SHARIA-BASED CLASSIFICATION FOR THE COMPANIES LISTED IN THE CAPITAL MARKET: A PROPOSED VISION

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ABSTRACT

The present study aimed to provide a Sharia-based classification for the companies listed in the capital market. The researcher suggests that those companies can be classified under Sharia into three types; companies which all their transactions are halal; companies which all their transactions are haram, and companies of mixed type (i.e. they carry out halal and haram transactions jointly). He found that it's Halal to establish companies which carry out halal and haram transactions jointly, provided that there is compliance with three criteria. These criteria are:

1)-the percentage of unintentional haram earning of all the earning of the company shouldn't exceed 5%.

2)-a criterion related to the earnings per share percentage of the overall haram earnings. 3)- A criterion related to the money borrowed or lent through Riba or the money invested in Haram transactions unintentionally. Based on these criteria, the companies which carry out halal and haram transactions can be classified based on a fifteen-item scale based on the extent of compliance with these criteria. The researcher recommends examining the proposed scale. That is because this scale plays a significant role in attracting the investors who would like to invest in the capital marketin accordance with the provisions of Sharia. It is because this scale plays a significant role in increasing the savings of companies. It is because this scale plays a significant role in improving the competitiveness of the companies listed in the financial market and promoting compliance with the provisions of Sharia to improve their ranking on the scale.

Keywords:

Islamic economy, Sharia-based classification, capital market, Islamic index

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INTRODUCTION

The Islamic economy has been receiving much attention. That's attributed to having many economic and financial developments and experiencing several financial crises. Under the Islamic economic system, much attention is dedicated for the banking sector and the financial market, especially in the capital market. That's because the latter market plays a significant role in increasing saving and avoiding financial deficit.

Most of the stock exchange markets don't show compliance with Sharia-based provisions. That is because the companies listed on such markets vary in terms of the extent of showing such compliance. Therefore, the researcher of the present study aimed to provide a Sharia-based classification for the companies listed in the capital market, especially for the companies which carry out halal and haram transactions jointly.

THE STUDY'S SIGNIFICANCE

This study is significant because

1)- It contributes to improving the Islamic economy.

2)-It provides a classification that contributes to attracting the investors who want to invest in the capital market in accordance with Sharia-based provisions

3)- It provides a classification that contributes to increasing the competition between companies in terms of showing compliance with Sharia-based provisions

Statement of the Problem

The study's problem is represented in the questions below:

1)-There are companies which bylaws indicate that they show compliance with Sharia-based provisions, but they carry out Haram transactions. What is the stand of Sharia on such companies?

2)-There are differences between the companies of mixed type in terms of the percentage of unintentional haram earning of the overall earnings. Do such differences affect the classification of the companies?

3)-There are differences between the companies of mixed type in terms of the money borrowed through Riba. Do such differences affect the classification of the companies?

4)-There are differences between the companies of mixed type in terms of the earning per share relative to all the haram earnings. Do such differences affect the classification of the companies?

THE STUDY'S OBJECTIVES

The present study aimed to

1)-Identify the stand of Sharia on dealing with the companies that receive haram earnings unintentionally

2)-Develop a Sharia-based classification for classifying companies of mixed type

Limits

The present study targets all the companies that are listed on the capital market

Approach

The researcher adopted descriptive, analytical and inductive approaches.

First part: The companies in the capital market and Sharia-based criteria for classifying them

The researcher suggests that those companies can be classified under Sharia into three types; companies which all their transactions are halal; companies which all their transactions are haram, and companies of mixed type (i.e. they carry out halal and haram transactions jointly). Such classification is based on compliance with Sharia-based provisions. The researcher identifies the stand of Sharia in terms of carrying out transactions with them and purchasing stocks from them.

First section: Companies which all their transactions are halal:

First: The definition of the companies which all their transactions are halal:

Such companies may be defined as the companies which capital is derived from Halal transactions. They invest their funds in Halal transactions. They refrain from giving or taking Riba-based loans (Alomrani, 2008:8). They refrain from investing their funds in Haram activities and carry out Halal transactions in the field of trade and industry. They don't deposit their funds in Riba-based banks (Altamimh, 1426 AH, 42).

Based on such definitions, in order for the joint stock companies to be considered as companies which all their transactions are halal, they must meet the following requirements

1)-The investments, transaction, activities and financial statements of the companies must be free from Haram (www.aliftaa.jo).

2)-The companies mustn't be having any haram earning.

3)-The companies must refrain from giving or taking Riba-based loans.

Second: The stand of Sharia on the companies which all their transactions are halal:

Many people specialized in contemporary fiqh (e.g. Shiltawt, 2001:355, Muhamad Bin Iibrahim and IbnBaz) believe that it's halal to engage in establishing the joint stock companies which all their transactions are halal. They believe that it's halal to buy stocks from them. That applies provided that there is compliance with the Sharia-based provision that are related to sale. Some contemporary researchers believe that it's haram to engage in establishing the joint stock companies which all their transactions are halal.

Second section: The companies which all their transactions are haram:

First: The meaning of the companies which all their transactions are haram:

The joint stock companies which all their transactions are haram refer to the companies that carry out haram transactions and invest their funds in Haram investments. They include the companies that invest in liquor, tobacco, pork, gambling, and pornography, and Rib banks (Alomrani, 2006:7).

Based on such definition, in order for the joint stock companies to be considered as companies which all their transactions are haram, they must meet the following requirements:

1)- The haram transactions must be among the scope of work of the companies(www.aliftaa.jo).

2)-The haram transactions must be listed amongst the companies' goals and on the companies' registration records. (In case the percentage of haram earning of the overall earning is 5%, the company shall be considered a company which transactions are haram).

Second: Examples on the companies which all their transactions are haram:

1)-Riba-banks, insurance companies, tobacco companies, night clubs, gambling places, places that deliver liquor (Alfaqir, 2011:8)

2)Restaurants which violate the provision of Sharia (i.e. the restaurants that deliver pork and liquor). Such companies include the hotels and cinemas which violate the provision of Sharia (i.e. the ones that deliver liquor and include a night club) (Alfaqir, 2011).

