

Analytical Study on Bill discounting with reference to Shār'iah

*Dr.Syed Ghazanfar Ahmed

**Uzair Ashraf Usmani

Abstract

With the growing economic industry, the importance of bill discounting is not obscured any more. It is undoubtedly one of the most important tools of trade financing. Now it has become very easy for importers and exporters to sale any product to a complete stranger anywhere in the world and get the bill against it discounted before its maturity date. That is why this tool is in the practice of all conventional banks. But regarding to shār'iah rulings its prevailed practice in conventional banks is not shār'iah compliance as this transaction consists of debt sale and interest. But due to it's vitally need, Jurists of Islamic shār'iah have stepped forward with its different alternatives based on *MŪrabaha*, *Wākalāh*, *MŪshāārkāh* and *Bāy' Sālām* in currency. In this article we have covered the causes behind the *shār'iah* rulings of prevailed bill discounting in conventional banks and addressed the *Bāy' Sālām* as an alternative in currencies and its executive model in Islamic banks. Furthermore I have discussed the different opinions of modern scholars regarding these issues.

Keywords: Bill discounting, letter of credit, *Bāy' Sālām* in currency, Islamic modes of Finance

*Assistant Professor, Deptt: of Quran & Sunnah, University of Karachi

**Research Scholar, Deptt: of Quran & Sunnah, University of Karachi

Significance of bill discounting

With the rapidly growing economy, the importance of bill discounting is not obscured any more. This bill has just not only become almost mandatory in trade financing but it is also a very important business tool among traders in the current round of world trade. Undoubtedly, the traders who deal in imports and exports have to use this product constantly. Through this product, the traders get the benefit of not only staying at home and selling their commodities to a completely unknown part of the world but also have an opportunity to get their bills discounted against the payable amount before their maturity, and then with that amount they generate more earnings and profit by investing and placing it in different financial institutions. That is the reason why this tool is in the practice of all conventional banks. According to the practice in vogue the exporter sells his goods at an agreed price to someone living in other country in exchange of a bill for payables. As soon as the trader loads his goods on the ship, the importer signs a bill to transfer it to the exporter from his bank, the bill actually is a bill of lading on behalf of the importer that he will pay the amount on mutually agreed date to the exporter. This bill is known as a letter of credit or bill ¹of exchange that is known as "الكمبياله" in Arabic and the date at which amount will be paid is the maturity date known as ²نضج الكمبياله in Arabic. After that, most of the time, the exporter is in a hurry to get the amount as soon as possible so that he can make further investments, therefore, the bill is taken to a bank for discounting. This process is called endorsement and known as تظهير in Arabic and the person who signs is known as endorser and is known as مظهر in Arabic. Bank accepts this receipt against the receivable amount, and reimburses some amount which is much lesser to the amount receivable (depending upon the outstanding number of days left from the maturity date) to exporter at that time. This procedure is identified as Bill discounting and in Arabic it is called ³خصم الكمبياله or خصم الكمبياله. Banks most often take its profit according to the corresponding number of days left from the maturity date.

Bill discounting's Mechanism which is prevailing and is in practice under all conventional banks in summarized from is that suppose a manufacturer name Zaid manufactures shoes exports/sells them to importer Umar who lives in America on mutually agreed price, let's say one lac dollars. They finalize this

deal on first of January and they already have decided that with mutual understanding Umar, the exporter, is going to pay him on 1st of March, now Zaid gets the shoes shipped, let's say on 15th January and informs Umar about it. Umar upon being informed sends a bill on behalf of his bank to the Zaid in which he undertakes the promise to pay the amount on 1st march as mutually agreed in the contract of sale, this bill is called bill of exchange or letter of credit which mostly are of two type's usance LC and sight L.C. It is termed as *كمبياله* in Arabic, now after receiving the bill Zaid wants financial assistance to make more investments he takes the bill to the bank and signs on the back of receipt of the bill and asks bank to pay him some money let's say 90,000 dollars and in exchange bank keeps receivable amount which is 100,000 dollars from the exporter. Bank mostly pays him the lesser amount as compared to the amount to be received, and the discounted amount which is 10000 dollars, in our case, is bank's profit. Mostly it depends upon the number of days which are left from the maturity date. bank discounts Supplementary money if the number of days are more to the date of maturity, this discounting is called bill discounting and it is termed as *حسم الكمبياله* or *نخصم الكمبياله* in Arabic and person who signs who is exporter in our case is called endorser and it is called *مظهر* in Arabic and this process is termed as endorsement or *تظهير*. In Urdu this process is called *ہنڈی پر ہتہ لگانا*.

Bill discounting can be divide into two types:

First type

In first type the bill holder (*مظهر*) receives the amount from the bank and gets himself free from any kind of liability. In other words if the importer did not pay amount to the bank, he would not be questioned to pay. This ⁴ is called without recourse.⁵

Second type

In second type of bill discounting after receiving the amount from the bank the bill holder or the exporter doesn't get himself from the liability of payable of importer. So he will be questioned if importer defaults. This is called with recourse.⁶

Shār'iah rulings of first type

The first step will be the proper understanding of debt. Debt is discussed in the book ⁷Almūsūa'h-ālīqīyyāh ālkūwīyīyyāh ⁸ according to which in a summarized form debt means an indemnity which becomes mandatory in the liability of the person due to the execution of the transaction or due to dispose of the property or due to taking loan from someone

Suppose if a person has bought something like wheat in exchange of Rs.100 from the shopkeeper, now on because of this transaction providing 10Kg wheat is debt on the shopkeeper and paying Rs.100 is debt on the buyer.

