



FATAAWA

ISSUED BY

ADVISORY COMMITTEE OF EXPERTS
(THE BANK'S SHARI'AH BOARD)

JAIZ BANK PLC

(The Premier (Islamic) Bank in Nigeria)

Kano House

No. 73 Ralph Shodeinde Street
Central Business District
Abuja
Federal Capital Territory

2011-2015

www.jaizbankplc.com



List of Scholars

Professor Dr. Monzer Kahf	-	Joined in October 2011
Professor Dr. Muhammad Lawal Bashar	-	Joined in Oct. 2011
Dr. Muhammad Alhaji Abubakar	-	Joined in Oct. 2011
Shaik Abdulwahab Abdallah Muhammad	-	Joined in Aug. 2013
Dr. Ahmad Bello Dogarawa	-	Joined in Nov. 2014
Dr. Isa Ali Ibrahim Pantami	-	Joined in Jan. 2015

Biographies

Advisory Committee Of Experts (ACE) Members (Shari'ah Board)

Professor Monzer Kahf - Chairman,

He is a leading scholar, Professor and a Consultant in Islamic banking and finance. He has been drafting and reviewing Shari'ah contents of finance agreements, by-laws and operational systems for Islamic financial institutions in many countries around the world including USA, Canada, Switzerland, Saudi Arabia and Trinidad. Prof. Kahf is currently a professor of Islamic Finance and Economics at Qatar Faculty of Islamic Finance, Hamad University.

He served as a senior research economist at the Islamic Research and Training Institute of the Islamic Development Bank (IDB), in Jeddah from 1985 to 1999.

He has written 38 books and published over 91 articles in English and Arabic on Trusts, Awqaf, Zakah, Islamic Finance and Banking and other areas of Islamic economics. He speaks English, Arabic and a little of French.

Professor Muhammad Lawal Bashar - Member

Prof. Muhammed L. Bashar is a member of the Advisory Committee of Expert (ACE) He is Professor of Economics at the Usman Dan Fodio University, Sokoto, Nigeria.

He is a well-published prolific Writer. He has a B.A. (Hons.) in Economics from Jamia Milla Islamia, New Delhi, an M.A. (Economics) from Jawaharlal Nehru University, New Delhi, a Ph.D (Economics) from Usman Dan Fodio University, Sokoto. He studied and taught Fiqh (Islamic Jurisprudence) for Economists at graduate level.

His specialization is in Regulatory Economics.

Dr. Muhammad Alhaji Abubakar - Member

Dr. Muhammad Alhaji Abubakar has over 20 years' experience in Islamic Scholarship. He obtained his degree, M.A and Ph.D (in Islamic jurisprudence) from Islamic University of Madinah, Saudi Arabia.

He has published articles on Islamic commercial jurisprudence and other areas of Islamic law in academic journals (local and international). He also published articles in some local dailies in Hausa language. He attended conferences within and outside Nigeria, and actively engage in propagating Islam.

Dr. Muhammad speaks Arabic, English, Kanuri and Hausa. He is currently a lecturer at the Department of Sharia, Faculty of Law, University of Maiduguri.

Sheikh Abdulwahab - Member

Sheikh Abdulwahab is a renowned Islamic Scholar and Preacher who has spent major part of his life in teaching and preaching about Islam. Together with Late Sheikh Ja'afar Mahmud Adam, they have contributed immensely in creating Islamic awareness within and outside the country.

He is a graduate of Darul Hadith in Makkah and Islamic University of Madinah, Kulliyatul Hadith Wa Darasat al Islamiyya (Faculty of Hadith and Islamic Knowledge). He is the Chairman of Bin

Baz Foundation, Member, Shari'ah Commission of Zamfara State and member, National Supreme Council for Islamic Affairs (NSCIA).

As part of his efforts towards propagation and development of Islam, Sheikh Abdulwahab has written several books on various topics including but not limited to Fatwa on Marriage and Divorce.

Dr.Ahmad Bello Dogarawa - Member

Dr. Ahmad Bello Dogarawa is an Associate Professor with the Department of Accounting, Ahmadu Bello University, Zaria, Nigeria. He is an alumnus of Al-Azhar University, Cairo and belongs to several professional bodies.

He has published more than 35 articles in academic journals (local and international), presented over 50 papers at local and international conferences and published 6 Islamic books in Hausa and English Languages.

He is a member, ABUTH Health Research Ethics Committee; and Member, League of Imams, Scholars and preachers in the Sahel with headquarters at Algiers, Algeria.

Sheikh (Dr.) Isa Ali Ibrahim Pantami - Member

Dr. Isa Ali Ibrahim Pantami is a Jumu'ah Chief Imam, University Professor and a Writer. He was educated in Nigeria, United Kingdom and Saudi Arabia. A PhD holder from the best modern university in the UK. He memorized the Qur'an by heart at the age of 14.

He has published 15 Islamic books and 9 international journal articles in reputable journals and many conference papers. He has been leading Jumu'ah prayer for over 20 years in both Nigeria and the United Kingdom.

In addition, he learnt Islamic knowledge from many prominent international scholars in various Majaalis. He is a professor at the Islamic University of Madinah, Saudi Arabia (al-Jamiatul-Islamiyya).

He is currently the Director General of National Information Technology Development Agency (NITDA)

Fatawa Issued

- Jaiz Bank Shari'ah Board (ACE) 2011-2015

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Introduction

After a long wait the Jaiz Bank was born in late 2011 as the first Islamic Bank in Nigeria. Because of some political sensitivity Islamic banks in Nigeria are called Interest Free Financial Institutions, NIFIs and their Shari'ah boards are called Advisory Committees of Experts, ACEs. The reality that is apparent in all related regulations of the Central Bank of Nigeria and other related authorities is that NIFIs are Islamic banks and ACEs are Shari'ah Boards.

The Shari'ah Board members of Jaiz Bank in their first meeting agrees that they will take decisions always by consensus and will not resort to voting unless in very extreme urgent cases. Fortunately, ACE maintained this pledge and all its Fatawa came in consensus. They also pledged to go by the collective resolutions of prominent Fiqh Academies especially the OIC F.A. and to avoid any side Fatawa given especially on the issues of Tawarruq, sale of debts and their like.

The Fatawa in this volume are taken over four years from 2011 to 2015. During this period the Jaiz ACE gradually expanded from three members in 2011 to 6 members in 2015. Accordingly for each Fatwa we have listed the members who were involved in it. We have sorted them under ten general headings that are: Controversial businesses and activities, Deposits in investment and current accounts, Gifts, ijarah wa iqtina', istisna', Kafalah Miscellaneous Murabahah Riba (interest) issues and Tawarruq. Within each heading we wrote the subject of each question for easy reference.

Finally we hope that the publication of these Fatawa helps in the advancement of Islamic banking practices and the expansion of Islamic finance in Africa and the world.

CONTROVERSIAL BUSINESSES AND ACTIVITIES

QUESTION: FINANCING HOME VIDEO BUSINESS

DATE: September 01, 2014

Can the Bank finance a customer who is involved in selling home videos and entertainment materials that include audio and video CD/DVD Plates in one of the major markets?

ANSWER

The ACE considers financing audios and videos retailers as permissible using Murabaha under the following conditions:

That the Bank does not give Wakalah (agency) to the customer. This means the Bank should buy the audios or videos directly through any of its employees in order to prevent any abuse or buying impermissible audio or video.

- The contents of the audios and videos should promote moral, social, family values, etc.
- They must not indecently expose parts of the body that should not be exposed.
- They must not be promoting ideas that violate the basic Aqidah principles such as oneness of Allah and other fundamentals of our religion.
- Any other thing that contradicts the Shari'ah should be avoided.

Jaiz Bank ACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

Shaikh Abdulwahab Muhammad Abdallah

QUESTION: FINANCING EVENT CENTER
DATE: July 23, 2014

A question was asked from one of the branches on the permissibility or otherwise of financing the acquisition of an event center on Ijarah wa Iqtina' where activities that will take place include weddings, Walimah and other social events.

ANSWER

The ACE is of the opinion that this is permissible under Shari'ah provided there is no incidences of non-permissible mixing of sexes, consumption of alcoholic drinks or other prohibited substances, inappropriate actions and behaviors, and their likes.

