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AAOIFI
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FOR ISLAMIC FINANCIAL INSTITUTIONS

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Foreword by AAOIFI Secretary General

Praise be to Allah, Lord of the Worlds, and Allah's blessings and peace be upon the noblest of Messengers, Prophet Muhammad, and upon his household and the companions, and those who follow their example with good conduct until the Day of Judgment.

It is of Allah's Grace that He bestowed on us the great religion of Islam, and made us the best Ummah raised up for mankind, one that is graced with the noblest of Prophets and Heavenly Books and religious codes. This comprehensive religious code encompassed and ordained all things beneficial to humankind in this life and in the Hereafter, and prohibited and banned all evils and vices, as made clear in the Noble Qur'an:

{“...Today, I have perfected your religion for you, and completed My favour upon you, and have granted Islam as a religion for you...”}.⁽¹⁾

One of the basic pillars of Islamic Faith is the belief in, and perseverance towards, the preservation of the well-being of people, and solid establishment of markets, trade, finances, and to distance all of which from prohibitions sanctioned in the Qur'an and the Sunnah; namely, Riba, Gharar, gambling, illegal appropriation of peoples' wealth, etc. This is also embodied in the keenness to observe prohibitions in the area of financial transactions and contracts, especially when it comes to honoring obligations, honesty and straightforwardness, mutual consent of contracting parties, and so on.

Based on this set of norms and values, the Islamic finance industry was established and has attained its current paramount status, as manifested in its growth at a pace greater than that of all other financial sectors. By so doing, it will hopefully be a boon for all peoples and nations of the world.

The cornerstone of the Islamic finance industry is, and will always be, the adherence to, and compliance with, the rules and principles of Shari'ah,

(1) [Al-Ma'idah (The Table): 3]

under the broader collective reasoning by prominent Shari'ah scholars and jurists, and based on evidences found in the Qur'an and the Sunnah, in an attempt to deduce Shari'ah rulings that fit current-day reality and practices.

In this regard, the volume of Shari'ah Standards has become the major compilation of contemporary Fiqh reasoning in the area of *Fiqh al-Mu'amalat* (Jurisprudence of Financial Transactions) around the globe. The standards cover a large array of Islamic financial contracts and products, including those pertaining to banking, Islamic insurance, investment banking, capital markets, financing, and so on.

These standards have acclaimed wide popularity within the global Islamic finance industry, and are deemed the most outstanding Shari'ah reference for this industry and its various stakeholders, including legislative bodies, regulatory authorities, and financial institutions, and other professional entities such as law firms, accounting and consultancy firms, in addition to universities, academic institutions and research centers and Fatwa issuing bodies.

Currently, AAOIFI Standards are officially adopted by a number of central banks and financial authorities on a mandatory basis or as guidance. Hence, these standards are viewed as a major hallmark for the Islamic finance industry and one of its principal accomplishments.

These standards would have not achieved such a prominence and outreach, with Allah's Grace and Guidance first and utmost, had there been no great efforts exerted by the Shari'ah scholars and Fuqaha and a host of experts and professionals, volunteering a great deal of their time towards this great cause.

The success of these standards can be attributed to a set of factors, primarily the thorough scholarly methodology (the due process) that AAOIFI follows in its efforts to develop and issue the standards. The development process is carried out through more than ten stages, commencing with the commissioning of consultants to prepare the exposure drafts. The exposure draft is then submitted to the respective Shari'ah Standards Committee which discusses and reviews it, and then forwards it to the Shari'ah Board to

further discuss and review it, coming up with the draft standard. The draft standard is then presented at a public hearing (one or more) where the Islamic finance institutions can discuss it with Fuqaha, experts and professionals hailing from these institutions in order to make certain the draft standard is meticulous and of high quality, covering all practical aspects and emerging practices faced by the industry practitioners. The remarks and comments presented at the public hearing will be discussed by the Shari'ah Board to introduce the changes it deemed suitable and finally adopt the standard. At this stage, the standard is presented to the drafting committee to edit its text for publication.

One of the major strengths of these standards is reflected in the collective efforts made by the Shari'ah Board which consists of 20 prominent Shari'ah scholars from around the world. This ensures globality and wide geographical outreach of these standards in addition to accounting for various localities, jurisdictions, applications and customary practices, etc. The standards also embody the scholarly background diversification among board members, as all major schools of Islamic Law are duly represented, and various specializations are taken into consideration in its formation (from judiciary to Fatwa issuing, consultancy, research, authorship, law, and economic and financial advisory, etc.).

These standards also pay special attention to noting down classical Fiqh compendiums across ages, in the area of financial transactions, selecting the most practical and convenient out of these references, and giving preponderance to specific rulings in the form of a classified and typified standard. Furthermore, the standards account for modern applications of Islamic financial contracts and products and relevant emerging matters. They also grant special consideration to the use of unified terminology and disambiguation of its different components and aspects: technical, legal, accounting, financial, etc. Moreover, the standards involve the process of deriving Shari'ah rulings to address all pertaining matters and to provide guidance to the process of differentiation between impermissible and permissible transactions and practices all in one neat, summarized compilation.

The Shari'ah Board has made incumbent upon itself, in view of the fast pace of development and change in the Islamic finance industry, to review

existing standards. It formed from amongst its members a special committee for that purpose. The committee reviews all remarks and comments raised by scholars and experts on the form and substance of the standards. The reviews, in a bid to address the industry's requirements as to emerging matters, have resulted in three classes of standards: (I) Standards whose items and paragraphs were updated to remove ambiguity and clarify their meanings and the rulings embedded therein, or to present more precise presentation of content and so on. (II) Standards to which new paragraphs were added or existing paragraphs were merged or omitted, so that the general structure of the standard is maintained. (III) Standards which the board deemed in need of a new preparation and development, in order to account for the sizable emerging matters and changes relating to the topic of the standard such as the Shari'ah Standards on Sukuk, Debit Card, Charge Card and Credit Card, and so on. The development process for such standards has commenced and is under way.

The new version of AAOIFI Shari'ah Standards has included a number of reviewed and revised standards (of types 1 and 2, as mentioned above). These standards are labeled with a "Revised Standard" designation.

We are ever thankful to Allah that issuance of the new version in its elegant layout has been completed both in hardcopy and digital formats. A total of 15 new Shari'ah standards have been translated and added to the English volume. As such, all Shari'ah standards, included in this edition, have been issued both in Arabic and English. New standards are also under preparation and are currently at different stages of the due process.

