

- 2/1/5 Currency transactions shall not be carried out on the forward or futures market.
- 2/2 It is prohibited to enter into forward currency contracts. This rule applies whether such contracts are effected through the exchange of deferred transfers of debt or through the execution of a deferred contract in which the concurrent possession of both of the countervalues by both parties does not take place.
- 2/3 It is also prohibited to deal in the forward currency market even if the purpose is hedging to avoid a loss of profit on a particular transaction effected in a currency whose value is expected to decline.
- 2/4 It is permissible for the Institution to hedge against the future devaluation of the currency by recourse to the following:
- 2/4/1 To execute back to back interest free loans using different currencies without receiving or giving any extra benefit, provided these two loans are not contractually connected to each other.
- 2/4/2 Where the exposure is in respect of an account payable, to sell goods on credit or by Murabahah in the currency of the exposure.
- 2/5 It is permissible for the Institution and the customer to agree, at the time of settlement of the instalments of a credit transaction (such as a Murabahah), that the payment shall be made in another currency applying the spot exchange rate on the day of payment.
- 2/6 Possession in sales of currencies**
- 2/6/1 When a contract is concluded for the sale of an amount of currency, possession must be taken for the whole amount that is the subject matter of the contract at the closing of the transaction.
- 2/6/2 Taking possession of one of the countervalues by one party without taking possession of the other is not enough to make a currency dealing transaction permissible. Likewise, taking partial possession is not sufficient. Taking possession of part

3/1/3 An Institution is not entitled to guarantee financial commitments without a right of recourse to the debtor, i.e. to be a non-recourse guarantor, unless the Institution is already authorised by its shareholders and investors to make donations or to perform acts of benevolence.

3/1/4 It is permissible to fix the duration of a personal guarantee. It is also permissible to set a ceiling on the amount to be guaranteed and it is permissible that the personal guarantee be restricted by, or be contingent upon, a condition. In addition, it is permissible that such a guarantee be made contingent upon a future event, for example, by fixing a future date at which liability will commence and, in this case, the guarantor may validly withdraw the guarantee, by notifying the creditor, before the prospective obligation to be guaranteed arises.

3/1/5 It is not permissible to take any remuneration whatsoever for providing a personal guarantee per se, or to pay commission for obtaining such a guarantee. The guarantor is, however, entitled to claim any expenses actually incurred during the period of a personal guarantee, and the Institution is not obliged to inquire as to how the guarantee produced has been obtained by the customer. [see item 7/1/1 and 7/1/2)]

3/2 Guaranteeing unknown (Majhul) and future debts

A valid guarantee may be given for debts, the exact amount of which is unknown. Similarly, a valid guarantee may be given for a debt that will arise in the future. However, it is permissible for the guarantor to withdraw such a guarantee before a future debt is actually created, after notifying the person having interest in the guarantee. This is called a “market (business) guarantee,” or a “guarantee of contractual obligation.” An example of this type is a third party’s guarantee to refund the price to the buyer if it appears that the sold commodity belongs to a person other than the seller and this guarantee is known as *Daman al-Dark* (dealers/business misrepresentation guarantee).

3/3 The effect of a personal guarantee

- 3/3/1 The creditor is entitled to claim the amount of his debt from either the debtor or the guarantor and he has the choice of claiming his right from either of them. However, the guarantor is entitled to arrange the order of liability, for example, by stipulating (at the conclusion of the contract of guarantee) that the creditor shall first claim payment from the principal debtor and that the creditor is entitled to recourse to the guarantor for payment only if the principal debtor refuses to fulfil his obligation.
- 3/3/2 If the creditor discharges the debtor from the debt, the guarantor is also discharged automatically from his liability. However, if the creditor discharges the guarantor from liability, the debtor remains in debt. If the guarantor secures a discount that results in paying an amount less than the original debt, the guarantor is entitled to recover only the amount he has actually paid to the creditor; he cannot demand that the debtor pay the debt in full ignoring the discount. This rule is intended to prevent a procedure being used that potentially leads to Riba. However, if the guarantor reaches an agreement with the creditor to settle the debt using as consideration a commodity of a different type from that in which the original debt was designated, the guarantor is entitled to recover the exact amount of the commodity provided as consideration for the debt, or the exact amount of the debt, whichever is less.
- 3/3/3 It is permissible for a personal guarantee contract to be designated in a separate contract. It can also be concluded together with, or before, or after, the conclusion of the contract of a credit transaction.
- 3/3/4 If an Institution manages transactions on the basis of Mudarabah or Musharakah or investment agency, it is not permitted for it to guarantee the fluctuations of currency exchange rates so that the investors will recover their investment shares irrespective of the behaviour of the currency market. Such a guarantee is prohibited

owned by the customer. If a sale transaction takes place and later on it is discovered that it was carried out through such practices, this would render the transaction void as it is tantamount to 'Inah.

2/2/4 If the supplier (owner) of the item has a blood relationship or marital relationship with the customer, then the Institution shall verify, before entering into Murabahah, that the sale is not fictitious and not a stratagem for the sale of 'Inah.

2/2/5 It is not permissible for the Institution and the customer to agree to form a Musharakah in a project or a specified deal together with a promise from one of them to buy the other's share in Musharakah by means of Murabahah on either spot or deferred payment terms. However, it is permissible for one partner to promise to purchase the other's share in Musharakah at market price or at a price to be agreed upon at the time of sale provided a new contract is drawn up. This sale may be on spot or on deferred payment terms.

2/2/6 It is not permitted to carry out a Murabahah on deferred payment terms where the asset involved is gold, silver or currencies.

2/2/7 It is also impermissible to issue negotiable Sukuk where the underlying asset consists of Murabahah receivables or other receivables only.

2/2/8 Likewise, it is not permitted to renew a Murabahah contract on the same commodity that was the subject matter of a previous Murabahah contract with the same customer, i.e. to refinance the transaction.

2/3 The promise from the customer

2/3/1 It is not permissible that the document of promise to purchase (signed by the customer) should include a bilateral promise which is binding on both parties (the Institution and the customer).

be clearly identified, with reference to the stages in which the item is transferred from one party to another.

- 3/2/3 The forms of taking delivery or possession of items differ according to their nature and different trade customs. Taking possession may be actual in the case of the physical delivery or transportation to the acquirer or its agent, but may also take place constructively by placing of the item at the acquirer's disposal so as to enable him to deal with it at his will, even though no physical delivery has taken place. Taking possession of an item of real property may also take place by means of the property being vacated and its being placed at the acquirer's disposal; if the latter is not able to have disposal of the purchased item, then the vacation of the property is not considered as conveying possession. In the case of moveable assets, possession will take place in accordance with the nature of the asset.
- 3/2/4 The receipt of a bill of lading by the Institution or its agent, when purchasing goods on the international market, is considered as constructive possession. The same would apply to the Institution's receipt of certificates of storage issued by warehouses following appropriate and reliable formalities.
- 3/2/5 The original principle is that the Institution itself must receive the item from the premises of the supplier or from a location that is specified in the delivery conditions. The responsibility for the risk attached to the item is transferred to the Institution upon its taking possession of the item. However, it is permissible for the Institution to authorize another party to take delivery of the item on its behalf.
- 3/2/6 As the Institution is the owner of the subject matter of Murabahah its insurance lies with the Institution before selling it to the customer. Any amount recovered from insurance at this stage will belong to the Institution exclusively and the customer has no claim to it even if the recovered amount exceeds the purchase price. The Institution is entitled to include

- 7/2/2 The lessor may stipulate that the Ijarah contract be terminated if the lessee does not pay the rent or fails to pay it on time.
- 7/2/3 An Ijarah contract does not terminate with the death of either party thereto. However, the heirs of the lessee may terminate the Ijarah contract if they can prove that the contract has become, as a result of the death of their legator, too onerous for their resources and in excess of their needs.
- 7/2/4 An Ijarah contract expires with the total destruction of the leased asset in the case of leasing a specific asset or with the inability to enjoy the usufruct owing to the loss of the benefit that the asset was intended to provide.
- 7/2/5 The two parties may terminate the Ijarah contract before it begins to run.
- 7/2/6 The lease expires upon the expiry of its term, but it may remain operative for a good cause, such as the late arrival to the place intended in the lease of transportation vehicles, and in the case of a late harvesting period for land leased for crop cultivation. The lease then continues with the rental based on the prevailing market value. An Ijarah may be renewed for another term, and such renewal may be made before the expiry of the original term or automatically by adding a provision in the new contract for such renewal when the new term starts, unless either party serves a notice on the other of its desire not to renew the contract.

8. Transfer of the Ownership in the Leased Property in Ijarah Muntahia Bittamleek

- 8/1 In Ijarah Muntahia Bittamleek, the method of transferring the title in the leased asset to the lessee must be evidenced in a document separate from the Ijarah contract document, using one of the following methods:
- a) By means of a promise to sell for a token or other consideration, or by accelerating the payment of the remaining amount of rental, or by paying the market value of the leased property.

also apply to the case of early ownership of the asset where a sale contract is concluded during the Ijarah. [see para. 7/1]

- 8/6 Subject to item 8/8 below, the rules governing Ijarah must apply to the Ijarah Muntahia Bittamleek, i.e. when a promise is made by the lessor to transfer the ownership in the leased asset to the lessee. None of these rules should be breached under the pretext that the leased asset was bought by the lessor on the basis of a promise by the lessee that he would acquire it or that ownership of it would devolve upon him, or that he would pay rentals in excess of those payable in respect of a similar property which are similar in amount to the instalments of an instalment sale, or that local laws and conventional banking practices consider such a transaction as an instalment sale with a deferred transfer of the ownership.
- 8/7 Transfer of the ownership in the leased property cannot be made by executing, along with the Ijarah, a sale contract that will become effective on a future date.
- 8/8 If the leased asset is destroyed or if the continuity of the lease contract becomes impossible up to the expiry period without the cause being attributable to the lessee in either case, then the rental is adjusted based on the prevailing market value. That is, the difference between the prevailing rate of rental and the rental specified in the contract must be refunded to the lessee if the latter rental is higher than the former. This is to avoid loss to the lessee, who agreed to a higher rental payment compared to the prevailing rate of rental in consideration of the lessor's promise to pass the title to him upon the expiry of the lease term.

9. Date of Issuance of the Standard

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to the rentals in consideration for the usufruct. The unified Shari'ah Supervisory Board of Al Baraka issued a fatwa supporting this.⁽¹⁸⁾

- The reason why insurance expenses must be borne by the lessor is that the owner of the asset is responsible for insuring it, and the lessor is the owner. This is supported by the resolution issued by the International Islamic Fiqh Academy.⁽¹⁹⁾
- The basis for the permissibility of using a certain benchmark or price index to determine rentals of subsequent periods after the expiration of the first period of an Ijarah contract is that the rentals will subsequently be known. This is similar to the principle of *Ujrat al-Mithl* (prevailing market rate of rental) and does not lead to dispute. Again, using a benchmark to determine the rentals is to the benefit of all parties since there is possibility of rental fluctuation that may be in favour of either the lessee or the lessor in view of the fact that the contract remains binding on both parties throughout its term. This rule is supported by a Fatwa issued during Al Baraka's 11th Forum.
- The basis for the permissibility of restructuring the rentals for the future periods is that such an act is deemed to create a new contract for a new term for which the rentals are not yet due. Hence, the rentals are not regarded as a debt, in which case the prohibition of rescheduling rentals in return for higher payment is not applicable to this. However, increasing previously agreed rentals in exchange for a deferred period of payment is a form of Riba.

Guarantees and Treatment of Ijarah Receivables

- The basis for the permissibility of obtaining guarantees for payment is that this is not contrary to the purpose of an Ijarah contract. Rather guarantees are relevant to credit transactions because they secure performance.
- The basis for the permissibility of a payment acceleration clause is the saying of the Prophet (peace be upon him): "*Muslims are bound by the conditions they made*", and because payment on a deferred basis is the right of the lessee (the debtor as to rentals), and the lessee may, based

(18) Fatwa of the Unified Shari'ah Board of Al Baraka No. (1/97).

(19) Fatwa of the Unified Shari'ah Board of Al Baraka No (9/9).

contract). The International Islamic Fiqh Academy has issued a resolution in support of this ruling.⁽²⁹⁾

- The basis for the rule that ownership cannot be made in contingent on a future date is that a sale contract cannot be dependent on a future date, as the term 'sale' means that its effect (transfer of ownership) immediately takes place.
- The basis for allowing recourse to the prevailing market rate of rental when the transfer of ownership becomes impossible without any cause attributable to the lessee is to protect the lessee against any loss as the lessee has paid more than the prevailing rate of rental in order to acquire title to the asset. If this acquisition of title becomes impossible, then the rental must be adjusted retrospectively to the prevailing market rate. This ruling is analogous to the principle that the price must be discounted when a sold crop has suffered damages due natural calamities.

