Shari'ah Standard No. (6)

Conversion of a Conventional Bank to an Islamic Bank

Contents

IN THE NAME OF ALLAH, THE ALL-MERCIFUL, THE MOST MERCIFUL

All praise be to Allah, the Lord of all the worlds, and blessings and peace be upon our master, Muhammad, and his household and all his companions

Preface

The aim of this standard is to explain procedures, mechanisms and treatments that are required for converting a conventional bank to an Islamic bank (bank/banks)[1] that observes the rules and principles of Shari'ah in its operations and financial relationships, and, at the same time, embraces the objectives and functions of Islamic banking services. The standard also includes an outline of significant Islamic banking activities that constitute alternatives to conventional banking practices that are in place prior to conversion.

(1) The word (Institution/Institutions) is used here to refer, in short, to Islamic financial institutions including Islamic Banks.

Statement of the Standard

1. Scope of the Standard

This standard covers fundamental mechanisms for converting a conventional bank to a bank that complies with Shari'ah rules and principles right after the decision to undertake immediate comprehensive conversion within a particular designated period that is announced, whether such a decision comes from within the bank or from outside the bank to be converted by outside parties interested in converting it. The standard covers the time frame required for the conversion, the effect of conversion on the methods used to solicit and receive deposits, and the method to be used to invest such deposits. The standard provides guidance on how to treat the receivables and liabilities realized by the bank prior to the conversion, whether or not such receivables and liabilities are received or paid. The standard includes a treatment of the prohibited assets that are in the possession of the bank before conversion and the appropriate ways of disposing of them.

The standard does not cover activities of the converting bank that are naturally permissible or the profit made by permissible means, as these are not the subject matter of the conversion. This is because there is no Shari'ah objection to the bank continuing such activities or employing them for its own benefit. The standard also does not cover activities of Islamic windows or departments or units in conventional banks.

2. Time Frame for the Conversion

2/1 It is necessary that all Shari'ah requirements be executed in the process of converting a conventional bank to a potential Islamic bank. It is also necessary that the Shari'ah rules and principles be observed in respect of all new transactions after conversion. In principle, the transactions that are concluded before the decision to convert must be ceased or disposed of immediately. It is not permissible to delay clearing out non-permissible transactions unless such delay becomes a necessity or a pressing need. Thus, the circumstances surrounding the conversion must be taken into consideration in order to avoid the risk of failure or a breakdown of the bank's operations, taking into account that the provisions of this standard will be applied to accommodate the situation.

2/2 If the bank did not decide on an immediate and comprehensive conversion as per item 2/1 and decided to adopt a gradual or partial conversion, then it is not regarded as a converted bank and may not be granted a licence as an Islamic bank unless the conversion process is completed. The shareholders are required to accelerate the process of conversion in order to free themselves from the sin of impermissible activities. This standard may be used as a guideline for identifying the steps of conversion.

2/3 The impermissible profits realised and transactions concluded during the period of conversion can be treated as per the explanation in items 8-11.

3. Necessary Measures for Conversion

3/1 For the success of the process of conversion, it is necessary that the bank set up all necessary procedures, create the required tools, explore alternatives to non-permissible financial practices, and train and promote the personnel required for proper implementation of the procedures of conversion.

3/2 The appropriate administrative arrangements must be in place, including changing the bank's operating license if required by the supervisory authorities, and amending the bank's by-laws (memorandum and articles of association) through the required procedures so that they include objectives and operational measures that are appropriate to Islamic banking. The by-laws must be cleansed from anything that contradicts the nature of Islamic banking.

3/3 Restructuring the organizational structure of the bank and its employment procedures, conditions and employee statutes to fit the situation of conversion.

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.

4/3 Intensifying transactions with Islamic financial Institutions through bilateral exchange of current or investment accounts and considerable cooperation in the areas of remittances, documentary credits and syndicated financing.

5. Providing Banking Services in Permissible Ways

In providing banking services, it is not permissible for the bank to receive interest as compensation for services rendered. It is a requirement that an Islamic alternative be worked out, such as treatment of uncovered documentary credits through Murabahah, Musharakah or Mudarabah in accordance with the rules of Shari'ah. It is not permissible to take a commission for providing a mere facility. However, the commission may be linked to expenses incurred for the execution of the credit facility accordingly.

