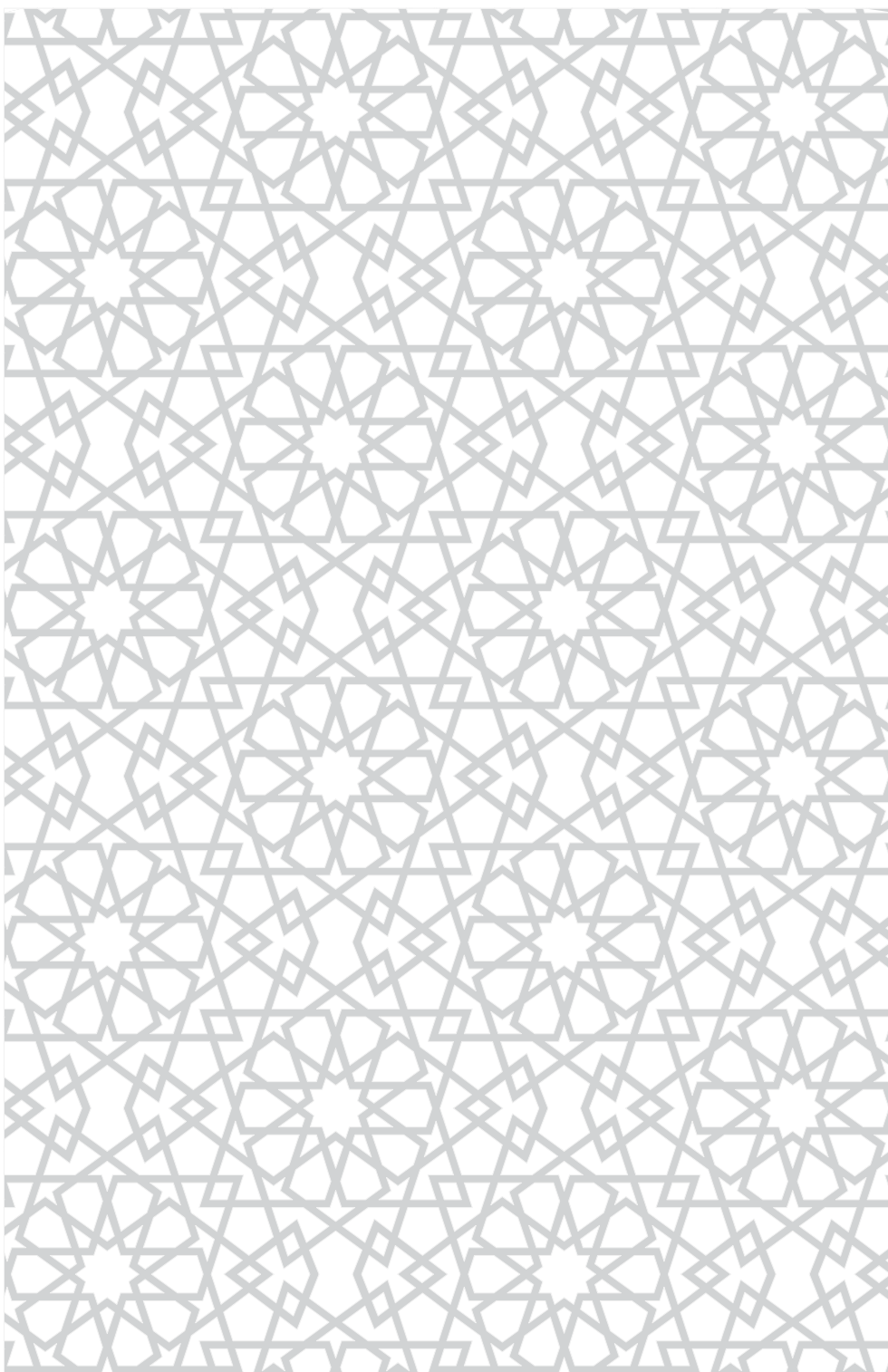


**Shari'ah Standard No. (10)**

# **Salam and Parallel Salam**

**(Revised Standard)**



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***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 the standard is to explain the rules for and limitations of Salam and Parallel Salam in respect to concluding a Salam contract, the subject matter of Salam and changes to the contract, whether in the event of ability to deliver or otherwise. The standard also explains rulings in respect to issuing Salam Sukuk.

