SHARES, UNIT TRUSTS and the SHARIAH

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INTRODUCTION

Investment in the so-called 'Islamic' banks is a question which concerns many Muslims who write to us seeking the directive of the Shariah regarding the permissibility of investing in the deals offered by these banks. The blanket sanction which some Maulanas have accorded to investment in these banks have thrown Muslims into confusion.

The deals offered by these banks and their methods of operation make it clear that they are no better than the kuffaar riba banks. Muslims are misled by the Islamic terminology which is copiously employed by these banks to market their haraam products. Terms such as *Mudhaarabah, Mushaarakah, Muraabahah, Ijaarah,* etc., are the thin veneer under which the riba is concealed. Unwary and ignorant Muslims are given the impression that the investment deals offered by these banks all fit into the scope of the aforementioned Islamic contracts and agreements.

However, this claim of the Muslim bank entrepreneurs is akin to a non-Muslim bank asserting that its leasing contract is *Ijaarah,* its hire-purchase deal is *Muraabahah, etc., etc.* While it is correct for a non-Muslim bank to aver that its leasing transaction is *Ijaarah* and its hire-purchase deal is *Muraabah*, it is grossly false to claim that such *ijaarah* and *muraabah* products offered by the kuffaar banks conform to the *Ihaarah* and *Muraabahah* deals of the Shariah. In exactly the same way do the deals of the 'Islamic' banks conflict with the Shariah notwithstanding the correctness of the terms *ijaarah, muraabahah,* etc. applying literally to their haraam products.

To understand the proper Shar'i classification of the contracts and agreements of these 'Islamic' banks, it is necessary to

examine their products, deals and contracts. This we shall, Insha'Allah, do in this discussion.

THE SPIRITUAL PERSPECTIVE

For gaining the confidence of the Muslim community, which is imperative for selling their wares, these purely capitalist financial institutions which are in entirety bereft of any ideals of altruism cite Qur'aanic aayaat and Hadith narrations with naked shamelessness. The endeavour is to deceive the Muslim public into the massive deception that these 'Islamic' banks are Islamic charitable institutions working for the welfare of the Muslim community in the spirit of Qur'aanic and Hadith exhortations of brotherhood and service to Muslims. But nothing can be further from the truth.

Consider the following advertising stunt of the Albaraka Bank. In its brochure advertising its haraam Unit Trusts product, the bank states:

> ***"As Muslims we are required to consume halaal food, wear halaal clothes and live in halaal dwelling. ……. However, ill-gained wealth that feeds us produces ill-flesh and keeps us spiritually naked."***

An examination of their deals will show that the wealth acquired from their investment plans is in fact ill-gotten haraam wealth yielded by products which do not conform to the Shariah. They speak of spirituality, of the need to grow halaal flesh, while they are immersed in riba in the same way as the kuffaar capitalists. Their big talk about spirituality is a gimmick to advertise banking business with its haraam investment products. No one can be further from the goals of spirituality than these men who operate riba institutions in the name of the Qur'aan and Sunnah.

And how is it possible for them to have even the haziest idea of spiritual treasures when the Qur'aan Majeed declares:

> **"*Those who devour riba do not stand except as one who has been driven to insanity by the touch of shaitaan."***

They vociferously trumpet the slogan of Islamic Brotherhood and Qur'aanic concept of *Qardh-e-Hasan* (Beautiful Loan 'given' to Allah Ta'ala), but their misdeeds loudly testify to the hardness of their hearts –hearts hardened harder than stone by their indulgence in riba in the name of the Shariah and under the cover of cheap 'fatwas' obtained from some Maulanas and Muftis. Consider the following case to understand the *insanity caused by the touch of shaitaan:*

A DISPUTE

The dispute is between Albaraka Bank and Mr. M. Hansa of Durban who wrote to us:

"An agreement was tabled telephonically with Mahomed Khan (of Albaraka Bank) on the matter of how to settle my debt of R550,000. I was approximately 30 days late in the evening when the Sheriff came to attach my goods. I was owing a balance of R90,000. In the interim I discovered that Albaraka Bank had obtained a judgement against me un-Islamically and by deceitful ways. Surprisingly, Shaukat Karrim (the Bank's lawyer) who had obtained the judgement unethically still represents the Albaraka Bank inspite of having brought it to the attention of the directors, C.E.O, as well as Maulana Joosab (of the Bank).

They obtained the judgement by serving the summons at the incorrect domicillium. I have a faxed copy and proof that the change of domicillium in 1995 was sent to Albaraka Bank. However, surprisingly, inspite of the summons having been

served at the wrong address, the attachment was made at the correct address.
Shaukat Karrim quoted R15,000 to my attorney. I personally spoke to him and he brought it down to R12,000 which is also high……(This is besides the costs of about R30,000 for my attorney and advocate.)

The trial to have judgement rescinded will take 2 days at enormous costs. Had proper channels been followed, no judgement would have been awarded to the Bank. The trial will be at a later date to discuss the merits of the case.

Shaukat Karrim has brought it to my attention that he has an open cheque from Albaraka Bank and the cost is no problem and he will run the bill high to prove his point.

Evidence for rescission of judgement and evidence for the trial are the same. It will be duplicated. The Bank and myself will have twice costs for advocate and attorneys. This will benefit only the advocate and the attorney, and not the bank or myself.
The litigation is run by the bank. I am the defendant."

In a letter to Albaraka Bank, Mr. M. Hansa writes:

AlBaraka Bank, Attention Maulana Joosab, Commercial Road, Durban

"We refer to our telephonic conversation with yourself and confirm the following as per your request:
One of my customers owed me a large sum of money. He had in turn purchased a huge quantity of goods (in the region of 31 million rands), so they were not paying me promptly.

I was in continuous contact with Mr. Mahomed Khan then, and I had told him that the amount owing by me will be split up in three instalments. The 1st instalment of R150,000 and the second instalment of R125,000 were paid. There remained a balance of R90,625 which was supposed to have been paid at the end of August 2002. Mr. Mahomed Khan did not come back to me, hence I thought everything was in order. On 21st August 2002 I received a writ at 9 pm and a sheriff came and attached all my possessions, whereas on this day there was only R90,625 owing. That was when I realized that I did not receive summons before this."

Mr. Hansa adds: *"Kindly provide the Islamic Ruling as this matter is already set down for 2 days – 11th and 12th October 2004. Estimates of my costs in the above matter is R45,000 and assuming the Bank will be the same excluding the trial cost. It will be a waste of time and money.*

I have requested a Shariah Ruling from Maulana Joosab of Albaraka Bank. However until today I have received no response. The documents are against us. Insurance is compulsory. Is this Shariah compliant?

CC. Jamiatul Ulama KZN – Attention Maulana Kathrada

In another letter to Albaraka Bank, Mr. Hansa wrote:
"We refer to our telephonic conversation of today and confirm that numerous occasions we requested you to give an Islamic ruling. Until today, we have not received any response. You should not be perturbed if I speak to other Ulema because you are procrastinating and I have no alternative.

Since the debt has been paid, the way forward is for each party to pay its costs. I await your earliest response."

No Shariah ruling can be expected to be forthcoming from the Maulana who is inextricably interwoven with the fabric of the riba Bank. The Shariah ruling in this matter caused by the hard-heartedness and intransigence of the Bank is:

(1) It is haraam for the Bank to oppose the endeavour by Mr. Hansa to obtain a rescission of the judgement. The Bank, it opposing the endeavour is guilty of the following two haraam and cruel acts:
i) Ruining the reputation of a Muslim. It is incumbent to protect the honour and good name of another Muslim.
ii) Instead of protecting the good name of Mr. Hansa, the Bank is actively striving to ruin his integrity by opposing the endeavour to have the judgement rescinded.
iii) The Bank has in a haraam manner involved Mr. Hansa in incurring a substantial loss of money running into tens of thousands of rands in the form of haraam legal fees. In so doing, the Bank is guilty of usurping or being an instrument in the usurpation of the wealth of a Muslim brother.
iv) The Bank having initiated this callous action, is responsible for its own costs as well as for the costs which it had forced onto Mr. Hansa.

It is noteworthy that inspite of the debt having been settled, this so-called "Islamic' Bank persists in its haraam and callous attempt to blacken the name of a Muslim brother and to involve him in paying tens of thousands of rands to satiate the haraam demands and desires of lawyers.

QARDH HASAN

This case is a window from which the Bank's understanding 'Islamic' brotherhood and its concept of *Qardh Hasan* could be clearly viewed.

Advertising its riba products, Albarka Bank states in its definition of Islamic Terminology:

> *"Qardul hasa (A benevolent or good loan): An interest free loan given either for welfare purposes or for bridging short term funding requirements. The borrower is required to pay only the amount borrowed."*

Bringing the Qur'aanic concept of *Qardh Hasan* in the advertising material of the Bank is laughable and deceptive. The Bank attempts to depict a picture of altruism for itself by citing the Beautiful Loan Allah Ta'ala exhorts Muslims to give.

A bank which subjects Muslims to the grinding yoke of haraam lawyers fees should not venture to comment on *Qardh Hasan.* It is a miserable attempt in advertising to drag the Qur'aan Majeed and insult it by deceptively using it to promote capitalist products sold to Muslims with capitalist attitudes. There is no difference in the ideology of the kuffaar capitalists and the Muslim entrepreneurs who operate riba banks under the guise of 'Islamic' financing.

QARDH HASAN AND THE QUR'AAN

Expounding the Shar'i concept of *Qardh Hasan*, Allah Ta'ala states in the Qur'aan Majeed:

> ***"Fear Allah as much as you can; hear and obey, and (in His Path), for it is best for your souls.***

Whoever has been saved from the greed of his nafs, verily, they are the successful ones. If you give Allah Qardh Hasan (Beautiful Loan), He Will increase (the wealth) for you and forgive you (your sins). And Allah is The One Who values (your righteousness), The One Who is Most Tolerant."

(Surah Taghaabun, Aayats 16 and 17)

In Surah Baqarah, aayat 280, the Qur'aan states:

"*And, if he (the debtor) is in (financial) difficulty then (grant him) an extension until ease (i.e. until he is able to pay). And, if you (waive the debt) as Sadqah, it is best for you."*

It is in total conflict with the rule and spirit of the Qur'aan to impose on a hard-pressed debtor the cruel yoke of interest and the exorbitant fees of lawyers. One can understand the oppression and injustice involved in this evil legal system which allows a lawyer to extract R50,000 from a hard-pressed client merely for a couple of hours in court.

Is it possible for persons who involve debtors in such oppression to have a proper understanding of the meaning of *Qardh Hasan.* This Qur'aanic concept has only three stages:

(1) Granting the debtor an extension of time to pay. This extension should be until his financial position improves.
(2) Waiving the entire debt. This is the best option in terms of the Qur'aan.
(3) Waiving part of the debt if one is not by either the financial or spiritual means (i.e. lacking in Taqwa and

Tawakkul) to write off the whole debt for aiding the brother and for gaining the Pleasure of Allah Ta'ala.

