

# Kasbati & Co

## Banking & Finance Quick Commentary 150 of 30.4.2022

**This Booklet covers Commentary on the Federal Shariat Court Judgment (which declared Interest against Sharia) encompassing the following areas:**

<b>Description</b>	<b>Para</b>
<b>Background</b>	<b>1</b>
<b>Views on Media</b>	<b>2</b>
<b>Government Comments</b>	<b>3</b>
<b>Current Order Background &amp; Decision in 2002</b>	<b>4</b>
<b>Review Petition &amp; Decision</b>	<b>5</b>
<b>Most important 13 questions formulated &amp; Decision</b>	<b>6</b>
<b>Twenty One laws affected due to Decision</b>	<b>7</b>
<b>Suo Moto Action against Insurance</b>	<b>8</b>
<b>Three Deadlines</b>	<b>9</b>
<b>Appreciation</b>	<b>10</b>

**By Asif S. Kasbati (FCA, FCMA & LLB) and Team**

\* Managing Partner, Kasbati & Co

\* ICAP all Fiscal Laws Committee Member

\* ICAP Islamic Banking Sub-Committee Member

\* Core Tax Committee Member of PBC

## KASBATI & CO.

**Quick Commentary Service Provider** of 933+Tax & Levies, Customs, Corporate, Finance & Banking Laws, Economy & Inflation, Financial Reporting (including Audit & Assurance) Matters Certificate of Tax and Corporate & Levies Management (CTM + CCLM) 6 Courses Author High Level 416+ Tax & Levies Laws Consultants

High Level Workshops Organizer with High Level Panelists

**Workshop, CTM & CCLM Portal:** <http://www.kasbati.com.pk/workshops.php>

**Commentaries Portal:** <http://kasbati.com.pk> **Youtube Channel:** Tax Excellence Services

**Facebook:** <https://www.facebook.com/taxexcellence>

**Twitter:** Register for Free by just writing Excellence\_Prof in SMS and then send to 40404

**PTCL:** 92 21 3432 9107 - 9, 92 21 34321740 & 92 21 37296771 **Mobile:** 0334 322 3163

**Postal Address:** Suite # 910, 9th Floor, Portway Trade Centre, Plot No. 189, Block A, SMCHS

Main Shahra-e-Faisal (Opp. CDC House and between PSO, Petrol Pump & City Banquet), Karachi

## Notes

Below is the sample Banking & Finance Commentary 150 released on 30.4.2022 to our Valuable Subscribers. Trail is for our Valuable Subscribers only.

On an average, we release Three Quick Commentaries (QCs) per day on 933+ Tax, Levies, Corporate, Finance & Banking Laws and Miscellaneous matters so that our Value Subscribers get QCs on timely basis without much load.

Be a part of our Valuable Subscribers to reap the benefits on timely basis, at the Ramadan Kareem Discount **Peanut Price of Rs 39,000 only (Per Quarter including Provincial Tax)**, by reading Bulk deal Flyer next to the Commentary or contact Messrs Muhammad Uzair Arif at 0343 292 2803 or 021 3729 6771 OR Amsal at 0342 222 8757 OR Nivyan at 0323 327 4584 or 021 3729 6783.

In order to impart knowledge, please share this QC with friends, relatives and other contacts ASAP.

Best regards  
Kasbati & Co Team

=====

From: **Asif S Kasbati** <asif.s.kasbati@professional-excellence.com>  
Date: Sat, Apr 30, 2022 at 4:24 PM  
Subject: BFQC150= Summary of Shariat Court Decision against Interest, etc.

### **Banking & Finance Quick Commentary (BFQC) 150**

Dear Learned Professional

You may have seen KQU1622 dated 29.4.22 whereby we shared the link of the “SCP Shariat Appellate Bench detailed Judgement against Riba dated 28.4.22 in Shariat Petition No. 31-L of 1991 plus 81 others in cases of Ms. Farooq Brothers Vs. UBL, etc. plus 81 others” alongwith several other updates and now give our **Commentary** thereon being an **Important** matter as your Goodself may have missed out the same owing to likely busy schedule.

## **EXECUTIVE SUMMARY**

The Federal Shariat Court (**FSC**) declares interest against Sharia. The [FSC vide Order dated 28.4.22](#) (Click on the link & treat as **Attachment 150.1**) announced a verdict in a long-pending case on Riba (interest), declaring the prevailing interest-based banking system as against the Sharia and directed the government to facilitate all loans under an interest-free system.

Background, Views on Media, Government Comments, Current Order Background & Decision in 2002 Review Petition & Decision matter are covered in Para 1 to 5 of our Commentary. Most important 13 questions

formulated and well then decision are covered in para 6. Twenty One laws affected due to Para 6 are covered in Para 7. While Suo Moto Insurance vs Takaful is covered in Para 8.

Different types of ineffective / repeal / deadlines of 30.6.2022, 31.12.2022 and 30.6.2027 are covered in para 9; while Appreciation matter is given in Para 10.

## **DETAILS**

### **1. BACKGROUND**

The first petition for the abolition of the interest-based banking system in the country was filed in the FSC on 30.6.1990.

The then Chief Justice of the FSC, Dr Tanzeel ur Rehman, had constituted a three-member bench that delivered judgment in the case on 14.11.1991 (PLD 1992 FSC 1), and sought its implementation by 30.4.1992. The then PML-N Government had challenged the decision in the SCP. Several years later on 23.12.1999, the SCP upheld the decision of the FSC and directed authorities to ensure its implementation by 30.6.2000.

Subsequently, a Review Appeal was filed in 2002 with the top court, and on 24.6.2002, the decision of the FSC was suspended and the case was referred back to the FSC for interpretation of Riba. The case against the interest rate system had been pending in the Shariat Court for the last 19 years. Around nine chief justices of the FSC have completed their terms since then, but the case remained undecided until its verdict was announced on 28.4.22.

The FSC ruled on 28.4.22 that elimination of interest from the economic system was a religious and legal responsibility, ordering the government to end the interest-based banking system by the end of **2027 with certain matters having deadlines earlier.**

The decision was made on petitions against Riba (usury) after the SCP referred the case back to the FSC in 2002 following appeals against the decision of the FSC.

The case was decided by a three-person bench after 19 years and 34 hearings. The FSC had earlier reserved the verdict of the case on 12.4.22.

## **2. VIEWS ON MEDIA**

Following are the Video Clippings related to the FSC Judgment:

- (a) [Press Conference in favour of Decision against Riba - Janab Siraj ul Haq Saheb](#)
- (b) [Press Conference in favour of Decision against Riba - Tanzeem e Islami Ameer](#)
- (c) [Decision against Riba - Geo News](#)

## **3. GOVERNMENT COMMENTS**

Finance Minister Miftah Ismail welcomed the FSC's decision. He said the Government and the SBP would "carefully study this important decision and then seek guidance and clarification from the FSC about the process, steps and timeframe" for its implementation. Following is his tweet dated 28.4.22:

*We welcome the Federal Shariat Court (FSC) decision in the Riba case. The government and SBP will carefully study this important decision and then seek guidance and clarification from the FSC about the process, steps and timeframe to implement this decision.*

## **4. BACKGROUND & DECISION OF 2002**

The relevant paragraphs are reproduced below:

2. The background of the case is that the United Bank Limited filed a Civil Shariat Review Petition No.01 of 2000 under Article 188 of the Constitution of the Islamic Republic of Pakistan, seeking review of the judgment dated 23.12.1999 passed by the Shariat Appellate Bench of the Supreme Court in Shariat Appeals Nos.11 to 19 of 1992, whereby the judgment dated 14.11.1991 of the Federal Shariat Court was affirmed and it was declared that Riba in all its forms and manifestations was prohibited by the Holy Qu'ran and Sunnah of the Holy Prophet (SAW) in addition to that many laws were declared as repugnant to Islamic Injunctions.

3. The Federal Shariat Court after in-depth discussion and hearing the view point of subject specialists and scholars declared the laws and provisions of laws, as repugnant to the injunctions of Islam through its judgment (PLD 1992 FSC 1). An appeal was filed in the Shariat Appellate Bench of the Supreme Court and the impugned judgment of the Federal Shariat Court was up held by the Shariat Appellant Bench of the Supreme Court vide its judgment titled Muhammad Aslam Khaki Versus Muhammad Hashim (PLD 2000 SC 225); consequently following laws were declared repugnant to the injunction Islam with the direction that these law will cease to have effect from 31st March, 2000:

1. The Interest Act, 1839.
2. The West Pakistan Money-Lenders' Ordinance 1960
3. The West Pakistan Money-Lenders Rules, 1965.
4. The Punjab Money-Lenders' Ordinance, 1960
5. The Sindh Money-Lenders Ordinance, 1960.
6. The N.W.F.P. Money-Lenders' Ordinance, 1960.
7. The Balochistan Money-Lenders, Ordinance, 1960.
8. Section 9 of the Banking Companies Ordinance, 1962.

