



In the Name of Allah, the Merciful, the Very Merciful

English Abridgment of the Arabic Fatwa

***Charging an Amount against Delay of Murabaha Installments
In light of the COVID-19 Pandemic Circumstances***

Background

- Customers of Islamic financial institutions enter into Shari'ah compliant financing facilities with Islamic banks which generate a financial liability in the form of deferred price of Murabaha which is settled via periodic outstanding installments of the debt (the "**Outstanding Installments**").
- During the current scenario of the COVID-19 pandemic, the Shari'ah ruling about charging an additional amount for a delay in settling the Outstanding Installments is discussed.

Response

- By examining the current matter and looking at its Shari'ah aspects, it was evident that for Islamic banks it is prohibited to charge an additional amount for the delay in settling the Outstanding Installment because it would be, with no doubt, a form of *ribā al-jāhiliya* which is prohibited in light of the consensus of the fiqh scholars and the Shari'ah texts such as: "وأحل الله البيع وحرم الربا" And Allah has permitted sale, and prohibited *ribā*.
- *Ribā al-jāhiliya* can be illustrated by an example where (A) has an outstanding debt (*dayn ilā ajal*) owed by (B), and once it becomes due on the maturity, (A) says: "either you settle the debt or you pay an amount as *ribā*". Alternatively, (B) may say: "allow me some time and I increase the amount paid by me".
- As per Al-Qurṭubī (a Mālikī jurist, d.1273), the most common form in the Arab's practices was when a creditor used to tell the debtor: "either you settle or pay *ribā*". The debtor used to increase the money and the creditor would provide him additional time. All such arrangements were prohibited as per the consensus of the Muslim Ummah. (*Tafsīr al- Al-Qurṭubī*, Matter 768)
- As per al-Ṭabarī (an exegete of the Qur'an, d. 923), the worst form of punishment that occurred to earlier people was due to their practice of lying and claiming that "*sale permitted by Allah for his worshipers is like ribā*". During the pre-Islamic period, if the owed money became due for the party, which used to lend on *ribā*, then the debtor used to tell the claimant creditor: "extend my time of settlement and I shall increase the money paid to you by me". In case, they were told that this a form of *ribā* which is not permitted, then they used to say: "it is the same whether we increased the amount at the start of the sale or at the maturity of indebted sale price". Hence, Allah has



clarified the false basis of their opinion, and said that “*And Allah has permitted the sale.*”

- As per Ibn Rushd al-Ḥafīd (a Mālikī jurist, d. 1198), the scholars agreed that *ribā* takes place in two cases: a) in a sale contract, and b) what was established as a liability of i) sale, ii) loan contracts or iii) other arrangements.” (*Bidāyat al-Mujtahid* ,3/145).
- Hence, any agreement, which includes a) an increase in the debt, and b) deferring the debt fully or partly through delaying the payment of some of its installments, will be a form of *ribā* which is prohibited as per the juristic consensus. No dispute among the jurists was reported in this regard.
- The debt, which is prohibited to be increased and delayed by mutual agreement, includes all the financial rights which are established as a liability, whether it was in the form of a) loan, b) sale price, c) indemnity for damages, or d) any other form. Hence this applies to the outstanding sale price as well.
- As per Al-Sarakhsī, (a Hanafi jurist, d, 1090), the price established by the contract is an outstanding debt. (*al-Mabsūṭ*, 14/3).
- Hence, the prohibition will apply on an agreement to a) defer the Outstanding Installments fully or partially, and b) increase the amount of the fixed debt which was owed by the buyer (i.e. the financed party) in favor of the seller (i.e. the financier bank).

Guidelines of Central Banks

- Under the current scenario of the COVID-19 pandemic and its effects, various central banks issued guidelines emphasizing the necessity or even making it compulsory to delay installments due by the financed parties (customers/clients of the banks).
- Under these circumstances, it was needed to critically evaluate some of the justifications which could be relied upon to permit charging an additional amount to the Outstanding Installments against deferment of installment/s in a Murabaha based financing facility (“Justification”).