6. Effect of Conversion on the Interest Based Receivables and Their Shari'ah Alternatives

6/1 All traces of conventional transactions whereby the bank originated monetary assets and is liable to pay interest for them must be liquidated. This is the rule whether such transactions involve individuals, banks or central banks. This liquidation includes, among others, the conditions relating to the deposits, preference shares, investment bonds and interest-based certificates that were issued by the bank before the decision for conversion. [see item 9]

6/2 The bank must confine itself to permissible operations for acquiring the necessary funds to operate or to meet its liabilities. Examples of such operations are:

6/2/1 The shareholders may increase their share capital in order to increase the bank's capital and provide a basis for attracting investment accounts and current accounts.

6/2/2 Issuance of Islamic certificates such as Mudarabah, Musharakah or Ijarah certificates within the parameters of Shari'ah.

6/2/3 Concluding Salam contracts whereby the bank acts in the capacity of a supplier, or Istisna'a contracts whereby the bank acts in the capacity of a manufacturer or builder with the condition that the contract price of the Istisna'a is paid to the bank in advance, although the deferment of payment of the price in Istisna'a is allowed by Shari'ah.

6/2/4 Concluding a sale-and leaseback deal by selling some of the assets of the bank for liquidity and leasing them back by means of an Ijarah contract. This transaction must take into account the Shari'ah Standards on Ijarah and Ijarah Muntahia Bittamleek whereby the contract of sale must be independent from the contract of lease, i.e. the two contracts must remain separate from each other.

6/2/5 Concluding Tawarruq deals in line with Shari'ah principles by buying a commodity on a deferred payment basis and selling it to a third party, other than the previous seller, for immediate payment.

6/3 If the capital of the bank has increased due to non-permissible transactions or the accumulation of reserves based on non-permissible transactions, then its treatment must be in accordance with the treatment of non-permissible receivables or other non-permissible assets in the possession of the bank as discussed below. [see items 8 and 10]

7. Effect of Conversion on Investments

7/1 All interest-based investment instruments must cease to be used and must be replaced by permissible investment instruments such as Mudarabah, all Shari'ah-nominate partnerships, diminishing Musharakah, sharecropping partnerships (agricultural, planting or irrigation partnership) or financing by way of deferred sales, Murabahah, Salam, Istisna'a, operating Ijarah, Ijarah Muntahia Bittamleek or other permissible financing and investment instruments.

7/2 All possible efforts must be exerted to terminate all interest-based loans that the bank has made before the decision to convert, whether such loans are medium-term or long-term facilities, followed by converting the principal amounts to financing instruments in accordance with the rules and principles of Shari'ah. If the bank is unable to terminate some of these loans, then the bank must dispose of the interest earned in the manner explained in item 10/2.

8. Treatment of the Bank's Non-Permissible Existing Receivables before the Decision to Convert

8/1 Non-permissible assets of the bank originated or acquired before the decision to convert

Starting from the financial period in which the bank decides to convert, the following must be done:

8/1/1 If a conventional bank is acquired with the intention to convert it to an Islamic bank, the new owners are not obliged to dispose of interest and impermissible earnings that have been earned before such acquisition.

8/1/2 If a conventional bank is converted by its existing shareholders into an Islamic bank, then the process of disposing of interest and impermissible earnings should be considered as commencing at the beginning of the financial period in which the conversion starts to take effect. However, for any impermissible earnings that have been distributed prior to conversion, it is necessary, on ethical grounds, for the shareholders and depositors to whom these earnings have been distributed to dispose of them personally. The bank is not bound to do so.

8/1/3 Revenues not yet received that are of doubtful permissibility are not subject to compulsory disposal, whether they were earned before or during the financial period in which the bank decides to convert. The same rule applies to revenues of doubtful permissibility that have been already received because of a belief that they are permissible on the basis of (I) an interpretation of a person who is qualified to perform *Ijtihad* on issues that are subject to personal juristic interpretation, (II) juristic position of an authoritative school of Shari'ah or (III) the opinion of some eminent and knowledgeable scholars.

8/1/4 If the bank has rights to prohibited non-monetary assets, it may receive them with the intent to destroy them. If the bank is entitled to receive consideration for supplying non-permissible assets or services, the bank may receive the consideration with the intent to donate it to charity. The same rule applies to any income that has been acquired from non-permissible assets during the period in which the bank decides to convert. In both cases, the customer should not be allowed to avoid paying the amount receivable or the consideration, otherwise such a customer would end up being entitled to two counter-values of the same transaction: the good or service supplied and the price payable for it.