There is no fourth option in the concept of *Qardh Hasan.* The idea of oppressing the debtor by imposing a lawyer over him is repugnant to the Qur'aanic exhortation of *Qardh Hasan.*

The manner in which Albaraka has inflicted injury and oppression on the hard-pressed debtor by assailing his integrity with the court judgement and by imposing the kuffaar legal system on him to extract tens of thousands of rands from him is an adequate commentary of the callousness and deception of the Muslim capitalist who are immersed in the riba banking structure which they have inherited from their kuffaar counterparts in the game.

The case of Mr. Hansa is not the only one. Over the years many Muslims have complained and suffered the inequities and *zulm* of the 'Islamic' banks which deceptively portray themselves as the upholders of Islamic economics.

UNIT TRUSTS

What are unit trusts?

The explanation of unit trusts which Albaraka Bank gives in its brochure is plain gibberish for the Muslim laymen whom this bank is wooing and trying to convince of the alleged Islamic permissibility of these haraam shares which are not *Shirkat* (Partnership) shares in terms of the Shariah. It appears that the one who wrote the explanation in the Unit Trust brochure, himself is ignorant of what exactly unit trusts are. He tries to sound like an expert with his explanation of gibberish. The layman reader is left in perplexity and knows

not head or tail of the meaning of unit trusts despite the brief and stupid description in the brochure.

The Bank should understand that it is marketing its products to ordinary Muslims who are not versed in the terminology of the capitalists. To speak of NAV and Equity Fund without giving the investors a hazy idea of what exactly these riba 'shares' are is to pull wool over the eyes of the unwary. If the author of the brochure lacks exposure in the capitalist economic system, he should seek the assistance of some non-Muslim expert of the system to explain the products in a manner which is comprehensible to laymen. One ignorant of the product should not attempt to present a clever image of himself by presenting a ludicrous explanation which leaves the layman reader in a greater quandary.

The haraam unit trust product is inextricably interwoven with the dealings of the Stock Exchange, hence the Albaraka brochure first attempts to pass off the Stock Exchange system as Islamically 'kosher'.

In this attempt, the brochure alleges: *"The joint stock companies accumulate capital by selling shares of the company on the stock markets. When a person purchases shares of a company, the purchaser is the shareholder of the underlined assets of the company."*

Then defining the 'share certificate', the brochure states:
"The share certificate: When the client purchased in a company the client did not purchase the share certificate but he purchased a portion of the assets of the company. The share certificate is a document that represents and confirms the proportionate share of the shareholder. The buying and selling of the share certificate in the secondary market is

actually replacing the seller's post as the shareholder to the purchaser of the share certificate."

The above explanation of shares in public companies and the share certificate has been sucked out from Albaraka Bank's thumb in an abortive bid to have its unit trusts and other dealings on the stock exchange proclaimed halaal –lawful in the Shariah. Albaraka's representative who has presented this figment of his imagination should state the basis and the evidence for his definition of the share certificate and his averment that the owner of the share certificate owns a proportionate share of the actual tangible assets of the company. There is no basis whatsoever for this claim of Albaraka.

The 'joint stock company' is a creation of the riba-capaitalist west. It is not a Shar'i institution nor did Albarakah Bank introduce this capitalist system of trading. It has merely adopted it in entirety—every aspect of it, including its riba base. Hence it should not seek to explain this capitalist system with its imaginary meanings in the endeavour to get it passed as halaal by the Shariah.

THE COMPANY

In the capitalist system adopted by the votaries of 'Islamic' banking, a company is a legal entity apart from its 'shareholders'. It should be understood at this juncture that a shareholder in a joint stock company differs substantially from the shareholder in an Islamic Shirkat (Partnership) enterprise. Insha'Allah, the difference will be explained later in this article.

The Muslim capitalists have manipulated the term 'shareholder' to confuse and mislead laymen who are

unacquainted with the technical meanings of the terms and their material effects. Since the 'shareholders' in these public companies do not own the assets of the company, they are not shareholders in the context of the Shariah. Mere similarity of names does not produce similarity in the effects of the different concepts. For example, literally speaking, the leasing system of the kuffaar banks is an *ijaarah* transaction. While leasing is known in the Shariah as *Ijaarah,* it does not follow that the *ijaarah* of the kuffaar banks is a valid Shar'i *Ijaarah* contract merely on the basis of a similarity of names. Similarly, the shareholder, viz., the person who purchases share certificates in a public company, is not a *Shareek* (partner/shareholder) in terms of the Shariah because such a 'shareholder' does not own a share of the tangible assets of the company as Albarakah Bank baselessly asserts nor is this type of 'shareholder' responsible for the debts of the fictitious legal 'person' called the company.

THE COMPANY SHAREHOLDER AND THE SHAR'I SHAREHOLDER

The following table of differences will give a better understanding of the meaning of 'shareholder' in the capitalist system and the Shariah.

Company Shareholder	Shirkat Shareholder
(1) Not responsible for the debts of the company.	Responsible for the debts of the company.
(2) Personal assets cannot be claimed or attached to pay the debts of the insolvent company.	Personal assets can be appropriated to pay the debts of the Shirkat enterprise (Islamic Partnership).

Company Shareholder	Shirkat Shareholder
(3) The company is not liable for the debts of its shareholders. The creditors of the shareholders cannot claim the assets of the company in lieu of the debt of shareholders in the event of them not paying their debts.	The assets of the Shirkat enterprise can be claimed by creditors of the shareholders (partners).
(4) The shareholders purchase rights *(Huqooq)* in the company.	The shareholders do not purchase *Huqooq*. They purchase an actual share of the tangible assets of the partnership business, which entitles them to a predetermined share of the profits.
(5) The shareholder cannot terminate his so-called partnership and demand his proportionate share of the tangible assets of the company.	The Shar'i shareholder can dissolve his partnership agreement and claim his proportionate share of the assets of the company.
(6) The shareholder cannot sell any 'proportionate' share of the tangible assets of the company.	The Shirkat partner can sell his share of the tangible assets of the partnership enterprise and transfer same to the buyer who is not obliged to become a partner in the business.
(7) The buyer of the share certificate from an existing shareholder becomes an automatic owner of all the rights of the shareholder from whom he purchased the share certificate (i.e. the paper certificate).	The buyer of the tangible assets sold by a shareholder, does not automatically become a shareholder in the Shirkat business. If the existing partners refuse to accept him, he has no right to demand that he be instituted as a partner on the basis of him having purchased the share of assets of the previous partner. On the basis of his purchase he cannot claim the right to receive profits from the Shirkat business if the existing partners refuse to accept him.

Company Shareholder	Shirkat Shareholder
(8) On the death of the shareholder, the agreement does not fall away. His rights are transferred to the persons who have acquired the share certificates. His heirs or whoever purchases the certificates gain the rights to which the certificates entitle the holder/owner thereof.	On the death of the Shar'i partner, the partnership agreement is automatically dissolved. His heirs do not become partners in the Shirkat enterprise. Unlike the transference of dividends to the new owners of the company's certificates, the heirs of the partner do not acquire a share in the Shirkat business to entitle them to claim profits.
(9) The heirs of the deceased shareholder cannot claim any share of the assets of the company.	The heirs of the Shirkat partnership can claim the proportionate share of the deceased of the actual assets of the partnership business.
(10) The shareholders do not participate in the losses of the company. They are not liable for any proportionate share of the company's losses.	The Shirkat partners are liable for the losses of the Shirkat business in proportion to their respective shares.

It should now be clear that the company and the Shar'i Shirkat are two entirely different concepts.

DEFINITION OF SHARES

What is the meaning of a share in the company? Albaraka Bank or any other so-called 'Islamic' banks are not qualified to answer this question. The creators of the joint stock company and their experts are qualified to inform us of the proper meaning of 'shares'. The experts define a share as follows:

> ***"The term 'share' as such denotes that the holder thereof has a claim on part of the share capital of the company, and does not refer to a right of ownership in part of the net assets of the company. A share in a company is not a corporeal object but represents a complex of rights and duties." (Mercantile Law)***

The Muslim banking entrepreneurs are at pains to make us believe that the shareholder owns a portion of the tangible assets of the company. Regardless of their meandering and complex interpretations to extract fatwas of permissibility from liberal Muftis and from even *juhhaal* 'muftis' lacking in entirety in the credentials of *Ifta*, the reality stated above with great clarity cannot be concealed.

The true definition of 'share' stated by the experts of the capitalist system who are the founders of the joint stock company, is a concept with real and factual effects as has been explained in the table of differences on page 13.

It should not be difficult for even the Muslim layman who lacks understanding of the workings of the riba system in which the 'Islamic' banks indulge with relish, to understand that 'ownership' has real effects. Among its effects are:

- The right to use the owned property/assets freely at any time.
- The right to dispose of the owned property at will, whether by sale, gift, waqf, etc.
- The right of the heirs to inherit the property owned by the deceased.
- The right of the owner to remove his assets from a partnership.

None of these effects are concomitant with the so-called proportionate share of the assets of the company baselessly alleged to be owned by the shareholders. There is no such concept of ownership in the Shariah which denies the owner the right to use and employ his *mielk* (property) as he deems fit.

THE FALLACY OF THE ARGUMENTS OF THE LEGALIZERS OF RIBA

Those who claim that the capitalist joint stock company is a valid Shar'i *Shirkat* enterprise present two arguments:

(1) "The concept of the independent legal existence of the company is a fiction of law".

(2) Upon dissolution of the company the surplus assets, if any, after payment of liabilities will be distributed pro rata to the shareholders.

For these reasons the company will be considered in the Shariah to be the property of the shareholders. Thus, the assets of the company belong to the shareholders in the same way as the assets of a Shar'i *Shirkat* belong to its partners.

From the explanation we have presented in the aforegoing pages, the fallacy of this conclusion should be manifest. But what is shocking is the deliberate blindness which the Muftis have adopted in their formulation of this fallacious conclusion. As explained above, ownership has real effects. None of the real effects of ownership extend to the owners of share certificates. How then is it possible for Muftis of the Deen to conclude that a man is the owner of a fictitious asset over which he has absolutely no power, no control and no right whatsoever?

The claim that the company is a legal fiction of law is a half-truth and misleading. While the company is a fictitious 'person', it is not a fictitious legal entity in kuffaar law. It is a real legal entity apart from its 'shareholders', hence the shareholders do not assume the liabilities of this legal 'person'. In law the company has real effects. Any shareholder who appropriates any

portion of the tangible assets of the company is guilty of fraud and can be jailed for 'theft' and fraud notwithstanding his Shar'i right of ownership of a portion of the assets of the company, i.e. if the company has to be accepted as a valid Shar'i partnership.