The newly translated standards that have been added to this edition went through three extensive stages in implementation of proper quality control measures. The first stage constituted institutional efforts made by the International Shari'ah Research Academy for Islamic Finance (ISRA) and the Islamic Development Bank (IDB). The second stage involved revision by a legal expert (lawyer) who examined the translation from the angle of accuracy and faithfulness to the original text and legal vocabulary. Finally, in the third stage, the Translation Committee, consisting of the Honorable Chairman of the Shari'ah Board and four esteemed members, edited and

was presented by the Islamic Development Bank during the annual meeting of its board of governors in Istanbul in March 1987. Thereafter, a number of committees were formed to examine the appropriate methods of preparing accounting standards for Islamic financial institutions. These committees produced several research studies and reports.⁽¹⁾

Since its establishment in 1411 A.H., corresponding to 1991 A.D. and until 1415 A.H., corresponding to 1995 A.D., the organizational structure of AAOIFI comprised the Supervisory Committee which consisted of seventeen members, the Financial Accounting Standards Board which consisted of twenty one members, an Executive Committee appointed from within the members of the Standards Board, and a Shari'ah Committee of four members.

After four years of work, the Supervisory Committee decided to form a review committee to look into the statute of AAOIFI and its organizational structure. The amendments that were later introduced in the statute, which were approved by the Supervisory Committee, included the renaming of the Organization and the changing of its organizational structure. The revised structure consisted of a General Assembly, a Board of Trustees (which replaced the supervisory committee), an Accounting and Auditing Standards Board (which replaced the former board that was confined to accounting standards only), an Executive Committee, a Shari'ah Board and a General Secretariat to be headed by a Secretary-General.

The amendment of the statute also included changing the method of financing AAOIFI. In the past, AAOIFI was financed by contributions paid by the founding members (Islamic Development Bank, Dar Al-Maal Al-Islami Group, Al Rajhi Banking & Investment Corporation, Dallah Al Baraka and Kuwait Finance House). The revised statute calls for the establishment of a Waqf (endowment) and charity fund to be financed from membership fee that is paid only once by institutions joining AAOIFI. The proceeds from this fund, the annual subscription fees, grants, donations, bequests and others are the sources from which AAOIFI funds its activities.

(1) These studies and reports are compiled in five volumes and were lodged in the library of the Islamic Research and Training Institute of the Islamic Development Bank in Jeddah - Saudi Arabia under serial no. (332/121021).

The powers of the Board of Trustees include, among others, the following:

1. Appointment of members of AAOIFI's Boards and termination of their membership, in accordance with the provisions of the statute.
2. Arrangement of sources of finance for AAOIFI and investing those resources.
3. Appointment of two members from amongst the members of the Board of Trustees to the Executive Committee.
4. Appointment of the Secretary-General.

Notwithstanding the provisions of the statute concerning the Board of Trustees' powers and authorities, neither the Board of Trustees nor any of its sub-committees including the Executive Committee, has the right to interfere directly or indirectly in the work of the other Boards of AAOIFI or influence them in any manner whatsoever.

c) Executive Committee

The Executive Committee is composed of five members: The Chairman and one member from of the Board of Trustees, the Secretary General, the Chairman of the Accounting and Auditing Standards Board and the Chairman of the Shari'ah Board. The Executive Committee has the power to discuss, among other things, the work plan, the annual budget, financial statements, and the report of the external auditor. The Executive Committee also has the power to approve the employment bylaws and financial regulations of AAOIFI. The Executive Committee meets at least twice at the request of the Secretary-General or as and when required at the request of either its Chairman or the Secretary-General.

d) General Assembly

The General Assembly is composed of all founding and associate members, members representing regulatory and supervisory authorities, observer members and supporting members. Observer and supporting members have the right to participate in the meetings of the General Assembly but without a right to vote. The General Assembly is the supreme authority and convenes at least once a year.

e) Shari'ah Board

The Shari'ah Board is composed of not more than twenty members to be appointed by the Board of Trustees for a four-year term from among Fiqh scholars who represent Shari'ah Supervisory Boards in the Islamic financial institutions that are members of AAOIFI, and Shari'ah supervisory boards in central banks, in addition to the Secretary General.

The powers of the Shari'ah Board include, among others, the following:

1. Achieving harmonization and convergence in the concepts and application among the Shari'ah Supervisory Boards of Islamic financial institutions to avoid contradiction or inconsistency between the Fatwas and applications by these institutions, thereby providing a pro-active role for the Shari'ah Supervisory Boards of Islamic financial institutions and central banks.
2. Helping in the development of Shari'ah approved instruments, thereby enabling Islamic financial institutions to cope with the developments taking place in instruments and formulas in fields of finance, investment and other banking services.
3. Examining any inquiries referred to the Shari'ah Board from Islamic financial institutions or from their Shari'ah Supervisory Boards, either to give the Shari'ah opinion in matters requiring collective Ijtihad (reasoning), or to settle divergent points of view, or to act as an arbitrator.
4. Reviewing the standards which AAOIFI issues in accounting, auditing and code of ethics and related statements throughout the various stages of the due process, to ensure that these issues are in compliance with the rules and principles of Islamic Shari'ah.

f) Accounting and Auditing Standards Board

The Standards Board is composed of twenty part-time members who are appointed by the Board of Trustees for a four-year term, in addition to the Secretary General. Members of the Standards Board represent the following various categories: Regulatory and supervisory bodies, Islamic financial institutions, Shari'ah Supervisory Boards, university professors, organizations and associations responsible for regulating the accounting

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Appendix (B)

The Shari'ah Basis for the Standard

Default on the Part of a Debtor

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

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

Litigation Expenses

A defaulting debtor must bear the litigation expenses and other expenses relating to his default in payment as he is the cause of the expenses.⁽⁸⁾

Disposal of a Mortgaged Asset

It is permissible for the creditor to demand the selling of a mortgaged asset and other properties belonging to a debtor which are in his possession for the purpose of liquidation and recovery of the debt. Furthermore, it is permissible for the creditor to obtain a mandate from the debtor to sell the mortgaged assets or other properties of the debtor, because such disposal is permissible for the creditor, and such a practice would speed up the procedures for disposing of the charged asset.⁽⁹⁾

Maturity of Instalments in the Case of Instalment Credit

It is permissible for the creditor to impose the condition that, if the debtor is late in paying one instalment, all the instalments become due. To this effect, there is a decision by the International Islamic Academy of Fiqh, the text of which reads as follows: "It is permissible for a seller on deferred credit terms sale to impose the condition that instalments become due before their original due date in case of the delay of the debtor in paying some of the instalments, so long as the debtor consented to this condition when the contract was agreed".⁽¹⁰⁾ Such a condition would be valid, as there is no Shari'ah text to the contrary, and it serves a lawful interest of the creditor.⁽¹¹⁾ Giving prior notice to the debtor before giving effect to such

(8) Some of the jurists have stated this such as Ibn Taymiyyah in "*Al-Ikhtiyarat*" and in "*Mukhtasar Al-Fatawa*" (P. 346), Al-Mawardi in "*Al-Insaf*" and Sheikh Muhammad Ibn Ibrahim Al Al-Shaykh (see: Paper by Sheikh Ibn Mani' in the Fourth Fiqh Conference (pp. 226-227), organized by Kuwait Finance House 1416 A.H./1995 A.D.