If we observe bill discounting closely we conclude the result that it is mandatory for the importer to pay debt to the exporter, but exporter therefore sells the debt to the third party which is the bank lower than the face value, and we already mentioned that the bill of exchange is actually the promise of importer which shows that he will pay the due debt on him in the future. So, following the shār'iah rulings of first type, we can say that it's a debt sale to third party transaction. We consider first type as sale because the

liability of exporter gets over after he receives the amount from the bank. According to Islamic law of sale, sale possess the same feature because after the sale the responsibility of the vendor from the subject-matter gets finished until or unless subject-matter appears to be defected or anyone else's share appears in the subject-matter. So it will be called debt sale.

So in other words it's a debt sale to third party and regarding the debt sale to third party, the jurists have given their word by which laws of bills of exchange can be verdict.

Hanafites school of thought

By observing the religious text of Hanafi school of thought, it is evident that near the Hanafites jurists selling the debt to a third party is not admissible because uncertainty is being found in it. And according to hadith such sale and purchase, in which uncertainty is being found, is prohibited.

Therefore the Holy Prophet (pbuh) said:

”عن أبي هريرة، قال: «نهى رسول الله ﷺ عن بيع الحصة، وعن بيع الغرر⁹»

Translation: Hāzrāt Abū Hūryrāh (RA) said: Holy Prophet (pbuh) has prohibited the sale and purchase of gravel and uncertainty.

The description of uncertainty is that the seller is legally obliged to do in terms of buying and selling that the subject matter which is being sold or purchased should be given in the risk of the buyer. Therefore, if the seller sells subject matter without giving in risk to the buyer then because of this unaffordable delivery, the sale becomes¹⁰ void. In aforementioned situation the person who has to receive the debt sells the debt to the third party then the third party has no idea that whether the debtor (the one who pays the debt) will pay the debt or not. Therefore, ambiguity is being found in it and that debt is an unaffordable delivery. Hence, uncertainty is found in it so selling or purchasing of this debt is not permissible.

It also come to know that the actual reason behind the illegitimacy of debt sale to third party is the uncertainty therefore if the debt is sold on the face value or more than or lesser than the face value, debt sale to third party will remain illegitimate.

The Hanafites text, in a summarized form, is mentioned below:

1. ¹¹ According to, *Īmām Muḥāmmād* (May Allah bless his soul) a person who has a debt on another person, it is inappropriate for him to sell the debt because the other person doesn't know that whether the debtor will pay debt or not. This is also the opinion of *Īmām Abū Hānīfāh*. (May Allah bless his soul)
2. *Allāma Kāḍiānī*¹² (May Allah bless his soul) narrates in his famous book that the sell or purchase of the debt is forbidden to any third person, because either the meaning of debt is the amount receivable or delivering the debt to under the ownership of someone else, both the cases are not

allowed regarding to shār'iah because in both the cases the vendor cannot give it to the customer since he doesn't have the debt

Hānbālites school of thought

¹³By looking at the text and narration of the Hānbāl ites, it can be said debt sale to third party is not allowed because uncertainty is being found in it. Whose details are given in the explanation of Hanafites religion¹⁴ before:

1. However according to ʾIshāq b. ʾrāhwāyḥ from Hānbāl ites the selling or purchasing of debt is permissible to the debtor for example dowry is to be paid by husband to wife which means that except the debtor, no one else is permissible to pay it. Hence it is permissible to the debtor to sell the debt.¹⁵
2. According to ʾIbn ʾi Qūdamah from Hānbāl ites¹⁶ except to the debtor no one else can be sold the debt to because regarding to this chapter narration of Hāzrāt ʾIbn -ʾi-Umār (رضى الله عنه) is that he used to sell camels in the grave yard of Bāqi' and sometimes he used to decide dīrhām for it and used to take dīnār and vice versa so interrogated once this to Holy Prophet (PBUH) about it and the Holy Prophet (PBUH) said that there is nothing wrong in it. Through it we came to know that sell or purchase was done in dīnār and that was mandatory to be paid but in exchange to that dīnār or dīrhām were being received from the debtor. Therefore, except to the debtor no one else is allowed to sell the debt to.

Zahiriates school of thought

ʾĀllama ʾIbn Hāzām writes about debt sale its summary is that debt sale is not allowed to third party whether this sale is done in the cash or against any commodity because ambiguity is there and this sale which produces uncertainty, regarding its brief explanation we already have mentioned before.¹⁷

Malkiates School of Thought

In Malkiates school of thought, the following context is followed:

According to ʾImām Muḥāmmād Āḥmād ¹⁸ it is not allowed to sell any debt to any one (third party) except for the debtor himself. However, they allow to sell debt with certain restrictions

1. Debtor should be available and should not busy in travelling. If the debtor is not available in council contract where selling and purchasing is going on than this selling is not permissible.
2. Debtor admits the due able debt on him.
3. Debt should be something which is permissible to be sold before taking its possession of it. If debt is wheat then it is not permissible to sell it to the third party before taking its possession as it is not permissible to sell or purchase anything before taking possession. In Malkiates school of thought short sale is allowed in everything except in the wheat. Hence, except wheat debt sale upon anything is permissible if other corresponding conditions are followed too.
4. Debt sale should not be in form of homogenous goods consequently as a result of it if debt is in the form of dīrhām and transaction is also executing in dīrhām then this transaction will be illegitimate, at this point ʾAllama Dāsūqī further added if both subject matter and consideration are homogeneous then uniformity on both the counter values will be prerequisite in order to make this transaction legitimate.
5. sale purchase of silver and gold against each other or against their selves is should not be allowed despite from the fact that they are not homogeneous when it comes to sale against one another, but because aforementioned transaction is Sārf and in sale of SĀRF taking possession on both subject matter and consideration in the council contract is one of the two stipulations, and in this case this condition is not getting full filled so this transaction is void.

6. There should not be prevailed any hostility among the vendor and the debtor so the customer could not able to get the debt.

