

**INTERNATIONAL COMMODITIES AND THE (*SHARI'AH*) GUIDELINES ON
DEALING WITH THEM**

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It is clear that due to great demand from Muslim and non-Muslim countries all over the world, Islamic finance is growing. Globally, there are around 280 Islamic banks. Besides that, there are 300 conventional banks that offer Islamic financial products through independent branches or windows. In March 2008, the total number of Islamic funds has reached 500 and is expected to be reach 1,000 by 2010. Furthermore, the assets of Islamic banks amounts to USD520 billion. With growth of between 15 – 20% per annum, the assets and deposits of Islamic banks are expected to reach USD1 trillion by 2012.

There are many Islamic investment companies which vary in size, from small to large business entities. Besides that, the Islamic capital market is growing and this growth is evidenced in the following:

1. The rapid growth of Islamic insurance and reinsurance companies; and
2. Several capital markets have declared that they will adopt the *Shari'ah* in their operations.

In light of the abovementioned developments, there is a clear indication of the significance of the Islamic capital market in general and Islamic banking in particular. Moreover, we must pursue to improve Islamic banking and to control it by way of Islamic regulations, in order to:

1. Achieve the objective of Islamic banking;

2. Achieve the hopes of the *ummah*, which rely on Islamic banking, in terms of the elimination of *riba* (usury) and prohibited gains;
3. Remove inconveniences for those who deal with Islamic banks; and
4. Achieve better community development.

Islamic banks and investment Islamic companies seek to achieve two main goals, as follows:

1. Investing and increasing their assets through legal ways, so as to maintain these assets and obtain sufficient profits; and
2. Meet the needs of their clients, in terms of finding investment channels that enable the clients to increase their properties (value and quantity) and to enable them to fulfill their needs by using methods and financial instruments that are *Shari'ah*-compliant.

The thinkers within the Islamic banking industry realize that Islamic banking is fairly recent, as it has only been in existence for the last 30 years. At the same time, the Islamic banking industry has faced many difficulties, in terms of operationalizing the theories of Islamic banking. Nevertheless, by the kindness of Allah, Islamic banking has been able to uphold itself, so that it is now a truth that cannot be denied by a fair person.

Yes, Islamic banking has faced and still faces such difficulties, as follows:

1. The idea of an Islamic financial system is quite new (especially if compared to the conventional financial system);
2. Some are in doubt about the applicability of the implementation of Islamic banking, and
3. Strong competition from conventional financial institutions.

Actually, conventional institutions enjoy stability, support and are widespread and entrenched in the global financial system. On the other hand, Islamic banks suffer from the lack of qualified staff. Furthermore, in many countries, Islamic

banks face legislative obstacles that prevent them from running smoothly and growing, and gaining acceptance from the society.

However, Islamic banks have demonstrated their ability, in terms of overcoming many obstacles, attracting many clients, and expanding and securing huge amounts of assets. Essentially, these Islamic institutions and firms are investment institutions with the aim to attain profit by means conducting a business. Furthermore, these institutions do not aim to make money without taking risks, which is prevalent in usury-based loans or money making methods that are free from religious tenets. There is a need for legitimate controls to deal with the actions of Islamic financial institutions, either with regard to the related contracts or services, with the view of adhering to the Islamic rulings on property. This is an real need, due to the following reasons:

1. Increase in the volume of liquidity in Islamic financial institutions, as a result of an increase in their assets size;
2. Growth in the size of the market and its transactions; and
3. The lack of Islamic financial instruments.

Yes, it is true that Islamic financial institutions must obtain profits for their clients. However, in order to do it, they must look for channels that are legal. Moreover, those profits should benefit the society. However, under the impact of preceding circumstances, Islamic financial institutions have resorted to using certain products or instruments, either locally or at the international level, especially with large investment institutions. One of these instruments is international commodities, which are used extensively and is also the subject of this paper. But before we go further; we should define the topic, so that we are clear about *alsela' aldwoliyyah* or international commodities.

