

GLOSSARY ON ISLAMIC BANKING

Amanah (أمانة): It refers to deposits in trust. A person can hold a property in trust for another, sometimes by express contract and sometimes by implication of a contract. *Amanah* entails absence of liability for loss except in breach of duty. Current Accounts are regarded as *Amanah* (trust). If the bank gets authority to use Current Accounts funds in his business, *Amanah* transforms into a loan. As every loan has to be repaid, banks are liable to repay full amount of the Current Accounts.

Arbun (عربون): Down payment; a nonrefundable deposit paid by a buyer retaining a right to confirm or cancel the sale.

Al-'Aariyah (العارية) (Gratuitous loan of non-fungible objects)
Al-'Aariyah means loan of a particular piece of property, the substance of which is not consumed by its use, without anything taken in exchange, In other words, it is the gift of usufruct of a property or commodity that is not consumed on use. It is different from Qard that is the loan of fungible objects which are consumed on use and in which the similar and not the same commodity has to be returned. It is also a virtuous act like Qard. The borrowed commodity is treated as liability of the borrower who is bound to return it to its owner.

Bai' Muajjal (بيع مؤجل): Literally it means a credit sale. Technically, a financing technique adopted by Islamic banks that takes the form of Murabaha Muajjal. It is a contract in which the seller earns a profit margin on his purchase price and allows the buyer to pay the price of the commodity at a future date in a lump sum or in installments. He has to expressly mention cost of the commodity and the margin of profit is mutually agreed. The price fixed for the commodity in such a transaction can be the same as the spot price or higher or lower than the spot price.

Bai' Salam (بيع سلم): *Salam* means a contract in which advance payment is made for goods to be delivered later on. The seller undertakes to supply some specific goods to the buyer at a future date in exchange of an advance price fully paid at the time of contract. According to normal rules of the *Shariah*, no sale can be effected unless the goods are in existence at the time of the bargain, but *Salam* sale forms an exception given by the Holy Prophet (SAW) himself to the general rule provided the goods are defined and the date of delivery is fixed. It is necessary that the quality of the commodity intended to be purchased is fully specified leaving no ambiguity leading to dispute. The objects of this sale are goods and cannot be gold, silver or currencies because these are regarded as monetary values exchange of which is covered under rules of *Bai al Sarf*, i.e. mutual exchange is hand to hand without delay. Barring this, *Bai'Salam* covers almost everything which is capable of being definitely described as to quantity, quality and workmanship.

Bai' bil Wafa (بَيْعٌ بِالْوَفَا): Sale with a right in the seller, having the effect of a condition, to repurchase (redeem) the property by refunding the purchase price. According to majority of *Fuqaha* it is not permissible.

Daman (ضمان): 1) Contract of guarantee, security or collateral; (2) Responsibility of entrepreneur/manager of a business; one of two basic relationships toward property, entailing bearing the risk of its loss; compare *Amanah*.

Dayn or Debt (دَيْن)

A *Dayn* comes into existence as a result of any other contract or credit transaction. It is incurred either by way of rent or sale or purchase or in any other way which leaves it as a debt to another. *Duyun* (debts) ought to be returned without any profit since they are advanced to help the needy and meet their demands and, therefore, the lender should not impose on the borrower more than what he had given on credit.

Falah (فَلَاح): Falah means to thrive, to become happy or to have luck and success. Technically it implies success both in this world and in the Akhirah (Hereafter). The Falah presumes belief in one God, the apostlehood of Prophet Muhammad (Peace be upon him), Akhirah and conformity to the Shariah in behaviour.

Fiqh (الْفِقْه): Islamic law. The science of the Shariah. It is an important source of Islamic economics.

Gharar (غَرَر): It means any element of absolute or excessive uncertainty in any business or a contract about the subject of contract or its price, or mere speculative risk. It leads to undue loss to a party and unjustified enrichment of other, which is prohibited.

Al Ghunm bil Ghurm (الْغُنْمُ بِالْغُرْمِ): This provides the rationale and the principle of profit sharing in Shirkah arrangements. Earning profit is legitimized only by engaging in an economic venture, risk sharing and thereby contributing to the economy.

Hadith (see *Sunnah*) (حَدِيث)

Halal (حَالَال): Anything permitted by the Shariah.

