

The Colour of Shari'a Compliant Money

– Gold and Silver by Ahmad Thomson

'Islamic Finance' and 'Shari'a Compliance'

At the recent Islamic Finance and Trade Conference held in London on the 13th and 14th June 2006, what has come to be known as 'Islamic Finance' came of age. Important figures from the financial world gathered to mark its progress and emphasise its potential. In his keynote speech the Chancellor Gordon Brown spoke of how he wanted "to make Britain the gateway to Islamic finance and trade" and of his ambition "to make Britain the global centre for Islamic finance". He also spoke proudly of how recent regulatory reforms in England have supported "the development of Shari'a compliant finance" – by bringing Shari'a compliant products comfortably and inextricably within the Bank of England's financial fold.

Although the Chancellor quoted some hadith of the Prophet Muhammad, may Allah bless him and grant him peace, it is significant that he did not quote any of those which deal specifically with financial transactions, perhaps because he also referred to his master the Governor of the Bank of England's speech made the previous evening in Edinburgh in which Mervyn King referred to the twin features of the Bank's present framework for monetary policy – "namely inflation targeting and independence of the Bank of England". Having observed that "there are some signs of inflationary pressures in the main industrial countries" and that "the economic outlook is far from certain," the Governor concluded that the Monetary Policy Committee, which meets monthly to decide on interest rates, would, "month by month, be debating the prospects for the economy in order to decide in which direction, if any, interest rates need to move."

The Chancellor did not have to spell it out, for clearly any accommodation of 'Islamic Finance' by a financial system which is based on manipulating interest rates, the prime cause of inflation, could not possibly involve the abolition of usury – which was illegal in England until Henry VIII changed the law. Clearly the *quid pro quo* for the Bank of England's recognition and support of 'Islamic Finance' is that Muslims are expected to accept regulation by a banking entity immersed in usury – even though, from a Shari'a perspective, usury is a serious crime, since it always involves exploiting human need in order to gain something for nothing.

This between the lines message was also inherent in the speech given by Callum McCarthy, the Chairman of the Financial Services Authority whose four statutory objectives are *firstly*, market confidence: maintaining confidence in the financial system; *secondly*, public awareness: promoting public understanding of the financial system; *thirdly*, consumer protection: securing the appropriate degree of protection for consumers; and *lastly*, the reduction of financial crime: reducing the extent to which it is possible for a business to be used for a purpose connected with financial crime.

Mr McCarthy outlined the FSA's approach towards the regulation of Islamic finance by emphasising the need to provide "a framework which offers those who use Islamic finance, whether from wholly Sharia compliant Islamic banks or by way of Sharia compliant products offered by non Islamic banks, the same degree of protection which is offered to those who use non Islamic finance". He emphasised the need to promote "financial inclusion" – in other words the inclusion of 'Islamic Finance' within the parameters of the main banking system – and with this goal in mind he observed that, "We at the FSA are determined to continue to help the development of Islamic finance in the UK."

Significantly, Mr McCarthy referred to "the special position of the Sharia Supervisory Board within an Islamic Bank", for without the sanction of a Sharia Supervisory Board, no financial product or banking entity can be deemed 'Shari'a compliant'. It is therefore very important to the interests of the banking community that Sharia Supervisory Boards make favourable decisions.

The Big Question

The eminent members of the various Shari'a supervisory boards have worked extremely hard to ensure that their Islamic financial institutions and Islamic financial products are 'Shari'a compliant' – thereby ensuring a healthy number of local, national and international portals through which Muslims' wealth can be channelled in to support the main banking system. Just as some scientists have agreed not to ask what existed before the Big Bang, however, the Shari'a boards appear to have agreed not to ask themselves whether paper money – and by extension, digital electronic money – is Shari'a compliant. This is in spite of the fact that if a transaction is to be truly Shari'a compliant, then the means of exchange utilised in the transaction must be Shari'a compliant. So, let us ask the Big Question on their behalf, "Is paper money Shari'a compliant?"

Paper Money

What is paper money? Today paper money is an unredeemable I.O.U. For example, I have an English £5 note which records a 'promise to pay the bearer on demand the sum of FIVE Pounds' made by Merlyn Lowther, 'the Chief Cashier'. This promise refers to the time when people (they weren't referred to as consumers in those days) used to deposit their gold sovereigns and silver florins with the bankers who would give them an I.O.U. in exchange which promised to repay the sum of gold or silver when asked. People soon realised that these I.O.U.s could be used as a means of exchange in any number of financial transactions before being turned back into gold or silver when needed. Then the bankers began printing I.O.U.s even though they were not backed by gold or silver and using them as money – although they did make sure that they still had enough gold and silver to honour any I.O.U. if anyone did ask for it to be redeemed. At this point, this paper money was a redeemable I.O.U. By this means the bankers were able to loan printed money on interest which in turn resulted in more money being created out of nothing – which meant that more I.O.U.s had to be printed.