**The provisions of the following laws which contained the term interest within the meaning of Riba were declared repugnant to the injunction of Islam.**

1. Section 10 of the Government Saving Banks Act (V of 1893).
2. Sections 79 and 80 of the Negotiable Instruments Act. (XXVI of 1881) in respect of interest on money claims,  
  
"Mark-up), "Services charges", etc.
3. Sections 114 and 117 (c) of Negotiable Instruments Act of 1881).
4. Sections 28,32,33 and 34 Land Acquisition Act (1 of 1894).
5. Sections 34, 34-A, 34-B and O.XXXVII, R.2(a) of Civil Procedure Code (V of 1908) relating to interest, Mark-up, lease, hire purchase and service charges.
6. Sections 2(12), 35(3), 144(1), O.XXI, R.11(2)(g), O.XXI, R.38, O.XXI, R.79(3), O.XXI, R.80(3), O.XXI, R.93,  
  
O.XXXIV, R.2(1),(a)(i)&(iii),(c); O.XXXIV, R.11, O.XXXIV, R.4(1) & (2), O.XXXIV, R.7(a)(c)&(2), O.XXXIV, R.11, O.XXXIV, R.13(1) & (2) O.XXXIX, R.9 of Civil Procedure Code regarding interest.
7. Section 59 of the Cooperative Societies Act(VII of 1925), provision relation to interest.
8. Rules 14(1) (b), 22 and 41 of Cooperative Societies Rules, 1927, provision of interest.
9. Section 3-BB (1) (b), 27(3), 29(8)(b), C(iii),47-B and 81(2) (d) of Insurance Act, 1938, provisions for a range  
  
of rates of interest etc.
10. Section 22(1) of the state Bank of Pakistan Act (XXXII of 1956) relating to purchase of Bills, Debenture, bonds etc, on the basis of interest.
11. Rule 17(1)(1)(3) of Agricultural Development Bank Rules, 1961.
12. Section 25(2)(a) &(b) of the Banking Companies Ordinance (LVII of 1962) regarding giving of directions by State Bank regarding rates of interest or Mark-up.
13. Rule 9(2) &(a) of the Baking companies Rules, 1963.
- 14.Rule 9 of the Banks (Nationalization) payment of Compensation Rules, 1974.

15. Section 8(2)(a)&(b) of the Banking Companies (Recovery of Loans) Ordinance (XIX of 1979) relating to interest and Mark-up.

16. Banks (Nationalization) payment of Compensation Rules 1974.

17. Banking Companies (Recovery of Loans) Ordinance, 1979.

4. In addition to that the Shariat Appellate Bench of the Supreme Court also held as follows:-

a. Any amount big or small, over the principal, in a contract of loan or debt in "riba" prohibited by the Holy Quran, regardless of whether the loan is taken for the purpose of consumption or for some production activity; there is no difference between different types of loans so far as the prohibition of Riba is concerned. The prohibition of Riba is absolute irrespective of the fact whether the additional amount stipulated over the principal loan or debt is small or large.

b. All the prevailing forms of interest either in the banking transactions or in private transactions do fall within the definition of Riba.

c. Similarly any interest stipulated in the Government borrowings acquired from domestic or foreign sources is Riba and clearly prohibited by the Holy Quran.

5. In addition to that the Shariat Appellate Bench of the Supreme Court directed the Federal Government to take certain steps which according to the court were necessary to transform the economy of Pakistan like, the Government should take strict austerity measures to drastically curtail the Government expenditure, and deficit financing should be controlled. It also suggested certain laws to be framed like, an Act to regulate the Federal consolidated Fund and Public Account, Provincial Consolidated Fund and Public Account requires to be enacted by the parliament and the Provincial Assemblies for their proper regulations; and laws similar to the freedom of information Act, the Privacy Act and Ethics Regulations of United States, Financial Services Act of Britain be enacted. Shariat Appellate Bench of the Supreme Court suggested certain offices to be established like, Serious Fraud Office (SFO) to control white collar and economic crimes, Credit rating agencies in the public sector etc.

6. The Shariat Appellate Bench of the Supreme Court directed certain special departments to be established within the State Bank. In addition to that for transformation of the existing financial system to the one conforming to Shariah certain time lines were also given by the Shariat Appellate Bench. The Government was directed to convert the domestic inter Government borrowings as well as the borrowings of the Federal Government from State Bank of Pakistan on interest free basis.

7. The Shariat Appellate Bench of the Supreme Court vide its judgment (PLD 2002SC 801) in the Review Order held: —we are of the considered view that the issues involved in these cases require to be re-determined after thorough and elaborate research and comparative study of the financial systems which are prevalent in the contemporary Muslim countries of the world. Since the Federal Shariat Court did not give a definite finding on all the issues involved determination whereof was essential to the resolution of the controversy involved in these cases. It would be in the fitness of things if the matter is remanded to the Federal Shariat Court which under the Constitution is enjoined upon to give a definite finding on all the issues within its jurisdiction.

## **5. REVIEW PETITION OF 2002 & DECISION**

The relevant paragraphs are reproduced below:

8. Resultantly, Civil Shariat Review Petition No. 1 of 2000 filed by the United Bank Ltd is allowed, the judgment dated 23th December, 1999 passed by the Shariat Appellate Bench of this Court in Shariat Appeals Nos.11 to 19 of 1992 and the judgment dated 14th November, 1991 of the Federal Shariat Court passed in Shariat Petitions No.42-1+45-1 of 1991 etc, are set aside and the cases are remitted to the Federal Shariat Court for determination afresh in the light of the contentions of the parties noted above and the observations made which are germane to the controversy. Besides the points raised before this Court, the parties would be at liberty to raise any other issue relevant to these cases and the Federal Shariat Court may also, on its own motions, take into consideration any other aspect which may arise or may be found relevant for determination of the issue involved herein.

9. The Review Petition was decided in 24.06.2002, whereby the judgment dated 23.12.1999 passed by Shariat Appellate Bench of the Supreme Court and judgment dated 14.11.1991 of the Federal Shariat Court were set



aside and the cases were remanded to this Court for re-determination afresh in the light of contentions of the parties as noted in the said judgment and observation made upon them, which were germane to the controversy. Two decades have passed since the announcement of the judgment in the Review Petition, and ever since the matter kept pending adjudication which is not at all an appreciable state of affairs. Although, this delay happened due to one or the other practical and procedural hindrances but still no excuse can be made acceptable. Nevertheless; this dark cloud of delay has a silver lining too. The delay has brought certain positive changes in the matter in issue of this case, i.e., the introduction and promotion of Islamic Banking or Interest-Free Banking in Pakistan at an exponential level took place during this period. During this period of last 20 years Islamic Banking has become a reality in Pakistan. Many topics which were considered as mere academic debate have become real and practical issues, like different modes of Islamic financing their practicality and operations at individual as well as at corporate level. Both the judgments which were set aside by the Remand Order of the Hon'ble Shariat Appellate Bench of the Supreme Court contained a very thorough and elaborative juristic literature on a very sound academic footing, which was appreciated and praised not only in Pakistan but all over the world in the relevant circles attached to the field of Islamic financing or Islamic Banking. Academically both the judgments are considered as master piece and land mark judgments for laying the foundation of Islamic Banking in the contemporary world. During the past 20 years both the judgments provided practical help and guideline for the development of Islamic Banking in Pakistan. At present, Islamic Banking, i.e., Interest Free Banking is a reality not only in Pakistan but all across the world. Resultantly, the significance of so many questions are changed, which were debated and agitated upon by the parties previously, while arguing those petitions in the Federal Shariat Court and in the Shariat Appellate Bench of the Supreme Court as well as in the review petition. For example, the question whether Islamic Banking is practical, viable and feasible or not in Pakistan or whether the implementation of Islamic Banking in Pakistan will impose any risk to the stability and security of Pakistan or not. All such questions perhaps have lost their significance which were previously relevant when the case was pending and was argued in the Hon'ble Shariat Appellate Bench of the Supreme Court. As a consequence of this change, the gravity of the importance of some academic questions have changed with Islamic Banking being regulated by the State Bank of Pakistan with the able and appropriate advice and guidance of its Shariah Board. In light of this background, we have divided the questions for our determinations in the following categories to dilate upon them accordingly:

i) Firstly, questions or points raised by the petitioner in the Review Petition before the Supreme Court were almost the same, which were earlier raised by them either before the Federal Shariat Court or Shariat Appellate Bench of Supreme Court and most of these questions were dilated upon elaborately. Some of these questions are repetition of one or two points in different ways. For instance some of these points which were raised by the petitioners, in the Review Petition, and were noted down by Shariat Appellate Bench of the Supreme Court in para 6 can be summed up in the following manner:

- a. Does the Holy Quran only prohibit Riba which is doubled and multiplied interest and it does not prohibit what is reasonable and fair?
- b. The Riba has not been defined in the Holy Quran and all that has been held in the judgment under review is based on Qiyas.
- c. The definitions and differentiation between usury, Riba and interest have not been properly distinguished.
- d. Charging of Riba on personal loans is prohibited while it is not prohibited on productive, industrial or commercial loans.
- e. Banking is a kind of business and business is permissible in Islam. (reference para 11)
- f. Banking interest is not Riba. (reference para 16 of the Remand Order)

## **6. THIRTEEN (13) QUESTIONS OF LAW FORMULATED AND THEIR VERDICT**

**The relevant and important para are reproduced below:**

16. After hearing the parties at length and reviewing the voluminous material provided by the parties, amicus curiae, jurist-consults and other experts from general public, who were keen and interested in providing their input in the case. We have formulated certain points of determination. We gave serious thought to every point raised before us through verbal or written arguments. In addition, we conducted elaborate and thorough research to understand all the points raised by the petitioners in Civil Review Petition before Shariat Appellate Bench of the Supreme Court.

Moreover, we have thorough consideration to all the fundamental points involved in this case. After undertaking all this exercise, we are of the view that following are some basic points which need our determination.

**Determination Point-I: Whether the Federal Shariat Court has jurisdiction to adjudicate upon the matter as prayed for in different Shariat Petitions pending adjudication before it.**

Answer-I: The Federal Shariat Court has jurisdiction to adjudicate upon the matter as prayed for in different Shariat Petitions pending adjudication before it.

