the bank wants to get the credit given to him to the extent of the amount mentioned, the significance of the credit would be completed when the payment is taken abroad, because credit under Islamic laws is not perfect without possession and after taking possession, the holder becomes

indebted to the bank which has the right to demand repayment of the debt at the place where the debt is taken which is matter of principle. It is not matter of the debtor's might to repay his debt out of his country, so he would demand concession of repaying his debt in his country only. The bank shall have right to charge commission for such concession.

Or it may be put in such a way that the person using the letter is indebted in foreign currency and wants to repay it in local currency i.e. in a different type which is not obligatory on part of a creditor to accept it, so the bank may take commission for such a concession.

(c) If the letter is interpreted as such that the bank gives out option to the person using the letter to purchase foreign currency against the local currency and takes its payment abroad. The bank has right to take commission for such an option.

Summarily the commission taken by the bank is permissible under Islamic laws. Its' permissibility could be reasoned in various ways.

BUSINESS OF DIFFERENT CURRENCIES

Until now, the problems concerning with the foreign (export-import) business, mode of banking payment, and sale-purchase of foreign currency have been discussed treating the currency as note (paper currency), now other types of currencies would be discussed.

The rules for different types of the currencies have different positions in Islam.

Before discussing the sale-purchase of different currencies in Islam, the types of currencies might be divided into four types :–

(i) Mineral (metal) currency of gold and silver,

(ii) The currency notes denoting the gold reserved with the bank of the issuing agency.

(iii) The currency note with or without gold-backing in the bank but the issuing agency guarantees that the gold of value mentioned might be given on demand.

(iv) The currency notes whose rule of guarantee has been withdrawn with none liable to give gold against them.

1. Metal Currency

The first type of currency i.e. the metal currency comes under rules for sale purchase of golden and silver coins according to Islamic laws. The Islamic jurists put two conditions for validity and permissibility of sale-purchase of these coins :–

(a) There should be equal amount (quantity) and same type in transaction. If gold coin is put against gold coin and silver against silver and difference occurs in quantity, it is interest and is absolutely prohibited. But there shall be no problem it there is gold against silver and silver against gold (in transaction).

(b) All the stages of the deal should be finalized then and there only. The buyer should pay the price and (at the same time) the seller should transfer the material under sale to him, otherwise the deal shall be invalid if both the parties disperse out of the deal meeting before the transfer (of possession).

The scholars have put such generalization in the above condition that it is necessary in the business of different types of the coins as well as in the sale of silver against gold or gold against silver. But I opine that it is the rule for business of different types only. There is no need of the rule to be applied to the business of same types of coins. There is no hindrance if the possession is taken after dispersal of the deal meeting and the deal is valid since the subject of the riwayah putting the condition of mutual possession in the same deal meeting is sale of dirham (gold coin) against dinar (silver coin). There is no riwayah about the sale of dirham against dirham or dinar against dinar, so the possession in one seal meeting should not be necessary as per the general rule.

If someone thinks that the possession should first be a conditions in sale of gold against gold when it is a condition in sale of gold against silver as there is no difference between the two, its' reply is

that there exists difference after all. There is no likely increase or decrease that can be though in the sale of gold against gold. Its problem has already been resolved in the first condition. But selling gold against silver might attract such speculation also. If this condition is not put, and the deal meeting is dispersed, there may also be a possibility that a party may demand deferring payment of the price from the other party and may affect some increase for this period. It is intention of the Lord of the laws that this types of move should not be let to occur in the deal. This restriction has been enforced so that mutual possession should be in the deal meeting only with no dispute to last.

Although, it is inferred through some riwayah that there should be no deal of cash and deferred payment in the business of same type of material as it is narrated regarding the business of swords that the silver should be cash to the extent of the silver (quantity), rest may be deferred, yet nothing other than the cash and deferred payment' is inferred through those riwayah. The matter of cash and deferred payment is absolutely different from the mutual exchange of possession is one deal meeting as could be known through the books on Islamic jurisprudence.

2 Currency Notes Representing Gold

If the deal is between the coins denoting gold and the notes against which there is gold in the bank, there is only one condition that the quantity of gold which the coin represents should not be less or more than the quantity of gold which the other note represents. Besides this, these is no condition of mutual exchange of possession

in a single deal meeting since these notes represent gold and there is no such condition for business of gold against gold.

It is something different that the condition of equality in itself is nothing less than a havoc. The value of these notes changes due to different factors and reasons so the condition of equality might be a forerunner of a fresh trouble. Thanks god, this type of coins is non-existent in today's world.

3. Provisory Currency Notes :

These are the currency (notes) which the issuing agency makes provision that gold of so much value may be given on demand. There may be two interpretation for it :–

(a) The regular provision of giving gold to the extent of its value by the issuing agency may be regarded as a surety due to which the socioeconomic value of the note might emerge and it gains confidence due to the credibility of the issuing agency.

(b) The aim of the provision by the issuing agency might be that it has regarded as itself liable (occupied by the liability) with the currency note instead of becoming valued one becomes a certificate to the effect that issuing agency is indebted

The difference between the two interpretations is very much clear. As per the first interpretation, the agency issuing notes takes responsibility of giving gold against it on demand, the note, if given for the price of something or against some service, means liability of gold against it and the note has been made a certificate to this effect. The issuing agency is since indebted to the seller or to one

rendering service. If this seller buys something against the note, it would not be a purchase against a note but against its object, gold which is established as liability for the issuing agency with the note having position as a certificate for it. Its actual positions is not different from other certificates. It is also a type of certificate only. But it is not so as per the second interpretation. According to the interpretation, the issuing agency if gives note as a price or as a recompense for some service, as if, pays the price of the material or the right of the service through the note and makes no liability for any debt against her but the note. The note has got value only due to the credibility the issuing agency enjoys among the people and because of the promise she has given to give gold.

The rulings as per Islamic laws shall obviously be different due to the two interpretations. As per the first interpretation, the deal with the note is deal with that gold which is reserved with the bank as a debt. For the deal with gold, there must be equality in type and value because buying currency of less or more value for the bank's note is wrong and invalid. Thus dealing with the currencies would be almost impossible due to appreciation and depreciation in the market value. But it is not so if based on the second interpretation. It is deal with note, not the gold. Hence there is no question of increase or decrease (of the gold) and deal may be made with these notes like those with (gold) backing.

It seems through indications and evidences that position of the notes based on the second interpretation is more accurate and clear. The first interpretation is not correct. The secret behind it is that the

note is regarded as a certificate towards the guarantee of the debt due to the bank and obviously loss of certificate or fall of credibility does not drop actual debt though it is widely known across the globe that any issuing agency does not take any type of responsibility nor is liable to give gold in lieu of it in case the note is cut off into piece or the government drops its creditability (value) and the bearer of the note does not get it changed immediately (within the stipulated time) into a new note. It may be said in other words that the issuing agency has taken responsibility of giving gold to the bearer of the note but note does not confer any right of gold to its bearer. So gold would also be given till the provision lasts. Gold would not be given if the provision ceases, let there be any much amount of notes. That is why the law keeps these notes separate from other commercial papers, cheques, promissory notes etc. and makes payment necessary by attributing them with cashability and regards other papers just in a position of certificates.

DEVALUED CURRENCY NOTES

The value and significance of the currency notes, if the provision of gold against the notes is withdrawn by the government (thus devalued), would be attributed with the past two interpretations. If the second interpretation is accepted and it is supposed that notes with gold backing are adjudged same as the currency notes with promise of gold whence the condition of deal with gold is not binding and the deal could be carried out with more or less quantity of gold than that of the promise.

If the first interpretation is adopted and the deals with these notes is regarded as that with gold, the regulation of 'devaluation' shall have to take into consideration for deriving ruling under Islamic laws and its (Islamic) legal position shall be discussed. If the devaluation means that the issuing agency has withdrawn its liability for gold and has made the currency note a provision note, there is no question of deal with gold here and it could be identified with the sale-purchase of notes whose rules and regulations have been discussed earlier under the cheque, promissory notes etc.

If the devaluation aims at releasing the issuing agency from the liability so as not to give gold in inland deal and to reserve the gold to be used for payment in foreign business only, it means that the note still has value and the bank is indebted for gold, though it does not want to give gold instantly or want to give gold in foreign deal only, thus the note retaining its original regard, with the devaluation becoming ineffective.

SECOND TYPES OF BANK'S FUNCTIONS

LOAN FACILITY

A bank also provides some facilities and advances loan besides the services discussed earlier. These facilities of the bank are recorded under 'services' at many places. But we aim at to discuss these facilities after separating them from the services regardless of the practice of putting both under one head at some places, as the letters of credits, surety documents and letters of personal credit have been counted under bank's services though they should be counted under facilities as regard to the amount more than their (candidates') amount already with the bank, these should be counted as loan that a bank uses to give to its account-holders.

In banking, the term of 'banking facility' is generally used for the credit. The facility covers such things as security, guarantee and surety which at time takes form of credit and sometimes does not. Sometimes the security and guarantee are reviewed as such that the guarantor's reputation and credibility is enhanced through it whether there is no question of giving out a debt. It is reviewed at times as such that as a result of the facility, credit has to be advanced at such a time when the bank is forced to deposit the amount on behalf of its' guarantee.

On the basis of the first view, the security or guaranty is just a service, which has already been discussed and the permissibility of the wage has been proclaimed. But it is not so if based on the second view, wherein the guarantee is identified with the credit,

with only difference that the usual credits are invented while the guarantee is an act which approaches sometimes to the credit.

The bank's credits are generally of three type (a) Long term loans, (b) Medium term loans, (d) Short terms loans

The bank's credit business sometimes is like the usual loan which the party seeks from bank and takes a limited amount in cash according to the demand, or at times, it is for opening credit that the bank fixes a certain amount for use by party for a certain period such as that the party may withdraw the amount anytime when desires. The reality of opening the credit is nothing other than giving loan continuously.

The present days' banks take interest on all these loans. Their business runs on interest only. But obviously it is not possible for the interest-free bank, whose duty is to adopt some new form of these matters under its general policy. These are some forms of this new policy:–

(i) The bank transforms all the loans into mudhariba; it should act as mediatory between owner of the money (depositor) and the agent (the traders/businessmen).

(ii) If the loan cannot be transformed into mudhariba, it should be left as such.

(iii) A condition should be put in the loan deal that the debtor shall have to pay service charges for scripting (of loan) etc. Besides it, all the profits may be given up.

(iv) It should be made a condition with the debtor that he has to give long-term loan to the bank out of the amount of the profit at the time of repayment of the debt.

(v) One gifting out the amount of profit should be regarded as a party of first class whose demands should be given preference to others.

CASHING OF COMMERCIAL PAPERS

Cashing the commercial paper is also a sort of loan in which the user of these papers approaches the bank before their maturity and demands amount to be repaid to him deducting the amount of interest for the leftover period and also deducting its commission and adjusting the expenses to be incurred on cashing the paper on maturity if to be chashed at some other place.

