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# SHARI'AH PERSPECTIVE ON GOLD

## INTRODUCTION

The Quran confirms that gold as a currency is desired by all of mankind due to its inherent nature of purchasing power and store of value that enables mankind to gain ownership. Al-Razi in his commentary on Chapter Ali-Imran, verse 14 stated that, "the owner of gold and silver are the owner of everything." Recently, there has been an increasing demand for gold as it continues to display its positive stable qualities that qualifies it as a risk management tool, particularly during adverse financial markets scenarios. According to the latest Gold Demand Trends annual report from the World Gold Council (WGC), gold demand in Q4 2014 increased by 6% as compared to that in Q4 2013. In addition, with the issuance of the guiding principles of Basel III: Liquidity Coverage and Liquidity Risk Monitoring Tool, there is an attempt to explore gold as a Shariah-compliant high quality liquid asset (HQLA) for the Islamic banking system.

In this regard, a research on the possibility of adapting gold as a permissible high quality liquid asset (HQLA) for the Islamic banking system was conducted by Amanie and KFH in 2014. The research shows that adherence to Shariah requirements for gold transactions such as trading gold on spot basis is a challenge, thus there is a dire need to develop the necessary infrastructure and Shariah governance to monitor the process flow of gold-based transactions. Therefore, it is imperatively essential to delineate clearly the Islamic perspective and philosophical foundation of gold, which shall encapsulate amongst others the distinctively unique criteria of gold and maqasid al-Shariah behind the strict Shariah ruling on dealing with gold. However, it is important to note that this article deals with gold in the form of currency such as gold bullion and gold coin rather than that in the form of commodity such as gold jewelry. The above-mentioned aspects of gold are essential to ensure that the structuring of gold-based Islamic financial instruments and formulation of Shariah standards and parameters for gold-based transactions are conformable to the distinctive criteria of gold and the ultimate purpose for which gold is created.

The fact is that not many contemporary scholars discuss the wisdom behind the trading of gold as the rules related to gold requires in-depth scrutiny based on maqasid al-Shariah, and also due to the reason(s) behind the strict Shariah rulings on dealing with gold: each ruling that the Shariah prescribes to regulate the use of gold as an underlying asset in a financial contract is intended to actualize certain objectives of the Shariah. Thus, in contemporary Islamic finance where gold is identified as a potential underlying asset in different sectors of the Islamic finance industry such as that in Islamic capital markets, the fulfilment of the Shariah ruling on gold may take different forms. This may give rise to various Shariah issues such as co-ownership of gold (musha'), deliverability of gold and acceptable forms of constructive possession of the transacted gold. Thus, this article would deliberate on the objectives (maqasid) of the two main Shariah requirements for dealing with gold, namely immediate possession of counter values (maqasid al-taqabud al-hali), and equal amount of the counter values either in weights, measurements or units (maqasid al-tamathul) in the case that gold is exchanged for gold.

## THE DISTINCTIVE CRITERIA OF GOLD

In essence, it is worthy to delve into the Shariah view on the distinctive criteria of gold that distinguishes it from other precious metals and commodities particularly in respect of their physical existence and categories of property that they belong to. The reason being is that the Shariah assigns special treatment to gold – which includes its juristic particularities and its traditional function ¬– as gold is a highly prized precious metal to the people. The distinctive features of gold may explain why it assumes a different Shariah treatment particularly in respect of Shariah rulings related to dealing with gold. Generally, gold is distinctively different from other metals because the Shariah treats it as a ribawi item in the category of medium of exchange (currency) that assumes the distinguishing functions of money: such as means of settlement of payment; store of value; medium of exchange; and standard of account. Being a currency with the above traditional functions of money, gold shall serve as a means (wasa'il) to acquire things rather than an objective or something that is intended for itself (maqasid) as emphasized by many scholars. It shall serve as a means to acquire goods and services and to settle payment of a deferred price.