3)- The companies that deliver products that violate the rules of religion, or ethics or infringe one's dignity. The companies that carry out medical activities that violate the provision of Sharia (Alfaqir, 2011).

Third: The stand of Sharia on purchasing stocks from the companies which all their transactions are haram:

Most of the ones specialised in Fiqh suggest that it's haram to carry out transactions or investments related to the stock of the companies which all their transactions are haram. That is because the item being bought or sold must be halal under Sharia-related rules (Alomrani, 2006:6).

According to Majmah Alfeqih Al'eslameh, ''There is any doubt the fact that it's haram to carry out transactions related to the stocks of the companies which primary scope of work is haram, such as: the companies that carry out riba-based transaction or produce or trade harm products'' (Majmah Alfeqih Al'eslameh, 1/73).

According to the General Ifta' Department in Jordan, ''It is haram to carry out transactions related to the stocks of the companies which primary scope of work is haram. It is haram for the owners and managers of companies to carry out riba-based and haram transactions. That applies regardless of the percentage of Halal based earning derived from such transactions'' (www.aliftaa.jo).

Third: The companies of mixed type (i.e. they carry out halal and haram transactions jointly).

First: The meaning of such companies

Such companies may be defined as: (the companies which primary activities are Halal in the agricultural, industrial or business fields. However, they carry out haram transactions, such as: taking and giving riba-based loans (Alomrani, 2006:4). They are divided into three types:

1)-Companies which most of their investments are Haram and carry out few halal investments

2)- Companies which most of their investments are halal and carry out few Haram investments.

3)- Companies which halal and haram investments are equal in terms of amount.

The latter definition doesn't identify whether the companies of mixed type carry out haram investments intentionally or unintentionally. That affects the stand of Sharia on carrying out transactions with such companies.

According to Altamimh (1424, 38), companies of mixed type may be defined as the companies which main transactions are halal (e.g. properties sale and manufacturing iron products) and carry out sometimes haram transactions (e.g making deposits in riba-based banks, and taking and giving riba-based loans). In other words, they refers to the companies which have haram and halal earnings (Altamimh, 1424, 38). They may be defined as the companies which primary transactions are halal. The latter transactions are mentioned on the companies' registration records. However, such companies carry out sometimes haram transactions which are not mentioned in the registration records nor bylaws (www.aliftaa.jo).

Based on such definitions, in order for the companies to be considered as companies of mixed type, they must meet the following conditions

1)-The primary transactions of the companies must be halal

2)-Haram transactions mustn't be mentioned on the companies' registration record

3)-The Haram transactions must be carried out sometimes not always by the companies. They must be carried out unintentionally and for necessity. There mustn't be any halal available alternative for the haram transactions carried out by such companies

Second: The stand of Sharia on carrying out transactions with the companies of mixed type:

It should be noted that the primary transactions of the companies of mixed type are halal, but they carry out sometimes haram transactions. Therefore, there is a debate among the ones specialized fiqh about the stand of Sharia on carrying out transactions with such companies. The views of those jurists are presented below:

The first view: The ones who suggest that it's haram to hold stocks in the companies of mixed type and their proofs

Some specialists in fiqh suggest that carrying out transactions with the companies of mixed type is haram. According to Majmah Alfeqih Al'eslameh, ''It's haram to carry out transactions with the companies that carry out haram transaction (e.g. Riba and etc..) (Majmah Alfeqih Al'eslameh, 1/73). That applies even if the primary transactions of such companies are halal''. The same view is adopted by Saleh Al-Marzooqi (Almarzuqeh, 1412,70), Aleel A-Nashmi (Al-Nashmi,1998,139) and Ali Al-Saloos (Alsalus, 1433, 6/2).

The latter view is attributed to the fact that the halal earning got mixed up with the haram earnings (Altamimh, 1426, 34). The latter specialists suggest that that it's haram to carry out transactions with the companies of mixed type regardless of the percentage of unintentional haram earning to the all overall earning. That's mentioned in the decision issued byMajmah Alfeqih Al'eslameh[1].The latterspecialists base their view in this regard on the several proofs. Those proofs are listed below:

First proof: There are various proofs in Quran and Hadith that suggest that Riba is haram whether it's a small or a great percentage. It applies whether it is carried out separately or jointly with other works. Such proofs include: "Believers, fear Allah and give up what is still due to you from usury, if you are believers" (Al-Baqarah, Verse 278)."O you who believe! do not devour usury, making it double and redouble, and be careful of (your duty to) Allah, that you may be successful" (Al-Imran, Verse 130). "Allah has permitted trading and forbidden usury" (Al-Baqarah, Verse 275).

Thus, there are several vases in the Holy Quran that prohibit Riba. Under such verses, the trader and investors in the stocks of the companies that carry out haram transactions are considered committers of sins and transgression.

2)- There are proofs in hadith. For instance, Jaber said that Prophet Mohammad said: (Allah cursed the ones who gain earning from Riba and the ones who act on his behalf. He cursed the ones who draft the records related to Riba andthe witness in such records. All of them are treated similarly) (Albokhareh,1986, 2086; Sahih Muslim: 1598,3/1219)

Based on the latter Hadith, some scholars believe that the ones who buys stocks from the companies of mixed type that carry out riba-based transactions is considered a person who carries out riba-based transaction. They believes that the holders of such stocks must stop withdraw their investment.

That applies whether those companies carry out such transactions a little or much (Alkhalil,1426: 142). The companies of mixed type are the ones that carry out haram and halal transactions jointly regardless of the percentage of the unintentional haram earning of the overall earning.

The ones who support the latter view suggest that the holders of stocks in such companies can't receive their riba-based earnings. In fact, the holders of stocks must estimate the amount of riba-based earnings and spend it on charity.

[1] The fourth decision issued by MajmahAlfeqihAl'eslameh which is affiliated by Muslim World League/ The fourteenth session/ 1415 - 1995

In case one was forced to borrow money from such companies, he must estimate the amount he paid on riba and spend it on charity (Al quruh Daghi, 77).

The ones who support the latter view suggest that it's haram to refrain from estimating and spending the amount paid for riba on charity when borrowing money from such companies. Otherwise, one shall be cursed.