(29) See Note (25).

to such a place. In that case, the place of delivery should be determined according to customary practice.

3/3 Security for al-Muslam Fihi

Al-Muslam Fihi may be secured by a mortgagee or a guarantee or any other permissible means of securing payment.

4. Changes to al-Muslam Fihi

4/1 Selling al-Muslam Fihi before taking possession

It is not permitted for the buyer to sell al-Muslam Fihi before taking possession of it.

4/2 Replacement of al-Muslam Fihi

It is permissible for the buyer to exchange al-Muslam Fihi for other goods, except currency, after the delivery date falls due, as long as such a substitution was not stipulated in the contract. This rule applies whether or not the substitute is similar in kind to al-Muslam Fihi. This is provided that the substitute is suitable for being exchanged as al-Muslam Fihi for the capital of the Salam contract, and that the market value of the substitute should not be greater than the market value of al-Muslam Fihi at the time of delivery.

4/3 Cancellation (Iqalah) of a Salam contract

It is permissible, when both parties agree, to cancel the entire Salam contract in return for repayment in full of the amount of the capital of Salam. Partial cancellation, that is, cancellation of the delivery of part of al-Muslam Fihi, in return for repayment of a corresponding part of the capital of Salam, is also permissible.

5. Delivery of al-Muslam Fihi

5/1 The seller is under an obligation to deliver al-Muslam Fihi to the buyer on the due date in accordance with the terms of the contract, such as agreed specifications and quantity. The buyer, on the other hand, must accept the goods if they meet the specifications explained in the contract. If the buyer refuses to accept al-Muslam Fihi, he shall be compelled to do so.

in which a person sells to his fellow man a specific and determined thing by weight or measure for a future defined date of delivery—is permissible.⁽⁵⁾

Wisdom of Making Salam Permissible

The wisdom of making Salam permissible lies in the fact that Salam facilitates a type of financing for people in need of it. In particular, farmers, market gardeners and merchants, among others, need working capital for their businesses and for their living expenses in order to operate. Hence, Salam is made permissible so that these businesses may benefit from it. The buyer may benefit from its permissibility as well, by acquiring the commodity at a price below the market price.

Similarly, a contract of Salam responds to the needs of a large number of business enterprises at different levels, ranging from small and medium-sized enterprises to conglomerates that are involved in agricultural and industrial production or trade and the like. In order for these businesses to be productive, they need working capital in the form of either cash or assets. Hence, Salam has provided an investment opportunity in the form of financing of the working capital for trade. It also covers the demands of those in need of liquidity, as long as they are able to fulfill the orders they receive in return at the due date.

Although the contract of Salam is commonly used by agricultural businesses, its permissibility is not, however, confined to these fields. It can also be used in other investment opportunities, such as industry or trade.

The contract of Salam also meets immediate needs for liquidity. This is because it gives the seller flexibility in using the sale proceeds (before the commodity is delivered), and the opportunity to arrange for the counter-value (al-Muslam Fihi) and its delivery to the buyer at the date of delivery.

Subject Matter of a Salam Contract

- The basis for the permissibility of presenting usufruct as capital in a Salam contract is the view of the Maliki scholars. This is regarded as immediate receipt of the capital based on the Shari'ah maxim that says:

(5) Ibn Al-Mundhir, *"Al-Ijma'"* (P. 54); and Ibn Qudamah; *"Al-Mughni'"* [6: 385], Cairo: Matba'at Hajar edition.

to the Prophet (peace be upon him) and said; 'The kin of so and so from the Jews had embraced Islam. However, they are hungry and I am afraid they may become apostates'. The Prophet (peace be upon him) asked the people around him; 'Who has something (money)?' One Jew said; 'I have so and so (he mentioned a sum of money), may be he said; 'I have three hundred dinars and I will pay such and such price for the products of the farm of the kin of so and so'. The Prophet (peace be upon him) said: '(buy) With such and such price to be delivered after such and such period, but not for the products of the kin of so and so'".⁽¹³⁾ Again, if a Salam contract is concluded for providing products from a specific farm, there might not be products from this farm at the time of delivery, and this leads to Gharar (uncertainty).

- The basis for the requirement that the subject-matter of Salam be commonly available under normal circumstances where it is required is to remove uncertainty and to ensure that the seller will be able to deliver it at the date of delivery.

Changes to a Salam Contract

- The basis for the impermissibility of selling the subject-matter of Salam before taking possession of it is because such an action is a form of sale of debts which is not permissible.
- The basis for the impermissibility of substituting the subject-matter of Salam with a commodity, the price of which is higher than the prevalent market value of the subject-matter of Salam at the date of delivery is to deter the buyer from making a compound profit on one deal.
- The basis for the permissibility of the termination of a Salam by agreement (Iqalah) is because the Prophet (peace be upon him) has encouraged Iqalah in general and Salam is not an exception from this concession. Salam is also a form of sale and since sale contracts admit Iqalah, so too does a Salam contract. Again, Iqalah is actually

(13) The Hadith has been related by Ibn Majah and Abu Dawud. See: "*Sunan Ibn Majah*" [2: 765-766]; and "*Sunan Abu Dawud*" [3: 744]. Al-Shawkani said: "There is an unknown narrator in the chain of transmission of this Hadith. This is because Abu Dawud narrated it through Muhammad Ibn Kathir from Sufyan from Abu Ishaq from a Najrani man from Ibn Umar. Therefore, the Hadith is not of a strong authority. See: "*Nayl Al-Awtar*" [5: 345-346].

3. Subject-Matter of, and Guarantees in, Istisna'a

3/1 The rulings concerning al-Masnoo'

3/1/1 An Istisna'a contract is permissible only for raw materials that can be transformed from their natural state by a manufacturing or construction process involving labour. Therefore, Istisna'a is valid only in so far as the supplier has agreed to provide a subject-matter that is manufactured or constructed.

3/1/2 It is permissible that a contract of Istisna'a be concluded for the production of a subject-matter having unique descriptions according to the requirement of the ultimate purchaser even if such a subject-matter has no substitutes in the market, provided the subject-matter is subject to specification. Similarly, it is permissible that the subject-matter of a contract of Istisna'a be items that have perfect substitutes in the market, and can be substituted for one another in fulfilling an obligation, because they share common characteristics by virtue of the process of manufacture or construction. This rule applies whether the items to be produced are intended for consumption or for use with their substance kept intact.

3/1/3 It is not permissible that the subject-matter of an Istisna'a contract be an existing and identified capital asset. For example, it is invalid for the Institution to conclude a contract to sell a particular designated car or factory on the basis of Istisna'a. This is because Istisna'a is a sale contract applicable to items that are identified by specification, not by designation. Unless the items are completely or partially delivered, the ultimate purchaser has no prior right (in the event that the supplier is declared bankrupt or insolvent) over a third party to the items that are the subject-matter of the contract while they are still in the process of being produced and have not yet been delivered to him. In addition, the ultimate purchaser cannot be regarded as the owner of the materials in the possession of the manufacturer for the purpose of producing the subject-

- The basis for the impermissibility of the manufacturer including a defect exclusion clause in an Istisna'a contract is that a valid Istisna'a is a sale of specified goods to be delivered in the future and exclusion of liability as to defects is valid only in the sale of particular identified goods. This prohibition of excluding liability as to defects in Istisna'a is one feature that makes it different from an ordinary sale.
- The basis for the impermissibility of drawing up Istisna'a contracts or procedures in a way that appears to be a mere interest-based financing is the need to avoid involvement in a Riba transaction, a potential Riba or 'Inah sales.

Subject Matter of, and Guarantees in, an Istisna'a Contract

- The basis for the impermissibility of concluding an Istisna'a contract for items that are not manufactured or constructed is that items that are not the subject of transformation by manufacture or construction by man, that is natural things such as animals, fruits and vegetables, are not by definition covered by the term Istisna'a which means a sale of materials on condition that they be subjected to transformation by a manufacturing or construction process.
- The basis for the permissibility of concluding an Istisna'a for manufactured items that either have or do not have equivalents in the market is because it is normal for people to deal in these kinds of item. As a principle, rules that are based on customary practice will change whenever such customary practice is changed. Therefore, any customary transaction that is subject to specifications may be a subject-matter of Istisna'a, regardless of whether it is for use or consumption.
- The basis for not allowing the subject-matter of Istisna'a to be a specific identified item is that an Istisna'a contract involves a sale for future delivery based on a specification. Therefore, if the items to be sold are specific identified items, the transaction involves selling identified items that the seller does not own, which is prohibited by the saying of the Prophet (peace be upon him): *"Do not sell what you own not".*⁽⁴⁾

(4) The Hadith has been related by Al-Tirmidhi in his *"Sunan"* [3: 534], edited by Ahmad Shakir; and Al-Albani, *"Irwa' Al-Ghalil"* [5: 132].

Statement of the Standard

1. Scope of the Standard

This standard covers all forms of traditional Fiqh-nominate partnerships that operate on the basis of Sharikat al-'Aqd (contractual partnership), except the partnerships that are explicitly excluded by this standard as indicated below. The standard also applies to all modern forms of partnerships including diminishing Musharakah. The standard does not cover ownership partnership where the parties jointly own an asset. It does not include rules for Sharikat al-Mufawadah because the practical application of this form of partnership is rare and, if need be, reference should be made to Fiqh books. The standard does not cover Mudarabah, because this form of partnership has a separate standard. In the same vein, it does not cover sharecropping partnerships, such as irrigation and agricultural partnerships. The standard also does not cover, as far as modern partnerships are concerned, regulatory policies and procedures necessary for operations in the market.

2. Definition, Classifications and Types of Sharikat al-'Aqd

2/1 Definition of Sharikat al-'Aqd

Sharikat al-'Aqd (contractual partnership) means an agreement between two or more parties to combine their assets, labour or liabilities for the purpose of making profits.

2/2 Classifications of Sharikat al-'Aqd

Sharikat al-'Aqd is classified into two main categories:

First Category: Traditional Fiqh-Nominate Partnerships.

Second Category: Modern Corporations.

2/2/1 The traditional Fiqh-nominate partnerships are as follows:

a) Sharikat al-'Inan (contractual partnership)

- 3/1/6/2 It is permissible for a partner to issue a binding promise to buy, either within the period of operation or at the time of liquidation, all the assets of the Sharikah as per their market value or as per agreement at the date of buying. It is not permissible, however, to promise to buy the assets of the Sharikah on the basis of face value.
- 3/1/6/3 A Sharikah venture comes to an end at the expiry date or before the expiry date if the partners agree to terminate it prematurely, or, in the case of partnership in a particular business, by actual liquidation of the assets that constitute the subject matter of the partnership. The termination of a Sharikah can take place on the basis of constructive liquidation. In this case, the Sharikah will be regarded as if it has been ended and the parties have commenced a new partnership whereby the assets that were not sold through actual liquidation, but have been valued on the basis of constructive liquidation, will be considered as the capital of the new partnership. If the liquidation is based on the expiry date, then all the existing assets shall be sold according to current market values and the proceeds will be used as follows:
- a) Payment of liquidation expenses.
 - b) Payment of financial liabilities from the net assets of the partnership.
 - c) Distribution of the remaining assets among the partners in accordance with their percentage of contribution to the capital. If the assets fall short and the partners do not recover all of their contributed capital, the distribution shall take place on a pro rata basis to the shares of capital.

4/1/1/2 The stock company has a juristic personality through its incorporation by law in such a way that it cannot avoid its obligations to people dealing with it. This separates the liability of the company from the liability of its shareholders (the co-owners) and also establishes for it a separate legal capacity as required for necessary legal arrangements, irrespective of the legal capacity of the shareholders. By definition, a stock company is entitled to initiate legal claims through its representative. It is subject to the jurisdiction of the place of its incorporation.

4/1/2 Shari'ah Rulings relating to a stock company

4/1/2/1 The contract forming a stock company is binding during the duration designated by the articles of association for the continuity of the company on the basis of the undertaking of the parties not to dissolve the company unless the majority of the partners have consented to do so. Therefore, no one is entitled to dissolve (to terminate) the company in respect to his shares. However, a shareholder is entitled to sell his shares or to relinquish title to them in favour of another person.