In terms of the Shariah it is correct to say that the company is a fiction of kuffaar law and has no existence although it does have existence in the capitalist system. The Shariah does not recognize an abstract concept as being a real person having rights and duties and capable of owning property

The second argument, viz., on dissolution of the company the shareholders obtain a pro rata share of the assets, by itself does not make the company shareholders owners of the assets of the company for the reasons already explained earlier on. There are no ownership consequences arising from the purchase of share certificates. This effectively negates the fallacy of shareholders being the owners of the company's assets.

Only in the event of the liquidation of the company will the shareholders be entitled to a pro rata share of the assets, never at any other time. During the subsistence of the company, the shareholders cannot claim a pro rata share of the assets (the cash and all other tangible assets) of the company. This conclusively proves that they are not existing shareholders of the company's assets. They will at some future date become the owners of the company's assets in the unlikely event of the liquidation of the company. The day they acquire physical possession of the assets will it be said that they have now become the owners of such assets. But future ownership is not existing ownership. Future ownership has no practical consequences for existing assets.

Besides this argument of the votaries of this baatil concept being incorrect, we can say without hesitation that they are guilty of

concocting blatant falsehood to mislead Muslims into indulging in riba. They cannot be so dim in the brains to understand the clear difference between company shareholders and partners in a Shar'i *Shirkat* venture.

THE SHAR'I MEANING OF SHARE

According to the Shariah a share in a partnership signifies a share in the tangible assets of the partnership enterprise. A man purchases a share of the assets of the partnership business and he acquires his share of the profits by virtue of having ploughed his assets into the venture.

When the partner has to pay Zakaat on his share of the business, he does not calculate his Zakaat liability on the basis of a fictitious value of his 50% share of the business. Value of his share is a fictitious entity on which the Shariah does not levy Zakaat. Furthermore, the Shariah does not levy Zakaat on all assets of the company. Zakaat is paid on only Zakaat-taxable assets (cash, stock-in-trade and recoverable debts). Zakaat is not paid on the equipment, property and other non-Zakaatable assets of the business.

If the shareholder is able to sell his 50% share in the business for say, R100,000, it will be said that the value of his share is this amount. But he does not have to pay Zakaat on the value of R100,000 which he does not own since he has not sold his share as yet. The offer he receives may be R100,000 while the actual tangible assets of his share may be only R20,000 of which R10,000 be comprise of non-Zakaatable assets. He thus is liable to pay Zakaat on only R10,000 whereas the legalizers of the company claim that he has to pay Zakaat on the market-value of the paper certificates, not on the value of the actual Zakaat

taxable assets in the company, which anyway the shareholders are blissfully ignorant of.

RIBA

It is abundantly clear that the dividend the 'shareholder' of the company receives whether the shares may be unit trusts or any other type of shares is plain riba and nothing else.

The purchaser of the unit trust/share certificate pays a sum of money to claim money (a dividend) in future. The 'dividend' that will be paid is more than or less than the amount paid for the right to claim a dividend. It is never the same amount. Riba is the consequence, and this is based on two grounds:

(1) Money is being exchanged for money, and the quantities exchanged are unequal, hence riba applies.
(2) Trade in money is called Bayus Sarf, the validity of which is dependent on simultaneous exchange of the monies in the same session of the trade. This NEVER takes place in the company system, hence the riba claim is further confirmed.

The whole system of the joint stock company is untenable in the Shariah. It is a haraam system. Its yields are haraam. The dividends shareholders obtain are haraam riba. All forms of investment on the Stock Exchange regardless of what type of Shar'i terminology is manipulated, are haraam. Muslims should not be deceived by the ostensibly holy arguments presented by the riba entrepreneurs of 'Islamic' banking. The entire 'Islamic' banking structure is modelled along the lines of the kuffaar banking system in which the foundational stone is riba.

MUSAHAMAH AND MUTAJARAH?

In its brochure advertising its unit trusts, Albaraka Bank says:

> ***"There are two Arabic terminologies that interprets equity trading: (1) Musahama: Acquisition of equities for the purpose of generating dividends (These earnings are paid as income distributions). (2) Mutajarah: Trading in equities by way of buying and selling. (These earnings are paid as capital gains distributions)."***

Suddenly Albaraka veers sharply from using Shariah terminology to 'Arabic terminology'. What bearing has Arabic terminology with the legal processes of the Shariah? In which way does contemporary or ancient Arabic terminology signify legality and permissibility in the Shariah? From which authoritative kutub of the Fuqaha of Islam did Albaraka Bank exhume these two Arabic terms?

In which authoritative kitaabn of the Fuqaha do these terms with their definitions appear? The Shariah recognizes only valid *Shirkat*, *Mudhaarabah* and *Muraabahah* agreements. The profits yielded by these enterprises belong to the partners of the respective ventures. They are absolutely free to spend and divert their profits in whatever way they desire. Albaraka Bank has made a miserable attempt to vindicate its equities and unit trusts by this nonsensical categorization of Arabic terminology.

SOUTH AFRICAN JOINT STOCK COMPANIES

In its brochure, Albaraka Bank states:

> *"The joint stock companies do not trade with the Islamic banks but receive interest or interest bearing loans from the Riba banks. This therefore brings about the difference of opinions whether trading in such companies are (is) permissible or not. There are two major opinions: The first opinion espouses permissibility of participation and trading in stocks of these companies provided that the profits earned should be purged from unlawful gains.*
> *Second opinion: This view strongly argues that participation and trading in these companies either by buying or selling, is impermissible."*

After presenting the two conflicting views of "the contemporary scholars", Albaraka Bank assumes the role of an arbitrating 'Mufti' and issues its 'fatwa' in favour of permissibility in dealing and trading with Riba companies. Thus, this Riba Bank concealing under an outer-guise of an Islamic hue says: *"The opinion of those who argue for permissibility is closer to the truth in this respect, …"*

But Albarakah Bank is not a competent Islamic authority to issue a 'fatwa' of preference between two opposing views. It presents in its brochure only the views of the advocates of permissibility of riba while ignoring in entirety the arguments of those who argue in favour of hurmat (prohibition) of riba and riba-associated trading.

Outlining the arguments of the advocates of permissibility, Albarakah Bank states:
"The advocates of permissibility have cited a number of authorities. These authorities are as follows:

(1) The legal maxim that says: What is independently impermissible is permissible when done in accompany (or accompaniment) with permissible acts."

This 'legal maxim' is not "an authority". It is a principle, not an authority. An evolved principle cannot be presented in refutation or abrogation of a *Mansoos Alayh* Ruling of the Qur'aan or Sunnah. The prohibition of Riba is based on the highest category of *Nass* (Qur'aan and Ahaadith-e-Mutawaatarah). The severity of the prohibition of all forms of Riba and participation therein is so grave that Hadhrat Umar (radhiyallahu anhu) was constrained to say: *"We abstained from nine tenths of halaal trade transactions for fear of indulging in riba."*

Riba never becomes permissible on the basis of the 'legal maxim' cited by Albaraka Bank. Riba is independently haraam. It is likewise haraam even in any deal in which it features *"in accompaniment of permissible acts"*. Depositing money in a riba bank due to compelling circumstances is permissible. This permissible act is accompanied by riba which the bank awards the depositor. This 'accompaniment' does not extricate riba from the confines of prohibition. It remains haraam irrespective of any permissible act or deed or transaction accompanying it.

Arguing this fallacy further, Albaraka states:
"The same principle is applied to intellectual property: intellectual property cannot be sold independently but can be sold subsequent to the relative tangible asset being traded."

This claim is erroneous. The Shariah does not recognize the concept of 'intellectual property'. It recognizes *Huqooq* (Rights). But such *huqooq* are not property or 'intellectual property' as averred by Albaraka Bank. Rights in the Shariah are pure rights (*Huqooq-e-Mujarradah).* It is false to say that " 'intellectual

property' can be sold subsequent to the tangible asset being traded." This leads to the misleading conclusion that *after* a tangible object has been sold, another sale may be transacted for the purchase of the rights attached to the tangible object which has already been sold. The *Huqooq* come attached to the tangible asset. The rights are inseparable from the sold tangible asset. The *Huqooq* do not form a separate subject for a sale transaction. The Shariah does not recognize the western concept of 'intellectual property' just as it does not accept the validity of the capitalist concept of a legal entity being a legal 'person' with rights and obligations.

Rights cannot be detached from a tangible asset and sold as a separate 'property' or commodity. Thus, the argument of the validity of a sale 'intellectual property' is fallacious and has been presented to deceive unwary people.

Albaraka Bank presents the following example for the application of the 'legal maxim':

> ***"Another example is the selling of a pregnant slave or an animal, the unborn cannot be sold independently but can be sold with the parent."***

The phraseology is highly misleading and presents a false picture of the Shar'i reality of the transaction. The phraseology of Albaraka Bank creates the idea that two separate sales can be transacted regarding the pregnant animal: first is the sale of the animal, then that of the unborn. The unborn automatically goes with the pregnant animal and is an inseparable constituent of the animal in the same way as the animal's stomach, legs, ears, etc. Albaraka's argument is similar to saying: An animal's skin (or any other part) can be sold subsequent to selling the animal. But this is fallacious. The implication of a subsequent sale of the

unborn or the animal's skin is erroneous and misleading since no such sale takes place.

The unborn accompanying its mother into the ownership of the buyer does not become his property by virtue of the 'legal maxim'. Selling it as a separate entity is unlawful and not valid. It became lawful for the buyer of its mother not on the basis of the 'legal maxim', but on the basis of the sale transaction in the same way as the animal's legs, skin and all its parts became the property of the buyer.

Let as assume that the unborn was removed and separated from its mother or the horns are separated. It will now be permissible to sell these items independently without the need for the sale to be 'subsequent' to the sale of the animal from which these parts were procured. But, Riba remains haraam whether it exists independently or in accompaniment with any permissible act.
Albaraka Bank further states:

> ***"The advocates that argue for the permissibility stated that dealings with interest-based transactions separately are vehemently condemned by the Shariah. But if these transactions were mixed with lawful means and those lawful means significantly outweighed the unlawful means, then lawfulness will prevail and vice versa."***

This argument is also fallacious. Again the phraseology employed here conveys the idea that while separate interest transactions are 'vehemently condemned by the Shariah', riba is not vehemently condemned if it is mixed with some lawful transactions. No sane Muslim, leave alone an Aalim of the Deen, can ever accept such drivel which hover on the brink of kufr.

Furthermore, every lawful thing is not necessarily acceptable on account of its lawfulness. Many lawful things are 'vehemently

condemned by the Shariah' notwithstanding their lawfulness. For example, divorce while being lawful is vehemently condemned and described as the 'most-hated' of the lawful things. No one can question the 'lawfulness' of three simultaneous Talaaqs, but such Talaaq is vehemently condemned by the Shariah.