They add that estimating and spending the amount of earning gained from riba by the holders of stocks in such companies shall not make it halal to buy stocks from such companies. In fact, the contracts concluded with such companies are invalid under Sharia. That's believed by most of the ones specialized in fiqh and Abu Hanifa.

That is because estimating the amount of riba-based earning shall not enable the holder o stock to identify the exact amount of such earning (Alomrani,2006:38; Al marzuqeh, 1412:131).

According to the ones who believe that it's halal to hold stocks in the latter companies, holding such stocks shall not make one as a person who carry out works on behalf of those companies. In fact, the ones who carry out works on behalf of those companies are the board of directors.

That applies unless the bylaw suggests that the holders of stocks have the authority to act on behalf of the company. According to the ones who believe that it's halal to hold stocks and invest in the latter companies and thus, there isn't any need forrepentance. However, they believe that the holders of such stock must estimate the amount of riba-based earning and spend it on charity.

They believe that such an estimation has become accurate today due to the use of modern technologies (Alomrani, 2006:39)

Second proof: Some scholars believe that the joint stock company is based on agency and thus, the holder of stocks in such a company is an actor on its behalf. Thus, if the joint stock company carries out riba-based transactions, the holder of stocks shall be involved in riba-based transactions and representing the company (Alsalameh, 1998, 19).

According to the scholars who believe that it's halal to hold stocks in the latter companies, not all the joint stock companies are based on agency. The latter scholars suggest that the laws suggest that the capital of the joint stock companies are not owned by the stockholders.

Thus, the stand of Sharia on the holders of stocks differ from the counterpart stand on the partners in such companies. The latter scholars consider the joint stock company as a legal person that is distinct from its owners (Al-Yaqoubi, 1998: 76).

In this regard, it should be noted that there is a difference between the partnership and the corporate. The partnership involves collaborating in the process of establishing a business entity. As for the corporate, it refers to a legal personality that people can purchase stocks from it (Al-Yaqoubi, 1998:76).

Alsanahure (5/292) suggests in this regard that the capital of the corporate isn't owned by the partners. In fact, it's owned by the corporate itself which is a legal person. The partner doesn't enjoy the right to dispose the corporate capital while it's still existent (Alsanahure, 5/292).

The latter scholars base their views on the fact that the joint stock company is a legal person. Thus, the stock holders can't be held responsible for the acts of its boards of directors. They base their views on the fact that the joint stock company isn't based on agency. They suggest that it's halal to purchase stocks from such a company, unless its bylaws involves haram transactions (Alomrani, 2006: 49).

Al-Yaqoubi (1998: 76) adds that holding a stock in the joint stock company that carries out riba-based transactions differs from being a partner in this company. He adds that there isn't any proof that indicates that it's halal to be a partner in this company.

Otherwise, it shall be halal to carry out riba-based transactions. However, Al-Yaqoubi (1998) adds that holding a stock in the later company is debatable, because this company is a legal person that is distinct fromthe personality of the stock holders (p.76).

Third proof: The earnings of the companies of mixed type include haram and halal earnings. Thus, some believe that it is difficult to identify the exact amount of haram earnings. That makes the corporate earning considered as haram earning even after spending the amount of the estimated haram earnings on charity (Alomrani, 2006:47).

The ones who opposes this view suggest that it's halal to invest in the latter companies, provided that the amount of haram earning is estimated and spent on charity. However, in case most of the company's earning is haram, it shall be a different case.

The second view: The ones who suggest that it's halal to hold stocks in the companies of mixed type.

Some scholars suggest that it's halal to purchase stocks from the companies of mixed type. However, there are requirements that must be met for considering the process of purchasing and holding such stocks as halal.

For instance, the Sharia Body of Alrrajihi Companies (qararatalrrajihi, 1/241) and the Sharia Body of the Jordanian Islamic Bank suggests that it's halal to purchase such stocks.

The same view is adopted by Bin Othimi no (11), Abdullah Al-Manea (Al-Manea, 1998, 33), the General Ifta' Department in Jordan (www.aliftaa.jo), Mohammad Taqi Al-Othmani (Dawwabah, 2009:29), Ali AlquruhDaghi (AlquruhDaghi, 77: 86) and Accounting and Auditing Organization for Islamic Financial Institutions ((AAOIFI, 568).

The latter scholars and bodies suggest that holding stocks in the companies of mixed type is halal. However, they add that there are requirements that must be met to consider that as halal. In case, one of those requirements hasn't been met, the process of purchasing and holding such stocks shall become haram.

Such requirements differ from one school of fiqh to another. The researcher presented below the requirements that must be met to consider that as halal and the proofs. He presented the proofs of the ones who suggest that it's halal to hold stocks in the companies of mixed type

First proof: Sharia-based proofs:

First requirement: A requirement related to the percentage of riba-based loans and haram investment. There is a debate over this requirement. The views about this requirement are shown below:

- First view: This percentage shouldn't exceed 30% of the overall market values, provided that this percentage isn't less than the book value. This view is adopted by Sharia body of Alrrajihi Companies (qararatalrrajihi,1/241). Others suggest that this percentage shouldn't exceed 30% of the overall market value of the overall market value of all the company's stocks (AAOIFI, 568)
- Second view: This percentage should be equal to the value of the company's assets or greater than 33% of the value of the company's assets. This view is adopted by the one who set Dow Jones Islamic Market Index (Dawwabah, 2009: 30)
- Thirdview: This value of the borrowed or deposited funds through riba shouldn't exceed 25% of the book value of all the company's stocks (www.aliftaa.jo).

It can be noticed that the aforementioned percentages are related to the company's assets value, market value, or book value. The researcher supports the third opinion. That is because the book value represents the actual value of the company's assets. However, the market value doesn't represent the actual value of the company's assets.

That is because the market value of the stock may be affected by the supply and demand levels rather than the company's activities. The market value of the stock may be affected by the speculations.

The aforementioned percentages vary. They aren't based on Sharia-based evidence. For instance, the one who set 33% based his view on a Hadith. This hadith is the following: (Amer bin Saeedsaid that his father said that Prophet Mohammad said:

(One-third and one-third whether it's great or big)) (Albokhareh, 1986, 3/1007).

The other percentages (25% or 30%) are based on discretionary views. The researcher of the present study suggests that 25% is the best percentage.