## Statement of the Standard

### 1. Scope of the Standard

This standard covers Salam and Parallel Salam transactions, whether the Institution is the buyer or the seller, and issuing Salam Sukuk. This standard does not cover Istisna'a (manufacturing or supplier contract) because the latter is covered by a separate standard.

### 2. Contract of Salam

#### 2/1 General framework for Salam contracts

2/1/1 It is permissible to initiate through negotiations several Salam contracts (with different parties). Each operation will end at its due date. It is also permissible to draw up a general framework or a master agreement that consists of an understanding to conclude successive Salam contracts, each of which will take place at an appropriate time. In this latter case, the transaction involved shall be concluded on the basis of a memorandum of understanding in which the contracting parties determine the framework of the contract and the intention of the parties to buy and sell. The parties shall also determine the quantity and specifications of the goods, the manner of their delivery, the basis for determining the price, and the manner of payment. The types of guarantees and other prospective arrangements shall also be specified in the memorandum. The execution of each Salam contract may then take place separately at the appropriate date.

2/1/2 If the Salam contract is concluded on the basis of what was initially agreed in the memorandum of understanding, the contents of the memorandum become part and parcel of the contract. This will hold true unless the parties agreed when the

contract was concluded to exempt themselves from some of the obligations referred to in the memorandum of understanding.

## **2/2 Form of a Salam contract**

A contract of Salam may be concluded using the word Salam, or Salaf, or sale, or any term that indicates sale of a prescribed commodity for deferred delivery in exchange for immediate payment of the price.

## **3. Subject Matter of Salam**

### **3/1 Capital of Salam contract and its conditions**

3/1/1 It is permissible for the capital of Salam to be in the form of fungible goods (such as wheat and other cereals) in which case the parties must make sure that they do not fall into Riba. The capital may also be items of material value (such as livestock). It is also permissible for it to be in the form of the general usufruct of a particular asset, such as living in a house or having the use of an aircraft or a ship for a certain period. In such a case, when a party is granted access to the usufruct through delivery of the asset, this is regarded as immediate receipt (possession) of the Salam capital.

3/1/2 The capital of Salam should be made known to the two parties in a manner that removes all uncertainty and eliminates the possibility of dispute. In principle, the capital of Salam should be in the form of cash. In this case, the currency of payment, the amount and the manner of payment shall be clearly defined. If the capital of Salam is in the form of fungibles,<sup>(1)</sup> then the kind, type, specifications and quantity of these shall be clearly defined.

3/1/3 The capital in a Salam contract must be paid immediately at the place where the contract is concluded. However, as an exception to this ruling, payment may be delayed for two or three days at

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(1) Fungibles are goods that share common features such that they do not differ significantly. Any fungibles can be replaced by any other in the event of destruction, without need to assess the value of the item destroyed or the one replacing it.

most. Even if such a short delay has been stipulated earlier, this will not affect the Salam contract provided that the period of delay is not equal to or greater than the delivery period for al-Muslam Fihi.

3/1/4 It is not permitted that a debt be recognised as the capital of Salam, such as using as the capital of Salam loans or debts owed by the seller to the Institution as a result of previous transactions.

### **3/2 Al-Muslam Fihi and its conditions**

3/2/1 Salam contracts are permitted for fungible goods, like those that may be weighed, measured or counted, the articles of which do not differ in any significant manner, provided that no Riba ensues.

3/2/2 Among the items for which variations in numbers make no difference are the products of companies that manufacture goods in approximate units that are identified by trademarks, standardised specifications and are regularly and commonly available at any time. However, this rule must be read together with item 3/2/8.

