

Banks' Gifts in Islamic Financial Institutions

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Abstract: This paper is a discussion about prizes in Islamic financial institutions, highlighting the different advantages and disadvantages of current account. The paper consists of prizes offered by Islamic banks to clients, which can be divided according to their type into: a) the rewards and material benefits, b) Intangible rewards and benefits. The paper discusses ruling on prizes and gifts for current accounts. The ruling on the bank offering prizes and gifts to current account holders. The ruling on offering prizes and benefits that are not required and do not take into account the amounts deposited in the current account. The ruling on offering rewards and benefits to the bank's clients without being specific to current account holders. To fulfil the objective of this paper, qualitative approach is used. The paper is organized into the following issues with three sections. First section is related to the discussion on truth about prize giving by Islamic banks, which consist on rulings on prizes and gifts in current accounts and jurisprudential conceptualisation for the current account. The second section is rulings on prize giving in current accounts and rulings regarding prizes and gifts. The third section is research on rulings regarding prize giving in investment accounts.

Keywords: Gift, Prize, Islamic Banks, Current Account, Investment Account.

Abstrak: Kertas kerja ini membincangkan tentang Hibah dalam institusi kewangan islam dengan memfokuskan kepada kelebihan dan kekurangan yang berbeza untuk akaun semasa. Kajian ini terdiri daripada Hibah yang ditawarkan oleh bank-bank Islam kepada pelanggan, yang mana jenisnya terbahagi kepada: a) ganjaran dan faedah material, b) ganjaran tidak ketara dan faedah. Kertas kerja ini membincangkan tentang polisi Hibah dan ganjaran untuk akaun semasa. Peraturan bank menetapkan tawaran Hibah kepada pemegang akaun semasa tersebut. Peraturan untuk memberi Hibah yang tidak diminta juga

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tidak termasuk jumlah yang telah disimpan dalam akaun semasa. Peraturan untuk menawarkan ganjaran dan faedah kepada pelanggan bank bukan hanya khusus kepada pemegang akaun semasa. Untuk mencapai objektif kajian, kaedah kualitatif telah digunakan. Kajian ini telah disusun berdasarkan isu-isu berikut dalam tiga bahagian. Bahagian pertama berkaitan dengan perbincangan tentang kebenaran dan fakta Hibah yang diberi oleh bank-bank Islam, yang terdiri daripada peraturan hibah dalam akaun semasa dan konsep perundangan akaun semasa. Bahagian kedua pula membincangkan tentang peraturan memberi Hibah kepada akaun semasa yang terdiri daripada konsep sebenar akaun semasa dan peraturan yang berkaitan dengannya. Manakala, bahagian ketiga pula mengkaji tentang peraturan yang berkaitan dengan memberi Hibah dalam akaun pelaburan.

Kata Kunci: Hibah, Ganjaran, Bank-bank Islam, Akaun Semasa, Akaun Pelaburan.

Introduction

The prize is defined as a gift without corresponding consideration (Al-Mawsū‘ah Al-Fiqhiyyah Al-Kuwaitiyyah, 1427). In this paper, it refers to the advantages and benefits granted to the account holder in the bank. The prizes offered by Islamic banks to clients are divided into many sections in various considerations. But they can be summarised according to their type into the following:

1. Rewards and material benefits: these are material matters that the bank offers to some of its customers. Such as prizes in kind or cash or dropping banking services fees.
2. Intangible rewards and benefits: These are the moral matters that the bank offers to some of its customers like the special reception each time any of these customers visited the branch of the bank (Resolutions of Sharī‘ah Council of Bank Al-Bilad, Guideline no. 372).

It is also not hidden to anyone that the bank’s obvious benefit from obtaining a high average balance of deposits is to reduce the cost of financing. Therefore, it is known in the banking sector that the higher the volume of deposits with the bank, the lower the cost of financing it has, and consequently distinguishes itself from other banks. This is the main motivation for banks in attracting deposits. One of the means of doing this is the awarding of prizes and gifts.

Based on the above, the most apparent view is that similarity of the current account to a loan is stronger than likening it to others. Loan is the nominal contract to which the current account is closer. However, the reality is that it is not like a loan in all its forms. So, lending and borrowing was not the intent of the bank or the customer when opening the account, nor did they intend concession or gratuity and charity and the bank's need for it in these perspectives. Although, the benefit is for the two parties, the bank and the customer.

