



Contemporary Issues in Current Account Operations in Pakistani IBs - Sharia Compliant Solution

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Abstract: Contemporary Sharia scholars have three stances about the Current Account Operations in Pakistani Islamic Banks (IBs) i.e., (i) Ijarah based contract (ii) Wadi'ah based contract, and (iii) Qard based contract. This paper is an attempt to delve into the root causes of the differences of scholars and to find Sharia compliant solution acceptable for all. Descriptive as well as applied approaches are used in this paper. Clearing of ambiguity on this issue may result in twofold benefits: from public point of view, it would satisfy practicing Muslims which may result in form of huge deposits in this account (ii) from IBs viewpoint the Current Account is a bonus deposit.

Keywords: Current account, Islamic banking, Bank deposits.

Introduction

Banks invite public to deposit their savings¹, this saving is termed as 'deposit' in English and 'Wadi'ah', in Arabic [2]. Deposits can be classified into three main types: (i) Current Account (CA) or Hisab Jari (ii) Saving Account (SA) or Hisab Tawfeer (iii) Fixed Deposit (FD) or Wadi'ah Sabitah.

Saving Account (SA) holder is entitled to gain profit in form of interest from Conventional Banks (CBs), and receive profit in the capacity of Rab-ul-Mal from Islamic Banks (IBs). This account is maintained, to secure savings on long-term basis, though no restriction is implemented for withdrawal of amount from this account at any time.

Fixed Deposit (FD) is an account, which restricts the account holder from any withdrawal, totally or partially, before agreed time which is called 'term' between CBs / IBs and Depositors. At the end of the 'term' the CBs pay interest which is either a fixed amount or a fixed proportion of deposited amount, while IBs offer profit that is neither guaranteed nor fixed, but it falls generally in the estimated range. Though, IBs treat these deposits as 'saving account' but distinguish it from SA by name of Fixed Deposit (FD) or Term Deposit (TD). The rate of

¹ <http://www.imf.org/external/pubs/ft/fandd/basics/bank.htm>

interest from CBs and share of profit from IBs are comparatively higher than that of the normal saving account (Marifa, 2014).

In Current Account (CA) deposits, account holder is not entitled for any profit or loss but he can get benefit of withdrawal from his account at any time, total or partial, without any conditions or restrictions. Probably, this is because of this convenience, this account is also called Checking Account or Demand Deposit Account (DD).²

Currents Account Holders (CAHs) are generally the businesspersons who need hassle free unlimited withdrawal from their account and the practicing Muslims who want to refrain from riba from CBs.

According to SBP statistical bulletin report, June 2015, total deposits in CA of Pakistani Banks, disregard to Islamic or conventional, reach to PKR 3019.5557 billion and for non-remunerative CA of only IBs is 373.5 billion. Growth of this account is noteworthy i.e., 30.2% annual growth rate is recorded in 2014 – 2015.³

Current Banking Practices

Some conventional British Banks such as National Westminster Bank⁴ as well as US Banks, like American Bank⁵ distribute a portion of profit with CAH, which is earned through Current Accounts. Some Pakistani Conventional Banks do the similar practices; such as Standard Chartered Bank⁶ Pakistan offers 10% cash back on fuel every month to their Xtra Mile Account (i.e., Current Account Holders); similarly Bank Al-Habib⁷ Pakistan announces: 0.01% profit rate to Al-Habib Tijarat Account and Al-Habib Apna Individual Account (i.e., Current Account Holders).

Though no Islamic Bank (IB) in Pakistan offers any such monetary benefits to the CAHs but all of them offer non-monetary incentives by one way or other (see table 1) such as: (i) Access to all ATMs linked to MNET (ii) Inter-bank funds transfer facility through ATM (iii) Facility of making instant payments (iv) Free internet banking services (v) Round-the-clock phone-banking (vi) Free account statement facility etc.