Albaraka Bank has endeavoured to create the idea that riba becomes lawful if mixed with halaal transactions. But this is extremely erroneous and blatantly false. In the first instance, riba NEVER becomes halaal (lawful) if it is mixed with lawful transactions. Secondly, when haraam money has become mixed with halaal money, and the latter is the greater quantity, then too, the obligation is Waajib to expunge the haraam contamination by contributing to the proper avenue of charity the haraam amount.

The Shar'i concept of the lawfulness of the whole compound of the admixture is not a principle or maxim for legalizing what Islam has made haraam. The homologous admixture, i.e. the mixed up money, is a separate entity for which the Shariah issues its ruling of lawfulness if the halaal is more than the haraam. It is entirely a separate issue which has no relationship with the legalization of haraam practices. For example: Money acquired from gambling was mixed up with halaal money which is more than the haraam money. The Shariah rules that this mixture of money is halaal. The Shariah does not condone such admixing of monies. It is sinful to mix haraam money with halaal money. The Shariah merely issues its ruling in the event of some luckless soul having committed the grave sin of mixing haraam money with halaal money.

The Shariah does not say that gambling becomes halaal as a consequence of the admixture. The haraam amount still has to be

separated from the admixture and given away in charity without a niyyat of thawaab.

But these Muslim banks seek to mislead and hoodwink people into believing that riba becomes lawful if the riba transaction is mixed up with some halaal transactions. Truly, this is the logic of shaitaan.

Mixing the lawful and the unlawful does not produce lawfulness of the unlawful. Mixing baatil and haraam transactions with halaal transactions does not render the haraam riba dealings lawful. The principle which Albaraka Bank is confusing here is known as *Istihlaak* which means the elimination of haraam wealth (not haraam transactions producing haraam wealth). If haraam money for example has been admixed with halaal money in such a way that the haraam cannot be distinguished from the halaal, then if the halaal component of this whole is more than 50%, the Shariah rules that the whole is lawful, but contaminated. However, inspite of this ruling it still remains incumbent to eliminate the amount of haraam wealth which had been mixed with the haraam money.

The result of this principle is simply that the haraam amount, not the precise haraam coins, must be eliminated and channelled into avenues allowed by the Shariah. Since the admixture has rendered differentiation impossible, the Shariah orders that the amount of haraam money should be removed from the whole whether the amount consists of the initial haraam or halaal coins.

But, if the two can be distinguished and physically separated, the principle of *Istihlaak* will not apply, and it will be incumbent to physically separate the haraam component.

Bank overdraft is haraam since it carries the evil of riba. Nevertheless, the money acquired by paying riba remains halaal. The acquisition of a bank loan is one transaction. Utilizing the loaned money in a lawful trade is permissible. But the riba remains haraam. The lawful trade transaction does not render lawful the transaction of acquiring an interest bearing loan irrespective of how insignificant the loan transaction may be in comparison to the lawful trade transactions.

It should thus be clear that the admixture of halaal and haraam transactions does not render halaal the haraam transactions. The admixture renders the whole physical tangible pile of assets lawful because of the inability to differentiate the haraam component of the whole from the halaal component. But this rendition of halaal does not absolve the mixer from the obligation of eliminating from his ownership the amount of the haraam component which has become indistinguishable due to the admixture.

In an attempt to give Shar'i sanction to haraam wealth, Albaraka Bank says in its brochure:

> ***"The first opinion espouses permissibility of participation and trading in the stocks of these companies provided that the profits earned should be purged from unlawful gains. In other words, the unlawful gains should be channelled in public interests and charity services according to certain rules and conditions."***

This claim is erroneous and misleading. This is not the opinion of the Shariah. It is a baseless opinion which lacks Shar'i substance. It has been derived by an incongruent application of principles and a misunderstanding of such principles. The impression conveyed by this averment is that it is permissible to

indulge in riba and all haraam trading provided that the haraam gains are diverted into charitable avenues. The inescapable conclusion is that commission of haraam is lawful if the end is noble. The Shariah rejects this baatil notion. A noble end does not justify haraam.

While 'purging' the admixture of haraam and halaal monies from the haraam-halaal admixture by giving the haraam amount to charity, participation in the haraam or riba transaction remains haraam and the perpetrator is deserving of severe Divine Punishment. He has to repent for having participated in unlawful riba transactions. Purging the money from its haraam component is not Taubah. Taubah is subsequent to the act of purgation which by itself does not absolve the perpetrator of the heinous sin of indulgence in haraam transactions.

Albaraka Bank has attempted to peddle the notion that it is perfectly permissible to engage in haraam trade and riba dealings as long as the intention is to channel the ill-gotten haraam gain into charitable avenues. This is a travesty of the truth. The Shariah does not permit this. The act of purgation is merely a device for absolution after the sin was committed and the Muslim desires to purify himself and his wealth from the haraam pollution. Purgation of wealth is not a licence for participation in riba dealings.

Mismanipulation of legal maxims and Shar'i principles has become a salient feature of the capitalist Muslims who utilize the Deen for satisfying their inordinate monetary and worldly cravings.

Another argument presented by Albaraka Bank for permissibility to participate in riba trading is:

> *"The advocates that argue for permissibility substantiated the aforementioned legal maxim by quoting the learned Scholar Ibn Taymiyya (R.A.), who argued that necessity permits things that are impermissible as in the case of permissibility of barter sale or exchange between the ripe dates for unripe dates, as impermissibility will lead to putting people in a very difficult situation due to their dire needs."*

A better attempt should have been made than citing Ibn Taimiyyah with an example of ripe and unripe fruit for legalizing participation in Riba trading. The principle: *Dhurooraat (dire necessities) make lawful prohibitions,* is as old as Islam. The Qur'aan Majeed states the basis for this principle. It is no a principle which Ibn Taimiyyah developed in the 7th century of the Islamic era. In relation to the Aimmah-e-Mujtahideen of the very first century, who had formulated this principle on the basis of the Qur'aan, Ibn Taimiyyah is a veritable non-entity.

This principle cannot be presented as a Shar'i basis for legalizing the participation of Muslim banks in riba trading with kuffaar companies. Investing in kuffaar riba companies is not compelled by *Dhuroorah* (Dire Need). Non-participation in these companies does not lead to any "very difficult situation" beyond normal endurance. The vast majority of Muslims, perhaps 99.9%, does not participate in the investment schemes of the Muslim capitalist bankers, and they do not suffer in consequence thereof.

The Fiqhi principle mentioned above may not be mismanipulated to legalize the grave sin and evil of riba which is prohibited by *Qat'i Nusoos* (Absolute Proofs of the Qur'aan and the highest category of Ahaadith). There is absolutely no scope

for the invocation of this principle for the purpose of satisfying the pecuniary motives of the capitalist entrepreneurs. No Muslim had suffered when these so-called 'Islamic' banks had not yet mushroomed, and no one will suffer should they disappear into oblivion. It is ridiculous to employ the principle of legalizing prohibitions for the acquisition of luxuries and provision of comforts. The argument is thus fallacious and does not facilitate Albaraka's attempt to legalize haraam riba.

A further fallacy tendered by Albaraka for participation in riba companies is:

> *"The advocates that argue for permissibility substantiate the aforementioned legal maxim by stating that the majority of scholars of Fiqh and Islamic jurisprudence approved that it is permissible to trade in funds and that the unlawful part is negligible by any form of usage which the Shariah has sanctioned."*

This argument is devoid of substance and does not substantiate the claim of permissibility of participation and trading with kuffaar companies which engage in riba transactions. In this argument, Albaraka Bank seeks to substantiate the 'legal maxim' it has cited in its abortive bid to legalize its participation and trading in stocks of the kuffaar riba companies. It is indeed superfluous to endeavour to produce substantiation for a legal maxim which has not been challenged by anyone. No one refutes the validity of the legal maxims which the illustrious Fuqaha of the *Khairul Quroon* era had evolved on the basis of the Qur'aan and Ahaadith.

Substantiation is not required for the *"aforementioned legal maxim"*. Substantiation (Shar'i proof) is required for bolstering the haraam participation of these banks.

The contention of the permissibility of trading in funds was never challenged. *Bayus Sarf* is unanimously permissible in the Shariah. No one is disputing this fact. What is refuted and branded as haraam, is the participation of the so-called Islamic banks in the trading activities with kuffaar riba companies. Thus the citation of this Fiqhi principle is nothing but an attempt to load the list of 'proofs' to awe those who lack in the knowledge of the Shariah. Or perhaps the citation was prompted by the lack of understanding of the meaning of the Shariah's principles by those who have set themselves up as muftis in the office of Albaraka Bank.

A further fiction tendered to legalize the haraam participation is the bank's averment: *"The advocates that argue for permissibility stated that if lawful is the majority, then the legality of such an act prevails although it might involve some unlawful acts."*

The inordinate craving for making quick money regardless of the methods of acquisition, has driven the 'Islamic' banks into a state of madness produced by shaitaan. Fiqhi principles are presented to scuttle the Shariah –to legalize swine flesh and the vice of riba when there is absolutely no dire need to save life and limb. The Deen has become a toy in the hands of insane entrepreneurs –driven to insanity by the touch of shaitaan. They lack proper knowledge of the masaail of Tahaarat and Salaat, yet these capitalists regard themselves qualified to issue verdicts on issues of grave Shar'i importance.

How simply and stupidly have they understood the issue of legalizing haraam! It is not as simple as Albaraka Bank puts it, viz., that a haraam becomes halaal merely by a majority of halaal. Ten riba transactions never become halaal if the same person enters into 20 halaal dealings, or if the ten riba

transactions form part of a conglomeration of dealings of which the major part consists of halaal contracts.

Ten lawful acts of Sadqah never render halaal one act of gambling, for example.

A BASELESS ANALOGY

In its endeavour to legalize trading with and investing in riba companies, Albaraka Bank states:
"What is inescapable is tolerable' – The advocates that argue for permissibility substantiate it by quoting Al Bahooti's statement, which says: 'What cannot be drained, like the sewers of Makkah, does not become impure by urine, or by anything else, until its colour or look is changed."

The principle, *'What is inescapable is tolerable',* is baselessly employed in the endeavour to legalize riba and haraam wealth. The analogy with the *sewers of Makkah* is absolutely ridiculous and fallacious. The sewer waters will always be impure whether urine enters it or not, because the colour, look and taste of such waters are always changed by an abundance of impurities. Sewer water is never pure. The discussion refers to clean rain water flowing in street gutters or canals, etc., not to filthy sewer water which does not require a further addition of urine to render it impure. Its impurity is a confirmed fact. The filth (najaasat) in sewer waters is always conspicuous. Yet, inspite of the aforementioned principle, the ruling of impurity will necessarily apply on account of the transformation of the properties and attributes of the water. The 'tolerability' of the initially pure water having become impure water is conditioned with 'colour and look'. It is not unrestricted.