Jaiz Bank ACE Members:

Professor Monzer Kahf
Professor Muhammad Lawal Bashar
Dr. Muhammad Alhaji Abubakar

QUESTION: FINANCING A GYMNASIUM
Date: 16/09/2015

Can the Bank finance a Gymnasium in which the Customer undertakes to separate males and females? The Branch requested for clearance to finance the purchase of equipment meant for a Gymnasium under the contract of Ijarah Wa Iqtina. The concern here is that Gyms in general in Nigeria are places where mixtures of opposite sexes are very common. Likewise, the dress for both male and female in such places are questionable. However, the Branch made the customer to undertake to ensure compliance with Shari'ah principles in this Gym. So we are asking the opinion of our great scholars, if we can go ahead with the transaction

ANSWER

It is permissible to finance on Ijarah such equipment with the condition that males and females are assigned either different rooms or different times in same room. As long as the Bank still owns any part of the equipment there should be no mixing of men and women exercising at the same time and place.

In the final analysis, if all the doors of Fitnah (Temptation) were closed, then it is permissible and lawful to go ahead with the project. This is my opinion subject to the input of our Scholars in the committee.

Jaiz Bank ACE Members:

Professor Monzer Kahf
Professor Muhammad Lawal Bashar
Dr. Muhammad Alhaji Abubakar
Sheikh Abdulwahab Muhammad Abdallah
Dr. Ahmad Bello Dogarawa
Dr. Isa Ali Ibrahim Pantami

QUESTION: FINANCING A GYMNASIUM**Date: August 27, 2015**

There was a question from one of the Branches. Can the Bank finance the purchase of gymnasium equipment where the Customer undertakes to separate males and females?

ANSWER

It is permissible to finance on Ijarah such equipment with the condition that males and females are assigned either different rooms or different times in same room. As long as the Bank still owns any part of the equipment there should be no mixing of men and women exercising at the same time and place.

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QUESTION: FINANCING SHARES/STOCKS**Date: 09/11/2015**

What is ACE position of purchasing a share for customers through the stock market via stock brokers? What is equally the position of the share screening process?

We are concerned that the stockbrokers are not the original owners of the shares but however go to the market to buy for their customers. It may mean there is a Gharar in the transaction. Can Salam be applied on this type of transaction?

ANSWER

Purchasing a share in the stock market is a genuine sale and has no Shari'ah problem from this angle. Definitely the broker is not the owner and cannot be according to laws of SEC. but he sells what he is authorized to sell by owners. You should realize that the system of stock and other regulated markets is such that name of other side/party is always not known, in a sense that you deal with the market but every transaction must have two parties.

In Lagos Stock Market you have the shares that are included in Lotus Capital index which applies the AAOIFI Criteria. I don't see it fair that ACE or its members should impose own opinion on Customers of the Bank and the screening criteria of AAOIFI is generally accepted and applied in many institutions and funds (I personally have some reservation on it).

Accordingly my opinion is: It is permissible to buy a share and sell it on Murabahah to a Customer while for other reasons you must not sell a share on any contract that makes a future delivery of the share. AAOIFI has similar opinion too as it decides that a share may not be lent or sold on Salam because of the issues related to delivery in the future. It is indeed a genuine business.

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QUESTION: PURCHASING AN ASSET FINANCED ON AN INTEREST
DATE: March 9, 2015

Is it permissible to finance the purchase of a house in which the owner of the house (seller) is financed by an interest-based mortgage loan?

ANSWER

For Jaiz it is permissible to buy the house from any owner as long as documentation and representation are all correct and to the satisfaction of the Bank.

We must remember that when we finance on Ijarah wa Iqtina', the Bank has to own the property free of any lien, mortgage or charge to any party. The property must be clear of any debt or charge otherwise the Bank may not have first-order claim on the property.

Jaiz BankACE Members:

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QUESTION: FINANCING A CONTRACTOR TO HAVE CHRISTIANS GO TO JERUSALEM FOR PILGRIMAGE

Date: 09/09/15

We received a question from one of the branches asking whether the Bank can finance a contractor who receives a contract from the National Christian Welfare Board to provide some services to some Christians on pilgrimage to Jerusalem.

ANSWER

While it is permissible to finance anyone to visit al Quds, his religion does not matter, financing a trip of pilgrimage to al Quds for a Christian is not permissible because such a trip contains mainly Shirk practices (statements and activities) that represent violation of the Islamic Aqidah (faith/doctrine). The Qur'an say: Help you one another in Al-Birr and At-Taqwa (virtue, righteousness and piety); but do not help one another in sin and transgression. And fear Allah. Verily, Allah is Severe in punishment.

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QUESTION: FINANCING RADIOTRANSMISSION EQUIPMENT
Date: 03/09/15

We have received inquiry on the permissibility of financing the purchase of Radio FM transmission equipment for commercial airing, this request came from a customer who earlier made request for financing the issuance of Radio License which was disbursed before ACE final decision on the matter. In that ACE decided on the non-permissibility of the income earned due to wrong use of product class. Same branch sent the above subject inquiry on same customer. Can the Bank finance the transaction for the purchase of Radio FM Transmission equipment for commercial airing?

ANSWER

It seems that financing transmission equipment for an FM radio is not prohibited; of course we do it on clear basis of Murabahah or Istisna' without Wakalah with this customer specifically because of the bad experience with him in the past. It is difficult to make a claim that FM radio is Haram.

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QUESTION: FINANCING FEES PAYMENT TO ISSUE A RADIO LICENSE
Date: July 23, 2015

There was an inquiry from one of the Bank branch on the permissibility of financing cost of license issuance for establishment of FM Radio station.

ANSWER

If the amount of financing includes, supposedly, fees and labor compensation for a lawyer or a service person who will follow up and obtain the license and if the total amount of labor compensation is substantial and it can be given on contract basis, we may be able to finance it as a Ju'alah for which we may use the same contract of Ijarah. It will be a contract with the lawyer or the service person to achieve obtaining the license and delivering it to the customer and a contract with the customer to achieve the same by the Bank for a marked up contract price.

This was not followed and violation of the process was evidenced, based on that, the ACE opined below:

The two amounts paid by the Bank cannot be a price of Murabahah sale nor an Ijarah no a Ju'alah because the fundamental elements of any of these contracts do not exist in this transaction as it is merely payment of fees to the licensing authority. ANY EXTRA AMOUNT RECEIVED FROM THE Customer is thus an increment on cash payment which is pure Riba.

ACE REQUIRES THAT THE CUSTOMER BE ASKED TO MAKE IMMEDIATE RETURN OF THESE TWO AMOUNTS AND THE TRANSACTION BE CANCELLED AND ANY AEXTRA AMOUNT RECEIVED IN IT BE TRANSFERRED TO CHARITY ACCOUNT.

MORE IMPORTANT, PLEASE INFORM THE MD PERSONALLY THAT ALL PERSONS INVOLVED IN APPROVING THIS DISBURSEMENT MUST BE STRONGLY DISCIPLINED. THE BANK MUST NOT BE INVOLVED IN ANY INTEREST TRANSACTION. THEY MUST ALSO BE CHARGED FOR THE TOTAL AMOUNT OF LOST PROFIT, THIS DISCIPLINARY ACTION MUST INCLUDE BOTH THE BRANCH AND THE RMD AND ANY HIGHER PERSON WHO APPROVED OF IT.

Jaiz BankACE Members:

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QUESTION: FINANCING ABATTOIR BUSINESS ENGAGED IN STUNNING ANIMALS BEFORE SLAUGHTERING AND SALE OF BLOOD IN POWDER FORM AS A BY-PRODUCT

DATE: OCT 18, 2014

A question was asked regarding a company requesting the Bank to grant it a facility for the construction of a modern abattoir, importation of machineries and to augment their working capital. The proposed abattoir will engage in the following activities: slaughtering of cattle, sheep and goats; sale of bones, horns and skin; sale of manure and sterilized blood powder for poultry chicken feeds. The process the company intends to follow in slaughtering involves stunning the animal first so as to remove the need for tying it down, after the stunning, the official in charge of slaughtering will then slaughter it with a knife. The question seeks to know the opinion of the scholars on these processes from Shari'ah perspectives.

ANSWER

ACE is mainly concerned with two Shari'ah issues in the proposal, which are stunning the animals before slaughtering and sale of sterilized blood powder.

Stunning animals before slaughtering: Stunning animals is permissible (this is also in accordance with OIC Fiqh Academy resolution) provided the shock does not kill the animal. If it kills it by mistake, the corpus will not then be processed for human food. It may be utilized for dog food. Stunning is rather consistent with the Sunnah of making it easier for the animal and making life easier for the workers.