However, current accounts are more like the loan contract. It is similar to a loan because the deposit is being guaranteed by the bank while mixing it up its money and making disposal at its own risk, and the disapproval of a conditional gift, or a cash gift. All these rulings are based on the consideration of the resemblance and in order to preserve the distinction of the Islamic bank from others, and the like. Nevertheless, it does not take the ruling of a loan in all aspects. Consequently, benefits and unconditional gifts from the bank are valid.

Rulings on Prizes and Gifts in Current Accounts

The Sharī'ah standards define the current account as: the money that its owner deposits in the banks on the condition that the bank returns it to him on demand (AAOIFI, 2017). The current account has advantages and benefits for both banks and customers, as it provides banks with cash liquidity from the sum of cash accumulated from deposits in current accounts, which banks reinvest in their favour. Also, it is no secret to anyone that current accounts in banks are considered one of their most important resources of liquidities. The current account also provides savings services for the client's money, and the possibility of withdrawing or retrieving it at any time. In fact, the customer is ready to pay a commission to save his money in the bank, if required. On the other hand, the bank trades in these deposits and returns them to the customers whenever they want. Accordingly, the contractual relationship between the two parties is based on mutual benefits between the customer and the bank.

Jurisprudential Conceptualisation for the Current Account

The researchers' opinions varied regarding the Sharī'ah conceptualisation of the current account. The current paper will mention the most popular of these opinions in brief:

- 1) The first opinion: conceptualisation that it is a loan contract because the depositor is a lender while the bank is a borrower. This is the view of most Sharī'ah researchers (IIFA-OIC, n.d). It is the view upheld by the International Islamic Fiqh Academy in its ninth session. The text of the decision reads thus:

Demand deposits (current accounts, whether with Islamic banks or interest-based banks, are loans in the jurisprudential perspective. This is because the possession of the bank receiving these deposits is a guarantee that is legally obligated to return it upon request. The status of loan is not negated by the fact that the bank is solvent (IIFA-OIC, 1995). This is the position of the Sharī'ah Standard of the Accounting and Auditing Organization for Islamic Financial Institutions. It says: "These are loans that constitute the current accounts insofar as the bank comes to own these amounts and it is possible for the owner of these accounts to withdraw these amounts at any time he likes (AAOIFI Sharī'ah Standard, no, 19).

The basis of this ruling is that:

1. The bank owns these funds, has the right to dispose of them, has their growth, does not keep an eye, and commits to a similar return upon request, and this is the meaning of the loan.
 2. That the amount deposited in the current account is absolutely guaranteed by the bank according to the system, so the bank will guarantee it if it is lost, whether the bank committed negligence or not (Al-Shubayli, n.d).
- 2) The Second Opinion: Among those who held this opinion is Hassan Al-Amin in his book, *Bank Deposits and Their Investment in Islam*, where he said:

A cash deposit on demand is an amount that is placed with the bank and withdrawn from it at the time chosen by the depositor, then that is all that is required in the real deposit and there is no ambiguity in that. If the bank had made used it in accordance with the usual course, this unilateral act from the bank cannot be counted against the depositor and interpreted as his intention, by saying that the deposit has turned to lending. The intention of the depositor has never turned towards a loan in this type of deposit, just as

the bank did not receive this deposit as a loan based on the evidence that it charges a fee/commission for keeping the demand deposit, unlike a term deposit, for which the bank pays interest. In addition, the bank takes extreme caution in using the deposit and it is acting alone on its part, then it immediately returns it upon demand. This indicates that when the bank acts on it, it does so from an opportunistic position that is not based on a legal position such as that of the borrower (Al-Amin, n.d).

The Maliki jurists discussed this matter, *using as loan the money kept with you as deposit* and they said if it is solvent and the money is returned there is no liability on him and the money will remain in the ruling of deposit. In *Sharh Al-Talqinby Al-Maziri*:

If a man borrows the money deposited with him, like dinars and dirhams whereby the money is now a liability on him and then returned it to his *amānah* (trust) which was the status before he borrowed it, is the liability for the repayment waded up from him because of the *wadi'ah*? He said that Malik has varying statements on this matter and accordingly his followers also differed on the matter. But the most popular opinion from Malik which is also the opinion of many of his followers is that the guarantee to pay the money if it got lost without his negligence is waived for him. This is because he has removed it from his responsibility and return it to his *amānah* (trust). This is how his followers from Egypt narrated reported it from him. It is the choice of Ibn al-Qasim and Ashhab (Muhammad, 2008).