Second requirement: A requirement related to the percentage of unintentionalharam earnings of the overall earnings. In this regard, there are various opinions:

First view: the Haram earning shouldn't exceed 5% of the overall earning of the company. This view is adopted by Sharia body of Alrrajihi Companies (qararatalrrajihi, 1/1241) and Accounting and Auditing Organization for Islamic Financial Institutions ((AAOIFI, 568). It is adopted by the General Ifta' Department in Jordan (www.aliftaa.jo)

Second view: The overall non-operational earning shouldn't exceed 9% of the operational earning. This view is adopted by the one who set Dow Jones Islamic Market Index (Dawwabah, 2009: 32) and Alhurane (2015:609).

Some of the aforementioned values are based on Sharia-based proof (e.g. one third). However, the five percent is based on a discretionary decision. The latter percent is based on the percent of Zakah which aims at purifying the money and asking for forgiveness. In this regard, there is a verse in Quran that suggests that the amount of haram earning should be spend on charity to purify the whole earning. This verse suggests that doing that shall make the rest of money become halal and purify the sinner. This verse states the following: ''Take charity from their wealth, in order that they are thereby cleansed and purified, and pray for them; for your prayer is a comforting mercy for them. Allah is Hearing, Knowing'' (Al-Taubah, Verse No. 103).

Since the percentage are based on discretionary decisions, they can be re-considered as it's needed.

Second proof: General rules in Fiqh:

First rule: The rule that suggests that severe hardship must be avoided. It also suggests that the need should be considered as a priority (Alzarkashi, 1402 AH:42).

The latter rule is stipulated in the following verse: ''And strive for Allah with the endeavor which is His right. He hath chosen you and hath not laid upon you in religion any hardship'' (Al-Haj; Verse No. 78).

It should be noted that Sharia aims at letting people avoid hardship and meeting the interests of people and nations. In application for the latter rule, Al-Iz bin Abed Al-Salam suggests the following: (In case all the available options are haram and there isn't any available halal option, it shall be halal to choose a haram option. That should be done as one finds it necessary.

It doesn't apply to basic needs only (Abd Alsalam, 1/123). In application for the latter rule, it is halal to carry out transactions with the companies of mixed type in order to meet the needs of people in accordance with the aforementioned requirements. Such needs are represented in the investing the savings. In addition, the governments' needs are represented in allowing people to invest their savings and improve their living conditions. If one said that it's haram to invest savings in the companies of mixed type, people and governments shall be facing major hardship. Thus, that shouldn't be said (Al-Manea, 1998, 42).

It should be noted that carrying out transactions with the companies of mixed type is a need and a necessity that can't be dispensed. Otherwise, there shall be major hardship. That's because most of the companies which main scope of work is halal are forced to carry out riba-based transactions (Dawwabah, 2009:34)

According to the ones who suggest that it's haram to carry out transactions with the companies of mixed type, they add that the government and people shall not face any hardship when refraining from purchasing stocks from those companies. They add that that purchasing stocks from those companies is a need rather than a necessarily. It should be noted that most of the ones specialized in Fiqh suggest that the need doesn't turn haram into halal, whereas necessity turns haram into halal (Alomrani, 2006,16).

Necessity is a want which dispense shall lead to harm related to one's compliance with the basic religious rules, and protection of money, brain, lineage, and body. Those five elements are called the five necessities. As for the need, it is a want which dispense shall lead to facing difficulties and hardship in meeting interests related to the five necessities without causing harm to any of the five necessities (Alzarkashi ,1402h,2/319; Alkurdi,1998,106, Alzuhile,1997,246, Ghaith, 2016, 563).

Second rule: There is a rule in Fiqhthat states the following: (It's halal to do the things that can't be avoided) (Alzarkashi, 1402h, 2/226).

There is another rule in Fiqh that states the following: (Meeting most of the requirements is halal in some cases when needed) (Al-Nadwi,2000,380). In application for this rule, some scholars suggest that it's halal to purchase and sell the stocks of the companies of mixed type which most of their transactions are halal and carry out few halal transactions.

That is because exchanging the stocks of those companies is a need for the public((Al-Manea,1998,49).

As for the scholars who are against this view, they add that the rule stating (Meeting most of the requirements is halal in some cases when needed) doesn't apply in this case. That is because companies can avoid riba-based transactions without facing any hardship. It is because the need in the latter rule of fiqh applies to the human needs only (Alomrani, 2006,18).

The latter scholars add that when haram things get mixed up with halal things, the general rules suggests that the whole thing shall be considered haram (Al-Nashmi,1998,150). To be specific, the rule of fiqh states (If haram things get mixed up with halal things, the whole thing shall be considered haram) (Alzarkashi, 1402h,1/348).

Third rule: (Sometimes, the haram sub-acts derived from a main halal act are considered halal. Sometimes, the sinful sub-acts derived from a main halal act aren't considered sins) (Al-Nadwi,2000, 423). That applies provided that the sub-acts derived the main act are not the primary goal sought (Al-Nadwi,2000,424).

In application for this rule, in a company of mixed type, the percentage of the unintentionalriba-based transactions of the overall transaction is small. In addition, the riba-based transactions in this company don't fall under the company's primary scope of work. That means that riba-based transactions are the sub-acts derived from halal acts. Thus, it is halal to exchanges the stocks of the companies of mixed type ((Al-Manea ,1998,4; Altamimh, 1426H, 76)

The scholars who are against this view suggests that the latter rule can't be applied to riba-related issues. That is because there are several proofs indicating that riba is haram in all cases whether it serves as a main act or as a sub-act derived from a main halal act. In addition, the latter scholars add that this rule applies to the sub-acts that are carried out unintentionally and derived from main acts. However, in the companies of mixed type, riba-based transactions are carried out intentionally and independently (Alkhalil,1426H, 73)

Rule four: A rule in fiqh suggests the following (Mixing up a great amount of halal earning with a minor amount of haram earning shall not make the halal earning becomes haram.

That applies provided that the haram earning gets excluded). According to Ibn Al-Qayyim, if someone received haram earning, he must spend the haram earning on charity. In this case, the rest of the earning is considered halal. That applies whether the amount of spent haram earning is an accurate or estimated amount. After spending this amount, the rest of money is halal and there isn't any reason for considering it haram (Ibn Al-Qayyim, 1/1252).