Sale of sterilized blood powder: -Dried blood though is forbidden, but is a bye-product of the business and does not form part of its major income. It is a small part of the whole business. This element will not prohibit financing the business as a whole, rather, proceeds from the sale of the dried blood be calculated and moved to charitable Foundation for distribution to charity.

Jaiz Bank ACE Members:

Professor Monzer Kahf

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Shaikh Abdulwahab Muhammad Abdallah

QUESTION: FINANCING SALARIED STAFF OF NATIONAL LOTTERY REGULATORY COMMISSION

DATE: FEB. 12, 2015

A question was asked on the permissibility to finance staff of National Lottery Regulatory Commission (NLRC). NLRC is a regulatory body in Nigeria that regulates all forms of lottery and promotions in the country.

ANSWER

ACE is of the opinion that staff of the NLRC are government employees who derive their salaries from the government budget/revenues. There is nothing non-permissible in helping them buy cars, houses, household appliances and any other permissible commodities through Murabahah or Ijarah wa Iqtina'. Their work in the NLRC aims at taming and reducing the evil associated with lottery and promotion practices.

Jaiz BankACE Members:

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DEPOSITS; INVESTMENT AND CURRENT ACCOUNTS**QUESTION: CURRENT ACCOUNTS; QARD OR WADI'AH?****Date: August 27, 2015**

The ACE received a request from the management of the Bank seeking ACE opinion on the possibility of changing the contract of the existing current account from Qard to Wadi'ah. This is to enable the Bank take some charges on such accounts.

ANSWER

ACE is of the opinion that Wadi'ah requires the depository to keep it in a safe untouched box. If the Bank uses funds given as Wadi'ah it is then considered a betrayal of the Amanah, a violation of Shari'ah and a dent in the Amanah of the Bank.

On the other hand if the Bank wants to charge the lender in current accounts for any services provided to him, such a charge is permissible and cannot be Riba by all means. In fact it is the opposite of Riba. If you want to charge simply for returning the loan to the lender, this is another violation because you are required to return the loan in the same location at the borrower's cost. Let us remember that the Bank is not required, by virtue of the loan contract (current account deposit) to provide internet access, periodical statements of account, check books, free transfer and the likes. All these services can be charged for.

In other words, there is no problem in charging current accounts for such services asnd several Islamic banks have charges on current accounts although they are loans.

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QUESTION: PAYMENT OF EXPECTED PROFIT ON MUDARABAH ACCOUNT**DATE: JULY 11, 2013**

Where the Bank takes a deposit on Mudarabah and advises the customer about its previous profits it gave on similar deposits, can the Bank give the customer some portion of expected profit on ground that should there be any loss the Bank will take it from the capital of the Rabbul Mal?

ANSWER

Payment of expected profit in advance is permissible. But here again there is a room for abuse which must be avoided by the following conditions:

1. It must be crystal clear, in writing that this is an advance on expected profit of a definite deposit and definite time, and must be made equally clear that it is adjustable at the end of the period.
2. It must not be added to the principal of the deposit; it can be credited in a current account or paid up front. But it must not enlarge, unrealistically the capital of the deposit.
3. The deposit must be marked as blocked and cannot be withdrawn until maturity and final adjustment/settlement.
4. Of course the amount of expected profit is always small relative to the amount of the deposit, so that its adjustment out of capital is always possible.

Jaiz Bank ACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

Shaikh Abdulwahab Muhammad Abdallah

QUESTION: CAN JAIZ FOUNDATION DEPOSIT ITS CASH IN JAIZ BANK MUDARABA ACCOUNT?

Date: 19/10/2015

We will like to know if, based on ACE decision in its first meeting dated October 20, 2011, Jaiz Foundation can invest part of its funds in a Mudarabah account with Jaiz Bank and Jaiz may benefit from these funds as Mudarib?

The decision of 2011 reads as follows:

“That the foundation may invest this amount as a shareholder in Jaiz or any other enterprise it deems fit provided that it is treated with full rights and privileges of a shareholder.”

The issue is that Jaiz Foundation is established by Jaiz Bank in order to move all non-permissible income to be used for charity. At the time of establishing the Foundation, there was interest-based income amounting to about two Billion Naira. This was generated by Jaiz International deposit for shares with the Central Bank and Unity Bank when Jaiz Intl was looking for license and could not get it between until 2011.

In relation to this the ACE decided that such interest income is considered Haram and Jaiz Bank, its Board or ACE Members are not permitted to benefit from it. However, investing such fund in Mudarabah means, if there is profit Jaiz Bank will share part of the profit as Mudarib, and that means they have benefited from the Haram Fund even though it may be indirectly. This is the basis of our question.

ANSWER

As it stands now, any cash available to JF must be placed in a bank anyway. Accordingly as Jaiz is now the only full Islamic bank and the closest to JF anyway there is no way other than depositing its liquid funds with Jaiz Bank. We suggest that for part of such funds that may be placed in time investment deposits, the Foundation should negotiate with JB management to obtain special privileges the least of them is like JAPSA. Additionally, the Bank benefit from these funds is in reality for providing additional services that is the services of Mudarib activities in

investing the funds, it is not a benefit from the Haram income but a benefit from selling these services to the Foundation.

Furthermore, since the Jaiz Foundation is an independent body, like any other body or individual, and partakes in legitimate business with it, it is lawful to benefit from their transactions as it benefits from other bodies. The source of the money is only secondary to Jaiz Bank since it is allowed and legalized to have a non-Muslim customer, whom you also do not question his source of income.

Jaiz Bank ACE Members:

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GIFTS

QUESTION: OFFER OF GIFTS TO EMPLOYEES
DATE: SEPTEMBER 01, 2014

Is the Bank allowed by Shari'ah to offer or receive gifts to and from individuals or organizations to which it offers services or receives services from? Would this be considered as a bribe?

ANSWER

The ACE resolved as follows:

The Bank may give gifts to its employees without limit with the approval of the Board of Directors provided these gifts are calculated out of the share of profit of the Shareholders and none is charged to the share of profit of investment account holders.

The Bank employees may receive gifts from other institutions or individuals. Any of such gifts that exceeds N10,000.00 (Ten Thousand Naira) whether in kind or cash should be given to the Bank's Treasury and considered as revenue to the Bank. If the management wishes to change this figure we require that strong evidence be given to ACE showing that it is usual and customary to receive such gifts without it inducing favoritism and/or privileges.

The Bank may give gifts to employees of other organizations, institutions and customers with maximum limit of N10,000.00 (Ten Thousand Naira Only). This gift may be charged to the general expenses of the Bank. However if it gives gifts to customers the Bank must not select the category of current account holders alone for its gift-giving as their contractual relations with the Bank is based on Qard principle and any benefit derived from a loan is Riba as the Fiqh Maxim says. If gifts are given to all customers in recognition of their good relation with the Bank, such gifts may not exclude current account holders.

Furthermore, the ACE reviewed the other question regarding exchange of gifts between employees. The ACE has no issue in cases where the gift is from a superior officer to a junior one. Exchange of gifts is encouraged in Shari'ah as the Prophet, pbuh, considers it as an

important element in improving inter-personal relations in His Saying “exchange gifts, this makes you love each other.” However, we advise that gifts from a junior employee to a senior employee should be avoided whatsoever because it may shadow a bribe to a senior person who may have influence on the gift giver.

Any gift given by junior employee to a senior one or given to an employee by outsider in excess of N10,000.00 should be given to the Bank's treasury.

Jaiz BankACE Members:

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IJARAHAND IJARAHWA IQTINA'

QUESTION: FINANCING MOBILE RECHARGE CARDS

DATE: August 16, 2012

We have proposals for financing the purchase and onward sale of prepaid mobile phone cards. Please we need clarifications on the following:

1. Which of the Islamic mode(s) of financing is suitable for pre-paid cards for mobile phones?
2. What is the status of pre-paid card in contract of sale? Can we use Murabahah for this transaction?

ANSWER

Prepaid phone card is simply an advance payment to the company which will be used up through the purchase, i.e., use of telephone services.

However, in wholesale we may be able to define telephone service units. If we define a number of hours of airtime say ten million hours to be used between Jan. 1 and Dec. 31, 2013, these service hours can be purchased by the Bank from the telephone company and sold to a customer at mark up. The Customer may then issue phone cards (or use phone cards handed to him by the telephone company) and sell them to retailers.

The contract which we will use is Ijarah both ways, with the phone company and with the Bank's customer.