After the term is over, the bank would demand its value from one issuing the paper. The value thus got shall become property of the bank since the bank has already paid the amount out of its own money to the user. If the drawer refuses to pay the amount, the user shall have to pay and the bank shall demand its amount from him only. But if the bank has not got the money even after the expiry of the term (maturity of the paper), the bank has right to take interest also for the period at the usual interest rate.

This business of cashing the papers is apparently in the same sense giving loan to the bearer of the paper. It is a transfer from one's creditor bank to debtor bearer i.e. of the paper. It is a transfer to a debtor, not one 'free of liability'.

There is another thing apart from the debt and transfer, i.e. the beneficiary has vowed (to guarantor) to give back the amount if the debtor (drawer) does not pay the amount on expiry of the term.

These elements result in that the beneficiary, due to the debt, becomes owner of the amount which the bank has paid in cashing of the paper and the bank becomes creditor to the one issuing the paper (drawer) because of the transfer; and owing to the vow of the payee, it is the bank's right to demand the amount from the payee himself if it is not being paid. The drawer of the paper being indebted to the bank affects as such that bank has right to extract profit in case of delay in payment beyond the time fixed.

Under the circumstance, the commission, that the bank cashing the paper deducts pertaining to the period between the payment and receipt, is plainly an interest of the debt that is forbidden (haram). But the charges for the service is not objectionable as that for the recording the debt.

As far as the commission for cashing of the papers at some other place is concerned, it is also not objectionable because the bank has become creditor to the payee of the note by paying the amount and the creditor has right to demand his debt to be repaid at the place where it is taken and has right to take wages for repayment at some other place.

This wage is connected with the dropping the condition that all the creditors await for since beginning.

To talk about the elements which are against the Islamic laws in the business of cashing the note, all the charges except that service charges and commission for repaying the debt at the other place

are wrong and unlawful. The interest cannot be permissible in any way in Islam. It is prohibited and shall remain prohibited.

In its place, long term loan and gifts (assistance) are made use of to the extent of profit in the interest-free banking

That this way is not enough for the bank's security is some thing different because the condition is possible for the person cashing the promissory notes and not for one issuing the promissory note who has become indebted to the bank only because the person cashing transfers (his debt from) him to the bank indirectly. How a condition can be put with him when there is no direct agreement between him and the bank?

It is needed that cashing process should be given such a colour under Islamic laws that the condition could be made but it does not take a form of interest.

In the past pages, the process has been believed to be made up of three elements : Loan/credit, Transfer and Pledge (Pact).

In the light of the present theory, it shall be supposed such that in the deal, there is a debt which the person cashing the promissory note takes from the bank.

Another element is an attorneyship on his behalf in which the bank has been given right to charge the amount from the person issuing the note on expiry of the term and to deduct the amount equal to that given to the payee (of the note). The bank has a right

by itself to take its wages for recording the debt and other deal from the value of the note.

On the basis of this interpretation, one issuing the note would be indebted to the payee, not to the bank. The bank's right would be on the payee, who makes the bank its attorney to recover the amount on his behalf on the completion of the term. Now the bank has right to make a condition with the payee that he has to pay the amount to the extent of the profit as debt to the bank and the amount could be changed into the form of gift under its power as already discussed earlier.

BUSINESS OF PROMISSORY NOTE

At the point, it is also an Islamic jurisprudential trend that encashment of the promissory notes be given a form of business in such a way that one cashing the note (payee) should be assumed as wanting to sell his debt of 100/- as denominated for 95/- in cash and bank becomes owner of the whole amount as written on the note for 95/- with some time still left in the competition of the terms.

Due to the trend, so many scholars have given fatwa (verdict) of its permissibility that the loan can be sold on less amount provided that the loan should not be gold and/or silver alone and is not measurable or weighable. The loan is being sold here at a less price is neither gold nor silver but notes.

As regards to liability of the payee, the payee shall be liable for the amount if the person issuing the note fails to pay the amount. Even after the sale-purchase, it can be interpreted in such a way that the payee has taken liability of paying the amount to the bank after selling the debt or the bank has even put a condition at the time of buying the debt that the debt shall have to be repaid after the completion of the term.

On the basis of the first interpretation, the payee shall himself be liable to pay the debt if the debtor fails to repay the debt. On the basis of the second interpretation, the payee shall be liable for

the debt after all whether bank demands directly from him and nothing about the refusal of the payment by the debtor arises.

Due to sale-purchase of debt, the basic interpretation of the matter in itself is in a constraining position of difficulty, due to the deal being not write gold and silver, one can get rid of interest but there are certain (narrations) prohibiting this which go on to tell that in such a situation, the purchaser has right to get the debt repayment limited to the amount advanced to the debtor, not more than that, as it will automatically dropped from the liability of the debtor. It means that the bank has right to take from the debtor only the amount as much has been advanced, in case the deal is regarded as debt, the rest will be dropped in favour of the debtor with no profit to the buyer.

There is a tradition of Imam Muhammad Baqir (A.S.) as reporter by Abu Hamza. According to it, the Imam when asked for the problem told that in such situation he would get the amount for which he purchased the debt, not more than that. There is another tradition of Imam Ali Raza (A.S.) as reported by Mohammad bin Fudhail. Some person had asked what should be done, whether to give full debt or not, in case purchaser of a debt after he had already purchased it approached the seller to get repayment of the debt. He (A.S.) told that he would get the amount as much he had advanced in the debt and debtor would be free of debt.

These is some constraints in reasoning by the narrations but even after it, I cannotsupport an opinion against as per the Islamic

jurisprudence and on the basis of my personal opinion. I find no way out in my person and in my jurisprudential passion to adopt an opinion against it in spite of these traditions.

Under the situations, it is not possible for an interest-free bank to get the promissory notes sold or purchased. After all, rest of the amount has to be abandoned after which there won't be any outcome of the deal.

THIRD TYPE OF BANK'S FUNCTIONS

PROFIT MAKING : INVESTING IN BONDS ETC. (PORTFOLIO MANAGEMENT)

Profiting means to invest a part of bank's own capital or the deposits with it, by the bank, in purchase of financial papers which are generally in form of certificates and whose business is expected to give profit such that the prospects of cash money in the bank would be safe and it could change them into cash anytime it wants. According to the Islamic jurisprudence, there is no difference befween a bank and an individual in the business of these papers. But as per the trading, the bank can differentiate in many ways in between its credit and utilization. It is a difference that the money is utilized in credits for a short period but in this business it is held up in the business for a very long time. But at times, it is vice versa also.

It remains difference in the bank's functioning in profitmaking and credit. In profiting the bank brings out its money in the market and likes to use it for long-term. The credit comes to the needy person and bank itself does not initiate any measure.

Third difference is that in bank's position remains highlighted in credits and is regarded as 'VIP' whereas it is not so in profiting since the bank's position remains as a commoner. But it does not affect anyway jurisprudentially in spite of these technical distinctions.

The certificates' business be interpreted jurisprudentially in two ways :–

(i) The deal is regarded as one based on debt : It may be said that the agency issuing certificate fixes its denomination value say 1000/- and sells for a year it to the buyer for 950/- that is repayable on the completion of one year, The additional amount of 50/- being the interest for the period for which the amount of 950/- remains in the custody of someone else.

(ii) It is regarded as a sale-purchase deal conditional with time and it be said that the issuing agency sells the same of 1000/- for a cash of 950/- with condition of time. It not objectionable in giving or getting more or less since it is not a measurable or weighable type of material.

In interpreting the deal as based on sale-purchase is actually nothing other than a wordy deception and the reality can not be covered with this deception. It is of course a debt that can be presented in different forms. The spirit of debt is that a person requires ownership of some other person's money and is consequently, liable to repay the same amount and it is that found clearly in this deal. One taking 950 /- is liable to repay950/- only, and has to 950/- more that is clearly interest which is prohibited under Islamic laws.

On the basis of the research, this business means a debt on part of the bank. There no difference or distinction between it and

the other debts. What the difference between the bank's fixed amount and the amount payable, the bank wants as profit is interest that is prohibited under Islamic laws just as the profit being taken on debt/loan is interest and is prohibited.

The interest-free bank is absolutely unable to do this type of certificate business. It can do business in only the certificates which are issued by government or an agency of the sort from whom taking the interest is permissible for the bank as has been hinted under fourth point of bank's basic points of the new policy.

The interest-free banks can buy the certificate from the government etc. and can take profit on them, besides it, business in other certificate and papers is prohibited and impossible.

And all the praises are for Allah, the Lord of all the worlds.

APPENDICES

APPENDIX-I

Discussed here are those interpretations in which it has been tried to change the interest profit into permissible earning and to present it in Islamic legal form and the objections on them have also been expressed.

To eradicate the interest profit of the loan, we have adopted the way under the general policy of the interest-free bank which has not only formally but actually and substantially a different position from the 'interest' thinking.

Overlooking the theory, there can be innumerable interpretations through which form of the interest can be changed whether it reality terminates at the interest.

To accomplish all the offshoots of the discussion, some interpretations of such type are mentioned as to discover the reality by expressing our opinions and the objections about them

FIRST INTERPRETATION

Interest on a loan can be permissible for the bank in way as explained here:–

The loan has two elements : Money (Capital) and the act of extending loan taken as verb. In Islamic laws, interest means

demand of excess money against the loan given. If the excess money is taken in the sense of verb instead of money, and it is regarded as Ju'ala (Declaration of Prize), there remains nothing objectionable in it as per Islamic laws.

It is in sense of Ju'ala if debtor declares that he would give (say) one Rupee as a recompense to the person who advances loan of (say)100/- to him. An advantage of the declaration would be that everyone would be ready to give loan and none would have any objection. But it is obvious, that this one Rupee is not an excess to the sum of 100/-, but it is wage or recompense for the act of giving loan. Its Islamic legal argument is that the right of this one Rupee shall if the Ju'ala becomes wrong for some reason or the other but the loan shall remain as such. It's example is that of a person who making Ja'ala for purchase of a house declares that he shall pay Rs. one thousand over the price of the house to one who sells his house to him. It shall be as a result of Ju'ala, not that of sale-purchase that is why the rules of type and price shall not be applied to it.

This interpretation can be discussed in two ways:- (i) The basis of the problem (ii) The law regarding the problem

Basically the point of discussion is that excess in the deal has been placed with respect to the act of lending, not the money of the loan though the intellectuals of the world converge on the point that this excess is against money and the act of lending has been used only for the change of word to cover up, so the mention of

Ju'ala is absolutely useless. Jua'la is always for the act, not for the money. The thing under question is money only regardless of the act in the light of the intellectual's inclination

The legal discussion is whether Ju'ala can be right in the position and whether it is actually a Ju'ala if the excess money is actually placed against the act of lending here with the consensus and inclination of the intellectuals not being given regards.