Āllama further added two more conditions which has been explained by mūftī Tāqī Usmānī in his latest book name fīqhūl bīyū'.

1. Consideration against debt should be in cash and in spot otherwise if we consider consideration as loan or debt then transaction becomes *Bāy' alkli bil kaali* which is not permissible in the eyes of shār'iah .
2. Debtor should be from those who can be enforced by law and regulative authorities so if he defaults from paying his debt then debt can be recovered through the mean of court.19 ,20,21

Shāfi'ates school of thought

On this issue, we may find contradiction among Shāfi' ates's narrations in some books we find legitimate to sale the debt to a third party, some narrations suggest that it is allowed if customer and the vendor take the possession on both consideration and the subject matter respectively in the council contract and then customer sells to the third party. This is how their opinion has been described in different classical books of Shāfi' ates.²³²²

Justice rtd mūftī Tāqī Usmānī after mentioning all the opinions and the brief research study, which have been made on Shāfi' ates school of thought, says:

Shāfi' ates has 3 opinions

1. Permissibility of debt sale
2. Impressibility of debt sale
3. Permissibility of debt sale with condition of taking possession in the council contract on the compensation and the debt

However it means that all Shāfi' jurists who mention the permissibility of debt sale are basically adopting this view with condition of taking the possession on the debt and its compensation in the at the meeting of the contract, therefore uncertainty which is the basic reason of getting this transaction impermissible does not exist in the aforementioned case, therefore in other words if uncertainty exists then Shāfi' ates jurists would not allow the debt sale to the third party too.

Shār'iah rulings of first type with respect scholars opinion

According to the above mentioned views and opinions of jurists fist type of bill of exchange is not allowed according to Hanafites , Hānbāl ites Zahiriates and of the opinions of Shāfi' ates school of thought even if it is sold on the face value as that sale will be based on uncertainty , jurists has mentioned another document in their books which resembles with the bill of exchange it was called *Jāmkīyyā* , this document used to be issued on behalf of *bāytūl māāl* or on the half of supervisor of the *wāqf* in the favor of the person whom had any financial right on them. Jurists of hanafiates and HĀNBĀL ITES do not allow sale of that document as this sale is actually the sale of debt to the third party, just like that they also do not allow the sale of first type of bill of exchange. But ĀLLAMA Ibn UL HĀTTAB one of the jurists of malkiates has allowed sale of that document:

²⁴ بخلاف الجامكية؛ فإن الملك محصل فيها لمن حصل له شرط الواقف، فلا جرم صح أخذ العوض بما وعنهما

But regarding to the conditions that malkiates impose on the debt sale we observe that they allow the sale of the debt with condition of inhomogeneity of both the consideration and subject matter however if they are homogenous then they should have to be equal in the quantity, in the aforementioned case there isn't any equality in the transaction of bill discounting so bill discounting should be impermissible according to malkiates too.

Regarding to Shāfi' ates and their opinions some of them allow the debt sale or sale of *Jāmkīyyā* with the condition of having the possession on both the consideration and subject matter in the council contract however if we take that specific opinion then bill discounting will be not allowed too according

to them as they also impose the condition that consideration should be equal to the face value of the debt and in the aforementioned case consideration is less than face value of bill of exchange so its sale is forbidden too. So our discussion proves that first type of bill discounting is impressible near all authentic jurists.

Shār'iah ruling of second type

If we observe closely the second type of bill discounting we come to the result that the liability in the favor of exporter does not get over when the he discounts the bill and receives the amount from the bank , in fact still bank shall has the right to receive his amount if the importer defaults from paying the amount, regarding its shār'iah adaptation it is actually the combination of *loan* and *Hāwalah* as bank first lends loan to the exporter with the condition that he will do the *Hāwalah* (transfer of loan) towards the importer means the importer must repay the loan that had lent to the exporter and then bank will take that loan given to the exporter plus the extra amount as its fee. Therefore it can be assumed as *Hāwalah* acting upon the *hanafites* school of thought.

(What is *Hāwalah*)

وفي اصطلاح الفقهاء تحويل الدين من ذمة الأصيل إلى ذمة المحتال عليه على سبيل التوثق به

Hāwalah is the transfer of debt from the transferor (*mūhyīl*) to the payer (*mūhal ālāyih*)²⁵ suppose if 100 rupees are payable in the liability of Zaid as debt and he has to pay this debt to the Umar then Khalid comes and says I will reimburse the debt on the Zaid to the Umar then this transaction is called *Hāwalah* according the Islamic jurists. In the aforementioned case Zaid is *mūhyīl* , or the debtor ,Umar is the person who has to be paid the debt is *mūhtāl lāhū* and Khalid who has taken the responsibility of paying the debt is *mūhtāl alaieh*.

Basic principal of Hanafites is if the debt gets lost then *mūhtāl* can receive the payable debt from the *mūhyīl*. In the aforementioned case *mūhyīl* is the

exporter bank is the *mūhtāil* who has lent the loan to the exporter and exporter has transferred the loan towards the importer who is the *mūhtāil* aliehi. Reason of saying this adaption *Hāwalah* is that there is a law in number of countries that if the importer didn't pay the debt then bank would have been granted a right to receive the debt from exporter, so according the following type of *Hāwalah* liability of the exporter does not get over so if the bank didn't get its debt received from the importer he would have been received it from the exporter. This is exactly the same situation that Hanafites has mentioned in their books. According to that if the debt gets lost then the creditor can receive the debt from debtor.

Although hanafites allows *Hāwalah* itself but the aforementioned type of bill discounting is illegitimate as it is necessary if the debt is in the form of loan then the receivable amount from the importer should have to be equal to the amount paid to the exporter (means as much loan has paid the bank as much he should receive from the importer) but the ongoing practice of all conventional banks is to receive extra amount of money from the exporter which is *Rībā*. So this type is also impermissible²⁶.