Jaiz BankACE Members:

Professor Monzer Kahf
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 Dr. Muhammad Alhaji Abubakar

QUESTION: RENTAL CHANGE IN IJARAHWA IQTINA'

DATE: MARCH 09, 2015

A question was asked by one of the departments in the Bank as to whether the Bank can increase its Ijarah rental rate due to increase in interest rates by most banks in Nigeria. This was due to strict measures taken by the Central Bank in response to the declining oil prices and falling Naira against the US Dollar. In view of this, the Bank is planning to increase the rental rate of its existing Ijarah financings. Kindly advise on the permissibility of this or otherwise.

ANSWER

ACE is of the opinion that in any contract the period of Ijarah is determined. The rent cannot therefore be changed for that period. If the contract is for a short period with repetitive renewals, the rent can be changed at each renewal by mutual agreement of the two parties unless the contract itself has provided for an agreed upon mechanism of increase at renewal time such as "rent at each renewal shall be determined as NIBOR + ...%". There is a need to check each contract to know what it says in regards to the period of the contract. For future contracts, the rent of any new contract may be increased by mutual consent.

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QUESTION: FINANCING AN ALLOCATED PROPERTY**DATE: SEPTEMBER 01, 2014**

Can the Bank finance a customer, who was allocated a property long ago by a construction company, has paid part of it and requires the Bank to finance the balance on Ijarah wa Iqtina'?

ANSWER

The ACE considered this as permissible as long as there was no sale agreement between the customer and the construction company previously. In this present case, the customer was only allocated the property and not sold. However, with the payment of such portion by the Bank, the construction company should provide an agreement showing a joint ownership with the Bank, by creating a partnership in owning this property.

Jaiz Bank ACE Members:

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 Shaikh Abdulwahab Muhammad Abdallah

QUESTION: PURCHASING A HOUSE FINANCED ON INTEREST TO BE FINANCED ON IJARAH WA IQTINA'**DATE: JANUARY 07, 2015**

A question was asked from one of the branches regarding a customer of the Bank who requested the Bank to finance the purchase of a house through Ijarah wa Iqtina. However, the owner of the house (seller) is financed by an interest-based mortgage institution and is yet to fully pay the full amount so that the house is still mortgaged for the interest-based loan. Can the Bank enter into such transaction?

ANSWER

For the Bank it is permissible to buy the house from any owner as long as documentations and representations are all correct and to the satisfaction of the Bank. We must remember that when we finance on Ijarah wa Iqtina', the Bank has to own the property free of any lien, mortgage or charge to any party. The property must be clear of any debt or charge otherwise, the Bank may not have first-order claim on the property.

Jaiz BankACE Members:

Professor Monzer Kahf
Professor Muhammad Lawal Bashar
Dr. Muhammad Alhaji Abubakar
Shaikh Abdulwahab Muhammad Abdallah
Dr. Ahmad Bello Dogarawa

**QUESTION: CHARGING RENT IN IJARAHWA IQTINA' BEFORE
AVAILABILITY OF USUFRUCT
DATE: DECEMBER 9, 2014**

A question was asked as to whether rent (as an income) can be taken on a property under construction before availability of the usufruct in an Ijarah Wa Iqtina' contract?

ANSWER

The ACE reiterates that the Ijarah wa Iqtina' contract and Offer Letter that are used by the Bank are correct as previously approved by the ACE. It however opines that it is wrong to use the Ijarah wa Iqtina' contract that was made for ready-made properties and assets for transactions that involve constructions in which advance payments are required months before the asset is ready for usufruct. This is a great mistake. It could have been remedied by including a clause in the Offer Letter and Agreement of such transactions (that involve disbursements before availability of usufruct) as explained in section 7:2 of the ACE approved Ijarah wa Iqtina' manual.

Now that the Bank did not include in the contracts such a clause in the Ijarah wa Iqtina' Offer Letter and Agreement, no rent or any other amount can be charged during the period because no charge can be made without being agreed on in the Offer Letter and the Agreement. The ACE therefore requires the Bank to refund all such amounts charged for gestation period to customers of this kind.

Jaiz BankACE Members:

Professor Monzer Kahf
Professor Muhammad Lawal Bashar
Dr. Muhammad Alhaji Abubakar
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Dr. Ahmad Bello Dogarawa

**QUESTION: SALE OF PROPERTY FINANCED ON IJARAHWA IQTINA'
CONTRACT
DATE: SEPTEMBER 1, 2014**

In an Ijarah Wa Iqtina', what will happen if the customer sells the property at a higher amount before maturity of the transaction and pays the Bank only its outstanding amount including value for its remaining portion and any due unpaid rent?

ANSWER

Ijarah Wa Iqtina' is a financing agreement. The Bank is not in the business of real estate trading, it is rather a financial institution specialized in providing finance. The Difference between the Islamic bank and other banks is that this bank provides finance in accordance with the rules and regulations of Shari'ah. It does not differ from other banks in matters of changing its business model to trading real estates and other commodities.

The Ijarah Wa Iqtina' contains a promise from the Customer to buy the house according to the schedule of amortization and acceptance of the Bank of this undertaking. This means that while the Bank is the owner of the house and the customer owns only a portion also while the part that is owned by the Customer is under mortgage to the benefit of the Bank until full payment is done and the undertaking is fully fulfilled, these two whiles do not allow the Customer to sell on his own. BUT the Customer can sell, with permission of the Bank provided he fulfills the undertaking of buying the share of the Bank and make full payment of the price of not-yet-purchased portion of the house at the time of sale.

In summary:

If the Customer wants to sell, he MUST notify the Bank and take its written permission and renew his pledge to buy the portion owned by the Bank at the time of selling to a third party; he cannot sell without this written permit and renewed pledge;

The price of the portion still owned by the Bank (which should be paid to the Bank at the closing) is as indicated in the schedule of amortization at the time of settlement;

No.2 above means that any difference in the sale price (profit or loss) belongs to the Customer.

Jaiz BankACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

Shaikh Abdulwahab Muhammad Abdallah

QUESTION: REPLACEMENT OF A PROPERTY FINANCED ON IJARAH WA IQTINA'

Date: 09/11/15

Below is a question we received from one of the staff:

A customer (1) of the Bank secured a financing for ownership of a house (A) under Ijarah Wa Iqtina' for a value of 15 Million in Abuja and has commenced payment for cost and rent. Another customer (2) is interested in the same house (A) to be financed by Jaiz Bank for the same 15 Million Naira.

Now the Customer (1) wishes to relinquish the house (A) to Jaiz Bank to enable it enter into another Ijarah wa Iqtina with the customer (2) for 15 Million. In return the Bank pays for another house (B) as replacement for customer (1) at the same cost of 15 Million in different location, while maintaining the existing payment schedules.

Can this be done by making an addition to the existing contract in order to accommodate the replacement of the asset without necessarily terminating the first contract?

We will appreciate your kind direction on this issue.

ANSWER

Relinquishing Ijarah wa Iqtina contract to another person at same financing is permissible. It is a matter of agreement, risk of the new Customer 2 and current rate of rent. The transaction means from Shari'ah point of view the following: Customer 1 sells his share to (2) and the Bank make Iqalah of the rental to Customer 1 and gives rental with a promise to buy (Ijarah wa Iqtina') to Customer 2 at same or different conditions.

This has nothing to do with any property in any other location. Financing a house in any location is subject to the conditions and terms of the Bank in that location. No relation between the two transactions and they must not be mingled together.

Jaiz BankACE Members:

Professor Monzer Kahf
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Sheikh Abdulwahab Muhammad Abdallah
Dr. Ahmad Bello Dogarawa
Dr. Isa Ali Ibrahim Pantami

ISTISNA'

QUESTION: ISTISNA AND PARALLEL ISTISNA' WITH SAME PARTY

DATE: March 09, 2015

Is it permissible for the two counter-parties in Istisna' and parallel Istisna' to be related?

ANSWER

The ACE is of the opinion that there is no problem if there is an ownership relationship between the contractor of parallel Istisna' and the Istisna' customer provided there is evidence of real construction. In all Istisna' contracts the Bank should be careful by investigating both parties with whom the Bank deals in the Istisna' and parallel Istisna'. This is to ascertain the level of job performance which may be through repetitive site inspections in order to avoid any practice of cash for a larger future debt which is the essence of Tawarruq. The Bank must be assured that every payment made by it reflects real and actual work done in implementation of the Istisna' contract.