In investigation into this problem, it is necessary to know that there are two reasons for being guarantor for some money in the Islamic laws : deal and loss. The deal here means that the duty of the person dealing with some other person is that he must hand over the thing to the buyer and loss here means that the person inflicting loss shall be surety for the compensation of the loss if some loss is inflicted to someone for some reason. The first type is called deal surety and second one compensation surety.

A person giving order of stitching clothes to a tailor is a guarantor of its wages not due to some deal, but only because he has carried out the job on his order and has spent his time and acted accordingly. It is his duty then to pay its price. He must pay equal to the usual wages for such type of the work.

It is even possible here to change the usual wage into a fixed one and it can be announced that the tailors sewing clothes shall be given100/-. It shall remain the same that the surety would be surety for compensation, not the surety for the deal and it will become a Ju'ala by name.

It means that a Ju'ala consists of two components : (i) A general or specific direction for act, and (ii) wage fixation that defines its amount, otherwise there wont be any right beyond the usual wages.

This explanation of Ju'ala reveals that Ju'ala is possible only when there is value of the work and there is a fixed usual wage for such work so as to fix its particular amount by Ju'ala, otherwise there is no question of Ju'ala if there is no wage for the main work. Ju'ala is that sets up after establishing the basic surety/guarantee, Ju'ala does not establish any surety.

If the first point is even overlooked here and some status of the act of lending is also recognized, the Ju'ala is not possible for such an act since the Ju'ala requires the value that can be guaranteed and there is no value for the act of lending beyond the amount of the loan.

It should be said in clear words that the point of discussion is only and only the value, that is the amount of loan money which has virtually (not really) been related to the act of lending, otherwise there is no question of anymore surety.

2

The second reasoning for the permissibly of profit over loan may be this, that secret behind the prohibitivity of a debt is that it makes debt an interest debt which is prohibited in Islam. If an expert in Islamic jurisprudence could take the matter of profit out of the loan, there won't be any objection on the profit.

One has to consider two type of situations to take profit out of loan :

(a) A situation is that Mr.X is indebted to Mr.Y who demands repayment of the debt and Mr.X takes debt from a bank and repays it.

(b) Another situation in which he instead of taking money from the bank, Mr.X orders the bank to pay an amount equal to that of the debt to Mr.Y

The outcome of both the situations is one and the same, but there is a large difference between two according to Islamic Jurisprudence.

In the first situation, Mr.X would be indebted directly to the bank while in the second situation, he has not taken any amount directly from the bank but he is indebted to the bank due to the bank repaying his debt, this liability being due to him repaying his debt to Mr.Y owing to order by Mr.X and thus losing its amount. Now it is responsibility of Mr.X to repay the amount. But there is no way for debt here, since Mr.X has not taken any amount from the bank but has ordered bank to lose (release) the amount. The loss of money attracts surety, not indebted. There is no question of interest when there is not question of debt

To say in clear words, the interest can be in such matters as in debt, purchase, or agreement. These is no such a deal here, it is just

a case of surety to a loss that attracts no interest and thus no prohibition.

But in the reasoning, two types of objection may be raised :–

(i) First objection : The logic, which prohibits, forcing a debtor to pay more amount than that of the debt, to his creditor, has also established on the basis of the generally known trends that there cannot be addition also to a debt being taken without any debt deal. There could be no difference in the spirit of the Islamic laws just by the change of word.

In making rules different for the two situations, it means that interest is prohibited if there is question of ownership and profit is permissible if there is no question of ownership, though there is no such thing in Islamic laws which has not regarded ownership such a crime that the profit is prohibited with it and permissible otherwise.

(ii) Second objection : If the demand for more in case of non-debt is regarded permissible, such a reason should be found out that makes the excess payment necessary and obligatory, otherwise fulfilling a condition being made just as a condition without going through a 'necessary pact' is not obligatory.

Some people have liked to make this excess on amount obligatory through Ju'ala instead of a necessary pact. They say that if Mr. X says to the bank to pay of (say) ₹ 10/- and the bank

pays the amount, the bank shall be rightful of ₹ 11/- (₹10/- of debt and ₹ 1/- being established due to Jua'la) due to the rules of compensation

There is a difference between this Juala and the past one. The reason behind the impermissibility of the past case of Ju'ala was that Ju'ala was fixed on advancing loan that was not an act of ownership in usual and normal terms as to establish surety for compensation. In this Ju'ala it is not for advancing loan or giving ownership but is for repaying the debt which is a respectable and permissible act of high value as regarded by society and masses.

But even despite it the logic is not perfect since paying the debt even having value is not such an act that Ju'ala can be fixed. All the significance of repaying the debt is due to the debt. There is no value for act of just repaying something apart from the amount. When the act has no value (cannot attract money), its Ju'ala can not be enacted. Ju'ala renews surety but doe not invent it.

There is no restriction in Ju'ala if some value is also assumed for the act of repaying a debt. It may be in the form that the debt repayment should have some more difficulty apart from giving the amount, such as the bank is in some other city and the payee Mr.Y is in some other city. Obviously the bank has not only to give money

but also to deliver it in other city for which wages (fee) can be taken. Ju'ala for it is valid.

3

The third reasoning is connected with only those debts that are paid off abroad. In it taking more has been claimed to be permissible here. Its example is that some person approaches a bank in Baghdad and desires that a fixed amount may be paid to his counsel in India. The bank has got his debt paid off through its resources. Advancing debt in India obviously implies that repayment should be in India but this act is beyond the might of an Iraqi who wants this debt repaid in Iraq only. Now the bank may rightfully demand extra money for which the right of repaying in India should be dropped. In clear words, there are ways of taking in India :
(a) to repay in India only and pay the equal amount to that taken as debt, (b) to repay in Iraq but by making excess payment.

Apparently the debtor shall repay in Iraq, not is India. So it is his duty to pay extra amount to the bank to drop the right of repaying in India. This excess money is not against loan to make it interest but recompense for dropping a right that has no reason to be prohibited.

The reasoning has already been presented in the past pages for permissibility of bank's commission. But there is a defect in it that it cannot be fully utilized as interest whose secret being whether the bank would be willing to pay the main the amount in India or not. If it is not willing so and demands the profit in Iraq only, it is a

clear interest. If it is willing, what is need of debtor to give profit to the bank in repaying his debt.

Its easy way is to transfer the money to an Indian bank through some other bank by paying just its due commission as to deliver the amount to the creditor there.

This amount of commission cannot be obviously equated with interest.

4

In some Islamic jurisprudential circles, it is well known that a way to be saved from interest is to give the interest a form at sale-purchase as Mr. X has not taken 10/- by giving 8/- on loan as to make it interest that is prohibited but has sold his 8/- for 10/- on the day one itself and delayed the payment in recovery of the price for two months. Now the purchaser has no right to raise an objection and the seller has got a profit of 2/- in the deal. This sale-purchase cannot be called as prohibited since there is not question of measurement and weighing here, it is just a note being sold and no price can be fixed in sale and purchase of a paper.

Some people object over this reasoning that full advantage of interest cannot be taken out of it also; since if the person taking 10 by giving 8/- and fixing a term of 2 months, takes the amount as on loan, it is clearly an interest and the bank has right to take more on more delay after the two months. If it is due to sale-purchase, there is no right of demanding more on more delay

beyond two months. Thus the seller shall be deprived of the profit due to more time which would not have occurred in the matter of loan.

The answer to the objection is as follows : Its solution can be derived on the very first day i.e. the sum of 98/- is sold for ₹ 10/- and a condition is put with the buyer on the first day that 1/- ₹ has to be given for each extra month's delay if delay is beyond the two months. In this way, this won't be interest and one can go on getting an amount equal to interest. A fantastic point in it is that fulfilling the condition is necessary and obligatory since it is under a sale deal.

It can this be said in clear words that excess money as taken conditional to loan is interest and is prohibited as making condition for excess against the period at the time of business is a prohibited act whether it is under a sale deal. But it is not so at this point where there is no loan deal as to raise question of interest, and there is no demand of some money against period to label it as interest. It has been made a condition on the first day that has not objection.

But it is research that this reasoning is incomplete. Selling ₹ 8/- against 10/- ₹ is a loan in disguise of sale-purchase on the basis of general notion, as my most learned teacher Ayatullah al-Saiyid Abul Qasim al-Khui has opined.

But what he has reasoned is not its reasoning since such deals cannot be regarded as sale-purchase. In sale-purchase there is the condition of the material and the price being separate. It is not

so here in it. The same rupee is material and the same rupee is its price as well. Had there been the material and price in cash, there would have been a possibility of saying that this is something other than that (both being separate). But the price is due to the buyer. The amount what is due to him can be accorded to the present amount also. So it is a loan nota sale-purchase, since complete strangeness of the material and price is not necessary in sale-purchase. It is enough that one be in cash and the other being outstanding. To accord 'what is due' over the present type of material is not a fault, otherwise it would have been prohibited to sell one horse for two horses on debt, since the 'horse' can be accorded to the existing horses also, though this business has been regarded as permissible, according to various (holy) narrations which implies that this strangeness of a lower degree is enough, no need of a complete strangeness. Its main reason is that this deal cannot be just regarded as sale. It is plainly a loan which has been given a form of sale. Its living proof is this tendency of common notion that purpose of the both parties in such deals is used to be debt, with sale to be used in words only. Above to it is the general norm that such debt what Islamic laws prohibit can be applied to such a business.

To say in clear words, this deal is a debt even preliminarily and is eligible to be put under rules of debt and the rules of sale cannot be applied to it.

This objection has been raised on the first part of this logics of ours that the aim of the two parties means personal aim of seller

and buyer. It cannotbe objected since the personal aims are separate from the main deal and do not affect nature of the deal.

The aim of the parties means what they have made in the deal. The question of 'making aims' is very simple. One can suppose and invent anything in virtual word. There is no trouble in supposing. Any business can be supported and a debt as well. It is upto a person what to assume? and what not while keeping his interests in mind.

To regard the two suppositions are similar is wrong since ownership is different with compensation and the ownership with security is different. The first one is called business while second one debt. That is why the possession is necessary in debt while it is not is sale-purchase.

This objection is reasonable to a large extent, so instead of indulging in these problems, it is proper to let the public notion rule and let it be said that the public notion based on the its general trend considers such matters as one of the debt proofs.

Debt is name of changing other's money with one's own liability. It is used generally for 'similar' things. Its use for 'precious' things is notional. Wherever this aspect emerges, it should be called debt let the concerned parties regard it as sale-purchase.

(Note:- 'Similar' things as used here are those whose parts have similar value e.g. wheat. Each grain of the wheat is of the same value. 'Precious' things as used here mean those whose part

have different values such an animal whose different organs have organs different value.)

5

There is a reasoning also that the debt may be changed into sale, but not like that 100/- is sold out for 120/- to make room for objection that it is actually debt given title of sale, but 100/- should be sold for some such other currency whose value is equal to 120/- and at the time of repayment it could be recovered in rupees after currency exchange.