When asked if he would become king of America, a banker replied, "Give me control of the issuing of money and credit and I care not who sits in the house of politics."

In the end, there were so many I.O.U.s – there was so much paper money – that it became no longer possible to honour them. So the bankers changed the rules and informed everyone that they could still use the paper money as a means of exchange, but they could no longer exchange it for gold or silver. In the end gold and silver money was taken out of circulation altogether.

Everyone knows, myself included, that even if I manage to locate Merlyn Lowther himself, he is not going to keep his promise. He is not a magician. My £5 note is not backed by gold or silver. It is only a piece of paper with a fancy design and a number printed on it. It is only worth what people think it is worth. Is this piece of paper a Shari'a compliant means of exchange? No it is most definitely not.

An I.O.U. is not a Shari'a Compliant Means of Exchange

The authority for the prohibition of using an I.O.U. as a medium of exchange derives from the earliest days of Islam :

Yahya related to me from Malik that he had heard that receipts were given to people in the time of Marwan ibn al-Hakam for the produce of the market at al-Jar. People bought and sold the receipts among themselves before they took delivery of the goods. Zayd ibn Thabit and one of the Companions of the Messenger of Allah, may Allah bless him and grant him peace, went to Marwan ibn al-Hakam and said, "Marwan! Do you make usury *halal*?" He said, " I seek refuge with Allah! What is that?" He said, "These receipts which people buy and sell before they take delivery of the goods." Marwan therefore sent a guard to follow them and to take them from people's hands and return them to their owners. (*Al-Muwatta* of Imam Malik : 31.19.44)

In other words, an I.O.U. cannot be used as a means of exchange, even if it can be redeemed for gold or silver – because it opens the door to usury. For example, A sells B some goods for 10 gold dinars. B does not have the money on him, so he writes A an I.O.U. and takes possession of the goods. A is not permitted to use that I.O.U. as a means for purchasing goods from C – because the transaction may become usurious. For example, C may only agree to sell goods which are worth 9 dinars for the I.O.U. – for which he will subsequently receive 10 dinars from A. Or perhaps C will only accept 9 dinars in payment for the goods and A can only raise them from D who pays him 9 dinars for the I.O.U. knowing that A will give him 10 dinars for it.

Since today's paper money is an unredeemable I.O.U., it follows that dealing with today's paper money is in fact usurious – and therefore any financial transaction or financial product which involves its use is unavoidably usurious and cannot therefore truly be described as being Shari'a compliant, let alone "wholly Shari'a compliant" to use Mr McCarthy's phrase.

Using digital electronic money is a substitute for using paper money and therefore the same analysis applies. Since virtually all money deposited with banks is used by the banks to provide loans on interest and to earn interest for the bank while not being used by the bank account holder, this means that even if an individual bank account holder does not accept interest on any credit balance, the bank will still be using the money in that credit balance to create money out of nothing by way of interest, either by lending it or by depositing it in an interest bearing account, whether it is overnight or for a longer period. Even if a bank assures its Muslim customers that their deposits will not be utilised to create money out of nothing by placing them in an interest-bearing account, this does not alter the fact that the money itself remains an unredeemable I.O.U. and is therefore itself usurious and accordingly not Shari'a compliant. If an I.O.U. is not a Shari'a compliant means of exchange, what is?

Gold and Silver

Islamic jurisprudence clarifies the difference between gold and silver on one hand and paper money on the other by the legal terminology which is used to indicate their inherent characteristics: Gold and silver are categorised as *'ayn* (tangible merchandise with intrinsic value) – whereas paper money is categorised as *dayn* (a promise to pay, a debt). An *'ayn* can never be mistaken for a *dayn* – and vice versa. The Shari'a permits an *'ayn* to be exchanged for an *'ayn*, but it is not permitted to exchange an *'ayn* for a *dayn*, nor is it permitted to exchange a *dayn* for a *dayn*.

Since the time of the Prophet Muhammad, may Allah bless him and his family and companions and grant them peace, the traditional currency of the Muslims has always been the gold *dinar* and the silver *dirham*. The Islamic *dinar* is a specific weight of 22 carat gold equivalent to 4.25 grams. The Islamic *dirham* is a specific weight of pure silver equivalent to 3.0 grams.