JUSTIFICATION No. 1

- *After the creation of the sale contract (inshā’ al-aqd’), the contracting parties have the right to amend the contract (including the Murabaha sale). As the parties have the right to create the contract at the start, similarly, they may amend it afterward in terms of changing the price of or the subject matter with mutual consent. Pursuant to this right, the contracting parties are authorized to increase the price a) after the sale contract formation (in‘iqād al-bay’), b) after completion of the contract (tamām al-bay’), or c) once the price becomes a payable by the buyer. This was based on a quote mentioned in Badā’i’ al-Ṣanā’i’ (5/259):*

”الرِّبَاةُ فِي الْمَبِيعِ وَالْتَّمَنِ جَائِزَةٌ مَبِيعًا وَتَمَنًا كَأَنَّ الْعَقْدَ وَرَدَ عَلَى الْمَزِيدِ عَلَيْهِ وَالرِّبَاةُ جَمِيعًا مِنَ الْإِبْتِدَاءِ، ...، وَصُورَةُ الْمَسْأَلَةِ إِذَا اشْتَرَى رَجُلٌ عَبْدًا بِأَلْفٍ دِرْهَمٍ، وَقَالَ الْمُشْتَرِي زِدْتِكُ خَمْسِمِائَةَ أُخْرَى تَمَنًا وَقَبِلَ الْبَائِعُ، أَوْ قَالَ الْبَائِعُ: زِدْتِكُ هَذَا الْعَبْدَ الْآخَرَ، أَوْ قَالَ هَذَا التُّوبَ مَبِيعًا وَقَبِلَ الْمُشْتَرِي جَاوَزَتْ الرِّبَاةُ كَانَ التَّمَنُ فِي الْأَصْلِ أَلْفًا

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وَحَمْسَمَانَةٌ، وَالْمَبِيعُ فِي الْأَصْلِ عَبْدَانِ، أَوْ عَبْدٌ، وَتَوْبٌ سِوَاءَ كَانِ ذَلِكَ قَبْلَ الْفَبْضِ أَوْ بَعْدَهُ، ...، وَلَهُمَا وَلَايَةُ التَّغْيِيرِ
أَلَا تَرَى: أَنَّ لَهُمَا وَلَايَةَ الْفَسْخِ وَأَنَّهُ فَوْقَ التَّغْيِيرِ لِأَنَّ الْفَسْخَ رَفَعَ الْأَصْلَ، وَالْوَصْفَ، وَالتَّغْيِيرَ تَبْدِيلُ الْوَصْفِ مَعَ
بَقَاءِ أَصْلِ الْعَقْدِ فَلَمَّا نُبِتَ لَهُمَا وَلَايَةُ الْفَسْخِ فَوَلَايَةُ التَّغْيِيرِ أَوْلَى، وَلَهُمَا حَاجَةٌ إِلَى التَّغْيِيرِ لِذَفْعِ الْغَبْنِ، أَوْ لِمَقْصُودِ
أَخْرَجَ."

Response No. (1) to JUSTIFICATION No. (1)

- According to Shari'ah, the authority of the contracting parties to amend the contract is restricted. Hence, the amendment should not result in any violation of the Shari'ah rulings. An increase in the indebted price against the deferment of the settlement will result in a form of *ribā al-diyūn* (ribā in debts) which is explicitly prohibited by the jurists.

Response (2) to JUSTIFICATION No. (1)

- The earlier *fiqh* scholars, despite their difference of opinions, permitted an increase of the price a) in a scenario when the buyer offers an increase entirely on his discretion, and the seller accepts it, b) or the buyers offers it a standalone *hiba* (gift), which is not part of the initial price (*mulḥaqa bi al-thaman*).
- Hence, the increase in the debt, which appears in the classical *fiqh* literature, does not imply an increase which is demanded by the seller against deferment of installment.