4/1/2/2 It is permissible for the issuer of shares to add a certain percentage to the actual value of the shares on the subscription date in order to recover issuing expenses, provided that such percentage is appropriately estimated to reflect the actual expenses incurred.

4/1/2/3 It is permissible to issue new shares in order to increase the capital provided the new shares are issued at the fair value of the old shares. This should be done in accordance with the opinion of experts in valuation of the company's assets. In other words, the new issues can be issued at a premium or at a discount to their nominal value, or issued at a market value.

- 5/6 It is not permitted to stipulate that one partner has a right to receive a lump sum out of the profits. [see item 3/1/5/8]
- 5/7 It is permissible for one of the partners to give a binding promise that entitles the other partner to acquire, on the basis of a sale contract, his equity share gradually, according to the market value or a price agreed at the time of acquisition. However, it is not permitted to stipulate that the equity share be acquired at their original or face value, as this would constitute a guarantee of the value of the equity shares of one partner (the Institution) by the other partner, which is prohibited by Shari'ah.
- 5/8 The partners may arrange for the acquisition of the equity share of the Institution in a manner that serves the interests of both parties. This includes, for example, a promise by the Institution's client to set aside a portion of the profit or the return he may earn from the partnership for the acquisition of a percentage of the equity of the Institution. The subject matter of the partnership may be divided into shares, in which case the Institution's partner can purchase a particular number of these shares at certain intervals until the partner becomes the owner of the entire shares and consequently becomes the sole owner of the subject matter of the partnership.
- 5/9 It is permissible for either of the partners to rent or to lease the share of the other partner for a specified amount and for whatever duration, in which case each partner will remain responsible for the periodical maintenance of his share on a timely basis.

6. Date of Issuance of the Standard

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- The basis for allowing distribution of partnership revenues, including the capital assets, prior to liquidation of the partnership is that the partners suffer no damage from this and also the distribution is subject to review and reimbursement when liquidation is actually effected.⁽²²⁾

Termination of Partnership

- The basis for the rule that termination of partnership will not affect obligations and actions that took place before it is protection of the remaining partners against any potential damage.
- The basis for the impermissibility of a promise by one of the partners to buy assets of the partnership at face value is that this constitutes a guarantee of the capital which is prohibited by Shari'ah. The basis for the permissibility of a promise to buy the assets of partnership at the market value is that this does not constitute a guarantee of capital.

Modern Corporations

- The permissibility of modern corporations is dependent on the principle of Shari'ah that human transactions are, in principle, permissible (*Mubah*) as long as there is no clear injunction against them, especially in view of the fact that the categorisation of any one or more of these corporations had parallels in Shari'ah-nominate contracts, such as 'Inan partnership, Mudarabah and the like.⁽²³⁾

Stock Companies

- The basis for the permissibility of underwriting issues of shares without taking consideration is that this is an undertaking that does not involve an impermissible act, such as taking a commission for a guarantee. The International Islamic Fiqh Academy has issued a resolution in this respect.⁽²⁴⁾
- The basis for the impermissibility of buying shares using an interest-based loan provided by a stockbroker or other party against a mortgage of the shares is that this is an interest-based transaction secured by

(22) See: International Islamic Fiqh Academy Resolution No. 30 (5/4), and resolution of Islamic Fiqh Academy under the auspices of Muslim World League during its 16th session.

(23) See: Abdul-Aziz Al-Khayyat, "Al-Sharikat" [2: 158-159].

(24) See: The International Islamic Fiqh Academy Resolution No. 63 (1/7).

ab initio, and the party who acts as the Mudarib should receive a common market price for the kind and amount of services that he provided as Mudarib.

- 8/5 If one of the parties stipulates that he should receive a lump sum of money, the Mudarabah contract shall be void. This rule does not apply to a situation where the parties agree that if the profit is over a particular ceiling then one of the parties will take the additional profit and if the profit is below or equal to the amount of the ceiling the distribution of profit will be in accordance with their agreement.
- 8/6 It is not permissible for the capital provider to give the Mudarib two amounts of capitals on condition that the profit earned on one of the two amounts would be taken by the Mudarib while the capital provider would take the profit earned on the other amount. It is not also permissible for the capital provider to state that the profit of one financial period would be taken by the Mudarib and the capital provider would take the profit of the following financial period. Similarly, it is not permissible to assign the profit from a particular transaction to the Mudarib and the profit from another transaction to the capital provider.
- 8/7 No profit can be recognised or claimed unless the capital of the Mudarabah is maintained intact. Whenever a Mudarabah operation incurs losses, such losses stand to be compensated by the profits of future operations of the Mudarabah. The losses brought forward should be set against the future profits. All in all, the distribution of profit depends on the final result of the operations at the time of liquidation of the Mudarabah contract. If losses are greater than profits at the time of liquidation, the balance (net loss) must be deducted from the capital. In this case, as he is a trustee the Mudarib is not liable for the amount of this loss, unless there is negligence or misconduct on his part. If the total Mudarabah expenses are equal to the total Mudarabah revenues, the capital provider will receive his capital back without either profit or loss, and there will be no profit in which the Mudarib is entitled to a share. If profit is realised, it must be distributed between the parties as per the agreement.

- 9/1/1 Attending to all permissible investment or trading fields that are feasible, given the amount of the capital at his disposal, and in which he believes that his expertise, and technical and professional qualifications are likely to give him the ability to compete effectively.
- 9/1/2 Carrying out the work himself or appointing another person to carry out some work if necessary, such as buying a commodity or marketing it for him.
- 9/1/3 Choosing as far as possible appropriate places and markets that are seemingly free of risks.
- 9/1/4 Safeguarding the Mudarabah funds or depositing them in the custody of a trustworthy person whenever appropriate.
- 9/1/5 Selling and buying on a deferred payment basis.
- 9/1/6 The Mudarib may do, either by permission or appointment of the capital provider, the following:
 - a) The Mudarib may, at any time, combine a Mudarabah contract and a partnership (Sharikah) contract, irrespective of whether this takes place at the outset of the contract or after the commencement of Mudarabah operations, and of whether the partnership contribution is from the Mudarib himself or from a third party. The mixture of unrestricted investment deposits with the Institutions' funds is an example of this kind of combination.
 - b) The Mudarib may accept funds from a third party on a Mudarabah basis if this new contract will not affect his investment and management responsibility in respect of the first Mudarabah contract.
- 9/2 It is permissible for the capital provider, on the basis of his interests, to place restrictions on the actions of the Mudarib. Thus, Mudarabah operations may be restricted to a specified time and place, so that the Mudarib may only invest the Mudarabah funds during a particular time period or in a specified country or in a market of a particular

country. In addition, the Mudarabah operations may be restricted to investment in certain sectors such as services or trade sectors or a single commodity or a group of commodities. However, restricting the Mudarabah operations to certain commodities is circumscribed with a condition that such commodities must be commonly available so that, other things being equal, the restriction will not prevent the objectives of the Mudarabah contract from being achieved. For example, the commodities to which the Mudarabah is restricted must not be scarce, seasonal (and out of season) or in very limited supply with the consequence that the objectives of the Mudarabah contract cannot be achieved.

- 9/3 The capital provider is not permitted to stipulate that he has a right to work with the entrepreneur (Mudarib) and to be involved in selling and buying activities, or supplying and ordering. However, the Mudarib should refer to him in performing any action and should not act without consulting him. Also, the capital provider is not entitled to lay down conditions that will restrict movements or actions of the Mudarib, such as a stipulation that the Mudarib must enter into a partnership with others or a stipulation that the Mudarib must mix his personal funds with the Mudarabah funds.
- 9/4 The Mudarib must carry out all the work that any similar asset or fund manager would be liable, by custom, to do. In this case, the Mudarib is not entitled to a fee for this work as this is part of his responsibilities. If the Mudarib appoints another party on an Ijarah (hiring contract) basis to carry out such work, the wages for the worker must be paid from the personal funds of the Mudarib and not from the Mudarabah funds. The Mudarib may hire against the account of Mudarabah funds another party, at the prevailing rate, to execute work that is not by custom the responsibility of the Mudarib.
- 9/5 The Mudarib is not entitled to sell items for the Mudarabah operation at less than the common or market price, or to buy items for the Mudarabah operation at a price higher than common prices, unless if such action in either case is intended to achieve an objective that is obviously in the interest of the Mudarabah.

Sukuk that represent common ownership of tangible assets, usufructs or services. As for trading or redemption prior to the commencement of activity, it is necessary to observe the rules of the contract of *Sarf* (currency exchange) along with the rules for debts (receivables) when liquidation is complete and the assets are receivables or when the assets represented by the Sukuk are sold for a deferred price.

- 5/2/2 In the case of negotiable Sukuk, it is permissible for the issuer to undertake, through the prospectus of issue, to purchase at market value, after the completion of the process of issue, any certificate that may be offered to him, however, it is not permissible for the issuer to undertake to purchase the Sukuk at their nominal value
- 5/2/3 The certificates may be traded through any known means, that do not contravene the rules of the Shari'ah, such as registration, electronic means or actual transmission by the bearer to the purchaser.
- 5/2/4 It is permissible, immediately upon issue and up to the date of maturity, but after the passing of ownership of the assets to the holders of the Sukuk, to trade in Sukuk that represent ownership of existing leased assets or assets to be leased on promise.
- 5/2/5 It is permissible for the issuer to redeem, prior to maturity, certificates of ownership of leased assets at the market price or at a rate agreed upon, at the date of redemption, between the certificate holder and the issuer.
- 5/2/6 It is permissible to trade in securities of ownership of usufructs of tangible assets prior to a contract for sub-leasing the assets. When the assets are sub-leased, the certificate represents rent receivables, which makes it a debt owed by the second lessor subject to the rules and regulations for disposal of debts.
- 5/2/7 It is permissible for the issuer to redeem Sukuk of ownership of the usufruct of tangible assets from the holder, after allotment

and payment of the subscription price, at the market price or at a price agreed upon between the parties at the time of redemption, on the condition that the subscription amount or redemption price is not deferred. [see item 3/4 of Shari'ah Standard No. (9) on Ijarah and Ijarah Muntahia Bittamleek]

- 5/2/8 It is not permissible to trade in certificates of ownership of usufructs of a described asset before the asset from which usufruct is to be made available is ascertained, except by observing the rules for disposal of receivables. When the asset is ascertained, trading in Sukuk of usufructs of such asset may take place.
- 5/2/9 It is permissible to trade in securities of ownership of services to be provided by a specified party prior to sub-leasing such services. When the services are sub-leased, the certificate represents rent receivables to be collected from the second lessee. In this case, the certificate represents a debt and is, therefore, subject to the rules and regulations of disposal of debts.
- 5/2/10 It not is permissible to trade in securities of ownership of services to be provided by a party to be specified in the future before the source from which the services would be provided is identified, except by observing the rules for dealing in debts. When the source of services is identified, trading in such Sukuk may take place.
- 5/2/11 It is permissible to set up a parallel Ijarah on tangible assets by employing the same description for the usufruct that was provided to the holders of the Sukuk in cases detailed in items 5/2/8 and 5/2/10 provided the two lease contracts remain independent.
- 5/2/12 It is permissible for the second buyer of the usufruct of existing and specified assets to resell them. The buyer is also entitled to issue certificates in this respect.

Statement of the Standard

1. Scope of the Standard

This Standard covers international sales contracts whose subject-matter are commodities and to derivatives of various kinds: Swaps, Indexes, Futures and Options.

The Standard does not cover financial and commercial paper or currencies, because these have their own specific standards, just as it does not cover sales that are concluded outside the organized markets.

2. Definition of International Sales and Their Kinds

2/1 Definition of international commodity sales

2/1/1 International commodity sales are contracts that are concluded in organized commodity markets under the supervision of specialised Organizations and through intermediaries who coordinate the demand for sales and the demand for purchases by employing standard contracts that contain various conditions and specifications along with a statement of the period and place of delivery. The contract may also stipulate the deposit of a portion of the price as a security for the execution of the contract and opening of an account with the intermediary.