Umar Ibn al-Khattab, the second leader of the Muslim community after the death of the Prophet Muhammad, confirmed and established the known standard relationship between the two based on their weights: 7 gold *dinars* must be equivalent to 10 silver *dirhams*.

Traditionally, the respective weights of the two coins were determined with reference to the weight of a specific number of grains of barley:

"Know that there is consensus [*ijma*] since the beginning of Islam and the age of the Companions and the Followers that the *dirham* of the *shari'a* is that of which ten weigh seven *mithqals* [weight of the *dinar*] of gold. . . The weight of a *mithqal* of gold is seventy-two grains of barley, so that the *dirham* which is seven-tenths of it is fifty and two-fifths grains. All these measurements are firmly established by consensus." (*Al-Muqaddimah*, Ibn Khaldun).

The gold *dinar* and the silver *dirham* have intrinsic value. They can only be devalued either by debasing them with other metals, or by clipping them so that they are under weight.

The gold *dinar* and the silver *dirham* can be used as a means of exchange – but they cannot be treated as a commodity in themselves, which means that they cannot be rented out (i.e. loaned on interest) and they cannot be replaced by or represented by an I.O.U. or a promise to pay.

Although the Chancellor made no reference to it, an essential element of true Islamic finance is *Zakat*.

Zakat

As well as being one of the five pillars of Islam, an essential element of Islamic Finance is the *Zakat* tax, the annual obligatory tax on Muslims payable on surplus wealth at a rate of 2.5% – which after being collected is then distributed amongst the poor, thereby ensuring the re-distribution of unused wealth. *Zakat* can only be paid in gold and silver or in certain goods in kind or in certain livestock, but not with an IOU nor with *fulus* (small change represented by base metal coinage or paper tokens, with no inherent value) nor with digital electronic money.

When the great Maliki 'alim, Shaykh Muhammad Alish (1802-1881), was asked:

“What is your judgement in respect to the paper with the stamp of the Sultan that circulates like dinars and dirhams? Is it obligatory to pay zakat as if it was a coin of gold or silver, or merchandise, or not?” he replied:

“Praise belongs to Allah and blessing and peace upon our Master Muhammad, the Messenger of Allah.

Zakat is not to be paid for it, because zakat is restricted to livestock, certain types of grains and fruits, gold and silver, the value of rotational merchandise [stock in trade] and the price of goods withheld. What has just been referred to does not belong to any of these categories.

You will find an explanation by making a comparison with the copper coin or fulus with the stamp of the Sultan which is in circulation and for which no zakat is paid since it does not belong to any of the categories just mentioned. It says in the Mudawwana : ‘Those who possess fulus for over a year for a value of 200 dirhams do not need to pay zakat unless it is used as a rotational merchandise [stock in trade]. Then, it should be treated as if it is merchandise.’

In the ‘At-Tiraz’, after mentioning that Abu Hanifa and Ash-Shafi’i obliged payment of zakat for the fulus, [it is stated that] since both affirm that the payment of zakat is from value, and considering that Shafi’i has two contradictory opinions about the subject, the opinion of this school is that there is no obligation to pay zakat for the fulus since there is no disagreement about the fact that what applies with respect to the fulus is not its weight or its quantity but only its given value. If the zakat was obligatory [on paper] by considering its substance as a merchandise, then the nisab would not be stipulated according to its given value but according to its substance and its quantity, as is the case with silver, gold, grain or fruits. Since its substance [paper] is irrelevant [in value] in respect to the zakat, then it should be treated the same as the [coins made of] copper, iron or other similar substances.

And Allah, ta’ala, is the Wisest. And may Allah bless and give peace to our Master Muhammad and his family.”

(Translated from the *Al-Fath Al-‘Ali Al-Maliki*, pp. 164-165).

In other words if *Zakat* were to be paid on paper money because it was being assessed as merchandise, or stock in trade, then the amount payable would be calculated with reference to its inherent value as paper in terms of its weight – and not with reference to its given value as indicated by the numbers, patterns and promises printed on it.

Since a small piece of paper is worth next to nothing, even if *Zakat* was payable on paper (which it is not), the *Zakat* payable on many pieces of paper would be negligible – and whether the numbers and symbols £5 or £10 or £50 or £100 or £1000 were printed on each piece of paper, this would be entirely irrelevant as regards measuring their worth as pieces of paper for the purposes of paying *Zakat*.

Since paper does not belong to any of the categories of goods on which *Zakat* is payable, and since paper money is in practice never treated as stock in trade, and since it is therefore treated as small change, it follows that it is in fact not Shari'a compliant to pay *Zakat* with paper money or with electronic digital money or with small change – or indeed to have a *Zakat* bank account, unless that account is an e-dinar or e-dirham account where every electronic dinar or electronic dirham is backed by a physical gold dinar or a physical silver dirham.