Jaiz BankACE Members:

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Shaikh Abdulwahab Muhammad Abdallah
Dr. Ahmad Bello Dogarawa

KAFALAH (GUARANTEE)

QUESTION: ISSUING KAFALAH FOR AN INTEREST-BASED TRANSACTION

Date: August 27, 2015

We received an inquiry on the issuing of Kafalah/Bank Guarantee to a registered microfinance Bank in Nigeria. The micro finance Bank is registered to carry out non-interest banking and financial transactions, the Bank wishes to access Micro Small and Medium Enterprises Development Fund from Central Bank of Nigeria (CBN) on behalf of their clients. They are required by the CBN to get a Bank guarantee from a reputable Bank in which they approached Jaiz Bank to issue the guarantee in favour of CBN. Further inquiry reveals to us that the intervention fund is based on 2% interest rate. However, the micro finance Bank has made a written proposal to CBN for conversion of the interest charges to processing fee at the same rate of 2%. Can the Bank go ahead and provide the guarantee coverage?

ANSWER

The ACE opined that changing the name of interest into fees does not make it Halal. Fees must be only in the amount of cost of processing not a % of the amount given. The question is thus: can we give a guarantee to a customer to obtain an interest-based loan? This is not permissible in Shari'ah.

Jaiz BankACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar
 Sheikh Abdulwahab Muhammad Abdallah
 Dr. Ahmad Bello Dogarawa
 Dr. Isa Ali Ibrahim Pantami

QUESTION: PERSONAL GUARANTEE AND GUARANTEE FROM OTHER THAN THE DEBTOR**Date: Dec. 6, 2013.**

A question was asked on the permissibility of customer giving him/herself a personal guarantee as a form of security for Kafalah or financing facility.

ANSWER

The ACE resolves that if a personal guarantee is offered by the debtor himself or a potential debtor in recognition of indebtedness or potential indebtedness, then it is not a guarantee that can be taken as security (cover) when issuing Kafalah (Bank L G). Personal guarantee is only a guarantee by another person not the debtor or potential debtor.

Jaiz BankACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar
 Shaikh Abdulwahab Muhammad Abdallah

QUESTION: CHARGE OF FEES ON KAFALAH (BANK GUARANTEE)**DATE: MAY 23, 2013**

A question was asked by one of the Bank staff in respect of the permissibility of charging fees on Bank guarantee (Kafalah) or it is supposed to be gratuitous.

ANSWER

The ACE is of the opinion that fees cannot be charged on Kafalah (Bank Guarantee) itself. But whenever it is fully or partially covered up to 50% fees can only be charged on the portion of the guarantee that is covered. This is because in such a case (where the guarantee is securely covered) it is considered a mere Wakalah and the Bank is acting as Wakil (Agent) and not Kafil (Surety). This also means where the guarantee is unsecured, the Bank cannot charge on the unsecured guarantee or the unsecured part of it. Whenever there is no Wakalah the Bank is only entitled to charge actual out-of-pocket amount expended on the process.

Jaiz BankACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar

Miscellaneous

QUESTION: LODGEMENT OF DIVIDEND WARRANT FROM A BREWERY AS A DEPOSIT

DATE: August 17, 2014

A question was received from one of the branches on permissibility of accepting lodgment of a dividend warrant of Nigerian Brewery Company (alcohol producer) into the Bank's account (current or savings account).

ANSWER

The ACE is of the opinion that a dividend warrant from a brewery company or any similar companies should not be accepted as deposit from a Muslim. Accepting it is recognition that it is his property while it is not a permissible property in Islam. The Bank should advise the customer to give it to charity. If he agrees, the Bank may accept it for deposit into a charity account. Otherwise, the Bank cannot accept it as a deposit into a current or a saving account. This is because, in Shari'ah alcoholic drinks are prohibited, have no value and do not produce dividends.

Accepting a warrant of dividend from a brewery is not permissible even from non-Muslim for whom, liquor is a respected property *مال محترم*, as liquor production violates the fundamental moral values of Islam and all religions and rejected by normal human minds.

Jaiz Bank ACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

Shaikh Abdulwahab Muhammad Abdallah

QUESTION: ACCEPTING DIVIDEND WARRANT FROM A CONVENTIONAL BANK AS A DEPOSIT

Date: 25/06/2015

We are in receipt of a question from Kano Branch regarding a Dividend Warrant from a conventional Bank. Can the Bank accept a Dividend Warrant from its customer into a current or saving account?

ANSWER

It seems that it is difficult to accept Haram money as a deposit in a Halal Bank. The dividend of a conventional Bank, although the Bank's net income includes non-interest ingredients, is majority interest and interest is a non-earned property according to Shari'ah. If this person has cashed it and come to us with cash money for deposit we accept it and we are not required to ask questions about the source of his money other than what the law and CBN regulations require the Bank to ask.

Jaiz Bank ACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

Sheikh Abdulwahab Muhammad Abdallah

Dr. Ahmad Bello Dogarawa

Dr. Isa Ali Ibrahim Pantami

QUESTION: DEDUCTING ZAKAH ON SHAREHOLDERS' FUNDS
DATE: JULY 10, 2013

A question was asked by many customers of the Bank whether Zakah on shareholders' and depositors' funds is to be deducted directly from the shareholders/customers' accounts and distributed to deserving recipients by the Bank.

ANSWER

The ACE is in support of the OIC Fiqh Academy rulings regarding Zakah on companies issued a few years ago. The ruling states that Zakah is an individual religious obligation on Muslim natural persons. It must be paid in accordance with Shari'ah by individuals on all their Zakatable properties including their ownership in companies as a form of worship towards Allah. The OIC in its famous rulings 28 (3/4) (1) resolves that Zakah must only be paid by companies and any other legal entities under one of the following circumstances;

If the laws of the country require companies to pay Zakah on shareholders' funds.

If the articles of incorporation require the company to pay it.

If the general assembly asks the management to calculate Zakah due on shareholders' funds and pay it on their behalf.

If a shareholder or a depositor, on personal level, asks the management to calculate and pay the Zakah due on his equity by virtue of specific Wakalah (Agency) if the company accepts to do this.

Jaiz Bank ACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

QUESTION: CHARGING COMMISSION ON TURN OVER (COT) ON CURRENT ACCOUNTS
DATE: MAY 23, 2013

Is it allowed to debit an account for cost of turnover (COT) where such account is not funded? These are charges taken for every withdrawal made on a current account. However, some customers of the Bank leave their accounts unfunded after transactions which deny the Bank the opportunity to take such charges.

ANSWER

The ACE is of the opinion that it is not allowed to debit an account for a COT where the account is not funded. This is a fake income and stands prohibited. Furthermore, the Bank should not charge current accounts holders any fees on withdrawal of cash from the Bank as long as they have a balance in the account. Withdrawal of cash from current account is a partial or full payment of a loan and the borrower is required to make the loan repayment available to the lender at the borrower cost.

Jaiz Bank ACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

QUESTION: BUYING HOUSES BY THE BANK FOR FUTURE SALE**DATE: March 20, 2013**

The Bank intends to buy, and pay the price in full of, some houses from property developers (not built at time of purchase) which will be ready by December. However, the intention is not to use it but to hold and then sell the houses again before completion at higher prices (meaning one month or two from now when the prices go up). Should this amount to speculation or not?

ANSWER

It is a permissible transaction provided the second sale by the Bank to customers is done after construction actually begins. However we do not advise the Bank to undertake this kind of transaction because it has high undue risk to depositors; the Bank is not a houses trader; it is a financial intermediary which may only buy on request from a customer.

Jaiz BankACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

MURABAHAH**QUESTION: DELIVERY BY THE CUSTOMER BEFORE WE PAY****Date: 16/11/2015**

Attached is an invoice obtained from a supplier of goods under Murabahah finance for one of our customer. The customer applied for finance under House Appliance Scheme, the goods were supplied to the customer by the seller before payment was made to the supplier by the Bank. Upon enquiry, we have come to notice the followings;

- 1) *The customer assured us that he did not buy the goods from the supplier.*
- 2) *The supplier was convinced to supply the goods to the customer after receiving call for confirmation of the goods with the supplier from the Bank. Therefore the supplier released the goods to the customer based on his conviction that the Bank will pay him considering the status of the customer (federal law maker as member of the House of Representatives)*
- 3) *The goods are now installed, in use in the residence of the customer while awaiting payment to the supplier.*

Can the Bank go ahead to make payment?