2/2 Types of international commodity sales

International commodity sales are divided into three types:

2/2/1 Spot contracts

These are contracts that require immediate delivery and acceptance of delivery, however, delivery and possession may take place within the limit of a day or two days in accordance with the regulations of the market.

conversion in accordance with the Shari'ah at the first general meeting or by striving for conversion in line with item 3/4/6. [see Shari'ah Standard No. (6) on Conversion of a Conventional Bank into an Islamic Bank]

- 3/4 Participation or trading (for investment and trading) in the shares of corporations whose primary activity is permissible, but they make deposits or borrow on the basis of interest

The fundamental rule is that of prohibition of acquiring shares of and transactions (investment and trading) in the shares of corporations that sometimes undertake transactions in Riba and other prohibited things even when their primary activity is permissible, but from this rule subscription and transactions (investment or trading) are exempted with the following conditions:

- 3/4/1 That the corporation does not state in its memorandum of association that one of its objectives is to deal in interest, or in prohibited goods or materials like pork (swine) and the like.
- 3/4/2 That the collective amount raised as loan on interest – whether long-term or short-term debt – does not exceed 30% of the market capitalization of the corporation, knowingly that raising loans on interest is prohibited whatsoever the amount is.
- 3/4/3 That the total amount of interest-taking deposits, whether short-, medium- or long-term, shall not exceed 30% of the market capitalization of total equity, knowingly that interest-taking deposits are prohibited whatsoever the collective amount is.
- 3/4/4 That the amount of income generated from prohibited component does not exceed 5% of the total income of the corporation irrespective of the income being generated by undertaking a prohibited activity, by ownership of a prohibited asset or in some other way. If a source of income is not properly disclosed then more effort is to be exerted for identification thereof giving due care and caution in this respect.

- 3/17 It is not permissible to undertake trading in the shares of a corporation, when the assets of the corporation are cash exclusively, whether this is during the period of subscription or after that, prior to the commencement of the business of the company or at the time of liquidation, except at their nominal value and with the condition of delivery of possession.
- 3/18 It is not permissible to undertake trading in the shares of a corporation if the entire assets of the corporation are composed of debts, unless the rules for dealing in debts are observed.
- 3/19 If the assets of a corporation are composed of tangible assets, benefits, cash and debts, the rule for trading in the shares of such a corporation will differ according to the primary asset, which conforms to the objective of the corporation and its usual activity. If its purpose and activity pertain to trading in tangible assets, benefits and rights, trading in its shares is permissible without taking into account the rules of *Sarf* or transactions in debts, with the condition that the total market value of assets, benefits and rights should not be less than 30% of the total assets value of the corporation including all assets, benefits, rights and cash liquidity (the corporation's debts, current accounts with others, and bonds it holds which constitute debts) irrespective of their size as in such a case these are secondary. If, however, the objective of the corporation and its usual activity is dealing in gold, silver or currencies (*Sirafah*), it is obligatory to undertake trading in its shares in the light of the rules of *Sarf*.
- 3/20 It is stipulated for the implementation of what is laid down in paragraph 3/18 that it shall not be adopted as a means for bargains in debts and trading in them by merging parts of tangible assets and benefits with the debts as a legal device for transaction in debts.

4. Rules for Issuance of Bonds

The issuance of all kinds of bonds is prohibited when these bonds include stipulations for the return of the amount of loan and excess in any form, whether such excess is paid at the time of the satisfaction of the principal amount of loan, is paid in monthly or yearly instalments or in another

- The basis for the impermissibility of Salam in shares is that the subject-matter of Salam is a debt and not an ascertained thing, while in shares of corporations nothing works except ascertainment. This is done by mentioning the name of the corporation whose shares are desired through Salam thereby rendering the shares an ascertained thing and not a liability for a debt. Shares cannot, therefore, essentially be the subject-matter of the contract of Salam. Further, Salam in shares implies the sale of ascertained things that are not owned and this is not permitted. In addition to this, the constant availability of specified shares in the market and the ability of the buyer to deliver them at the end of the period is something that cannot be guaranteed.
- The impermissibility of concluding futures contracts for shares is that these contracts imply the stipulation of delay in the delivery of an ascertained sold commodity, that is, shares, and this is prohibited and not permitted. Likewise, the delay in the price and the priced commodity, for this is the sale of a debt for a debt, which is prohibited by agreement. Further, the seller -mostly- does not own the shares for which the futures contract has been concluded and is, therefore, selling something that is owned by another. This is something over which there is no disagreement among the scholars as to its impermissibility. It is also included primarily in the meaning of the Shari'ah Texts established By Prophet Muhammad (peace be upon him) that convey the prohibition of the sale of something that one does not possess. Again, most of the futures contracts are completed through a cash settlement between the parties, and this is brazen gambling if this is stipulated within the contract. If it is not stipulated in the contract, it is still one type of gambling. Thereafter, the purpose of contracts is the delivery of possession, while in futures contracts delivery of possession is not the primary purpose of the contracting parties. These contracts, thus, create an obligation for, and engage the liability of, each party for a debt that is of no benefit, except by way of Mukhatarah and for waiting for a loss that will inevitably be incurred by one party.
- The basis for the impermissibility of concluding options contracts for shares is the right of option- which is the subject-matter of options

dispute, or temporary uncertainty, may be dispensed with. It can also be overlooked when, in absolute agency, the principal authorizes the agent to channel the funds in any form of investment. Nevertheless, the agent should observe the interest of the principal, as well as the norms and customary practices if necessary.

3/3/2 It should be owned by the principal, or he has the right of depositing thereof.

3/3/3 It should be something that can be disposed of through agency. This includes all types of financial contracts and dealings that a person can perform personally. Any contract that a person is permitted by Shari'ah to be involved in personally can be performed through agency.

It should not involve a Shari'ah-banned practice, like trading in impermissible commodities or committing usurious lending.

4. Types of Agency

4/1 Agency may take the following forms:

4/1/1 Specific versus general agency. General agency includes all methods of disposing of assets provided that the interest of the principal and the customary practices are well observed. Disposal of assets here does not include making donations, unless the principal authorizes the agent to do so.

4/1/2 Limited versus absolute agency. Absolute agency is bound by customary practices and the interest of the principal. It is not permissible in absolute agency to sell at less or buy at more than the market price, nor is it permissible to perform barter and deferred payment sales, except with the prior consent of principal.

4/1/3 Paid versus non-paid agency. [see item 4/2]

4/1/4 Binding versus non-binding agency. [see item 4/3]

4/1/5 Temporary versus continuous agency. [see item 4/4]

4/2 Paid agency

- 4/2/1 Paid agency is permissible in Shari'ah, whether remuneration is explicitly stipulated in the contract or ascertained in accordance with the customary practices, as when the agent does provide such service except for remuneration.
- 4/2/2 When agency is paid, it falls under the Shari'ah rulings on Ijarah. [see item 4/3]
- 4/2/3 The amount payable as remuneration for agency should be known, whether in lump sum or as a share of a specific amount of income. It may also be defined in terms of an amount of income to be known in the future, as when remuneration is linked to an indicator that may be quoted at the beginnings of different intervals of time. However, it is not permissible to leave remuneration for agency undetermined and allow the agent to take an unspecified share from the entitlements of the principal.
- 4/2/4 When remuneration for agency is not specified, it may be measured in terms of the prevailing market rate for similar effort.
- 4/2/5 Remuneration for agency may be any gain in excess of a specific amount of output of the operation, or a share of the output.
- 4/2/6 A certain share of the output may be added to the specific remuneration of the agent, as a motivation.
- 4/2/7 When the agent, for no reasonable excuse, refrains from carrying on agency that he has been paid for, and the work he has done was beneficial, he becomes entitled to the remuneration commensurate with the part of work done, and within the limits of the contract value for that part of work. The agent in this case is bound to indemnify the principal for any actual loss resulting from his refusal to continue the work.

When the principal, for no reasonable excuse, forces the agent to discontinue the work before the end of the agency period,

in such a way that the guarantees stemming from the agency contract and the sale contract are kept separate. After the completion of the conclusion of the sale contract, the commodity becomes under the guarantee of the purchaser/agent. [see Shari'ah Standard No. (8) on Murabahah – item 3/1/5]

6/2 Monitoring of the provisions and rights of the contract

Monitoring the provisions of contract is the responsibility of principal, whereas monitoring the activities stipulated in the contract (except donations that should be assigned to the principal) is the responsibility of agent. Nevertheless, the principal, by virtue of ownership, may pursue the agent's activities.

6/3 Breach of contract stipulations

6/3/1 When the agent breaches the contract in a way that does not serve the interest of the principal, the latter is free to maintain the contract or declare it invalid. Breach of the contract on the part of the agent may relate to the subject matter of agency or part thereof, the price, on spot or deferred payment, possession (purchase), or transfer of ownership (sale). [see items (8) and 5/2]

6/3/2 When the agent breaches the contract by purchasing at a price that exceeds both the market price and the price set forth by the principal, he should compensate the principal for the difference between the purchase price and the market price. Similarly, if the breach is by selling at less than the price specified by the principal, compensation should be for the difference between the selling price and the market price. Hence, the case here is similar to what happens in Mudarabah or investment agency whereby selling is stipulated to take place for a profit not less than a specified proportion. And hence, the agent (or the Mudarib) doesn't guarantee that proportion, but his guarantee is limited to any amount less than the price of a similar fungible good.

misleading formalism in making transactions and prevent overlapping of guarantees.

- Monitoring of the contract's provisions is assigned to the principal because he is the principal party of the contract, whereas the agent, who is just a contractor, has to monitor the activities of the contract.
- Suspension of an agent act that breach the contract without adding to the benefit of the principal, until obtaining the principal's approval conforms to the normal Shari'ah practice of exerting the best possible effort to rectify an act of a Muslim.⁽⁹⁾ The act here remains pending approval of the principal to safeguard him against injury.
- An agent who breaches the contract by selling or buying at a price other than the price agreed upon has to indemnify the principal for the difference between the price he accepted/offered, and the market price. The justification for this ruling is the need to establish justice and compensate the principal for loss, without committing the Shari'ah-banned practice of accepting capital on pre-fixed return, which entails a suspicion of Riba. This case has been discussed in "*Al-Mughni*" by Ibn Qudamah, who referred also to another viewpoint that suggests revocation of the deal.⁽¹⁰⁾
- Agency in selling a mortgaged asset is treated as an exceptional case where the contract does not expire on the death of the agent (agency to be pursued by inheritors), in order to preserve the rights of the mortgagee. Moreover, such agency is originally irrevocable before fulfillment of its purpose, for thereto is attached others' rights.
- The justification for adopting the fiqh viewpoint that advocates suspending the act of the uncommissioned agent rather than revoking the deal (for uncertainty about its confirmation by the principal), is the fact that an act of a Muslim should, as far as possible, be preserved from cancellation.⁽¹¹⁾ Preservation of the act against cancellation is possible here through suspension, in addition to the fact that the act may prove to be useful to the

(9) "*Al-Mughni*" by Ibn Qudamah [5: 135-136].

(10) Ibid.

(11) In "*Al-Bada'i*" [5: 177], it is stated: "The act of the Muslim should, as far as possible, be perceived as correct"; and in "*Fath Al-Qadir*" [2: 445], it is stated: "Making the best possible effort to rectify the act of the Muslim".

Appendix (B)

The Shari'ah Basis for the Standard

Permissibility of Syndicated Financing

- Permissibility of syndicated financing is derived from Musharakah, which encounters no Shari'ah restriction.

Projects Financed Through Syndication

- The ruling that syndicated financing should be directed only towards activities that do not entail dealing in a Shari'ah-impermissible commodity or service, is dictated by the need to abide by the directives outlined in the Holy Qur'an verses and the noble Hadith of the Prophet (peace be upon him). These divine sources prohibit usury, alcoholic drinks, drugs, gambling, pork, illegitimate carcasses, prostitution, nightclubs, statues, etc, as well as impermissible acts like deception, bribe, cheating in weight and measurement, and all types of prohibited sales, etc.⁽²⁾

Participation of Institutions with Conventional Banks in Syndicated Financing, and Permissibility of Assigning the Role of the Lead Manager to a Conventional Bank

- Partnership between a Muslim and a Non-Muslim is not prohibited or cannot be judged right away as invalid, except in case of Shari'ah-banned dealings. This is so because what really matters is the conformity of the deal in question to the rulings of Shari'ah, rather than whether the deal has been made by a Muslim or a Non-Muslim. This viewpoint has been adopted by the Al Baraka Seminar,⁽³⁾ as well as the Fourth Fiqhi

(2) For a detailed account of prohibited dealings, their various modern forms, and the Shari'ah bases of their prohibition. See: Dr. Ahmad Muhiddin Ahmad: Operations of Islamic Investment Companies in the International Market, (pp. 27-43).

(3) The text of the Fiqhi opinion is "There is no Shari'ah restriction on participation of conventional banks with Islamic banks in a syndicated financing that observes Shari'ah rulings in its operations, on condition that conventional banks should not assume the entire task of managing the operations, or making decisions on Shari'ah related issues.", Resolution No. (9/1), The Fatawa of the Al Baraka Seminars (P. 151).