8/1/5 If the bank is converted and it has, among its tangible assets, impermissible commodities, the bank is obliged to destroy them. If the bank has sold some of these commodities and is yet to receive the price thereof, the price must be received and be donated to charity.

8/1/6 If the property assets of the bank are locations designated for non-permissible activities, they should be changed to locations designated for permissible operations and services.

9. Treatment of Non-Permissible Liabilities before the Decision to Convert, Whether the Conversion Is Internal or External

9/1 Internal conversion

9/1/1 If the liabilities are in the form of payment of interest, the bank should employ all lawful means to avoid paying such interest. This rule does not apply to the principal amounts of debts or loans. The bank should not pay interest except on the basis of dire need.

9/1/2 If the liabilities are in the form of obligations to provide non-permissible services, then the bank is obliged to make every effort to terminate such liabilities, by refunding the consideration, even if it has to pay compensation for non-fulfilment of such obligations.

9/2 External conversion through acquisition of the bank by parties interested in converting it.

If the purchaser is capable of negotiating a deal that could exclude all non-permissible receivables (e.g. interest and non-permissible assets) from the acquisition deal in a way that will make the seller solely liable for non-permissible liabilities, then the Shari'ah requires that the purchaser do so. However, if the acquisition cannot be concluded unless all assets of the bank including the non-permissible assets and receivables are acquired, then the purchaser is required by Shari'ah to act as quickly as possible to dispose of non-permissible liabilities even if the purchaser has to suggest to the creditors of the bank an earlier repayment for a discount.

9/3 Treatments for impermissible mortgages

The shareholders must accelerate the redemption of all impermissible mortgages attached to the assets of the bank. In the case of external conversion, the buyer must stipulate that the seller replaces impermissible mortgages with permissible ones.

10. Disposal of Impermissible Earnings

10/1 All impermissible earnings acquired by the bank before conversion that need to be disposed of as per the rules in this standard must without delay be paid to charity, unless it is difficult to do so, for example, where complete disposal promptly will lead to the collapse of the bank or bankruptcy. In this case, the implementation of conversion can reasonably take place gradually.

10/2 Any interest and other non-permissible earnings should be channelled to charity and general public utilities. It is not permissible for the bank to use this money, directly or indirectly, for its own benefit. Examples of charitable channels include, among others, training people other than the staff of the bank, funding research, providing relief equipment, financial and technical assistance for Islamic countries or Islamic scientific, academic Institutions, schools, anything to do with spreading Islamic knowledge, and similar channels. The charity money must go to these channels in accordance with the resolutions of the Shari'ah Supervisory Board of the bank.

11. Zakah Obligation on the Bank before the Decision to Convert

When the conversion is initiated by outsiders who acquired the conventional bank for the purpose of converting it, then they are not obliged to make Zakah payment for the past financial periods because the Zakah for previous periods is the liability of the previous owners. The Zakah liability will start to exist for the new owners from the date of the decision to convert. For the purpose of discharging the responsibility to pay Zakah, the owners may apply the Shari'ah Standard No. (35) on Zakah. However, if the decision to convert was made by the shareholders and the Zakah was not paid for the previous financial periods, the shareholders are obliged to pay Zakah for these periods. They must take into account that they are obliged to pay Zakah even if the revenues and the money earned are impermissible because the shareholders are obliged in the first place to dispose of all accrued interest and impermissible earnings. So, the payment of Zakah is part of the obligation to dispose of impermissible earnings and interest.

12. Date of Issuance of the Standard

This Standard was issued on 4 Rabi' I, 1424 A.H., corresponding to 16 May 2002 A.D.

Adoption of the Standard

The Shari'ah Standard on Conversion of a Conventional to an Islamic bank was adopted by the Shari'ah Board in its meeting No. (8) held in Al-Madinah Al-Munawwarah on 28 Safar - 4 Rabi' I, 1423 A.H., corresponding to 11-16 May 2002 A.D.