Haram (حَرَام): Anything prohibited by the Shariah.

Hawalah (حوالة): Literally, it means transfer; legally, it is an agreement by which a debtor is freed from a debt by another becoming responsible for it, or the transfer of a claim of a debt by shifting the responsibility from one person to another – contract of assignment of debt. It also refers to the document by which the transfer takes place.

Hibah (هبة): Hibah means Gift.

Ijab (إيجاب): Offer, in a contract; see also qabul.

Ijarah (إجارة): Letting on lease. Sale of a definite usufruct of any asset in exchange of definite reward. It refers to a contract of land leased at a fixed rent payable in cash and also to a mode of financing adopted by Islamic banks. It is an arrangement under which the Islamic banks lease equipments, buildings or other facilities to a client, against an agreed rental.

Ijarah-wal-Iqtina (إجارة والاقتناع): A mode of financing, by way of Hire-purchase, adopted by Islamic banks. It is a contract under which the Islamic bank finances equipment, building or other facilities for the client against an agreed rental together with a unilateral undertaking by the bank or the client that at the end of the lease period, the ownership in the asset would be transferred to the lessee. The undertaking or the promise does not become an integral part of the lease contract to make it conditional. The rental as well as the purchase price are fixed in such a manner that the bank gets back its principal sum alongwith with some profit, which is usually determined in advance.

Ijtihad (اجتهاد): It refers to an endeavor of a qualified jurist to derive or formulate a rule of law to determine the true ruling of the divine law in a matter on which the revelation is not explicit or certain, on the basis of Nass or evidence found in the Holy Qur'an and the Sunnah. Express injunctions have no room for Ijtihad. Implied injunctions can be interpreted in different ways by way of inference from the accepted principles of the Shariah.

'Illah (علة): It is the attribute of an event that entails a particular Divine ruling in all cases possessing that attribute. 'Illah is the basis for applying analogy for determining permissibility or otherwise of any act or transaction.

Ijma (إجماع): Consensus of all or majority of the leading qualified jurists on a certain Shariah matter in a certain age.

'Inah (A kind of Bai) (عينة): Double sale by which the borrower and the lender sell and then resell an object between them, once for cash and once for a higher price on credit, with the net result of a loan with interest.

'Inan (A type of Shrikah) (عنان): It is a form of partnership in which each partner contributes capital and has a right to work for the business, not necessarily equally.

Istihsan (إستِحسان): It is a doctrine of Islamic law that allows exception to strict legal reasoning, or guiding choice among possible legal outcomes, when considerations of human welfare so demand.

Israf (إسراف): It refers to immoderateness, exaggeration and waste and covers spending on lawful objects but exceeding moderation in quantity or quality; spending on superfluous objects while necessities are unmet; spending on objects which are incompatible with the economic standard of the majority of the population. See also Tabzir

Istisna'a (إستِصناع): It is a contractual agreement for manufacturing goods and commodities, allowing cash payment in advance and future delivery or a future payment and future delivery. A manufacturer or builder agrees to produce or build a well described good or building at a given price on a given date in the future. Price can be paid in installments, step by step as agreed between the parties. Istisna'a can be used for providing the facility of financing the manufacture or construction of houses, plants, projects, and building of bridges, roads and highways.

Jahl or Jahala (جهل - جهالة): Ignorance, lack of knowledge; indefiniteness in a contract, sometime leading to Gharar.

Jua'alah or Ji'alah (جعالة): Literally, Joalah constitutes wages, pay, stipend or reward. Legally, it is a contract for performing a given task against a prescribed fee in a given period. A similar contract is 'Ujrah' in which any work is done against stipulated wage or fee.

Kali bil-Kali (كالى بالكالى): The term Kali refers to something delayed; appears in a maxim forbidding the sale of al-Kali bil-Kali i.e. the exchange of a delayed counter value for another delayed counter value.

Al- Kafalah (Suretyship) (الكفالة): Literally, Kafalah means responsibility, amenability or suretyship, Legally in Kafalah a third party become surety for the payment of debt. It is a pledge given to a creditor that the debtor will pay the debt, fine etc. Suretyship in Islamic law is the creation of an additional liability with regard to the claim, not to the debt or the assumption only of a liability and not of the debt.