Meaning of commodities (sela')

Literal meaning

Sela' is the plural of *sela'h*, which means commodities. Ibn Faris said, "The three letters of the word (سلع) mean that something is fissured and opened. According to Ibn Faris, *sela'h* (commodity) is something sold because it is not acquired for a long time, i.e. not kept but traded (*Mua'jm Maqaiyyes Alogha*). Alfiyroz Abadi said that *sela'h* constitute belongings and anything that is tradable. Actually, his opinion is similar to Ibn Faris'. The second word, *aldwoliyyah*, means international.

Technical meaning

Sela' are strategic commodities, such as minerals, grains, nourishments and petroleum. These commodities are sold and traded wholesale in commodity bourses. There are around 60 bourses that deal with 100 categorized commodities. Some bourses deal with specific commodities¹, while others deal with only one type of commodity. Examples of such bourses are:

1. Bourse of Chicago for Grains (USA) - This is the first bourse in the world. It was established in 1848;
2. Bourse Euronext (Paris) – This bourse specializes in foodstuff-related commodities; and
3. Bourse of London for Minerals – This is the biggest bourse in the world.

Recently, Dubai established a commodities bourse that is located within the Dubai International Financial Center (DIFC). The bourse is the first bourse that deals with futures energy contracts in the Middle East. Apart from enabling

¹ Go back to (International Commodities and the Guidelines on Dealing with them) by Mohammed Abdl Halim Umer. Research was submitted to the sixteenth session of International Fiqh Academy, which assembled in Dubai from 30 Safer – 5 Rabie' awal 1426 H.

traders to trade commodities, the said bourse also aims to fill the gap that exists among the bourses of America and Europe.²

Importance of international commodities

International commodities trading are considered the main pillar of international trading, as many contracts are concerned with such trading. These contracts have become necessary for the execution of international commodities trading, like contracts of insurance, transportation, agency, etc. International commodities trading can play a positive role in improving the commodities trading sector. The important aspects of international commodities trading are:

1. Knowing the trend of the commodity price for an adequate period of time;
2. Matching between the buyers and sellers, which helps to develop the commercial exchanges;
3. Reducing the risks of sudden crisis and ensuring that one enters the market at the precise time;
4. Keep enough liquid assets; and
5. Ensuring the existence of acceptable procedures to settle disputes.

Indicators of global interest in the commodities market

The daily trading volume in the commodities market goes beyond USD1.5 trillion. For such a huge amount, there should be controls to regulate it and to minimize disputes. On that matter, actually, disputes can happen anywhere, i.e. at the location where purchases are made or elsewhere. Therefore, since the last century, early attempts have been made to set up a legal framework for such transactions, in which two agreements emerged:

² Dived Ralteg, the (CEO) of Dubai Center for Commodities and Minerals during an interview with AlArabiya channel.

First - Agreement of Lahay 1964. It produced a unified law for the sale contracts of international³ commodities. Several countries signed this agreement.

Second - Agreement of Lahay in the same year and on the same subject. Like the previous agreement, only a few countries signed the second agreement.

These two agreements are binding for the signatory countries. As such, the laws as per the agreement will be included in the laws of each country, according to the constitutional procedures of each country. In addition to that, in Vienna on 11 April 1980, an agreement that supersedes the two earlier agreements was signed. The agreement was prepared by the United Nations Commission on International Trade Law (UNCITRAL). However, it only came into effect in 1988. Many countries signed the agreement, with other countries invited to be parties to it. In reality, this agreement does not need to be formalized by a decree. It is self-executing and automatically becomes part of the law of any country⁴.