Problem Statement

As discussed earlier, most of the banks, whether CBs or IBs, collect funds in one of the three Portfolios i) Current Account (ii) Saving Account (iii) Fixed Deposit, but their status and procedures are different. Keeping in view that almost all contemporary Sharia Scholars have given verdict that the ‘commercial interest of CBs’ is as same as ‘Interest against personal loan’ rather, in some cases this is worse and more detrimental than that; and hence this is strictly

² <http://www.consumerfinance.gov/askcfpb/953/what-difference-between-checking-account-demand-deposit-account-and-now-negotiable-order-withdrawal-account.html>

³ State Bank of Pakistan, “Islamic Banking Bulletin - Islamic Banking Department,” June 2015. <http://www.sbp.org.pk/ibd/Bulletin/2015/IBB-Jun-2015.pdf>

⁴ http://personal.natwest.com/personal/current-accounts/compare-current-accounts/reward-silver-account.html?extcam=N_AGG_MSM_MTA_RwdS_ALO_AL_LIST

⁵ <https://www.americanbank.com/business/banking/checking/interest-rates>

⁶ <https://www.sc.com/pk/save/current-xtra-mile.html>

⁷ <https://www.bankalhabib.com/business/islamic-banking/declaration-of-profit.php>

prohibited in IBs (Usmani, 2002). Due to this fact, Islamic banks create relation of Musharik or Mudarib with account holders of Saving and Fixed Accounts (Marifa, 2014).

Current banking practices reveals that portfolio of Current Account has become an integral part of all Banking systems, irrespective to CBs or IBs, because of its demand from customer and being highly beneficial for the Banks, but, Islamic Banks cannot generate profit through it without vetting its status and explaining its profit generating formula on Sharia Standards.

In the subsequent lines, we cast light on different views about 'the status' and 'profit generating formula' which has become the matter of debate among contemporary Sharia Scholars. For convenience, we break this discussion into five parts that would be dealt in five questions.

Research Questions

- 1) What is the status of Current Account Deposit in perspective of Sharia?
- 2) What will be Sharia ruling if CA is treated as (i) Ijara (ii) Wadi'ah or (iii) Qard?
- 3) Will it be permissible in Sharia to offer monetary benefits or other incentives to CA holder?
- 4) Which facilities can or cannot be offered to CA holder?
- 5) What will be the ruling of Sharia, if CA holder places his CA deposits as mortgage against his outstanding debts?

Literature Review

Sharia scholars are divided into three groups on the matter of Sharia ruling on CA status:

Ijara Based Contract

Shahrani (2001) and Subaiti (1995) have discussed this relation in their articles: 'Hisabatul Jariyah wa Haqiqatuha' and 'al-Hisabat-ul-Jariyah wa asaruha fi tansheet-il harakat-il- iqtisadiyah' respectively, but they did not mention its implementation in any banking system. To the extent of our knowledge, no Islamic bank in Pakistan deals CA on this relation. (see table 1)

Sharia Scholars have determine different portfolios for different nature of contractual relations; such as, for getting benefit of the corpus of an article against compensation, the bai' (sale) agreement is a valid contact, and for without compensation, the hibah (gift) contract is suitable; while for gaining benefit of the article against compensation without harming and perishing its corpus, the Ijara contract is valid, and without compensation, the 'Ariya, can be a suitable one (Kasani, 1997).

Ijara or lease is the transfer of the right of usufruct of particular corpus to another person in exchange for a rent (Usmani, 2013). Sharia Scholars are unanimous that Ijara on perishable and consumable articles is not allowed (AAOIFI, 2010); such as rice, wheat or fuel cannot be used as subject matter of Ijarah (Usmani, 2013). The same is the case of Current Account Deposits (CAD) i.e., its utility cannot be availed unless it is converted into commodity and/or consumed. Therefore, no possibility remains for Ijara contract on CAD.