It follows that any future bona fide Islamic Finance and Trade Conference will need to consider the introduction of a universal Shari'a compliant means of exchange in which *Zakat* can also be paid – in other words, in compliance with the Shari'a of Allah and in accordance with the Sunnah of our master Muhammad, may Allah bless him and grant him peace, not Mervyn, the introduction of the traditional currency of the Muslims, the gold dinar and the silver dirham.

The Role of Islamic Banks and Shari'a Boards in establishing the Gold Dinar and Silver Dirham

Up to now most Shari'a Boards have either failed to consider or have studiously ignored or skirted round this fundamental issue. This is either because their members have become so accustomed to using paper and digital electronic money that they do not see what it really is (that is, they cannot distinguish between an '*ayn*' and a '*dayn*'), or it is because they argue that achieving Shari'a compliance is an evolutionary process which will take time and therefore it is not feasible to deal with this issue at this stage. This is a false argument and as convincing as the argument which asserts that eventually a pig can evolve into a camel.

Sooner or later, the Shari'a Boards will have to give this matter serious thought, for even if their current financial products are Shari'a compliant in every other aspect, in fact none of them will be Shari'a compliant until the means of exchange which they all utilise is itself Shari'a compliant. Furthermore, the Islamic banks now have the infrastructure by means of which Shari'a compliant gold dinars and silver dirhams can be minted, distributed and utilised – and therefore any excuse based on the doctrine of *darura* (necessity) to avoid this obligation is simply no longer valid.

The principle of *darura* does not entitle Islamic banks to pretend that paper and digital electronic money are Shari'a compliant by virtue of necessity indefinitely. The Shari'a requires them to strive to move from what is *haram* (forbidden) to what is *halal* (permitted) – and since it will not be difficult to do this, this means that they cannot plausibly assert that there is no alternative to paper and plastic, however well qualified the members of their Shari'a boards appear to be.

The Islamic banks and the governments of the traditionally Muslim countries now have the knowledge and the infrastructure and the resources to legally recognise the gold *dinar* and the silver *dirham* as their currencies, and to put the gold *dinar* and silver *dirham* back into circulation and to operate *dinar* and *dirham* accounts, including the use of internet technology, provided that each e-dinar and each e-dirham are backed by an equivalent number of gold dinars and silver dirhams.

No financial transaction and therefore no financial product can be truly Shari'a compliant until these traditional Islamic means of exchange are in use again.

By doing this, they will also facilitate the proper collection and distribution of *Zakat* in gold and silver in compliance with the Shari'a – which will in turn impede hoarding and ensure the equitable re-distribution of real wealth amongst the poor.

We look forward to the day when not only the Islamic Banks and Shari'a Boards but also the Governor of the Bank of England, the Lord Chancellor and the Chairman of the Financial Service Authority have addressed these issues and brought the practices of their institutions within the parameters of the Shari'a. Instead of re-defining 'Shari'a Compliance' to suit the usurious banking system, there is an urgent need for the usurious banking system to become Shari'a compliant if it is to survive and truly flourish. They will then be glad to quote the ayats of Qur'an and the Hadith of the Messenger of Allah, may Allah bless him and grant him peace, which never featured in their speeches at the Islamic Trade and Finance Conference 2006, especially the following ayats in which Allah (God) contrasts *riba* with *bay'* (trade) and with *sadaqa* (voluntary charitable giving) as follows:

Those who practise *riba* will not rise from the grave
except as someone driven mad by Shaytan's touch.
That is because they say, 'Trade is the same as *riba*.'
But Allah has permitted trade and He has forbidden *riba*.
Whoever is given a warning by his Lord and then desists,
can keep what he received in the past
and his affair is Allah's concern.
But all who return to it will be the Companions of the Fire,
remaining in it timelessly, for ever.
Allah obliterates *riba* but makes *sadaqa* grow in value!
Allah does not love any persistently ungrateful wrongdoer.
Those who have *iman* and do right actions
and establish *salat* and pay *zakat*,
will have their reward with their Lord.
They will feel no fear and will know no sorrow.
You who have *iman*! have *taqwa* of Allah
and forgo any remaining *riba*
if you are *muminun*.
If you do not, know that it means war from Allah
and His Messenger.
But if you make *tawba* you may have your capital,
without wronging and without being wronged. (Qur'an : 2. 274-278)