Kharaj bi-al-Daman (الخراج بالضمان): Gain accompanies liability for loss; a Hadith forming a legal maxim and a basic principle – see also Al- Ghunm bil Ghurm.

Khayar (خيار): Option or a power to annul or cancel a contract.

Khayar al-Majlis (خيار المجلس): Option of the contracting session; the power to annul a contract possessed by both contracting parties as long as they do not separate.

Khayar al-Shart (خيار الشرط): A right, stipulated by one or both of the parties to a contract, to cancel the contract for any reason for a fixed period of time.

Mal-e-Mutaqawam (المال المتقوم): Things the use of which is lawful under the Shariah; or wealth that has a commercial value. Legal tenders of modern age that carry monetary value are included in Mal-e-Mutaqawam. It is possible that certain wealth has no commercial value for Muslims (non Mutaqawam) but is valuable for non-Muslims. Examples are wine and pork.

Maisir (ميسير): An ancient Arabian game of chance played with arrows without heads and feathering, for stakes of slaughtered and quartered camels. It came to be identified with all types of hazard and gambling.

Mithli (Fungible goods) (مثلى): Goods that can be returned in kind, i.e. gold for gold, silver for silver, US \$ for US \$, wheat for wheat, etc.

Mubah (مباح): Object that is lawful (i.e. something which is permissible to use or trade in).

Mudarabah (مضاربة): A form of partnership where one party provides the funds while the other provides expertise and management. The latter is referred to as the Mudarib. Any profits accrued are shared between the two parties on a pre-agreed basis, while loss is borne by the provider(s) of the capital.

Murabaha (مرابحة): Literally it means a sale on mutually agreed profit. Technically, it is a contract of sale in which the seller declares his cost and the profit. This has been adopted by Islamic banks as a mode of financing. As a financing technique, it can involve a request by the client to the bank to purchase a certain item for him. The bank does that for a definite profit over the cost which is stipulated in advance.

Musawamah (مساومة): Musawamah is a general kind of sale in which price of the commodity to be traded is bargained between seller and the purchaser without any reference to the price paid or cost incurred by the former.

Musharakah (مشاركة): Musharakah means a relationship established under a contract by the mutual consent of the parties for sharing of profits and losses in the joint business. It is an agreement under which the Islamic bank provides funds which are mixed with the funds of the business

enterprise and others. All providers of capital are entitled to participate in management, but not necessarily required to do so. The profit is distributed among the partners in pre-agreed ratios, while the loss is borne by every partner strictly in proportion to respective capital contributions.

Qabul (قبول): Acceptance, in a contract; see also Ijab.

Qard (Loan of fungible objects) (قرض): The literal meaning of Qard is 'to cut'. It is so called because the property is really cut off when it is given to the borrower. Legally, Qard means to give anything having value in the ownership of the other by way of virtue so that the latter could avail of the same for his benefit with the condition that same or similar amount of that thing would be paid back on demand or at the settled time. It is that loan which a person gives to another as a help, charity or advance for a certain time. The repayment of loan is obligatory. The Holy Prophet is reported to have said ".....Every loan must be paid.....". But if a debtor is in difficulty, the creditor is expected to extend time or even to voluntarily remit the whole or a part of the principal. Qard is, in fact, a particular kind of Salaf. Loans under Islamic law can be classified into Salaf and Qard, the former being loan for fixed time and the latter payable on demand. (see Salaf)

Qimar (قمار): Qimar means gambling. Technically, it is an arrangement in which possession of a property is contingent upon the happening of an uncertain event. By implication it applies to a situation in which there is a loss for one party and a gain for the other without specifying which party will lose and which will gain.

Qiyas (قياس): Literally it means measure, example, comparison or analogy. Technically, it means a derivation of the law on the analogy of an existing law if the basis ('illah) of the two is the same. It is one of the sources of Islamic law.

Riba (ربا): An excess or increase. Technically, it means an increase over principal in a loan transaction or in exchange for a commodity accrued to the owner (lender) without giving an equivalent counter-value or recompense ('iwad) in return to the other party; every increase which is without an 'iwad or equal counter-value.