Furthermore, the stupidity of the analogy is self-evident. What is the relationship between sewer water and indulgence in riba-

trading? What makes investment in haraam stock companies 'inescapable'? What suffering does abstention from involvement with riba companies create? If the only well in a village has been rendered impure and there is no way of purifying it, the argument of 'inescapability' has validity. If no other water is available, the use of the impure water of the solitary well becomes tolerable in the same way as haraam meat becomes tolerable to save life when absolutely no halaal food is available. But what is the life-demanding need to become involved in trading and investment with ribat enterprises? The claim of 'inescapability' in relation to riba investment is a figment of the imagination of the capitalists of these banks.

The vast majority of Muslims throughout the world do not invest in these riba companies listed on the stock exchange. None of them suffer in consequence of non-participation in these companies. Only a tiny minority, namely, the extremely wealthy members of the community, especially the capitalist-minded, invest in riba companies and haraam businesses. Riba and haraam cannever be legalized on any principle of the Shariah for further bloating the pockets and filling the coffers of millionaires and billionaires—of people who are really in no need of the ill-gotten money which their haraam investments will generate.

Another utterly baseless analogy to legalize indulgence in riba, is Albaraka Bank's citation from the Al-Majmoo' of Imaam Nawawi (rahmatullah alayh):

> ***"A sale wherein the uncertainty is unavoidable is lawful although it might involve some degree of Gharar. An example of a sale of Gharar where the uncertainty is unavoidable relates to disclosing the strength of the foundation of a house purchased."***

What is the similarity between the inability to disclose the strength of the foundations of a house and indulgence with the haraam stock companies to earn haraam income? This analogy is fallacious and can never be accepted as a basis for permissibility to invest in riba companies. What makes such investment incumbent or absolutely necessary to justify dealing with companies which deal in riba? Purchasing a building without disclosing the strength of the foundations, is not a haraam act. But riba is absolutely haraam. Disclosing the strength of the foundations is normally impossible. This type of uncertainty does not exist in kuffaar companies dealing in riba and other haraam and baatil transactions.

BUSINESS ACTIVITIES

The Unit Trust brochure states:

> **"*The advocates of permissibility who participate in these stocks acknowledge that usury is unlawful, whether in the form of stocks or otherwise. But the sale and purchase of equities is (are?) lawful because the business activities of these companies are primarily lawful and the unlawful part generated from an ill-gotten income as a result of usury can be purged, set aside and spent for charity and public interest."***

It is haraam to participate in any business knowing that it generates haraam income regardless of the "business activities being primarily lawful". The argument of purging haraam wealth by giving it to charity is baseless, in fact, unlawful. Haraam wealth which has by some misfortune come into one's possession has to be compulsorily eliminated by giving it to charity. Such purgation is not a licence for participation in ventures to earn halaal and haraam wealth with the intention of giving the haraam part to charity. Participation remains haraam.

Participation in even a business in which the activities are 100% lawful can also be haraam if the trade transactions and contracts of a business are *baatil and faasid.* Even if the only products sold are Zam Zam Water and Mushafs (Qur'aan copies), then too will it be haraam to participate in such a venture. The argument of the business activities being primarily lawful is not valid.

If the agreement on the basis of which the investor acquires gain/profit is in conflict with the Shariah, such yield will be haraam. Notwithstanding the 100% halaal nature of the actual business activity, e.g. the products sold are only halaal foodstuff. However, according to the partnership agreement, Zaid who is a partner receives a fixed monthly sum of money for his capital investment. This gain acquired by Zaid is riba and is haraam notwithstanding the 100% lawful business activities of the business.

In the same way, the gain acquired from investment in equities is riba and not lawful due to the unlawfulness of equities. Since dealing in shares in public companies is not valid, hence haraam, the yield is haraam riba. The gain of this type of investment will not be halaal simply because the trading activities or the products sold by the company happen to be halaal. A massive deception perpetrated by the Muslim capitalists is to present the smokescreen of lawful products in which the companies deal. The public is misled and made to believe that purchase of shares in certain joint stock companies is lawful because they do not deal in liquor and pork. This is not the only criterion for lawfulness in the Shariah. In addition to the products being halaal, the agreement/contract on the basis of which profit is earned must also be lawful. But shares and equities are not lawful, hence the dividend yielded is also not lawful.

THE OPINION OF THE BANK

The capitalist Bank setting itself up as a grand mufti issues the following verdict:

> **"*The opinion of those who argue for permissibility is closer to the truth in this respect, for the following reasons:*"**

Among the reasons for its opinion, the capitalist bank tenders the following: *"The strength of the sources they have cited from jurisprudence provisions and legal principles."*

Let the capitalist Bank furnish the sources of 'jurisprudence' which the legalizers of riba have provided for their view so that their strength and validity could be scrutinized. This arbitrary claim is baseless. What are these sources? We have just shown that the 'legal principles' cited by Albaraka Bank, have no application in the determination of permissibility in relation to the shares and equities. The principles have been mismanipulated and an abortive attempt has been made to apply these 'maxims' to legalize what the strongest Sources declare absolutely Haraam. The strongest Sources are the Qur'aan, Ahaadith and Ijma' of the Ummah.

Far from Islamic jurisprudence (Fiqh) legalizing the haraam dealings of the stock exchange, it rather confirms the *hurmat* (unlawfulness and prohibition) of the capitalist systems and relegates the trade in shares and equities into the domain of *butlaan* (being baatil and haraam).

The second reason tendered by Albaraka Bank for the permissibility view is: *"The backtracking of some advocates of impermissibility and their coming closer to arguing for permissibility, (27-29 Muharram 1419 A.H.)"*

The alleged "backtracking of some advocates of impermissibility" does not bolster the view of permissibility. Firstly, this claim is highly ambiguous. The reasons for the alleged "backtracking" are mysterious. The backtrackers have not been mentioned. Their arguments are unknown. Their "backtracking" has absolutely no bearing on the arguments of impermissibility. The arguments should be clinically dispensed of by providing solid Shar'i grounds for such dismissal. Furthermore, the views of contemporary liberals really do not hold much weight in the Shariah. Generally, their opinions are heavily influenced by the inordinate demand of the Muslim capitalists to make halaal just every haraam concept spawned by western capitalism.

The arguments of the 'backtrackers' are just as baseless as the arguments of the advocates of permissibility—arguments devoid of Shar'i substance –arguments which stretch Shar'i principles beyond the confines of their operation –arguments which employ Shar'i principles to cancel out Qur'aanic and Sunnah prohibitions.

The third reason offered by Albaraka Bank for its acceptance of the permissibility view is: *"This would serve in the common interest of the Ummah in the vital economics field of conducting business."*

Should it be accepted that the permissibility view "would serve in the common interests of the Ummah", then it will be like saying that haraam food would serve in the common interests of the Ummah in the vital field of nourishment and sustainment of life especially in the poverty stricken regions of the world. The fallacy of this type of reasoning should be manifest. Then the claim that the particular dealings of the bankers, such as leasing and selling luxury items to wealthy persons and to the not so-

wealthy, but generally to people living comfortably and desirous of luxuries beyond their means, are within the ambit of 'vital' needs, is blatantly false. It is a naked lie which deceives only the bankers themselves. The masses of the Ummah are not in the least reliant for their living on the facilities of the riba-capitalist Muslim banks such as Albaraka Bank. Their Rizq is Allah's Responsibility, and He provides such Rizq without there being any need whatsoever for indulgence in riba and haraam.

The "common interests of the Ummah" have to be served by means of halaal, not haraam. Riba cannot be a way for serving the "common interests of the Ummah". The Qur'aan categorically declares: *"Allah increases Sadqah (i.e barkat and the quantity of wealth), and He eliminates riba (i.e. He destroys wealtht of riba)." The "common interests of the Ummah"* cannot be lawfully and constructively served by the endeavour to legalize riba by means of baseless interpretations of maxims and principles totally unrelated and inapplicable to this issue.

The averment that the field of operation of the capitalist bankers is *"the vital economics field of conducting business"* is true in relation to only the banks such as Albaraka. The economics of the capitalist Muslim bankers are not 'vital economics' for the masses of the Ummah. The masses hardly have any connection with these banks. Furthermore, these riba-banks driven to madness by the touch of shaitaan DO NOT serve the needs of the Ummah at large. It is not their policy to be of any assistance whatsoever to needy Muslims and to the masses of Muslims. The mechanics of their trade is vociferous testification for the wide chasm which exists between the Muslim banks and the Muslim masses. It is more difficult to do a deal with a bank like Albaraka for example, than with a non-Muslim bank such as Westbank. The requirements for passing the applicant's

creditworthiness are more cumbersome and greater in quantity than the requirements stipulated by the non-Muslim banks.

To grant credit on which riba will be charged, the Muslim riba-bank requires, for example, 6 months of bank statements and financial statements (balance sheets, etc.) while the non-Muslim bank does not require this much of information. The very modus operandi of the Muslim bank confirms that only a very small group of well-to-do people can benefit from the riba-loans it advances. Let no one be under any misapprehension in this regard. The Muslim bank **does not buy and sell anything.** It does not purchase a vehicle. It does not own a vehicle to resell at a profit. Its claim of a muraabaha sale is a massive deception, fraud and falsehood designed to hoodwink unwary Muslims. The Muslim capitalist bank does only one shaitaani act –it advances a loan on interest. It then seeks to cover its haraam tracks with names such as muraabahah, etc. But the veneer of the Shar'i hue with which it has painted its transactions are too thin to conceal the reality of the misdeeds being perpetrated in the name of Islam and under the aegis of signatures of Muftis who have likewise been misled and constrained to issue fatwas of legalization. From beginning to end, it is only *Riba* which regulates all the transactions of the capitalist Muslim banks.

The fourth reason Albaraka Bank advances for the permissibility to trade in haraam shares is:

> *"The permissibility has opened a wide scope for Islamic banking world wide, and this is presently being a form of Da'wah of the message of Almighty Allah."*

Indeed Albarakah Bank has descended into the depths of moral decadence by dragging the glorious Name of Allah Azza Jala and the sacred institution of Da'wah and Tableegh into its sordid mess of haraam riba dealings. Men of these banks who have no

respect for the *Ahkaam* and institutions of the Deen dare speak of Allah Ta'ala and Da'wah. You phone the bank to transact a deal and you have to commence with *zina.* The first thing that happens is to hear a female whispering into your ear. They speak of Da'wah and Allah Ta'ala while they flagrantly disregard Allah's *Hijaab laws.* The muftis who support these evil banks lack the very basic Islamic decency and shame when dealing with these miscreants. They refrain from vital and fardh naseehat. They will not admonish the modernist capitalists in issues of moral turpitude which are flagrantly perpetrated. These muftis sit together with the females, savouring their eyes, tongues and ears, with the looks and voices of the females whom the Muslim entrepreneurs employ in attempts to seduce customers and the bosses in exactly the same ways as their kuffaar counterparts do. The mufti saahibaan should hang their heads in shame.