Statement of the Standard

1. Scope of the Standard

This Standard covers definition of Indices, methods of their calculation, their main types, their various forms of applications, and the Shari'ah status of each of these forms. The Standard also sets out the Shari'ah rulings that govern Indices.

2. Definition and Main Applications of the Index

1/2 An Index is a statistically computed figure based on a selected package of financial papers or commodities dealt in organized or non-organized financial markets, or in both. Each paper/commodity is given a specific weight, according to its market value, and the total value is divided by a constant figure. Among the best-known indices at present are the Consumer Price Index, and the Dow Jones and FTSE indices in the financial markets.

2/2 An Index that is well designed to measure the market situation, indicates the general economic situation of the country, and may help in forecasting its future developments before any change takes place and, thus, facilitates investment decisions. An index may also provide a signal to investors about the future movement of the prices of financial papers, or demonstrate a certain downward or upward trend of such prices. Due to the inconsistency that might occur between one index and another, indices are used besides other analytical methods, as well as the experience and knowledge about the market situations and the predominant models of transactions.

2/3 The upward and downward movements of an index reveal the directions of the market, and hence the market is denoted as a rising or a declining market.

3. Bases of Calculation and Characteristics of Indices

3/1 Calculation of indices is a process that depends on several aspects including past and current price forecasts, market projections, time intervals, upper and lower limits of dealing prices, and display charts.

3/2 Indices differ from each other in several aspects such as the components of the index or the type of data it attempts to summarize, the weight it assigns to each component, and the method of calculation thereof. There are, however, some common characteristics among all well-known indices in the capital and commodity markets, regardless of the data that each index attempts to analyze. Most important among these characteristics are accuracy, objectivity and transparency.

Accuracy refers to proper specification of the components of the index, sources of its data input, time of obtaining the data, method of calculating the weights, and basis of rounding off the numbers.

Objectivity entails presentation of the detailed calculations of the index to leave no room for difference of opinion with regard to determination of the value of the index on a specific date or at a specific place.

Transparency entails pre-specification of the time, place, and method of announcing the readings of the index so that the process does not involve *Jahalah* (ignorance or uncertainty).

3/3 There are some general principles that govern almost all indices, such as:

3/3/1 The absolute value of the index has no implication when presented as a single figure. The value of the index, at a given point of time, becomes meaningful only when compared to the past and future values of the index. Only then, the trend and percentage of change may be observed. For instance, an increase of 9 points in the value of the index may represent 2% of its previous value.

3/3/2 The values of the index at different periods may be multiplied or divided by any constant figure (i.e., increasing or decreasing

the figures of the index by the same percentage like division of shares), without affecting the accuracy of its implications. That is to say, the implications of the index are confined to what it represents of the average upwards and downwards changes in the weights of its components from time to time.

4. Types of Indices

Indices are classified according to different considerations:

4/1 With regard to their general or specific nature, indices may be classified into the following categories:

- General Indices that measure the market situation in general.
- Sectoral Indices that measure the market situation of a certain sector or industry, such as the transport sector.

4/2 Indices that precede price movements may be classified, with regard to central and area fluctuations, into the following categories:

- Centered Oscillating Indices, which measure price changes during a specific period in the past, and indicate probable future events.
- Ranged Oscillating Indices (band) that fluctuate between two areas, like overbuying or overselling.

5. Permissible Methods of Using Indices

5/1 It is permissible in Shari'ah to use indices to discern the magnitude of change in a certain market, or to judge the performance of specialized managers by comparing the returns they achieve to the indices. Indices may be used to form up an idea about a portfolio or to estimate its systematic risks instead of monitoring the performance and risks of each financial paper independently. Moreover, Indices may also be used for forecasting the future situation of the market and discovering the pattern of changes that the market may undergo. Therefore, using indices for guidance in operations that relate to real transactions is permissible in Shari'ah.

5/2 It is permissible to use indices as a benchmark for comparison of funds and investment bonds, or for correlating the remuneration of

the manager or the bonus of the agent to the investment, or the bonus of the Mudarib to the results of the Mudarabah.

- 5/3 It is permissible to use an index like LIBOR, or a certain share/commodity price index, as a basis for determining the profit of a Murabahah pledge, provided that the contract is to be concluded on a specific profit that does not vary with further changes in the index. [see Shari'ah Standard No. (8) on Murabahah – Item 4/6]
- 5/4 It is permissible to use the index to determine the portion of the variable *Ujrah* (rent) that represents the return. [see Shari'ah Standard No. (9) on Ijarah and Ijarah Muntahia Bittamleek – para 5/2/3]
- 5/5 It is permissible that work rules, regulations and the arrangements, pertaining to money-based employment contracts, stipulate a provision on wage indexation. Wage indexation here refers to periodical adjustment of wages according to changes in the price level, as determined by the concerned bodies. However, in case of accumulation of unpaid wage that takes the form of debt, Shari'ah rulings on debts should be observed.
- 5/6 It is permissible to link the deals to be undertaken by the Mudarib or the agent to a specific index, so that he can dispose of the commodity at the market price when the index reaches a certain reading, or purchase a certain amount of the commodity at a specific reading of the index.
- 5/7 It is permissible to connect the fulfillment of a binding pledge on the part of a buyer or a seller to the rate of increase or decrease of a specific index in comparison to the price of the commodity at a particular date, so that any further increase may be added to the price of the commodity.
- 5/8 It is permissible to link the amount of a donation to a charitable body, in case of delayed settlement, with a particular index, at one end.

6. Impermissible Methods of Using Indices

- 6/1 Shari'ah prohibits trading in indices or taking advantage of their changes in the financial markets, through payment or receipt of

Appendix (B)

The Shari'ah Basis for the Standard

- Developing indices is permissible in Shari'ah because they constitute a method of forecasting and a means of observing the state of circumstances (inferences). Resorting to inferences is a well-recognized practice in judicature and financial transactions. Ibn Al-Qayyim in his book on Judicial Methods presented a number of proofs on permissibility of using inferences.
- Permissibility of using indices to forecast the market situation is derived from acceptability of using inferences for judgment. As indicated above, Shari'ah does not object to using inferences to make current or future judgment based on past events, or to initiate practical actions in the light of probable developments.
- Selling or buying indices is prohibited because it is nothing more than payment or receipt of money for the mere existence of a certain reading or figure. Such an act constitutes a form of gambling and an illegal act of gaining money. Hence, prohibition of selling or buying indices has been well emphasized by the Resolution of the International Islamic Fiqh Academy which states that it is not permissible to sell or buy an index, because this constitutes pure gambling. It is an act of selling an imaginary object that never exists.⁽²⁾
- Prohibition of concluding option contracts that are based on indices, or on the index contracts' multiplier, rests on the same reasons for prohibition of trading in indices, in addition to prohibition of dealing in options themselves. Such transactions obviously deal with wills and intentions rather than with real commodities. Moreover, prohibition of dealing in options has been clearly stated in a resolution issued by the International Islamic Fiqh Academy.⁽³⁾

(2) Resolution No. 63 (1/7), Resolution of the Islamic Fiqh Academy (P. 127).

(3) Resolution No. 63 (1/7), Resolution of the Islamic Fiqh Academy (P. 127).

Appendix (C)

Definitions

Index Multiplier

A specific ratio added to the difference in the price of the index on expiry of the date of the transaction.

Centered Oscillating Indices

These are the indices that fluctuate around a given center or point. They measure price change in a past period, and are used for forecasting probable future events. Such indices precede market movements and measure the rate of price change during the period under study.

Ranged Oscillating Indices

These are indices that fluctuate between two specific ranges, such as the limit of overbuying and the limit of overselling.

Benchmark

It refers to any index that represents the performance of a whole industry or a particular activity. It can be used as a standard for measuring the performance of investment funds and investment units, or used as an indicator for fixing remuneration for management or bonus for the investment agent or the Mudarib.

Hedging

It is a method for mitigating investment risks (such as market risks) by using financial instruments available in the market to curb down the risks that may arise from severe price changes.

Divider

It is the total price of the two shares, divided by the average price before division.

at the market price on the day of purchase, or at the price to be set by the market on the day of purchase, or at the price people usually sell at.

Sale with forgivable Gharar in price could also include purchasing commodities through *Bay' al- Istjrar*, in which the buyer obtains the goods regularly from the seller for a price to be determined subject to the price that people normally sell at, or subject to an index, and even after consumption of the goods in question.

A similar sale contract is that which comprises selling, at unit price, of a quantity of the commodity which the buyer can see, yet does not know its exact amount or total value. That is to say, one could sell a quantity of grains at the price per kilogram, or he could rent a car at a rent per mile, so that the payable amount of rent is determined after reaching the target destination.

Furthermore, such sales may include concluding a lease contract at the rent normally paid for similar property, or for a variable rent to be indicated by a specialized index.

In all these preceding cases, the contract does not become null and void.

5/3 Gharar relating to ignorance of the contract's period

5/3/1 The contract becomes null and void when its duration is not stipulated. If, however, Gharar is removed by knowledge of the contract's duration, or abandonment of the duration, at the time of contracting, the contract becomes valid.

5/3/2 Gharar can be forgiven in postponement of the price until known seasons such as season of harvesting. In this case, the two parties should observe the normal date of the season rather than the event of harvesting.

5/4 Gharar pertaining to failure in delivery

Gharar which relates to failure in delivery nullifies the contract. Examples of such Gharar include selling of fish in the water, unless it is

found in a confined place and does not require fishing. Such type of Gharar can also be seen in the sale (without option) of a commodity to be imported from abroad, and one is not sure whether a license for its importation would be obtained or not.

5/5 Gharar relating to sale of non-owned commodities

Gharar relating to sale of a non-owned commodity nullifies the sale contract. It refers to the case when the seller does not (personally) have the commodity at the time of signing the contract, and has to purchase it from the market. Salam and Istisna'a are exceptional cases here (subject to their respective conditions).

5/6 Gharar that results from sale of non-held commodities

A person shall not sell a commodity (whether it is a real estate or movable property) that he does not guarantee through actual or constructive holding. In the absence of actual or constructive holding, it will not be possible to determine the party that possesses (and hence guarantee) the sold object. Therefore, selling a commodity that one does not own nullifies the sale contract.

Actual holding in this context refers to receiving the good in hand, or receipt of the exact quantity in case of commodities measured in terms of volume or so. If the deal in question pertains to a Juzaf commodity (a commodity of an unknown quantity) holding would require shifting the commodity to another location. Holding in all cases, other than the preceding ones, shall be judged as per normal practice.

As regards constructive holding, it indicates the act of releasing the commodity and facilitating the process of its holding.

5/7 Gharar resulting from sale of nonexistent commodities

It is impermissible to sell a commodity that neither exists at present, nor does its existence in the future is ensured. Mu'awamah sale (sale of fruits to be delivered over several years) is a good example of such transactions.

Zakatable assets include: cash and the like, receivables (minus) doubtful debts, assets prepared for trading (such as goods, financial papers and real estate), and financing assets (Mudarabah, Musharakah, Salam, Istisna'a.....). Deductions from financial assets include fixed assets relating to them as well as deductible allocations as shown in item 7.

2/1/2 Assets prepared for trade are to be assessed in terms of their expected cash value (selling market value) at the time when Zakah is due.

2/1/3 In determination of zakatable assets in agriculture and livestock other than articles of trade, application of the ratios and rates specified by Shari'ah should be observed.

2/2 Direct payment of Zakah by the institution

2/2/1 The institution or the company is committed to pay Zakah under the following cases:

- a) Enactment of an enforceable Zakah law.
- b) Stipulation of commitment to pay Zakah in the articles of association.
- c) Issuance of a Zakah commitment resolution by the general assembly.

2/2/2 When the Institution accepts agency for payment of Zakah on behalf of all or some of its equity holders or the holders of investment accounts, funds should be available - or submitted by the principals of such agency - for payment of Zakah on their behalf.

2/2/3 There should be coordination between the mother Company and its subsidiaries with regard to payment of Zakah so as to avoid double payment.

2/2/4 In case of establishing a Zakah fund, or preparing Zakah accounts, clearance by the Shari'ah Board of the institution or the company should be obtained. Clearance by the Shari'ah

its current state or after manufacturing, and when it is acquired through buying or otherwise. To be subject to Zakah payment such goods should not necessarily be obtained through buying, the mere intention to offer them for sale is quite sufficient.

5/2/2 Articles of trade should be valued at selling market price in the place where they exist, and according to the method of their sale (retail, or wholesale, or if both whichever the predominant). Articles of trade should not be valued at cost or market price whichever the less. However, when other methods of valuation are extremely difficult, valuation at cost can be used for Zakah purposes. When there is a price change during the period between the date of accrual and date of payment of Zakah, the price at the date of Zakah accrual should be adopted.