Appendix (A)
Brief History of
the Preparation of the Standard

In its meeting No. (5) held in Makkah Al-Mukarramah on 8-12 Ramadan 1421 A.H., corresponding to 4-8 December 2000 A.D., the Shari'ah Board decided to give priority to the preparation of a Shari'ah Standard on Conversion of a Conventional bank to an Islamic Bank.

On Monday 29 Ramadan 1421 A.H., corresponding to 25 December 2000 A.D., a Shari'ah consultant was commissioned to prepare a juristic study and an exposure draft.

In its meeting held in Bahrain on 15-16 Safar 1422 A.H., corresponding to 9-10 May 2001 A.D., the Shari'ah Studies Committee discussed the juristic study and made certain amendments to it. The committee also discussed the exposure draft of the Standard in its meeting No. (10) held in Bahrain on 14 Rabi' I, 1422 A.H., corresponding to 6 June 2001 A.D., and asked the consultant to make some amendments in light of the comments made by the members.

In its meeting No. (11) held in Jordan on 17 Jumada II, 1422 A.H., corresponding to 5 September 2001 A.D., the Shari'ah Studies Committee discussed the exposure draft and made some relevant amendments.

The revised exposure draft of the standard was presented to the Shari'ah Board in its meeting No. (7) held in Makkah Al-Mukarramah on 9-13 Ramadan 1422 A.H., corresponding to 24-28 November 2001 A.D. The Shari'ah Board made further amendments to the exposure draft of the standard and decided that it should be distributed to specialists and interested parties in order to obtain their comments and discuss them in a public hearing.

A public hearing was held in Bahrain on 29 –20 Dhul-Hajjah 1422 A.H., corresponding to 2-3 February 2002 A.D.. The public hearing was attended by more than 30 participants representing central Institutions, Institutions, accounting firms, Shari'ah scholars, academics and others who are interested in this field. The members responded to the written comments that were sent prior to the public hearing as well as to the oral comments that were expressed in the public hearing.

The Shari'ah Standards Committee in its meeting held on 21-22 Dhul-Hajjah1422 A.H., corresponding to 6-7 March 2002 A.D., in the Kingdom of Bahrain discussed the comments made about the exposure draft. The Committee made the necessary amendments, which it deemed necessary in light of both the discussions that took place in the public hearing, and the written comments that were received.

The Shari'ah Board in its meeting No. (8) held on 28 Safar – 4 Rabi' I, 1423 A.H., corresponding to 11-16 May 2002 A.D, in Al-Madinah Al-Munawwarah discussed the amendments made by the Shari'ah Standards Committee, and made the necessary amendments, which it deemed necessary. Some paragraphs of the standard were adopted by the unanimous vote of the members of the Shari'ah Board, while the other paragraphs were adopted by the majority vote of the members, as recorded in the minutes of the Shari'ah Board.

Appendix (B)
The Shari'ah Basis for the Standard

Gradual Clearance of Non-Permissible Previous Transactions

The basis for the permissibility of gradual clearance of non-permissible previous transactions due to necessity or need and in accordance with the rules of Shari'ah is because it is not feasible for the converting bank to clear all non-permissible transactions immediately. Therefore, the bank must dispose of the effects of impermissible transactions because this is feasible.

Necessary Procedures and Mechanisms for Conversion

Since the realisation of the conversion is dependent on the procedures and mechanisms mentioned in this standard, these procedures and mechanisms thus become permissible or in certain circumstances their use becomes obligatory when the conversion will not be realised without applying these procedures and mechanisms. This is because conversion is obligatory, and if an obligation can be realised only by means of a particular way or tool, then the use of such a tool also becomes an obligation.

Providing Banking Services

The basis for the permissibility of providing banking services that are not related to giving loans on an interest-bearing basis is that such an operation is a practical application of Ijarah and an agency contract with remuneration. If providing these services involves Riba then the operation becomes impermissible as it is a Riba-based transaction that is prohibited by Shari'ah.