Introduction

In the introduction of the agreement, it is stated that the countries that are parties to this agreement:

³ International sales are not just characterized by the different nationalities that are parties to it. It may be that the purchaser and seller are of the same nationality. But the consideration is with regard to different places or the domiciles of the contracting parties. There are three criteria of international sale: 1. If the commodity is moveable globally, when or after the contract is concluded. 2. Issuing offer and acceptance in two different countries, even if those countries are not the contracting parties' place of business. 3. Handing over the commodity in a third country. However, it does not mean that the commodities should be moved from one country to another, because the contracts may be executed in the future. Afterwards, the contracting parties trade those contracts and settle them at the time of delivery of the commodities. (International Commercial Contracts, Mahmud Samir Alsharqawi. Special Study for Contract of International Sales, page 16).

⁴ Interpretation of the agreement of the United Nations concerning the contract of international commodities trading, provision 5, page 10, 20, 24. Dr. Husam Aldin Alsagir.

1. Should focus on the common goals of the decisions that were made by the General Assembly of the United Nations in its first session, which relates to the effort of building a new international economic system;
2. Should emphasize on the development of international commerce that is based on equality and mutual benefit. This would enhance global relations;
3. Consider adopting unified rules to govern international commodities trading, which take into account the diversity of social and economic systems. All of this would contribute towards removing the legal barriers and support the development of international commerce.

Chapter one of the agreement

Clause 1 established the forms in which the rules of the agreement are to be applied, as follows:

1. Application of the rules of the agreement on commodities purchase contracts, among contracting parties that conduct their business in different countries -
 - a. When these countries are contracting countries; and
 - b. When rules of special international law is applied to the law of the contracting country.
2. It does not matter if the business address of the contracting parties is not mentioned in the contract (before or during the execution of the contract) or in the preceding transactions among the said parties; and
3. The following is irrelevant in determining the application of this agreement: Nationality of the contracting parties, their civil status, their commercial status and the contract itself⁵.

Apart from this agreement, on 1 January 1995, the World Trade Organization (WTO) was established. This organization replaced the General Agreement on Tariffs and Trade (GATT), which was founded in 1947. WTO aims to liberalize

⁵ Appendix of agreements of the United Nations relating to the international commodities trading contracts, Dr. Husam Aldin Alsagir.

international trade by means of establishing an international commercial system that is based on demand and supply. Furthermore, WTO aims to eliminate international trade restrictions and obstacles. There are three main agreements under the WTO, i.e. concerning the trade in commodities (first agreement), trade in services (second agreement) and trade in intellectual property rights (third agreement)⁶.

Sections of the international commodity markets

International commodities must fulfill the criteria that control the attributes of commodity in the markets.

These markets are divided into:

1. Urgent commodity markets - Markets in which the commodities are shown. Actually, the commodities have specific characteristics, i.e. the commodities are in hand or in existence in dedicated warehouses and are capable of being shipped and transported. This market deals with actual sold commodities. Usually, this is the main purpose of such markets. Nevertheless, the conditions of one market might differ from the other, e.g. the representative of the buyer will obtain the commodity in the presence of the representative of the seller, according to the attributes defined; and
2. Futures commodity markets - In these markets, contracts are entered into for commodities that are not yet in the warehouse but have exact specifications. The contracts are distinct from the contracts in the urgent markets, such as the contracts are not binding as the contracts in the urgent markets. Furthermore, it is possible to withdraw from the contracts through the payment of the difference in the price (as compensation for the withdrawal).

⁶ Wikipedia.

The two types of operations in the commodities markets are shown below:

- a. Absolute operations, where the contracting parties are obligated to execute the contracts at a specific time by (1) delivering the commodity and receiving the money (2) clearance of two operations and (3) agreeing to defer the contract to a later date; and
- b. Conditional future operations, where one of the contracting parties has the right to carry out or cancel the contract, according to precise conditions in the markets. The main types of conditional contracts are:
 - Future contract with conditional compensation - This contract entitles a party to execute the deal or to withdraw from it, in exchange for a compensation that is determined in advance. Usually, this right is given to the purchaser;
 - Future contracts with the condition of additional commodities: This right is commonly given to the contracting parties to acquire more commodities at the maturity date. The contract gives the buyer an option to add more commodities to the contract. Whatever the case may be, at the maturity date, the stipulations in the original contract must be fulfilled. In addition, the contract also gives an option to the vendor to sell more commodities, but at the same price that is stated in the contract. Actually, the latter happens when the current price is less than the contract price;
 - Future contracts with conditional selection – This type of contract gives an option to the parties to conclude the bargain at the time of liquidation, either in their capacity as vendors or as purchasers. The traders have the option to buy at highest price or to sell at the lowest price; and
 - Composite future contracts: These contracts are the combination of the aforementioned contracts. Speculators prefer to resort to this kind of contract. The most widely used composite future contracts are:
 - Contract of urgent purchase in exchange of sale, with the condition of compensation;