And that is the reason why second type of bill discounting is also declared as illegitimate in AAOFI²⁷ standards.²⁸

Alternative of Bill discounting

Apart from being its impermissibility, its importance is undoubtedly not obscured anymore. For the development of society the bill of exchange financially plays an extra ordinary role. Therefore, it was an exigency of the time for the contemporary scholars and jurists to present its alternative, and they have come up with the following alternatives:

Mūrabaha model

Wākalāh model

Sālām model

Insha-ALLAH, we will discuss the main frame work and structure of *Sālām* model in our ongoing discussion and conclude this research with the legitimacy of this model.

***Sālām* based currency model**

To get fully understand *Sālām* based currency model it would be better for us to understand *Bāy' Sālām* and *Bāy' Sārf* first. We also have to understand the meaning of *fūlūūs* and *shār'iah* rulings of executing *Sālām* in the currency and *fūlūūs* as well.

Definition of *Sālām*

"بو بيع الاجل بالعاجل"

In *Sālām* , the seller undertakes to supply specific goods to the buyer at a future date in exchange for some advance price fully paid on the spot. The price is in cash but the supply of purchased goods is deferred .

Suppose if a vendor sells wheat and says that he will undertake to supply the specific quantity of wheat, let's say 100 tons, after 6 specific months and customer agrees and pays the amount as consideration in advance on the spot then this type of transaction is called *Bāy' Sālām* . As at the time of transaction the subject-matter is not available, consequently, according to the analogy, this sale should be void ab initio because it is necessary in the contract of sale for the subject matter to be available at the time of sale but this sale has been proven by the hadith. So, *shār'iah* has allowed to use this as a mode of financing with some certain unambiguous conditions. Under such a sale contract the subject matter is called *muslam fih* and the consideration is termed as *ras ul maal*.

The author of one of the famous books of Hanafites *Āllama Kasaani* (may Allah swt bless him) says in his book:

الأول فالصرف في متعارف الشرع " اسم لبيع الأثمان المطلقة بعضها ببعض وهو بيع الذهب بالذهب والفضة بالفضة وأحد الجنسين بالآخر ²⁹

Sārf means the exchange of some *Athāmān e mūtlāqa* with some other, *Athāmān mūtlāqa* is the term that means exchange or sale and purchase of gold against gold or silver against silver or sale purchase of one of the genus against one another, according to Islamic jurisprudence if both commodities are homogenous then there should be prevailed uniformity among the both commodities and taking possession on both the commodities should be necessary and if they are not homogenous like exchange of silver against gold then it is allowed to execute it without uniformity but taking possession is still necessary.

To know the shār'iah rulings of currency we have to understand the meaning of *fūlūūs* and we also have to understand whether rulings of Sārf are implemented on the *fūlūūs* too or not because if the rulings are implemented on *fūlūūs* then it means execution of *Sālām* in the *fūlūūs* will be forbidden as in Sārf it is necessary to take the possession on both the counter values and where as in *Sālām* it is only necessary to take possession on the *rāsūl māāl* only.

What are *fūlūūs*

According to Arabic encyclopedia

³⁰ وفي الاصطلاح: كل ما يتخذة الناس ثمنا من سائر المعادن عدا الذهب والفضة

Fūlūūs means anything from the metals except silver or gold that have been made *Thāmān* (consideration) by people. So *fāls* is not itself is a *thāmān* but it has been made and treated as *thāmān* due to custom of the people or the orders of the government, so if that custom has changed or the government has stopped treating as legal tender then the actual status of *fūlūūs* will be revoked too and it will remain not more than a metal which has its own made up value. On the other hand gold and silver both are *thāmān* itself as they are genetically *thāmān* whether people or government call it *thāmān* or not. That is why silver and gold are called genetically *thāmān* ,

Shār'iah ruling of fūlūūs based Sālām

From the four schools of thoughts it is not allowed to execute the *Sālām* in the *fūlūūs*³¹ near Ḥmām Malik may Allah swt bless him because according to him verdicts of Sārf are implemented on fūlūūs and it is compulsory in Sārf to take possession on both the counter values whether they are homogenous or not where as in Sālām it is not compulsory for the subject matter to be taken in possession, so the execution of Sālām based fūlūūs is not allowed³² near to him.³⁴³³

Hānbāl ites school of thought

There are two narrations of Ḥmām Āhmād bīn Hānbāl (may Allah swt bless his soul) regarding the issue of the implementation of the verdicts of Sārf on the fūlūūs, according to the first narration its verdicts are not implemented on fūlūūs and according to second narration its verdicts are implemented on the fūlūūs. Following the second narration some of the Hānbāl ites jurists say that it is allowed to execute the fūlūūs based Sālām if the rasul maal is in the form of goods, in other words it should not have to be in the form of cash no matter the transaction is executing as in weights or in numbers, execution is allowed, and this is the right narration and the opinion regarding to this issue.)³⁵

Shāfi' ates school of thought

According to Ḥmām Shāfi' may Allah swt bless him fūlūūs genetically is not thāmān so the rulings of Sārf are not implemented on the fūlūūs and when the rulings are not implemented then the execution of fūlūūs based Sālām and its transaction is legitimate too.³⁶