(9) "*Al-Rawd Al-Murbi*", (P. 74), 2nd edition, Dar Al-Turath, Cairo.

(10) International Islamic Fiqh Academy Resolution No. (51); "*Majallat Majma' Al-Fiqh Al-Islami*" No. 6 [1: 193] and No. 7 [2: 9]. This has been reinforced by the Resolution No. 64 (2/7); see: "*Majallat Jami'at Al-Malik 'Abd Al-'Aziz*", Al-Iqtisad Al-Islami, (P. 89).

(11) Ibn Abidin says; "If one says, I have invalidated the deferred period and I have abandoned it, the debt becomes due on the spot": "*Hashiyat Ibn Abidin*" [5: 157], Dar Al-Fikr edition, Beirut, 1399 A.H./1979 A.D. The Shari'ah Supervisory Council of the Kuwait Finance House has supported this in its Fatwa No. (542). "*Al-Fatawa Al-Shar'iyyah Fi Al-Masa'il Al-Iqtisadiyyah*", Kuwait Finance House, [4: 18].

a condition is merely of the nature of a reminder, so as to provide him with reasonable time for payment.

The Right to Repossess a Sold Asset

If an asset sold by Murabahah or another sales contract is still available to the seller, and the purchaser has defaulted in the payment of the price, and subsequently has become bankrupt, then the seller is entitled to repossess the sold asset instead of initiating legal proceedings to obtain a bankruptcy order. This judgement is based on the report of Abu Hurayrah (may Allah be pleased with him) that the Prophet (prayers and peace of Allah be upon him) said: If one party has sold an asset and the other party (the purchaser) has become bankrupt, and the former party has managed to retain the asset, then he is more qualified to take possession of the asset in preference to the other creditors.⁽¹²⁾

A Commitment on the Part of the Debtor to Make a Donation in Case of Default

The permissibility of stipulating a condition, whereby the debtor in case of default is obliged to donate a sum of money (in addition to the amount of the debt) to be spent by the creditor (the Institution) on charitable causes, is because this has been considered as an instance of the commitment to make a donation, which is well established in the Maliki school of law. This is the opinion of Abu Abdullah Ibn Nafi' and Muhammad Ibn Ibrahim Ibn Dinar, two Maliki jurists.⁽¹³⁾

Guarantor

A guarantor is liable for anything for which the debtor whose debt is guaranteed is liable, because standing as a surety adds one obligation to another with respect to the liability. This is in line with the Quranic verse expressing the statement of Prophet Yusuf (peace be upon him) saying: **{“... and I will be a guarantor to it”}**.⁽¹⁴⁾ Also, the Prophet (peace be upon

(12) This Hadith has been related by Al-Bukhari in his *“Sahih”* [2: 846]; and Muslim in his *“Sahih”* [10: 221]. Also, see: *“Al-Muhadhdhab”* by Al-Shirazi [3: 253], Dar Al-Qalam edition, Damascus 1417 A.H./1996 A.D.

(13) See the book entitled: *“Tahrir Al-Kalam Fi Masa'il Al-Iltizam”* by Al-Hattab and the legal opinions of the Fourth Fiqh Conference organized by the Kuwait Finance House.

(14) [Yusuf (Joseph): 72].

is the practice of Umar Ibn Al-Khattab (may Allah be pleased with him) in the presence of some companions of the Prophet (peace be upon him), which has been permitted by Imam Ahmad. A resolution has been issued in connection with the permissibility of 'Arboun (Earnest Money) by the International Islamic Fiqh Academy.⁽¹⁹⁾

Priority right of recovery and the right to follow up

The basis for the permissibility of the priority of certain rights, such as those of liquidators, is that these rights are considerations that are determined by the judiciary on the basis of public interest. The basis for giving priority to a person whose assets per se have contributed to the increase of the bankrupt's assets, and have been located and identified, is the Hadith of the Prophet (peace be upon him): *"If one sells a commodity, and the owner thereof becomes bankrupt, and then he finds it without being altered, he has more right over it than the other creditors."*⁽²⁰⁾ A resolution in connection with the permissibility of preference was issued by the Second Fiqh Seminar hosted by Kuwait Finance House, based on a number of Fiqh rulings determining certain preferences that include priority in the recovery of debts. The right of following up the subject of a mortgage is based on the fact that the aim of the mortgage is to facilitate recovery of the amount of the debt and leaving the debtor without a right of follow-up will defeat this objective.

(19) Resolution No. 72 (3/8) in respect of 'Arboun (Earnest Money).

(20) Related by Al-Bukhari and Muslim with different texts as follows: *"If one finds his property without being altered in the possession of a bankrupt, he has more right over it than the other creditors"*: *"Sahih Al-Bukhari"* (H: 2402); and *"Sahih Muslim"* (H: 1559).

- 3/4 Formation of a Shari'ah supervisory board and an internal Shari'ah compliance department in accordance with the Governance Standards issued by Accounting and Auditing Organization for Islamic Financial Institutions.
- 3/5 Reformatting or designing standard contracts or specimens or exemplars of documents that comply with Shari'ah rules and principles.
- 3/6 Opening accounts with local or international Islamic banks and revamping of the accounts that are maintained with local or corresponding conventional banks [see, item 4 (b)]. Any dealings with conventional banks must be limited to the magnitude of the need to do so.
- 3/7 Preparing a special programme for preparing personnel and training them to deal with the application of Islamic banking practices.
- 3/8 Taking necessary measures for the implementation of accounting, auditing, governance, and ethics standards issued by Accounting and Auditing Organization for Islamic Financial Institutions.