Suppose 100/- is sold out for $ 2.5 and a sum of 120/- equal of $2.50 is repaid. There also no objection in such a sale, as rule of coin deal is not applied to sale-purchase of currency notes since there is condition of possession in the deal meeting but there is permissibility of selling as liability also in it, thus one would get 120/- by giving 100/- only but cannot be alleged to change the debt into sale as per public notion.

But this reasoning shall be complete only when we do not claim debtness here also, since this much long course will go in vain if it is regarded as debt as per public notions.

It is public notion that considers debt only if a thing is changed into another thing of same type as liability. As regards to coins, it focuses on value not the particulars. It does not view whiteness or blackness of a paper or for that matter Indian or Iraqi affinity. It regards the exchange of 100/- with $ 2.50 as exchange of this

value with that value, with the result it regards all such deals as debts only irrespective of the title or form attributed to the deal.

In clear words, as per general notion, change with the same type is debt on one hand, the coins of 'same value' are regarded as of 'same type' ever by overlooking characteristics on coins of the other hand.

For the reason there is no possibility of correctness of this reasoning also, but in case the public notion is overlooked and it is considered that the parties really want to change 100/- into $ 2.50 with their eyes actually on the significance of dollar, not of its value only, unlimited possibilities for the correctness' of the deal may come out.

6

There is a possibility of the correctness of the deal that the bank suppose itself counsel (agent) of the depositors and advances the debt (loan) on their behalf as that covered and regards them only as creditors. Then it should put a condition in the main deal with the person seeking loan debt that payment shall be made along with excess amount and that the excess amount will not be of depositors (owners of the money) as to make it interest but, the bank, which has just done counseling and has not advanced any loan, shall have right over it. Thus it would not be an interest which is the excess in money that owners of money makes condition and which is not an excesses to be got by someone other than the owner, for example, Mr. X gives 100/- to Mr. Y and makes a

condition to extend ₹10/- as sadqa (alm), this condition of excess of ₹10 apparently should not be interest since it is not concerned with the owner of the money.

But there is a risk in this reasoning. Some riwayah (narrations) are on the subject that creditor has no right to put any condition other than debt amount (recovery of the debt). It implies that this condition of excess in money is not permissible in any way whether it is related to the owner of the money or anyone also.

7

In this reasoning, permissibility of insurance money from debtors is discussed, without going through general interest.

It is said that every bank advancing loan is aware of the fact that there are many loans which remains unrecovered and thus the bank gets loss. Now it has right to receive a particular amount separately from the debtors to compensate the loss due to dead loans so that the bank gets no loss itself.

Apparently, in this procedure, it is a clear interest. We have hinted to it in the theory of interest free banking that the bank should approach insurance company and should not charge excess amount from the debtors for compensation.

Now the problem is whether the charges that insurance company itself also demands can be made responsibility of debtor or not.

Its detail is that bank itself sometimes gets insurance of its loans and makes a condition with the debtor to deposit an amount equal to the insurance premium in the bank so that it is not burdened, and sometimes bank in its interest makes condition with debtor to get the loan insured and demands that loan shall be given only to one who gives surety from insurance company, let any money is spent in the way.

In the first case ,the bank has made condition of a more money that is interest which cannot be regarded as permissible but in the second option it is condition for surety only, without any mention of money that every creditor can put for its own safety.

Now the question is whether such condition makes loan an interest loan. Its reply is that position of insurance itself may be seen as to examine whether the insurance is some deal with insurance company to repay the loan of the debtor or it is a gift which debtor after giving the insurance money makes condition that this much amount shall be given to the bank under certain conditions and the insurance company shall gift away its money to the bank under certain conditions as he has gifted his money to the insurance company (as insurance charge).

If the insurance is some deal and the bank makes condition with debtor that loan shall not be given unless it is a deal of surety with the insurance company, it is a permissible matter that no restriction can be imposed on it and it cannot be regarded as interest. It is right of every creditor not to hand over the money without being fully satisfied. The responsibility of money being spent

out does not lay on the creditor who does not make condition for any excess money.

But if this is insurance is conditional with the gift and debtor having insurance by giving the amount equal to the insurance premium, makes condition with the bank to give the amount equal to the insurance premium, makes condition with the bank to give the amount under certain conditions it has to be seen what the outcome of the insurance condition from the bank's side would be for the bank.

If its aim is that debtor after giving the premium makes the condition that the company shall give the amount preliminarily to the bank in case of non-repayment of the debt and the debt shall remain as such. It is clearly an interest, the company's amount is excess, not the repayment of the debt.

If insurance means that the company itself instead of the bank gifts out the amount under certain conditions and it pays as debt, there is no objection in it and can neither be called interest. Its only advantage is that bank shall take the amount directly from the company and shall get its loan recovered fully after adjustment.

APPENDIX-II

In the past discussion, it has been mentioned that a depositor has no right to make agent surety for the money but for sharing the profit. In this appendix, the Islamic jurisprudential position of the matter has been explained in detail and told how for the condition of the surety for the agent of business (mudhariba) or other trustees has the Islamic legality

The discussion about making an agent of mudhariba (business) surety for the money can be made in the ways :–

(a) according to general rules wherein making all the trustees responsible has been discussed.

(b) in the light of the riwayah (narrations) specific about mudhariba.

At the first stage, it is necessary to clarify that in Islamic laws, there are two types of trustees: (i) General Trustee and (ii) Special Trustee.

(i) General Trustee: A general trustee is a person who has got the money or something valuable with the permission of its owner who has himself given possession whether there be no mention of the trust such as the borrow or taking something on

rent, or without rent, laborer, agency etc. These are those thing which the owner has given but not as a trust.

(ii) Special Trustee: Special trustee is the person who has been entrusted the money etc. as a trust that he has to ensure the safety of thing. on behalf of the owner.

The discussion about making general trustees surety like agents of mudhariba (business as permissible in Islam) can be divided into two:–

a) Surety for loss or waste (of possession)

b) Surety for loss (as opposite to gain or profit)

The surety as in a) means that the agent is made liable only to pay the price if the material is lost and the surety as in b) means that the agent shall be liable for the loss suffered due to depreciation of the money/material in the market. This surety is above to the general sureties. Islamic scholars have regarded surety only in case of loss (in the sense of waste or ceasing to possess), and has not put any liabilities for market value, even the usurper has not been regarded liable to the loss (as opposite to gain) i.e. depreciation

a) Surety for loss/ destruction: Most of the scholars have regarded such type of conditions for the agents as impermissible and has said that the condition of surety should not be made even if the condition be necessary but instead condition of giving the money/material equal to the value of the money/material be may be made.

[The difference between the two conditions is that giving the money/material is condition for an act and condition of surety is condition for consequence. A man's right is related to the act but he is helpless against the consequence. The condition shall be correct only to the extent a man has might and shall not be correct if the matter is beyond might and control of a man.]

The condition of consequence being wrong has been attributed with a few reasons:-

1) Condition in public sense and general notion means that the condition is given into ownership of the person entering into condition such as condition of sewing (tailoring) where sewing (clothes after sewing) is given back to custody of its owner. The consequences of an act are not in anyone's ownership or in one's might or control. So this condition is not right. There is no difference between condition of an act and that of the consequence in public notion or regards, both have one and the same meaning as far as general notion and public regard is concerned.

Many objections can be put against this reasoning. The most important of them is that condition of act though means making master of the act in general notion and public regards but this doesn't mean that making the condition invents ownership or mastery of the condition since beginning as to make it impossible about the consequences. But the meaning of making the condition, in fact, is just to make a relationship of particularity between the condition and the person of condition. The possibility of evolving the

relationship is in acts as well as in consequences also. The only difference is that actual point of relationship between the condition and the person of condition is not inventable, only the condition and the person of condition is inventable, so the invention of relationship my be made virtually (not really). It is not so in condition of consequence where the actual point of the relationship is also inventable, since the condition of act is an external matter and the consequence in condition of consequence is a virtual matter. The reality of an external matter con not be brought in state of invention but the reality of virtual matter can be invented.

All these talks are for that we have accepted making master owner as the meaning of condition in the condition of an act, otherwise if it could be denied in the light of the research and it is said that condition does not mean ownership, the main logic shall become useless, what to the question of objection. It is the research that the condition of tailoring means surety of main sewing, not the surety to sewing pertaining to Mr. X as to discuss about the sewing as ownership of Mr. X.

Second Logic : The condition of surety is against all those logics wherein the surety of trustee has been denied. This condition is against the Holy Book of God hence no such a condition is right.

It can't be said at this point that the reason behind trustee not being surety (guarantor) is that there is no reason for his surety, not that the rule of his surety has been withdrawn since the rule 'The hand is responsible for what it has got hold of' is sufficient for surety.

Now some logic is needed to finish the surety, otherwise it is established for every trustee. Its research of the meaning is that there are two types of logics for non-surety. Some logics due those which have negated the surety from the title of trustee etc. Some logics are those wherein is no mention of trustee and 'trust' and even the surety of every such person, who has got the money/ matter with the owner's permissible such as tenant, Laborer etc., has been denied.

The first type is connected with the world 'trust'. It is evident that the form is true for one having 'trust' (one who has been entrusted) but is true for general trustee due to owner's permission only. As per general notion and public regards, he is not regarded as 'trustee'.

It in to see now whether the general notion and public regard have made this condition to regard him as trustee or not so as not to regard him surety.

If the general notion and public regard has made this condition, he would not be even trustee after the condition of surety. It is useless to discuss more about the surety.

If the general notion and public regards have recognized 'trustee' absolutely whether there is even condition of surety, the claim is right that condition of surety about the trustee is against all the logics wherein the trustee being surety has been negated.

Now regarding the research whether position of trustee remains after the condition of surety or not, it is explained as that

there are two types of making the trustee as surety of the money/ goods:-

Sometimes this surety means due to the loss owing to calamity and sometimes the lossing the money/goods due to negligence of the 'trustee' himself.

Apparently if the condition of surety means the surety of money/goods against the natural calamity, the position of 'trustee' is not gone off due to it, since the 'trustee' on his own does not embezzle or breach the trust but he has no might or control over the nature.

But if the surety is concerned with the excessiveness or negligence of trustee himself, the condition shall automatically finish off the position as trustee. What is question of breach of trust or embezzlement from one who has been believed to be trustee.

The mention of surety of camel-pullers and porters/carriers etc. in the rivayahs (holy narrations) is only with respect to the consideration that they themselves have no reliability about their words and have to produce witnesses on the claim of loss.

Summarily such persons if regarded as trustees cannot be made surety, even if they are not regarded as trustees, the holy narrations bear testimony over that a tenant also cannot be surety. As a result, the condition of surety shall be against these logics. All such conditions which are against the Holy Book and traditions are unacceptable.

But it is the fact that there is no opposition or contradiction between the condition of surety and logics of non-surety.