ANSWER

1) If this "receiving call for confirmation of the goods with the supplier from the Bank" is a purchase call from the Bank, the Bank has purchased, and 2) If it is in the Contract with the Customer that he is assigned as agent of the Bank to receive the goods or so it is understood by the Customer from previous transactions with him or his peers, then it can be considered Murabahah as a way of considering correct *تصحيح أفعال العباد* and the Bank should complete all papers and make payment.

Apparently this can be understood from the fact that the invoice is in the name of the Bank. Otherwise, if the second condition is not satisfied, may be a Bank officer should visit the Customer and take delivery then a sale on Murabahah should be made to the Customer and then make payment and a note to bring this mistake to their attention.

However both Customer and supplier should be given some training to make them understand the Shari'ah Murabahah and why its steps are necessary.

Jaiz BankACE Members:

Professor Monzer Kahf
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 Dr. Muhammad Alhaji Abubakar
 Sheikh Abdulwahab Muhammad Abdallah
 Dr. Ahmad Bello Dogarawa
 Dr. Isa Ali Ibrahim Pantami

QUESTION: BUYING WEAPONS FOR THE GOVERNMENT

DATE: FEB. 25, 2015

There was a question from one of the Bank's departments as to whether the Bank can facilitate opening of Letter of Credit (LC) for the finance or purchase of arms (weapons) on behalf of the government in its quest to fight insurgency.

ANSWER

ACE is of the opinion that the Bank should stay away from that type of deals or transactions. The ACE is also of the opinion that financing purchase of weapon or opening an LC for it would expose Jaiz to a serious reputational risk. This is because the security situation in Nigeria would make it improper for a Bank to establish LC for importation of weapon even if it is by government or her agencies. Weapons are instruments of killing and destruction and an Islamic finance institution should not be involved in them regardless of who buys them and in whose hands they will end.

Jaiz BankACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar
 Shaikh Abdulwahab Muhammad Abdallah
 Dr. Ahmad Bello Dogarawa
 Dr. Isa Ali Ibrahim Pantami

QUESTION: BUYING GOODS RE-POSSESSED BY A CONVENTIONAL BANK

DATE: April 3, 2014

A customer of the Bank was financed by another Bank (conventional interest-based Bank) for importation of fertilizers under interest-based financing. The customer had defaulted and the Bank seized the goods from the customer with the intention of selling in order to recover their funds. Can the Bank buy such goods and sell to the same customer on Murabahah?

ANSWER

The Bank needs to determine who owns this specific shipment of the goods. If the owner is the customer and it is under debt to the conventional Bank, then we cannot finance it because this will mean financing debt for debt which is not allowed in Shari'ah. If the customer surrenders ownership of this quantity of the fertilizers to the conventional Bank against a Bank's

acceptance already offered to the supplier, after obtaining evidence of surrendering the ownership of this shipment (goods) to the Bank, we may buy it from the conventional Bank and sell it to the customer.

Jaiz BankACE Members:

Professor Monzer Kahf
Professor Muhammad Lawal Bashar
Dr. Muhammad Alhaji Abubakar
Shaikh Abdulwahab Muhammad Abdallah

QUESTION: FINANCING THE PURCHASE OF GOLD JEWELLERIES, SILVER AND BUREAU DE CHANGE STOCKS USING MURABAHAH

DATE: DECEMBER 06, 2013

A question was raised from one of the branches on Shari'ah permissibility and relevant product type to be used (if permissible) for financing the purchase of gold jewellery, silver and bureau de change stocks on behalf of the Bank customer(s)

ANSWER

ACE is of the opinion that for this type of transaction, customers who sell gold jewelries, silver or for bureau de change, Murabahah and Ijarah do not fit because of restrictions on Sarf (Money Exchange) contracts. Alternatively, gold and silver traders and bureau de change dealers (if permitted by CBN) can be financed on Musharakah provided sufficient risk mitigating processes and arrangements are undertaken in order to uphold our responsibilities towards Mudarabah depositors in protecting their funds.

Jaiz BankACE Members:

Professor Monzer Kahf
Professor Muhammad Lawal Bashar
Dr. Muhammad Alhaji Abubakar
Shaikh Abdulwahab Muhammad Abdallah

QUESTION: USE OF PER ANNUM IN CALCULATING PROFIT IN MURABAHAH TRANSACTIONS

DATE: DECEMBER 06, 2013

The ACE is requested to shed light on the use of per-annum method in calculating profit by the Bank in all Murabaha and Ijara wa Iqtina transactions.

ANSWER

The ACE believes that there is nothing wrong in calculating profit rate using per annum. The Bank calculates its profit rate on per annum using the declining balance because the customer pays on installments which makes it fair for him. Furthermore, as long as this is stipulated in the contract, it is Shari'ah compliant. Otherwise the difference of schedule of payment may not have any effect on total profit. The ACE also advises and instructs the management that it is not sufficient to mention rate of profit alone. The amount of sale price must be mentioned clearly on both Offer Letter and Agreement.

Jaiz BankACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar
 Shaikh Abdulwahab Muhammad Abdallah

QUESTION: LISTING OF VENDORS FOR CUSTOMERS TO CHOOSE FROM IN MURABAHAH

DATE: MAY 23, 2013

A question was asked by staff of the Bank as to whether the Bank can provide list of vendors for its customers to choose from while requesting for asset financing under Murabahah.

ANSWER

It is wrong for the Bank to establish a list of vendors for its customers to choose from while requesting for financing. This will limit the choice of customers and therefore deny them their right of choice.

Jaiz BankACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar

QUESTION: UNILATERAL CHANGE OF PROFORMA INVOICE BY THE BANK

DATE: May 23, 2013

One of the Bank staff asked a question as to whether the Bank has the right to change a proforma invoice submitted by customer with another proforma invoice from a different vendor.

ANSWER

The ACE is of the opinion that where a customer provides a proforma invoice from a vendor requesting the Bank to buy the assets or goods under Murabahah, the Bank has no right to change to another vendor, but can advise the customer to negotiate or the Bank may negotiate the prices with the Customer's own vendor.

Jaiz BankACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar

QUESTION: HANDING THE BANK DRAFT TO THE CUSTOMER TO DELIVER TO SUPPLIER

DATE: May 23, 2013

A question was asked in respect Murabahah Facility granted to a customer, as to whether the Bank Draft processed in favour of the supplier can be given to the customer for delivery to the vendor.

ANSWER

The ACE opined that in Murabahah, the Bank can hand over a draft in favour of the vendor to the customer for onward delivery. This will help ease the process flow. However, on no account should cash be given. This does not contradict Shari'ah principles. Wherever there is fear of

connivance with the vendor, the Bank should receive the asset physically and deliver it to the customer.

Jaiz BankACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

QUESTION: CHANGING THE SALE PRICE IN MURABAHAH LINE OF CREDIT

DATE: April 23, 2013

We have an enquiry regarding a particular Murabahah line. A customer was provided Murabahah line facility where the Bank will purchase cement from a company in Lagos and sell to the customer. The customer was appointed as agent by the Bank to facilitate the purchase from the company. The approval has a line of 60 days and is for N200 Million worth of cement. The Bank has paid for the goods which will be supplied to us within the sixty days.

However, the company was only able to supply part of the goods worth N40 Million which according to them was due to some technical reasons in the areas of production and distribution. They however promised and assured us of delivery within four weeks after the sixty days. Now we want to know Shari'ah opinion on the following:

1. *Since the Bank only signs an offer letter and collected a promise to purchase from the customer and not sale execution through Murabahah agreement, can the Bank and the customer mutually change the terms and conditions of the offer letter that will allow for sale of the goods (worth N40 Million) which we have received so far instead of waiting for the remaining N160 Million worth, which will also be sold to the customer on receipt.*
2. *Can the Bank extend the period to another one month making it 90 days instead of 60 days, but with the Bank mutually agreeing to cancel the initial transaction and a new contract agreed upon, in order to allow for changes in pricing and period of delivery? Would this not be like an interest-based transaction whereby profit is increased for delay of payment.*
3. *Or can the Bank's full payment to the cement supplier and assurance of delivery be considered as taking constructive possession by the Bank, thereby going ahead to sell all the goods to the customer worth N200 Million comprising received and not received portions of the goods. Is this not like selling debt for debt?*

ANSWER

This is a valid option: Reduce the transaction to N40m or partially fulfill it for this amount only. The ACE does not go along with changing its unit price. However, there is somewhere negligence on the part of either the Wakil/Customer or the Bank. Any such contract must contain a penalty clause which requires the supplier to compensate the Bank for any problem such as this.