4. Dealings with Banks

- 4/1 Exerting all possible efforts to adapt the ways of dealing with central banks regarding deposits, liquidity needs or otherwise in a way that does not conflict with the rules of Shari'ah, especially rules that govern Riba transactions. The possible alternatives to the reserve amount required by law include, among others, depositing receivables represented by commercial paper to be paid later by customers instead of accepting the freezing of the cash account. The bank can also finance government projects using Islamic instruments. Among the possible alternatives for the purpose of set-off is for the bank to maintain current accounts that accrue no interest or disposing of the interest earned, if that is impossible, and adapting the ways of dealing with the central bank for acquiring liquidity, for example, by the opening of investment accounts for the central bank.
- 4/2 Revamping the transactions with conventional banks on the basis of Riba free transactions and the application of instruments acceptable by Shari'ah.

saying: *"I will preferably take it at the acquisition price"*. The majority of scholars agreed, in principle, on the permissibility of Murabahah.

Promise from the Purchase Orderer

- The basis for the permissibility of responding to the application of the customer that the Institution buys the commodity from a particular supplier is because such a demand will not affect the acquisition of the commodity by the Institution, especially in view of the fact that this demand is not binding. The Institution is entitled to acquire the commodity from another supplier provided the commodity complies with the desired specification. The customer may be forced to fulfil his obligation on the basis of general sources of the Qur'an and Sunnah that require fulfilment of obligation and undertaking. The International Fiqh Academy has issued a resolution endorsing a unilateral binding promise.⁽⁵⁾ The same was adopted in a fatwa for Kuwait Finance House,⁽⁶⁾ Qatar Islamic Bank,⁽⁷⁾ and others.
- The basis for allowing price quotations be submitted in the name of customer is because such an act has no contractual effect if there is no acceptance by the customer. The basis why it is preferred that the quotation be submitted in the name of the Institution, is to avoid confusion and this is what was endorsed by the Fatwas of Qatar Islamic Bank,⁽⁸⁾ and Kuwait Finance House.⁽⁹⁾
- The basis for not allowing a Murabahah deal when the customer accepts the deal directly from the supplier is because, by this, a sale contract has taken place between the customer and the supplier in which case the commodity enters into ownership of the customer. This ruling will not be affected whether or not the customer has paid the price. This is because payment is not a condition for the permissibility and conclusion of a contract as payment of the price is but a consequence of a contract and is not principal requirement or a condition for regarding a contract valid.

(5) International Fiqh Academy Resolution No. 40-41 (2/5 and 3/5).

(6) Fatwa No. (49).

(7) Fatwa No. (8).

(8) Fatwa No. (35).

(9) Fatwa No. (87).

- The basis for the requirement that there must not be any contractual commitment between the customer and the supplier is to safeguard against the contract being a mere interest-based financing. Therefore, the lack of any commitment between the customer and the supplier is a basic condition for the permissibility of executing a Murabahah by the Institution.
- The basis for the requirement that the customer must not have any (business) connection with the supplier is to avoid involving in a 'Inah (sell and buy back) transaction that is prohibited by Shari'ah.
- The basis for the permissibility that the supplier may be a relative of the customer or a husband or wife to the customer is because both parties have independent legal liability unless it has come to be that they are involved in a 'Inah transaction, in which case the transaction is prohibited. This is to defeat a potential intentional arrangement to evade formalities of the transaction. The Fatwa of Kuwait Finance House supports this.⁽¹⁰⁾
- The basis for not allowing a partner to promise to buy the shares of another partner on a Murabahah basis is because this will lead to the buyer guaranteeing the share of other partner, which is Riba.
- The basis for not allowing dealings in gold, silver and currencies on deferred Murabahah basis is the saying of the Prophet, peace be upon him, in respect to exchange of gold with silver that such exchange take place "*hand to hand*";⁽¹¹⁾ i.e., without delay in delivery, and the rules of currencies are subsumed under the ruling for gold and silver. This ruling is endorsed by the resolution of the International Fiqh Academy.⁽¹²⁾
- The basis for the prohibition of Murabahah tradable securities or refinancing of a Murabahah transaction is because these fall under the heading of sale of debt that is prohibited by Shari'ah.
- The basis for not allowing a bilateral binding promise is because it amounts to a contract prior to acquisition of the item to be sold. The International Fiqh Academy has issued a resolution in this respect.⁽¹³⁾
- The basis for the permissibility of the agreement to amend the terms of the promise is because a promise is not a contract and as such the amendment

(10) Fatwa No. (55).

(11) The Hadith has been related by Muslim in his "*Sahih*".

(12) International Fiqh Academy Resolution No. 63 (1/7).

(13) International Fiqh Academy Resolution No. 41(3/5).

of the profit margin and the duration will not amount to rescheduling of debt which is prohibited by Shari'ah.

- The basis for using options when buying on Murabahah is the case of Hibban Ibn Munqidh when the Prophet (peace be upon him), said to him: *"If you buy, a condition that there is no cheating and that you have a three day period for any of the goods bought. If you are satisfied, then keep it and if you are not satisfied, return it to the buyer."*⁽¹⁴⁾ The ruling on the application of option in Murabahah is endorsed by a resolution issued during the second Fiqh Forum organised by Kuwait Finance House.
- The basis for the impermissibility of a commitment fee is because such a fee is in exchange for the right to contract, which is a mere intention and wish that is not a subject of exchange.
- The basis for the impermissibility of a facility commission is because it is not allowed to receive commission in the event of giving out a loan facility itself. It is therefore a logical conclusion to disallow commission for a mere readiness to finance the customer on a deferred payment basis.
- The basis for allowing that the expenses of preparing the document of contracts between the Institution and the customer be borne by the two parties is because both parties will equally benefit from this, and moreover there is no any impermissible act involved. The basis for the permissibility that these expenses may be borne by one of the parties is because this is a form of condition that is permissible.
- The basis for the permissibility of the customer guaranteeing the good performance of the supplier is because this guarantee secures rights and does not adversely affect any rules of the Murabahah transaction.
- The basis for not allowing that the customer guarantee the risk of transportation of the goods is because the safety of the goods is the responsibility of the owner and the customer is not the owner. Hence, the owner must bear the risk since the right to profit is associated with bearing risk.
- The basis for the permissibility of *Hamish Jiddiyyah* (security deposit) is because it is a form of guarantee for any financial damage that may occur.
- The basis for the permissibility of obtaining the earnest money to secure performance is the practice of Umar Ibn Al-Khattab (may Allah be pleased

(14) The Hadith has been related by Ibn Majah, *"Sunan Ibn Majah"* [2: 789].

is the opinion of Abu Abdullah Ibn Nafi' and Muhammad Ibn Ibrahim Ibn Dinar, among the Maliki jurists.⁽²²⁾

- The basis for the prohibition of additional payment over the principal debt in consideration for extension of time is because such action is a pre-Islamic form of Riba.
- The basis for the permissibility of discount or rebate for earlier payment is because discount for early payment is a form of settlement between the creditor and the debtor to pay less than the amount of the debt. This is among the settlement that are endorsed by Shari'ah as stated in the case of Ubay Ibn Ka'b (may Allah be pleased with him) and his debtor where the Prophet (peace be upon him) suggested to him in words: *"write off a portion of your debt."*⁽²³⁾ The International Islamic Fiqh Academy has issued a resolution in support of this rule.⁽²⁴⁾
- The basis of the permissibility of payment of debt in another currency is that this would entail the settlement of the debt by discharging it. This does not involve any prohibited transaction pertaining to debts either with regard to sale or purchase.