The logic of non-surety means that trustee or tenants can not be made responsible just on touching the thing. The surety means that owner of the money or goods has put condition separately to take the additional responsibility of the meaning of what the main control or possession has not demanded.

It is clear also by this statement that the following explanation of the researcher, Nayini is absolutely improper :–

> 'The possession of the money or goods if produced due to ownership right such as tenant, trustee etc. (who hold possession due to ownership right) cannot invent surety but if the possession is only due to permission such as that of a porter who carries the goods only on the permission by the owner, the possibilities of surety exist and the condition of surety shall finish the generalization of the permission, meaning one has right to carry the goods but no right to lose (destroy) to it'.

It is so because the meaning of surety condition in itself is producing surety of possession, hence the condition is wrong and invalid everywhere. If it is inventing surety separately, there is no objection in it whether he is tenant laborer, trustee or mortgagee.

It can be, of course, said that the condition itself does not make its' 'guaranteed permissible. It is necessary for the condition that it should be permissible first so as to make enacting the condition necessary and obligatory since for making the surety condition permissible its permissibility has to be proved apart from the condition.

But besides the general laws, there are plenty of specific riwayah for its such as Yaquq bin Shoaib narrates :

> 'I asked Imam Ja'far Sadiq (a.s.) whether the person selling goods of someone else on wages (agency) can be made surety. He replied that he was not in favour of it since there would be apprehension that agent should be burdened with beyond the actual loss or damage but there would be no objection also if he himself is willing.

In another second riwayah (narration/reporting), Musa bin Bakr has reported from Imam Musa Kazim (a.s.) :

> I asked him what the rules is about the condition if someone puts condition on loading food items on a boat of a boatman that the boatman would be liable for any loss. He (Imam) said that the boatman is liable for the loss.

These riwayah reveal that making condition of surety is not against the Islamic Laws. When it is not against the Islamic laws, it shall remain enforced and has to be followed.

Surety for Loss (Lessening)

Until now it has been talk about the surety against loss (destruction). Further discussion is concerned with surety against loss (lessening) to look whether condition of this surety is correct and enforceable or not.

The surety can be conceptualized like that of the first type with a difference that it is surety essentially for the money/goods in the former that price has to be paid when it is lost (missing) but in this case there is surety of the value here that the possessor is responsible for the loss in value (depreciation), (and it has to be compensated). This surety condition can also be in two ways. There be condition separately at the beginning and the condition may be put as for consequence as is evident by the tradition of Imam Jafar Sadiq (a.s.) as narrated by Halabi.

> Imam (a.s.) was asked about two persons who shared the money/ goods that earned profit. Some part of the goods/ money was debt outstanding against the two. A person asked to give him the money/goods to the extent of the capital and the responsibility of profit or loss should go to the other person. Imam (a.s.) when asked whether the way was right, told that there was no objection if the condition had been made so.

Imam (a.s.) put the restriction of condition in the permissibility . It implies that there is no doubt in the permissibility of the subject of the condition if agreed upon between the two separately as a compromise or under sharing settlement itself.

It is only to see what the reasoning is for the narration to be logic behind surety for the loss (depreciation, decrease in capital). The respected scholars have stated many meanings of the riwayah (narration):

(1) The meaning of a person particular for the capital and other responsible for profits/loss is that the first person has separated out his share equal to the money/goods due to the other person in external money/good's through compromise or due to condition and has withdrawn himself out of the money/ goods' share. He is responsible for the remaining money/ good in every regard whether it is profit or loss.

The subject on its own is absolutely right but it is not related to the point of the discussion. The point of discussion is being the surety of a non-owner and the meaning of this reasoning being the money/goods entering into under the ownership. There is much difference between the two. Besides it, the meaning itself is against the appearance of the riwayah which shows that the first person regards his right related to the capital and wants to keep it and the meaning of going away the share is just opposite to it.

(2) The outcome of the settlement mentioned in the riwayah is that a share-holder becomes responsible for the value of the money/goods of the other shareholder and takes surety of its loss with the share money/goods being as such i.e. no money/goods of one is transferred to other. A shareholder has only taken surety of the other and has taken liability of the loss (as opposite to the gain); and the other shareholder has made owner the earning profit coming as a result of the condition his ownership and that is the surety under discussion i.e. a share-holder has taken liability of value of the other's goods/money and the other shareholder has entrusted the profit to him as a result of the condition. There is no objectionably in its Islamic Legality when the permissibility of main subject is established. This can be accomplished through a compromise or as under 'necessary pact' also.

There are some other riwayah about it which testify our issue such as Refa'a's statement :–

> "I asked Imam Abul Hasan (Hazrat Ali a.s.) about some person entering into share with another person over a she-slave and deciding that the profit would be shared equally but no responsibility of the loss to the other person. He told that there was no objection to it in his view if the owner of sheslave so agreed."

The appearance of the riwayah shows that a shareholder has taken surety of the value of the other shareholder's money/ goods and has taken himself the liability of the loss, even if the share continues. The logic of continuing share is that share in profit continues. It is the probability that we have given in the past riwayah and have supported it. It is revealed from these statements that to make agent of mudhariba surety and to make him liable for the loss by making him liable to the value is valid and permissible under Islamic laws whether settled through a permanent pact or a condition is made under some agreement, though some riwayah regarding the mudhariba shows that the owner has no right to take share in profit after such a surety as Mohammad bin Quais has reported from Imam Mohammad Baquir (a.s.) that the Commander of the Faithfuls (Hazrat Ali as.) had told that the person having made condition for half of the profit in business could not be surety and one who had made a businessman or trader surety has no right in any profit beyond the capital.

It is clearly evident by the riwayah that the surety and profit are the things which cannot be brought together in the eyes of Islamic eyes. There won't be profit when there is surety and there won't be surety when there is profit.

Some scholars have taken meaning of the surety as in the riwayah to debt. The debt is also a type of surety only. It aims at that the owner giving his money/goods on loan to a trader/ businessman has made him surety for the compensation. He has then no right to profit; otherwise it will certainly be an interest.

It is right on its own but there is no mention of it in the riwayah. The riwayah covers every surety whether it is loan or non-loan. There is no logic for a particular reference to loan. The truth of the riwayah lasts even if condition of act is made instead of condition of surety as to give words that the goods/money will be given in the same quantity if it is lost, since the condition of act is philosophically separate thing from condition of consequence and surety but they are of same meaning in general notion and public regards.

Some scholars have made the reasoning of the riwayah such that the actual intention of both the parties have been eyed in it and the rule has been stated likewise.When the owner makes agent surety, mudhuriba actually means loan, so the interest is prohibited. When condition for half of the profit has been made, the mudhariba in the case means mudhariba, hence surety is not correct.

But there is a trouble in it that the reasoning even though reasonable is totally alien (unconnected with) to the riwayah. The subject of the riwayah is clearly that surety is directly enemy or alien to the profit which in itself cannot come together with surety. There is no use of actual or apparent meaning here.

Surety of a non-agent:

It was the mutual contradiction of surety and profit that we keeping it in view regarded third party instead of agent as surety in the interest-free banking formula and have borught out this aspect that the bank being in the position of mediation should take surety

whether the surety is decided through ‘special pact’ or as a condition under ‘necessary pact’.

The bank although has itself a position of trustee, yet we have clarified that a general trustee can can be made surety. There is no objection in it as per the rules. Even if it is accepted that trustee can not be made surety as per rules and that surety is feasible only in some particular (places or) situations as is revealed about the borrowing (of something for sometime), even then there can be made a settlement with the bank in form of condition of act and the depositor can say that the money/goods has to be given to the extent of loss if it occurs in his money/goods.

APPENDIX –III

In the interest-free banking formula, the matter of taking fixed deposit and giving them in turn to businessmen/traders has been given a form of mudhariba wherein the depositor is owner (financer/investor) and businessman/trader is agent, bank being just mediator and attorney, so it also gets a share. This share of the bank is discussed here with respective to its Islamic legality..

It may be made clear that the percentage share that has been fixed for interest-free bank is not based on the mudhariba. Mudhariba can cause a share to given to the agent only. It's rule is that all the profit shall be in the ownership of the owner, after which the percentage share of agent shall be taken out.

The bank is neither an owner nor an agent, so some other permissibility has to be found out for its share.

At this point, two mudharibas cannot be supposed that one between the depositor and the bank, and another between bank and the businessman/trader in the way that (the bank) gets right of making agent first and thet can itself invent a new mudhariba, since the bank cannot be regarded a surety of the money/goods if it supposed to be agent as surety is necessary for the bank. Due to it

only ,we have regarded the bank as a stranger mediator so that it can take surety for the money/goods.

The percentage share cannot be also regarded as wages/ recompense for the bank as to suppose it as Ijara (on hire) to say that the depositor has hired the bank to invest his money/goods in business, because there can be many objections to such type of hiring.

First objection: The wages in hiring (Ijara) should be known but it is unknown here. Being unknown does not mean that its receipt is doubtful since we have clarified that it is almost certain to get profit in Mudhariba, But being 'unknown' implies that its' quantity is unknown and the quantity must be known is Mudhariba.

Second Objection: In Ijara (hiring), the person hired becomes owner of the wages as with the agreement. And the wages must necessarily be 'worthy of ownership' whether it is external (in cash) money/goods or proven outstanding against the person hiring, though it is not so in this case. The profit as from business is neither existent not proven outstanding against anybody. There is a possibility only in future, after that there is no possibility of rightfulness and validity of the Ijara (Hiring).

As per Islamic laws, there may be some reasons for the bank's share:–

(1) The bank's share is regarded as Juala (Reward/ Prize) and it is supposed that the depositor has declared so much percentage of money to be given to one who arranges to invest his money in business. Here also, apparently the bank's share shall remain unknown and unacceptable but there is no

restriction in it since wages being known and entrust able (able to be handed over) is necessary in Ijara but not in Ju'ala. It's proof is that the right of wages is established in Ijara since the beginning only but the right of reward is set only after accomplishment of the work. There is no existence of profit at the beginning of the work that could be given as wages ,but on completion of the work gain becomes existent after all and can be given as profit.

Its example is present in many riwayah. Mohammed bin Muslim has reported from Imam Jafar Sadiq (a.s.) that there is no objection if someone asks some other person to sell his clothes for 100/- and takes away the excess if sold for more (though the excess is neither known nor existent).

Zurarah says that he asked Imam Jafar Sadiq (a.s.) about the person who says on giving capital to some other person that the gain is his (other person) if it occurs. The Imam told that there is no objection in that deal. There are riwayahs other than these one also wherein holy infallibles (masumen a.s.) have declared rightfulness of such deals when the quantity of Ju'ala (reward) is unknown and non-existent.

(2) The bank's share is made rightful as a condition under a pact (settlement) whetheit is as under a condition of consequence and the bank makes a condition under some settlement that a part of the profit would be its share as and when profit comes out. This condition though definitely 'hanging', attracts no objection. Even there is no harm if the depositor is not owner of the profit at the moment since he will be owner at the time

for which the condition has been put. There is no objection to settling so in the conditional way under such circumstances.

