

The Symposium on the Malaysian Experience of Islamic Banking

I am thankful to the organizers of this **Symposium on The Malaysian Experience of Islamic Banking**, for inviting me to deliver an address in the opening ceremony of this gathering.

The fact that this symposium is being held under the patronage of His Highness Sheikh Jaber Al-Ahmed Al-Jaber Al-Sabah -May God Protect Him- comes as an honor to this gathering, as well as a confirmation of H. His desire for an appropriate and fruitful preparation for the completion of the implementation of the provisions of Islamic *Shari'a* in the State of Kuwait; noting that the first phase of this implementation was exemplified in the issuance in December 1991 of an Amiri decree setting up a committee entrusted with carrying out this task.

The endeavors of the Higher Advisory Committee in bringing to completion the implementation of the provisions of Islamic *Shari'a* in the State of Kuwait, and its efforts in the preparation for this symposium, are meritorious undertakings and an extension of its worthy achievements in fulfillment of the noble task with which it has been entrusted. This task is that of devising a plan for establishing an atmosphere conducive to the implementation of the provisions of Islamic *Shari'a* in the State of Kuwait, while making allowance for the state of affairs in the country and the safeguarding of its interests. Thanks are therefore due to the Committee for its past and ongoing efforts in the process of achieving this end and meeting the purpose of its establishment.

I would also like to greet with much affection and appreciation our brothers from Malaysia who are attending the symposium in order to contribute the knowledge and expertise they have gleaned from the Malaysian experience in Islamic banking.

Their experience is, without doubt, one rich with knowledge and expertise, and which therefore deserves being studied and benefited from. It is also worth our while to ponder and reflect on the studies and researches, which will be presented by those who lived that experience, and which will describe its features and illustrate its high potential for success.

In this age where economic progress is considered the sound basis underlying the rise and strength of nations, establishing an Islamic economic system becomes a matter of significance. Some features of that system were first described by industrious thinkers among the intellectuals of the Islamic nation such as *Ibn-Khaldoun*, who presented in his famous *Introduction* the sound bases for social and economic studies, and *Abou-Yousif* who illustrated in his book *Al-Kharaj* the foundations and principles of public finance. Early Islamic scholars studied the rules governing the contracts of the then prevalent transactions, such as sales, partnerships, leases, crop-sharing, mortgages, loans, deposits and other transactions which were the foundation of economic life then.

In this modern age of ours, characterized by the diversity of economic activities along with the multiplicity of both the means of their accomplishment and the types of institutions executing them, the most salient trait of a modern economy is its dependence on bank credits. This has imparted to banks their imposing formidable significance within the economic system.

It is therefore of vital importance that an Islamic banking system -which Islamic countries aspire to apply- be established on sound and distinct bases defining its scope, content and modus operandi, so as to enable it to fulfill its mission in the service of the development and progress of the Islamic countries' economies.

Furthermore, religious sentiment should not become a substitute for living by the spirit and prescriptions of religion, namely by giving due consideration to the causal relationship linking means to ends, which is

best exemplified in the saying of our holy Prophet "**Act discerningly and put your faith in God**".

It is therefore a must that Islamic scholars and specialists in finance, banking and *Shari'a* lay down a system on which the Islamic bank will be based, and which will take into consideration the legal, organizational, economic and social environments of the country of establishment. These views are further supported by the International Union of Islamic Banks, which stated that "**no single model is expected to befit the legal, organizational, economic and social environments in all countries**".

In our opinion, the Islamic banking system should include the following fundamentals:

1. A clear and specific definition of the Islamic bank.
2. The institutional form taken by the Islamic bank.
3. The means through which the Islamic bank receives funds: current accounts, savings accounts, fixed-term, or unspecified term investment deposits and investment deposits for particular, or unspecified purposes.
4. The forms of using and investing of funds available with the Islamic bank, encompassing all contracts and investment outlets, which do not contravene the provisions of the Islamic *Shari'a*.
5. The method followed by the Islamic bank in the distribution of profits among shareholders and depositors, and among the various categories and types of deposits.
6. The bases and criteria to be applied in assessing the solvency of the Islamic bank.
7. The bases and criteria to be applied in assessing the liquidity of the Islamic bank.

8. The types of banking services, which the Islamic bank can offer to its clients, other than the uses and investment of funds.
9. The bases and rules to be applied in liquidating the Islamic bank, if need be.

In addition to the above, there are operational aspects with regard to which the Islamic bank should define its approach. These include, for example, the dealing relationship of the Islamic bank with other traditional banks within and outside the country of its operations, and its relationship with the country's central monetary authority to which it resorts for credit facilities to strengthen its liquidity or solvency.

Another of the issues worth considering in the context of the Islamic banks' operations is the necessity for them to research means of dealing with securities - especially bonds and financial derivatives - without contravening the provisions of the Islamic *Shari'a*, so that they may have investment tools of their own that are traded in money and financial markets and can be readily liquidated if need be.

It goes without saying that it is necessary to subject Islamic banks to the supervision of the central banks in their countries. These central banks ought to devise ways and methods of supervision suitable to the nature of the activities of Islamic banks, along with assisting them in the fulfillment of their mission.

Worth mentioning here is that there are at present three investment companies carrying out their activities in investing funds both for their own account and of behalf of clients, while observing the provisions of Islamic *Shari'a*. These companies have *Shari'a*-abiding supervisory bodies to ensure that none of their activities conflicts with the provisions of *Shari'a*. Also, these companies are under the supervision of the Central Bank of Kuwait, which did not face any supervisory issues or problems with them.

The organization of this symposium from the Kuwaiti side by the Higher Advisory Committee for the Completion of the Implementation of the *Shari'a* in the State of Kuwait and with the cooperation of the Central Bank of Kuwait, along with the participation of our brothers from Malaysia who possess the experience and interest in Islamic banking practice, is proof of the common desire to pave the way for operating an Islamic banking system in the State of Kuwait. Such a system, while meeting the needs of that segment of the banking clientele who seek to deal with banks that carefully and strictly abide by the provisions of the *Shari'a*, will coexist with the traditional banks currently operating in the country.

We deem it unsound, from the standpoint of both banking supervision and close abidance by Islamic *Shari'a*, that a single banking unit carry out concurrently Islamic and traditional banking activities, owing to the impossibility of separating the funds belonging under each activity. To pretend that this is possible is a simplistic view, which may affect the soundness and regularity of Islamic banking activity within any such mixed-banking unit.

The establishment of Islamic banks in Kuwait alongside traditional banks requires much care and effort in the preparation of legislation proper to the Islamic banking system. Such legislation ought to encompass a codification of the above issues, which together outline the scope of the work of Islamic banks, while making allowance for the laws in force in the State of Kuwait and the provisions, which Islamic banks will have to be exempted from, owing to the very nature of their activities.

It is worthy of mention that the preparation of such legislation will be no difficult task, should the team carrying it out enjoy both the expertise in banking activities and the appropriate knowledge of the provisions of Islamic *Shari'a*, so as to ensure that these activities do not transgress any such provisions.
