# 244108 - Ruling on requesting a guarantee from a riba-based bank?

**the question**

I am intending to star a new company in pakistan. i need to know that if there is a govt rule or compan policy to have or show bank gurantee than is it be Halal or Haram.?
If haram, than is there any other option to avail the tender.?
Some of my friends are saying against the hadith and your fatwa that even the job of a door keeper in such organisation is haram.

**Summary of answer**

Conclusion:

If you need a bank guarantee or letter of credit, let it be issued through an Islamic bank, and it is more appropriate for you to have money in the bank to cover the liability. The bank fee should be in return for acting as an agent (wakaalah) and not as a guarantor (kafaalah), so the fee should not be connected to the amount of liability or the length of the guarantee period.

If you cannot find an Islamic bank, then there is nothing wrong with requesting this guarantee from a riba-based bank, if you deposit enough money to cover any liability in a current account, and the bank fee has nothing to do with the amount of liability or the length of the guarantee period

Dealing with riba-based banks, without getting involved in riba, is permissible, as is depositing money in them in the case of need, when there is no Islamic bank.

As for working in such banks, that is prohibited, even if it is working as a security guard, because that is helping, directly or indirectly, with riba.

And Allah knows best.

**Detailed answer**

Praise be to Allah.

The bank guarantee is a limited-time, irrevocable, binding commitment that is issued by the bank at the request of another party (a customer of the bank) to pay a certain amount of money, at the request of another party that has an interest with the customer, in return for the customer entering into a bidding process or carrying out a project properly, according to specifications, so that the beneficiary will benefit from this guarantee if the customer delays or falls short in carrying out what he committed to do for the beneficiary with regard to the bidding process or carrying out a project and the like. In that case the bank will deduct from the customer what it paid to the beneficiary.

End quote from Fiqh an-Nawaazil by Dr. Bakr ibn ‘Abdullah Abu Zayd (1/201)

Based on that, the letter of credit – that is not covered – is a guarantee from the bank regarding the customer. Therefore it is not permissible to charge a fee for it, because giving the guarantee is regarded as an act of charity, and because of what that may lead to of falling into riba.

That is because the guarantor (the bank) is committed to pay the debt on behalf of the person who is guaranteed, if he does not pay up, and if the guarantor (the bank) pays on his behalf, it becomes a loan and the fee for giving the guarantee is something extra to the loan, so it is riba.

Ibn al-Mundhir (may Allah have mercy on him) said: All the scholars from whom we acquired knowledge are unanimously agreed that offering a guarantee in return for a fee taken by the one

who gives the guarantee is not lawful and is not permissible.

End quote from al-Ishraaf ‘ala Madhaahib Ahl al-‘Ilm (6/230)

Ibn Jareer at-Tabari (may Allah have mercy on him) said in Ikhtilaaf al-Fuqaha’ (p. 9):

If a man gives a guarantee to another man to pay money he owes to a third man, in return for a fee that the one who is guaranteed agreed to pay, the guarantee on that basis is not valid. End quote.

Ibn Qudaamah said in al-Mughni (6/441):

If he says: Guarantee me and I will give you one thousand, that is not permissible, because the guarantor is obliged to pay the debt (on behalf of the one whom he guaranteed), so if he pays it, the one who was guaranteed owes him; therefore it becomes like a loan, so if he takes compensation for that, it becomes a loan that brings benefit, and that is not permissible.

End quote.

It says in a statement of the Islamic Fiqh Council concerning bank guarantees:

Firstly: Bank guarantees of all kinds are either with or without coverage. If the guarantee is without coverage, then the guarantor becomes liable for whatever the guaranteed person is liable for, and is bound by the consequences, now or in the future. In fact this is what is meant in Islamic fiqh by the term damaan or kafaalah (guarantee).

If the bank guarantee is covered, then the relationship between the one who requested the guarantee and the one who issued it is a relationship of wakaalah (appointing someone to do something on one’s behalf), and wakaalah is valid with or without payment, so long as the purpose of the guarantee is to serve the interests of the beneficiary (the one to whom payment is guaranteed).

Secondly: kafaalah (guarantee) is an act of charity that is intended to show kindness and grant relief, and the fuqaha’ have stated that it is not permissible to receive compensation for that,

because in the event of the guarantor paying the amount he guaranteed, it becomes akin to giving a loan that brings benefit to the lender, and that is prohibited according to sharee‘ah.

The following was determined:

Firstly: that it is not permissible to charge a fee for the bank guarantee in return for offering a guarantee – where the amount of money and the timeframe are mentioned – whether it is with or without coverage.

Secondly: charging administration fees for issuing bank guarantees of either type is permissible according to sharee‘ah, so long as care is taken not to charge more than the usual charges for such procedures. If full or partial coverage is offered, it is permissible to figure out the real costs of issuing the guarantee. End quote from Qaraaraat Majma‘ al-Fiqh al-Islami (p. 25)

In the first conference of the Islamic Bank of Dubai, the following statement was issued:

Bank guarantees involve two things: wakaalah (asking someone to act on one’s behalf) and kafaalah (guarantee).

It is not permissible to charge a fee for kafaalah (guarantee), but it is permissible to charge a fee for wakaalah (asking someone to act on one’s behalf). But with regard to the fee for wakaalah, attention should be paid to reflecting the actual costs borne by the bank for the purpose of offering this service, because usually when issuing a guarantee there is some work that the bank carries out, according to bank procedures. This work involves, in particular, gathering information and studying the project for which the letter of credit will be granted. It also involves what the customer requests from the bank of services having to do with the project, such as collecting dues from the owners of the project.

Working out the amount of the fees is to be left to the bank, which should do it in such a way as to make it easy for people to carry out their business, and in accordance with business norms.

End quote from Mawsoo‘ah al-Qadaayaa al-Fiqhiyyah al-Mu‘aasirah wa’l-Iqtisaad al-Islami by Dr ‘Ali as-Saaloos (p. 644).