

Appendix (B)

The Shari'ah Basis for the Standard

Default on the Part of a Debtor

The debtor must settle his debt when it is due. Default in payment by a debtor who is able to settle the debt is prohibited. The Prophet (peace be upon him) says: *"Default in payment on the part of a solvent debtor is unjust."*⁽²⁾ He (peace be upon him) also says: *"Delay in payment by a solvent debtor would be a legal ground for his being publicly dishonoured and punished."*⁽³⁾ Moreover, he (peace be upon him) approved the statement of Salman Al-Farisi to Abu Al-Darda' saying: *"Give everyone his right."*⁽⁴⁾ Muslim scholars have agreed on the permissibility of a debtor being punished in such circumstances.⁽⁵⁾ However, an insolvent debtor should be granted a grace period.

- (2) Related by Al-Bukhari in his *"Sahih"* [2: 999], Dar Al-Qalam edition, Damascus, 1401 A.H./1981 A.D.; Muslim in his *"Sahih"* [10: 288], Al-Maktabah Al-Misriyyah edition with the commentary of Al-Nawawi, Cairo, 1349 A.H./1930 A.D.; and Ahmad in his *"Musnad"* [2: 71 and 345], Al-Maktab Al-Islami edition, Damascus.
- (3) Related by Ahmad in his *"Musnad"* [4: 388-399], and all relators of Hadith except Al-Tirmidhi, Al-Bayhaqi, Al-Hakim and Ibn Hibban who deemed it authentic. Al-Bukhari deemed it 'suspended'. In his *"Fath Al-Bari"*, Ibn Hajar has said: "Its chain of transmission is good": *"Nayl Al-Awtar"* [5: 240], Mustafa Al-Babi Al-Halabi edition, Cairo, 1378 A.H./1951 A.D.; and *"Fayd Al-Qadir"* [5: 400], Mustafa Muhammad edition, Cairo, 1371 A.H./1938 A.D.
- (4) Related by Al-Tirmidhi from Abu Juhayfah quoting the statement of Salman (may Allah be pleased with him) which the Prophet (peace be upon him) approved when mentioned to him saying: *"Salman has said the truth."* Al-Tirmidhi said: "It is an authentic Hadith": *"Sunan Al-Tirmidhi"* [2: 66], Bulaq Edition.
- (5) *"Bada'i Al-Sana'i"* [7: 173], Dar Al-Kitab Al-Arabi, Beirut, 1982 A.D.; *"Al-Muhadhdhab"* [3: 245], Dar Al-Qalam edition, Damascus, 1417 A.H./1996 A.D.; *"Al-Mughni"* [4: 501], Maktabat Riyad Al-Hadithah, Riyadh; *"Hashiyat Qalyubi"* [2: 288], Dar Al-Fikr edition, Beirut, no date; *"Mu'jam Al-Mustalahat Al-Iqtisadiyyah"*, (P. 314); The International Institute of Islamic Thought edition, Virginia, USA, 1415 A.H./1995 A.D.; and *"Dalil Al-Mustalahat Al-Fiqhiyyah Al-Iqtisadiyyah"*, (P. 274), Kuwait Finance House edition, Kuwait, 1412 A.H./1992 A.D.

bound by their conditions (stipulated in contracts and undertakings)".⁽⁹⁾ Breaching these conditions amounts to negligence from the manager. Hence, it is compulsory upon him to bear any loss arising from this breach.

Shari'ah Non-Compliant Means for Protecting Capital

- The basis for the prohibition of a third party's undertaking to bear the loss with the right of recourse to the manager is that this condition results in making the manager liable for the loss, which is prohibited by the Shari'ah.
- The basis for prohibiting the manager from undertaking to buy the investment assets at their face value or at a value initially agreed upon is that this condition results in the manager undertaking to bear the partial or complete loss of the assets' value, which is a forbidden condition as aforementioned.
- The basis for the prohibition of a third party's guarantee for a fee received in exchange for the guarantee is that it firstly entails excessive ambiguity because the extent of the loss is unknown at the inception of the contract, and because giving a guarantee in exchange for a fee, is prohibited by the Shari'ah.
- See Shari'ah Standard No. (20) on Sale of Commodities in Organized Markets for the basis of the prohibition of trading in options, futures and swaps.⁽¹⁰⁾

(9) Related by Al-Tirmidhi from the Hadith of Amr Ibn 'Awf, may Allah be pleased with him, in "*Kitab Al-Ahkam*", Chapter on "*Ma Dhukira 'An Rasuli Allah, peace be upon him, Fi Al-Sulh*", No. (1272); it is related also by Abu Dawud from the Hadith of Abu Hurayrah, may Allah be pleased with him, in "*Kitab Al-Aqdiyah*", Chapter on "*Bab Fi Al-Sulh*", No. (3120); also it is related by Al-Darqutni from the Hadith of 'A'ishah, may Allah be pleased with her, with the addition of "...that which is consistent with the truth", [2: 3]. It is an authentic Hadith when all its chains of transmission are taken into consideration; "*Taghliq Al-Ta'liq*" [3: 280]; and "*Fath Al-Bari*" [4: 451].

(10) See Resolution No. (63) 1/7 of the International Islamic Fiqh Academy regarding Financial Markets.