Attracting Investments

The conversion necessitates doing away with the conventional methods of attracting investment funds such as interest-bearing deposits, which should be replaced by the application of Mudarabah and Musharakah contracts or acting as an investment agent. The basis for the impermissibility of using conventional methods of attracting investments is the Saying of Allah, the Exalted: ***{"But Allah has permitted trade and forbidden usury"}.***[2] The basis for terminating all previous impermissible transactions is the Saying of Allah, the Exalted: ***{"Give up what remains of your demand for usury"}.***[3] Also, a number of Shari'ah boards have issued resolutions for the treatment of pre-conversion liabilities that involve payment of interest by using Shari'ah acceptable instruments and the conversion of interest-based bonds to Islamic certificates and shares.[4] The Fiqh Academy under the auspices of the Muslim World League has issued a resolution confirming the permissibility of Tawarruq (which is one of the instruments that can be used to acquire liquidity).[5]

Investment of Funds

- The basis for the rule that the bank must cease investing through making loans and receiving interest is that this is Riba and paying or receiving Riba is prohibited.
- The basis for the alternatives to interest-based transactions provided in this standard is the authorities that are mentioned for each investment instrument in details in the Fiqh books[6] and the Shari'ah Standards.

Treatment of Impermissible Rights of the Bank before the Decision to Convert

- The basis for not obliging the bank to dispose of impermissible intangible assets from the previous financial period, i.e. before the year of conversion, is because the management of the bank cannot change rights originating in the previous financial period, as the responsibility and authority for doing so ends at the end of the previous financial period. As for the shareholders (the owners), they are obliged person-

(2) [Al-Baqarah (The Cow): 275].

(3) [Al-Baqarah (The Cow): 278].

(4) *"Qararat Al-Hay`ah Al-Shar'iyyah Li Sharikat Al Rajhi"*: Fatwa No. (106 and 200); *"Fatawa Nadwat Al Baraka"* [11: 6]; *"Fatwa Hay`at Al-Fatwa Wa Al-Raqabah Al-Shar'iyyah li Bayt Al-Tamwil Al-Kuwayti"* No. (415).

(5) *"Qararat Majma' Al-Fiqh Al-Islami Al-Tabi' Li Rabitat Al-'Alam Al-Islami"*, the session held in 1419 A.H.

(6) See: Chapters on Mudarabah, partnerships, agency contract, sales, Ijarah, etc. in different Fiqh books and also the Shari'ah rules for investment and financing instrument issued by Accounting and Auditing Organisation for Islamic Financial Institutions.

ally to dispose of any dividends from non-permissible earnings that were distributed to them, because the responsibility of shareholders remains even after termination of the responsibility of the management at the end of the financial period, i.e. the end of financial period does exonerate shareholders from responsibility.

- The basis for allowing the bank to keep impermissible earnings and income of doubtful permissibility earned on the basis of an interpretation of a person who is qualified to perform *Ijtihad* on issues that are subject to personal juristic interpretation and the juristic position of an authoritative School of Shari'ah, etc., is that the Shari'ah validates actions that occur on the basis of an interpretation that one believes to be valid until such an interpretation is proved incorrect. The scholars are unanimous that in times of social unrest due to the actions of insurgents who believe in their cause by interpretation or *Ijtihad* to the effect that they have a right to do so, the insurgents are entitled to items of property they acquire during this time, even if they realise later that they were wrong and end their act of insurgence.(7)
- The basis for destroying the bank's non-permissible tangible assets in the possession of others before the year of conversion is that these assets are worthless by Shari'ah Standards since they are impermissible. This is because disposing of a prohibited thing is an obligation as in the case when the verse that prohibited liquor was revealed people discharged the wine that was in their possession.

Treatment of Non-Permissible Liabilities of the Bank before the Decision to Convert

- The basis for the rule that the bank should refrain from paying interest after the conversion is because such interest is not, by the Shari'ah Standard, a valid debt that should be honoured. Again, repentance through conversion necessitates refraining from prohibited acts including payment of interest. The principle of necessity is the basis for allowing payment of interest if the bank could not refrain from doing

(7) See Ibn Qudamah, *"Al-Mughni"* [12: 250-251], Hajr publication, 2nd edition 1413 A.H., edited by Abdullah Al-Turki and Abdul-Fattah Al-Hulw.

so because of lack of legal protection and the possibility that the bank may be subject to punishment that may prevent the avoidance of paying interest. The payment of interest due to necessity is supported by saying of Allah, the Exalted: ***{"Whoever disbelieved in Allah after his belief, except him who is forced thereto and whose heart is at rest with Faith..."}***(8) and the saying of the Prophet (peace be upon him): *"Verily, Allah, the Exalted, Has forgiven my ummah those act done by mistake, forgetfulness and compulsion"*.(9)