- BAT contract of purchase in exchange of sale, with the condition of compensation;
- Contract of purchase with the condition of compensation, in exchange of selling BAT; and
- Contract of purchase with the condition of compensation, in exchange of selling with the condition of compensation⁷.

Practice of Islamic banks and companies in the commodities markets

The methods employed by Islamic financial institutions to execute commodities trading can be segregated into two:

First: Investing some of their properties for the contracts of buying and selling commodities. Profits are obtained from the differences between the purchase and the sale price.

Second: Buying commodities from the commodities markets and then reselling them to clients through the contract of *murabahah* on deferred installments basis. For this type of commodities trading, some of the clients are willing to possess the commodity. Thus, the commodity is delivered to him. On the other hand, other clients do not want to possess the commodity. They only want to make a profit from trading it. For the latter, the transaction will be structured along the lines of a *tawarruq* contract. By using a certain mechanism, the commodity is sold and the amount is deposited into the client's account. Essentially, the mechanism is the subject matter of this paper. This mechanism is implemented in steps, as follows:

1. The bank makes a deal with a broker for the bank (a) to purchase a determined quantity of a specified commodity that exists in those markets and (b) the purchase should be done during specific days of the week;

⁷Dr. Prof. Mohammed Abdul Gaffar Alsharif. Practice of Islamic Investment Firms in the Global Market, page 238-245, accessed on www.islamonline.com

2. The bank sells the commodity or part of it to their client on *murabahah* bases. An agreed percentage of profit is added to the cost price. Finally, the client pays the price on deferred installments basis, in accordance to pre-arranged procedures (this step is theoretical and no actual sale has happened);
3. The client, who has purchased the commodity/commodities appoints the bank as an agent to act on his behalf, to sell the commodity/commodities and collect the proceeds;
4. The bank informs the broker that the commodity has been sold to the client;
5. The broker (who still has the commodity in his possession) sells the commodity according to the bank's regulations. Once the sale is concluded, the broker will confirm it (it is worth to note that in this step, the bank is acting on behalf of the client when the bank asks the broker to sell the commodity);
6. Once the bank gets the sale confirmation from the broker, the bank deposits the sale proceeds into the client's account (in this step, the actual sale happens and it is deemed as reselling);
7. The fee for the broker is determined on the basis of a percentage of the total sales proceeds. This is because the services he rendered is considered as paid agency; and
8. At the end of the week, the bank returns the commodities, which have not been sold to the broker, as per the deal between them. The broker is obliged to buy back the commodities at the initial price, as per step 1.

Viewpoint of the *Sharia'h*

The International Islamic Fiqh Academy had discussed the prevailing practices in the commodities markets during its seventh and sixteenth session. The Academy judged that four methods are practised in these markets:

First method: The contract of buying and selling, which states that the commodity will be delivered and the price would be paid immediately and simultaneously. Furthermore, the seller owns the commodity or its security, which is the evidence of his ownership of the commodity. This contract is permissible, as it fulfills the conditions of a valid sale.

Second method: The contract of buying and selling, which states that the commodity will be delivered and the price would be paid immediately, with the guarantee of the market authority. This contract is permissible, as it fulfills the conditions of a sale.