That is the reason why gold as a currency is considered as a debt-based asset (dayn) rather than a specified asset ('ayn) because it is a fungible asset that admits deferment. It is also a store of value as it is able to maintain its purchasing power over time. In other words, the scholars uphold that gold is not ultimately intended for direct benefit of its corpus but rather it is acquired and accumulated for its purchasing power that enables acquisition of assets and accumulation of wealth. Hence, with regard to categories of mal, gold is a subset of fungible assets (mal mithli) and not a consumable asset (mal istihlaki). Scholars like al-Sarakhsi emphasizes that gold and silver are pure currency and there is no intended objective from their corpus, rather ultimately, the intended objective of gold and silver is that they function as currency. In this regard, Ibn Taymiyyah argues that dirhams and dinars are not intended for themselves but rather they serve as a means of transaction, thus they are (meant to be) currency as opposed to other properties that are intended for their benefits."

## THE MAQASID (OBJECTIVES) BEHIND THE STRICT SHARIAH REQUIREMENTS ON GOLD TRADING

In order to preserve the above distinctive criteria of gold, particularly in relation to its natural function as currency, the Shariah prescribes a strict ruling pertaining to dealing with gold as compared to that of non-ribawi assets. Thus, it is important to discuss the maqasid and wisdom behind the strict Shariah ruling on the exchange of gold for gold or with other ribawi items as specified in various hadith. For example, al-Bukhari related a hadith from Abu Sa'id al-Khudri that the Prophet says, "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt, like for like and hand to hand." This hadith requires that both transacted ribawi items must be of equivalent quantity and delivered immediately before parting if they are of the same group and in kind, like the exchange of gold for gold. If they are of the same group but of different kind, both must be delivered promptly but an equal quantity is not a requirement. Thus, the focus here will be on the maqasid al-Shariah of immediate delivery and an equal quantity of the transacted gold. This is because both requirements are laid down by the Shariah to avoid all types of riba prohibitions that may arise from Shariah non-compliant currency exchange such as riba al-fadl, riba al-nasa' and riba al-nasi'ah, and far more important is to preserve the objective of Shariah behind the prohibition of riba.

### The Objective of Equal Quantity (Maqasid al-Tamathul)

Jurists stipulated that the exchange of gold for gold with excess in quantity of any of them leads to riba al-fadl, which is prohibited. Thus, it is essential to scrutinize the objective behind the prohibition of riba al-fadl. Ibn Qayyim argues that the prohibition of of riba al-fadl comes under the principle of sadd al-dhari'ah, which aims to block the means to riba al-nasi'ah, while the prohibition of riba al-nasi'ah is based on the prohibition of the objective (tahrim al-maqasid). The question to ponder is what does ibn Qayyim mean by this? In his commentary on the hadith, "Do not sell one dirham for two dirham, indeed, I am afraid for you of al-rima (riba)," ibn Qayyim asserted that the Prophet prohibited riba al-fadl because he feared that his ummah might indulge in riba al-nasi'ah. The reason being is that if the people exchanged one dirham for two dirham, which is definitely due to the superiority of the dirhams either in its quality, weight or others, they will gradually be involved in generating deferred profit (ribh mu'akhar) – which is more than the immediate profit – by initially generating immediate profit (ribh mu'ajjal), which is the real riba al-nasi'ah ('ayn riba al-nasi'ah).

In addition, the requirement of tamathul is also intended to avoid treating gold similar to non-ribawi commodity and to retain the monetary function of gold in the economy. This can be deduced from ibn Qayyim's explanation on the prohibition of riba al-fadl. He says, "If riba al-fadl is allowed in (the exchange of) dirhams and dinars, such as a person takes the lighter (dirhams and dinars) but gives the heavier ones in excess of (the lighter), then the dirhams and dinars will become similar to traded items (commodity)," which is intended for itself and not for acquiring other goods. Thus, on other occasions, he explained that the prohibition of riba al-nasi'ah is based on maqasid, and the prohibition of riba al-fadl is based on the fact that it is a means (to prohibited acts). According to him, when a person has experienced the pleasure of immediate profit (which is in fact riba), they tend to multiply the profit by way of deferring the delivery of the gold to get deferred profit (that is more than the immediate profit).

The above indicates that the Shariah sheds light that riba al-fadl that may occur on spot basis encourages its doer to further generate more profit by conducting the transaction on deferred basis, which may result in more profit on account of deferment. This gives rise to riba al-nasi'ah. Instead, such a strict ruling is intended to establish fairness in exchange contracts because each exchange contract (mu'awadat) is built upon the principle of fairness and equality as asserted by al-Kasani, "Because a sale contract is an exchange contract based upon the equivalency of the counter-values." Based on the above, if gold is exchanged with gold of different weight, the excess in weight is not given any counter value, which is against the principle of mu'awadat that requires, "exchanging a property with a property but rather it is a riba-based transaction because riba means a stipulated excess in an exchange contract without a counter value."