An alternate way of amending is as condition of act and to take the condition of possession instead of ownership into regards. That is that the bank settles with the depositor that so much amount of percentage share shall be transferred from his ownership into its side, and that the share shall not be its property directly so that the condition of consequence applies.

APPENDIX- IV

It has been mentioned in our formula that agents often do tricking and claim for loss or damage of goods/money. So it is duty of the bank that it settles at the beginning only that no claim without proof shall be entertained against the capital and the minimum limit of the profit. Its Islamic legality is discussed hereunder.

This rule of the bank is openly against the main rule of trust. The rule of the trust deposit is that the word sof 'trustee' whom the money/goods has been entrusted should be relied about it but the bank has made rule of unreliability here.

The way of enforcing the rule is that the bank makes a condition as a condition of act under some agreement that the agent shall have to pay the amount equal to the loss if he claims loss (not the profit) and cannot prove it or it can be given a form of Ju'ala and the agent says to the bank that in case the bank gives him capital for business, he shall pay to the bank an amount equal to capital and minimum limit of profit and the bank's fixed charges if loss occurs, while deducing only the amount that remains outstanding against the agent or whose loss (or damage) is proved.

APPENDIX – V

The deposit in the interest bank are in fact not 'trust' but are loan (credit) that earns interest. For the interest-free bank, it is necessary that they are proved as 'trust' (amanah) and the bank should be given right to utilize them so as to get rid of interest.

The deposits in interest banks are not 'trust' (amanah) in terms of Islamic jurisprudence. They are is plainly as credit for which the depositor gets interest. As per Islamic jurisprudence, these can not be regarded trust of any type, perfect or imperfect. But that does not mean that it is impossible to suppose them as trust and can in no way be supposed as trust, as some scholars opine that they cannot just be supposed as trust since, the owners (depositors) of the money do not permit the bank to utilize the money while it is under ownership of the depositors, otherwise all the gains would be of owners only. But the permission of the owner means to make the bank liable for the capital by regarding it owner that is correct definition of a debt.

Debt/loan means only that some other is made owner of the money/goods and surety as well. Due to it, the bank's deposits are debt, event though in form of trust and they have no connection with the actual trust. But it is the reality that these amounts even after being assumed as trust can be taken into all the uses what a

bank takes of the amounts. The bank's amounts have three advantages: security, gain and paying a limited amount of the money to its owner or depositor (partial withdrawal by the depositors at times).

[The Arabic term for a bank deposit is amanah that literally means trust, faith, or something entrusted to someone in good faith for its safe custody.]

We would try to take all the three uses from these amounts even on regarding them as trust as per Islamic laws.

The question of surety is that there is no need of debt for it, but it can be established by a regular pact as detailed in appendix-II and told that surety/guarantee of deals are not connected with the debt only, but it can be with external amounts (in cash). The only difference is that surety in debt means transferring the debt from a person to another, and surety in external amounts means that liability shall rest on the bank though the money/goods shall remain in ownership of the owner.

The way of the bank's gain is that it can be settled as a condition under surety agreement or share agreement or any 'necessary pact' and the bank makes agreement with the owner of the money that the value of the money shall be in the bank's ownership under condition of consequence. Preliminarily, the value shall go to the owner but immediately shall be transferred to the bank as under the condition of consequence. The preliminary transfer is against the compensation but there is no hindrance in the transfer

through the owner as the scholar researcher Nayini has recognized while discussing about conditions.

Giving out some profit in limited quantity to the owner/ depositor can be interpreted as that it could be taken as an exception in the condition of the second stage and that the bank makes a condition with the owner depositor that the amount in whatever of as and when it comes the amount, as and when comes in whatever quantity to the owner depositor shall go on to be transferred to the ownership of the bank, leaving only a limited amount to be in ownership of the depositor/owner that won't be transferred.

An interpretation of the bank's surety may also be as such that the bank makes a settlement with the depositor that his amount of (say) Rs 1000/- shall become part of its immense money which has been accumulated as its 'own money' and the current deposits. Thus his money will become 'collective thousand' instead of 'personal thousand' with only a difference that this 'collective' shall be dependant on those thousands which are reserved in the bank's treasury and no thousand other than those shall be conformable with the aggregate as has been mentioned in the interpretation for the riwayah about the sharing.

The advantage of the settlement shall be this that the depositor shall not be affected by loss till there remains last thousand in the bank's capital since his money has become 'collective' and there remains the amount that can be regarded as 'collective'. But

alongwith it, the depositor shall make a condition with bank that it should take care of that value of his thousand should not change when it does any deal. for example if bank wants to sell its sum of Rs. 10,000 for Rs 5,000 on loss. Although the rule of 'collectivity' states that loss shall be shared each and every owner of thousand, yet he will not be affected by the loss and his amount would be safe from its applicability to the 'collective' since he has already made condition that his money should be safe in all the deals. Even then he will get share in the profit since his moneys is 'collective' and every part of the 'collective' has right to share the profit.It is then duty of the bank to settle as a condition of consequence with the depositor that the share of the profit whatever he gets shall be transferred to the bank after it becoming ownership of the depositor. In this way the deposit shall remain in the ownership of its owner and the gain shall not be said to be interest after being regarded as in the form of the lona gain.

APPENDIX – VI

In this appendix, an Islam interpretation of cashing cheque of some bank by another bank shall be discussed and it shall be told what its Islamic legal form is.

A cheque's payee is considered to be owner of amount to extent of the amount of the cheque and bank on which the cheque is drawn is considered as the debtor of the 'payee'. In case the payee wants to cash the cheque from some other bank,a few interpretations can be derived as per Islamic jurisprudence for the procedure :–

(i) Cashing the cheque from some bank may mean that the bank contacts the bank on which the cheque is drawn and transfer to it the drawee's debt due to the bank to it and itself becomes indebted. There shall be two transfers in the case: one transfer of the drawee to the first bank and another transfer from the first bank to the bank where the cheque is being cashed. In the situation, the bank cashing the cheque may take commission since it has taken trouble of contacting the bank and transferring the debt. In Islam, there is right of demanding wages for every trouble.

(ii) Cashing the cheque from some bank may mean that the payee of the cheque wants to sell his debt due to the first

bank (on which the cheque is drawn) to the present bank (through which the cheque is being cashed) and the bank is purchasing the debt by paying the amount in cash so as to invent its' debt due to the first bank. There it is claimed in this form that the bank has no right to take wages since the bank has itself become indebtor by purchasing the debt and wants to pay its debt in cash and it is impossible that someone takes wages from his creditor for repaying his debt. But in my view, there is possibility of wages here also. It can be in the form that bank deducts the commission at the time of purchasing the debt itself or else the purchase may be in the way that the amount of the cheque and the commission is bought for an amount equal to the amount of the cheque.

It is a different matter that the validity of the deal depends on whether it is permissible to sell the debt for a price less than it, otherwise the deal shall be wrong if it is not so. But there is such a way that selling of the debt is not regarded at a less price and it is regarded that present bank makes a condition at the time of purchasing the amount of the cheque that the seller shall have to pay the amount by bringing it from the first bank, otherwise the bank shall have right to demand the wages for additional trouble and that its condition cannot be dropped without paying the wages.

(iii) Cashing the cheque from some bank may mean the payee is making the bank his attorney for taking repayment of the debt from the bank on which the cheque is drawn.

Apparently, this bank shall neither be indebted by cashing in the way as in the first interpretation, nor be creditor to the original bank as in the second interpretation but the payee of the cheque and the original bank both shall remain creditor and debtor in their respective positions, and this bank shall act as an attorney or mediator only. The amount, which the payee gets this bank before it receives the payment from the first bank, is a sort of debt that it would get from the first bank through this cheque. In the way, the bank has no right to take the wages since that might be regarded as interest to the debt. But the wages or recompense (commission) is connected with cashing the cheque on authority that is a trouble different matter from advancing and recovering the debt. It is different that in this debt, the second bank should take payment in cash only from the first bank that being demand of attorneyship though it does not happen so normally.

(iv) The cashing may be regarded as consisting of a debt and a transfer and it may be in the form that payee takes debt equal to the cheque amount from the present bank and, on being indebted, transfers it to his bank which is already indebted to this indebted payee.

This transfer is valid and permissible as per Islamic laws and the bank has right to take wages too, since it is responsibility of a debtor to repay it in cash as taken in cash but in case he does not want to repay in cash , the creditor is free to accept the transfer or not, and not to accept the transfer without the wages. This wage is not for the term of the debt as to be regarded as interest but is for accepting transfer by dropping the condition of cash repayment that has no connection with interest.

It is clear with these statements that cashing from the other bank can be interpreted in four ways and there is right of taking commission in each the way.

Surprisingly some prominent scholars have regarded cheque cashing as a type of transfer and plead that cashing means transferring from the first bank to the present bank and that there is no right to take commission is transfer otherwise it would be a gain from the debtor and that is interest. God only knows what the meaning they have taken of cashing that they have regarded it as transfer to the first bank after regarding it a purchase on part of the present bank . If they mean that payee of the cheque is selling the cheque to the bank, it implies that the bank cashing has become owner of the debt of the first bank; otherwise there is no value of a cheque in itself. To whom transfer could be made if the bank itself has become owner (possessor) of the main debt ? The ownership has already been got by purchase then transfer is meaningless after the purchase.

If they mean that the person issuing the cheque is taking debt from the bank and transferring it to his bank, the transfer in this case, is established but there is no mention of the purchase. Putting purchase and transfer together is result of not reaching to the depth of the problem.

The act is valid and permissible as per Islamic jurisprudence due to the four interpretations and taking the commission as per all the interpretations is also lawful.

APPENDIX- VII

As mentioned in the main theory that bank has right to take commission in transfer through the bank, the discussion is being expanded a bit herewith so that the viewpoints of others could be analysed.

It has been clear by past discussions that the interpretation, by some scholars, of the commission which may be permissible only in some forms of money transfer, is not proper and is objectionable. Those scholars say that this transfer is of two types :–

(i) To take payment in Baghdad on paying an amount at Nejaf.

(ii) To take payment at Nejaf and pay it back in Baghdad

In the first case, the bank is indebted, so can take commission. In the second case, the depositor (owner) is creditor, so cannot take commission otherwise it would be necessarily an interest.

Though it is the research that the commission is permissible in both the cases which is in the way that the commission should not be regarded as against the debt as to become interest but the Islamic legal interpretation should be made in such a way that as per rules, repayment of a debt must be at the place where it is taken. It is the demand of accordance of place and is also the principle of reason. But when the debtor wants to repay the debt at some other place, the creditor has right not to agree on change of the place without taking commission. The debt at Nejaf must be repaid at Nejaf only and it is the bank's discretion to accept it in Baghdad or not and the bank can take commission for dropping its right.