Response No. (3) to JUSTIFICATION No. (1)

- The discussion of the scholars is related to a mere increase (*ziyāda maḥḍa*) in the price. It does not involve an increase against the deferment of the price. None of the jurists had permitted stipulation to increase the price against deferment of settlement. Hence, the present scenario of delaying payment of the Outstanding Installments against an increase in amount does not fall under the permissibility of increasing the sale price as mentioned by earlier jurists.

Response No. (4) to JUSTIFICATION (1)

- An agreement to increase the indebted price deferment of the settlement will imply that this increase is actually a consideration against the deferment which constitutes *ribā al-jahiliyā* explicitly prohibited in Shari'ah.

Response No. (5) to JUSTIFICATION (1)

- In case, presumably, the Ḥanafīs allowed an increase in price against deferment of installment (though it was not found in their writings), then it will result in blanket permission of rescheduling of all types of debt in all scenarios (exceptional or normal circumstances) based on the rationale that the Ḥanafīs have permitted the increase in a sale price on an absolute basis. In reality, this was neither opined by Ḥanafīs or other schools because it constitutes *ribā al-jahiliyah* which is prohibited as per the consensus.



- The Ḥanafīs, like other fiqh scholars, categorically did not permit deferment of settlement, at the time of debt maturity against money. It was considered as *ribā* which is prohibited as per the consensus. This is evidenced in the statement of al-Ṭaḥāwī (a Ḥanafī jurist, d. 993) who stated that *ribā al-jahilīyah* was prohibited, as per Quran, and it comprised of delay in the matured debt by increasing the owed money. Hence it was prohibited to buy the time of settlement (i.e. receive consideration) against the money (*Mukhtaṣar Ikhtilāf al-Fuḡhā'*, 4:435).

JUSTIFICATION No. (2)

- *The agreement of the parties to extend the time of settling the debt is, in fact, a non-binding promise. Hence, this agreement (which is, in reality, a promise) does not lead to the prohibition of increasing the price against deferment of installment.*

Response No. (1) to JUSTIFICATION No. (2)

- Some *fiqh* scholars have opined that the debt cannot be delayed by deferring it, and (in case the parties agreed to defer it) the agreement of deferment is merely a non-binding promise. They explicitly stated that the agreement to extend the time of settling the debt by increasing the subject debt will be a form of *ribā al-jahilīya*. As per Ibn Qudāma (a Ḥanbalī jurist, d. 1223), this kind of agreement resembles the prohibited *ribā al-jahilīya*, which is an increase in the debt by extending the time of settlement (*al-Mughnī*, 10/450).
- As per al-Bahutī (a Ḥanbalī jurist, d. 1641), it is not permitted to agree to a) extend the time of settlement, and b) to increase the amount of the debt, because it resembles *ribā al-jahilīya* (*Kashshāf al-Qinā'*, 4/545).
- The Shari'ah principles do not endorse a new *ijtihād* based on two justifications that an increase in the indebted price is made on a) a fiqh opinion that the debt amount is merely a price (overlooking the reality that it actually represents a debt), and b) another *fiqh* opinion that that considers agreement of deferment a non-binding promise. The derived view overlooks what was resolved by the jurists of the first fiqh opinion that fixing the time of settlement becomes binding in indebted price whether it was a) fixed in the initial contract, or b) was amended after the conclusion of the contract.

JUSTIFICATION No. (3)

- *Although the instructions of moratorium issued by the central banks are mandatory legally, however, this does not change the Shari'ah regarding deferment i.e. its a non-binding promise by nature. Hence, the binding aspect of such regulatory instruction will not be taken into account, and it will not change the non-binding nature of agreement on deferment of installments for new maturity dates.*



Response No. (1) to JUSTIFICATION No. (3)

- It would be an assumption, which refutes the reality, to state that the purpose of the contract (*maḍmūn al-aqd*'), which was intended by the parties, of deferring the date of settlement is non-binding.
- It is well known in the banking industry that adherence to times of settlement is binding. It implies that neither the creditor can prematurely claim, nor the debtor delays beyond the agreed date of settlement. Hence, assuming that in the present scenario, the delay arrangement will be non-binding opposes in the contemporary market practice.