Hanafiates school of thought

According to Hanafites to prove Rībā in any commodity availability of *homogeneity* with *volume* is indispensable, volume means weight of gold and

silver, and it means *mākilī* except in these two commodities³⁷, so weight is one of the prerequisites of having *Rībā* in gold and silver. therefore it means verdicts of *Sārf* are not implemented on *fūlūūs* according to the Hanafites school of thought as *fūlūūs* are countable numerical object, therefore this opinion demands the legitimacy of sale purchase of excessiveness of *fūlūūs* with one another and the non-prerequisites of taking possession on both the counter values. But HANFIATES somehow impose the condition of taking possession with another angle i.e. *fūlūūs* are basically from the *ATHĀMĀN* (consideration) and the ruling of *thāmān* is that they are not get specified with specification³⁸ but they get specified with taking the possession. So if they are sold without specification then it will expose to usury or *Rībā*. Which can be explained as: for instance Zaid sold Umar 2 *fāls* against one *fāls*. And this sale was just executed verbally not physically then zaid said: now I have to pay you two *fāls* and you have to pay me one *fāls* therefore I execute the settlement agreement with you as two payable *fāls* on mine are settled against one *fāls* payable on you therefore there remain one *fāls* only which is in my liability and now I have to pay you only one *fāls*, so in the end without any physical actual sale purchase paying of *fāls* has become liability of Zaid and this one *fāls* is not against any compensation which is usury and *Rībā* and clear violation of³⁹ *shār'iah* rulings. Therefore to avoid the transaction without any compensation Hanafites impose the condition of taking possession in the council contract so the *fūlūūs* get specified.

And if specified *fūlūūs* are sold against one another with excessiveness then issue will be disputed and debatable among Hanafites jurists, according to *Imām Abū Yousuf* and *Imām Abū Hānīfāh* (may Allah swt bless them) sale purchase of *fūlūūs* with excessiveness is legitimate because specified *fūlūūs* are like goods therefore as selling of goods with excessiveness is legitimate so the selling of *fūlūūs* is legitimate too, *fūlūūs* are like goods because they are actually made up of metals like paper, steel etc, they are not genetically *thāmān* so they are called *thāmān* due to the custom of the people consequently if both the counter parties are agreed for the revocation of custom then a *fāls* will not remain more than a thing made up of metals

and its value will be the equivalent to the value of goods. And both counter parties can revoke the custom as no one else has the authority on them. So it means that *fūlūūs* can be sold after getting specified with excessiveness.

On the other hand *Imām Muḥāmmād* says that *fūlūūs* cannot be sold after getting specified with excessiveness because *fūlūūs* are declared *thāmān* due to the convention and custom of the people so it cannot be revoked with the revocation of both counter parties therefore they will remain *thāmān* and when they will remain *thāmān* then will not be specified with the specification so their sale purchase will be like the sale purchase of non-specified *fūlūūs* with excessiveness which is forbidden near Hanafites so the aforementioned situation will be forbidden too.

However apart from the aforementioned disputed issue Hanafites jurists agree that rulings of *Sārf* are not implemented on the *fūlūūs* because the transaction is not *Sārf* therefore if they both the counter values are exchanged and they are homogenous then their excessiveness will be illegitimate and taking possession of both the counter parties on the counter values in the council contract will be the condition. Because every single value is *thāmān* and *thāmān* cannot be specified with the specification but it can be specified with taking the possession, therefore taking possession is the stipulation otherwise sale of debt against debt will be exposed which is a non-*shār'iah* -compliant. And if both counter values of *fūlūūs* are not homogenous then taking possession on one of the counter values will be prerequisite.⁴⁰

From the above mentioned research study we conclude the result that according to hanafites rulings *sraf* are not implemented on *fūlūūs*, regarding the *Sālām* based *fūlūūs* transaction it is written in the books of Ahanf that its sale purchase is permissible if it is sold numerically, there is no doubt it is legitimate near *Imām Abū Hānīfāh* and *Imām Abū Yousuf* (May Allah swt bless them) but near *Imām Muḥāmmād* (May Allah swt bless him) it is written in different books of jurisprudence of Hanafites that its sale numerically is not allowed near him because *fūlūūs* do not get specified so

they will remain in the ruling *thāmān* and will not become a good therefore its sale as *Sālām* is illegitimate.

But few scholars from Hanafiate⁴¹ have written his opinion as legitimate and said that for the legitimacy of *Sālām* it is necessary that (subject matter) should have to be a thing which should not be a *thāmān* but a thing that can be purchased by the *thāmān* means it should be a subject matter. And common rule regarding the contract of sale is that it should have to be kept legitimate as far as possible. Therefore to make the aforementioned transaction legitimate it will be assumed that both the counter parties have revoked custom and convention of *fūlūūs* as *thāmān* and made them in the ruling of goods, therefore as the execution of *Sālām* is legitimate in the goods so as its execution legitimate too near *Imām MŪHĀMMĀD* .

We also came to know from the above mentioned result that if *fūlūūs* are not specified like the currency is admitted as legal tender by the government on government level therefore regarding the execution of *Sālām* based *fūlūūs* sale purchase of specified and unspecified of *fūlūūs* following types are achieved:

1. *Fūlūūs* are unspecified and homogeneous, regarding this type transaction is illegitimate because *fūlūūs* when they are homogenous then taking possession on both the counter values from subject matter and consideration is prerequisite and in the execution of *Sālām* based *fūlūūs* counter values are not taken in the possession. So the following type is illegitimate.
2. *fūlūūs* are unspecified and inhomogeneous ,the clear verdict regarding to this type isn't found in the books of *fiqh* but following the rules and regulations set by the jurists regarding to this chapter demand that their transaction with excessiveness should be legitimate and taking possession on one of the counter values should be stipulation, because this is not transaction of *Sārf* where lending debt is forbidden subsequently it proves excessiveness and taking possession just on one value is legitimate too in this type.⁴²