Ijara contract on breastfeeding may be presented as example on consumable subject matter. The Holy Quran expresses⁸: "And if they are pregnant, then spend on them till they deliver. Then if they give suck to the children for you, give them their due payment." But, this example is not pertinent due to the fact that Ijara on breastfeeding is not on 'milk' rather this is on the service of breastfeeding which is the case of 'Ijara on service' (إِجَارَةٌ عَلَى الْأَعْمَالِ) rather

⁸ Al-Quran Surah Talaq 65:6. Tran. Mohsin A.

than the Ijara on commodity (إِجَارَةٌ عَلَى الْمَنَافِع). Moreover, if it is considered as 'Ijara on commodity' than this is just one aspect of Ijara that include many other services such as, nurturing, mentoring and safekeeping etc. Islamic Jurists have allowed Ijara on consumable articles, if this is only a part of a main cluster service (Kasani, 1997)

Wadi'a Based Contract

Wadi'a based contract: Dr. Hasan Abdullah Al-Ameen, Dr. Eesa Abduhu, Dr. Abdur-Razzaq Al-Heeti and Dr. Ahmad Ubaid Al-Kubaisi are known figures amongst contemporary scholar who advocate this relation between CA holder and IB (Shahrani, 2001). Dubai Islamic Bank Pakistan Limited (DIBPL) has established Current Accounts on the same contractual relation⁹. (see table 1)

Wadi'a or Trust is a contract in which a party entrusts the articles to another party for safekeeping and it is returned to the depositor on demand, at any cost without any damages/losses.

In this relation, ownership of the article remains with the depositor (the owner) through the article is possessed by a trustee (Rahmani, 2007). On the contrary, the trustee does not have intrinsic right to use the article; though he can get benefit of it with prior permission of the owner.

Benevolence agreement, Aqd-ut-Tabarru', (i.e., fulfilling the responsibility of safe handling of entrusted article without compensation), is considered as generosity. In this case, if the entrusted article damages or destroys without the negligence of the trustee, the depositor does not have right to claim compensation. This theme is inferred from a Hadith: "There is no penalty on the trustee" (Majah,2008).

The four Islamic Jurists are unanimous on the verdict that charges cannot be levied on trustee if the damage is caused without negligence (Al-Muqaddasi, 1996)

In a nutshell, Wadi'a is a contract in which the trustee neither deserves rights of usufruct nor liable for any damage or loss, if it happens beyond his control.

Qard based Contract

In this contract, CAH is the creditor and bank is the debtor. This is the standpoint of Taqi Usmani (1999) which is also endorsed by International Islamic Fiqh Academy, Jeddah¹⁰ and Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) (AAOIFI, 2010). All Pakistani Islamic banks, except DIBPL, have accepted this viewpoint (see table 1).

Qard literally means 'cut off' and this is so named because the possession as well as ownership of the article is 'cut off' from creditor when it is transferred to debtor (Al-Shirbini, 1997). According to AAOIFI (2010): "Qard is the transfer of ownership in fungible wealth to a person on whom it is binding to return wealth similar to it" (AAOIFI, 2010).

In this contract: (i) ownership of article is transferred from the creditor to the debtor, (ii) the debtor is unconditionally entitled to use or consume the article, and (iii) the debtor is bound to return the same or the similar article to the creditor (AAOIFI, 2010).

A hadith says: "A loan must be paid back, a debt must be discharged and one who stands surety is held responsible" (Tirmizi, 2008).

Qard contract is a not non-profit relation as the profit sharing is against its instinct characteristics. Hadith says: "When one extends loan to the other and the debtor presents something or his animal as a gift to the creditor, the creditor should not accept the thing and

⁹ <http://www.dibpak.com/Deposits/Current-Account>

¹⁰ www.fiqhacademy.org.sa/qarat/9-3.htm

should not derive benefit from the animal, apart from the situation where this (exchange of gifts) has been the norm between them earlier” (Majah,2008). Abdullah bin Salam admonished Abu Burdah: “You live in a land where interest prevails in abundance. If there is something receivable by you from someone and they give you even a handful of straw, barley or fodder as a gift, do not accept it, because that will be riba” (Bukhari, 2008).