Third method: The contract of buying and selling, which states that (a) delivery of a described commodity that is not in existence as yet will be made in the future, (b) payment will be made at the time of delivery and (c) the contract will be terminated, as soon as the commodity is delivered and payment has been made. This contract is not permissible, due to the deferment of both delivery and price. Nevertheless, this contract can be modified to fulfill the conditions of a *salam* contract. It must be noted that one of the conditions of *salam* is that it is not permissible to sell a commodity that is not owned.

Fourth method: The contract of buying and selling, which states that (a) delivery of a described commodity that is not in existence as yet will be made in the future, (b) payment will be made at the time of delivery and (c) the contract is silent on the termination of the contract once delivery and payment is made. Instead, the contract can be terminated by a counter contract. This contract is void.

If we scrutinize the judgement of the Academy on the above methods, we would observe that in respect of the first method, the Academy permitted the contract. Actually, this contract concerns the present transactions, where the seller has the actual commodity or its securities. Moreover, the contract must fulfill the conditions of a valid sale contract.

Furthermore, the Academy validated the second method, whereby the contract of buying and selling is implied by the delivery of the commodity and payment made, with the guarantee of the market authority. In fact, the second method is deemed as a kind of spot sale. This type of sale is connected with the first method. As regards to the third method, the Academy forbade it because the contract stipulates the delivery of a described commodity in the future and payment would be made at the time of delivery. Actually, the contract includes the deferment of both the delivery and the price. This contract can be corrected if it fulfills the conditions of *salam* that is payment is made in advance and the delivery of the commodity is deferred.

In respect of the fourth method, it is similar to the third contract, in terms of the deferment of delivery and payment, and the non-existence of a genuine sale. This method involves the trading of contracts and it does not look like *salam* because there is no real ownership.

Despite of the clarity and importance of the Academy's judgements, the Academy did not address some significant issues which were known to them at that time. One of those things is conditional deferred contract⁸. One of the more important contracts is contract with the condition of compensation. This condition gives a right for the contracting parties to not execute the transaction at the maturity date or cancel the contract. The second one is deferred contract with the condition of additions, i.e. for the purchaser or seller to increase the quantity that has been agreed upon. The third one is deferred contract with the condition of selection for the buyer or seller at the time of liquidation.

These contracts are exploiting ignorance and ambiguity (*gharar*)⁹, and what is construed as deferment of delivery. In fact, these contracts are unjust and eat the property of the people. Furthermore, the contracts have excessive and massive *gharar* that is enough to render such contracts as null and void. Moreover, *gharar* leads to dispute and dissatisfaction, and may later lead to the oppressive expropriation of the property of the people. The latter is prohibited in the *Shari'ah*, as mentioned in the Qur'an: "O you who believe! Eat not up your property among yourselves unjustly." (An-Nisa, verse 29) and the Prophet s.a.w. said, "No one can take his Muslim brother's property, unless he agrees)¹⁰.

In addition, there is a fourth type of complex deferred contracts that have many forms, some of which have been mentioned earlier. All those contracts are invalid because they contain two contracts in one contract. The Academy was also silent with regard to the use of derivatives in the deferred sale of commodities.

The Academy also mentioned the legality of options (capital market), as laid down during its seventh session, decision 63 (1/7):

The contracts of options are prohibited because the subject matter of the contracts are not property or certain benefits. Furthermore, in options, if one loses his financial rights, he will not get compensation for it. Hence, these contracts are not permissible. Furthermore, the party who has the right of option will tend to inflate his benefit, which leads to harm for the other party. Moreover, most of these contracts do not fully fulfill the conditions of a valid sale and contain the sale of debt to others who have nothing to do with the debt.

⁹ It is proven that *gharar* is prohibited, as per the authentic tradition, which was narrated by Imam Ahmad, Muslim and Tirmizi.

¹⁰ Imam Ahmad Musnad, Vol. 5, page 72.

The decisions of the Academy have not been applied to the widely used contracts of international commodities trading, i.e. the type which all Islamic financial institutions use; it is called *murabahah* of international commodities.