3. Transaction of gold and silver against **fūlūūs** whether are they are specified or unspecified. Execution of **Sālām** is legitimate in this type as gold and silver are measured with weightage whereas **fūlūūs** are numerical countable object so the both counter values are inhomogeneous as a result of that lending loan for the future and the excessiveness in the counter values are allowed and legitimate in this transaction so the execution of **Sālām** based **fūlūūs** is allowed too.
4. Transaction of **fūlūūs** against gold and silver, like the clause no three this type and execution of **Sālām**⁴³ is allowed⁴⁴ too.⁴⁵

Currency based **Sālām** transaction

From the above mentioned brief research study we conclude that, if **fāls** of one genus is sold against **fāls** of another genus then transaction will be legitimate if one of the values is taken in the possession therefore in this situation execution of **Sālām** is legitimate. Furthermore it should made clear that modern jurists has three point of views regarding the issue of prevailed currency:

1. According to first point of view the prevailing currency is not generic **thāmān** but its verdict is like verdict of **fūlūūs** .So if the verdict of the **fūlūūs** is implemented on the currency then concerning the opinions of **Ḥmām Shāfi'** and **Ḥmām AHAMD BĪN HAMBAL** in which verdicts of **Sārf** doesn't implement on the **fūlūūs** , therefore execution of **Sālām** should have to be legitimate near to them.

Whereas, according to **Ḥmām malik** execution of **Sālām** should not have to be legitimate; and according to Hanafites execution of **Sālām** should have to be legitimate if they are dealt numerically, but this opinion also demands the legitimacy of the excessiveness in the exchange of currency, too. Subsequently, if opinion of **ḤMĀM SHĀFI'** and right opinion **ḤMĀM ĀHMĀD BĪN HĀNBĀL** , in addition to the opinion of **SHEKHAIN** were also taken as fatwa then door of **Rībā** shall open because the current practice in all the conventional banks and in the world is taking back the currency

with interest after lending it to the borrower which falls under the category of Rġbā. So this opinion has not gotten any acceptance from the modern jurists

2. Second point of view concerning the shār'iah status and the verdict of prevailing currency is like the generic thāmān and it has taken the place of generic thāmān ,so point of view demands that ,verdicts of should be implemented on currency and zakat should be paid up with this currency, in addition to this currency should be considered as rausul maal too but should not be considered as musalm fiih or subject matter in the transaction of Sālām , so if this point of view was taken then execution of Sālām would be illegitimate In the views of all authentic jurist which we have already mentioned earlier, this point of view has gotten the acceptance in the conference of AAOFI ,and almost all the Arab jurists are acting upon this point of view.
3. Third point of view is based on the opinion of İMĀM MŪHĀMMĀD (may Allah bless him) and this point of view has gotten the acceptance of sheikh ul islam mŭftġ Tāqġ Usmānġ, conclusion regarding to this point of view is that prevailed currency is in the verdict of thāmān e urfi or thāmān e istalahi which means that currency has become the thāmān or consideration due to the custom or convention of the people due to the treatment of the government it as thāmān . Therefore, every country's currency is considered as one single genus ,subsequently zakat should be allowed to pay with the currency and considering this currency as rausul maal should be allowed too, furthermore if the genesis were different then execution of of Sālām in currency would be legitimate too, however danger of considering currency as the mean of Rġbā as the condition of exchanging the currencies on market rate isn't there in this point of view therefore mŭftġ Tāqġ Usmānġ has included this condition in the execution Sālām and in the exchanging of currencies. So it will not be sold unless on market rate.⁴⁶

Opinion of contemporary scholars on currency

The result of the contradiction among the modern jurists is that execution of *Sālām* in the currency is illegitimate with reference to first point of view because in that situation it is in the verdict of sale of *Sārf* due to treating it as genetical *thāmān* therefore its sale purchase is illegitimate too no matter they are homogenous or inhomogeneous, that is the reason why modern Arab jurist don't allow the execution of *Sālām* against one another in currencies.

Whereas with reference to the third point of view fatwa is on the opinion of *Imām Muḥāmmād* (may Allah bless him) consequently if currency of one genus is sold against the currency of another genus then execution of this sale will be legitimate because it's not sale of *Sārf* ,furthermore taking possession on one of the genesis or the counter values should be prerequisite however in *Sālām* *rasul maal* is taken under the possession on the spot so the execution of sale *Sālām* will be legitimate ,but to refrain from the *Rībā* exchange rates of currencies should be subject to the market rate . This is the opinion of sheikhul islam *mūftī Tāqī Usmānī*. MEEZAN BANK was the first bank who came up with this newly design model of exchanging of currencies in Pakistan and following MEEZAN's Footstep STATE OF PAKISTAN also adopted this currency model.

Sālām based Model

In this model sale of slaam is executed in currency, after shipping goods as per the L/C contract terms ,exporters do not wish to wait for the proceeds , that are expected as future date , in order to generate liquidity exporters bring bill of exchange to the Islamic bank counter and get the bill against it discounted using the mechanism of currency based *Sālām* , under this mechanism Islamic bank purchases the foreign currency on the market rate from the exporter to be delivered on the future date against the immediate payment in local currency on market rate, mostly in Pakistan its PKR. Exporter takes the local currency (*rasul mal*) in his possession immediately and it becomes mandatory in his liability to pay the foreign currency (muslim

fih) on the agreed future date, when he receives that on the he instantly reimburse the foreign currency to the bank.

Treasury department of the bank plays a very significant role in the execution of sale of *Sālām*, it gathers the liquid cash from the market and from the deposit of the bank then executes this deal. Islamic bank normally doesn't take the profit more than the profit of conventional bank, however, the main difference is that in conventional banks the profit is haram as it consists of the debt sale or *Rībā* whereas in Islamic bank its halal profit base on the sale purchase of a currency.

