

22. THE FEATURES OF A CONVENTIONAL BANK

Conventional banking, which is interest based, performs the following major activities:

1. Deposit creation
2. Financing (Refer to section IV)
3. Agency services
4. Issuing letters of credit
5. Advisory services
6. Other related services

We now would like to make a comparison of these activities with the Islamic concept of banking.

Deposits (The Liability Side)

Deposit – qard (loan) not amanah (Trust)

The common misconception regarding deposit is that it is a form of amanah (security/trust). However, according to the Shariah definition, deposit has more resemblance to qard (loan) than amanah. This conclusion is based on the fact that in Islam an item is termed as amanah, if it bears all the features of amanah. Deposits cannot be termed amanah, as they do not have two of its special features, i.e.

- Amanah cannot be used by the bank for its business or benefit.
- The bank cannot be liable in case of any damage or loss to the amanah resulting from circumstances beyond its control.

Whereas in banks, deposits are primarily placed to earn profit, which is only possible when the bank uses these deposits to invest in other business. Hence deposits do not fulfill the first condition of amanah, which says that it should not be used by the caretaker for his own business or benefit.

Secondly, the bank is held 100% responsible for these deposits in all circumstances even in case of loss or damage to the bank. This feature releases deposits from the ruling of amanah where the assets will not be returned in case of any damage to the asset resulting from circumstances beyond the caretaker's control. According to this justification, all three kinds of deposits, namely current accounts, fixed deposits and saving accounts are not amanah. They are all governed by qard.

One school of thought says that only fixed deposits and saving accounts fall under the laws of qard but the current account is governed by amanah. However, this is also not correct because the bank is as much liable to current account holders as its PLS account holders and is called the guarantor in fiqh terminology. Due to this feature, current account is also governed by qard.

The depositors are not interested in terminology but the end-result of holding an account. Therefore, if a bank does not offer security to the assets, the depositors under normal circumstances will never keep their assets at such a bank. Similarly, if the depositors are told that the status of their account will be that of amanah and in case of any loss to the assets, without any negligence of the bank, will not be returned to them, not a single person would put his asset in the bank. Therefore the bank provides the security to the assets which the depositors themselves want.

We therefore conclude that the main intention of the depositors is not to put the assets in banks as amanah; rather as qard by having collateral security by appointing the bank as guarantor.

Example of Syedna Zubair bin Awwam (Allah be pleased with him)

Hazrat Zubair bin Awwam (Allah be pleased with him) was famous for his honesty and trustworthiness. Prominent people used to leave with him their properties in trust. Based on their needs they would also withdraw all or part of their properties. It has been reported in Al Bukhari and Tabaqaat-e-Ibn-e-Saad in respect of Hazrat Zubair bin Awwam (Allah be pleased with him) that he would decline to accept such property as amanah (trust) but rather accepted them as qard (loan).

The reason for this action on his part was his fear that the property may be lost and it may be suspected that he was neglectful in its safekeeping. As such, he decided to consider it a loan so that the depositor felt more comfortable and his reputation remained intact. Another reason for it was that it could become possible for him to employ these funds for trading and earn profit out of them. The loan amount calculated at 2.2 million at the time of his death by his son Syedna Abdullah bin Zubair was specified as qard not amanah. He also used the term loan while instructing his son before his death "Son, dispose off my property to settle the loans."

Conclusion

From the above discussion, we come to the conclusion that all three forms of bank deposits are governed by the law of qard as a consequence of which the account holder may withdraw only the assets deposited. Any increase on it will be interest. It has already been discussed in the chapter of commercial interest that if the purpose of the lender is business or security and not providing financial assistance, then to get an excess amount is also interest, which is prohibited in Islam just like usury.

It is also clear that there is a consensus of Muslim scholars on the point that the transactions in Fixed Deposit and Savings Account is prohibited because the bank pays excess to their account holders over their actual capital, which is interest. The Islamic Fiqh Academy Jeddah in their 2nd session has further endorsed such transactions as interest based transactions, therefore it is illegal for a Muslim to keep their deposits in such accounts. As far as the current account is concerned, the bank does not pay any excess (interest) over the actual capital, therefore holding such an account is allowed.

To sum up, profit given on fixed deposit and savings accounts is interest and therefore prohibited. However if the banking system is based on Islamic principles, Musharakah can play a very important role therefore, we will now discuss how the banks can operate on a Musharakah basis. As

we already know a bank has two sides, one where it receives deposits from customers which is called the liability side and the other where it advances finance to investors and businessmen which is called the asset side. Both sides can operate on a Musharakah basis. As far as deposits are concerned, the Musharakah is the only instrument in which money can be received from customers meaning that every depositor will become a partner in the bank's business through their deposited money. However, for the asset or finance side, there are other instruments apart from Musharakah but since those instruments are not covered in our subject, we will stick to the operation of Musharakah. We will begin with the role of Musharakah in deposits and its relevant laws and will then discuss the procedure of Musharakah on the finance side.

Role of the Bank as Agent :

A bank under the Shariah can act as the customer's agent (on Al-Wakalah basis) and can carry out the transaction on his behalf. Moreover it can charge agency fee for its services.

The agency fee can be charged in the following cases:

- Payment / receiving of cash on behalf of the customer
- Inward bill of collection
- Outward bill of collection
- Letter of credit opening and acceptance
- Collection of export bills / bills of exchange. In this case the undertaking or guarantee commission and take-up commission can be Islamized. Bank will charge an agency fee for accepting the bills which are bought at face value.
- Underwriting and IPO services

Role of the Bank as Guarantor

The bank or financial institution gives a guarantee on behalf of its customer but according to the Shariah, a guarantee fee cannot be charged. Normally, conventional banks charge a fee for following guarantees:

- Letter of guarantee
- Shipping guarantee

Advisory Services

Most of the advisory services provided by the financial institutions can be carried out easily in compliance with the Shariah as long as the nature of business is halal:

- Financial advisory services
- Privatization advisory services
- Equity placement

- Merger and acquisition advice
- Venture capital
- Trading (Capital market operations)
- Cash and portfolio management advice
- Brokerage services (Purchase and buying shares of companies involved in halal business, a fee could be charged for it).

Other Allowed Islamic financial Services and Products

- Remittance
- Zakat deduction.
- Sale and purchase of foreign currency
- Sale and purchase of travelers checks (local and foreign currency)
- ATM services
- Electronic online transfer
- Telegraphic transfer (of cash)
- Demand draft
- Pay order
- Lockers and custodial services
- Syndicate funds arrangements services (non-interest or markup based) for some fee.
- Opening of bank account (current and non-interest or no-markup)
- Clearing facility
- Sales and purchase of shares/stock (of companies involved in halal activities)
- Collection of dividends
- Electronic banking window
- Telephone banking