Response No. (2) to JUSTIFICATION (3)

- The parties enter into the arrangement of delaying the Outstanding Installments only when the delay is binding. By doing so, a) the bank secures its right of increasing the time of settlement, and b) the financed customer secures his right for settling beyond the original time as per the first contract. In case, the financed customer knew that the deferment is non-binding, then he will not accept the increase in the Outstanding Installments. Hence, the prevailing banking norm regarding bindingness of settlement date shall be taken into consideration not the presumable rare cases of non-bindingness, if any.

Response No. (3) to JUSTIFICATION (3)

- When the financed parties, (who are indebted with the Murabaha sale price) restore to accept via explicit agreement, a) increase in what they owe as a debt, and b) delay in making the payment of the new debt, then it shall be *ribā* which is prohibited as per the consensus.
- On the other hand, if it was not explicitly stated in the amended contract that the increase in debt is against the delay in the settlement, then why shall people accept an increase in the Outstanding Installments knowing the fact that the central banks have already made it mandatory on banks to defer the Outstanding Installments? The simple answer is that there no justification except that increase in the debt price is considered against the extended time.
- The above is supported by a) the practices of the banks and b) the customs (*'arāf*) in this regard which are probative (*muḥakkama*) to determine banks' dealings and contracts with their customers.

Response No. (4) to JUSTIFICATION (4)

- It is known that the state authorities (*walī al-amar*) may intervene in what it deems to be in the public interest (*maṣlaḥa*). Hence, the state authorities may amend the contents of the contracts and their effects.



- The state authorities may opt for binding application of some of the *fiqh* opinions for the larger public interest (*maṣlaḥa*). Hence, based on a *fiqh* opinion, if a regulator makes extension in the settlement date mandatory (with binding effect on both the parties), then it cannot be said that a) the binding is not acceptable as per Shari'ah principle, or b) such binding will disintegrate Shari'ah contracts from their spirit, and c) the binding defy the revealed commands (*tanzīl*).
- On the contrary, if the regulatory guidelines required binding delay in the Outstanding Installments against an increase for the delay, then it will be against the spirit of the contract which goes against the revealed commands. However, by analyzing the current scenario, this has not happened.

JUSTIFICATION No. (4)

- *An increase in the price is a compensation for the bank due to the prejudicial harm (ḍarar) caused by the COVID-19 pandemic wherein mandatory guidelines issued by the central banks, required banks to delay receiving payments of the Outstanding Installments. This is based on the Shari'ah principle of providing relief from the pandemics (wad' al-jawā'ih).*

Response No. (1) to JUSTIFICATION (4)

- At the time of calamities, the obligations and burden should be removed and taken away from the debtors (i.e. the parties financed by the banks in the present scenario). Nevertheless, it should not, eventually, result in additional obligations and a burden on the debtors.

Response No. (2) to JUSTIFICATION (4)

- According to Shari'ah, it is not permitted to either claim a consideration or compensation for the harm caused due to a delay in receiving the installments of debt. The rationale behind not permitting such an act is fundamentally the impermissibility to claim consideration for the extension of settlement. Otherwise, people shall commit the sin of falling in *ribā* which is prohibited as per the consensus. The Shari'ah does not consider the loss of *ribā* as the harm that needs to be settled via compensation. Needless to say, one of the justifications, which is made by those who legitimize *ribā* is the argument that the creditor is compensated for the time he extended the money through payment of *ribā*.

Response No. (3) to JUSTIFICATION (4)

- The calamities, even the law of necessity (*ḍarūra*), do not permit a) imposing a *ribā* on the financed party, or b) agreeing with the customer to carry what is referred in point (a). Anything which goes in that line will be against what was agreed upon as per the consensus of the scholars.