**Determination Point-II: What is Riba according to injunctions of Islam in the light of Holy Quran and Sunnah of the Holy Prophet and how it is defined by the Muslim jurists and scholars in the light of Holy Quran and Sunnah?**

42. According to above mentioned definitions of Riba any amount taken or given in a loan transaction in excess to the actual loan amount is Riba. Refer Pages 131 & 132

43. Another type of transaction known as Riba al-fadl is also prohibited which was explained by Prophet (PBUH) himself. Refer Page 132

44. The prohibition of Riba al-fadl is in fact a precautionary measures introduced by Islam to implement the complete prohibition of Riba in any manner and all its forms. Refer Pages 133 to 135

For Hadith, refer Para 45.

For The Urdu Encyclopedia of Islam, refer Pages 139 to 141.

46. After going through all the verses of the Quran, ahadith, saying of Companions / Sahabah (RA) of the Prophet (PBUH), the opinion of the Muslim Jurists, muhaddithin, lexicographers and mufassirin especially the opinion of Hazrat Umer (RA). We hold that Riba should be defined inclusively not exclusively. It means

that in the light of the Verses of the Quran, saying of the Prophet (PBUH) and the practice of Sahabah Karam (RA), any transaction which has the slightest doubt of being included in any type or category of Riba must be included in the definition of Riba. There is a consensus among the Jurists that the Riba is completely and absolutely prohibited according to the Injunctions of Islam as laid down in the Quran and Sunnah of the Prophet (PBUH). In addition to this in the light of all the verses related to the prohibition of Quran, ahadith of the Prophet (PBUH) narrating Riba, explanations of all the jurists, scholars and mufassirin of Quran related to Riba we have concluded that:

i. According to the Injunctions of Islam, „Riba“ exists in a loan or a financial transaction in which increase in principal amount of the lender of the money occurs.

ii. That increase in a transaction occurs according to the wishes of loan lending party (lender) at a predetermined rate or without any predetermined rate.

(It is irrelevant whether the increased amount upon a loan is fixed at the initiation of the loan contract or charged after the lapses of certain stipulated time period).

iii. The transaction occurs in the absence of any exchange of a counter-value or recompense or Iwid

iv. Riba is prohibited absolutely in all of its forms and manifestations.

47. Shariah strictly prohibit all types of Riba therefore any kind of socio-economic, legal or religious change in the borrower or the lender of a loan transaction involving Riba does not change the nature of prohibition. Riba is equally forbidden for the poor and the rich and even for the Muslims and the Non-Muslims in an Islamic State. Similarly, nature of its prohibition does not change with the change in the purpose of taking loan; which mean that the loan taken on Riba for commercial, productive of industrial purpose is as prohibited as the charging of Riba upon a loan which is taken to fulfil personal need. Likewise, change in the ratio of percentage at which Riba is charged on a loan in a transaction does not change legal effect of prohibition of Riba in a transaction. This means that no limit of percentage can be fixed for the purpose that up till that limit charging of interest upon a loan is legal or permissible and more than that is forbidden or prohibited. Similarly, change in legal status of any party involved in a Riba transaction, for example if one of the parties or both the

parties in a transaction are legal persons, does not change the legal or Sharai effect of the Riba transaction it will remain prohibited.

**Determination Point-III: Whether the term Riba is confined to compound interest only, hence in the light of Islamic injunctions only charging of compound interest on loans is prohibited and not the charging of simple interest.**

52. After going through a voluminous scholarly work of the Muslim scholars of every era and of every background we are of the considered view that Riba is haram or prohibited in every form and quantity. Its prohibition is not at all dependent on its percentag or the mathematical style in which it is calculated. It is evident from the phraseology or expression of the Quran itself that here only doubled or multiplied interest is not meant or intended but it also includes even the smallest percentage of interest in it. Riba or interest is absolutely prohibited and forbidden.

**Determination Point-IV: Whether the prohibition of Riba in Islam changes with the change in the percentage of interest charged upon a loan and is there any difference between usury and interest?**

67. Hence we are of the considered view that usury and interest are synonyms of the English language used to translate the meaning of the term Riba and there is no difference in them. If we call Riba as usury or we call it interest it does not make any difference, it is prohibited according to Islamic Injunctions in the light of Holy Quran and Sunnah. The prohibition of Riba is absolute. Moreover, according to the Injunctions of Islam the effect of prohibition of Riba does not change with the rate at which interest is charged upon a loan.

**Determination Point-V: Whether only the charging of interest upon consumption loans is prohibited and the charging of interest upon commercial or productive loan is not prohibited in Islam.**

77. After going through all these books and relevant sources, we are of the view that any such personal opinion of any person has no legal binding, irrespective of whether that opinion was given by anybody from the sub-continent or from Egypt, especially when that opinion is in opposition to the overwhelming scholarly opinion of the Muslim world from every era and from every corner of the world. In addition to that it is also a relevant

fact in our consideration that such an opinion was normally given when the majority of Muslim states were under colonial rule and they had no concept of Islamic Banking. Hence those scholars were living under specific socio-economic and political conditions where it was almost impossible for them to imagine the concept of Islamic Finance at the national level let alone at an international level. Hence they obviously ignored and rather erred in making an opinion which was against the principles of Islamic Jurisprudence and even against the Injunctions of Islam. In Islam a rule does not change with the change in appearance of that thing upon which it is applicable. For example, Liquor is prohibited in Islam so it will remain prohibited in Islam irrespective of the fact that the style of its brewing, manufacturing and packing are totally different from the era when it was declared prohibited. Similarly, the quantity in which it is used or the manner in which it is used or the name or brand to which it is called does not have any impact on the basic ruling of Islam about it, that it is prohibited under all conditions and all its manifestations and forms. Same is the case of Riba or interest be it on personal loan or on commercial loan it is haram and prohibited. By giving consent no illegal act can be made legal like fornication, gambling or selling wine etc. under Islamic Jurisprudence.

78. Now coming to the point of determination, whether only the charging of interest upon consumption loans is prohibited and the charging of interest upon commercial or productive loans is not prohibited in Islam. For all the reasons discussed herein above we have decided this point of determination as, that the prohibition of Riba is absolute, irrespective of the fact as to whatever purpose the loan is taken on interest. The purpose of taking loan does not change the status of prohibition of Riba.

#### **Determination Point-VI: Whether the Islamic Banking model is practical or not and is the Islamic Banking a kind of heela?**

79. While arguing the review petition, the petitioners forwarded two nebulous types of arguments:

Firstly, Islamic Banking is not practical, and

Secondly, whatever is being done in the name of the Islamic Banking is just a heela i.e. devices to avoid what is otherwise Riba.

80. In para-10, of the review order the argument of a counsel Dr. Syed Riaz ul Hasan Gilani ASC representing the Federation were reproduced wherein he stressed upon the fact vehemently that the alternate banking Islamic Banking and financial system i.e. Islamic Financial system as proposed in the impugned judgment under review was not at all workable and the Government has found it incapable of being implemented. The para-11 of the Review Order, contains the arguments of Mr. Gilani that all the Islamic banking system suggested in the judgment under review is a misnomer and according to him except Musharika other modes of finance are nothing but heela, i.e. devices to avoid what is otherwise Riba which are in fact more harsh and oppressive having the element of Zulm and are worst in consequences as compared to the various forms of interest prevalent in the present day banking system which have wrongly been termed as Riba al-Nasiah in the judgment under review. According to him the judgment under review omitted to take into consideration the fact that the alternate system is not a consensus oriented system and had been bitterly opposed by many eminent jurists.

81. As we have already taken notice of the fact that the ground reality regarding Islamic Banking is completely changed from the time when the review petition was being heard and now. Therefore; to get the actual data we asked relevant and specific questions from the State Bank of Pakistan to explain the steps so far taken by the State Bank of Pakistan regarding promotion of Islamic banking in Pakistan. Answers to these questions, helped us in assessing the actual state of affairs of Islamic Banking in Pakistan. Whether the model of Islamic Banking and Islamic Finance are actually applicable in Pakistan or not.

82. The question we asked from the State Bank of Pakistan and its answer are as follows:

**Determination Point-VII: What is the status of Islamic banking worldwide especially in the Islamic world and in Pakistan?**

104. We have examined the above mentioned facts provided by the experts and we have concluded that now in Pakistan a comprehensive framework exists for Sukuk and regular issuance of Sukuk can be used to convert the financial system to Shariah compliant and interest free mode at the Government Level. A gradual target can be set by Govt to convert the entire borrowing to Islamic modes in next few years and stop issuance of interest-based instruments. Therefore, to eliminate Riba completely we direct that all Public Sector entities to start dealing only in Interest-free Shariah-compliant modes which are approved by the State Bank of Pakistan.

**Determination Point-VIII: Whether the interest or Riba becomes permissible if the transaction are undertaken or made in the name of business**

107. Those who eat Riba (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitan (Satan) leading him to insanity. That is because they say: "Trading is only like Riba (usury) ," whereas Allah has permitted trading and forbidden Riba (usury) . So whosoever receives an admonition from his Lord and stops eating Riba (usury) shall not be punished for the past; his case is for Allah (to judge); but whoever returns to Riba (usury), such are the dwellers of the Fire - they will abide therein.

The opening sentence of the verse contains the argument of those people who indulged or involved in taking Riba. They used to equate Riba with trade or business (Bay). (refer Page 219)

Same arguments were forwarded by the counsel of a bank after almost fifteen hundred years. The answer to this argument is unequivocally stated in the Holy Quran as: (refer Page 219)

108. The bare reading of the verse tells us that (بَيْعٌ حَالَالٌ وَبَيْعٌ حَرَامٌ) (sale is permissible and Riba is prohibited, one is permitted (Halal) and other is prohibited (Haram)). This is one of the basic Ayah or Hukam upon which all or any banking transaction is analyzed separately and individually, by the Islamic jurists on the analogy (Qiyas) of permissible and non-permissible sale بَيْعٌ حَالَالٌ transactions according to injunctions of Islam, i.e., Quran and Sunnah. Therefore, we have decided this point against the respondents. All or any transaction undertaken by a bank if it involves interest or Riba at any percentage less or more , in any form simple or multiplied or compound is prohibited and haram. Banking itself per se is neither permissible nor impermissible according to the Injunctions of Islam in the light of the Quran and Sunnah, it is actually the nature of transaction which it undertakes that makes it permissible or impermissible according to the Injunctions of Islam. If its transactions are Shariah compliant then it is permissible and if they are not Shariah compliant or have doubts in them of being Shariah compliant then such transactions are impermissible and against the Injunctions of Islam.