Riba Al-Fadl (ربا الفضل): Riba Al-Fadl (excess) is the quality premium in exchange of low quality with better quality goods e.g. dates for dates, wheat for wheat, etc. – an excess in the exchange of Ribawi goods within a single genus. The Concept of Riba Al-Fadl refers to sale transactions while Riba Al-Nasiah refers to loan transactions.

Riba Al-Nasiah (ربا النسئة): Riba Al-Nasiah or riba of delay is due to exchange not being immediate with or without excess in one of the counter values. It is an increment on principal of a loan or debt payable. It

refers to the practice of lending money for any length of time on the understanding that the borrower would return to the lender at the end of the period the amount originally lent together with an increase on it, in consideration of the lender having granted him time to pay. Interest, in all modern banking transactions, falls under purview of *Riba Al-Nasiah*. As money in present banking system is exchanged for money with excess and delay, it falls, under the definition of *riba*. A general accord reached among scholar about its prohibition.

Ribawi (رِبَوِي): Goods subject to Fiqh rules on *Riba* in sales, variously defined by the schools of Islamic Law: items sold by weight and by measure, foods, etc.

Al- Rahn (الرهن): Pledge, Collateral; legally, *Rahn* means to pledge or lodge a real or corporeal property of material value, in accordance with the law, as security, for a debt or pecuniary obligation so as to make it possible for the creditor to recover the debt or some portion of the goods or property. In the pre-Islamic contracts, *Rahn* implied a type of earnest money which was lodged as a guarantee and material evidence or proof of a contract, especially when there was no scribe available to put it into writing. The institution of earnest money was not accepted in Islamic law and the common Islamic doctrine recognized *Rahn* only as a security for the payment of a debt.

Salaf or Loan / Debt (سَلَف)

The word *Salaf* literally means a loan which draws forth no profit for the creditor. In wider sense, it includes loans for specified periods, i.e. short, intermediate and long-term loans. *Salaf* is another name of *Salam* as well wherein price of the commodity is paid in advance while the commodity or the counter value is supplied in future; thus the contract creates a liability for the seller. Amount given as *Salaf* cannot be called back, unlike *Qard*, before it is due. (see *Qard*)

Al-Sarf (الصَّرْف): Basically, in pre-Islamic times it was exchange of gold for gold, silver for silver and gold for silver or vice versa. In Islamic law such exchange is regarded as ‘sale of price for price’ (*Bai al Thaman bil Thaman*), and each price is consideration of the other. It also means sale of monetary value for monetary value – currency exchange.

Shariah (شَرِيعَة): The term *Shariah* refers to divine guidance as given by the Holy Qur’an and the *Sunnah* of the Prophet Muhammad (PBUH) and embodies all aspects of the Islamic faith, including beliefs and practice.

Shirkah (شَرِكَة): A contract between two or more persons who launch a business or financial enterprise to make profits. In the conventional books of

Fiqh, the partnership business has been discussed under the option of Shirkah that, broadly, may include both Musharakah and Mudarabah.

Sunnah (السُّنَّة): Custom, habit or way of life. Technically, it refers to the utterances of the Prophet Muhammad (PBUH) other than the Holy Quran known as Hadith, or his personal acts, or sayings of others, tacitly approved by the Prophet.

Tabarru' (تَبَرُّع): It is a donation/gift the purpose of which is not commercial but is seeking the pleasure of Allah. Any benefit that is given by a person to other without getting anything in exchange is called Tabarru'. Gracious repayment of debt, absolutely at lender's own discretion and without any prior condition or inducement for reward, is also covered under Tabarru'. Repaying a loan in excess of principal and without a pre-condition is commendable and compatible with the Sunnah of the Holy Prophet (peace be upon him). But, it is matter of individual discretion and cannot be adopted as a system because this would mean that loan would necessarily yield a profit. If such reward takes the form of a system, it would be considered Riba.

Tabzir (تَبْذِير): Spending wastefully on objects which have been explicitly prohibited by the Shariah irrespective of the quantum of expenditure. See also Israf.

Ujrah (أَجْرَة): See Jua'alah.

Wakalah (وَكَالَة): A contract of agency in which one person appoints someone else to perform a certain task on his behalf, usually against a certain fee.

(Source: SBP Publication, 'Islamic Banking and Finance: Theory and Practice'
by Muhammad Ayub, Sr. J.D. IBD, SBP)