This means that the profit lost on paying in advance for the 160m worth of cement must be borne by the supplier because it is the supplier that caused this loss. This amount of penalty must reflect in the difference in price of the remaining 160m worth of cement for the delayed period so that the total amount received by the Bank achieves the same percentage of profit it contracted the customer.

Jaiz BankACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar

QUESTION: EXCEEDING LIMIT IN MURABAHAH LINE
DATE: April 19, 2013

We have some customers who are distributors of some conglomerates. We have given them Murabahah line facilities and sometimes they bring an invoice that is far above the line limit given to them. This is because the producers will not divide the invoice for them. For example a customer may receive an invoice for 3000 bags of sugar at 20 Million while his line limit is 18 Million which means, the invoice is 2 Million above the limit. This technically means the Bank can only purchase goods worth maximum of 18 Million.

Our question here is can the Bank ask the customer to write on the invoice or in a separate letter instructing the Bank to buy goods worth maximum limit (N18 Million) as in the above example, and then ask the Bank to debit his account for the balance of 2 Million to pay for the remaining goods? This means, the Bank will pay for both goods using Bank's fund for (18,000,000) and customer's fund for (2,000,000.00). After purchase the Bank will then sell its own goods to the customer at agreed selling price.

We would appreciate your kind opinion on the above issue.

ANSWER

This is a typical matter that may happen in line of credit. The usual practice is to extend the line of credit within 10-20% and honor the action of the agent. This means that the Bank will finance the whole amount. It is usually done with good customers from whom you have good security covering about 120% of the line of credit, especially when it is for a short term and the risk management department approves it. It is of course more profitable to the Bank. The Shari'ah basis of it is approving the action a curious *الفضولي* by the principal. Here, it is a buy of the extra 2m Naira by the Wakil on behalf of the Muwakkil. The former may approve it and then it becomes valid although it exceeds the limit of the Wakalah.

Alternatively, charging the account of customer for the difference is permissible and accepting the Wakil's action only within the limit of its Wakalah is also practiced by Islamic banks. The Bank needs in this case to take approval of the customer to charge its account for the price of the difference (The 2 Million Naira).

Jaiz BankACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar

QUESTION: DISCOUNT ON PRICE UNDER MURABAHAH
DATE: January 16, 2013

In one of our Murabahah transactions which are for the purchase of sugar before subsequent sale to the customer, we have some issues that require the ACE's opinion. The cost of the goods at the time of

entering the contract was =N=49,800,000.00 (for 10 trucks of sugar or 6000 bags), but at the time of making payment to the vendor (producer), the price of sugar has reduced from =N=49,800,000.00 for (10 trucks of sugar or 6000 bags) to =N=47,520,000.00 for (12 trucks of sugar or 7200 bags) leaving us with excess of =N=2,280,000.00. How do we treat the balance?

ANSWER

For the Murabahah: this amount should be credited to the Customer and the calculation of profit should be revised to become on the N47.52m instead of N49.8m. The reason is that Murabahah is based on full disclosure and the agreement is cost plus profit (mark-up). This is a standard case of full disclosure which is the main feature of Murabahah.

Jaiz BankACE Members:

Professor Monzer Kahf
Professor Muhammad Lawal Bashar
Dr. Muhammad Alhaji Abubakar

QUESTION: FINANCING BALLISTIC FLOATATION VEST

DATE: June 22, 2012

Our customer has received a job order for Ballistic Floatation Vests from the Navy and has approached us for finance. Is this a compliant item to be financed. Note a Ballistic Floatation Vest is a Navy gear (vest) which help floatation in water as well as serve as bullet proof vest.

ANSWER

The ACE believes it is Shari'ah compliant because it is a defensive tool not an aggression weapon. It can be financed using Murabahah or Istisna'.

Jaiz BankACE Members:

Professor Monzer Kahf
Professor Muhammad Lawal Bashar
Dr. Muhammad Alhaji Abubakar

RIBA (INTEREST) ISSUES

QUESTION: ACCEPTING HIBAH (GIFT) ON WADIAH DEPOSIT FROM THE CENTRAL BANK

DATE: SEPTEMBER 01, 2014

The Central Bank recently developed some liquidity management instruments for use by non-interest financial institutions, one of which is the CBN-Safe Custody based on Wadi'ah and Hibah. This allows the Central Bank to give Hibah (gifts) at its discretion to non-interest banks that place deposits with the CBN. Can the Bank use this instrument and realize the Hibah as income whenever given by the Central Bank?

ANSWER

What is mentioned as features of this instrument are correct. However, it opens a door for abuse because, for a gift by the borrower to become a custom (and therefore prohibited interest) from Shari'ah perspectives, what matter is the act of giving itself not the rates or percentages given. Therefore, the inclusion of the word "standard" in its feature may give the

illusion that variation of rates or percentages may not make it usual and customary which makes it contrary to Shari'ah. If you give the first time and the second or more, it therefore becomes usual and customary which is prohibited by Shari'ah. Furthermore, the concept of Wadi'ah is pure safe keeping whereby as Wadi'ah the CBN will not be permitted to use it or mix it with other funds.

The ACE is therefore of the opinion that the Wadi'ah based CBN safe-custody instrument with Hibah (gift) is in reality interest and not permissible. If the Bank decides to use it out of necessity, the Hibah (gift) given to the Bank by the CBN must be credited to charity and distributed to the poor and needy in Nigeria. The ACE does not therefore recommend the use of such instrument by the Bank.

Jaiz Bank ACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar
 Shaikh Abdulwahab Muhammad Abdallah

QUESTION: INTEREST IMPOSED ON THE BANK BY TAX AUTHORITIES

Date: July 30, 2015

There was an inquiry as to whether the Bank can pay interest regarding interest imposed on it as penalty by a tax authority due to delay in remittance of PAYEE tax charges by one of the branches.

ANSWER

The Bank must first write to the tax authority requesting exemption from the interest. If it becomes unavoidable the Bank must then pay it and if there is any negligence on the part of any employee or the MD of the Bank, that person must be charged the amount paid.

Jaiz Bank ACE Members:

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QUESTION: INVESTMENT IN TREASURY BILLS

DATE: April 3, 2014

A request for clarification was made by the management to the ACE on permissibility of the Bank to invest in treasury bills for a specific purpose. The Bank intends to issue Visa Card operating license which requires it to pass through one of the three conventional banks in the country. One of the banks approached by the Bank requested a deposit of 500 Million Naira in treasury bills for issuing the necessary certificate. The Bank therefore wishes to know if they can invest in treasury bills in order to meet the requirements while all interest that may accrue from such an investment will be channeled to charity.

ANSWER

There is no way an Islamic Bank may accept to undertake such a transaction especially under the current social and political environment in Nigeria. This is a violation of the basic tenets of

Islam and in direct conflict with the *raison d'être* of the Bank itself. ACE does not approve for the Jaiz Bank to buy treasury bills by all ways and all means. The ACE understands and appreciates the importance of having the Visa cards as providing this service to our customers is very useful and important. However, no matter how important the provision of this service is, indulging in interest-based treasury bills is prohibited with war declared by Allah and His Messenger, as well as with the potential negative propaganda against the Bank in the media in Nigeria as being an Islamic Bank that takes interest. No matter how useful this matter is, violating Shari'ah for it cannot be warranted or justified.

Accordingly:

The Bank should negotiate with the CBN (with whom the Bank has huge deposit) and with other banks in Nigeria to accept Osun State Sukuk instead of treasury bills and with Islamic Banks outside the country including the IDB to help the Bank with a guarantee and/or to accept Osun State Sukuk as collateral.

The Bank should negotiate with Islamic windows of conventional banks in Nigeria to put a Mudarabah deposit with them which may be blocked against issuance of the desired collateral certificate by their mother banks.

The ACE advises that the Bank should not introduce a credit card at this stage while a Visa debit card may be issued once this matter of collateral is resolved.

Jaiz Bank ACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

Shaikh Abdulwahab Muhammad Abdallah

QUESTION: PRE-OPERATION INTEREST EARNED

DATE: December 06, 2013

A question was asked by the management regarding the use of interest earned by the Bank from set-up funds under the custody of the Central Bank of Nigeria to clear all pre-operating expenses of the Bank before it was given license.

Answer

The ACE is of the opinion that interest earned, even if it is without being sought, is not owned by the earner and cannot by any means be used to discharge of any of the earner's expenses, taxes, liabilities and any other form of charges due on the earner. Consequently, interest earned by the Bank in the past or in the future cannot be used to write-off past or future expenses of the Bank.