- The basis for making a distinction between the principal loan and interest is because the loan contracts per se are valid. It is the interest associated with the loan that is forbidden. This is the view of the Hanafi jurists who say that the loan contract itself is valid and the condition to pay interest is void.(10) Again, the basis for this ruling is the legal maxim that says acts of Muslims must be deemed valid as far as possible even if their acts are based on a non-preferable juristic view.(11)
- The basis for the requirement that the outside buyer interested in converting the conventional bank should exert all possible effort to exclude impermissible rights is that the payment of interest is the responsibility of the seller. Such interest would have no bearing on the buyer of the bank as the seller's right to receive such interest can be taken into account in computing the price to be paid for the bank. If the buyer is unable to convince the seller in this respect, the principle of necessity becomes applicable with regard to payment of interest. The basis for extinguishing Riba-based loans as soon as possible even if such an act will impose on the buyer the need to suggest to the creditor/s early payment of these loans for a discount is the principle of *Da' Wa Ta'jjal* (discount for acceleration of payment) that was endorsed by the resolution of International Islamic Fiqh Academy provided the discount was not agreed upon earlier.(12)

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(8) [Al-Nahl (The Bees): 106].

(9) The Hadith is related by Ibn Majah, *"Sunan Ibn Majah"* [1: 695].

(10) See Al-Sarakhsi, *"Al-Mabsut"* [12: 25-26], Dar Al-Ma'rifah.

(11) See Ibn Al-Humam, *"Fath Al-Qadir"* [9: 114], Dar Al-Fikr; Al-Sarakhsi, *"Al-Mabsut"* [7: 86]; Al-Kasani, *"Bada`i' Al-Sana`i'"*, [3: 79], [4: 5], [7: 149 and 177], (Dar Al-Kutub Al-'Ilmiyyah).

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

- The basis for requiring that the purchaser accelerate the redemption of all impermissible mortgages attached to the assets of the bank is because Riba is prohibited; hence, securing payment of Riba by personal guarantees or mortgages is also prohibited. It must be noted that the graveness of securing Riba by personal guarantee is greater than graveness of securing Riba by writing and attestation, which were mentioned in the saying of the Prophet (peace be upon him): *"Allah curses the one who take (earn) Riba, the one who gives it, the one who scribe it and the two witnesses"*.(13)

Treatment of Impermissible Tangible Assets Acquired by the Bank Before the Decision to Convert

- The basis for destroying the existing tangible assets of the bank after conversion has already been explained. The basis for donating to charity receivables earned from trading in such assets has also been explained earlier. The basis for transforming the locations that were used for impermissible services to locations for permissible services is that the prohibition does not concern the location itself, rather the prohibition relates to the use of the location.

Disposal of Impermissible Rights

- The basis for the requirement that impermissible earnings be donated to charity is that these revenues are not permissible for the person who earns them. This is evidenced by the order of the Prophet (peace be upon him) that the usurped goat be given to war prisoners.(14)
- The basis for indicating charity as a way of disposing of impermissible earnings is that by transferring the ownership of these earnings, the characterisation of prohibition in respect to these earnings is changed and they become permissible for the beneficiary. Again, a thing which is prohibited for one person is not necessarily prohibited for another person, i.e. when it is prohibited for one, it may be permissible for other.

(13) The Hadith has been related by Muslim in his *"Sahih"* [3: 1219], verified by Muhammad Fu`ad Abdul-Baqi, Dar Ihya Al-Turath Al-'Arabi.

(14) The Hadith has been related by Al-Daraqutni, *"Sunan Al-Daraqutni"* [4: 285]; and *"Nayl Al-Awtar"* [9: 18].

The International Islamic Fiqh Academy has issued a resolution in support of this ruling.[15]

- The basis for allowing delay in disposal of non-permissible earnings if such disposal will lead a total breakdown of the activities of the bank or its bankruptcy is that the Fuqaha were of the view that a repentant may use impermissible earnings to cover his unavoidable needs. However, the Institution is not entitled to benefit whatsoever, i.e. directly or indirectly, from the earnings that must be disposed of. This is because such benefit adds value to the asset of the Institution.
- The channels for disposing of impermissible earnings include, as well as those mentioned in this standard, all other channels of disposal that the Shari'ah Supervisory Board of each Institution will regard as appropriate channels for disposal of impermissible earnings.

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