Analysis

Sharia ruling on the finding of three possible relations of CAHs and IBs is appended below:

Ijara based Contract

In the light of Sharia, Current account can never be an Ijara based contract because it is necessary for a valid contract of Ijara that the corpus of the leased article must: (i) remain intact, and (ii) remain in the ownership of lessor; while in the case of Ijara based contract between CAH and IB (i) the article which is a ‘currency’ cannot remain intact, and if the currency is leased out it will deem to be a loan, and this loan is strictly forbidden in Sharia because it fall in Riba-ul-Hadith. About such transaction the holy Prophet (s.a.w) instructed: “It is not permissible to barter two sa’s (صاعين) of dates for one sa’ (صاع) nor two Dirhams for one Dirham (as this is a kind of usury)” (Bukhari, 2008).

Wadi’a based Contract

Current account deposit cannot be considered as Wadi’a because it is necessary for a valid contract of Wadi’a that the corpus of the trusted article must (i) remain intact (unless damaged or perished without negligence of trustee) (ii) remain in the ownership of depositor, and (iii) the trustee is neither entitled for reward nor liable for loss.

While in the case of Wad’ia based contract between CAH and IB: (i) the article, which is a ‘currency’ cannot remain intact (ii) IB ensures its return at any cost (iii) IB generates profits from these deposits.

If IB is restricted by CAH to not to get benefit of the deposits or, on the other hand, IB announces that it is not guarantor for Current Accounts Deposits, there is a high possibility that this CA portfolio of IBs remain unattractive.

Qard Based Contract

Subject to some precautions and restrictions, current account deposits can be considered as Qard based contract, because it contains all sharia compliant features that are required for this contractual relation. In this contract: (i) ownership of article is transferred to debtor (ii) debtor retains right to use or consume the article to generate profit from it, and (iii) the debtor guarantees returning of the similar article or its substitute to the creditor.

This relation suits CAH and IB in a sense that: (i) IB becomes an owner of the deposits (ii) IB can generate profits by using or consuming of these deposits (iii) IB gives guarantee of return to the CAH as and when demanded, even in the case of total or partial damage of deposits with or without negligence of IB.

Some scholars do not consent to this interpretation on the ground that intention of CAH behind this arrangement is the security of money, not to extend assistance to IB, while one of the important factors of loan is the intention to help to the debtors.

This objection seems invalid because the intention of benevolence is not the integral part of Qard, as obvious from the incident of Zubair (r.a), who used to receive deposits from Wadi’a depositors in form of loan, saying: “This is Salaf (loan), not a Wadi’a (trust) because I fear its destruction” (Bukhari, 2008).

This arrangement of deposit by Zubair (r.a) gives some important insights about Qard and Wadi'a: (i) intention of creditor to help debtor is not necessary condition for Qard (ii) the deposited articles/money as a Qard with the intention of security is not against Qard contract (iii) the debtor is liable to return Qard at any cost (iv) the trustee is not liable to return Wadi'a if damaged or lost without his negligence.

Primary intention of creditor should always been a reward in the hereafter but if he intends also the security of his article by way of Qard arrangement it does not go against the injunctions of sharia. Therefore, nothing seems objectionable, if CAH and IB enter into Qard based contract with the intention of securitizing the deposits (Usmani, 1999).

Qard based contract should have three important features: (i) debtor is authorized to use loaned article/money with his free-will (ii) debtor is bound to refund the same or substitute article/money of the same value to the creditor on his demand (iii) debtor is the guarantor of the debt.

Since all required features of CAH and IB are found in the Qard based contract, it seems fit for CAD in IBs and can be recommended as the best sharia compliant arrangement for this purpose.

Current Account Deposit as Mortgage

Can CAD be dealt as mortgage in favor of CAH in context of Qard Based Contract?

Majority of Sharia Scholars are of the opinion that the mortgage article must: (i) be a real asset (ii) have possessing value and (iii) saleable.