In case most of the transactions of the company of mixed type is halal, the company can estimate the amount of riba-based earning and spend it on charity. Such an amount can be estimated through making financial statements and budgets. Spending this money on charity shall make the rest of the company's earning considered as halal(Alkurdi,1998,113; Bin Biyh,1998,79).

The scholars who are against this view suggests that the latter rule applies to the ones who received haram earning unintentionally. However, the company of mixed type carried out riba-based transactions intentionally. In addition, the one who buys stocks in this company does that intentionally (Altamimh, 1426H, 80).

Third proof: The boards of directors of the company of mixed type must be holders of stocks in this company. Otherwise, they can't enjoy this membership nor enforce control over the transactions of this company (AlquruhDaghi, 87)

The ones against that suggest that holding stocks in this company is associated with damages that exceed the benefits (AlquruhDaghi, 87)

Fourth proof: The joint stock company is a new type of company which differs from the types of companies known in Fiqh. It is a legal person which has its capital and own responsibilities. The stockholders aren't engaged in the management of this company (qararatalrrajihi,30)

The scholars who are against this view suggests that holding stocks in this type of companies is haram because such companies are based on agency. That applies though those companies differ from the types of companies known in Fiqh (Alomrani ,2006,31)

According to the researcher of the present study, it is halal to exchange the stocks of the companies of mixed type in accordance with Sharia-based requirements. Such requirements are presented in the aforementioned argument.

They are stipulated through proofs in Sharia and sayings of experts in Fiqh. The researcher adds that it's difficult for the holders of stocks to identify whether each transaction carried out by the company is haram or halal. For instance, some companies have thousands of stock holders (www.aliftaa.jo)

Second part: Sharia-based criteria for classifying the companies listed on the stock exchange markets.

Based on the Sharia-based criteria, companies listed on the stock exchange marketsare classified into types. Those types are identified below:

First type:The companies which all their transactions are halal,

Those companies must meet the following requirements to be considered so:

1)-The investments, transaction, activities and financial statements of the companies must be free from Haram

2)-The companies mustn't be having any haram earning.

3)-The companies must refrain from giving or taking Riba-based loans

Second type: The companies which all their transactions are haram:

Those companies must meet the following requirements to be considered so:

1)- The haram transactions must be among the scope of work of the companies

2)- The haram transactions must be listed amongst the companies' goals and onthe companies' registration records. (In case the percentage of haram earning of the overall earning is 5%, the company shall be considered a company which transactions are haram).

Third type: The companies of mixed type (i.e. they carry out halal and haram transactions jointly).

Those companies must meet the following requirements to be considered so:

1)-The primary transactions of the companies must be halal

2)-Haram transactions mustn't be mentioned on the companies' registration record

3)-The Haram transactions must be carried out sometimes not always by such companies. They must be carried out for unintentionally and for necessity. There mustn't be any halal available alternative for the haram transactionscarried out by such companies.

The researcher suggestions that there must be other criteria for classifying companies based on Sharia. Thus, he developed the following criteria

First section: Criteria for classifying companies of mixed type:

First criterion: The haram earning must be earned unintentionally:

That means in case the company earned the haram earning intentionally, the company shall not be considered a company of mixed type. In the latter case, the primary goals of the company shall be including haram transactions. In other words, the company of mixed type receive haram earning unintentionally or by mistake due to wrong management practices

First: The meaning of unintentional haram earning and its cases:

Haram is a term in Sharia. It refers to any act that is prohibited in the Holy Quran or Hadith. There isn't any evidence in Holy Quran or Hadith indicating that it's haram or reprehensible to exchange the stocks of the companies of mixed type (Albaz,1999,38). Haram earning refers to the earning gained from carrying out transactions that violate the provision of Sharia (Albaz, 1999, 39).

Unintentional haram earning refers to the earning gained from carrying out a haram transaction or possessing a haram item by a company which primary scope of work doesn't include haram transactions. It is gained through the transactions that aren't mentioned in the company's registration record nor the goals of the company

Second: Purifying the earning through spending haram earning on charity and proofs

Such purification refers to the process of estimating the amount of haram earnings gained from stocks and spending this amount on charity (Dawwabah, 2009: 50).

Proofs indicating that it's mandatory to purify the earning through spending haram earning on charity.

1)-“but if you do not, then take notice of war from Allah and His Messenger. Yet, if you repent, you shall have the principal of your wealth. Neither will you harm nor will you be harmed“ (Al-Baqarah, Verse 279). The latter verse indicates that the ones who received haram earnings and repented must spend the amount of haram earning on charity.

2)-“Do not consume your wealth between you in falsehood; neither propose it to judges, in order that you sinfully consume a portion of the people's wealth, while you know“ (Al-Baqarah, Verse 188).

Upon this verse, Ibn Abbas said: in case a man owe people money and denied that, this man shall be considered as a person who obtained haram money (IbnKatheer, 1981).

3) In Masnad Imam Ahmad, Imam Ahmad said that Sumrah bin Jondob said that Prophet Mohammad said: (One must pay off the money he/she owes to people. If the money wasn't paid off, the money shall be haram) (bnHanbal, 5/8). Based on this Hadith, one is held liable for paying off the money he/she owes to people (Albaz,1999,342).

Ibn Al- Qayyim suggests that its mandatory to spend the amount of haram earning on charity. According toIbn Al- Qayyim, if someone received haram earning, he must spend the haram earning on charity.

In this case, the rest of the earning is considered halal. That applies whether the amount of spent haram earning is an accurate or estimated amount. After spending this amount, the rest of money is halal and there isn't any reason for considering it haram (Ibn Al-Qayyim, 1/1252). According to Ibn Al-Qayyim, if the halal earning got mixed up with haram earning, the earning should be purified through spending the amount of haram earning on charity.

Third: The way and steps of purifying the earning through spending haram earning on charity:

The researcher believes that the haram earning must be spent on charity. That is carried out through one of the following methods: a)-returning the haram earning to the one who are entitled to receive such earning (owner), b)-Paying off the haram earning on behalf of its owner, c)-paying off the haram earning on charity –not to the owner- in the aim of getting rid of it (AAOIFI, 569).