5/2/3 When the articles of trade are subject to another type of Zakah treatment (e.g., when the articles of trade are livestock or agricultural produce) they should become subject to Zakah on articles of trade only.

5/2/4 In principle, Zakah on articles of trade is to be paid in cash, yet in case of trade recession it can be paid in kind (from the same articles of trade), provided that the interest of Zakah recipients could, thus, be achieved.

5/2/5 Zakah has to be paid on the goods earmarked for the buyer after concluding the contract, even if he has not yet possessed them.

5/2/6 Applications relating to commodity current assets in the items of financial statements

5/2/6/1 Commodity stocks prepared for Trade, raw materials in their different forms, and goods for sale in their original form or after being manufactured by adding them to other materials: To be valued for Zakah purposes at selling market price.

If a good of this type is defective it shall be valued at its selling market price and as per the method of its sale (retail, or wholesale, or if both whichever the predominant). If the good in question is a slow-moving item it can be valued for Zakah at its market price and in its current form. When an allocation is made for such goods it should not be deducted from zakatable assets.

- 5/2/6/2 Goods in process: To be valued for Zakah at their current market price on the day of Zakah accrual, and if it is not possible to know their market value, they could be valued at cost.
- 5/2/6/3 Works under implementation (constructions): To be valued for Zakah in their current state on the day of Zakah accrual.
- 5/2/6/4 Industrial accessories (spare parts) used in production equipment: are not part of Zakatable assets.
- 5/2/6/5 Goods in transit: To be valued for Zakah at market price in the place where they are found.
- 5/2/6/6 Goods to be sold by others on commission (by agency): To be valued for Zakah at market price in the place where they are found.
- 5/2/6/7 Goods imported through documentary credits covered by the Institution, including the expenses of opening the credit and the amounts retained by intermediary banks: Zakah should be paid on the amounts retained for the credit, and not the expenses. When the goods are owned Zakah has to be paid from them on the basis of their market value.
- 5/2/6/8 Goods prepared for export through documentary credits to the benefit of the Institution: The amounts retained

for the credit, are neither subject to Zakah nor are they deductible from zakatable assets, since they have not yet been possessed. However, Zakah has to be paid on the goods that are still held by the Institution as part of its finished goods or goods in process.

5/2/7 Intangible rights prepared for trade such as copy right, patent right, trademarks, and computer software: should be subject to Zakah on articles of trade.

5/2/8 End of the year stock of raw materials (primary materials) which are normally used as ingredients and remain as components of the goods manufactured for trade: Should be valued for Zakah at their market value before entering the process of manufacturing. No Zakah is payable on supporting materials which do not represent ingredients of or remain as components of the manufactured goods, such as fuel and cleaning materials.

5/2/9 Finished goods and goods in process being manufactured for trade: are subject to the same rate applicable to Zakah on articles of trade. Finished goods and goods in process should be valued in their current state and at market price.

5/2/10 Rapping and packing materials: are not to be included in valuation of goods for Zakah if such materials are not prepared for trade separately. Nevertheless, if such materials increase the value of the goods they should be included.

5/3 Receivables of the institution or the company

5/3/1 If the debt owed to the Institution is a cash amount the Institution should pay Zakah on it annually - whether such debt is due or not - since the Institution will certainly receive it. As for bad debts (non-repayable debts) and doubtful debts the Institution does not have to pay Zakah except for one year after collection of such debts, and as per the rulings indicated in item 6/2.

5/3/4/10 Debtors of Salam goods purchased by the Institution and not yet received: the Institution should pay Zakah on Salam capital if the goods have been purchased for trading purposes. When the goods are purchased for operating or income generating purposes the rulings indicated in item 4/1 and 4/2 should be applied. As regards the Salam capital received by the seller of the goods, such income is subject to Zakah as part of the seller's cash assets.

5/3/4/11 Debtors of Istisna'a goods sold by the institution: This item represents the balance of amounts due to the Institution as per delivery dates of the Istisna'a commodity. Such amounts are part of Zakatable assets, and Zakah has to be paid on them under the category of current assets, because they constitute cash amounts.

5/3/4/12 Debtors of Istisna'a goods purchased by the institution: When such goods are purchased for the sake of trading, the debt relating to them (the price which the Institution is committed to pay to the seller) should be included in zakatable assets, and subjected to Zakah as per item 5/3/1.

5/3/4/13 Investment in shares for the sake of trading: Should become subject to the Zakah rate applicable to articles for trade. Valuation has to be at market price, yet in the absence of any market for such shares, valuation can be made by experts.

5/3/5 Debtors in an insurance portfolio

As indicated in the Shari'ah standard on Islamic Insurance the contributions of policyholders constitute a fund which has an independent financial liability, and the contributor is supposed to have given the premium as a donation. Consequently, the insurance fund is not committed to pay back any excess amounts to policyholders [items 2 and 5/5 of the Shari'ah Standard No.

- 5/6/1 It makes no difference if the animals which belong to the same owner are found in the same place or different places. Mixed ownership can also be recognized so that the animals owned by more than one person are treated as if they are owned by a single person, when such animals share the same facilities.
- 5/6/2 Animals owned for trade should become subject to the Zakah rate on articles of trade. Valuation has to be at selling market price.
- 5/6/3 Working animals, such as animals used in land plowing, irrigation and carrying are not part of zakatable assets.
- 5/6/4 Animals other than camels, cows and goats are not subject to Zakah payment, unless they are owned for trade. If such animals are used for production rather than trade they should not be included in zakatable assets.
- 5/6/5 When animal products such as milk and wool are owned for trade they should become subject to Zakah on articles of trade.
- 5/6/6 Zakah is not payable on horses, mules, donkeys and all other animals used for work or adornment, unless owned for trade.
- 5/6/7 Zakah is not obligatory on chickens acquired for production, which should be treated in the same way as Mustaghallat (productive assets such as leased properties). [see item 4/2]
- 5/6/8 Chickens, milk and stocks of animals are subject to Zakah on articles of trade when they are owned for trade purposes.

6. Liabilities

6/1 Classification of liabilities

Liabilities in financial statements comprise items which are not debts owed by the Institution in the strict sense of Shari'ah. Such items include for instance the capital of the company, the reserves and the profits. The debts included under the item of liabilities comprise the following:

the debt is collected or the commitment is fulfilled, or if the provision amount is more than it should have been.

7/2 Classification of provisions

Regarding provisions, the following should be observed:

7/2/1 Provisions relating to fixed assets: Such provisions are non-deductible from Zakah assets, since fixed assets are not part of the Zakah base.

7/2/2 Provisions relating to current assets: Since Zakah is calculable on the basis of market value, provisions relating to current assets are not considered as part of liabilities to be deducted from zakatable assets. If, for any reason, current assets are valued for Zakah calculation at book value which happens to be more than exchange value, the difference between book value and market value pertinent to provisions should be deducted from Zakatable assets.

7/2/3 Provisions relating to liabilities: Liability provisions which aim to cover imprecisely determined commitments of the company such as provisions for: end of service benefits, staff leaves, taxation, and indemnities, shall be reasonable so as not to become secret reserves. Whenever exaggeration in such provisions is discovered, the excess amount should be removed.

7/2/4 In the cases when the provision is deductible from assets interest should not be deducted if it happens to be involved in it. Deduction from assets in this case should include only the Shari'ah-recognizable commitment. It should, however, be noted that interest bearing deposits and loans are strictly prohibited by Shari'ah. [see item 6/2/3]

7/3 Applications relating to provisions

7/3/1 Provision for redemption of pre-operating expenses: It is the cumulative amount of the redeemed part of pre-operating expenses. This provision is not deductible from zakatable assets.

- 7/3/2 Provision for deterioration in the value of investments in shares purchased for acquisition: This provision is meant to cater for price decline in financial markets, or book value, below cost; in case of valuation at cost or market value whichever the less. Such provision is not deductible from zakatable assets.
- 7/3/3 Provision for perishable or slow moving goods: In case of slow moving goods the provision is to cover probable declines in value due to expiry, obsolescence of type, or slow marketing. This provision is not deductible from zakatable assets.
- 7/3/4 Provision for probable declines in the prices of goods or financial papers: This provision is usually made to cater for declines which actually take place, and it is not deductible from Zakatable assets.
- 7/3/5 Provision for leaves: It is the amount deducted from revenues so as to cater for the commitment of the institution to compensate staff for leave entitlements. This provision is not deductible from Zakatable assets.
- 7/3/6 Provision for end of service and retirement benefits or pension salary of staff: It refers to the amounts deducted from revenues for meeting payment of such obligations. Such amounts are not deductible from Zakatable assets because they are allocated for disbursement, but not yet disbursed. They can be deducted only when they are actually paid or when they become due for payment during the current year, but not yet settled.
- 7/3/7 Provision for indemnity: It refers to the estimated amounts deducted from revenues in order to cater for a confirmed commitment relating to an initial legal verdict (before appeal) stipulating the payment of a specific amount as indemnity to a certain party. Such provision is estimated according to the amounts mentioned in the verdict, and it should not be deducted from Zakatable assets until it becomes due for payment by virtue of a final verdict.
- 7/3/8 Provision for maintenance: It is an amount allocated for spending, but not yet spent. It is not deductible from Zakatable assets.

- 7/3/9 Provision for insurance of fixed assets: This provision refers to the amounts charged to the revenues of the company to substitute the premiums that will be paid to insurance companies. This provision is estimated as per the amounts of its components. It should not be deducted from Zakatable assets because it comprises amounts that have been allocated for spending, but still owned by the company.
- 7/3/10 Provision for decrease in the price of currencies: It is the amount charged to the revenues of the company to cater for probable decline of the prices of foreign currencies against the price of the currency used in the financial statements of the company. It is assessed on the basis of the difference between the two prices (purchase price and market price). Such provision is not deductible from zakatable assets, because what matters is the prevailing exchange price at the time of valuation of Zakatable assets.
- 7/3/11 Provision for taxes: It refers to the estimated amounts deducted from the revenues of the company for settlement of the unpaid taxes of the current year. Such provision is assessed according to size of activity during the current financial period, besides the tax level in the previous financial periods. This provision is not deductible from Zakatable assets.

8. Reserves

8/1 Definition of reserves

Reserves are amounts deducted from profits by virtue of law (statutory reserves), or as required by articles of association of the Institution, or on the basis of a decision by the general assembly (voluntary reserves). Reserves provide necessary funds for many purposes such as future expansion, facing probable losses, distribution of profits in the years when no profits are realized, and distribution of the accumulated amounts of the reserves when they are no longer needed.

8/2 Nature and Shari'ah status (Hukm) of reserves

8/2/1 Both types of reserves (statutory and voluntary) are not deductible from zakatable assets, because in Shari'ah they are not considered to constitute debt obligations owed by the company, although it is referred to under liabilities. Since reserves are owned by the company they should be subject to Zakah as part of Zakatable assets, in case of applying the net assets method of Zakah assessment.

8/2/2 In spite of the fact that the capital account and the issuance premium provide sources of funding for the company they are not considered to be part of its debt obligations, even if capital is usually referred to under liabilities. Therefore, capital account and issuance premium are not deductible from Zakatable assets.

8/3 Applications relating to reserves

8/3/1 Revaluation reserve (capital reserves): It results from revaluation of fixed assets at current market value, and since fixed assets are not subject to Zakah, such reserve is not deductible from Zakatable assets.

8/3/2 Income reserve: It refers to that part of distributable profit which is retained by an administrative decision in provision for future need. It is not a debt obligation owed by the Institution, and therefore should not be deducted from Zakatable assets.

8/3/3 Reserve of profits earned from share purchasing operation (institution's treasury shares): This reserve results from the act of the Institution when it purchases and sells its own shares. It is not deductible from Zakatable assets, since it is part of the profits.

8/3/4 Reserve of profits declared for distribution: It refers to the profit declared by the board of directors, but the decision for its distribution has not yet been taken.