Just what Da'wah stems from the riba deals of the banks? The Message of Allah declares that riba is haraam. But the shaitaani 'da'wah' transactions of the banks are contaminated with riba. This argument of Albaraka Bank is like a person priding himself with having made wudhu with urine. There is absolutely not even a semblance of rationality in this ludicrous averment which a brain driven to insanity by shaitaan's touch has advanced as a reason for legalizing riba on the fallacious basis of mismanipulation of Shar'i principles and 'maxims'. What a stupid reason for an attempt to legalize haraam!

The fifth corrupt reason tendered by Albaraka Bank for the view of permissibility of the modernist muftis and sheikhs is: *"This is instrumental in providing Islamic banks with an alternative for short term investments."*

Firstly, Albaraka Bank and other banks of its ilk are not 'Islamic' by any stretch of imagination in the same way that a tatter shall or bottle store owned by a Muslim cannot be 'Islamic'. Muslim ownership does not necessarily make an institution Islamic. If legalization of riba and haraam will provide an alternative for short term investment, it is not a ground for permissibility of what Allah has made impermissible. The Shariah does not issue a licence for legalization of haraam and riba to satisfy the need of the banks for short term investment.

The five 'reasons' presented by Albaraka Bank for its preference of the view of permissibility are all utterly baseless. These 'reasons' are devoid of Shar'i substance and are not at all grounds for making a choice between two opposite views – between halaal and haraam. Such a choice can be made by only properly qualified Ulama on the basis of Shar'i *dalaail*, not the type of stupid and insipid arguments motivated by the percuniary interests of the bankers whose prime concern is only to make money by hook or crook in ways which may be even haraam.

ALBARAKA BANK'S 'FATAWA'

In a truly ridiculous averment, Albaraka Bank states:

> *The Fatawa of Albaraka's 6th Islamic Economic Seminar (6/5) on purchase of equities in Joint Stock Companies with lawful objectives but which occasionally deal with usury by way of extending, or seeking loans. The opinion of the participating fuqaha* (sic!) *appears to be in favour of purchasing such stocks."*

Our advice to Albaraka Bank is to revert to Hadhrat Mufti Taqi Saheb to ask him for the meaning of the term 'fuqaha'. Albaraka is blissfully ignorant of the meaning of Fuqaha. The participants of the 'economic seminar' of Albaraka Bank are not Fuqaha.

Albaraka Bank does no possess even an idea of the meaning of Fuqaha. The age of the Fuqaha has terminated a thousand years ago.

Inspite of the participation of the assumed 'fuqaha' in a seminar organized for Albaraka Bank's pecuniary aims, Albaraka still has no clear direction, hence it is constrained to say *"appear to be in favour of purchasing such stocks"* -- haraam stocks! Despite the participation of a galaxy of modernist 'fuqaha', no clear direction—no categoric 'fatwa' was forthcoming, hence the bank is constrained to proclaim the permissibility view with misgiving and uncertainty.

A disease of the nafs from which all modernists suffer chronically is to rush into the skirts of *taqleed* of liberal sheikhs when the 'fatwas' appear palatable and serve the desired interests. Hence, the modernist capitalists of Albaraka Bank are quick to cite 'fatwas' of sheikhs in its attempt to bolster its riba dealings. Feeling snug with such fatwas, the Bank states:
"*The said memorandum permits investment in these equities. The Shariah boards of the following (5 riba-capitalist banks) adopted the view of those who argue for permissibility."*

Firstly, the so-called 'shariah boards' of the riba-banks have no Shar'i credibility. The members of these boards have worldly interests with these banks, hence they will sit together in settings and scenarios which advocate even zina of varying degrees. Secondly, the adoption of the banks of the view of permissibility is simply a natural choice of those whose job it is to manufacture money by legalizing the prohibitions of Allah Ta'ala. Thirdly, let it be known that the *baatil fatwas* of the liberal sheikhs and muftis hold no water in the Shariah. In this regard, this Ummah is constrained to heed the following warning of the Qur'aan in its castigation of the Ulama of Bani Israaeel:

"They take their Ahbaar and their Ruhbaan as gods besides Allah."

It was the accursed practice of the sheikhs and muftis of Bani Israaeel to do what the modernist and liberal sheikhs and muftis of our age are doing. They legalized haraam to gain the favour of the wealthy capitalists and to gain worldly contributions for their pet projects and for themselves from those whose desires they upheld with their corrupt fatwas. These liberal learned men have opened up a miserable avenue of *baatil ta'weel* (false interpretation) to gain the favour of the wealthy capitalists. Hadhrat Haaji Imdaadullah (rahmatullah alayh) speaking on the subject of this type of interpretation said: *"They have opened up such a wide portal of interpretation through which several elephants can pass together."* So wide and terrible is this doorway of *baatil ta'weel* initiated by the liberal muftis and shaikhs that a number of 'elephants' can go through all at once, not in single file.

SHARIAH SUPERVISORY BOARD?

About its 'shariah' board, Albaraka Bank states: *"It is made up of a team of Islamic legal scholars……the boards role is to ensure that the fund is in compliance with the letter and the spirit of Islamic investing."*

Neither do Albaraka's business activities comply with the letter nor with the spirit of Islam. On the contrary, the entire operation of the Bank is in compliance with the letter and spirit of the kuffaar capitalist economic system as it quite apparent from the methodology it has adopted when granting credit facilities to clients, and when it claims payment from clients who may have become involved in financial difficulties. There is absolutely no

difference between these Muslim-owned banks and the non-Muslim banks in all their activities.

What brand of "Islamic legal scholars" does Albaraka Bank have in its employ? The obligatory duty of Islamic scholars is to uphold the Institution of *Amr Bil Ma'roof Nahy Anil Munkar* (Commanding righteous and prohibiting evil) in every sphere of the Deen, not only in the financial department. The moral (*Akhlaaqi)* sphere is a vital component of the Shariah. Instead of admonishing the modernist owners of the bank and applying pressure on them to refrain from employing female staff—a purely lewd practice of the kuffaar—the molvis who constitute the bank's so-called shariah supervisory board, participate in haraam acts along with the modernist capitalists of the bank.

These molvis cannot honestly plead ignorance for their condonation of the practice of female employees and receptionists at the bank. Surely they must be aware of the famous Hadith in which Rasulullah (sallallahu alayhi wasallam) stated with great clarity that the various organs of the body commit zina. Thus, the ears, the eyes, the hands, the heart, etc., all commit zina when they become involved with females for whom observance of *Hijaab* is imperative—*Waajib.* Yet they freely intermingle and interact with the female staff, no purdah whatsoever being observed.

Every client has to suffer the spiritual and moral calamity of having to speak with female receptionists. Muslim clients of these banks have complained to us in this regard and have voiced surprise, not because of the employment of female staff by the modernist fussaaq bank owners, but by the flagrant approval for this practice offered to the bank by the molvis – by the so-called "Islamic legal scholars" of the so-called "Shariah Supervisory Board". They have truly abdicated their office of

molwiyyat and have assumed the despicable role of the ulama-so' of Bani Israaeel of bygone times.

When learned people – "Islamic legal scholars" – show absolutely no regard for the Qur'aanic commands of *Hijaab*, what confidence can anyone repose on them in matters of monetary concern, especially when they constitute cogs in the riba enterprise of the Muslim capitalists?

When Hadhrat Umar (radhiyallahu anhu) was on his way to take possession of the City of Jerusalem, he halted at a place called Jabiyyah. In an address to the Sahaabah and other Muslims who had assembled to welcome the illustrious Khalifah, Hadhrat Umar (radhiyallahu anhu) said:

> ***"O People! Reform your souls (your characters), then your outward actions will become (automatically) reformed……Practise for your Aakhirah, and your mundane affairs will be seen to……..Never ever be alone with a woman, for verily, the third one present is shaitaan."***

Sayyiduna Umar Ibn Khattaab (radhiyallahu anhu), the Second Khalifah and Ruler of the Islamic Empire was on his way to take political possession of an important prize city and to annex it to the Islamic Empire. Yet, his address to the Sahaabah and the Mujaahideen emphasised the moral aspects of the Deen, among which he singled out for mention the strict observance of purdah and to scrupulously avoid being together with females. The illustrious Khalifah did not fail in his duty of *Amr Bil Ma'roof.* His political preoccupations and the responsibility of the Khilaafate did not make him indifferent to the morality of the Ummah. But the molvis of the bank's 'shariah board' in their air-conditioned offices with hardly any work to do, cannot find the time nor the enthusiasm to admonish their paymasters who

indulge in acts of moral turpitude – total and flagrant violation of the Qur'aan's *Hijaab Ahkaam.*

Muslims cannot place any reliance on a board of so-called "Islamic legal scholars" who show scant regard for the *ahkaam* of the Shariah which they pretend to expound. Their prime function is to search the *kutub* of the different Math-habs to dig out some detail on the basis of which impermissible acts could be made permissible to gain the favour of their capitalist bosses. They have no other function but to formulate legless 'proofs' by the method of *baatil ta'weel* to render halaal the haraam activities of the capitalist bank operators These boards of 'Islamic legal scholars' are not viable Shar'i institutions. They are the handmaids of the entrepreneurs to aid them in the achievement of their monetary goals. And, the prime method of these boards is to fabricate only such fatwas which render haraam into halaal.

THE JOINT STOCK COMPANY

The modernists and pro-western capitalists in the Muslim community are always at pains to convince Muslims that the joint stock company is exactly like a *Shar'i Shirkat* (Partnership). Inspite of their strivings to prove their point and the employment of baseless interpretation, they have failed in their exercise. The simple reason for their failure is that the joint stock company is plainly not a Shar'i partnership.

Albaraka Bank has been constrained to concede this reality, albeit grudgingly. In order to justify investment in such ventures, Albaraka's brochure states:
"Shariah scholars mentioned that the joint stock company is basically different from a simple partnership. In a partnership contract the actions and dealings of each partner is (are) attributed to each other by way of agency. But in the joint stock

company the majority rules, therefore the majorities (majority's) choice cannot be attributed to the individual's disapproval (approval!)."

This statement is a candid admission of the claim that joint stock companies are not valid partnership enterprises in terms of the Shariah. Since the joint stock company is *basically different* from a simple Shar'i partnership, then what exactly is a 'joint stock company' in terms of the Shariah? In which category of dealings does the company fit? It is *basically different* from Islamic *Shikat*, hence it is never a valid Shar'i partnership.