In case there is a haram earning, it must be purified and avoided. That applies whether the amount of profit remained after such purification is zero (AAOIFI, 569).

AAOIFI (569) suggests that the haram earning received through stocks must be gotten rid of it. That applies even if no profit remained after doing that.

One may wonder what mechanism should be adopted to calculate the haram earning that got mixed up with halal earning in order get rid of it. Such mechanism is illustrated below:

1)-The Securities Commission and stock exchange markets must oblige the companies of mixed type to disclose information about their financial positions. That should be done through publishing the relevant financial statements in periodical manner. Publishing such statements shall make it possible and easy to calculate the haram earning (statements, 2009:50).The managements of companies must show much credibility, and objective when disclosing the haram earnings.

2)-Calculating the unintentional haram earning should be carried out through making discretionary calculations by experts. The percentage of haram earning of the overall earning may exceed the determined percentage. In this regard, the researcher recommends forming a committee of experts to determine the percentage of the company's unintentional haram earning. Based on such percentage, the company shall be classified under Sharia. The company must request making this classification process. The committee must also involves members of a Sharia body. It must be supervised by the stock exchange market.

After making this assessment, in case it was found that the haram earning exceed the determined percentage and the company didn't disclose some pieces of information about earning, the committee shall state that it's haram to hold transactions with the company of mixed type.

3)-It's haram for the company to benefit from the haram earning in any manner (AAOIFI, 569). It's haram to use the haram earning for paying off the Zakah, or taxes of stock holders or the company's taxes. According to General Ifta' Department in Jordan, a Muslim should get rid of the haram earning received as a result of having stocks. He should get rid of this earning through spending it on charity without getting any personal benefit that is for his favor (www.aliftaa.jo). The managements of the companies of mixed type must identify the way it got rid of the haram earning.

The researcher believes that the government must establish a fund for the haram earning gained by the companies of mixed type. He believes that the government must identify the activities to be funded by this fund. Such activities include: establishing hospitals, and educational institution and charity activities. Charity activity include: helping the poor, and paying off the debt of poor women.

Fourth: The percentage of the unintentional lharam earning of the overall earning

There must be a Sharia-based document that identifies the percentage of unintentional haram earning of the overall earning of the companies of mixed type. This document must identify that exceeding this percentage shall make exchanging the stocks of such companies considered as haram. This percentage must be set by Sharia bodies. There are various views about this percentage. Such views are shown below:

a)-Some scholars suggest that this percentage should be 33%. This view is based on the following Hadith: (Amer bin Saeed said that his father said that Prophet Mohammad said: (One-third and one-third whether it's great or big)) (Albokhareh,1986, 3/1007)

b)-Some scholars suggest that this percentage should be 2.5% and others claim that it should be 5%. Others scholars suggest that it should be 10%. The latter percentages are based on the percent of Zakah which aims at purifying the money and asking for forgiveness.

In this regard, there is a verse in Quran that suggests that the amount of haram earning should be spend on charity to purify the whole earning. This verse states the following: ''Take charity from their wealth, in order that they are thereby cleansed and purified, and pray for them; for your prayer is a comforting mercy for them. Allah is Hearing, Knowing'' (Al-Taubah, Verse No. 103).

The latter verse suggests that Zakah is mandatory to purify the earning from any unintentional haram earning. The earning received through agriculture requires paying a Zakah percent of one tenth or five hundredths. The zakah percent that must be paid for funds is twenty-five thousandths. Thus, the ones who set a percentage adopted a moderate view.

Zakah aims at purifying the earning as a mean to letting one get rid of the earning that might be haram unintentionally. Paying Zakah shall enable one to make sure that the remaining earning considered as halal (Al-Muzaini,2009).

Based on the aforementioned argument, the percentage of the unintentional haram earning of the overall earning must be within the range of (2.5 -10%). In case the company is operating in the field of industry or trade, the percentage of unintentional haram earning of the overall earning mustn't exceed 2.5%. In case the company is operating in the field of agriculture, the percentage of unintentional haram earning of the overall earning mustn't exceed 5-10%.

The latter percentage is determined based on the type of agricultural activity. If the company of mixed type didn't exceed the determined percentage, it shall be halal to hold transactions and stocks in it. That applies provided that the company gets rid of the haram earning (not the haram profit).

In this regard, one may ask:

(Is the company which percentage of unintentional haram earning of the overall earning is 0.05 is similar to the company which counterpart percentage is 5%, in case this percentage mustn't exceed 5%? Are those companies given the same Sharia-based classification in the financial market?

The researcher believes that those companies shouldn't be given the same Sharia-based classification. That is because the companies differ from each other in terms of the percentage of unintentional haram earning of the overall earning. Therefore, the researcher classified the companies of mixed type as follows based on such percentage:

Table (1): A classification for the companies of mixed type based on the percentage of haram earning of the overall earning

Percentage of unintentional haram earning of the overall earning	Classification
%0,999to %0,001	1
%1,999 to %1	2
%2,999 to %2	3
%3,999 to %3	4
%5 to %4	5

*This table is developed by the researcher with assuming that the percentage of unintentional haram earning of the overall earning mustn't exceed 5%.

Based on table (1), there are five categories of companies of mixed type based on the percentage of unintentionalharam earning of the overall earning. The researcher drafted table (1) with assuming that the percentage of unintentional haram earning of the overall earning mustn't exceed 5%. Such a classification is based on the first criterion.

Assuming that the percentage of unintentionalharam earning of the overall earning mustn't exceed 2.5%, there are five categories of companies of mixed type. Such a classification is based on the first criterion. Those categories are presented in table (2)

Table (2): A classification for the companies of mixed type based on the percentage of unintentionalharam earning of the overall earning

Percentage of unintentional haram earning of the overall earning	Score based on the first criterion
0,001 % to0,499 %	1
0,5 % to 0,999 %	2
1% to 1,499 %	3
1,5 % to 1,999 %	4
2 % to 2،5 %	5

*This table is developed by the researcher with assuming that the percentage of unintentionalharam earning of the overall earning mustn't exceed 2.5%

Second criterion: A criterion related to the earnings per share percentage of the overall haram earnings.