**The Objective of Immediate Possession (Maqasid al-Taqabud)**

Deferment is not allowed in the exchange of gold for gold, and gold for silver. Stipulation of deferral in the execution of the above exchange contract by the contracting parties reflects that their ultimate objective is to trade gold as commodity, which diverts it from the very objective of currency. Ibn Taymiyyah elucidated this point as follows, "Whenever some of it (i.e., dinar) are exchanged for each other with deferral, it is actually intended for business that contradicts the very objective of currency. Stipulation of spot transaction and immediate possession in such a transaction is to complete its objective, which is to acquire the needed (items), that is indeed fulfilled by possessing it and not by establishing it in one's liability." Another argument put forward by scholars is that the main difference between a sarf contract and a qard contract is that a sarf contract has to be free from deferment. This essentially signifies that if it is executed on deferred basis, its substance is in fact similar to that of a qard contract but with the prohibited excess while the Shariah considers the substance rather than the form. Instead, immediate possession is necessary to avoid dispute on account of depreciation of the value of gold during the deferred period. Some scholars like al-Marghinani asserts that the deferred gold is not better than the cash gold in terms of possession (not quality) as both are equal in weight. Thus, it is not justified to deliver one of them promptly and the other one on deferred basis because a large majority of jurists stress that deferment assumes monetary value, which then makes the quantity of the deferred gold in excess of that of the spot gold particularly when a large majority of jurists stress that the deferment earns a portion of its price.

The above discussion gives rise to the question as to whether trading gold in the gold market as it is practised today is in line with the above distinguishing criteria of gold and the maqasid of the strict Shariah ruling on dealing with gold. This is despite the hadith that clearly explains on freedom of exchanging ribawi items in excess of one another as long as both are from different types but of the same group, which is similar to sarf contract. However, some scholars like ibn Rushd affirms that, "In respect of gold and silver, the reason for the prohibition of deferment and excess is that they are not intended for profit

but rather they are ultimately intended to measure the value of things that have benefit." Ibn Qayyim says that, "It is not permissible to treat money as goods, as that leads people to mischief which is known only to Allah. What is a must is that money has to be capital in trade (on which there is an expected return or profit), it should not be traded for itself." The question to ponder upon is how to harmonize the above views with the permissibility of sarf contract of which its rulings are also applicable to gold trading? It is argued that trading gold for profit is permissible provided that all Shariah rulings related to gold trading or sarf contract are completely met so that all forms of riba can be avoided.

**CONCLUSION**

The forgoing discussion signifies that there is a need for a robust Shariah framework for gold trading as well as comprehensive parameters of gold as underlying assets in different investment vehicles. Several attempts on the above have been made recently. For instance, the Securities Commission Malaysia (SC) on 7 October 2014 issued Shariah Parameters on Islamic Exchange-Traded Fund Based on Gold and Silver, endorsed by its Shariah Advisory Council (SAC). The parameters comprise amongst others Shariah requirements for the establishment, structuring and trading of an Islamic ETF based on gold and silver as an underlying asset. In 2011, the International Shari'ah Research Academy for Islamic Finance (ISRA) introduced a set of parameters for gold investment, which was later endorsed by the National Fatwa Council of Malaysia in its 96th meeting held from 13-15 October 2011. The parameters serve as guidelines for the public regarding different types of gold investment schemes. In line with the latest development of the gold market, the Securities Commission Malaysia (SC) on 16 October 2014, organized a Shariah Advisers' Seminar on Exploring the Potential of Gold as an Underlying Asset in Islamic Capital Market (ICM) Products. The seminar focused on the Shariah perspective on gold, innovation on gold-based products in Islamic capital markets and potential Shariah Issues in developing gold-based ICM Products. In view of the above, there is a need for further research particularly on the scholar's views on the trading of gold, to which extent that it is acquired and intended for itself rather than for acquiring goods and services, which is not in line with the status of gold as a medium of exchange.