The decisions and judgements of the Academy do not apply to this type of transaction. Therefore, the decisions and judgements are relevant for the first and second method, which concern the spot cash sale of the actual commodities. Indeed, *murabahah* of international commodities are actually pre-arranged between three parties, namely the buyer, the bank and the seller. Being pre-arranged makes the contract a contract of tripartite *'inah*, which is not acceptable to some scholars. In this type of transaction, the buyer does not intend to possess the commodity, but to obtain liquidity that is going to be repaid at a premium and on installments. Most of the time, the commodity reverts to the first seller. Usually, the contracting parties conclude a contract for commodities that are not moveable. Nevertheless, the aim of such contracts is to finance the buyer and the role of the bank is to pay the price and obtain the profit on the price which it has paid¹¹.

Ibn Rushd in his book, *Albayan wa Altahsil*, in the chapter on *salam*, mentioned that: someone asked Imam Malik about a person who sells a commodity to another person on deferred basis. After the seller hands over the commodity to the buyer, the buyer immediately sells the commodity to a third party, which is present at the same meeting place. Then, the third party in turn sells the commodity to the first seller. All of this takes place at one meeting place. Imam Malik said this method of transacting is not good and he considered the third party as a person that is used to legalize the sale between the first and the second party.

¹¹ The rule of *Tawarruq Munazum*. Research submitted to the Academy of World Muslim League in its nineteenth session. Dr. Abdul Allah Alsaedi.

What is the solution?

Islamic banks were and continue to be established for a noble purpose. Islamic banks are the greatest achievement of contemporary Muslims. The success of Islamic banks attracted the non-Muslims, as well as encouraging Muslims to continue with this type of banking. The success enjoyed is the result of diligence and hard work, and not mere ambitions.

It is feared that the Islamic banks follow the current practices (some of which are not *Shari'ah*-compliant) to earn easy profits. In this regard, Islamic banks realize that they are facing competition from conventional banks and that there are prohibitions that must be avoided. If they slip into those prohibitions, they will lose their credibility and the 'element' that entitles them the gratification of Allah and their clients. So, Islamic banks should adhere to the *Shari'ah* at all times. This, however, that does not mean that Islamic banks have not been offering Islamic financial products and practising Islamic finance. However, more efforts are needed.

The rate of growth of Islamic banking and the variety of Islamic financial institutions are increasing. Therefore, some efforts have been exerted to control and develop the performance of Islamic banking. But those efforts are not enough. As a consequence, some academic institutions and industry personalities have been asked to find legitimate alternatives for the practices of conventional banks, in order to enable Islamic financial institutions to achieve two goals:

1. Investing funds according to *Shari'ah* principles; and
2. Develop the community.

In its eighth session, held in Brunei Darussalam from 1 - 7 Muharam 1414, the International Islamic Fiqh Academy issued some resolutions with respect to the problems confronting Islamic banks. The Academy stated in its fifth provision

from decision 76 (7/8) that a commercial commodity market for Muslim countries should be established and be the alternative for the international commodity market, which is full of violations of the *Shari'ah*. Provision six states that liquidity surplus should be used to serve the development goals of the Islamic world, by cooperating among Islamic banks to support shared funds and projects.

In its nineteenth session, held in Makkah from 22 to 27 Shawal 1428, the Fiqh Academy of the Muslim World League urged Islamic financial institutions to avoid usury in all its forms. Moreover, the Academy insists on the role of *fiqh* academies and scientific organizations to guide the Islamic banks to achieve the objectives of Islamic economics.

At the same time, it is fair for Islamic financial institutions to say that they face many obstacles that may hinder their progress, such as lack of support from the legislative and supervisory bodies, the non-existence of an Islamic capital market and lack of cooperation among Islamic financial institutions¹².

Apart from that, there two obstacles that are more serious, i.e. lack of external legal supervision and insufficient financial instruments. These obstacles led to the adoption of conventional products and practices by the Islamic financial institutions and consequently, Islamic financial institutions became influenced by conventional institutions.