The researcher recommends classifying companies based on the earnings per share percentage of the overall haram earnings. To be classified under this classification, this percentage must be within the range of 0.001 -5%. Under such a classification, there are five rating scores for companies (i.e. 1-5). However, two companies may be similar in terms of the percentage of unintentional haram earning of the overall earning, but differ from each other in terms of the earnings per share percentage of the overall haram earnings. Such difference may be attributed to having a greater number of stocks in one of those companies. In this case, one may be ask: (Are the two companies categorized similarly under Sharia in the financial market?

The researcher recommends classifying companies as follows:

1)-The companies must be arranged based on the earnings per share percentage of the overall haram earnings in an ascending order. The companies that gets one score is the one that has the least earnings per share percentage of the overall haram earnings.

2)-The number of the companies of mixed type shall be divided on (5). The companies shall be classified into 5 categories based on the following equation:

The number of the companies of mixed type in each category= (The number of the companies of mixed type that met the first criteria / 5)

3)-The companies shall be divided into five categories. Each category shall be consisting from several companies of mixed type. Each category represents a specific score. Such categories and scores are presented in table (3)

Table (3): The categories and scores of the companies of mixed type

Category	Score based on the first criterion
First category	1
Second category	2
Third category	3
Fourth category	4
Fifth category	5

*This table is developed by the researcher

The researcher provided an example in the below argument:

The researcher assumes there are 15 companies of mixed type in the financial market. He assumes that all of them show percentage of unintentional Haram earning of the overall earning that are less than 5%. Table (4) presents data about them

Table (4): Data about the companies in the provided example

No.	Company's name	percentage of unintentional Haram earning of the overall earning	The earnings per share percentage of the overall haram earnings
.1	Al-Sanabel Co.	%2،5	0،00026
.2	Al-Motaheda Co.	%3،3	0،019
.3	Al-Awa'el Co.	%1	0،01
.4	Al-Namothajeye Co.	%5	0،0017
.5	Al-Motamayeza Co.	%5،0	0،0003
.6	Al-Ta'deen Co.	%4،4	0،0614
.7	Al-Malabes Co.	%2،4	0،0006
.8	Islamic A bank	%5،0	0،0094
.9	Islamic B bank	%2،1	0،0014
.10	Al-Mata'em Co.	%2،3	0،0356
.11	Al-Tamweeneye Co.	%2،0	0،0014
.12	Al-Aqarat Co.	%1،3	0،009
.13	Al-Alban Co.	%7،1	0،0123
.14	Al-Khayr Co.	%5	0،00017
.15	Al-Ihsan Co.	%2	0،0087

*This table is developed by the researcher

First: the researcher assigns a score to each company (i.e. 1-5). Each category includes three companies based on the following equation:

The number of the companies of mixed type in each category= (the number of the companies of mixed type that met the first criteria / 5)

15/5=3

Second: It can be noticed that each category includes 3 companies. The companies are arranged in an ascending order based on the earnings per share percentage of the overall haram earnings. The first category represent one score. The classification of the companies based on the second criterion is presented below

Table (5): Classification of the companies based on the first and second criteria

No.	Company's name	First criterion: percentage of unintentional Haram earning of the overall earning	The company's score based on the first criterion	Second criterion: The earnings per share percentage of the overall haram earnings	Classification based on the second criterion	The company's score based on the second criterion
.14	Al-Khayr Co.	5 %	5	0،00017	First category	1
.1	Al-Sanabel Co.	2،5 %	3	0،00026		1
.5	Al-Motamayeza Co.	5،0 %	1	0،0003		1

.7	Al-Malabes Co.	2،4 5	3	0،0006	Second category	2
.9	Islamic B bank	2،1 %	3	0،0014		2
.11	Al-Tamweeneye Co.	2 %	3	0،0014		2
.4	Al-Namothajeye Co.	5 %	5	0،0017	Third category	3
.15	Al-Ihsan Co.	2 %	3	0،0087		3
.12	Al-Aqarat Co.	1،3 %	2	0،009		3
.8	Islamic A bank	5،0 %	1	0،0094	Fourth category	4
.3	Al-Awa'el Co.	1%	2	0،01		4
.13	Al-Alban Co.	7،1%	2	0،0123		4
.2	Al-Motaheda Co.	3،3%	4	0،019	Fifth category	5
.10	Al-Mata'em Co.	2،3%	3	0،0356		5
.6	Al-Ta'deen Co.	4،4%	5	0،0614		5

* This table is developed by the researcher

Third criterion: A criterion related to the amount of funds borrowed or lent through Riba or the amount of funds invested in Haram transactions unintentionally

The researcher concluded that it's halal to carry out transactions with a company of mixed type. That applies provided that the neither any of those amounts exceed 25% of the book value of the company's stocks. The latter rule applies whether there is a haram earning or not.

The researcher assumes that this percentage of a company coded as (company a) is 3%, whereas the counterpart percentage of a company coded as (company b) is 25%. In this case, one may ask: (Are those two companies given the same classification?)

The researcher adds that those two companies shouldn't be classified similarly. Hence, the researcher believes that companies should be classified in Sharia as follows in this regard

Table (6): Sharia-based classification for the companies based on the third criterion

The percentage of the funds borrowed or lent through Riba of the book value of the company's stocks / The percentage of the amount of funds invested in Haram transactions unintentionally of the book value of the company's stocks.	The company's score based on the third criterion
0,001 % to 4,999 %	1
5% to 9,999%	2
10 % to14,999 %	3
15 %to19,999 %	4
25 % to 20%	5

* This table is developed by the researcher

Based on table (6), (company a) is given one score and company b is given 5 scores. Thus, company a is given a higher level.

The third criterion is consistent with the first criterion. In fact, the first and third criteria must be met by the company of mixed type to consider exchanging its transactions as halal:

1)-The haram earning percentage shouldn't exceed 5% of all the earning of the company,

2)- The percentage of the funds borrowed or lent through Riba of the book value of the company's stocks mustn't exceed 25%. The sample applies to the percentage of the amount of funds invested in Haram transactions unintentionally of the book value of the company's stocks.