According to Kasani (1997): "Requisites for a mortgage item are that it should be saleable in trade, that is, existent at the time of the transaction, of the category of the substance, goods, possessing value, specified, and capable of being handed over to the buyer" (Kasani, 1997). Muqaddasi expounds: "It is not appropriate to make such article a mortgaged item which is not saleable, such as Ummu Walad, endowed amount and something already mortgaged. This is because the objective of mortgage is to recover the loan by disposing off the mortgaged item and something which is not saleable cannot fulfill this objective" (Al-Muqaddasi, 1996).

Keeping Kasani (1997) and Muqaddasi's interpretations in view, it seems that CA cannot be treated as mortgaged article because: (i) CA is 'Dayn' not an 'Ain' (ii) CA is a 'Qard' and 'Qard' is not saleable.

Nevertheless, Kharshi Maliki finds room for the considering of debt as a mortgage, such as: "To place a debt/loan as mortgage with the debtor, the pre-requisite is that the repayment period of the loan which is being placed as mortgage should be at least equal to that of the loan for which the mortgage is brought into effect. This is because, if the debt/loan remains in possession of the mortgagee after completion of the mortgage period, it becomes similar to loan and, consequently, two agreements, loan and sale, will enter in one sale agreement. However, if it is decided that after completion of mortgage period the loan will be placed with a trustworthy third person till completion of loan period, this arrangement will become permissible" (Al-Kharshi, 1896).

In a nutshell, CA may be used as mortgage: (i) if the CAH is also a debtor of the bank and places his current account as mortgage with the bank for authentication of the debt/loan (ii) the creditor is a third person other than the bank, and then the debtor places his CAD with that person in a way that the latter is authorized to withdraw from the account whenever he wants (iii) the creditors is other than IB and he demands that the debtor must freeze his CA in the bank until the maturity of loan period (Usmani, 1999).

Conclusion and Recommendations

- 1) Qard based contract (QBC) between CAH and IB seems to be a best possible Sharia compliant mode for Current accounts deposits (CAD)
- 2) Offering monetary incentives to CAH in any form is strictly forbidden; this is tantamount to riba.
- 3) IB may offer CAH non-monetary services and facilities but these should not exceed the facilities that are offered to other account holders across the board. These services and facilities may include: (i) e-Banking facility (ii) Free ATMs facility (iii) Free Inter-bank funds transfer through ATM or e-Banking (iv) Facility for instant payments (v) 24/7 customer services through mobile calls and e-banking (vi) SMS alerts on transactions (vii) Fund transfer facility to own or other accounts (x) Free chequebooks, etc.
- 4) Any incentives exclusive for CAH in any form, monetary or non-monitory, will be tantamount to riba
- 5) Mortgaging from Current Account by CAH is highly avoidable if the arrangement is based on QBC
- 6) CA may be mortgaged by the CAH against his loan subject to two conditions: (i) repayment period of the mortgaged loan should be at least equal to that of the loan for which the mortgage is brought into effect, and (ii) after completion of mortgage period, the loan will be placed with a third party till maturity.

Table 1

| Dubai Islamic Bank Pakistan Limited (DIBPL) | |
|--|---|
| Nature of Current Account | Wadi'a contract ¹¹ |
| Current Account Facilities | <ul style="list-style-type: none"> - Unlimited number of deposits and withdrawals. - No minimum balance restriction. - Low transaction charges. - Standing instructions option for payment of bills. - Free account statement. - Entitlement to Silver or Gold ATM/VISA Debit Card. - Free access to Dubai Islamic Internet Banking. - Free access to Dubai Islamic Phone Banking. - Free online banking. - Enjoy Dubai Lounge Priority Banking services and enjoy a host of exclusive privileges |
| Saving Account Facilities | <ul style="list-style-type: none"> - Unlimited number of deposits and withdrawals - Monthly profit payment on the average balance of the month. - Entitlement to Silver or Gold ATM/VISA Debit Card - Standing instructions option for payment of bills. - Free account statement. - Free access to Dubai Islamic Internet Banking. - Free access to Dubai Islamic Phone Banking. - Free online banking. - Enjoy Dubai Lounge Priority Banking services and enjoy a host of exclusive privileges. |
| Current Account Additional Facilities | <ul style="list-style-type: none"> - Low transaction charges. |