109. At the time of the advent of Islamic Banking, the basic presumption about the banking system which was then prevalent was fundamentally wrong, that it is not manageable without interest based transactions. The Interest-free banking or the Islamic banking is an evident proof of the reality to be otherwise.



**Determination Point-IX: Whether mechanism of indexation and inflation should be adopted by the banking sector in Pakistan to balance the inherent imbalance in the economic transactions.**

111. Hence, we are of the considered view that at the moment these questions do not come under the precinct of jurisdiction of this Court because presently there does not exist any law which contains this issue therefore discussing this issue is irrelevant and outside the scope of this court. It is a matter to be decided by the relevant authorities like the regulator of the banking sector, i.e., State Bank of Pakistan or the Government or the Parliament. So far as our jurisdiction is concerned, it is subject to Article 203-D of the Constitution to review and decide the repugnancy of any law in relation to injunctions of Islam as contained in Quran and Sunnah. At present, there does not exist any law, regulation or SRO of State Bank, etc., which deals with the question of indexation; therefore, we consciously refrain to answer the question of indexation and all the related questions in this regard, which are connected to the effect of inflation of money over the borrowed amount during the period of borrowing. This is outside the scope of the jurisdiction of this Court at the moment.

112. The Federal Shariat Court while deciding a Shariat Petition as is in the case which is pending before us, is required to decide the question, i.e., whether or not the law or provision of law impugned before it is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah. For clarity the relevant Articles of the Constitution which define the term law and contemplate the power, jurisdiction and function of Federal Shariat Court are covered in more detail on page \_ to \_ of the Order are reproduced herein below:

The term law given in clause (c) of Article 203B in Chapter 3-A of Part-VII of the Constitution reads as follow:

(c) law includes any custom or usage having the force of law but does not include the Constitution, Muslim personal law, any law relating to the procedure of any court or tribunal or, until the expiration of [ten] years from the commencement of this Chapter, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure; and

Article 203D reads as under:

203D. (1) The Court may, [either of its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet (SAW), hereinafter referred to as the Injunctions of Islam.

(A) Where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Federal Legislative List, or to the Provincial Government in the case of a law with respect to a matter not enumerated [in the Federal Legislative List], a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court.

(2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision:

(a) the reasons for its holding that opinion; and

(b) the extent to which such law or provision is so repugnant; and specify the day on which the decision shall take effect

Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal.

(3) If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam,

(a) the President in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or the Governor in the case of a law with respect to a matter not enumerated in either of those Lists, shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam; and

(b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.

113. As per the Constitution, drafting and formulation of laws is the prerogative of the Parliament or the Provincial Assemblies as the case may be according to their respective jurisdictions. In a constitutional democracy, the Parliament is supreme body to legislate and same is the legislative scheme of our Constitution.

**114. We are of the opinion that these points are to be decided by the Parliament or by the State Bank of Pakistan being the relevant authority of the banking sectors in Pakistan. Constitutionally, the Parliament is supreme to legislate any law as per requirement within the parameters set out by the Constitution. In this regard, our decision will contains the reasons for the Parliament to legislate laws according to the Injunctions of Islam.**

115. We further hold that to give a policy guideline to the government or to any sector in order to mould that sector in accordance with the principles of Islam is not job of Federal Shariat Court. This is the obligation and duty of the Parliament to follow the guiding principles by itself keeping in view the Islamic provision of the Constitution like Article 2-A and 227 in addition to the overall framework of the Constitution or to seek the assistance of Council of Islamic Ideology of Pakistan.

**Determination Point-X: Whether the charging of interest by banks on loans given by them to their customers is Riba or not; and whether the charging of interest by the depositors of a bank upon their deposits in the bank is Riba or not according to the Injunctions of Islam?**

After hearing the detailed argument of the parties on this point and going through all the material given by the experts during the hearing of this case and examining the relevant classical Juristic opinions and literature, we are of the considered view that banking interest is Riba in all its forms and manifestation. There is consensus of jurists that a loan that draws any additional amount which is normally called as interest is Riba; be it the amount taken by the banks from their customers upon lending them loan for any purpose or be it the payment made by the banks to its customers against their deposits which they maintain with the banks.

**Determination Point-XI: Whether Pakistan will have to obey its international commitments on payment of interest or Riba on international loans already taken, and how to deal with the future foreign borrowing of the Government in accordance with the Islamic Injunctions?**

132. After deliberation on the issue, and hearing the submissions made by the financial and banking experts and reviewing the reply of the State Bank of Pakistan we are of clear view that:

Firstly, according to the Injunctions of Islam Pakistan is bound to fulfill all or any financial obligation regarding foreign debt. However, according to Islamic Injunctions if it wants to convert those obligations from Riba based transaction to the Shariah-Compliant mode, then it is also possible but only with the mutual consent of the parties.

Secondly, for future foreign borrowing there are enough Shariah- Compliant modes available in the international financial market which can be used and which are well recognized by the International Banks and Financial Institutions. Hence any argument that Islamic mode of financing or Shariah Complaint modes for international borrowings are not available does not have any factual backing. However, which Shariah-compliant mode is to be adopted completely depends upon the Government of Pakistan.

**Determination Point-XII: Whether the Federal Shariat Court should give timeline to the Government to take necessary steps for formulation of legislation which can provide enabling legal framework necessary to transform the Conventional Banking System into Riba-Free or Islamic Banking System.**

136. Now the question arises how much time will be needed to transform the conventional interest based system into a Riba-free economic system. We asked from the Attorney General for Pakistan as well as from the counsel of the State Bank of Pakistan to answer this question that how much time will be needed to transform the conventional interest based system into Riba-free economic system completely, in light of the current economic situation and international economic commitments of Pakistan. In response the Attorney General for Pakistan made a commitment that after consulting the Governor of the State Bank of Pakistan as well as the Finance Minister alongwith other relevant authorities in the Government of Pakistan, he would let this Court know the answer of this question. However, despite the lapse of several dates of hearing he did not

answer our question. Instead he reiterated his earlier request for not setting any time limit for elimination of Riba. Consequently, we asked this specific question from different experts, practitioners and scholars. Dr. Wiqar Masood a Former Federal Secretary Finance Division Government of Pakistan having a vast first-hand experience economics and fiscal policy management of the Government was of the view that there are certain aspects of our conventional banking system which can be converted to Interest-Free Banking without any delay as all the necessary legal framework is already available like the deposit side of the banks, at the same time some other aspects like borrowing side of the Government though they are feasible and practical but will need time. According to his opinion five years' time is reasonable to implement the Riba Free banking completely. Same question was put to an Expert, Mr. Ali Ahmed Siddique who is a renowned academician of Islamic Banking associated with IBA Karachi and also a Banker. He also acknowledged that this process of transformation will need some time but it is not impossible. He gave the example of Faisal Islamic Bank which almost converted from conventional bank to a successful Islamic Bank in five years. On this analogy he also suggested that five years' time will be sufficient for this transformation. Similarly, a Jurist Consult Professor Dr. Attique us Zafar an expert of Islamic Economics, who remained Professor in International Islamic University Islamabad, and is also author of some relevant books and articles was of the view that seven years' time will be more than enough for this transformation. Another Jurist Consult Dr. Muhammad Ayub a former director of the State Bank of Pakistan was of the view that keeping a realistic approach in mind, this transfer will require reasonable time. Some experts were of the view that in light of our international commitments ten years' time is appropriate for complete transformation of the economy from an interest based conventional economy to a Riba-free economy. On the contrary, some experts were of the view that three years' time is enough because much of the work has already been done. They argued that the existence of Legal framework in the form of relevant Laws, Directives and the Guideline of the State Bank of Pakistan to support and promote Islamic Banking is already available. Existence of Shariah Standard for Audit and Accounting approved by the State Bank of Pakistan and above all the existence of number of full-fledged Islamic

Banks in addition to many conventional Banks with branches or windows of Islamic Banking is ample evidence that this transformation can be completed very easily within three years. After listing to the experts in addition to the failure of the Attorney General for Pakistan in providing an answer to our question i.e. how much time would be required for the transformation of our economy, we have decided to decline the request of the Attorney General for Pakistan as well as of the counsel of the State Bank of Pakistan with regard to not setting any timeline for complete elimination of Riba from the country. We also hold that the setting of the timeline is the requirement of the Constitution which also fulfills the requirement of Shariah as in some situation time is required for proper

implementation of a Shariah ruling.

## **7. TWENTY ONE LAWS CONSIDERED & DECIDED**

**The Shariat Court examined following laws several laws or provisions and held as Riba and consequently against Quran and Shariah. Hence these were also directed to be repealed or amended.**  
For more details about the above laws or provisions please refer to Pages 257 to 280 of the Order.