3/4 Execution of the mortgage

- 3/4/1 With due consideration to item 3/1/4, the mortgagee has the right to claim the sale of the mortgaged asset in case of default. After repayment of the mortgagee's debt the remaining value of the mortgaged asset should be given to the mortgagor by virtue of the mortgage contract. If the sale value of the mortgaged asset happened to be less than the due debt, the difference shall be subject to Shari'ah rulings on normal debt, and the mortgagee should have the right of recourse on the mortgagor for settlement of such difference.
- 3/4/2 The mortgagee does not have the right to stipulate a condition that he should own the asset in case of default. Nevertheless, there is no prohibition for the mortgagee to purchase the mortgaged asset from the mortgagor at market value, and take the portion of the value to which he is entitled.
- 3/5/3 When the mortgagor is bankrupt, the mortgagee should have the priority over other debtors, for getting his debt repaid from the sale value of the mortgaged asset. If the sale value of the mortgaged asset is less than the mortgagee's debt, he becomes in the same standing with other debtors with regard to the excess indebtedness.

4. Mortgage of Financial Papers and Sukuk

- 4/1 It is permissible to mortgage the financial papers and Sukuk which can be issued and transacted according to Shari'ah, such as Islamic Sukuk and shares of Islamic financial Institutions. The shares of the companies whose original activities are permissible can also be added to this category. [see Shari'ah Standard No. (21) on Financial Paper: Shares and Bonds, item 3/4]
- 4/2 It is permissible to mortgage usufruct-based Sukuk which represent common shares in the usufructs of specific assets, or assets in the form of a specific indebtedness. This should be taken with due consideration to Shari'ah Standard No. (17) on Investment Sukuk, item 5/1/5/2.

sequestered assets or to have claims on these assets. This right shall be established for the seller who has not received any part of the selling price.

7. Sale of the Sequestered Assets and Allowances Made for the Insolvent Debtor

7/1 The concerned authorities will order the sale of the sequestered assets -other than the assets described below- whether they are in currencies different to the currency in which the insolvency is being administered, fungibles, stocks, commodities (goods or merchandise) or real estate. A reasonable period of time should be allowed before selling real estate assets, and assets should be sold in the order provided above. A survey of market prices should be conducted to ensure that a better price could not be achieved at auction. If the price offered is less than the value of the asset, the auction should be repeated to obtain the value of the asset. Otherwise, it should be sold at whatever price is achieved on the third auction. If possible, it is recommended to make the sale subject, for a reasonable period of time, to an option to reverse the sale.

7/2 Excluded from the sale are the insolvent debtor's tools of trade; whatever he needs to continue his business; a suitable home and basic expenses for him and his dependents. If his home exceeds his requirements, it should be sold and replaced by one that is suitable for him. The same applies mutatis mutandis to institutions.

7/3 The debtor is not required to earn or take out a loan if the proceeds of sale are not sufficient to pay off his debts.

8. Distribution of the Insolvent Debtor's Assets Among the Creditors

8/1 It is preferable to expedite the distribution but not with such excessive haste that it harms the insolvent debtor. It is not necessary to delay the distribution until all insolvency assets are sold. The proceeds may be distributed as and when they are received, which is required if the creditors demand it, taking into consideration the statutory procedures of insolvency provided that they do not conflict with the rules and principles of the Shari'ah are observed.

Statement of the Standard

1. Scope of the Standard

This Standard covers what is meant by liquidity and the permissible means of obtaining and deploying it.

2. Definition of Liquidity and Liquidity Management

2/1 Liquidity refers to cash or that which can be easily converted to cash.

2/2 Liquidity management means achieving a balance between obtaining liquidity as swiftly and cheaply as possible and investing and deploying it effectively.

Liquidity is achieved in various ways depending on where it is being utilised. For example, in institutions it is the ability to cover withdrawals; in the money market it is the ability to swiftly convert securities into cash; and with Sukuk and investment funds, it is the ability to redeem or sell them in the secondary market.

3. Need to Utilise Liquidity in Institutions

Institutions need liquidity to meet numerous requirements, such as:

3/1 To distribute profits, which may rely on the liquidation of assets, see Shari'ah Standard No. (40) on Distribution of Profit in Mudarabah-Based Investment Accounts.

3/2 To discharge liabilities by selling inventory assets and converting them to cash to pay what is owed to creditors, to face contingent liabilities, or liquidate investment vehicles or the institution itself, and similarly to expand its activities, or to achieve capital adequacy or to improve its credit rating, see Shari'ah Standard No. (43) on Insolvency.

4. Obtaining and Deploying Liquidity

4/1 Obtaining and deploying liquidity through interest-bearing loans is prohibited by the Shari'ah, whether transacted directly or through

the Musharakah; rather, fixed assets are either lent or leased to the venture and rental payments are accounted as expenses of the Mudarabah or Musharakah.

4/2/5 Issuing investment Sukuk to expand the institution's activities

This involves issuing the types of investment Sukuk explained in Shari'ah Standard No. (17) on Investment Sukuk in order to obtain funds from Sukuk investors and undertake projects required of the institution. The institution may securitise some of its assets by selling them to Sukuk subscribers, managing the assets on their behalf and promising to purchase them at the market price or at a price to be agreed. If the institution is only the lessee and not the manager of the Sukuk assets, it may promise to purchase them at face value.

4/2/6 Tawarruq

This should be done in accordance with Shari'ah Standard No. (30) on Tawarruq.

4/2/7 Interest-free loan

An application of interest-free loans is outlined in Shari'ah Standard No. (26) on Islamic Insurance in item 10/8 regarding loans given by the Takaful operator to the Takaful fund.

5. Liquidity Should Only Be Deployed Using Shari'ah-Compliant Modes, which include:

- 5/1 Purchasing commodities in cash and selling them for deferred payment through Musawamah or Murabahah contracts.
- 5/2 Leases, lease contracts that end in ownership and forward leases, whether for tangible assets or services.
- 5/3 Purchasing commodities on a Salam basis (immediate payment for deferred delivery), then selling them after taking physical or constructive delivery, whether personally or by appointing the seller, in a separate contract, to sell the commodities to his customers.

10/2 If the Investment Agency is restricted to activities that yield a minimum specified profit margin and the agent does not find such an investment, then it should seek the principal's consent before investment. If it invests in lower-yielding transactions, it is liable to compensate the principal for the difference between the profit earned and the average profit prevalent in the market (if it is less than the stipulated amount/percentage). It is not liable for the minimum profit margin specified for the investment by the principal. [see Shari'ah Standard No. (23) on Agency and the Acts of an Uncommissioned Agent (Fodooli), item 6/3/2]

11. Rules of Investment Agency

If the agent co-mingles his own funds with the principal's funds or with the funds that he manages, he may not then purchase, for his own account any assets from the assets owned by the co-mingled funds without giving notice on each occasion. This is to establish the transfer of ownership and liability for the asset from the co-mingled funds to the agent's account. This requirement is impracticable in relation to investment accounts (and therefore this requirement may be waived). [see items 7/1/2 and 7/1/3]

See also Shari'ah Standard No. (23) on Agency and the Acts of an Uncommissioned Agent (Fodooli).

12. Contemporary Applications of Investment Agency

12/1 Co-mingling the funds of an unrestricted agency with Mudarabah funds or with the agent's funds.

12/1/1 It is permissible to co-mingle funds on the basis of Investment Agency with funds from Mudarabah investment accounts. Such funds are treated as if they were extra funds provided by a capital provider in a Mudarabah investment or shareholder funds when they are co-mingled with funds in Mudarabah investment accounts. Allocation of profits is calculated by the standard prorated method (usually daily weighted

profit prevalent in the market (if it is less than the stipulated amount/percentage), because he is in breach of the conditions of the Agency. However, the agent is not liable for the specified percentage stipulated in the contract if it is higher than the prevalent market rate, because it will be tantamount to acquiring another's wealth by illegitimate means.⁽⁴⁾

- The basis for the permissibility of employing the agency's funds in the Mudarabah portfolio is that the authorization granted by the investment agency includes such employment when the agency is unrestricted.
- The basis for the principle that the agent, in a situation where the agency's funds are employed in a Mudarabah portfolio, is entitled to the agency commission and not to Mudarabah profit is that his contract with the institution is that of agency and not of Mudarabah. Even if the agent has employed the funds in a Mudarabah portfolio, the profit entitled to the institution is generated from the Mudarabah portfolio and not on the basis of agency.



(4) See *"Al-Mughni"*, vol. 5, (P. 135).

Statement of the Standard

1. Scope of the Standard

This Standard covers the rules relating to options of buyers to revoke contracts that arise immediately upon the seller deceiving the buyer by statement or conduct or grossly overcharging him in specific circumstances. It does not cover *Khiyarat al-Tarawwi* (options to reconsider) or *Khiyarat al-Salamah* (options to revoke due to incomplete performance) as they have separate Shari'ah Standards dedicated to them.

2. *Khiyar Al-Taghrir* (Option to Revoke on Grounds of Deception)

2/1 Definition of *Khiyar al-Taghrir*

The option to revoke on grounds of verbal deception is the right of a buyer to revoke a contract due to deception by the seller or a colluding party, inaccurately describing the sale item so that the buyer purchases it at a price higher than the market price.

2/2 Examples of verbal deception (*Taghrir*)

- a) Deliberate misinformation regarding the original cost price or expense incurred in a Murabahah (markup), *Tawliyah* (sale at cost) or *Hatitah* (sale below cost) sale. [see Shari'ah Standard No. (8) on Murabahah]
- b) Increasing the bid in an auction sale phantom bidding which is known as Munajashah or Najsh.
- c) Inaccurate statements to mislead the buyer into thinking that the sale item meets his requirements, or falsely claiming that it is no longer available elsewhere in the market.
- d) Deceptively inaccurate announcements about a company's performance in order to entice the public to buy its shares.

3/2/3 The deception must be continuing. If the seller engages in a deceptive conduct but the sale item's condition eventually improves (to a condition not less than the original specification) before the contract is revoked, the buyer has no right of revocation.

3/3 Examples of deceptive conduct

3/3/1 False branding of products using counterfeit labels to promote sales.

3/3/2 Painting an old car to hide its age and give the impression that it is new.

3/3/3 Adding lubricants or other substances so that the product appears in a better condition.

3/4 Causes of *Khiyar al-Tadlis*

3/4/1 A buyer who is enticed by deceptive conduct may return the sale item or retain it.

3/4/2 The buyer may return the item within a period customarily acceptable for return.

3/4/3 The buyer is not entitled to compensation if he decides to retain the sale item.

3/5 Lapse of the option

The option to revoke on grounds of deceptive conduct lapses if the item is destroyed or consumed by the buyer after the deception is discovered, or if the buyer fails to return it despite being able to do so.

3/6 Transfer of the option

Khiyar al-Tadlis does not transfer upon death to the heirs of its owner.

4. *Khiyar Al-Ghabn* (Option to Revoke on Grounds of Price Gouging)

4/1 Definition

Khiyar al-Ghabn is a buyer's right to revoke a contract or accept it if it is discovered that the price paid exceeds the highest estimate given by experts in the market. The price gouging that triggers this

option is that which, according to the opinion of certified valuers, is deemed excessive in commercial custom.

4/2 Prerequisite

The buyer must be unaware of price gouging at the inception of the contract.

4/3 Examples of price gouging

- 4/3/1 Sale to a *Mustarsil*; i.e., a purchaser who does not negotiate the price because he trusts the seller not to overcharge him.
- 4/3/2 Collusion between brokers and sellers that leads to price spikes or increases of prices above fair market levels.
- 4/3/3 Exploiting the ignorance of exporters using deceptive statements in order to purchase items from them at a price lower than the prevalent price in the importer's country.
- 4/3/4 Acting as an intermediary between sellers and other market participants in order to sell items in the market for more than the prevalent price.

4/4 Causes of *Khiyar al-Ghabn*

- 4/4/1 The party deceived by price gouging has the right to revoke the contract; he may also accept it without recourse to refund.
- 4/4/2 If the party deceived by price gouging accepts the contract, then he is not entitled to seek any compensation. It is permissible for the two parties (the party deceived by price gouging and the seller) to mutually agree upon an indemnification amount instead of revocation.

4/5 *Khiyar al-Ghabn* lapses in the following situations

- a) Destruction or consumption of the sale item or the occurrence of any change or defect in it. The attachment of a third-party right over the sale item has the same legal effect as its consumption.
- b) Inaction of the buyer during the period enabling him to revoke, and after discovering price gouging in the sale item.