As for some of the forms mentioned in the standard, there are texts to support them, inter alia, the Hadith reported on the authority of Ibn Umar (may Allah be pleased with him) who said: "I have met the Prophet (peace be upon him) at the house of Hafsa (may Allah be pleased with her), and I said to him: 'O Prophet of Allah, I would like to ask you: 'I sell a camel in Al-Baqi' for a price quoted in dinar but I take dirham, and I sell for a price quoted in dirham but I take dinars, I take this from this and I give this from this.' The Prophet (peace be upon him) replied: *'There is no objection to your taking the other currency based on the price of the day, provided you do not leave each other with something remaining owed as a debt between you.'*"⁽²⁵⁾ Some of the forms in the standard are a kind of set-off and this is permissible.

(22) See the book entitled: *"Tahrir Al-Kalam Fi Masa'il Al-Iltizam"* by Al-Hattab. This rule has been endorsed by the resolutions and recommendations of the Fourth Fiqh Forum organized by the Kuwait Finance House.

(23) The Hadith has been related by Al-Bukhari: *"Sahih Al-Bukhari"* [1: 179] and [2: 965].

(24) The International Islamic Fiqh Academy Resolution No. 64 (7/2).

(25) Related by Abu Dawud, Al-Tirmidhi, Al-Nassa'i, Ibn Majah and Al-Hakim, who deemed it a sound Hadith. Al-Dhahabi agreed with Al-Hakim. It was also narrated without a chain of narrators, quoting only Ibn Umar: *"Al-Talkhis Al-Habir"* [3: 26].

Appendix (E)

Definitions

Murabahah

It is the sale of a commodity by an institution to its customer (the purchase orderer) as per the purchasing price/cost with a defined and agreed profit mark-up (as set out in the promise/*Wa'd*), in which case it is called a banking Murabahah. The banking Murabahah involves deferred payment terms, but such deferred payment is not one of the essential conditions of such transaction, as there is also a Murabahah arranged with no deferral of payment. In this case, the seller only receives a mark-up that only includes the profit for a spot sale and not the extra charge it would, otherwise, receive for deferral of payment.

Commitment Fee

A commitment fee is the percentage or amount which the Institution takes from the customer to start processing the transaction even though a sale contract may not be concluded).

'Arboun

The term 'Arboun means an amount of money that the customer as purchase orderer pays to the Institution after concluding the Murabahah sale, with the provision that if the sale is completed during a prescribed period, the amount will be counted as part of the price. If the customer fails to execute the Murabahah sale, then the Institution may retain the whole amount.

Syndicated Financing

A syndicated financing is a partnership relationship for financing a particular project which two or more parties has interest to finance. They will distribute the profit or revenue as per agreement. In other words, syndicated financing is the acceptance of a number of companies (financial Institutions) to enter into a joint investment transaction through one of the permissible investment instruments with an understanding that one of the

on agreement, choose to pay before time and relinquish the deferral of the date of payment entirely. The lessee may also agree to a stipulation that bases acceleration of payment on the event of default in payment.

- The basis of the prohibition of increasing the amount of lease receivables in exchange for a deferral of payment is because this is a form of Riba.
- The basis for the permissibility of stipulating that a solvent debtor should undertake to make a payment to charity in case of default is that this is similar to an undertaking to make a donation that is approved by the Maliki scholars, notably Abdullah Ibn Nafi' and Muhammad Ibn Ibrahim Ibn Dinar.⁽²⁰⁾

Changes to the Ijarah Contract

- The basis for allowing the lessor to sell the leased asset to a third party without the consent of the lessee is that the lessor owns the asset and is acting within the limits of his ownership without affecting the right of the lessee that is materialised in the usufruct. If the Ijarah expires, enabling the buyer to take possession of the asset is sufficient to discharge the seller from any responsibility as to delivery in which case the buyer will own the asset excluding the right of the lessee to the usufruct which is attached to the asset even if the ownership is transferred. The Shari'ah Supervisory Board of Al Rajhi Banking and Investment Corp.,⁽²¹⁾ and the Shari'ah Supervisory Board of the Jordan Islamic Bank⁽²²⁾ have issued a resolution in support of this ruling.
- The basis for the termination of the lease contract due to a total destruction of the leased asset is that the rent is in consideration of the benefit of the leased asset and if the latter is destroyed, there is no justification for the payment of the rental.
- The basis for the entitlement of the lessor to the rentals even though the lessee returns the leased asset to the owner or stops using it is that Ijarah is a binding contract that cannot be terminated unilaterally by the lessee.

(20) International Islamic Fiqh Academy Resolution No. 13 (1/3).

(21) See: Al-Hattab, "*Tahrir Al-Kalam Fi Masa'il Al-Iltizam*" (pp. 170). This view appeared in the Fatwas of Kuwait Finance House.

(22) Resolution of the Shari'ah Board of Al Rajhi Banking and Investment Corp. No. (11).

- The basis for the permissibility of terminating the lease contract in case of intervening contingencies or force majeure is that there is a pressing need which calls for this. This is because if the contract were to be binding in spite of such contingencies, then a person with a valid excuse may incur loss that was not a result of a contract. The Shari'ah Supervisory Board of the Kuwait Finance House⁽²³⁾ and the unified Shari'ah Supervisory Board of Al Baraka⁽²⁴⁾ have issued a supporting Fatwa in this regard.
- The basis for the permissibility that the lessor may stipulate that an Ijarah contract be terminated due to non-payment of rental by the lessee is that contractual stipulations are primarily valid and enforceable. This stipulation does not legalise impermissible acts or invalidate permissible acts. Therefore, the permissibility of this stipulation comes under the prophetic Hadith stating: *"Muslims are bound by the conditions they made except a condition that legalises impermissible act or invalidates permissible act"*.⁽²⁵⁾
- The basis of the rule that Ijarah does not terminate with the death of either party thereto is that the subject-matter of the contract is the asset and as long as the asset is available the Ijarah contract remains unaffected. The basis for the right of the lessee's heirs to terminate the Ijarah if they can prove that the contract has become too onerous for their resources is to avoid inflicting damage on the heirs. This exceptional ruling is taken from the Maliki School of law since it serves the interests of the lessee. The heirs of the lessor may not terminate the Ijarah in the event of the death of the lessor because there is no potential damage to them, as they will receive the rentals for the remainder of the term of the contract.

