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Shariah-Compliant

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Overview

- Importance of Sharī'ah Compliance in mu'āmalāt
- Understanding the basic requirements of Sharī'ah Compliance
- Addressing common financial and legal issues facing a UK resident Muslim

Shari'ah defined

The word occurs only once in the Holy Qur'an:

ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ (18) [الجاثية]

Thus we put you on the right way [Sharī'atin] of religion. So follow it and follow not the desire of those who have no knowledge.

[45:18]

Used commonly to refer to commands, prohibitions, guidance and conduct

Basic purpose is to enable man to lead him to righteousness and truth.

Importance of Sharī'ah Compliance in Mu'āmalāt

A Muslim is one who submits in all walks of life

يَا أَيُّهَا الَّذِينَ آمَنُوا ادْخُلُوا فِي السِّلْمِ كَآفَّةً وَلَا تَتَّبِعُوا خُطُوَاتِ الشَّيْطَانِ إِنَّهُ لَكُمْ عَدُوٌّ مُّبِينٌ (208)
[البقرة]

O you who believe! Enter into Islam in totality, and follow not the footsteps of the Satan for he is to you a affirmed enemy. [2:208]

Importance of Sharī'ah Compliance in Mu'āmalāt

Two types of 'ibādāt

by actual nature – Salāh, Zakāt, fast, Ḥajj, 'Umrah, dhikr, Qur'ānic recitation, etc

by virtue of adherence to the Qur'ān and Sunnah – all civil transactions

عَنْ عَبْدِ اللَّهِ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : « طَلَبُ كَسْبِ الْحَلَالِ فَرِيضَةٌ بَعْدَ الْفَرِيضَةِ ». [البیهقی]

It is reported by Ibn Mas'ūd, he said: The Messenger of Allah sws said: To search for Ḥalāl earning is an obligation after the **obligation**. [Baihaqī]

Even everyday practices can become a means of reward when they are practised according to the Sunnah

عَنْ سَلْمَانَ قَالَ: قِيلَ لَهُ: قَدْ عَلَّمَكُمْ نَبِيُّكُمْ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كُلَّ شَيْءٍ حَتَّى الْخِرَاءَةَ. قَالَ: فَقَالَ: أَجَلٌ لَقَدْ نَهَانَا أَنْ نَسْتَقْبِلَ الْقِبْلَةَ لِغَائِطٍ أَوْ بَوْلٍ أَوْ أَنْ نَسْتَنْجِيَ بِالْيَمِينِ أَوْ أَنْ نَسْتَنْجِيَ بِأَقْلٍ مِنْ ثَلَاثَةِ أَحْجَارٍ أَوْ أَنْ نَسْتَنْجِيَ بِرَجِيعٍ أَوْ بِعَظْمٍ. رواه مسلم [كتاب الطهارة، باب فى الاستطابة]

It is reported from Salman that it was said to him: Your Apostle sws teaches you about everything, even about excrement. He replied: Yes, he has forbidden us that we should face the Qiblah at the time of excretion or urination, and that we should cleanse with the right hand or with less than three pebbles, or with dung or bone.

[Muslim]

Civil transactions arguably form $\frac{3}{4}$ of Sharī'ah injunctions

3 of the 4 volumes of The Hedāyah pertain to mu'āmalāt

Acceptance of even purely devotional observances depends on correct observance of the rules on mu'āmalāt

عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ « أَيُّهَا النَّاسُ إِنَّ اللَّهَ طَيِّبٌ لَا يَقْبَلُ إِلَّا طَيِّبًا وَإِنَّ اللَّهَ أَمَرَ الْمُؤْمِنِينَ بِمَا أَمَرَ بِهِ الْمُرْسَلِينَ فَقَالَ (يَا أَيُّهَا الرُّسُلُ كُلُوا مِنَ الطَّيِّبَاتِ وَاعْمَلُوا صَالِحًا إِنِّي بِمَا تَعْمَلُونَ عَلِيمٌ) وَقَالَ (يَا أَيُّهَا الَّذِينَ آمَنُوا كُلُوا مِنْ طَيِّبَاتِ مَا رَزَقْنَاكُمْ) ». ثُمَّ ذَكَرَ الرَّجُلَ يُطِيلُ السَّفَرَ أَشْعَثَ أَغْبَرَ يَمُدُّ يَدَيْهِ إِلَى السَّمَاءِ يَا رَبِّ يَا رَبِّ وَمَطْعَمُهُ حَرَامٌ وَمَشْرَبُهُ حَرَامٌ وَمَلْبَسُهُ حَرَامٌ وَغُذِيَ بِالْحَرَامِ فَأَنَّى يُسْتَجَابُ لِذَلِكَ ». [مسلم]

Abu Huraira reported Allah's Messenger sws as saying: O people, Allah is Good and He therefore accepts only that which is good. And Allah commanded the believers as He commanded the Messengers by saying: “O Messengers, eat of the good things, and do good deeds; verily I am aware of what you do”. And He said: “O those who believe, eat of the good things that We gave you”. He then made a mention of a person who travels widely, his hair dishevelled and covered with dust. He lifts his hand towards the sky (and thus makes the supplication): “O Lord,O Lord,” whereas his diet is unlawful, his drink is unlawful, and his clothes are unlawful and his nourishment is unlawful. How can then his supplication be accepted? [Muslim]

Shortfall in purely devotional observances can be made up by qadā, bequest for fidyah and repentance

Transgressions in civil rights cannot be made up except by forgiveness by the one to whom the rights are due

Economic activity is merely a means to the ultimate goal of establishing justice, fulfilling Allah's will, achieving salvation in the Hereafter

وَابْتَغِ فِيمَا آتَاكَ اللَّهُ الدَّارَ الْآخِرَةَ وَلَا تَنْسَ نَصِيبَكَ مِنَ الدُّنْيَا وَأَحْسِنْ كَمَا أَحْسَنَ اللَّهُ إِلَيْكَ وَلَا تَبْغِ
الْفُسَادَ فِي الْأَرْضِ إِنَّ اللَّهَ لَا يُحِبُّ الْمُفْسِدِينَ [القصص]

And seek with the wealth Allah has bestowed upon you the other world. And do not forget your portion in this world. But do good, as Allah has done good to you. And seek not occasions for mischief in the land, for Allah loves not those who do mischief. [28:77]

Wealth should be utilised to further the interests of the Hereafter

Basic requirements for Shari'ah - Compliance

- The subject matter of any transaction must be Shari'ah-compliant
- The transaction must not involve any interest based lending or borrowing
- The transaction must not involve gharar – uncertainty or hazard caused by lack of clarity regarding the subject matter or its counter-value
- The documentation/contract wording must conform to Shari'ah principles

Basic requirements for Sharī'ah -Compliance

Contemporary contracts fall foul of Sharī'ah Principles in **FOUR** key areas:

- I. Seller not having ownership/possession of goods or selling something that is not in existence yet
- II. Contracts must be devoid of excessive uncertainty (gharar)
- III. Penalty clauses which require the householder to pay interest charges if they default on payment
- IV. Two completely independent contracts must not be made contingent on one another – e.g. hire purchase agreements

Conventional Mortgage Alternatives (Ribā-Free Home Purchase Plans)

- Why are conventional mortgages not permitted?
- How do 'Islamic' Home Purchase Plans differ?

Diminishing Mushārah

Bakr buys the property with the bank in a 30:70 ratio thereby creating joint ownership

Bakr separately promises to purchase the bank's share of property in units

Bank's share is leased to Bakr by a separate contract
Bakr pays rent + an extra payment held in trust by the bank

Bakr periodically purchases units of the bank's share – preferably at market price, but can also be at a predetermined price promised by Bakr.

The rental amount to be paid to the bank will be adjusted to reflect the decreased ownership of the bank.

Diminishing Mushārah

Key Challenges

Shirkat-ul-milk or shirkat-al-'aqd?