We suggest a unique solution for those obstacles; nowadays, developed countries spend 3% of their GDP on scientific research. This helps to propel their development to greater heights. On the other hand, Islamic financial institutions seem to care less about science-based research and development.

¹² Islamic Banks: Between Theory and Practice. Dr. Abdul Razzaq Alhiti, page 663-695.

In relation to this, it is a given that financial products are the backbone of Islamic finance. However, these products cannot be developed without the proper support. Thus, if the Islamic financial institutions allocate not more than 5% of their profit to establish specialist organizations to improve the Islamic financial industry, then that will certainly result in a quantum leap in the development of the industry.

Islamic financial institutions are also requested to do their best in moving from the advisory system (*ifta'i*) to the institutional system. This is because the institutional system improves the performance and contributes to create new leaders who are qualified to enhance the performance of Islamic financial institutions. This is the right time for the concerned authorities to make a decision that allows external legal authorities to supervise Islamic banks. Conversely, the Islamic banks could initiate this step to affirm their credibility.

As a result, the confidence of clients will increase and everyone will be assured that Islamic banks are on the right track. Additionally, Islamic banks should also seek real investments to attain profit and develop the community. The real investments should be made in Islamic countries, by using money, in small and big schemes, with the aim of earning a massive return. Moreover, these investments should create prosperity and progress for all Muslim communities. In this regard, there are many useful schemes that are needed by Muslims at the country level, as well as at the institutional and individual level. Therefore, financing large schemes in those countries via suitable mechanisms for sharing (*musharakah*), *istisna'* and *sukuk* would prove to be productive and profitable.

Investing in companies in the industrial, agricultural, commercial and real estate sector gives the opportunity to Islamic financial institutions to earn good revenues and support those companies. Those companies in turn help to improve the development of the economy and overall prosperity. In connection to this, investments in the agricultural and poultry sector can be done through the

contract of *salam* and *musharakah*. There have been some success stories, such as the ones experienced by Faisal Islamic Bank and Jordan Islamic Bank. However, because of lack of government support and lack of cooperation among Islamic financial institutions, the success attained by the said banks was not able to favourably affect the market.

So, the potential is enormous. There are many areas that can be developed and invested in, provided that there are specialist organizations to study such opportunities using accurate scientific researches. Investing in this area and scientific research will, without a doubt, fill the needs and contribute to the capability of Muslims at the international markets; markets which do not care about Muslims or the suitability of their practices from the Islamic point of view.

We sincerely hope that one day, we will see a high level of revival among the Muslims. Until that day, I hereby provide some recommendations to control and to correct the transactions of international commodities:

Firstly, the transactions should be in compliance with the decisions of *fiqh* organizations and academies. One of the most important decisions is with respect to spot sale. The best effort must be undertaken to adhere to the conditions of a valid sale and making sure that the commodity is moveable and can be owned.

Secondly, Islamic financial institutions should not engage in futures contracts because those contracts are not *Shari'ah*-compliant.

Thirdly, Islamic financial institutions should try to use contracts that are legally acceptable and not mere form, which is a prevalent element in the international commodities contracts. The following must be observed:

- a. The bank must possess the commodity before the actual sale takes place;
and

- b. The first buyer should not be an agent (*wakil*). If he is one, then that constitutes a trick to give the commodity back to him. The sale is then considered as *'inah*.

Fourth, the Shari'ah advisory councils of Islamic financial institutions should:

- a. Audit the international commodities contracts of their principal institutions;
- b. Set an appropriate framework to conclude such contracts; and
- c. Recommend that their institutions reduce these contracts in their investment portfolio.

Fifth, avoid non-compliant international commodities transactions by drawing up conditions and specifications that are *Shari'ah*-compliant. That is not difficult to do in the international market, provided that there is a pre-agreement among the contracting parties, on the basis of freedom of contracting.

Sixth, these transactions should be subjected to more supervision and auditing, and the markets should be visited to ensure that the commodities to be traded really do exist.

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