3/2/3 Salam is not permitted for anything specific like "this car". Nor is it permitted for anything for which the seller may not be held responsible, like land, buildings or trees; or for articles whose values change according to subjective assessment, like jewellery and antiques. Also, it is not permissible to stipulate that al-Muslam Fihi must be from a specific piece of land. However, on the delivery date the seller may present the buyer with whatever items are available (and meet the contract specifications), irrespective of whether such items are from his own fields or factories or elsewhere.

3/2/4 It is not permissible for al-Muslam Fihi to be an amount of currency, gold or silver, if the capital of the Salam contract was paid in the form of currency, gold or silver.



- 3/2/5 Al-Muslam Fihi must be the kind of article for which a specification may be drawn up so that the seller may be held responsible for its conformity to the specification. It will be sufficient if the specification is explained in a manner that removes uncertainty, except for minor discrepancies that are customarily ignored, considered acceptable, and not usually regarded as grounds for dispute.
- 3/2/6 It is a requirement that al-Muslam Fihi be clearly known to the contracting parties in a manner that eliminates any possibility of uncertainty or ambiguity. The reference for determining descriptions that are used to specify and identify al-Muslam Fihi is customary practice and the experience of experts.
- 3/2/7 It is a requirement that the parties know the quantity of al-Muslam Fihi. The quantity of each item is determined according to its condition and nature with regard to weight, measurement, volume and number.
- 3/2/8 It is a requirement that al-Muslam Fihi be commonly available under normal circumstances at the place where it should be on the delivery date, so that the commodity will be accessible to the seller in order to discharge his obligation by delivering it to the buyer.
- 3/2/9 It is a requirement that the date of delivery for al-Muslam Fihi be known in a manner that eliminates any uncertainty or ambiguity which may lead to a dispute. There is no Shari'ah objection to the contracting parties setting various dates on which the delivery of al-Muslam Fihi may take place, in instalments, provided the capital of Salam was paid at the time the contract was originally concluded.
- 3/2/10 In principle, the parties may designate the place at which al-Muslam Fihi is to be delivered. If the parties to the contract do not determine the place of delivery, then the place at which the contract was concluded will be regarded as the place of delivery unless it turns out to be impossible to make delivery

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

### **3/3 Security for al-Muslam Fihi**

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

## **4. Changes to al-Muslam Fihi**

### **4/1 Selling al-Muslam Fihi before taking possession**

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

### **4/2 Replacement of al-Muslam Fihi**

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

### **4/3 Cancellation (Iqalah) of a Salam contract**

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

## **5. Delivery of al-Muslam Fihi**

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

- 5/2 If the seller offers delivered goods of a quality that is superior to that required by the contractual specifications, the buyer must accept the goods, provided that the seller shall not seek a higher price for the better quality. This may be considered one of the ways in which a contract is ethically fulfilled. However, this will apply only if the (inferior) description specified in the contract is not itself deemed vital.
- 5/3 If the quality of the delivered goods is inferior to that required by the contractual specifications, the buyer is entitled either to reject or to accept the goods in that condition. If he accepts the goods, his action is considered as ethical acceptance. It is also permissible for the two parties to agree to a settlement on terms for acceptance of the goods even at a discounted price.
- 5/4 It is not permitted for a seller to deliver al-Muslam Fihi in the form of a commodity different from the one agreed upon if the commodity is considered to belong to the same genus as al-Muslam Fihi (e.g., al-Muslam Fihi is corn and the commodity that the seller wants to deliver is wheat). However, the delivery of al-Muslam Fihi in the form of a different type of commodity from that agreed upon may take place only on the basis of the conditions for the replacement of al-Muslam Fihi by other goods. [see item 4/2]
- 5/5 Delivery of al-Muslam Fihi may take place before the due date, on condition that the goods conform to the agreed specifications and quantities. If the buyer has a valid reason for rejecting the goods, then he will not be compelled to accept them. Otherwise, the buyer will be forced to accept the goods.
- 5/6 If the seller fails to perform his obligation, owing to insolvency, he should be granted an extension of time for delivery.
- 5/7 It is not permitted to stipulate a penalty clause in respect of delay in the delivery of al-Muslam Fihi.
- 5/8 In case all or part of al-Muslam Fihi is not available to the seller on the due date, the buyer shall have the following options:

5/8/1 To wait until al-Muslam Fihi is available.