¹¹<http://www.dibpak.com/Deposits/Current-Account>

| BankIslami Pakistan Limited (BIPL) | |
|---|--|
| Nature of Current Account | Qarz (loan) ¹² |
| Current Account Facilities | <ul style="list-style-type: none"> - Minimum balance of Rs. 1,000/- only to open the account. - Joint Account facility. - Access to the entire online branch network. - Visa Debit Card. - Access to all ATMs. - Interbank Funds transfer facility. - Facility of making instant payments at Orix terminals. - Free Internet Banking service. - Round the clock phone Banking. - Personalized service from Customer Relationship Officers. - Free Account statement facility. - Hold mail and Stop payment facility. - Safe deposit lockers |
| Saving Account Facilities | <ul style="list-style-type: none"> - Free Internet Banking Service. - Hold Mail & Stop payment facility. - Safe Deposit Lockers. - Profit/loss payment on monthly basis. - Differential and specific pool allocation possible for large deposit holders - Profit announcement at the beginning of every month. - Monthly profit/loss payment on daily product basis. - Round the clock phone Banking. - Personalized service from Customer Relationship Officers. - Free six monthly Account Statement facilities. |
| Current Account Additional Facilities | - None |
| Al Baraka Bank (Pakistan) Limited (ABPL) | |
| Nature of Current Account | Qarz (loan) ¹³ |
| Current Account Facilities | <ul style="list-style-type: none"> - Free from any minimum balance charges. - Unlimited deposits and withdrawals. - Free ATM card. - Additional benefits such as e-Statement, 24/7 Phone Banking. |
| Saving Account Facilities | <ul style="list-style-type: none"> - Free from any minimum balance charges - Profit is calculated on monthly average basis - Profit will be paid every month - Unlimited deposits and withdrawals - Enjoy higher profits on higher balances - Free ATM card - Additional benefits such as e-Statement, 24/7 Phone Banking. |
| Current Account Additional Facilities | - None |

¹²http://www.bankislami.com.pk/product_services/islami_current_account/

¹³<http://www.albaraka.com.pk/retail-banking/deposit-accounts/abpl-current-account/>

| Meezan Bank Limited | |
|---------------------------------------|---|
| Nature of Current Account | Qarz(loan) ¹⁴ |
| Current Account Facilities | <ul style="list-style-type: none"> - Minimum Investment is Rs. 1000/- - One time freecheque book. - Free internet banking - No restriction on withdrawals or number of transactions. - Online branch banking facilities - No deductions on low balance - Free Takaful Coverage - Free ATM Takaful Coverage |
| Saving Account Facilities | <ul style="list-style-type: none"> - Minimum investment required is Rs. 100 - Free Cheque Book - Free Internet Banking - Free Online Banking - No restriction on withdrawals or number of transactions - Free issuance of Pay Order - Free bank balance certificates - Access to priority desk - Free Takaful Coverage. - Free ATM Takaful Coverage |
| Current Account Additional Facilities | - None |
| Burj Bank Limited | |
| Nature of Current Account | Qarz (loan) ¹⁵ |
| Current Account Facilities | <ul style="list-style-type: none"> - No minimum balance requirement - No restriction on number of transactions and withdrawals. - Access to PKR Account through Burj Debit MasterCard. - Free access to Burj online banking. - Free internet banking service including free funds transfer within Burj Bank branches. |
| Saving Account Facilities | <ul style="list-style-type: none"> - Attractive tiered profit rates. - Profit calculated on Monthly average balance with monthly and half-yearly payout. - Unlimited number of transactions free of charge. - Free online banking. - Unmatched services available at Burj Bank branches present nationwide. |
| Current Account Additional Facilities | - None |

¹⁴<https://www.meezanbank.com/rupee-current-account/>

¹⁵<http://www.burjbankltd.com/retail/deposits/burj-current-account>

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