Transfer of the Ownership in the Leased Asset in Ijarah Muntahia Bittamleek

- The basis of the rule that the documents of the lessor's promise to sell and the methods of transfer of ownership be separated from the Ijarah contract is to ensure that the obligations and liabilities are not

(23) Fatwas of the Shari'ah Board of Jordan Islamic Bank No. (18).

(24) Fatwa No. (233) and (253).

(25) Fatwa No. (9/9) of the Unified Shari'ah Board.

- The basis for the permissibility of offering a difference in the price for an Istisna'a contract relating to a difference in the date of delivery is that Istisna'a is analogous to an Ijarah contract. The fuqaha have stated that it is permissible to give a labourer in Ijarah an option regarding wages depending on whether the worker finishes the work in one day or in two days. The hirer may say two dinars if the worker finishes in one day or one dinar if he finishes in two days. Istisna'a is similar to this. There is a resolution issued during the Al Baraka Annual Forum supporting this ruling.⁽⁶⁾
- The basis for not allowing a contract of Istisna'a to be drawn up on the basis of a Murabahah sale, for example, by determining the price of Istisna'a on a cost- plus basis, is because the subject-matter of Murabahah should be something already in existence, the cost of which is known and which is owned prior to the conclusion of a Murabahah sale. An Istisna'a contract, on the other hand, is concluded prior to ownership of the subject-matter, because (I) it is a sale based on a specification giving rise to a future obligation, and (II) the actual cost will be known only after the completion of the work, and, (III) the price in a contract of Istisna'a should be known when the contract is concluded.
- The basis for deciding that the Institution is not obliged to give a discount when the actual costs of the manufacture are substantially greater than the estimated costs or when it secures a discount from the manufacturer is because the Istisna'a contract and Parallel Istisna'a contract are independent in terms of obligation and effects. The Shari'ah Supervisory Board of the Kuwait Finance House has issued a Fatwa in this respect.⁽⁷⁾
- The basis for the permissibility of the Institution acquiring all necessary guarantees is that these guarantees secure its rights and this request does affect the purpose of a contract.

Changes to an Istisna'a Contract

- The basis for the impermissibility of extending the date of payment in return for consideration is because that is Riba.

(6) See: Resolution No. (13/7).

(7) *"Al-Fatawa Al-Shar'iyyah Fi Al-Masa'il Al-Iqtisadiyyah"*, Fatwa No. (447).

- The basis for the permissibility of discounting for unconditional earlier payment is the saying of the Prophet (peace be upon him) in the case of Ubay Ibn Ka'b (may Allah be pleased with him) and his debtor: "*Write off a portion of your debt*".⁽⁸⁾ The International Islamic Fiqh Academy has issued a resolution in support of this rule.⁽⁹⁾
- The ultimate purchaser (the owner of the land) is not entitled to acquire ownership of incomplete building structures or utilities that are already in place without giving consideration to the builder if the builder is unable to continue to discharge his obligation. The basis for this is that the construction was initiated by the builder at the request of the ultimate purchaser and such a request is stronger than a mere permission to build on the latter's land.
- The basis for the permissibility of a contract of Istisna'a including a clause that the manufacturer is not liable for extra expenses that result from additional conditions inserted into the contract at a later date as a result of directives of the relevant authorities, is because this condition is agreed upon by the parties and does not affect the purpose of Istisna'a contract. The Shari'ah Supervisory Board of Kuwait Finance House has issued a Fatwa in respect to this ruling.⁽¹⁰⁾
- The basis for the permissibility of a penalty clause in an Istisna'a contract is that such a clause is in the interest of the contract and because it is laid down in respect to an obligation regarding items that must be produced and delivered in the future and not in respect to monetary debt.

Supervision of the Execution of an Istisna'a Contract

The basis for the permissibility for the Institution, when acting as the ultimate purchaser, to appoint a technically experienced consulting firm and the permissibility for the Institution, when acting as the manufacturer, to appoint the ultimate purchaser as an agent is because agency is permissible and there is nothing against it in an Istisna'a contract provided it is done with the agreement of the parties.

(8) The Hadith has been related by Al-Bukhari in his "*Sahih*" [1: 179] and [2: 965].

(9) International Islamic Fiqh Academy Resolution No. 64 (7/2).

(10) See: Fatwa No. (251).

Diminishing Partnership

- The basis for saying that all the general rules for partnerships, especially the rules for 'Inan partnership, are applicable to diminishing partnerships is to safeguard this new form of partnership from becoming a mere interest-based financing transaction in which a client undertakes to pay another party for his finance in addition to a share in the partnership income.
- The basis for the impermissibility of one partner being responsible for the expenses of insurance or maintenance is that this condition is in conflict with the nature of the partnership contract.⁽³²⁾

(32) See: Fatwa No. (219) of the Fatwas of Kuwait Finance House.

3/6 Musharakah contract with the client to finance documentary credit for imported goods

- 3/6/1 In case the institution signs a partnership contract with the client to purchase goods prior to the opening of credit and before the client concludes a sale contract with the supplier, it is permissible to open the credit in the name of either partner. It is permissible for the institution, after receipt of the goods, to sell its share to a third party or to its partner through a spot or deferred payment Murabahah on the condition that the sale to the partner is not based on an earlier exchange of binding promises or stipulated in the Musharakah contract.
- 3/6/2 It is permissible for the institution to sign a partnership contract with the client in respect of goods purchased by the client on the condition that the institution does not sell its share to the client on a deferred payment basis.

3/7 General rules

- 3/7/1 If the credit transaction includes a provision that it is subject to the prevalent principles and practices that unify documentary credit, it is necessary to qualify such a statement with the stipulation that it will not violate Shari'ah rules and principles. It is preferable that the institution presents alternatives that could be agreed upon between the institution and the correspondent banks.

It is a requirement to explicitly state that a provision stipulating interest will not be acted upon, and also for trading activities that contravene the provisions of the Shari'ah. For valid substitutes. [see Shari'ah Standard No. (17) on Commercial Papers, items 5/2 and 5/3]

- 3/7/2 It is not permissible for the institution to discount accepted bills of exchange, i.e. to purchase these bills before maturity at less than their nominal value.