In line with the approval given by the CBN using the doctrine of *dharura* (necessity) for the Bank to temporarily keep the pre-operating interest income, the ACE advises that when the Bank starts declaring profit, it should earmark and actually pay at least 20% of the shareholders' profit to charity in fulfillment of its commitment to keep its fund pure until all the accumulated interest is given away. The Bank is therefore advised to have a policy in place regarding this issue. In addition, the ACE advised management to intensify efforts to transfer funds deposited in conventional banks including CBN into halal earning instruments. In this regards, the management is required to furnish the ACE with a plan of diversion and a quarterly report on this effort.

Jaiz BankACE Members:

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 Shaikh Abdulwahab Muhammad Abdallah

QUESTION: DISPOSITION OF INTEREST EARNED BEFORE THE BANK' LICENSE**DATE: October 20, 2011**

The proceeds of public offer of establishing of the Bank were placed with the central Bank as required by law. The Central Bank periodically pays interest on such deposits to the Bank during the over eight years waiting for license. Can the Bank use such interest to offset all its pre-operating expenses considering the fact that the Bank was only recently given the license to operate Islamic Banking?

ANSWER

The ACE has studied the request of the management regarding this and is of the opinion that: Interest earned without being sought is not owned by the earner and cannot by any means be used to discharge any of the earner's expenses, taxes, liabilities and any other charges due on the earner. There are several Fatawa in this regard including those given to Islamic Development Bank (IDB) concerning interests earned from foreign banks. Consequently interest earned by the Bank in the past or in the future cannot be used to write-off past or future expenses.

Alternatively, pre-operational expenses could be considered as establishment expenditure which will be amortized over a number of years as the Board of Directors sees appropriate. A Waqf-type foundation can be established, present and future interest accruals should be transferred to it as a full-fledged owner.

Jaiz BankACE Members:

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QUESTION: GIFT FROM INTEREST BASED BANKS**DATE: February 22, 2013**

A question was asked regarding the practice of accepting gifts (Hibah) offered by conventional banks when funds are deposited with them. This is determined by a certain percentage of the money deposited.

ANSWER

The ACE is of the opinion that Hibah (gift) given to the Bank by any Bank on its deposited funds is in fact a pure prohibited interest irrespective of the name given to it by the depository Bank. Such gifts must not be mingled with the revenues of the Bank which consist of Halal income. Rather, this interest must be transferred to charitable foundations for distribution to the poor and needy and similar causes within Nigeria without being allowed to mix with the Bank's fund or that of its depositors.

Jaiz BankACE Members:

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Professor Muhammad Lawal Bashar
Dr. Muhammad Alhaji Abubakar

Tawarruq ISSUES

QUESTION: COMMODITY MURABAHAH

DATE: May 09, 2015

Is it permissible to participate in a commodity Murabahah transaction as proposed by a Trading Company using London Metal Exchange?

ANSWER

This proposal is rejected as they are based on Tawarruq, which was declared by the Islamic Fiqh Academy of the OIC as not permissible.

Jaiz BankACE Members:

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Dr. Ahmad Bello Dogarawa
Dr. Isa Ali Ibrahim Pantami

QUESTION: BUYING GOODS FROM A COMPANY FULLY OWNED BY THE CUSTOMER

Date: August 26, 2015

There was a question from one of the Bank branches as to whether an individual customer can be financed by the Bank on Murabahah where the supplier/vendor is a company that is fully owned by him. For example Customer A requires Jaiz to finance the purchase of rice from a supplier B, Fully and 100% owned by Customer A.

ANSWER

The answer of ACE is NO, because it is a pure Tawarruq. ACE added that, with the circumstances as mentioned; a natural person and a legal person fully owned by the natural person, there is a Fatwa that they are one person from Shari'ah point of view to the extent that one of them can give a loan to the other with increment and such an increment is not considered Riba because B is fully owned by A.

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QUESTION: REFINANCE OF DEBT (LOAN) FROM INTEREST BASED BANK
DATE: July 13, 2012

Can the Bank refinance a customer who has taken a loan from a conventional Bank to purchase a house in order to help him out of interest-based banking?

ANSWER

The ACE has received from the management a description of a few cases of refinancing customers who already have conventional loans and desire to obtain cash to pay these loans and become costumers of an Islamic Bank.

We studied this idea and noticed that the only way that cash can be given to a customer (with making potential profit) is the Salam contract which can genuinely be applied with any customer who has goods which can be produced and delivered to the Bank at a future date.

The idea of buying a mortgaged asset from a customer to provide him with cash (to pay the conventional loan and release the mortgage) and lease/sell the same back to the customer is Tawarruq which is ruled as being pure Riba by the OIC Fiqh Academy (2009) and the Fiqh Academy of the Muslim World League in Makkah (2007) and cannot be accepted by the ACE, management and staff of the Bank or any other conscious Muslim.

Jaiz BankACE Members:

Professor Monzer Kahf
 Professor Muhammad Lawal Bashar
 Dr. Muhammad Alhaji Abubakar

QUESTION: FINANCING OUTSTANDING DEBT
Date: August 18, 2015

There was an inquiry from one of the Bank branches as to whether the Bank can finance a customer to pay for the outstanding balance of the price of shares bought by him.

ANSWER

The ACE opined that it is not Shari'ah compliant to finance this remaining amount of a debt due on the customer because it is a pure purchase of debt for a larger amount of debt.

Jaiz BankACE Members:

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WAKALAH (AGENCY)**QUESTION: APPOINTING AN AGENT TO SOURCE FOR GOVERNMENT DEPOSITS****DATE: July 11, 2013***Can the Bank appoint someone to act as an agent to source for deposits especially from government sources on the promise of paying that person agency fee?***ANSWER**

Theoretically YES, this is permissible. But this matter opens many other issues about which ACE has reservation. When you solicit deposits, especially from governments, on commission basis, there is a big likelihood of bribes and corrupted decisions. ACE accepts assigning to marketing persons a quota that they should fulfill for confirmation on job, but accepting deposits through agents on commission is difficult under such possibilities which may not be small in Nigeria. The ACE does not agree to it unless there is strong assurance that there will definitely be no bribes or any corrupted decisions based on certain benefits or favors to a government officer.

Jaiz Bank ACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

Shaikh Abdulwahab Muhammad Abdallah

QUESTION: WAKALAH BASED TRANSACTIONS**DATE: April 24, 2013**

We have a transaction that we are proposing and we will like to know Shari'ah opinion on its permissibility. A customer of ours has a business transaction with his supplier who gives him goods on credit and pay within a specified period after selling the goods. The supplier however requires comfort from the customer's bankers. The comfort is usually in the form of payment guarantee to the supplier. The customer wants us to partner with him in the business. The customer does not want to enter into murabahah transaction as the supplier is willing to supply goods and delayed payment. It is also pertinent to mention that the customer has been doing this business with the same suppliers through a conventional Bank but has decided to move his business to an Islamic Bank. After discussing with the customer we decided to propose the following transaction subject to your perusal and consideration before reverting back to the customer;

1. The customer appoints the Bank as his agent to facilitate the transaction on his behalf.
2. The Bank undertakes the transaction on his behalf which includes receiving goods, collection of sale proceeds from the customer's buyers and facilitating payment to the suppliers at the end of their facility period.
3. The Bank in addition gives assurance that it will ensure payment at the end of the period by way of a guaranty.
4. The Bank charges a fee for the services rendered.

We will appreciate your opinion on the permissibility of this transaction or otherwise.

ANSWER

There is an easier way to do it, of course after approval from risk management and having sufficient collateral. The Bank buys from the supplier for payment say after 90 days, takes

delivery and sells to customer payment after 90 days at price higher by the amount of profit the Bank wants to make on the Kafalah. This all can be done by a Wakalah to the customer.

This way, the Bank becomes under debt to the supplier instead of guarantee and will have a debt on the customer. It has the same amount of risk for the Bank like giving Kafalah to the supplier and Bank can earn the same amount as variant of price. On the due date, the Bank receives payment and pays to supplier.

We see that taking the pain of all actions proposed by the branch, including issuing Kafalah, in order to obtain a return is not worth it when all what is intended is assuring the supplier of payment on maturity. This objective can be assured easier. Still the Bank may domicile sale proceeds as a security of the customer's debt.

Jaiz BankACE Members:

Professor Monzer Kahf

Professor Muhammad Lawal Bashar

Dr. Muhammad Alhaji Abubakar