The researcher assumes that a company has a deposit in riba-based banks. He assumes that this deposit exceeds 30% of the book value of the company's stocks.

However, the percentage of haram earning of the overall earning doesn't exceed 2%. In this case, the company didn't meet the third criterion, but it met the first criterion (Alfaqir ,2011,17). In this case, holding stocks in this company is haram.

The researcher provided a Sharia-based classification for companies of mixed type based on the three criteria. He classified the companies mentioned in the example below.

Table (7): An example for the Sharia-based classification for companies of mixed type based on the three criteria.

No.	Company's name	First criterion: percentage of unintentional Haram earning of the overall earning	The company's score based on the first criterion	Second criterion: The earnings per share percentage of the overall haram earnings	Category based on the second criterion	The company's score based on the second criterion	Third criterion: The percentage of the funds borrowed or lent through Riba of the book value of the company's stocks / The percentage of the amount of funds invested in Haram transactions unintentionally of the book value of the company's stocks	The company's score based on the criterion
.14	Al-Khayr .Co	%5	5	0،00017	First category	1	%13	3
.1	Al-Sanabel .Co	%2،5	3	0،00026		1	%9	2
.5	Al-	%5،0	1	0،0003		1	%2	1

	Motamayeza .Co							
.7	Al-Malabes .Co	%2،4	3	0،0006	Second category	2	%3	1
.9	Islamic B bank	%2،1	3	0،0014		2	%7	2
.11	Al-Tamweeneye .Co	%2	3	0،0014		2	%12	3
.4	Al-Namothajeye .Co	%5	5	0،0017	Third category	3	%17	4
.15	.Al-Ihsan Co	%2	3	0،0087		3	%22	5
.12	Al-Aqarat .Co	%1،3	2	0،009		3	%11	3
.8	Islamic A bank	%5،0	1	0،0094	Fourth category	4	%4	1
.3	Al-Awa'el .Co	%1	2	0،01		4	%8	2
.13	Al-Alban .Co	%7،1	2	0،0123		4	%11	3
.2	Al-Motaheda .Co	%3،3	4	0،019	Fifth category	5	%23	5
.10	Al-Mata'em .Co	%2،3	3	0،0356		5	%24	5
.6	Al-Ta'deen .Co	%4،4	5	0،0614		5	%21	5

* This table is developed by the researcher

Table (8): The scores of the companies in the financial market based on the proposed Sharia-based classification. (The lower the score is, the more halal it shall be to carry out transactions with the company)

No	Company's name	The company's score based on the first criterion	The company's score based on the second criterion	The company's score based on the third criterion	Total scores
	Al-Motamayeza .Co	1	1	1	3
	.Al-Sanabel Co	3	1	2	6
	.Al-Malabes Co	3	2	1	6
	Islamic A bank	1	4	1	6
	Islamic B bank	3	2	2	7
	Al-Tamweeneye .Co	3	2	3	8
	.Al-Aqarat Co	2	3	3	8

	.Al-Awa'el Co	2	4	2	8
	.Al-Khayr Co	5	1	3	9
	.Al-Alban Co	2	4	3	9
	.Al-Ihsan Co	3	3	5	11
	Al-Namothajeye .Co	5	3	4	12
	.Al-Mata'em Co	3	5	5	13
	Al-Motaheda .Co	4	5	5	14
	.Al-Ta'deen Co	5	5	5	15

The companies listed in the aforementioned table are arranged in an ascending order. Al-Motamayeza Co. is ranked first based on the Sharia-based classification. The total score of the latter company is 3. As for Al- Ta'deen Co., it is ranked last based on the Sharia-based classification. This classification is based on three criteria. The total score of the latter company is 15.

Second section: General criteria for classifying companies:

1)-The company should show compliance with Sharia-goals (i.e. ensuring compliance with the basic religious rules, and protection of money, brain, lineage, and body).

2)-The company's contracts should be free from manipulation or fraud. They should be concluded willingly.

3)-The company's bylaw must identify that the company shall refrain from carrying out haram transaction or meeting a haram goal (AAOIFI, 569).

4)- The company must get rid of the haram profit (www.aliftaa.jo)

5)-The company must spend the haram profit on charity in a manner that doesn't meet the personal interests of stockholders.

1. Spending the prohibited profit on public good, provided that it does not result in any benefit to the shareholder (www.aliftaa.jo).

2. That there is a general need for dealing in mixed companies that is estimated by the legal experts and economists (Dawwabah, 2009,49 .

3. The obligation to deny what is forbidden and work to change it (Dawwabah, 2009,49.

4. Ethical standards; Companies' commitment to Islamic ethics and values such as honesty, cooperation and non-harm, including environmental pollution.

Results

The researcher reached a set of results as follows:

1. The companies listed in the capital market are legally classified into three companies: pure companies, forbidden companies, and mixed companies.

2. The permissibility of mixed companies within Sharia controls, general standards, and three special criteria represented by the criterion of the proportion of prohibited accidental revenue to the total revenues of the company so that it does not exceed 5%, the criterion of the share of each share of the total prohibited revenue, and the standard of the total amounts borrowed or borrowed with interest or invested in the activity Forbidden accident, not exceeding 25%.

3. The possibility of classifying the mixed companies within 15 degrees, so that the mixed companies vary in the extent of commitment within this classification.

Recommendations

1.Staff in financial markets must study the proposed classification; Due to the importance of such classification in attracting the investors seeking to invest in the capital market in accordance with the provisions of Islamic law, and its importance in mobilizing financial savings; The proposed Sharia classification helps increase competition between companies listed on the financial market to adhere to the provisions of

Sharia by raising the degree of their Sharia classification.

2. The researchers recommends carrying out studies about the ethical standards by showing their role in Sharia classification through data and figures that help in classifying companies in the capital market.

3. Researchers recommends carrying out studies about the objectives of Islamic law by showing their role in Sharia classification through practical applied studies that help classify companies in the capital market.

4. Establishing a fund for unlawful revenue for mixed companies that must dispose of it and specify the fund's objectives and the ways in which the funds collected in it will be spent on public interests for Muslims, such as building hospitals and educational institutions, and various aspects of charity for the poor, the needy, the debtors, the financiers, and so on.

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