5/8/2 To cancel the contract and recover the paid capital.

It is also permissible for the parties to agree to replacement of al-Muslam Fihi by other goods. [see item 4/2]

## **6. Parallel Salam**

6/1 It is permissible for the seller to enter into a separate, independent Salam contract with a third party in order to acquire goods of a similar specification to those specified in the first Salam contract, so that the first Salam obligation will be discharged by delivering these goods. Hence, the seller in the first Salam contract becomes the buyer in the second Salam contract.

6/2 It is permissible for the buyer to conclude a separate parallel Salam with a third party for the purpose of selling, on the basis of Salam, a commodity whose description corresponds to the description of the commodity to be acquired through the first Salam contract. In this situation, the buyer in the first Salam contract becomes the seller in the second Salam contract.

6/3 In both the two situations mentioned in items 6/1 and 6/2, it is not permissible for the parties to link the obligations under the two Salam contracts together so that the execution of the obligations of one contract is contingent on the outcome of the other. Hence, it is necessary that both the obligations and the rights under the two contracts stand alone in all respects. Therefore, if one party breaches his obligation under the first Salam contract, the other party (the injured party) has no right to relate this damage or loss to the party with whom he concluded a Parallel Salam. Consequently, he has no right on the basis of his loss or damage under the first Salam contract to terminate the second Salam contract or to delay in performing it.

6/4 All the rules of Salam as explained in items 1-5 above are applicable to Parallel Salam as well.

**7. Salam Sukuk Issues**

It is not permitted to issue tradable Sukuk based on the debt from a Salam contract. [see item (4/1)]

**8. Date of Issuance of the Standard**

This Shari'ah Standard was issued on 29 Safar 1422 A.H., corresponding to 23 May 2001 A.D.

## **Adoption of the Standard**

The Shari'ah Standard on Salam and Parallel Salam was adopted by the Shari'ah Board in its meeting No. (6) held on 25-29 Safar 1422 A.H., corresponding to 19-23 May 2001 A.D.

In its meeting No. (8) held in Mecca on 28 Safar - 4 Rabi' I 1423 A.H., corresponding to 11-16 May 2002 A.D., the Shari'ah Board readopted a resolution to reformat the Shari'ah Rules for Salam and Parallel Salam in the form of a Shari'ah Standard.

## **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 2001 A.D., the Shari'ah Board decided to give priority to the preparation of the a Shari'ah rules for Salam and Parallel Salam.

On Monday 11 Shawwal 1420 A.H., corresponding to 17 January 2000 A.D., the Fatwa and Arbitration Committee decided to commission a Shari'ah consultant to prepare a juristic study and an exposure draft on the Shari'ah Rules for Salam and Parallel Salam.

In its meeting held in Bahrain on 21-23 Muharram 1421 A.H., corresponding to 26-28 April 2000 A.D., the Fatwa and Arbitration Committee discussed the exposure draft of the Shari'ah rules for Salam and Parallel Salam and asked the consultant to make the amendments in light of the comments made by the members.

In its meeting No. (4) held in Abu Dhabi, United Arab Emirates, on 14 Sha'ban 1421 A.H., corresponding to 10 November 2000 A.D., the Fatwa and Arbitration Committee discussed the exposure draft and made some relevant amendments.

The revised exposure draft of the Shari'ah rules was presented to the Shari'ah Board 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 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 to discuss them in a public hearing.



A public hearing was held in Bahrain on 4-5 Dhul-Hajjah 1421 A.H., corresponding to 27-28 February 2001 A.D. The public hearing was attended by more than 30 participants representing central banks, institutions, accounting firms, Shari'ah scholars, academics and others interested in this field. Members of the Shari'ah Studies Committee 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 Fatwa and Arbitration Committee held its meeting No. (5) in Bahrain on 15 Dhul-Hajjah 1421 A.H., corresponding to 10 March 2001 A.D., to discuss the comments made about the exposure draft. The committee made the necessary amendments in light of both the written comments that were received and oral comments that took place in the public hearing.

