

3/3 Participation or trading in, shares for purposes of conversion

Participation or trading is permitted for purposes of conversion for one who has the ability to effect conversion by adopting a resolution for conversion in accordance with the Shari'a at the first general meeting or by striving for conversion in line with Item 3/4/6. See Shari'a Standard No. (6) pertaining to the conversion of a conventional bank into an Islamic bank.

3/4 Participation or trading (for investment and trading) in the shares of corporations whose primary activity is lawful, but they make deposits or borrow on the basis of interest

The fundamental rule is that of prohibition of acquiring shares of and transactions (investment and trading) in the shares of corporations that sometimes undertake transactions in *niba* and other prohibited things even when their primary activity is lawful, but from this rule subscription and transactions (investment or trading) are exempted with the following conditions:

3/4/1 That the corporation does not state in its memorandum of association that one of its objectives is to deal in interest, or in prohibited goods or materials like pork (swine) and the like.

3/4/2 That the collective amount raised as loan on interest – whether long-term or short-term debt – does not exceed 30% of the market capitalization of the corporation, knowingly that raising loans on interest is prohibited whatsoever the amount is.

3/4/3 That the total amount of interest-taking deposits, whether short-, medium- or long-term, shall not exceed 30% of the market capitalization of total equity, knowingly that interest-taking deposits are prohibited whatsoever the collective amount is.

3/4/4 That the amount of income generated from prohibited component does not exceed 5% of the total income of the corporation irrespective of the income being generated by undertaking a prohibited activity, by ownership of a prohibited asset or in some other way. If a source of income is not properly disclosed then more effort is to be exerted for identification thereof giving due care and caution in this respect.

3/4/5 For the determination of these percentages, recourse is to be had to the last budget or verified financial position.

3/4/6 It is obligatory to eliminate prohibited income specific to the share that is mixed up with the earnings of the corporations, and this in accordance with the following:

~~**3/4/6/1**~~ The elimination of prohibited income is obligatory on one who is the owner of the share, whether an investor or a trader, at the end of the financial period, even if the payment is due at the time of issuance of the final financial statements whether quarterly, annual or for other period. Accordingly, elimination

- is not obligatory for one who sells the shares before the end of the financial period.
- 3/4/6/2** The subject-matter of elimination is the prohibited income specific to the share whether or not the profits have been distributed and whether or not the corporation has declared a profit or suffered a loss.
- 3/4/6/3** Elimination is not obligatory for the intermediary, agent or manager out of part of their commission or wages, because this is their right in lieu of the work they have undertaken.
- 3/4/6/4** The figure, whose elimination is obligatory on the person dealing in shares, is arrived at by dividing the total prohibited income of the corporation whose shares are traded by the number of shares of the corporation, thus, the figure specific to each share is obtained. Thereafter the result is multiplied by the number of shares owned by the dealer – individual, institution, fund or another – and the result is what is to be eliminated as an obligation.
- 3/4/6/5** It is not permitted to utilise the prohibited component in any way whatsoever nor is any legal fiction to be created to do so even if this is through the payment of taxes.
- 3/4/6/6** The responsibility for elimination of the prohibited component of the income, for the benefit of all, falls upon the institution in case it is trading for itself or in case it is managing the operations. In the case of intermediation, however, it is bound to inform the person dealing in them of the mechanism for the elimination of the prohibited component so that he can undertake it himself. The institution may offer these services, with or without a charge, for those dealers who desire them.
- 3/4/7** The institution will apply the above rules whether it does so directly or through another and whether it is trading for itself or for another by way of intermediation or management of wealth, like funds, or is doing so as the agent of another.
- 3/4/8** It is necessary to observe these rules throughout the period of participation or trading. If the rules cannot be applied, it is obligatory to give up such investment.
- 3/5** It is not permitted to purchase shares by raising interest-bearing loans through a broker or another (margin sales), just as it is not permitted to pledge the shares for such a loan. See item 4/1/2/6 of Shari'a Standard No. 12 regarding Sharikah (Musharakah) and Modern Corporations.
- 3/6** It is not permitted to sell shares that the seller does not own (short sale), and the promise of a broker to lend these at the time of delivery is of no consequence. See item 4/1/2/7 of Shari'a Standard regarding Sharika (Musharakah) and Modern Corporations.