1. The Interest Act, 1839 (XXXII Of 1839)
2. The Government Savings Banks Act 1873 (Act No.V OF 1873).
3. The Negotiable Instrument Act, 1881.
4. The Land Acquisition Act, 1894.
5. Code of Civil Procedure, 1908
6. Cooperative Societies Act, 1925.
7. The Cooperative Societies Rules. 1927.
8. The State Bank of Pakistan Act, 1956.
9. The West Pakistan Money-Lenders“ Ordinance, 1960
10. The West Pakistan Money-Lenders“ Rule, 1965,
11. The Punjab Money-Lenders“ Ordinance, 1960 (W.P Ordinance XXIV of 1960)

12. The Sindh Money –Lenders“ Ordinance, 1960

13. The N.W.F.P. Money-Lenders“ Ordinance, 1960

14. The Balochistan Money-Lenders“ Ordinance 1960

15. The Agricultural Development Bank Rules 1961.

16. The Banking Companies Ordinance 1962.

17. The Banking Companies Rules. 1963.

18. The Banks (Nationalization) Payment of Compensation Rules, 1974.

19. Section 24(6) and (8) of the House Building Finance Corporation Act, 1952

20. The Legal Practitioner and Bar Council at 1973.

21. The Employees Old Age Benefits Act, 1976.

## **8. DIFFERENT INSURANCE LAWS TAKEN SUO MOTO & DECIDED**

The Shariat Court took Suo Moto Notice under Article 203D(1) of the Constitution in 1992 to examine the different provisions of the following Laws:

1. The National Insurance Corporation Act, 1976.

2. Life Insurance Nationalization Order, 1972.

3. War Risks Insurance Ordinance, 1971.
4. Federal Employees Benevolent Fund and Group Insurance Act 1969.
5. War Risks Insurance Ordinance, 1965.
6. Pakistan Insurance Corporation Act, 1952.
7. The Riots and Civil Commotion Risks Insurance Ordinance, 1947.
8. War Injuries (Compensation) Insurance Act, 1943.

Out of the above mentioned laws two laws namely, The National Insurance Corporation Act, 1976 and Pakistan Insurance Corporation Act, 1952 were subsequently repealed by the Insurance Ordinance, 2000 and Insurance Corporation (Re-organization) Ordinance, 2000 respectively during the pendency of these petitions rendering the respective Petitions SSM. No.11/I/1/1992 and No. SMM No. 4/I/1992, infructuous, while all other laws listed hereinabove were examined by us and we are of the view that the word „interest“ wherever occurs in the different provisions of these laws is against the Injunctions of Islam as laid down in the Holy Quran and Sunnah for the

reasons discussed herein before. Hence the same should be deleted or alternatively changed where ever possible with any of the Shariah-Compliant Mode which is approved by the State Bank of Pakistan.

Regarding the occurrence of the word „insurance“ in different laws, we are of the view that the concept of „insurance“ per se is not un-Islamic. Its prohibition and permissibility in Shariah depends upon the modes of business in which an insurance company is involved to generate profit for itself and its customers. If an insurance company is involved in those type of modes which are linked with or based upon those activities which are prohibited in Islam like Riba, al-Gharrar or al-Qimar, then insurance services given by such a company are prohibited according to the Injunctions of Islam. Otherwise, if an insurance company is involved in any of the Shariah-Compliant business modes to generate profit for itself and for its customers then it is permissible according to the Injunctions of Islam. The Islamic concept of insurance is called Takaful. The word “Takaful” originates from the Arabic word “Kafalah” which means „To Guarantee, Guardianship, Foster care and protective care etc., the Takaful companies undertake business in accordance with the Sharaiih-Complaint Modes which are free from Riba, al- Gharar and al-Qimar. The concept of Takaful is based on Islamic Injunctions.



The concept of Takaful and its basis in a very elaborative way is discussed in one of the Resolution (No. 200 (6/21) of International Islamic Fiqh Academy (IIFA) of OIC, Jeddah titled „Shari‘ah Rulings and Standards for the Foundations of Cooperative Insurance“, explaining conditions of permissibly of Insurance in Islam. This Resolution contains the full reference of Ahadith which provide the basis of Takaful business in Islam.

In Pakistan SECP Takaful Rules are available for registration of Takaful Companies which do business of Takaful in accordance with the Shariah-Complaint Mode. In consequence thereof many Takaful companies are registered with Security and Exchange Commission of Pakistan (SECP) under the Takaful Rules.

## **9. DEADLINES**

Resultantly, these laws or provisions of the laws will cease to have effect as on and from 1st. of June, 2022.

The Federal Government as well as the Provincial Governments are directed to complete the necessary legislative amendments in the impugned laws in order to bring such laws or provisions of the laws into conformity with the injunctions of Islam by 31st of December 2022. Although it is the universal principle of law that law does become

effective retrospectively but to avoid any possible ambiguity we categorically made it clear that all such laws will take effect prospectively.

163. Hence, after considering all these arguments and noting all the practical aspects we are of the view that five years period is reasonably enough time for the implementation of our decision completely i.e convert economy of Pakistan into, equitable, asset based, risk sharing and Interest-Free Economy. Therefore we would specify the 31st day of December, 2027 on which the decision shall take effect by way of complete elimination of Riba from Pakistan.

## **10. APPRECIATION**

166. Now before parting we would like to bring on record our deep appreciation for all those experts, subject specialist, jurisconsults, Ulema, scholars, economists, finance experts, Chartered Accountants, former Bureaucrats and Bankers, etc., who unceasingly and persistently kept on pursuing this case for decades selflessly and with all sincerity. Their valued input, expert opinions and highly professional knowledge helped us to follow all possible aspects of this case and multiple issues involved therein. All verbal presentations made before us and the written submissions submitted from all across the country were invaluable contributions for assistance in this case.

Best regards for Here & Hereafter

Asif S Kasbati (FCA, FCMA & LLB)

### **Managing Partner**

**Kasbati & Co** (900+ Tax, Levies, Companies, Banking, Finance, Economy, Inflation, etc

Quick Commentary Service Provider and High Level 416+ Tax & Levies Laws Consultants)

**Head of Tax & Professional Excellence Services** (Symbols of High Quality Practical Tax, Levies & Corporate Training for Beginners to High Levels' Professionals) **PTCL:** 92-21-34329108 **Mobile:** 0334 322 3163 **Website:** [kasbati.co](http://kasbati.co) **Facebook:** <https://www.facebook.com/taxexcellence/>

**Google Map link:** [Tax Excellence](#) **YouTube Channel** [Tax Excellence](#)

-----

### **Banking & Finance Commentary (BFQC) 110**

Dear Learned Professionals

#### **Background**

This refers to our following related BFQCs (in trail, in blue, in italic and after double line):

- (i) BFQC 109 dated 17.9.21 about Islamic Banking Bulletin April-June 2021 by SBP.
- (ii) BFQC 98 dated 30.6.21 about Crypto Currency Shariah & Legal Aspects.
- (iii) BFQC 86 dated 8.5.21 about Shariah compliant matters including tax credit (which is technically TLQC and CoQC as well).

#### **Updated Status**

Training and Awareness of Islamic Finance (**TAIF**) hosting a Free Webinar on "Shariah Compliant Business Campaign" Thursday at 1pm (PST) via Zoom (**Attachment 110.1**) featuring Mufti Ismail Desai. The Webinar is based on the 3 Sessions:

- (i) Session 1 will cover the following:
  - (a) Shariah View on Cryptocurrency

- (b) 'Buy Now, Pay Later' (BNPL) / Deferred payment Schemes
- (c) Islamic Indemnification (Takaful) and Islamic Vehicle and Home Finance

(ii) Session 2 will cover Shariah Compliant business success stories; and

(iii) Session 3 will follow Q & A – followed by Du'aa

2. Register your Goodself now to learn above by clicking on the link: <https://bit.ly/3kcutcR>.

3. All our QCs are for our Paid Subscriber Entity only, however, for this particular QC, for Sadqa e Jaria, we request your Goodself to forward this email to your family members, friends, other relatives and associates living in Pakistan or Abroad to attend the Webinar & read our earlier BFQCs, TLQC & CoQC in trail.

Best regards

Asif

=====

From: Asif S Kasbati <[asifskasbati@tax-excellence.com](mailto:asifskasbati@tax-excellence.com)>

Date: Fri, Sep 17, 2021 at 12:03 PM

Subject: BFQC 109=Islamic Banking Bulletin April-June 2021 - SBP

Dear Learned Professionals

#### **BACKGROUND**

*This refers to BFQC 104 dated 24.7.21 (in trail, in blue, in italic and after double line) whereby we sent our commentary on Islamic Banking Bulletin Jan-March 2021.*

#### **UPDATES STATUS**

*You may have seen KQU1227 (Morning) whereby we shared the link of the “Islamic Banking Bulletin-June 2021” alongwith several other updates and now covering in our **Commentary** being an **Important** matter.*

#### **COMMENTARY**

*The SBP has released the Quarterly report of “Islamic Banking Bulletin for the quarter ended 30.6.2021” (click on the link and treat it as **Attachment 109.1**) which shows:*

*a) Tremendous growth of 32.0% in assets and 29.7% in deposits of Islamic Banking. This has been the highest YoY growth in assets and deposits since June 2015.*

*b) The profit before tax of Islamic Banking Industry (IBI) fallen to Rs 42.6B in April-June 2021 from Rs 49B billion as compared to last year.*

*c) Non-performing finances (NPFs) to financing ratio remained same as 3.3% at the end of June 2021 (like at end of June 2020).*

*d) The IBI network consisted of 22 Islamic Banking Institutions including five full-fledged Islamic Banks and 17 Conventional Banks, having standalone Islamic Banking Branches. During the quarter under review, 79 branches were added to a branch network of IBI. As a result, the branch network increased to 3,583 branches (spread across 124 districts of the Country) by the end of June, 2021.*

2. For an Interesting Table of contents of the report, please refer to page # 2 of **Attachment**.

Best regards

Asif

-----

From: Asif S Kasbati <[asifskasbati@tax-excellence.com](mailto:asifskasbati@tax-excellence.com)>

Date: Sat, Jul 24, 2021 at 12:54 PM

Subject: BFQC104=Islamic Banking Bulletin Jan-March 2021 - SBP

Dear Learned Professionals

## A. BACKGROUND

This refers to BFQCs 77(in trail, in blue, in italic and after double line) whereby we sent our commentary on Islamic Banking Bulletin Oct-Dec 2020.