APPENDIX – VIII

It has been explained in the interest-free banking theory that it is permissible as per Islamic laws for the bank to take commission for cashing the promissory notes. It is to discuss here when and how it should be.

Does the right of commission from payee of a promissory note emerges out only on demand of debt from the debtor or after receiving it back.

Some scholars have made it the topic of discussion and have researched that the question is related to nature of the commission whether it is wages or ju'ala (reward). If it is wages, the right shall emerge out on the demand only. If it is ju'ala (reward) it can not become right before completion of the task.

Though it is true that the basis itself is wrong, the question is not at all related to ijara (hiring on wages) or ju'ala (reward). But it is related to the form of ju'ala and ijara both, whether to put demand only or to receive the amount.

The research on the subject is as follows:–

It is, sometimes, possible to recover the debt and sometimes it is not.If the recovery of debt is possible whether through goodwill or through litigation, the creditor has right to make a condition in

ijara (hiring) also like that in ju'ala that there won't be any right of any recompense (say commission) without the amount being recovered.

If the recovery of the debt is not possible, this condition is permissible neither in ijara nor in juiala, but one shall get ju'ala (reward) as well as the recompense on demand only.

The question is whether such a condition can be put in case the recovery of the debt is possible in no way for the bank that the fixed amount or recompense shall be given only after the debt is received back.

The solution of the problem is as follows:–

It is an established condition that the ijara (hire work on wages) cannot be correct unless and until the ijara act is possible. The validity of ijara means that the labourer should be owner of the gain i.e. capable of carrying out the job for which he has been hired so that he could offer his services. For example, tailor doing tailoring on charge must be capable of doing the job (tailoring) otherwise what he would offer to one who pays the wages (charges). When the capability and will is necessary for the validity of the ijara, it shall be wrong if the bank hires or is hired for the recovery of amount when it is beyond the bank's might. But there is no difficulty if the debtor himself is ready to repay the amount, since the hired one has made available all the prerequisites whatever are under his control (might). The debtor has presented himself for one of the prerequisite i.e. payment. There is no possibility of the validity of the ijara without his presence and readiness.

The problem is that the ijara shall be absolutely invalid if the readiness of the debtor becomes doubtful and consequently the capability of the hired one is doubtful. The ijara shall be valid if it is related to the reality of occurrence that there is actually might. The ijara shall become invalid if there is no might actually, since the hired one is taking responsibility of what is not in his might.

This objection cannot be made on the probability that the ijara in such a condition shall become suspended and a suspended ijara is not valid, since the ijara deal at the point is not suspended but ijara occurs absolutely. The creditor is hiring and that bank is being hired. The suspicion is in the validity of ijara not in ijara itself. It is evident that it is harmful that deals are suspended but not harmful if the validity of the deals is suspended.

The other point is that the ijara shall not be wrong or invalid even if it is regarded as suspension of the ijara since the cause of suspension is suspension of deal on the external affairs and the ijara is suspended here on the perfectivity of its' elements. There is no harm in it. It may be said in clear words that if someone says that one is hired if pilgrims return otherwise not, it is then the ijara that is suspended and doubtful and there is no way of its validity and lawfulness. But there is no harm if it is said such that one is hired if all the conditions of the pact are fulfilled.

If we believe that the ijara is invalid in case the might is doubtful whether actually the might (capability) be existent, the fixation of the wages on recovery of the debt is wrong since the bank's might is doubtful and in case of doubt, there must be suspension or deception , both are not right. It is, therefore, necessary that the

ijara should be related to making demand only and the demand only should beget the rightfulness.

If we believe that ijara follows the actual matter; if there is actually might, it is right otherwise not. Even then such an ijara is possible that the wage is not to be paid without the recovery. Its form is this only that actual recovery is made ijara so that there should not be any demand of wages without recovery, and that ijara becomes invalid if the recovery is not possible. But if the amount is recovered, the right of wages is begot. It would signify that there exists might and ijara is valid in case of existence of might.

It seems correct in the difference (of opinion) that the validity of ijara should be dependent on the actual matter; it is valid if might exists actually, otherwise not.

There may be an objections to the line of thinking .There are two reasons behind the might being condition in an ijara :–

(i) The might is involved in the hired one being owner of the gain (capability), that he cannot hand over (offer his service) unless and until he is not owner of the gain. Anybody not capable of tailoring cannot make someon owner of tailoring (user of tailoring)

(ii) The might over handing over the ijara job is must in ijara. If hired one is not having might over handing over, the ijara is wrong whether he might actually be having might.

The actual might can fulfill the condition of ownership/ possession that ownership is sufficient there, and the knowledge of ownership is not necessary. But the condition of handing over or surrendering (assignment) cannot be fulfilled with this actual might.

It is comparable with the deception. There remains possibility of deception unless there is knowledge of might.

This objection is baseless since its basis is not deception even if the condition of handing over is accepted. The riwayah (narration) of deception, Nahi an Nabi anil ghhirar is weak and root less as regards to its authenticity and logicality. The base is consensus where the measure of trust is the form when there is not actual might. There is no necessity of knowledge of the might.

All these discussions were concerned with the ijara. Now to the ju'ala (reward). Such an interpretation is possible in it also that the right of the fixed amount does not take effect before the recovery of the debt. This could be in two ways :–

1. The amount be fixed, since very beginning, on recovery of the debt only and no amount be fixed on demand only.

   The only objection on it may be that the might here is doubtful as is famous that the might over the job of ju'ala also is must. Its answer is that there is no function of ownership/possession of gain in ju'ala as to necessitate the first objection as on ijara here also, and that there no is immediate accountability of the person doing ju'ala that somebody may get a thinking of deception in it.

   It is rule of ju'ala that the right of demanding the amount from one declaring reward ju'ala is begot only when the job has been fulfilled. There is even no contention if the job can not be fulfilled. The matter is conditional. What is question of amount if there is no fulfillment of the condition ?

   Due to it, there is no necessity of might over the job in ju'ala. It seems to be an act of an idiocy in case of absence of might. But it is only when the impossibility of the might is known. The objection does not hold good in case of doubtfulness of the

might. In such a case, making ju'ala is possible and a creditor can say that this much of amount shall be given to one if he causes recovery of his debt.

2. The definite amount is fixed on the demand only but a condition is put that the demand shall be made in such circumstances when the debtor is ready to repay the debt. This ju'ala though will necessarily be suspended but there is no trouble in such a suspension. Ju'ala is only a renewal of demands for the surety of compensation, and nothing else. All the suspension etc is possible in such matters. Necessarily, the bank shall be rightful of the amount only when puts demand in state of might, and the demand in such a state means recovery of the debt.

It becomes clear by these statements that the bank being rightful of commission on demand or on recovery rests on neither recompense (ijara) nor or ju'ala (rewards), but such an interpretation for the both is possible that the commission can be taken on recovery also as well as on demand only.

APPENDIX – IX

In this discussion, detailed Islamic Jurisprudential implications of accepting the promissory notes by the bank are hinted out. The acceptance by the bank means is a sort of liability that the bank shall pay the amount if the debtor fails to repay the debt. It has been clarified in the theory that this liability is valid and lawful under Islamic laws. Its interpretation is hereby made as per Islamic laws.

It should be clear that the bank's responsibility does not mean that it is a surety to accept the promissory note since the surety as according to Islamic laws means that a debt due is transferred from a person to another. It is not so in acceptance by the bank. If such surety means that both are made liable, this surely is wrong as per Islamic Laws.

It is needed that the such an interpretation for the bank's liability be made wherein the debt due is neither transferred from a person to another nor both are made liable as so to evolve a meaning for the acceptance beyond the surety as per Islamic jurisprudence.

This interpretation is that bank is not liable to the main debt so as be transferred to its liability , but it is surety for the repayment

of the debt. It is evident that surety for the money is different from the surety for the payment or repayment.

If it is supposed that this also is another meaning of surety where both are regarded as liable since at this point the debtor is also liable and the bank has also become liable. Is it not some existence of the second type?

It's answer is that the second type of surety means that both are liable to the main money and the responsibility is concerned with the debt money (or material) but it not so in the case. The liability of debtor here is concerned with the main debt and the bank's liability is related to the repayment of the debt. These two are obviously separate. Its proof is that creditor has no right to approach to the bank in the beginning but shall demand from his debtor and shall approach to the bank to cause its debt recovered if he is unable to repay. Repayment or payment also is a valuable thing which is getting lost due to refusal by the debtor. Now it is duty of one who has taken liability of this valuable thing, to provide it. The result of providing the 'payment' shall come out in form of recovery of the debt.

This third type of surety is absolutely right as per Islamic laws.It's proof is the inclination of the intellectuals of the world and the generalization of ufu bil u'qud (fulfill your pacts).

Differently it is necessary for the connection with the ufu bil u'qud that first the deal is proved as 'pact' in the eyes of intellectuals of the world. The pact means that deal should be sufficient and

necessary, meaning that it should be associated with the necessity from the two sides and both should have connection with each other so that it should be called as mutual pact, otherwise shall be called as iqa'a (occurrence), not the pact if the surety is connected with one side. The holy Quran has commanded to fulfill the pacts, that is not concerned with the iqa'a.

There remains question how it should be decided whether the tille of any deal is one-sided or bi-lateral (mutual). It's procedure is to consider the subject of the deal carefully whether it is discretion of a single person (party) that works or it is mutual discretion of two persons that works. If it is a single person's discretion or power, it is iqa'a otherwise a pact (aqd) since for a pact mutual bondage necessiation, and discretion or power and necessary as in the nikah (marriage), business ijara (hiring) etc.

At this point, it is to be seen whether surety in its third meaning is in the discretion of only the surety (guarantor) or it is the discretion of both the surety or guarantor and the guaranteed that works. If it is only surety's discretion, argument from the verse is useless. If the discretion of both works, it is a pact and fulfilling the pact is obligatory as per the verse.

Some people think that this meaning of surety cannot become 'pact' and there is no necessity of use of discretion by creditor and surety here. There is no question of interfering in the affairs in this surety. Hence there is also no connection with it. A creditor shall demand his debt from his debtor only, let anybody who wishes take surety for the payment. It is not so in Islamic legal surety. The

debt's liability is transferred from one to another in it. So the consent of creditor is necessary but there is no such necessity in this case. But this thinking is wrong. It is right that two-sided binding is essential. It is also right that there works discretion of two people but it is not a rationalistic inclination that there should be simultaneous exercise of discretion in the affairs of both the members (parties). An exercise of discretion from one side is sufficient for the pact as is in gift. There is exercise of discretion in the money goods only of the person gifting. All the rationalists acknowledge it as a pact. It means the surety of the third meaning is an Islamic legal matter which has no room for any suspicion. As far as the riwayahs stating transfer of person's liability to another's liability, are concerned, there is no contradiction in meanings of theirs and ours. These riwayahs are related to the surety whose subject is main money/goods while our meaning is related to the surety whose subject is payment of the money instead of money itself.