Response No. (4) to JUSTIFICATION (4)

- The guidelines of the central banks intended to provide relief to the people during the time of the current pandemic and protect the interest of the society by the state authorities. Hence, an increase in the burden, even if it was at a later stage, by increasing the debt will be against the overall purpose of the relief package.

JUSTIFICATION No. (5)

- *In order to meet the requirements of equity and justice ('adāla) for both the parties, Shari'ah has laid the principle of intervention by the judge (tadakhkhul al-qāḍī) in interpreting the contract and amending it, based on the changing circumstances and contingencies.*

Response No. (1) JUSTIFICATION No. (5)

- Certainly, this is recognized as a principle. However, it cannot be applied in claiming a financial consideration for the harm resulted from the delay in the payment of the debt installments. As per the juristic consensus, it is impermissible to charge a consideration for the harm caused by the delay in payment of the installments for fixed and outstanding debts.
- Enabling such an application will lead to opening a way for intervening in the Shari'ah contracts. Under the pretext of harm, once the installments are due, then consideration might be asked from the customer. This might even be applied, for example, in the cases of procrastination (*mumāṭalah*) and insolvency (*i'sār*). Eventually, this leads to the legitimization of a form of *ribā*.

Conclusion

- Finally, this is a chance and opportunity for Islamic banks to stand out from other financial institutions by a) reducing the financial burden on their customer, and b) not linking the delay in the installments with an increase in the Outstanding Installments. The move to link the extension of the time of settlement with the increase in the debt will have, largely, adverse repercussions on Islamic banks' image, as well as, its reputation.
- In this challenging time, it would be odd and strange to observe that Islamic banks will overlook their founding principles and their *raison d'etre* in the first trial of their adherence to these principles.
- If it is argued that these banks will collapse (God Forbid) if they have not opted for such measures, even then, (if such worries could realize) it does not permit entering into *ribā* based dealings with the debtors. Nevertheless, some small banks in less privileged jurisdictions have declared that they will delay the payment of the Outstanding



Installments without increasing the amounts. This came as adherence to Shari'ah rulings,

- Most probably a decline in the profit of banks that delayed the payments of the Outstanding Installments without charging an increase, may happen. However, such matter does not call for an unjustified apprehension because whoever contributed to the shareholding of such banks, or deposited funds with them, expressed his full consent with Shari'ah compliant banking of these financial institutions. The depositors or the shareholders are supposed to accept lower profits in these challenging times.
- On the other hand, those Islamic banks, which got themselves involved in debt-based deposits (e.g. Reverse Murabaha), will have to take the responsibility and face the consequences of applying such products.

The Draft of the Fatwa (in Arabic) was drafted on 27th Sha'abān 1441H – corresponding 20th April 2020 by the Executive Shari'ah Committee of Islamic Economic Forum¹, formed for this purpose by the Forum of Islamic Economics, including Dr. Ayman Dabbagh, Dr. Osaid Kailani, Dr. Abdulbari Mashal.

The Fatwa (in Arabic) was revised and endorsed by the following Eminent Scholars:

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End of English Abridgement²

¹ Islamic Economic Forum is a specialized knowledge-based platform on social media which was founded by Mufti Khalid Hasani (Pakistan) on 1st February 2016. Its Arabic part is managed by Dr. Abdul Bari Mishal. The total number of members (in Arabic as well as English) are around 600 persons including Shari'a scholars, experts, professionals, economists, academicians, advisors, Shari'a auditors etc. based in 58 different countries. Also, the forum includes representatives of support organizations and various central banks. The forum has committees and taskforce, looking to online publish the discussions, translate the circulars, besides having administrative committee.

² English abridgment was prepared by Dr. Yousuf Azim Siddiqi (Malaysia) and Dr. Syed Ehsanullah Agha (Pakistan).

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