The members of the Board differed on this into those who prohibit them due to the cause indicated, and those who permit them -being in a majority with those permitting them disagreeing on the following points:

- a) That these contracts -prior to the ascertainment of the goods- do not involve delay in the two counter-values rather they amount to bilateral promises, which are agreements to sell and do not amount to sale itself.
- b) That they merely amount to extension of the session of the contract (*Majlis al-'Aqd*), with respect to the agreement, up to the time of ascertainment of the goods.
- c) That they do not amount to a delay in the two counter-values, but they are permitted on the basis of general need.
- d) That they are, *ab initio*, an exchange of a debt for a debt and this is permitted under the Shari'ah.
- e) That the contract preceding the opening of documentary credit amounts to a sale contingent upon the opening of credit.
- f) That these contracts do not involve delay in counter-values, because that is attained through a stipulation for delay, while there is no stipulation of delay in this case.

Commissions and Expenses in Documentary Credit

- The basis for the impermissibility of receiving compensation for guarantee for the aspect related to documentary credit is that a guarantee is preparatory to extending a loan, and this is not to be compensated. The four Fiqh schools are unanimous on the impermissibility of taking compensation for guarantee. This rule is endorsed by a resolution of the International Islamic Fiqh Academy,⁽⁸⁾ a ruling of the Shari'ah Supervisory Board of the Faysal Islamic Bank of Sudan,⁽⁹⁾ the Shari'ah Board of Al Rajhi Banking Corporation for Investment⁽¹⁰⁾ and a resolution of the Shari'ah Fatwa and Supervisory Board of the Kuwait Finance House.

(8) International Islamic Fiqh Academy Resolution No. 12 (12/2).

(9) Fatwa No. (14) of the Shari'ah Supervisory Board of the Faisal Islamic Bank, Sudan.

(10) Resolution No. (297) of the Fatwas of the Shari'ah Supervisory Board of Kuwait Finance House.

Seminar of the Kuwait Finance House (1995). This case also does not come under the Hadith stating that the Prophet (peace be upon him) prohibited involving in partnership with a Jew or a Christian unless purchase and sale take place by the hands of the Muslim.⁽⁴⁾ It is clear that the emphasis of prohibition here relates to avoidance of Riba and invalid contracts, and therefore, no justification for prohibition will remain if due preventive measures against prohibited practices are well catered for. Also, the viewpoint of the Shafi'i, Maliki, Hanbali and Hanafi Schools⁽⁵⁾ who advocate *Karahah* (disinclination towards the deal) does not include this case. The reason is that the Musharakah can avoid Shari'ah-banned practices by explicit reference to the firm commitment of the conventional Institution that leads the syndication to Shari'ah rulings in transactions, besides tightening the control and supervision of the Shari'ah boards of the participating Institutions throughout the various stages of the syndicated financing operation.

Preparatory Tasks and Commissions

- Permissibility of receiving commissions for performing preparatory tasks, originates from the fact that such tasks are beneficial to the partners and do not embark on any Shari'ah-impermissible practice. As regards the justification for the ruling that the commission can be equal to, less or more than the actual cost of providing the tasks, it is because the two parties are free to make what is known as a permissible condition, or resort to mutual consent. This same viewpoint was the Fiqhi opinion of the Al Baraka Seminar as well as the Fiqhi Seminar of the Kuwait Finance House (1995).⁽⁶⁾

(4) See: *"Al-Majmu' Sharh Al-Muhadhdhab"* [14: 93].

(5) Ibn Qudamah, *"Al-Mughni"* (Part 4); Al Nawawi, *"Al-Majmu'"* [13: 504]; Al-Buhuti, *"Sharh Muntaha Al-Iradat"* [2: 319]; *"Al-Mudawwanah"* [5: 70]; and Al-Kasani, *"Bada'i' Al-Sana'i'"* [6: 61].

(6) The text of the Fiqhi opinion of the Al Baraka Seminar is "The preparatory tasks performed by the bank that creates the operation entitles it to a remuneration which could be equal to, less or more than the actual cost of performing the tasks". The Fiqhi opinion of the Fourth Seminar of the Kuwait Finance House is "The preparatory tasks performed by the bank that initiates the operation entitles it to remuneration to be determined through mutual consent, whether the bank has been assigned the role of management or not."

Supervisory Boards of Dubai Islamic Bank, Kuwait Finance House, Qatar Islamic Bank and the Islamic Insurance Company – Jordan.⁽¹⁷⁾

- The rulings relating to the contract as such are based on the general principles of contracts in Islamic Shari'ah, which emphasize avoidance of fraud and deceit and the need to observe the time limits indicated in the contracts. Shari'ah rulings on compensation have also been resorted to in this connection, in addition to the Fatawa and resolutions issued by various forums such as the Islamic Fiqh Academy of the Muslim World League, the Supreme Council of Ulema of Saudi Arabia and the Shari'ah boards of Islamic banks and Islamic insurance companies.⁽¹⁸⁾
- The jurisdictions of the company are determined on the basis of its articles of association, the various documents that govern the contractual relationship, the general principles of contracts and conditions, insurance conventions, and some Fatawa of Shari'ah boards.
- The rules that regulate the relationship between the company and the policyholders are based on the articles of association, which consider this relationship as an agency contract (remunerated or free of charge) for the management of the insurance operations, and Mudarabah for the investment of the insurance assets.
- Indemnity is based on the general Shari'ah directives emphasizing the principle that "one should neither tolerate harm nor cause it to others"⁽¹⁹⁾ as well as the general principles and rules of Fiqh that advocate fair, and at the same time, non-obsessive indemnification for injury. Furthermore, inferences on indemnity could also be drawn from the cooperative nature of this donation-oriented contract, in addition to some Fatawa such as Fatwa No. (3) of the 10th Al Baraka Seminar on Islamic Economics, and the various Fatawa of the Shari'ah boards of Islamic banks and Islamic insurance companies.⁽²⁰⁾

(17) *"Fatawa Al-Ta'min"* (pp. 193–206).

(18) *ibid.*

(19) This Hadith has been related by Malik in *"Al-Muwatta'"*, *"Kitab Al-Aqdiyah"*; Ahmad in *"Musnad Al-Imam Ahmad"* [1: 313] and [5: 527]; and Ibn Majah in his *"Al-Hashiyah"* [2: 782].

(20) *"Fatawa Al-Ta'min"*, (P. 153).

tion to normal practice. A Fatwa in this regard has been issued by the Board of Fatwa and Shari'ah Supervision of the Kuwait Finance House.⁽²⁴⁾

- Permissibility for the employee to state a condition for termination of the contract when the pay is delayed is based on the fact that such condition is fair, and does not violate the rulings of the contract. The Prophet (peace be upon him) said: "*Muslims are at their conditions*".⁽²⁵⁾



(24) Fatwa No. (232) and No. (252).