It becomes clear by all these discussions that this third interpretation for accepting the promissory notes by the bank is absolutely correct, with its result, the bank would be liable to the money equal to the quantity of the value but this liability shall not be against the main debtor, neither along with him, but in a second ory degree after it that bank shall be responsible for the repayment if he has not repaid the debt.

APPENDIX – X

In this appendix, those letters, which the bank uses to write (issue) in surety of contracts and whose aim is that agency be paid the amount if the plant is not complete, shall be discussed according to Islamic jurisprudence.

Wherever the bank issues such surety letters, the contractor earlier makes agreement with the agency through some pact and pledge that he shall pay so much of amount to the agency if he does not complete the work. The bank's only job is taking surety to pay the amount if the person fails to pay it. This condition is absolutely right in its place. It is only needed that main deal does not become wrong and invalid by the work not being carried out by the contractor. For example, if ijara is concerned with some external gain and that has gone out of control of the person hired on ijara, the ijara itself shall become invalid and unlawful, what to talk of the condition. To avoid such a situation, such attitude should be adopted that the condition is not affected by the rightness or wrongness the deal. After the condition being right, the agency gets right over the contractor to recover certain amount of money in case the work is not completed.

Three forms of the condition are possible according to the Islamic laws :–

(a) The condition should be concerned with the outcome. The agency should make such a condition that it shall automatically become owner of certain money of the contractor if the work is not completed.

(b) The condition should be concerned with the general act that the agency be made owner of so much amount in case the work is not completed.

(c) The condition should be concerned with special act such that the contractor shall give the money to the agency in case the work is not completed.

The difference in these two forms is that anybody can pay the amount in second form, no need of authorization or attorneyship but in the third form, the contractor himself has to pay the amount.

It should not be misconception that condition of contractor's act can only be made with him, while the condition of act by someone else is meaningless because there is no condition of the act by someone else here but it is condition of a common cause that can be applied to self or other.This might to such an extent is sufficient for the condition, as is stated in the binding commandments, that the common factor of act the 'bound' (liable) and other is seekable , with the difference that the sought shall be the actual existence of the act, not the act of any particular person.

After the three forms of the condition are clear, it must be known that the first type of condition is wrong. To make preliminarily a contractor liable for some amount and transferring his money to self is such a condition that has no parallel in Islamic laws. Seeking proof of fulfilling the condition is useless when the condition itself is not established in the Islamic laws. These are for permissible condition and not to make condition permissible. The remaining two forms are rational and right. After discussing their rationality, it would be discussed what the surety by bank means and how the bank takes liability of the condition. For it, we would refer to the third type and regard the bank as surety as in the promissory notes, with only difference that it is surety was for the debtor there and it is for the one bound with the condition here. Both the matters conform with the rational thinking.

As far as the interpretation for the demand of the debt repayment or fulfilling the condition is concerned, there may be two ways of it:–

1) The liability which is made in the sense of surety means that the bank has taken surety for repayment of the debt or for fulfilling the condition in the same way as the usurped thing is in custody of the usurper as that he is responsible for its price after it gets lost. The only difference is that usueper's responsibility is compelling while the bank takes the liability on its own. It is liability for the value of the money/goods after it gets lost in the former case but it is for the value on getting the condition lost in the latter case.

The condition of fulfilling the condition is itself a valuable thing that has a value in the eyes of intellectuals. This condition expires as soon as the contractor refuses to pay the amount and liability of payment comes to the bank as soon as the condition expires.

Due to this research, there is no different in both the types of condition of act and the bank can take responsibility of fulfilling the condition in both the conditions. Apart from it, some people have expressed suspicion over the statement that the second form of the condition can be put in the bank's responsibility but not the third form, since in it, there is the condition for direct payment by the contractor and there is no possibility of such conditions to be transferred to someone else. A common factor can go to anyone but the specific portion (clause) is non-transferable. But this suspicion has no reality as a person can become responsible for some other's act with the condition that he must have power to cause him to act as is in case of a bail that so and so would be present on such and such time. Getting oneself present is the act of the bailee but the surety or bail is given by some other person because he can cause him to be present. Just like it, the bank can take surety (bail) for the payment by the contractor but with a condition that he should have power to cause the contractor to pay. Obviously he would not have taken surety, had he not had the power. If incidentally he is unable to pay, the bank shall be responsible for the value of the condition and shall pay the amount.

2) The responsibility by the bank may directly mean that the bank's responsibility of the value in case of getting the thing lost be regarded as the surety.

There is a difference between this interpretation and the former one, the bank has taken responsibility of fulfilling the condition, so the agency had right to ask the bank to get the condition fulfilled while in latter case, the bank has taken surety directly, so fulfilling (the condition) cannot be demanded from the bank but the payment can be demanded

It is revealed from the discussion that the making condition by the agency is a rational matter and taking surety for the money by the bank is a rightful and permissible act. After it, there remains no significance of some scholars saying that the bank's surety is in fact 'Islamic legal bail' i.e. surety for the contractor instead of the money. Then there is this suspicion over it how the bank would pay the amount. Bail means just to produce the bailee. There is no surety of the amount in it. Hence we don't need all such interpretations. This matter, in our view, is related to surety for money, not to the bail, though there is a third meaning of the surety here. It is neither transfer of money from one's liability to another's liability, nor the merger of one's liability to another's liability, but taking surety for the payment instead of the money itself. Its result would come out in the form of payment of the money by the bank if the contractor fails to pay .

If thought carefully , the meaning of the Islamic jurist's fatwa (verdict) regarding the surety of usurped goods is this surety only. The money is not to the liability here that an Islamic legal surety be supposed but there is main commodity present here whose surety means only that the surety is liable for the payment and in case of non-payment , liable for its value.

An objection is put at this point for what the bank takes surety when the agency itself does not become owner/possessor of any thing due to the contractor as in the implications of condition of performance. The performance condition means that a sum of (say) hundred rupees is to be paid in case of non- pursuance of the contract. What does the bank's surety mean when not a single rupee is outstanding against it.

The reply to the objection is that there are two probabilities regarding performance condition :–

(a) The person of condition becomes owner of the actual act after the performance condition,

(b) He just becomes owner of condition, not of the act.

Based on the first probability, the bank would take surety of the ownership when the agency becomes owner of the possession of (say) Rs. 100/- (rupees hundred), due to the contactor. In case he does not carry out the act, it shall be the bank's responsibility to pay its value due to loss of the act (non-pursuance) and that the value is Rs.100/- as per the obligation.

Owing to the second probability, the agency is not owner of the act of possession but is, after all, owner of the condition and the bank shall take surety of the same condition after which it has to pay the amount since this condition is not there in the surety that the owner loses the condition, but if it is lost due to some other reason, the surety after all has to pay the value. The denial of ownership shall not affect the surety in anyway.

APPENDIX – XI

In complementing the first appendix, those gains are interpreted here that the bank receives from its account-holders after paying the amount of their imports.

The interest banks take gain out of the debt produced after paying the amounts of goods of the exporters-importers for whom the banks have issued letters of credit. It has already been hinted to some of their interpretations in the beginning of appendices. Our reservations about them have also been expressed. For example, this interpretation is possible that the bank does not advance debt to local businessman by giving out the price of goods to businessman abroad and paying down the debt of local importer such that his debt is paid off out of his money, but the bank pays his debt from its own money. Since it is done by his wish, he shall be liable for the bank's money in case of loss of the money. If banks then wants to get even more money, it won't be interest since the interest is that which on debt. It is no debt here as the money remains in possession of its owner.

It is absolutely wrong to regard this as a sort of interest. The surety for the interest is concerned with the debt contract. The surety here occurs due to the loss that can in no way be called as debt. In spite of it, we have mentioned our objection over this interpretation and have told that this interpretation is not right.

The second interpretation of it can be made is the way to change the debt into a form of sale and it be said that the bank, while paying off the local businessman's debt in foreign currency, is selling foreign currency for the local currency and effecting increase in the price through the quantity of local currency that is yet outstanding against the businessman. This business has no wrong in. Both the currencies are essentially and specifically different, their nature is also different. There is no fault in just accordance with the business.

The research of this interpretation has also been given in the beginning of the appendices.

It is needed to think, differentiating the interest from the wages in the gains that the bank demands from the importers. It is not correct what some scholars think that neither gain nor wages is permissible as the bank has paid the debt of the local businessman in form of debt only. If their objective is that taking gain or wages is prohibited essentially and that, the interest would invade debt through wages also as through gain. It is a suspicion. It is after all permissible for the bank to take wages that does not make debt 'an interestful' debt. It's proof is that the bank when gives amount as a debt to 'the extent of value' to a local businessman, and then pays off his debt with the amount, it has explicitly right to take wages for paying the debt off. The creditor is responsible to advance the debt, not to put the debt on the other channels. It is additional trouble for the bank that it is having to bear for sake of the businessmen, so it has right to demand wages for the trouble and

also the businessman should not have any excuse to pay the wages to it, as any bank would necessarily take charges for the money transfer if he approaches and wants to send abroad the money in cash after withdrawing from the bank. But if it is supposed that the debt is already with interest and that condition has already been made for the profit there, the discussion would be right whether there is right to take wages after paying the debt of foreign business with that amount. But there is a room to say that there are two opinions of scholars about the debt with interest: some think that capital (in debt) is rightful but wrong to the extent of excess, some opine that even main debt is wrong. In first case, there is, after all, right to take wages. In paying off the debt, one has acted on the debtor's wish, so should get wages but in the second case, wages is impossible as the main debt is wrong, because the money shall not become ownership of the local business when the main debt itself is wrong and the bank can neither pay the debt off with this money to make right of demanding wages for the labour.

APPENDIX –XII

The position of issuing letter of credit by the bank is reviewed here in the light of Islamic laws.

As evident from our discussion, it is not necessary that the bank should be indebted to the person to take commission from him as some scholars have said that the bank has right to take commission if someone takes letter of credit from it after giving the amount in cash to the bank since in this way the bank becomes debtor to the account-holder, and it is not a crime if profit is taken by the debtor, while it is crime if creditor takes such a profit.

The research in its implication is that taking wages is, after all, permissible whether bank is even creditor since the thing made prohibited in Islamic laws is accepting any profit against the money of debt. Taking profit beyond it, is not prohibited absolutely. The position here is that the bank, after issuing the letter of credit, has given the account-holder option to receive the amount to the limit of the letter in any country he likes. He shall become debtor to the bank when and where he receives the amount. The rule of debt is that it must be paid at the place where it has been taken. Obviously the debtor cannot do so, he therefore wishes the bank to accept the amount in the country after giving it abroad and the bank shall have right to take commission for dropping its right due to his wish. This commission is not against the money of debt that it may be called interest but is against the right of payment (repayment) and the creditor has full power to drop or to keep his right.