- 8/2 The worker (irrigator) and the owner are responsible for the expenses of the Irrigation Partnership in proportion to their shares, including any Takaful insurance, unless they agree otherwise.
- 8/3 The worker (irrigator) is solely responsible for performing the work customarily undertaken by workers (irrigators) in similar Irrigation Partnerships and such work does not entitle him to any increase in his share of the crop as he is already contractually obligated to carry it out. If he hires others to perform his work, their wage is his sole responsibility and should not be taken from the overall crop. The worker (irrigator) may hire, on the account of the Irrigation Partnership, others to perform work that is customarily beyond the scope of his duties.
- 8/4 If the worker (irrigator) refuses to complete the term of the Irrigation Partnership after commencing work or entering into the contract, the owner should demand performance from him. If the worker (irrigator) stops working before the crop materializes he is not entitled to any share. If he stops working after the crop materializes but before it is ready for harvest, a third party should be hired to complete the work and his wage should be deducted from the worker's (irrigator's) share after the crop is harvested and sold. If the worker's (irrigator's) share is not sufficient to pay the third party's wage, the worker (irrigator) must make up the difference. If the worker's (irrigator's) share of the crop is more than the third party's wage, he keeps the difference.
- 8/5 In an Irrigation Partnership (Musaqat) that is due to terminate when the crop materializes or is ready for harvest, if the owner does not enable the worker, and this occurs before the crop materializes, then the owner shall be requested to enable the worker (irrigator) to complete his work. If the owner does not enable the worker (irrigator), then the worker (irrigator) shall be entitled to a wage at the market rate for similar work. If this occurs after the crop materializes, the worker (irrigator) is entitled to his stipulated share of the crop.

9. Division of Produce

9/1 In principle, all recurring produce of the trees should be shared as part of the crop, such as fruits, palm leaves etc. unless the parties agree to restrict their sharing arrangement to just the fruits.

9/2 The worker (irrigator) is entitled to his share of the crop on an indivisible basis as soon as it materializes.

10. Contingencies in Irrigation Partnerships

10/1 If the crop does not materialize at all or is completely destroyed by a natural disaster, the worker (irrigator) is not entitled to anything. If the natural disaster destroys only part of the crop, the parties divide what remains according to their stipulated shares.

10/2 If the crop does not materialize during the stipulated term, the worker (irrigator) has the option either to stop working or to continue his work without a wage until the crop materializes and thereafter takes his share. If he stops working without a valid excuse, he foregoes his right to a share of the crop when it materializes. If he has a valid excuse, he is entitled to the portion of his share that corresponds to the period of time worked in proportion to the total time the crop took to materialize.

11. Trees Belonging to Third Parties and Usurped Trees

11/1 If it transpires that the trees belong to a third party, the crop will then belong to him (the third party). In this case, the worker (irrigator) is entitled to a wage or compensation from the other party (the usurping party) at the market rate for similar work but not exceeding (what would have been) his share of the crop.

11/2 If the worker (irrigator) enters into an Irrigation Partnership (Musaqat) with a party who, unbeknown to the worker (irrigator), has usurped the trees, then the produce, if any, will belong to the owner of the trees and the worker (irrigator) will be entitled to a wage at fair market rate. But if the worker (irrigator) knew that the trees were usurped, then he is not entitled to any remuneration.

12. Termination of Irrigation Partnership Contract (Musaqat)

The Irrigation Partnership (Musaqat) contract terminates upon the occurrence of any of the following:

- 12/1 Harvest and division of the crop, if the Irrigation Partnership was linked to the produce of a specific season.
- 12/2 Completion of the agreed term and division of the crop in accordance with Item 10/2.
- 12/3 Death of the worker (irrigator) or liquidation of the institution carrying out the work if the Irrigation Partnership (Musaqat) contract stipulates that the work is non-assignable. If there is no such stipulation, the successor has the option to complete the work on the same terms, either himself or by hiring workers (irrigators), in return for the deceased's (or liquidated institution's) share of the crop. If the successor chooses not to complete the work, the owner may complete the work himself or by hiring others and upon materialization of the crop, the successor of the worker (irrigator) is entitled to receive a wage at the market rate for similar work for the period of time worked by the deceased (or liquidated institution) but not exceeding his (or its) stipulated share of the crop.
- 12/4 Death of the trees that are the subject matter of the contract or inability of the trees to bear fruit.
- 12/5 Passing of a season without any fruit.

13. Revocation of Irrigation Partnership Contract (Musaqat)

- 13/1 Irrigation Partnership (Musaqat) contract is revocable by mutual consent of the two parties (Iqalah).
- 13/2 The owner can revoke the contract in the following situations:
 - 13/2/1 When the worker (irrigator) is unable to perform the work, in which case the following apply:
 - 13/2/1/1 If the worker (irrigator) is unable to work for a reason outside his control, such as an illness, he is entitled to receive a wage

at the market rate for similar work for the period of time worked.

13/2/1/2 If the worker (irrigator) is unable to work for a reason within his control, he is entitled to receive a wage at the market rate for similar work for the period of time worked. He is also liable to indemnify the owner for actual loss suffered, as determined by experts.

13/2/2 When the worker (irrigator) stops working and it is not possible to enforce him (to fulfil the terms of the contract).

13/3 The worker (irrigator) is entitled to revoke the contract if the owner refuses to allow him to work. [see item 8/5]

14. Zakat Due on Irrigation Partnership (Musaqat)

See Shari'ah Standard No. (35) on Zakat, item 5/4/9.

15. Some Applications of Irrigation Partnership (Musaqat) in Financial Institutions

15/1 The institution may enter into Irrigation Partnership (Musaqat) contracts with the owners of trees and then hire workers (irrigators) to carry out the work.

15/2 The institution can own trees and enter into Irrigation Partnership (Musaqat) contracts with other parties to carry out the work.

16. Date of Issuance of the Standard

This Shari'ah Standard was issued on 21 Safar, 1434 A.H., corresponding to 4 January 2013 A.D.

neither party shall have the right to revoke it unilaterally. And the basis for the non-entitlement of the worker to any compensation in case he stopped the work before materialization of the produce is that he abandoned his obligation toward completion of work and is thus not entitled to receive a share of the produce before materialization. And if the produce materializes, then another hand may be hired to complete the work at the expense of the worker because in such a case the worker (Al-Musaqi) is entitled to receive a share and shall not be deprived of it, and he shall complete the work, and such an obligation shall not be considered fulfilled unless work is completely carried out. Otherwise, the wage of the hired hands shall be deducted from the share of the worker (Al-Musaqi).

- The basis for obligating the owner of trees, in case he prevented the worker from carrying out the work of Musaqt, to completely fulfil the contract is that the Musaqt contract becomes binding upon commencement of work or upon commitment of non-revocation (of the contract). And in the event that the owner revokes the contract before the produce materializes, the basis for obligating the owner to pay out the prevailing market wages is that the time and effort of the worker shall have to be compensated. And in the event that the owner revokes the contract after the produce materializes, then the worker is only entitled to his share in the produce (but not the prevailing market wages).

Division of the Produce

- The basis for the inclusivity of division of recurring produce is that the worker contributes with his work to the produce and thus shall not be deprived of his respective share. This roughly conforms to the standpoint of Ibadis and Malkis jurists, and coincides with the opinion of some of Hanifis. It has reported that Abu Said Al-Khudri opined that the worker deserves a share in the palm racemes and cotton straws, unless there is a customary practice ('Urf) or a condition (Shart) to the contrary. Abu Amr Al-Qurtubi also said: "Torn palm leaves and fibers and cords shall be shared by both parties according to their respective shares in the fruits", and this conforms to the law of equity.⁽⁷⁾

(7) "*Bayan Al-Shar'*" [40: 292 and 296]; and "*Al-Kafi*" [2: 107].

the option either to carry on the work as per the set conditions or to stop it is that the heirs or the owners of the institution have had legally inherited this right. The basis for their entitlement to the prevailing wage is that their testator was entitled to the compensation by virtue of his efforts. So if he had died before the produce materialized, then he shall be entitled to the compensation. The basis for limiting the compensation, which is the prevailing wage, to a maximum of the testator's share in the produce is that the owner of trees did not commit to pay more than the worker's share. And if continuation of work by the heirs does not entitle them to more than the share of their testator in the produce, then how shall they deserve more without work?

- The basis for termination of Musaqa contract upon perishing of trees, subject matter of the contract, or inability of the trees to bear fruit is the Hadith stating: *"There should be neither harm nor malice"*, because the worker will be excessively harmed if he is obligated to work gratis (without compensation).

Revocation of Musaqa Contract

- The basis for revocation of Musaqa contract by mutual consent of the two parties is the Hadith of Prophet Mohammad (peace be upon him) stating: *"Anyone who consents to revoke the contract upon the request of a regretting counterparty, Allah shall forgive his regretful sins on the Day of Judgment"*.⁽¹¹⁾
- The basis for obligation to pay the prevailing wage if the worker is unable to perform the work due to a reason out of his control is that the worker did exert an effort under a contract, therefore he shall be entitled to a compensation against that work, and that the work has not been performed in its entirety, and thus he is paid the prevailing market wage.
- The basis for liability of the worker to indemnify the owner for actual loss suffered for a reason within his control is that he caused such a loss, and therefore shall be liable.



(11) Related by Ibn Hibban, Chapter on Iqalah.

the market rate unless you (you and the counterparty) leave the transaction session without settlement of dues". Therefore, this was an evidence on the requirement to take possession of both countervalues (Qabd) at the contracting session (*Majlis al-'Aqd*).

'Arboun is also impermissible in Salam contract, because in Salam, payment of the price (capital of Salam) shall be settled at the contracting session. The Prophet (peace be upon him) said: *"Whoever pays money in advance for dates (to be delivered later) should pay it for a known specified weight and measure (of the dates)...."*. This implies that unless the price is paid in full before the two parties leave the contracting session, the transaction is not deemed to be Salaf (or Salam).

- The basis for determination of a specific term for 'Arboun is to avoid Gharar that may result from an unknown term (Jahalah that involves 'Arboun term).
- The basis for the seller being liable for the object of sale before delivery and for the buyer being liable for it after delivery is the Shari'ah maxim: "Ownership (title) shall be established upon the conclusion of the contract, while liability is contingent upon delivery (Qabd)".
- The basis for attributing growth connected to the original is that it represents an integral part of it.
- The basis for attributing growth and yields, separate from the object of sale, to the object of sale is the saying of the Prophet (peace be upon him): *"Al-Kharaj Bi al-Daman"* (i.e., entitlement to revenue is based on bearing liability for the revenue-generating asset).





Overview: Publication Sponsor

Islamic Financial Services in SABB Bank

Banks have become very important for all people and businesses all over the world. They are the backbone of any financial or economic system at both the local and international levels. Due to their importance, banks are highly regulated by most countries. This is because the country's economy depends totally on the activities of its banks. The stronger and more effective the banks are, the more likely it is that the economic and financial systems may be more stable and effective. All this explains why the countries normally pay much attention to monitoring and regulating systems for their banks and financial institutions as a means to maintain and increase the efficiency of their banking and financial operations.

The increasing number of economic and financial activities and transactions in the world in general and in the Islamic community in particular highlights the need for more Islamic banking services. This is why the Islamic banks, in a highly competing market, do their best to provide their customers with high-quality Islamic banking services that help them manage their financial transactions in a Shariah-compliant way.

The Saudi British Bank (SABB) is one of the banks that offer such Islamic banking services. In 2001, the Bank opened a new section, Amanah, to provide services and products compatible with Shariah standards under the supervision of an independent Shariah Committee. In 2012, the name of this section has been changed to "Islamic Financial Services".

SABB has a network consisting of 102 branches including 18 ladies' section branches. All SABB branches provide Islamic financial services. The bank provides Islamic financial services and solutions as well as treasury services for both personal and corporate customers.

For Personal Customers:

1. Personal finance based on the concept of Tawarruq and Murabahah

a) Tawarruq product (MAL)

MAL is a personal financing product based on Tawarruq. It is one of the sales types compatible with Shariah principles and approved by SABB Shari'ah Committee whereby the bank owns the metal purchased from the international metal market and then sells it to the customer at a fixed profit margin and the value thereof is payable over a maximum period of 5 years.

b) Murabahah product (SAHAM)

SAHAM is personal finance product based on Murabaha. It is one of the sales types compatible with Shariah principles and approved by Shariah Committee at SABB whereby the bank purchases Shariah compatible local shares from the Tadawul and then sells it to the customer at a fixed profit margin and the value thereof is payable over a maximum period of 5 years.

2. Real estate finance

Real Estate Finance is based on the concept of Ijarah with the promise to transfer ownership. It is a Shariah-compliant transaction whereby SABB purchases the house and then leases it to the customer with the promise to transfer ownership at monthly installment and finance period up to 25 years.

For Personal and Corporate Customers:

1. Murabahah commodity investment account:

Murabahah Commodity Investment Account is an alternative product for conventional fixed deposits product and it is an investment vehicle for customers wishing to gain attractive returns at low risks in short and medium terms.