Legal enforceability of promise

Rental being linked to LIBOR

Penalty on Default

Advantages of DM

Bank can utilise extra payments after purchase of share by customer
Ownership of property transfers to customer sooner than the Ijārah plan

Conventional Bank Accounts

- Why are [most] conventional bank accounts not permitted?
 - **Basic bank account**
 - No cheque and no overdraft facility – use of only available funds
 - **Current Account**
 - Cheque book and overdraft facility
 - May give a low interest return
 - **Savings Account**
 - Deposit Account – higher rate of interest than Current Account
 - Cash ISA – higher return than Deposit Account
 - Fixed Notice (60/90 days etc) – withdrawal penalty if without notice
 - **Free** overdraft facility?

Ribā-Free Bank Accounts

How do 'Islamic' bank accounts differ?

- **Current Account**

No return paid on deposit
chequebook and multi-functional bank card

- **Saving Account**

Bank invests deposits in Shariah-compliant investments and pays return
as percentage of profit

On Demand Savings Account

Fixed Term Deposit Account (3, 6, 12, 18, 24 months)

60 Day Notice Account

Key Challenges

- Capital guarantee of investments?
- Unilateral gift from the bank?

Bank Cards

- **Debit Card**
 - Linked to bank account
 - No interest charged unless amount withdrawn goes beyond overdraft limit
- **Credit Card**
 - Creates a debt with minimum payable and remaining balance carried forward as interest bearing loan
- **Prepaid Card**
 - Likely to have irregular conditions – top up, transaction, withdrawal, inactivity charges – flat rate v % of transaction

Key Challenge

- Are Credit Cards permissible if holder is sure he will pay loan off before any interest is incurred? What about interest charges condition in a Debit Card?

Personal Loans

- What is **WRONG** with a conventional personal loan?
- What about Student Loans?
 - Can loans be linked to the CPI and thus interest paid at the rate of inflation?
 - Return of same units of measure or same value of the loan
<http://www.alqalam.org.uk/UserFiles/File/StudentLoans.pdf>
- How does an 'Islamic' 'loan' work?
 - Commodity Murābahah
 - What is Tawarruq and how does it work?

Key Challenges

- Why is it controversial? Is there an alternative?
- Is underlying need for the loan valid?

Tawarruq

Zayd requires £10,000 for 12 months

Zayd promises to purchase copper from the bank on deferred payment basis over 12 months

Zayd appoints bank's employee as his agent to purchase the copper on his behalf

Bank sells copper to Zayd through Zayd's agent (bank employee) at cost plus profit [12.5%] payable over 12 months

After possession, Zayd sells copper through an appointed third party broker

Payment [£10,000] credited to the Zayd's account

Zayd makes monthly payments of £1,250 to the bank

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Car & Equipment Leases

- Are conventional leases Sharī'ah-compliant?
- Responsibilities of lessor & lessee
- Penalties on default
- Mutually contingent contracts in hire-purchase

Key Challenges

- Live within our means?
- Tolerated if lessee is sure he will not default on payments?

Guarantees, Warranties & Breakdown Cover

- Are guarantees permitted?
- Are extended warranties considered to be insurance?

<http://www.alqalam.org.uk/UserFiles/File/guarantee%20and%20extended%20warranty%20fatwa.pdf>

- Is Breakdown Cover permitted?

Key Challenges

- What is the difference between a guarantee, a warranty and insurance?
- Is breakdown cover insurance, a guarantee or a warranty?

Insurance & Takaful

- So what's **WRONG** with conventional insurance?
- So how does 'Islamic' insurance work?
 - Takaful?
- What about those scholars who view conventional insurance as permitted?

Key Challenges

- How to resolve key issue of Gharar?
- 'Aqd Tabarru' and debate around this

Key outcomes of this session are to:

Raise awareness of some of the key legal / financial areas where Muslims need to be aware of Sharī'ah principles to either avoid what is clearly unlawful or to fulfill an obligation

To suggest ways for further study as this session is simply to raise awareness and each area needs more research

Most importantly for you, the audience, to recognise that disseminating and implementing this knowledge amongst the community is a personal challenge!