In short if we observe closely the contraction between the modern jurists and the sheikhul islam *mūftī Tāqī Usmānī* we conclude the result in the end that *mūftī Tāqī Usmānī*'s view is substantial after observing the situation in the market, because in other alternatives like *Mūrabaha* customer or exporter doesn't need the required commodity to be purchased but he needs money in cash, and alternative *Mūrabaha* basically depends upon on the required commodity, so the need of required is created for the sake of the execution of *Mūrabaha* sometimes but in *Sālām* his need can be full filled with the amount of cash he received from the as rasul maal.

Process flow

1. Exporter comes to the bank and a final approval for *Bāy' Sālām* will be sought as per the standard credit approval policy of the bank.
2. After the approval, master agreement for the overall facility will be signed between the customer and the bank.
3. Whenever customer has the need of the PKR, he will bring his export LC bills to the bank.
4. The banks treasury based on the market price of the day, will set a range for the spot this rate will be used for conversion (purchase) rate negotiation between the bank and the customer.

5. After finalization of the deal bank purchases the foreign currency to be delivered at future known specific date (due date) and pay the price in PKR as per agreed rate.
6. To extend the facility the Islamic bank may ask the exporter to assign its receivable under this L.C to the bank, it may also ask the exporter to furnish the other securities to protect itself incase if exporter defaults.
7. The customer will deliver the foreign currency on the due date to the bank but will not be contingent to the arrival of the L.C proceeds, in case if L.C don't arrive on due time the customer will have to arrange foreign currency from his own sources and ensure payment on the due date and transaction will conclude.

Conclusion

1. Bill discounting is a very important tool of trade finance, it's a common tool that has been used by all conventional banks to discount bills and provide facility to its customers however with subject to shār'iah we find its violation at two levels:
2. Without recourse : according to it after discounting of bill liability of customer has finished and bank has not the right to demand discounted amount from customer in case importer has not paid the due amount. In other words it's a debt sale to third party and this sale is not allowed according to the opinions of all school of thoughts.
3. With recourse as per shār'iah this scenario is the combination of Hāwalah h (transfer of debt) and loan with Rībā there on. As per shār'iah all schools of thoughts are unanimous that this scenario is also not shār'iah compliant. And that is the reason why second type of bill discounting is also declared as illegitimate in the AAOFI ⁴⁷ standards. ⁴⁸
4. In Sālām , the seller undertakes to supply specific goods to the buyer at a future date in exchange for some advance price fully paid on the spot. The price is in cash but the supply of purchased goods is deferred .

5. Sārf means the exchange of some *Athāmān e mutlaqa* with some other, *Athāmān mutlaqa* is the term that means exchange or sale and purchase of gold against gold or silver against silver or sale purchase of one of the genus against one another, according to Islamic jurisprudence in Sārf possession should be taken on both counter values in the event of contract.
6. Fūlūūs means anything from the metals except silver or gold that have been made Thāmān (consideration) by people. So fāls is not itself is a thāmān but it has been made and treated as thāmān due to custom of the people or the orders of the government.
7. Does shār'iah allow if rulings of Sālām are applied on fūlūūs ? Sālām does not allow in fūlūūs according to the opinion of Ḥmām Malik, one of the opinions of Ḥmām Āhmād Bīn Hānbāl .however Ḥmām Shāfi' it is allowed to execute Sālām in fūlūūs .
8. As per the opinion of Ḥmām Mūhāmmād Rahimullah it is allowed to exchange one fāls against another however from both counter values one of the counter values need to be taken under possession.
9. Regarding the issue of modern currency Arab scholars says that they are gential thāmān hence exchange of currency against one another is like Sārf hence Sālām is not allowed to execute in it.
10. Mūftī Tāqī Usmānī adopts opinion of Ḥmām Mūhāmmād Rahimullah and applies ruling of fūlūūs on currency hence Sālām can be executed in modern currency.
11. Meezan bank and other banks adopts this opinion starts executing Sālām in currency as tool of bill discounting. However it is necessary to execute that on market value.

References

¹ Mufti Taqi Usmani P1120 ,2015 First edition ,Fīqhūl biyū', Maktaba Maariful Quran Karachi

² Mufti Taqi Usmani P1120 ,2015 First edition ,Fīqhūl biyū', Maktaba Maariful Quran Karachi

³ Mufti Taqi Usmani P1120 ,2015 First edition ,Fīqhūl biyū', Maktaba Maariful Quran Karachi

⁴ Mufti Taqi Usmani P1120 ,2015 First edition ,Fīqhūl biyū', Maktaba Maariful Quran Karachi

⁵ uniform commercial code 3.415(b) If an **indorsement** states that it is made "without recourse"

or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the **instrument**.

⁶ ...Uniform commercial code 3.145 if an **instrument** is dishonored, an **indorser** is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an **incomplete instrument**, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation of the indorser is owed to a **person entitled to enforce** the instrument or to a subsequent indorser who paid the instrument under this section

⁷ Almūsūa'h-ālfīqhīyyāh ālkūwīyīyāhp 102/21 ,wizaratul auqaf washoun wal Islamia-Alkuwait , second edition ,Darul Salasil

⁸ Almūsūa'h-ālfīqhīyyāh ālkūwīyīyāhp 103/21 ,wizaratul auqaf washoun wal Islamia-Alkuwait , second edition ,Darul Salasil

⁹ Imam Muslim , Sahih Muslim , 1153/3, Darul ihya Alturaas , Bairut

¹⁰ Mufti Taqi Usmani P338/1 ,2015 First edition ,Fīqhūl biyū', Maktaba Maariful Quran Karachi

¹¹ Imam Malik , Mouta Imam Malik riwayat Muhammad ibn ul Hassan ,P 292, second edition , Maktaba Ilmiyya

¹² Āllama Kasani , Badail Alsanaie, second edition , p 148/5 , Darul kutubul ilmiyya

¹³ AlMuharrar fil fiqh ala mazhabil imam ahmad bīn hanbal 338/1

¹⁴ Alaul din Abul Hassan Ali bīn suleman Almardawi , Alinsaaf fi marfaul alrajih minal khilaf lil mardawi , second edition , 112/5 ,Darul ihya Alturaas

¹⁵ Ishaq Bīn Mansoor , Masaail Imam Ahmad wa Ishaq bīn Rahvi, First edition , Jamia Islamia , Madina Munawwarah .