(25) Reference has been referred to earlier.

3/2/5 Istisna'a

Istisna'a is a method through which the institutions provide finance to their clients. In this case the institution assumes the commitment of manufacturing the equipment or the good, or constructing the buildings or the different types of capital assets according to the specifications agreed upon. The institution which provides finance in this manner has the right to sign a Parallel Istisna'a contract with another party to manufacture the asset in question.

3/2/6 Salam

Salam is a method of financing which institutions use for extending finance to owners of farms and merchants who want to spend on their business as well as on their personal needs. Under this mode of financing the Institution has the right to arrange Salam with another party through a parallel Salam contract.

3/2/7 Other financing operations

Finance can also be extended to clients through other financing operations which include among others: *Qard Hasan*, customer overdraft balances, letters of guarantee and letters of credit.

4. Shari'ah Status of Offering Credit Facilities

The decision to offer a credit facility and the facility agreement are considered as means of mutual understanding and exchange of non-binding promises for entering into transactions. The Shari'ah status of actual utilization of the facilities depends on the type of contract to be used.

5. Shari'ah Rulings on Credit Facilities

5/1 It is impermissible to use any of the traditional facilities mentioned in item 3/1 if it involves interest or would lead to an interest-bearing loan as is the case in guarantees and uncovered credits, or it would result in deferment of one of the two transacted objects as is the case in currency exchange contracts. [see Shari'ah Standard No.

Appendix (B)

The Shari'ah Basis for the Standard

Shari'ah Basis for Charging a Fee for Preparation of the Credit Study

The credit study is a detailed study on the financial and credit position of the client so as to facilitate assessment of his credit worthiness and ability to honor commitments. According to Shari'ah, this task as such can constitute a remunerable service apart from the financing contract. The institution can even stipulate a condition that the study should be prepared by a third party. Charging the client for the credit study is also justified by the fact that the benefit from the study is shared between the financier and the financed party, rather than confined to the former only. The fee for the study should not necessarily be equal to the actual cost of its preparation, since it is a service which can be performed independently within the contract. Therefore, the credit agreement fee is considered as a fee payable for the effort exerted in preparation of the study as an independent service, irrespective of its results.

In this regard, the Shari'ah Board of Aayan Company for Leasing and Finance issued a Fatwa (Fatawa Aayan: 189), indicating permissibility of charging such fees. The text of that Fatwa runs as follows:

“When the clients of Aayan Company wish to sign with Aayan Company permissible investment or financing contracts through Mudarabah, Musharakah or any other mode of financing, and if Aayan Company, for that purpose, needs to conduct a study on the financial status of these clients and their legal eligibility for concluding such contracts, it is permissible for Aayan Company to sign special contracts with these clients so that Aayan Company prepares the required study. For preparation of the study, Aayan Company may charge a fee to be paid by the clients on the basis of

- The basis of permissibility of the two types of reinsurance is the various evidences of permissibility of insurance and the Fatwas issued by the 2nd Seminar of Al Baraka (Fatwa No. 2/9), the 10th Seminar of Al Baraka (Fatwa No. 10/3/5), and the Fatwas of the Shari'ah Supervisory Boards of Dubai Islamic Bank, Faisal Islamic Bank, Kuwait Finance House, Qatar Islamic Bank and the Islamic Insurance Company.⁽¹⁸⁾
- The basis of the rulings relating to the Islamic insurance and reinsurance contract is the general principles of contracts in the Islamic Shari'ah such as forbiddance of cheating and fraud, and necessity of commitment to the time specified for implementation of contracts. In addition to these general principles, the insurance and reinsurance contracts are also based on specific rulings pertaining to insurance coverage indicated by the Resolutions and Fatwas issued by the Islamic Fiqh Academy of the Muslim World League, the Supreme Council of Ulema and the Shari'ah Supervisory Boards of Islamic banks and Islamic insurance companies.⁽¹⁹⁾
- The jurisdictions of the company are based on its articles of association, the documents which regulate the contract, the general principles of contracts and conditions, insurance practices and the Fatwas issued by Shari'ah Supervisory Boards.⁽²⁰⁾
- The rulings that relate to regulation of the relationship between the company and the policyholders are based on the articles of association of the company which specify whether the contract is a fee-based agency or not, in addition to the Mudarabah contract regarding the reinsurance fund.
- The reinsurance coverage is based on the general texts affirming the Hadith which states: "*No harm and no reciprocal harm*"⁽²¹⁾ and the general rules and principles of Islamic Fiqh which stipulate that coverage should be for the actual harms and not at all for making a wealth out of it. The reinsurance coverage is also governed by the donative nature of the Islamic reinsurance contract and the Fatwas issued by competent bodies such as

(18) "*Fatawa Al-Ta'min*", (pp. 193 -206).

(19) Ibid.

(20) Ibid.

(21) This is a Hadith narrated by Malik in "*Al-Muwatta`*", *Kitab Al-Aqdiyah*, (P. 464); "*Musnad Ahmad*" [1: 313 and 5: 527]; and Ibn Majah in his "*Hashiyah*" [2: 784].

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.

For Corporate Customers:

1. Islamic cash line

Islamic Cash Line is a product approved by Shariah Committee at the Bank as the first alternative solution to the conventional overdraft. The product is structured by combining:

- a) Murabahah liquidity/Tawarruq.
- b) Mudarabah investment account.

2. Tawarruq

Tawarruq product provides companies with Shariah-compliant solutions for satisfying liquidity requirements for working capital or expansion projects. The product concept is based on the customer's purchase of metals owned by the bank on deferred payment including agreed profit margin. Upon ownership of the metals, the customer can authorize SABB TSY to sell the goods on his behalf and receive the proceeds accordingly.

3. Import documentary credits

Import Documentary Credit is a Shariah-compliant product based on Murabahah concept, i.e., selling at cost price plus profit. The bank, upon the customer's request, opens a D/C and purchases the goods from origin. Upon the bank's taking constructive possession of the goods as per documents (arrival of documents) or physical possession (arrival of goods), it sells the goods to the customer at cost price plus profit.

Treasury Services Include:

1. Islamic rate hedge against fluctuation of finance cost

Hedging against fluctuations of finance is a treasury tool used to limit or minimize the effects of interest rate/profit margin fluctuation, allowing companies to manage their floating rates obligations against fixed rate through SABB Hedge SWAP.

2. Promise to exchange

Promise to Exchange is an alternative Islamic solution to conventional options, which provides protection against the risk of adverse exchange