Albaraka Bank has been constrained into this admission in its attempt to justify investment in joint stock companies which invest in interest bearing accounts to earn riba. The bank then presents its understanding of 'legal maxims' to achieve the trick of transforming haraam money into halaal. But, it is haraam for the Muslim Bank to invest in such businesses in the first place. The "legal maxim" which states the transformation, is entirely another issue as has been explained earlier in this booklet. That principle does not legalize participation or investment in any riba institution to earn contaminated money.

The legal principle applies in a different situation. It is not a licence for investing in a riba business. This has already been explained in detail.

10% HARAAM

The evil gymnastics with *ta'weel-e-baatil* has culminated in a shameless acceptance of haraam. Albaraka Bank states in its brochure: "*The percentage of non-halaal income in the income statement must not exceed 10%. Income from interest bearing accounts and non-halaal investments in total divided by total*

income (mark the gymnastics!) *must not exceed 10% If the* (haraam) *income exceeds 10% then such an investment will not be permissible. The purification process must be adhered to if the fund earned 10% or less of income from non-halaal activities."*

From whence did Albaraka Bank acquire the 10% limit? Has Albaraka become the divine lawmaker?

The logic displayed by the Bank here creates the notion that to invest in a haraam venture is permissible provided that the haraam income does not exceed 10% of the total income of the investor. The implication, in fact categoric claim, of this statement is that it is permissible to invest in a haraam business and earn haraam riba income as long as the haraam income is 10% or less in relation to the halaal income acquired from the other investments.

There is no basis for this conclusion in the Shariah. It is downright stupid and false to aver that if the percentage of haraam income does not exceed 10%, then such investment is lawful and if it exceeds 10%, it is unlawful. From where did they obtain this ludicrous 'fatwa'?

It is haraam to invest in an institution which pays haraam returns regardless of the percentage relationship which such haraam riba has with other halaal income. Truly, this type of logic and conclusion are the effects of brains deranged by the touch of shaitaan as the Qur'aan Majeed states.

Pursuing this corrupt and utterly baseless line of reasoning, Albaraka Bank avers "*The non-halaal investments must not exceed 30% of the company's total market capitalization."*

.....The ratio of 30% is prescribed due the fact that it is less than 1/3, and 1/3 has been declared abundant in the Hadith of our beloved Muhammad (S.A.W.). (Bukhari & Muslim)."

The bank dithers between 10% and 30%. The 'ijtihad' of the bank has failed to present a uniform principle to regulate its investments to earn haraam riba. In one instance 10% haraam earnings render the investment unlawful, while in other instances it is one third. This confusion is the consequence of the type of satanic insanity which according to the Qur'aan Majeed applies to those who indulge in riba.

This is truly rotten 'ijtihad' of the *juhala* (ignoramuses). Albaraka Bank or its decrepit and incompetent 'shariah supervisory board' consisting of so-called 'Islamic legal scholars', has attempted to formulate a new principle of Fiqh based on a Hadith which has absolutely no relevance to either the issue of legalizing haraam nor to the formulation of a principle. This silly 'ijtihad' of unqualified men has proposed a new 'principle' which has not existed in Islam for the past fourteen centuries. In its stupid 'principle' Albaraka Bank avers that it is permissible to earn haraam income as long as the unlawful earnings are less than one third of the total of one's halaal income. The basis for this new fangled 'principle' in Albaraka's opinion is a Hadith in which it is mentioned that one third is much or abundant.

The Hadith to which Albaraka Bank refers pertains to the issue of inheritance. A Sahaabi had asked Rasulullah (sallallahu alayhi wasallam) if he should bequeath two thirds of his wealth to Sadqah. Rasulullah (sallallahu alayhi wasallam) refused permission for this and advised one third, adding that one third is much.

This Hadith has no relationship with haraam earnings. Not a single among the Fuqaha since the inception of Islam had ever utilized this Hadith or any other Hadith to formulate the principle which Albaraka's corrupt 'ijtihad' has produced. There is no principle in the Shariah which allows the earning of haraam money on the basis of it being less than one third or more precisely 30% (according to the tin-plated modernist mujtahids), of the total of one's halaal earnings.

The 30% 'principle' is a fraud fabricated in the name of Rasulullah (sallallahu alayhi wasallam) by the ignorant modernist 'mujtahids'. About such falsehood, Rasulullah (sallallahu alayhi wasallam) said: *"He who alleges falsehood on me, should prepare his abode in the Fire."*

In the Hadith in question, Rasulullah (sallallahu alayhi wasallam) mentioned that for the purpose of making a bequest to charity, the testator should not exceed one third of his total wealth since one third was much and adequate. The rationale for this decision was clearly mentioned by Nabi-e-Kareem (sallallahu alayhi wasallam). In ordering the Sahaabi not to exceed one third, Rasulullah (sallallahu alayhi wasallam) said: *"It is better that you leave your heirs wealthy than in a state of poverty which will constrain them to beg from people."*

It is the height of ignorance and shaitaan-induced insanity (Qur'aanic epithet) to infer from this Hadith permission to earn haraam wealth as long as it is 30% of the halaal wealth which is earned elsewhere. The Hadith has been ludicrously used to override the Qur'aanic and Hadith prohibition of riba in particular, and haraam earnings in general.

This stupid 'principle' effectively means that a Muslim is allowed to gamble, indulge in riba and other haraam business

activities to earn haraam money as long as the ration of 30% is observed. The brains which have spawned this haraam principle are truly lamentable. The bank should present substantiation from the Fuqaha and the Books of the Shariah for its 'principle' which it has clearly sucked out from its thumb.

If the 30% claim is a Shar'i principle, it should have uniform application in all Shar'i issues. Consider the example of a mixture of gold and a base metal. According to the Shariah if the alloy consists of 49% base metal and 51% gold, the whole alloy (100%), will be regarded as gold, and Zakaat has to be paid on it. If the one third 'principle' of abundance has to be accepted, it will follow that the whole alloy should be regarded as a base metal exempted from Zakaat. But the Shariah does not employ any such 'principle' to decide the nature of the mixture of metals. The principle of predominance is employed. Since gold is the dominant component of the mixture, the whole is regarded as gold. Here one third is not considered to be 'abundant', hence the alloy is not classified as gold inspite of 49% being gold- far in excess of one third.

TRANSFORMATION

The Shar'i principle governing the transformation of haraam money (not haraam employment or haraam investment or haraam business), is known as *Istihlaak* which states that if tangible haraam money is mixed with tangible halaal money, and the halaal amount is predominant, more than 50% – the principle mentioned above – then the homologous whole will be regarded to be halaal. But at the same time it remains incumbent to purify the money by giving to charity the haraam amount. Since the coins have become indistinguishable due to the admixture, any coins to the amount of the haraam sum, may be given away to secure release from the obligation.

There is no one third principle operating here or in any other transaction to render haraam lawful. The one third mentioned in the Hadith is a straightforward *mas'alah* pertaining to the issue of making a bequest for the time after Maut. It has never been utilized to formulate a principle. Leave alone a principle for legalizing haraam activity.

THE HADITH OF ONE TENTH HARAAM

It would have been more appropriate for Albaraka's artificial 'mujtahids' to have formulated a principle on the basis of the Hadith which states that Salaat performed with a garment purchased with nine tenths halaal money and one tenth haraam money is unacceptable to Allah Ta'ala. In this Hadith one tenth (not one third) is sufficient to contaminate the whole.

According to the methodology of Albaraka's 'ijtihad', the principle which is deducted from this Hadith states: *One tenth haraam renders the whole haraam.* Hence, 100% of Albaraka Bank's income is 'haraam' on the basis of this 'principle' which can be formulated on the basis of the aforementioned Hadith in terms of the logic of the 'ijtihad' of the riba-capitalists.

It can be correctly observed that morally all the income of the Bank is contaminated since the haraam component of the total wealth far exceeds 10%. The bank advocates a maximum of 30% halaal for the overall lawfulness of its income.

It should be understood that the one tenth mentioned in the Hadith is not a mandatory minimum requisite for rendering the whole contaminated. Even less than one tenth haraam will likewise contaminate the whole in the same way as one drop of urine contaminates a full bucket of water. Ill-gotten earnings are

haraam regardless of the small quantity. The mention of one tenth in the Hadith does not imply that one twentieth or 5% riba is halaal.

MISCONCEPTION

A grave misconception of the 'mujtahids' of Albaraka's 'shariah board' is their understanding that the principle of *Istihlaak* of tangible money—the coins and the notes—by admixture, can be extended to haraam investment or earning haraam money. This misconception has constrained Albaraka Bank to advocate shamelessly participation in haraam business ventures, and to invest in businesses to earn riba. This attitude attempts to create the perception that the Shariah permits and give a free licence for making investments in haraam ventures and to earn riba as long as the amount is small in relation to the total income. But this is totally and blatantly false.

A SHOCKING RIBA TRANSACTION

The following glaringly *haraam* transaction more than adequately highlights the riba backbone of Albaraka Bank and similar other banks which lay vociferous claim to being models of 'Islamic' banking.

A client applied for financial assistance to Albaraka Bank for the purchase of a fixed property. Responding to Zaid's application, Albaraka Bank wrote:

> *"We have pleasure in confirming that this Bank has approved a Murabaha* (sic) *facility of ONE MILLION FOUR HUNDRED AND THIRTY FOUR THOUSAND RANDS (R1,434,000.00) to assist you with the purchase of the property referred to in your application."*

Normally, in a Murabah transaction the Bank would purchase the property from the registered owner at a certain price and then resell it to you at a profit. However, whilst we are satisfied that this Murabah facility is in conformity with the Shariah, in view of the practical difficulties involved and the substantial additional costs due to the applicability of the laws of the Republic of South Africa, we confirm that you may conclude arrangements with the registered owner and sign any documents necessary for the transfer of the property directly into your name.

The terms and conditions of the facility are as follows:

AMOUNT OF FACILITY	
Cost	*R 760,000.00*
ABL Profit	*R 674,000.00*
Selling Price	*R1,434,000.00*

THE OBJECTIONS OF THE SHARIAH

In a brazen attempt to fool itself and to soothe the client who at the time was desperately in need of the finance to purchase the property, Albaraka Bank, set up the abovementioned stratagem which it deceptively labels *'Murabaha Facility'*.

Apart from the Hindu money-lenders of India who gobble up the lands of poor unfortunate, ignorant Muslim peasants who happen to suffer the colossal calamity of becoming entwined in the riba tentacles of these monsters, we know of no other bodies, private persons or financial institutions, which charge the whopping sum of almost 100% interest on a loan. In the case under scrutiny, Albaraka Bank charged the client R674,000 (Six hundred and seventy four thousand rands) riba on a loan of R760,000 (Seven

hundred and sixty thousand rands). No amount of desperate wriggling and manoeuvring will be able to save the soul of this riba institution from the charge that it is guilty of being the institution which charges the highest usury in the world – riba marketed under the label of *'Murabah Facility'*. By which device of interpretation has Albaraka Bank legalized this huge sum of riba, is known to Allah Ta'ala Alone.