## B. UPDATES STATUS

You may have seen KQU # 1109 dated 10.7.21 (morning whereby we shared the link of the “Islamic Banking Bulletin March 2021” along with several other updates and now give our **Commentary** on the same in ensuing paragraphs being an **Important** matter.

## C. COMMENTARY

The SBP has released the Quarterly report of “Islamic Banking Bulletin for the quarter ended 31.3.2021” (click on the link and treat it as **Attachment 104.1**) which shows:

- a) Tremendous growth of 30.6% in assets and 28.4% in deposits of Islamic Banking.
- b) Profitability increased by 3.4% (March-21 VS March-20 Quarter).
- c) Non-performing finances (NPFs) to financing ratio has declined from 5% (end of March 2020) to 3.5% at the end of March 2021.
- d) 48 branches were added in the branch network of Islamic Banking Institutions (IBIs) as a result, the branch network of IBI increased to 3,504 branches (3,456 in Quarter ended December 2020).

2. For an Interesting Table of contents of the report, please refer to page # 2 of **Attachment 104.1**

Best regards

Asif

-----  
From: **Asif S Kasbati** <[asifskasbati@tax-excellence.com](mailto:asifskasbati@tax-excellence.com)>

Date: Wed, Jun 30, 2021 at 12:28 PM

Subject: BFQC 98 - Crypto Currency Islamic Shariah & Legal Aspects

Dear Learned Professionals

Crypto currency is a virtual currency that is secured using cryptography. Most crypto currencies are decentralized networks based on block chain technology. There are many crypto currencies in the market, but the most popular one is Bitcoin.

## A. Shariah

The question arises as to whether Crypto Currency is Haram or Halal in light of the Shariah. Regarding this issue, please review the fatwas and videos from Learned Muftian-e-Kiram:

1. Mufti Muhammad Taqi Usmani Sahab opinion dated 10.5.21 regarding Crypto Currency Trading (**Attachment 98.1**) As the opinion does not have Darul Iftah Stamp, we have confirmed the same from a Mufti associated with Darul uloom Korangi;
2. Mufti Taqi Usmani Sahab video dated 16.7.18 (click on the link and treat it as **Attachment 98.2**);

3. Mufti Ali Asghar Sahab opinion regarding [Crypto Currency](#) (click on the link and treat it as **Attachment 98.3.**); and

4. Mufti Faraz Adam Sahab opinion regarding [Crypto Currency](#) (click on the link and treat it as **Attachment 98.4.**)

#### **B. Legal & related aspects**

1. The Khyber Pakhtunkhwa Assembly had passed a [Resolution](#) dated 2.12.2020 ((click on the link and treat it as **Attachment 98.4**) to legalize the Crypto Currency, however, unless the Federation does not legalize it and SBP passes the Law, Crypto Currency is likely to be considered as illegal as evident from para 2 below as well.

2. As per the Express Tribune news (FIA) dated 20.5.21 has arrested a man suspected of defrauding a large number of people in Pakistan, India, Britain and UAE through a [digital currency scam](#) (click on the link and treat it as **Attachment 98.5**).

#### **C. Other matter**

Watch [Waqar Zaka Interview to BOL News on What is Crypto currency?](#) (click on the link and treat it as **Attachment 98.6**).

Best regards  
Asif

-----  
From: **Asif S Kasbati** <[asifskasbati@tax-excellence.com](mailto:asifskasbati@tax-excellence.com)>

Date: Sat, May 8, 2021 at 11:50 AM

Subject: BFQC 86 - AAOIFI Fellowship Programs: CIPA & CSAA-Why & How?

Dear Learned Professionals

This refers to BFQC 81 (in trail, in blue, after double line) about Strategic Plan for Islamic Banking Industry for the period 2021-2025 and Other BFQCs about Shariah Compliant matters.

It would be worthwhile for your Goodself / Young Children to attend the AAOIFI Fellowship Program introduction (as given in trail), if time on Sunday.

This would be good for Here & Hererafter.

Best regards  
Asif Kasbati (FCA, FCMA & LLB)

-----  
From: **Asif S Kasbati** <[asifskasbati@tax-excellence.com](mailto:asifskasbati@tax-excellence.com)>

Date: Wed, Apr 7, 2021 at 12:41 PM

Subject: BFQC 81 - Strategic Plan for Islamic Banking Industry for the period 2021-2025

Dear Learned Professionals

This refers to BFQCs 77, etc (in trail, in blue, in italic and after double line) relating to “Islamic Banking Bulletin for the quarter ended December 31, 2020”, etc.

2. You may have seen KQU # 963 whereby we shared the link of the “Strategic Plan for Islamic Banking Industry for the period 2021-2025” with several other updates and now give below our **Commentary** on the same in ensuing paragraphs being an Important matter.

3. The External Relations Department of SBP vide Press Release dated 5.4.21 titled “SBP unveils ambitious Third Five-year Strategic Plan for Islamic Banking Industry” (**Attachment 81.1**) in which SBP has set headline targets for Islamic Banking Industry (**IBI**) to be achieved by 2025.

4. *The main targets for Islamic banking industry are these:*

- (i) 30 % share in both assets and deposits of the overall banking industry.*
- (ii) 35 % share in the branch network of the overall banking industry.*
- (iii) 10 % and 8 % share of SMEs and Agriculture financing respectively, in private sector financing of Islamic banking industry.*

5. *In order to steer the growth of Islamic banking on sound footings, SBP has been providing proactive guidance through issuance of Strategic Plans for the Islamic banking industry; so far, two five-year Strategic Plans have been issued. This third Strategic Plan for Islamic banking industry (2021-25) aims to set a strategic direction for the industry to strengthen the existing progressive momentum and lead the industry to the next level of growth. The plan has been developed in close coordination and consultation with all key relevant stakeholders.*

6. *The strategic plan envisages achieving the aforementioned specified targets by focusing on six strategic pillars namely:*

- (i) Strengthening legal landscape.*
- (ii) Enhancing conduciveness of regulatory framework.*
- (iii) Reinforcing comprehensive Shariah governance framework.*
- (iv) Improving liquidity management framework.*
- (v) Expanding outreach & market development.*
- (vi) Bolstering human capital & raising awareness.*

7. *The IBI has widened its footprint in banking system of the country as follows:*

- (a) 22 Islamic banking institutions (5 full-fledged Islamic banks and 17 conventional banks having standalone Islamic banking branches).*
- (b) Offering Shariah compliant products and services through a network of 3,456 branches and 1,638 Islamic banking windows (dedicated counters at conventional branches).*
- (c) Spread across 124 districts of the country.*
- (d) The Islamic banking industry has acquired a market share of 17 % and 18.3 % in assets and deposits of the overall banking industry, respectively by end December 2020.*

8. *SBP aims at making IBI one third of the overall banking industry by 2025. Keeping in view the potential towards ensuring broad based economic growth and development, Islamic banking has remained a top priority area for the SBP. The plan provides a consensus based agenda and strategy to make Islamic banking an efficient and practical solution for consumers. It also contains an extensive focus on improving the public perception of Islamic banking as a distinct and viable system capable of catering to the varied financial services needs of various segments of the society that would significantly contribute to increasing overall financial inclusion in Pakistan.*

9. *The plan also emphasizes that IBI must develop innovative products based on distinctive Shariah characteristics to cater to underserved sectors particularly SMEs and Agriculture, which are critical for growth of the country's economy.*

10. *The IBI is expected to fully capitalize on the potential of Islamic finance to attain the shared vision of a vibrant and sustainable Islamic banking sector in Pakistan.*

11. *For a detailed view, please refer to [Strategic Plan for Islamic Banking Industry 2021- 25](#) (click and treat it as **Attachment 81.2**) and for Interesting Content, please refer to page 5 of the **Attachment 81.2**.*

*Best regards*

---

From: **Asif S Kasbati** <[asifskasbati@tax-excellence.com](mailto:asifskasbati@tax-excellence.com)>

Date: Mon, Mar 29, 2021 at 12:18 PM

Subject: BFQC 77 - Islamic Banking Bulletin Oct-Dec 2020 - SBP

Dear Learned Professionals

## **A. BACKGROUND**

*This refers to BFQCs 71 & 53, etc (in trail, in blue, in italic and after single line) relating to Shariah Compliant investments and Prohibition of Interest for Here & Hereafter and related matters.*

## **B. UPDATES STATUS**

*You may have seen KQU # 942 dated 24.3.21 (afternoon) whereby we shared the link of the “Islamic Banking Bulletin December 2020” alongwith several other updates and now give our Commentary on the same in ensuing paragraphs being an Important matter.*

## **C. COMMENTARY**

*The SBP has released the Quarter report of “Islamic Banking Bulletin for the quarter ended December 31, 2020” (click on the link and treat it as **Attachment 77.1**) which shows*

*(a) **Tremendous growth of 30% assets and 27.8% deposits in Islamic Banking** which is the highest increase in assets in a year since 2012 and in deposits since 2015.*

*(b) Over the last 5 years, both assets and deposits of the Islamic Banking Industry have more than doubled.*

*(c) This growth in assets and deposits of the Islamic banking industry is encouraging, particularly due the fact that the industry was also faced with the Covid-19 pandemic challenges during 2020.*

*2. SBP has been playing a vital role in the promotion and development of Islamic Banking in the Country. Due to continuous efforts of SBP and relevant stakeholders, the Islamic Banking industry has been growing consistently over the years and this is reflected in the sizable market share it has acquired in the overall banking industry.*

*(a) Financing of the Islamic Banking industry has also grown by 16% during Current Year 2020.*

*(b) Non-performing finances (NPFs) to financing ratio has declined from 4.3% (end of December 2019) to 3.2% at the end of December 2020.*

*3. SBP is amongst the few regulators who have introduced a comprehensive Legal, Regulatory and Shariah Governance framework for Islamic Banking industry in the Country. During the last few years, significant efforts have been made by SBP for growth of Islamic Banking in the country. Some of the major steps includes:*

*(a) strengthening of the Shariah Governance framework*

*(b) ensuring availability of Shariah Compliant refinance facilities*

*(c) detailed guidelines to facilitate the industry during Covid-19 for rescheduling/restructuring of financing facilities according to Shariah principles.*



(d) SBP has also played a key role in the development of the Shariah structure for Naya Pakistan Certificate, i.e. Islamic Naya Pakistan Certificate (**INPC**) which is now available through the Roshan Digital Account for investment to Overseas Pakistanis and those resident Pakistanis who have declared assets abroad.