The reported words of the Prophet Muhammad, may Allah bless him and grant him peace, and the recorded practices of the first Muslim community are equally explicit:

'Abdullah ibn Mas'ud related that the Messenger of Allah, may Allah bless him and grant him peace, cursed the one who accepted usury, the one who paid it, the witness to it and the one who recorded it. (*Sunan of Imam Abu Dawud*: 16.1249.3327)

Yahya related to me from Malik from Nafi' that he heard 'Abdullah ibn 'Umar say, "If some one lends something, let the only condition be that it is repaid." (*Al-Muwatta'* of *Imam Malik*: 31.44.94)

Malik related to me that he had heard that 'Abdullah ibn Mas'ud used to say, "If some one makes a loan, they should not stipulate better than it. Even if it is a handful of grass, it is usury." (*Al-Muwatta'* of *Imam Malik*: 31.44.95)

Abu Hurayrah related that the Messenger of Allah, may Allah bless him and grant him peace, said, "A time is certainly coming to mankind when only the receiver of usury will remain, and if he does not receive it, some of its vapour will reach him." Ibn 'Isa said, "Some of its dust will reach him." (*Sunan of Imam Abu Dawud*: 16.1248.3325)

Today, most of the world's population is choking on the dust of usury. The only cure is to restore the use of gold and silver as a means of exchange.

The Future

The impulse to make this transition from paper and plastic to gold and silver may well arise not so much out of a yearning to be pleasing to Allah by following His Shari'a, and not so much out of a desire to be granted a place in the Garden in the next world as a reward for obedience to Allah, and not so much out of a wish to avoid a place in the Fire in the next world as a punishment for disobedience to Allah – but rather simply out of sheer necessity:

When it becomes unavoidably apparent that the frail bubble of modern economics must inevitably burst, given that paper money is only intrinsically worth the paper on which it is printed and given that most of the trillions of all the major currencies in the world today only exist as electronic data tenuously located on various hard disks around the world, then prudent investors are likely to exchange their worthless paper and digital electronic tokens for merchandise or property which possess intrinsic value.

From the sane perspective of the Shari'a, it does not take a great deal of financial acumen or expertise to appreciate that most modern financial problems have arisen out of the institutionalisation of usury and that these have ballooned out of control in less than a lifetime – ever since the banking system abandoned the gold standard. Even economists who do not have access to the wisdom of the Shari'a are beginning to realise that this departure from bi-metal backed currency has turned out to be no more than an experiment which has gone horribly wrong.

Historically, as long as the Muslims used gold dinars and silver dirhams, they thrived. Since it is an essential aspect of true Islamic finance that money may be used as a means of exchange, but must not be treated as a commodity (which means that it cannot be rented out – that is, loaned on interest), and since the Shari'a forbids any unjust increment in a commercial transaction (even by so much as a blade of grass), in this past age, usury was virtually non-existent and therefore there was zero inflation. For fourteen centuries, a silver dirham was enough to purchase a chicken and a gold dinar was enough to purchase a sheep. This is still the case today.

Since there was no usury and no inflation, other than the *Zakat*, there was virtually no taxation. As long as the *Zakat* tax was collected and distributed, there were no national debts. There was therefore no need to increase taxes every year in order to service the national debt, as is the case in most countries today, including the UK. Today elections are won or lost on a party's taxation policy, not on their foreign policy however misguided.

Conclusion

If complicated mental gymnastics are avoided and the simplicity of the Shari'a is acknowledged and appreciated, then it appears inevitable that the world of finance will one day return to a bi-metal based economy, simply because it is healthier and it has a proven track record of at least five millennia.

From a Shari'a perspective, the return to the use of gold and silver currencies will not be an attempted escape back to the past, but rather it will be a recovery of sanity and true economic stability – and once established it will then and only then be possible to have truly Shari'a compliant financial products, in substance as well as in name.

“Yahya related to me from Malik that Yahya ibn Sa'id heard Sa'id ibn al-Musayyab say, 'Keeping gold and silver out of circulation is part of working corruption in the land.'” (*Al-Muwatta* of Imam Malik : 31.16.37)

To end on a positive note (and definitely not an I.O.U.) our prayer for the various Islamic banks and Shari'a advisory boards and the Governor of the Bank of England, the Chancellor and the Chairman of the Financial Services Authority is that they do something really worthwhile during their brief time on earth – by bringing back gold and silver into circulation.

In the words of the HSBC advertisement, “Shari’ah isn’t just a privilege, it’s an Amanah,” an amanah which the mountains refused – but which some people in every age have accepted, in compliance with the command of Allah and His Messenger, may Allah bless him and grant him peace.



Acknowledgements

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