The transaction never was a Muraabahah deal. In a Muraabah deal, a man sells his *own* property. Without a property belonging to one, the question of a sale and a Muraabaha deal simply does no arise. The explanation about the deal *'conforming with the Shariah'* and *"the practical difficulties"* related to the *"laws of the Republic of South Africa",* are arrant bunkum presented in an endeavour of self-beguilement and to present a ridiculous veneer to cover up the noxious stench of riba which this deal emits.

The fact of reality is that Albaraka NEVER purchased the property. It granted the client an outright loan on which it charged almost 100% interest. The Bank concedes in its letter that it had acted in contravention of its "normal practice of purchasing the property from the registered owner". Instructing the client to take transfer of the property directly into his name does not elevate Albaraka Bank to the status of ownership. The stark truth is that Albaraka advanced the client a loan of cash (R760,000). The client utilized the greater part of this loan to pay the outstanding balance owing on the property. Albaraka levied on this loan interest to the tune of R674,000.

According to the Shariah, Albraka's farcical 'Murabaha Facility' transaction is a haraam riba deal. The following explanation of the deal provided by the client further confirms the fallacy of the 'Murabaha Facility' claim of Albaraka Bank:

"A Close Corporation (CC) purchased a property comprising a block of flats for R930,000. The members of the CC paid a deposit of R230,000 on behalf of the CC to the seller and Albaraka Bank (AB) paid an amount of R700,000 to the seller in respect of the balance of the purchase price, plus also advanced an amount of R60,000 to the CC for repairs, renovations and improvements to the property. A Murabaha agreement was signed whereby the CC was to pay AB the capital of R760,000 plus so-called profits of R 674,000 giving a total of R1,434,000."

The facts of the case thus are as follows:

- The client (the CC) initially purchased the property.
- The purchase price agreed on by the buyer (the CC) and the seller is R930,000.
- The CC paid a deposit of R230,000. It required a further R730,000.
- The CC applied to Albaraka Bank for a loan to pay the outstanding balance on the property. The Bank granted the loan.
- In addition to the R700,000 required to pay the balance of the purchase price, the CC required a further R60,000 for renovations. This loan too was granted by the Bank.
- Albaraka Bank then pretended that the R700,000 advanced to pay the balance of the purchase price, plus the R60,000 given for renovations constituted the 'price' of a fictitious building which it had 'purchased' in its imagination. Stating this figment of its imagination on paper, the Bank brazenly – without fear for man or Allah – lists the cost price of the building which was bought by the client (the CC) as being R760,000. But the price was R930,000 of which the clients themselves paid R230,000 directly to the owner of the building. The paper

purporting to be a 'Murabaha Facility' can ever conceal the villainy and *hurmat* of this plain riba transaction.

THE RULING OF THE SHARIAH

The ruling of the Shariah pertaining to the aforementioned riba transaction is that the Bank has to compulsorily refund the client the sum of R674,000. This amount is haraam money in the Bank's coffers. It belongs to the clients (the CC). It cannot be given to charity because the clients are still alive and not missing. And if they are missing, their heirs are very much alive and looking ravenously at the large sum which the Bank had acquired from the clients under the baseless guise of 'Murabaha Facility'.

RIBA COMPOUNDED WITH RIBA

In its fallacious *'Murabah Facility'* agreement, Albaraka Bank stipulates:

> *"Registration of a first Mortgage Bond over the property described as……in the sum of R1,434,000 plus a contingency sum of R287,000 in favour of Albaraka Bank Limited."*

What is this additional haraam riba 'contingency sum of R287,000' payable on the already huge sum of R634,000 riba? The Bank has some explaining to do.

Another haraam riba stipulation reads:

> *"In the event of the Purchaser* (sic) *failing to make payment of any amount/s due and payable in terms of this agreement, the Purchaser promises / undertakes and binds himself / itself to pay to the Bank a penalty / penalties within 30 days of the date of default calculated at the rate of nought comma one percent (0,1%) per day,*

during the period of default, on the amount/s overdue from the due date/s of payment thereof to the actual date/s of payment thereof."

This 'penalty' charge is a glaring riba charge portrayed as a 'charity' charge by those whose hearts have become desensitised as a consequence of devouring riba. We have published two booklets on this haraam riba-penalty. Whoever is interested to study this question, may write to us for the two booklets on riba-penalty.

The spiritual insanity and intellectual derangement of those who devour riba are conspicuously confirmed by the fact that a massive riba charge of R634,000 on a R760,000 loan fails to satiate their pecuniary cravings. Thus, they come within the full glare of the Qur'aanic castigation:

"Those who devour riba do not stand except as one who has been driven to insanity by the touch of shaitaan."

Now when the clients are in financial stress and cannot meet their commitments, the Bank conducts itself with *Yahudi* attitude and instituted legal action. The clients (the CC) contends: *"Despite all reasonable attempts by the CC and its members imploring AB to resolve the matter amicably and give sufficient time to reschedule payments or find alternative buyers, AB has proceeded with legal action relentlessly applying undue pressure."*

It is haraam for Albaraka Bank to utilize Qur'aanic verses and moral precepts of the Shariah such as *Qardh Hasan* and Islamic Brotherhood to promote and sell its riba products. It lacks the faintest idea of the Qur'aanic concept of a Beuatiful Loan and Islamic Brotherhood. When it comes to money, the devourers of

riba throughout the world will truly succeed in squeezing blood from stones. That is because the Qur'aan says that they are *"driven to insanity by the touch of shaitaan."*

All those who have suffered the misfortune of dealing with these so-called Islamic Banks, only begin to realise the villainy of the riba-operators when they apply the pressure of the kuffaar legal institutions to suck out the riba from clients reduced to penury under the satanic yoke of haraam riba.

NOTICE TO THE BANKS

Albaraka Bank as well as other Muslim banks of the same ilk should take note of the Qur'aanic ultimatum and declaration of war on those who deal in riba. These banks have two options: Either to set their houses in order by bringing their operations and products fully within the confines of the Shariah, or to close up shop and branch off into some halaal avenue in the pursuit of their rizq.

CONCLUSION

Albaraka Bank has attempted to pass off its products as halaal on two grounds:

(1) That trading in shares of joint stock companies is lawful.
(2) That the Shariah allows investment in haraam businesses to earn haraam money, primarily riba, provided that the amount is small and that it will be 'purged' by giving it to charity.

Both these contentions are fallacious. Shares, as has been explained in this booklet, are haraam. The joint stock company is not a valid Shar'i partnership (shirkat) enterprise. Buying and selling shares is not permissible.

Buying and selling unit trusts are likewise not permissible. The dividend earned is haraam riba. Investing in these Muslim-owned banks is not permissible.

"Those who devour riba do not stand except as one driven to insanity by the touch of shaitaan."
(Qur'aan)

THE INSANITY CREATED BY RIBA

"Those who devour riba do not stand except as one who has been driven to insanity by the touch of Shaitaan. This is because they say: 'Verily, trade is like riba while Allah has made lawful trade and made riba unlawful."
(Surah Baqarah, aayat 275)

The so-called Islamic banks intransigently refuse to set their house in order. This intransigence is the product of the shaitaani insanity mentioned in the aforementioned Qur'aanic verse. It is a simple issue for these banks to restructure their transactions with only a little effort.

It is a simple matter to bring their trade transactions fully within the bounds of the Shariah if they are truly concerned about the Deen of Allah Ta'ala and if they can bring themselves to understand the vital need for Halaal income. The Muslim community will be only too happy to deal with Muslim banks if they streamline their affairs to conform with the Shariah. Presently, they are employing deception by their utilization of Islamic terminology for deals which are 100% replicas of the transactions of the riba capitalists.

The Muslim-owned banks, contrary to their claims, do not purchase any tangible commodities *(maal)*. The claim they tender in this regard is a massive falsity and deception. They do not deal in *maal*. They deal in only finance – money. They sell money, and their 'profit' is pure riba. Their thinking ability has been affected and deranged by the shaitaani produced insanity because they intransigently persist with the fallacious claim that their riba dealings are halaal trade. Just as the mushrikeen of Arabia had intransigently insisted that their riba was like trade, so too do these banks claim.

These banks will be able to comply with the Shariah only if they agree to think along Islamic lines. But they plot all their dealings in strict accordance with the riba procedures and methods of the kuffaar capitalists right down to the finest detail.

Their so-called shariah boards act as mere rubber stamps for all the un-Islamic and riba transactions fabricated by the banks. The shariah boards are despicable subterfuges providing 'legality' for the riba contracts and agreements. Since these boards are directly associated with the banks and the molvis and sheikhs serving on these boards are employees of the banks, they (the molvis, muftis and sheikhs) are incapable of presenting the *Haqq* of the Shariah. They are perennially searching for interpretations to sanctify and sanction the riba deals of the capitalist banks.

They only need to divest themselves of the riba mentality acquired from the kuffaar capitalists and figure out simple ways to ensure that their dealings comply with the Shariah. This is neither an insurmountable nor a difficult task. It is their intransigence and their determination to follow the riba path of the western entrepreneurs which induces them to believe that banks in this age cannot operate if run strictly according to the Shariah. This mentality is the consequence of the shaitaani

insanity stated in the Qur'aan.

If they obstinately refuse to bring their house in order to comply with the Shariah, let them then take notice of the Divine Ultimatum. The Qur'aan issues the following declaration of war to the riba capitalists:

> ***O People of Imaan! Waive (leave off) what remains (for you) of riba if indeed you are Mu'mineen. And, if you do not do so, then take notice of war from Allah and His Rasool. And, if you repent (and abandon your riba demands), then for you is your capital amount (which you had given as a loan). Do not commit oppression and you will then not be wronged."***
>
> ***(Surah Baqarah, aayats 278 and 279)***

Compliance with the Qur'aan requires a complete waiver of all interest which the bank demands under guise of its 'penalty clause'. All riba agreements have to be cancelled and the riba charged (finance charges, etc.) has to be compulsorily refunded to the oppressed debtors. Only then can the Muslim-owned banks be saved from the Ultimatum of War from Allah and His Rasool. This War will continue from this dunya right into the Aakhirah. If they refuse to set their house in order, they should clearly understand their loss as the Qur'aan states:

> ***"They are losers in the dunya and in the Aakhirah."***

INSURANCE

All Muslims know and understand that insurance is haraam even if they indulge in this riba-qimaar sin.

Albaraka Bank, in fact all Muslim-owned capitalist riba banks have incorporated insurance as a binding condition for granting finance (loans).

The insistence on insurance further testifies to the scant regard these riba banks have for the Shariah. Their primary concern is to safeguard their monetary interests even at the cost of purchasing Jahannum and the Wrath of Allah Ta'ala.

Every agreement of these banks makes insurance mandatory. This demand belies their claim of being 'Islamic'.