And this means that the fact that the current account is a deposit does not affect the account if the bank feels like using part of it for itself by borrowing it and guaranteeing what it borrowed and the contractual relationship remains on the initial ruling of *wadī'ah* (deposit). It is known that in the banking system, the bank does not borrow the entire deposit, but rather it remains part of it with it and deposits another part with the central bank and then it borrows what remains.

- 3) The Third Opinion: the current account is a combination of contracts and not a single contract. It contains elements of loan, *wadī'ah* (deposit) and *wakālah* (agency), and it may include elements from other contracts, and each of these contracts has its own ruling and validity conditions. The authors of this

opinion argued on the premise of the general permissibility of transactions that is the Sharī'ah evidence indicating that the original presumption of transactions is the permissibility and that we cannot prohibit except what Allah and His Messenger (PBUH) prohibited (Hammad, n.d).

- 4) The Preferred Opinion: The researcher is of the opinion that the current account is not a new contract because if it is possible to conceptualise it on the basis of the Sharī'ah nominal contracts, then we do not need to say that it is a new contract. On the other hand, the conceptualisation of the current account as a *wadī'ah*, though, it shares the features of the *wadī'ah*, considering the fact that the intention of the customer is to protect the money and have easy access to it. However, current account is still different from *wadī'ah* from many perspectives, the most important ones are: (Al-Shubayli, n.d).
 1. That the bank is authorized to have disposal of the money deposited with it.
 2. And that the bank guarantees the money to its depositor.
 3. And that the bank is obliged to return the same, not return the deposit irrespective of whether the money is lost or not.
 4. And that the right of the customer relates to what is in the custody of the bank and not with the money deposited.
 5. And the growth of the money deposited belongs to the bank, and not to the customer.

The principle of the deposit is that it is a trust, which the trustee is not permitted to have disposal of and according to the Maliki School, if he acted on it with permission it becomes a debt. Moreover, the legal view of the current account is that the current account is a loan and not a deposit. The Egyptian Civil Code stipulated in Article (726) the following:

If the deposit is an amount of cash or anything else that perishes by using it, and the depository institution is authorized to use it, then the contract is considered a loan. Similar position is upheld by the Iraqi civil law, Syrian civil law, Jordanian civil law, Kuwaiti civil law, UAE civil transactions law, and

Algeria civil law, that the current account is a loan (Shahda, n.d).

This is what the existing banking custom is. The reality of the commercial bank is that it borrows money at interest and lends it at a higher interest, and therefore only the statutory reserve remains and what it is kept to maintain the activeness of accounts and short-term investments.

Moreover, considering the current account as a deposit to escape from considering it as a loan, simply because all the provisions of the loan contract are not put in place, does not nullify its loan status. It is not technically imagined that the balance of a specific account is emptied for financing, and then the same amount of money is returned to the account. This is just a theorization and ultimately not supported by reality.

2. Prizes and Gifts for Current Accounts

First: The ruling on the bank offering prizes and gifts to current account holders that are conditional upon opening the account.

a) The bank provides conditional cash and in-kind interests.

The bank may not commit to any cash or in-kind interest that it pays against the current account, because it is a debt secured by the bank. It is not permissible to increase it. Ibn Abd al-Barr said: "Every increase in a loan or a benefit that the lender benefits from is usury, even if it is a handful of feed, and that is forbidden if it is stipulated" (Abu Umar Yusuf, 1980).

According to the Sharī'ah standard issued by AAOIFI regarding the distribution of profit on investment accounts, "The institution shall guarantee refunding the full amounts of the current account to its owners, and it is not permissible for it to add any fixed or variable percentage increase to the principal amount, for it is usurious interest (AAOIFI Sharī'ah Standard, no, 19).

b) Waiver of banking services fees related to deposits and withdrawals.

If the benefits or services provided to current account clients are related to deposits and withdrawals or to open a current account, then there is no objection to granting them to current account holders: such as issuing a cheque book, or transferring money to the customer without

the customer incurring fees, or issuing various cards for free; Because it is one of the ways to deliver the customer to his money, and the bank pays his right, and does not lead to any additional benefit that is added to the customer's balance and account.

These advantages are not intended for the lender, but rather their aim is to facilitate the repayment of what he has lent, just as these advantages are not mutually exclusive benefits for account holders, but rather are mutual benefits between the two parties, as they are the same as the presumption that both parties benefit from without harm to one of them.