¹⁶ Abdul Rehman Bīn Mansoor bīn Muhammad bīn Ahmad bīn Qudama , Alsharhul kabir Ala Matnil Muqanna , 342/4 , Darul Kitab ul Arabi

- ¹⁷: Abu Muhammad Ali bġn Ahmad bġn Saeed bġn Hazam Alundlusi , Almuhalli bil Asaar 487/7 , Darul fikar Bairut .
- ¹⁸ Muhammad bġn ahmad bġn Muhammad aleesh abu Abdullah almalki , Manhul Jaleel sharah mujhtasar Khalil 46/5 ,Darul fikar , Bairut
- ¹⁹ Muhammad bġn ahmad bġn Arfah Aldasouqi Almalki , Hashiyatul Dasouqi 63/3, Darul fikar .
- ²⁰ Mufti Taqi Usmani 351/1 ,2015 First edition ,Fġqhŭl bġyŭ', Maktaba Maariful Quran Karachi
- ²¹Mufti Taqi Usmani,Fġhi Maqalat 98/6 , first edition , Maimon Publishers
- ²² Abu Zakriya Mahyuddin Yahya bġn Sharful Alnawawi , Raouzatul Talibeen ,516/3 Almaktabul Islami , Bairut Damascus , Umman
- ²³Abu Zakriya Mahyuddin Yahya bġn Sharful Alnawawi, Almajmou Al Muhazzab 275/9 Darul Fikar
- ²⁴ Shams ul Deen Abu Abdullah maroof bilhattab alraeeni almalki , Mawahibil aljaleel fi sharh mukhtasar Khalil 224/4 , second edition , Darul fikar
- ²⁵ AAOIFI STANDARDS 99 CHAPTER NAME HAWALA
- ²⁶Mufti Taqi Usmani, Buhoosul Qadaya 35/2, wizaratul Aouqaf Walshoun Islamia
- ²⁷AAOIFI STANDARDS 2/217
- ²⁸ Mufti Taqi Usmani,Fġhi Maqalat 125/6 , first edition , Maimon Publishers
- ²⁹Āllama Kasani , Badail Alsanaie, second edition , p 215/5 , Darul kutubul ilmiyya
- ³⁰Almŭsŭa'h-ĀlfġhġyyĀh ĀlkŭwġtyġyyĀhp 204/32 ,wizaratul aouqaf washoun wal Islamia-Alkuwait , second edition ,Darul Salasil
- ³¹ Malik Bġn Anas Bġn Maalik , Almudawwana 5/3 , Darul fikar
- ³²Malik Bġn Anas Bġn Maalik , Almudawwana 5/3 , Darul fikar
- ³³ Abu Umar bġn yousuf bġn Abdullah Bġn MUHAMMAD ALQURTABġ , Alkaafi Fi fġhi Ahlil Madina 644/2 , second edition , Maktaba Riyaaaz
- ³⁴Abu Umar bġn yousuf bġn Abdullah Bġn MUHAMMAD ALQURTABġ , Alkaafi Fi fġhi Ahlil Madina 644/2 , second edition , Maktaba Riyaaaz
- ³⁵ Mansoor Bġn Younis Bġn Salah ul din Albahwati Hanbalites , Sharah muntaha al Iradat 89/2, Aalim ul kutub
- ³⁶ Imam Shaafi Abu Abdullah Muhammad bġn Idrees bġn Alabbaas, Al Umm lilShaafi 98/3, Darul Maarfa Albairut .
- ³⁷ Mufti Taqi Usmani 665/1 ,2015 First edition ,Fġqhŭl bġyŭ', Maktaba Maariful Quran Karachi

³⁸ Ahmad ubnu Muhammad Makki AlHanafi , Ghmaz u oyoonil Basair fi sharhi Alishbah Walnazair 351/3, Darul kutubul Ilmiyya

³⁹ Mufti Taqi Usmani 719/1 ,2015 First edition ,Fīqhūl bīyū', Maktaba Maariful Quran Karachi

⁴⁰ Mufti Taqi Usmani 721/1 ,2015 First edition ,Fīqhūl bīyū', Maktaba Maariful Quran Karachi

⁴¹ Āllama Ibnul Hummam , Fathul Qadeer 75/7, Darul fikar

⁴² Mufti Taqi Usmani 724/1 ,2015 First edition ,Fīqhūl bīyū', Maktaba Maariful Quran Karachi

⁴³ Muhammad Bīn Ahmad Shamsul Aima AL Sarakhsi , Almabsoot Alsarakhsi 136/12 , Darul ,Maarift Albairut

⁴⁴ Jamal ul Deen Al Babarti , Alinayah sharhul hidaya 75/5, Darul fikar.

⁴⁵ Abu Abdullah Muhammad bīn Alhassan bīn farqad Alsheebani ,Alasl almaroof bil Mabsoot 7/5, Idartul Quraan wal uloom il Islamia

⁴⁶ Mufti Taqi Usmani 733/1 ,2015 First edition ,Fīqhūl bīyū', Maktaba Maariful Quran Karachi

⁴⁷ AAOIFI STANDARDS 2/217 AAOIFI STANDARDS 2/217

⁴⁸ Mufti Taqi Usmani,Fiqhi Maqalat 125/6 , first edition , Maimon Publishers