4. In continuation of its on-going strategy, SBP remains committed towards promotion of Islamic Banking industry on a sound and sustainable basis in the Country by providing a level playing field. It may be recalled that in recognition of its efforts for development of Islamic Banking industry:

(a) SBP has been voted as the best central bank in promoting Islamic Finance for 2020 by a poll conducted by Islamic Finance News (**IFN**), REDmoney Group Malaysia.

(b) SBP has also won this award in 2015, 2017 and 2018.

(c) Global Islamic Finance Award has also bestowed the “Best Central Bank of the Year 2020” award to SBP in 2020.

5. Let us move forward to Islamisation of Finance & Economic system, which is **Mandatory for all Muslims**, by avoiding Riba.

6. For an Interesting Table of contents of the report, please refer to page # 2 of **Attachment 77.1** having 25 pages.

Best regards  
Asif

-----  
From: **Asif S Kasbati** <[asifskasbati@tax-excellence.com](mailto:asifskasbati@tax-excellence.com)>

Date: Wed, Mar 10, 2021 at 5:04 PM

Subject: BFQC 71 - ICT & KPK Prohibition of Interest for Here & Hereafter

Dear Learned Professionals

## **A. BACKGROUND**

This refers to BFQC 53 dated 3.11.20, etc (in trail, in blue, in italic and after double line) about Shariah Compliant matters including Tax Credit for Here and Hereafter.

## **B. UPDATES STATUS**

You may have seen KQU # 898 dated 24.2.21 (afternoon) whereby we shared the link of the “The Islamabad Capital Territory Prohibition of Interest on Private Loans Act, 2021” alongwith several other updates and now give our Commentary on the same in ensuing paragraphs being an Important matter.

## **C. COMMENTARY**

### **I. Islamabad**

1. The National Assembly has passed “The Islamabad Capital Territory Prohibition of Interest on Private Loans Act, 2021” (click on the link and treat it as **Attachment 71.1**). **To prohibit the business and practices of private, money-lending and advancing loans and transactions based on interest. The injection of Islam as laid down in the Holy Quran and Sunnah explicitly and unequivocally prohibit charging interest on loans and have declared war against those who do not abandon interest** “Surah Baqarah - Ayats 275-276” (click on the link and treat it as **Attachment 71.2**).

2. The Constitution of the Islamic Republic of Pakistan obliges the State to take steps to enable the Muslims of Pakistan individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning



of life according to the Holy Quran and Sunnah and it is expedient to make a comprehensive legislation on the subject for covering all the aspects of the mischief of private money-lending and matters akin thereto;

3. It is desirable to stop curb the menace created by private loan sharks and money lenders who are charging interest and then molest the borrowers for recovery. Details of Circulation of Bill from 2018 to 2021 in Senate and National Assembly with the activity date alongwith the main presenter of the Bill in Tabular form is given below:

<b>Activity date</b>	<b>Activity</b>	<b>Presenter</b>	<b>Attachment No (by clicking on the link)</b>
7.3.2018	The Islamabad Capital Territory Prohibition of Interest on Private Loans Bill, 2017 had presented in the Senate Standing Committee on Interior for consideration and reporting back to Senate. The Committee considered and discussed the Bill in its meeting held on 17.9.18 and final consideration was held on 26.11.18 in which committee extensively considered the Bill clause by clause and proposed some Amendments in the Bill.	Senator Sirajul Haq Sahab (Ameer-e-Jamaat-e-Islami)	<a href="#">71.3</a>
20.1.2020	The Islamabad Capital Territory Prohibition of Interest on Private Loans Bill, 2019 was passed by Senate after incorporating all the amendments were proposed on 26.11.18 by Senate Standing Committee on Interior.	Senator Sirajul Haq Sahab (Ameer-e-Jamaat-e-Islami)	<a href="#">71.4</a>
14.11.2019	The Islamabad Capital Territory Prohibition of Interest on Private Loans Bill, 2019 was introduced in the National Assembly for consideration.	Muhammad Sana Ullah Khan Mati Khel (Member NA)	<a href="#">71.5</a>
23.2.2021	The Islamabad Capital Territory Prohibition of Interest on Private Loans Bill, 2021 was passed and become Act by National Assembly after consideration proposed on 14.11.2019.	Muhammad Sana Ullah Khan Mati Khel (Member NA)	71.1

4. As other laws, the Table of Content is not given therein, hence, we give below the same for ready reference.

<b>Section No.</b>	<b>Description</b>	<b>Page #</b>
1	Short Title, extent and commencement	1
2	Definitions	1-2
3	Prohibition of private money lending	3
4	Punishment for abetment	3
5	Punishment for molestation	3
6	Complaint	3
7	Liability to pay interest on debt to stand extinguished	3
8	Offences to be tried by Court	3
9	Cognizance of offences	3
10	Adjustment of principal amount	3
11	Recovery of sums	3
12	Appeal	4
13	Power to deposit in Court money due on loan	4
14	Act to override other laws, etc	4
15	Indemnity	4
16	Power to make rules	4
17	Interpretation	4
18	Repeal	4

5. The West Pakistan Private Money Lenders Ordinance, 1960 is hereby repealed.

## **II. Khyber Pakhtunkhwa**

*On 19.9.2016, the Khyber Pakhtunkhwa Assembly had passed the Prohibition of Interest on Private Loans Bill, 2016 (click on the link and treat it as **Attachment 71.6**) which were presented by Sultan Muhammad of Qaumi Watan Party (**QWP**) and Aizazul Mulk Afkari of Jamaat-e-Islami (**JI**) after incorporating all the amendments were proposed by Fakhre Azam Wazir of Pakistan People's Party (**PPP**).*

*For an Interesting Table of content, please refer to page # 1 of **Attachment 71.6**.*

## **III. Other Pakistan areas**

*Let us hope for the best for the rest of Pakistan area with the efforts of Parliamentarians of Riasat-e-Madina, Islamic Ideology Based Political Parties, Muhtaram Muftian-e-Kirams, Institute of Policy Studies (click on the link and treat it as **Attachment 71.7**), Al-Huda Foundation (click on the link and treat it as **Attachment 71.8**) & Professionals including Pakistan Economic Forum (**PEF**) Board of Advisor for Interest free Economy and finalize the matter in Court which is pending as per the video clipping (click on the link and treat it as **Attachment 71.9**)*

*Best regards*

*Asif S Kasbati (FCA, FCMA & LLB)*

-----  
*From: **Asif S Kasbati** <[asifskasbati@tax-excellence.com](mailto:asifskasbati@tax-excellence.com)>*

*Date: Tue, Nov 3, 2020 at 6:39 PM*

*Subject: BFQC 53 - Updated Sukuk Register, etc and Important Free Workshop*

*Dear Learned Professionals*

### **Background**

*This refers to the following QCs relating to Shariah Compliant matters:*

- (a) CoQC 5 dated 5.9.16 (in trail, in blue, in italic and after double line) about Shariah Screening of Listed Companies for Islamic Equity Indexes vide SECP Circular 29*
- (b) TLQC 204 dated 12.1.17 (in trail, in green) about Shariah Compliant Tax Credit - SRO 12*
- (c) CoQC 96 dated 23.8.17 (in trail, in blue) about Sukuk (Privately Placed) Regulations, 2017*
- (d) CoQC 278 dated 6.11.18 (in trail, in blue) about Shariah Governance Regulations & related tax matters vide SRO 1318.*
- (e) Other QC which you can find by placing word Shariah in our Website [kasbati.com.pk](http://kasbati.com.pk) in subject box considering TLQC 1200.*

### **Updated Status**

*Moreover, we refer to KQU # 707 dated 26.10.20 (afternoon) whereby we shared the link of the “Register of Shariah Compliant Securities dated 22.10.20” alongwith several other important updates and now give below our Commentary thereon in ensuing paragraphs.*

### **Commentary**

*If your Goodself has not seen the “Updated list as of 22.10.2020 about Register of Shariah Compliant Securities / Sukuk issued under Shariah Governance Regulations, 2018” so far, please refer to **Attachment 53.1** and it is worthwhile to note as follows:*

- (a) *The Register contains 2 Listed Sukuks on PSX and 7 Privately placed Sukuks.*
- (b) *Out of 8 Sukuks issuing Companies, 7 are Listed entities whilst only 1 is Private Limited Companies.*
- (c) *The progress as to Sukuk issued is extra-ordinary faster in 2020 than in 2019; with 6 in 2020 (till 22.10.2020) viz-a-viz only 3 in 2019 full year*
- (d) *Total Rs 259,000 held in million Sukuks in 2020 as compared to only Rs 8,500 million in 2019, which means investment under Sukuk has increased over **30 times**.*