Ibn Taymiyyah said:

“Whoever takes the ‘loan’ from the lender, which is to lend him dirhams, he collects from him in another country, such as if the lender is for his purpose to carry dirhams to another country. Then he borrows from him in the country of the lender's dirhams and writes it a basement - that is, a paper - to the country of the borrower's dirhams. This is permissible according to the more correct of the two scholarly opinions.

And it was said: It is forbidden because it is a loan that brings a benefit, and the loan if it draws a benefit is usury, and the correct permissibility is because the borrower saw the benefit with the security of the risk of the way to transfer his dirhams to the country of the borrower's dirham, as both of them benefit from this borrowing. And the street does not forbid what people benefit, fix and need. Rather, it forbids what harms and corrupts them, and Allah Has caused them not to be in need of that (AAOIFI Sharī'ah Standard, no, 40,2/2/2).

Accordingly, Paragraph (1/3/10) of the nineteenth standard of the Sharī'ah standards of the Accounting and Auditing Organization for Islamic Financial Institutions stated: “An institution may provide services related to deposits and withdrawals to current account holders with or without charge, such as cheque books, ATM cards, and the like. It is forbidden for the institution to distinguish between current account holders with regard to the aspect of depositing and the account, such as allocating rooms to receive the owners of some accounts or distinguishing them from cheques.

This was also stipulated by Regulation No. (372) of the Sharī'ah regulations of Bank Al-Bilad, which reads: “The bank (the borrower)

may provide to clients of current accounts (lenders) what was a moral matter, or services related to account opening, or payment to clients, such as : Cheques, cashier cards, reception rooms, and customer attention.

c) Ruling on dropping banking services fees that are not related to deposits and withdrawals.

Among the benefits that the current account holders can obtain: the distinctive prices of some services provided by the bank, as banks provide free services to the owners of these accounts, and others with low prices compared to others who do not have accounts with the bank, and this is also affected by the customer's importance to the bank. In terms of the number of years he has dealt with the bank, the average balance in his account, and so on, these features mostly relate to foreign exchange, fees for opening credits, credit cards, and letters of guarantee, and that may exceed the interest rate on loans (Al-Imrani, 1427H).

It appears, that forfeiting banking service fees not related to deposits and withdrawals remains on the basis of the prohibition if it is for some clients but not for some, and the bank has no benefit in providing these services or assigning some of their value except for a loan. This is because it is a benefit to the lender - the current account holder - and only the loan is its corresponding consideration.

Paragraph (2/10) of the nineteenth standard of the Sharī'ah standards of the Accounting and Auditing Organization for Islamic Financial Institutions stipulated that: "The institution may not offer to the holders of current accounts because of those accounts alone gifts in kind or financial advantages or services and advantages that are not related to the deposit and the account. This includes exemption from fees or some of them, such as exemption from fees for credit cards, safety deposit boxes, remittance fees, letters of guarantee and documentary credit fees.

Yusuf Al-Shubaily opined that it might be permissible. This is because benefits and services differ from gifts, as the gifts have a pure benefit for the creditor and a pure harm for the debtor, so the prohibition is directed at not being a pretext for an increase in the debt, unlike the benefits and services of exemptions and the like. The benefits are reciprocal. The guarantee or credit card or the reduction in cost of financing, does not mean that he is harmed by providing that service, as he benefits from things other than those fees, Such as the commission

that he takes when using the card for purchases, and the profit margin he receives in financing or in credits, and so on. The exemption is an incentive for the customer to enter into the transaction, so that the bank earns from its proceeds from other commissions related to it other than the initial fees (Al-Shubayli, n.d).

d) Provide moral benefits to current account holders

There is no objection to the bank providing moral benefits to current account holders, such as: allocating them to reception rooms, and so on: because it is an unintended subsidiary benefit to the current account customer, and it does not lead to any additional benefit that is added to the customer's balance and account.

AAOIFI Sharī'ah Standard paragraph 10/1/3 states: "is permissible for the institution to render services related to deposits and withdrawals to the owners of the current accounts with or without compensation like cheque books and ATM cards and the like. There is no restriction on the institution if it distinguishes between owners of current accounts with respect to what relates to deposits and withdrawals, like exclusive booths for receiving the owners of some accounts, or like distinguishing between the types or cheques.

With this, the Sharī'ah Board of Al-Rajhi Bank issued a decision number (354) dated 7/24/1420 AH regarding the ruling on the Excellence program, and in it: "The company may provide from this program what was a moral matter, or service related to opening an account and paying the customer, such as cheques, cashier cards, reception rooms, customer care.

Second: The ruling on offering prizes and benefits that are not required and do not take into account the amounts deposited in the current account.

There may be a number of advantages under it, the most important of which are: promotional gifts for the purpose of marketing for the bank (Al-Rajhi, 1437) such as calendars, pens, mugs, notebooks and files, which often contain the bank's logo and are not exclusive to current account holders. There is nothing wrong with giving and accepting them. Because the debt has not been mutilated, and the interest therein is shared by both parties, so the bank benefits from advertising and marketing for it, and the customer benefits from that gift, and the talk

has been given that if the interest is shared between the two parties, there is nothing wrong with its permissibility.

Paragraph (2/10) of the nineteenth standard of the Sharī'ah standards of AAOIFI stipulated that, in which it was stated: The institution may not offer to the holders of current accounts because of those accounts alone gifts in kind, financial advantages, services and advantages. It relates to deposit and the account... and does not come under the same ruling as the general prizes and benefits that are specific to the holders of current accounts. In the provisions documents, it says: The authority permitting prizes and gifts if they are general, that is, they are not linked to the loan. Therefore, there is no ambiguity in such prizes and gifts.

Included in this type of benefits are: the benefits provided by the bank with the purpose of encouraging customers to carry out operations related to the account that generate a return on the bank such as gifts related to the use of the ATM card in purchases (Al-Rajhi, 1437) or gifts given to current account holders on transfers from the account and so on (Al-Rajhi, 1430). All of these benefits are included in what the jurists stipulated in accepting gifts between the lender and the borrower that are not due to the loan, so it is permissible.

All of these benefits are included in what the jurists stipulated in accepting gifts between the lender and the borrower that are not due to the loan, so it is permissible.

Third: The ruling on offering rewards and benefits to the bank's clients without being specific to current account holders. The most obvious is that it is permissible, because it is not limited to the current account only, but rather to the overall relationship that may include investment accounts, credit cards, financing contracts, and so on. This is the concept of what is mentioned in the Sharī'ah standards, as the loan standard states that;

The institution is not permitted to provide current account holders on account of those accounts alone with in-kind gifts, financial advantages, services and benefits not related to deposits and withdrawals, including exemption from fees or some of them, such as exemption from credit card fees, safety deposit boxes, remittance fees, letters of guarantee and credit fees. Therefore, not in its ruling is awards and public benefits that are not specific to current account holders (AAOIFI Sharī'ah Standard No. 19).

3. Provisions for Prizes in Investment Accounts

The definition of investment accounts came in Shari'ah Standard No. (40) issued by AAOIFI, which states: These are the amounts that the corporation receives from investors on the basis of joint *Mudaraba* and whose owners authorize the corporation to invest it on the basis of *Mudaraba*.

Granting prizes and gifts on investment accounts, there is nothing wrong with it. As the balances of these accounts are owned by their owners, and the bank is carrying out *Mudaraba* with them with a share of the profit, provided that awarding these prizes does not guarantee the capital, and that the payment of these prizes is from the bank's money.

3.1 Fatwa 23/2 Al-Barakah stated the following

It is permissible for the bank to offer prizes to the owners of investment accounts, because the balances of these accounts are owned by their owners, and the bank is *Mudharib* therein for them with its share of the profit, provided that awarding these prizes does not guarantee the *Mudaraba* capital or any part thereof, as in the event of a loss, because a *Mudharib's* guarantee of *Mudaraba* capital is not permissible according to Shari'ah, provided that the payment of these prizes is from the bank's money, not from the profits of investment accounts, because the *mudharib* does not have the right to donate from the *Mudaraba* fund (Al-Barakah, n.d).

Conclusion and Recommendation

The prizes offered by Islamic banks to clients are divided into many sections in various considerations. But they can be summarised according to their type into: a) the rewards and material benefits: these are material matters that the bank offers to some of its customers, b) intangible rewards and benefits: these are the moral matters that the bank offers to some of its customers like special reception each time any of these customers visits the branch of the bank. Furthermore, the researcher is of the opinion that the current account is not a new contract because if it is possible to conceptualise it on the basis of the Shari'ah nominal contracts, then we do not need to say that it is a new contract. On the other hand, the conceptualisation of the current account as a *wadi'ah*, though, it shares the features of the *wadi'ah*, considering the fact that the intention of the customer is to protect the money and have

easy access to it. However, current accounts still differ from *wadī'ah* from many perspectives.

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