2. *Let us move forward to Islamisation of Finance & Economic system, which is **Mandatory for all Muslims**, by avoiding Riba. In this connection, please refer to the following matters.*

- (a) *Riba is Haram, etc - "Surah Baqarah - Ayats 275-276" (click on the link and treat it as **Attachment 53.2**).*
- (b) *At the time of SBP inauguration Ceremony, Quaid-e-Azam announced an Interest free Pakistan economy.*
- (c) *In Constitution Article 38-F, it has been specified that Riba must be eliminated ASAP.*
- (d) *Shariah Court Landmark detailed verdict of 299 pages - which reported in 97 pages with setting as "1992 PLD 1" (click on the link and treat it as **Attachment 53.3**).*

3. ***Workshop for Islamic Economic System and against Riba** will be held on Saturday 7 November 2020 at 2pm in Lahore, Zoom link will be circulated as soon as available for all over the World. For 3 Flyers in this regard, please refer to **Attachments 53.4 to 53.6** wherein:*

- (a) *Former Justice Sheikh Mufti Taqi Usmani will speak on the Occasion alongwith several other Learned Speakers in (**Attachment 53.4 & 53.5**) including Dr Atif Waheed - Tamzeene-e-Islamic Ameer and s/o Dr Israr Ahmad, JI officials, etc.*
- (b) *Undersigned has been invited to speak on "Shariah Compliant tax credit and related SECP regulations (**Attachment 53.6**)".*

*Best regards  
Asif S Kasbati (FCA, FCMA & LLB)*

-----  
*From: **Asif Kasbati** <[asifskasbati@gmail.com](mailto:asifskasbati@gmail.com)>  
 Date: Tue, Sep 6, 2016 at 5:47 PM  
 Subject: CoQC-5 - Shariah Screening of Listed Companies for Islamic Equity Indexes - SECP Circular 29  
 Dear Learned Recipients*

*The SECP has issued Circular 29 dated 5 September 2016 (Attachment 5.1) regarding Shariah Screening of Listed Companies for Islamic Equity Indexes in supersession of Circular 14 dated 21 April 2016 (**Attachment 5.2**). Circular 29 requires Listed Companies to Voluntarily disclose the information as stated from para 2(i) to 2(x) in the Circular 29, in Company's Half yearly and Annual accounts.*

- 2. *The above disclosure is in addition to the normal disclosure of the Listed Companies.*
- 3. *Furthermore, it is important to note that the Federal Government has incentivized the Listed manufacturing companies to become Sharia Compliant Companies (though as a Muslim which is even otherwise necessary) by introducing 2% Tax Credit as per **Clause 18B** of Part II of Second Schedule to the Income Tax Ordinance 2001(as introduced vide the Finance Act, 2016 and which was not in the Finance Bill, 2016) and as explained in the Finance Act Workshop.*

4. *Clause 18B is reproduced below for your perusal.*

*Quote*

*(18B) The rate of tax as specified in Division II of Part I of the First Schedule shall be reduced by 2% in case of a company whose shares are traded on stock exchange if:*

- (a) it fulfils prescribed shari'ah compliant criteria approved by State Bank of Pakistan, Securities and Exchange Commission of Pakistan and the Board;*
- (b) derives income from manufacturing activities only;*
- (c) has declared taxable income for the last three consecutive tax years; and*
- (d) has issued dividend for the last five consecutive tax years.*

*Unquote*

5. *We hope that the above criteria is a way forward (if not in full) towards planning for claiming the Tax Credit and SBP & FBR may also approve the same shortly. Should you require our detailed advice in this regard, please feel free to contact us. SECP's leading role in respect of Tax Credit is also fortified by the high level Tax professional and Ex-SBP Director.*

6. *Though our term relates to SECP Updates (and not Commentary), however, as the matter inter alia relates to Tax as well; as such, we are encompassing our comments on the SECP Circular 29.*

*Best regards*

*Asif*

-----  
*From: Asif Kasbati <[asifskasbati@gmail.com](mailto:asifskasbati@gmail.com)>*

*Date: Thu, Jan 12, 2017 at 10:35 AM*

*Subject: TLQC 204 - Shari'ah Compliant Criteria for Tax Credit - IT Final SRO 12*

*Dear Fellows*

*This refers to QC 199 (in trail after double line in Blue and Italics) whereby we sent our Comments (about Shariah Compliant criteria for claiming 2% Tax Credit by Shariah Compliant Manufacturing Listed Companies) regarding the DRAFT Income Tax SRO 1173 dated 27 December 2016 with the FBR suggested deadline of 3 January 2017 and with our view that the FBR will allow more time, prior to release of the Final SRO (para 4 of QC 1999 refers).*

2. *The FBR has now issued IT SRO 12 dated 10 January 2017 (as per our suggested date) with minor cosmetic changes as per our wording stated in the comments para 3, Alhamdulillah. Consequently, our comments in QC 199 remained unaltered inspite of the Final SRO 12 dated 10 January 2017.*

3. *For your ready reference the Draft SRO 1173/2016 and Final SRO 12/2017 are attached as **Attachment 199.1 and 204.1.***

4. *Let us try our level best to implement Shariah in all spheres of our Own, Family, Friends, Relatives, Offices, Shops, Businesses and beloved Country Lives for Here & Hereafter, before we leave this World **any time**, which is a truly reality, as we have attended Funeral of even Kids and Young.*

*Best regards*

*Asif*

-----  
*From: Asif Kasbati <[asifskasbati@gmail.com](mailto:asifskasbati@gmail.com)>*

*Date: Wed, Aug 23, 2017 at 12:41 PM*

*Subject: CoQC 96 - Sukuk (Privately Placed) Regulations, 2017 - to be Shariah Compliant*

Dear Learned Recipients

This refers to our QCs 204 & 199 about tax credit and CoLU 5 (in trial in blue & italic after double line) in respect of Shariah Compliant Criteria.

The SECP has now issued the “**Sukuk (Privately Placed) Regulations, 2017**” vide SRO 836 dated 21 August 2017 (**Attachment 96.1**). These Regulations are applicable from 21 August 2017 and have repealed the Sukuk Regulations, 2015 which were then notified through SRO 112 of 2015.

As you may be aware that **Sukuk** is also a Shariah Compliant product as per SECP and Shariah Department of the SBP.

Those entities who have issued or plans to issue Term Finance Certificates (which are not Shariah Compliant) may plan to proceed towards Sukuk. Further, those person who have invested in TFCs may also dispose off TFCs and acquire Sukuks.

Best regards

Asif

-----  
From: **Asif S Kasbati** <[asifskasbati@tax-excellence.com](mailto:asifskasbati@tax-excellence.com)>

Date: Tue, Nov 6, 2018 at 6:30 PM

Subject: CoQC 278 - Shariah Governance Regulations & related tax matters - SRO 1318

Dear Learned Recipients

## **1. Background**

Further to CoLU 191, etc (after double line in trial, in blue & italic), whereby we had informed your goodself that the SECP had issued **Draft** Shariah Governance Regulations, 2018 vide SRO 273 dated 1 March 2018 applicable on Shariah compliant companies, Shariah compliant securities and Islamic financial institutions.

Now, the SECP has issued the **Final** version of Shariah Governance Regulations, 2018 vide SRO 1318 dated 2 November 2018 (**Attachment 278.1 - uploaded on SECP website on 5 November 2018**).

## **2. Tax related matters in the Regulation**

### **2.1 Tax Rebate - Regulation 5(5)**

It is worthwhile to note that the Certificate granted under this Regulation shall **NOT** be valid for the purpose of availing tax rebate under criteria prescribed in Income Tax Ordinance, 2001. Please refer to QC 204 read QC 199 (in trail, in green & italics), for more details about Tax Rebate).

### **2.2 Charity - Regulation 16**

(a) **Shariah Non-Compliant income** shall be deemed as a liability of a Shariah Compliant Company and shall be transferred to a separate account named as ‘Charity Account’.

(b) The amount credited in the Charity account shall be disbursed subject to the following:

(i) any disbursement or payment from the charity account shall be made only to the approved charitable organizations registered under Pakistani law as charitable organization (Trusts, Hospitals, etc). **The Income Tax exemption Certificate** issued by the Government of Pakistan to that effect shall be considered as an approval for the purpose.

(ii) the amount available in charity account shall be disbursed within a period of three months of its transfer to the charity account.

## **3. Validity of Certificate - Regulation 5(2)**

The Shariah compliance Certificate granted shall remain valid for a period of 3 years from the date of Certificate unless suspended or cancelled earlier by the SECP.

**4. *Renewal of Certificate - Regulation 5(3)***

*The Company shall, at least one month prior to the date of expiry of the Certificate, apply for renewal of Shariah compliance Certificate to the SECP on the format as set out in Form C along with all the documents as mentioned therein and receipt evidencing the payment of non-refundable processing fee as prescribed in Schedule I.*

**5. *Worthwhile to read***

*5.1 It is worthwhile to read full Regulation or at least refer to headings therein.*

*5.2 This is another way forward towards Islamization of Pakistan in real sense (for which Pakistan was actually built) with proper controls, especially Corporate, Banking & Takaful sectors and will be useful for the Services' Providers as well as Service Recipients to deal with them with peace of mind for **Here & Hereafter**.*

*5.3 For your goodself ready reference, we kept Company law Commentaries 132, 104, 96 & 5 relating to Islamization in Pakistan (in Blue & Italics in trail).*

*Best regards*

*Asif*