The Shari'ah Board in its meeting No. (6) held in Al-Madinah Al-Munawwarah on 25-29 Safar 1422 A.H., corresponding to 19-23 May 2001 A.D., discussed the amendments made by the Fatwa and Arbitration Committee, and made the necessary amendments. The standard was adopted in the name of Shari'ah rules for Salam and Parallel Salam. Some paragraphs 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.

The Shari'ah Board decided in its meeting No. (7) held in Makkah Al-Mukarramah on 9-13 Ramadan 1422 A.H., corresponding 24-28 November 2001 A.D., to reformat all Shari'ah rules in a form of standards and a committee was formed for this purpose.

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., the Shari'ah Board adopted the reformatted version of the Shari'ah rules for Investment and Financing No. (3) on Salam and Parallel Salam with the title of Shari'ah Standard No. (9) on Salam and Parallel Salam, without any substantial changes in the content.

The Shari'ah Standards Review Committee reviewed the standard in its meeting held in Rabi' II, 1433 A.H., corresponding to March 2012 A.D.,



in the State of Qatar, and proposed after deliberation a set of amendments (additions, deletions, and rephrasing) as deemed necessary, and then submitted the proposed amendments to the Shari'ah Board for approval as it deemed necessary.

In its meeting No. (39) held in the Kingdom of Bahrain on 13-15 Muharram 1435 A.H., corresponding to 6-8 November 2014 A.D., the Shari'ah Board discussed the proposed amendments submitted by the Shari'ah Standards Review Committee. After deliberation, the Shari'ah Board approved necessary amendments, and the standard was adopted in its current amended version.

## Appendix (B)

### The Shari'ah Basis for the Standard

#### Permissibility of Salam

A contract of Salam derives its permissibility from the Qur'an, the Sunnah and Ijma' (consensus of Fuqaha). On the level of the Qur'an, Allah, the Almighty, says: ***{“O ye who believe! When you deal with each other, in transactions involving future obligations in a fixed period time, reduce them to writing”}***.<sup>(2)</sup> Ibn Abbas said: “I declare that a Salam (Salam) contract in which the commodity is guaranteed for future delivery has been permitted by Allah” and then he read: ***{“O ye who believe! When you deal with each other, in transactions involving future obligations in a fixed period time, reduce them to writing”}***. It is reported that Ibn Abbas said: “This verse is a revelation for the particular purpose of making Salam permissible.”<sup>(3)</sup>

On the level of Sunnah, Ibn Abbas is reported to have said: *“The Prophet (peace be upon him) has come to Medina and found that people were selling dates for deferred delivery after a duration of one or two years on a Salam basis. The Prophet (peace be upon him) said: ‘Whoever pays for dates on a deferred delivery basis (Salam) should do so on the basis of a specified scale and weight’”*. In another text of the Hadith the Prophet (peace be upon him) said: *“Whoever pays on a deferred delivery basis should do so on the basis of a specified scale, weight and date of delivery”*.<sup>(4)</sup>

The scholars are unanimous on the permissibility of a Salam contract. Ibn Mundhir said that the scholars agreed that a Salam contract -i.e, a contract

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(2) [Al-Baqarah (The Cow): 282].

(3) See: Ibn Al-Jawzi, *“Zad Al-Masir Fi 'Ilm Al-Tafsir”* [1: 336]; and Ibn Kathir, *“Tafsir Al-Qur'an Al-'Azim”* [1: 496].

(4) The Hadith has been related by Al-Bukhari, Muslim and others. See: *“Sahih Al-Bukhari”* [2: 781], Damascus: Dar Al-Qalam edition; and *“Sahih Muslim”* [3: 1226], Beirut: Dar Al-Fikr edition.

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

### **Wisdom of Making Salam Permissible**

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

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

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

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

### **Subject Matter of a Salam Contract**

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

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

“Taking possession of part of a thing is like taking possession of the whole thing”.<sup>(6)</sup> Hence, this is not a sale of debt (because the buyer has received control over the usufruct).<sup>(7)</sup>

- The basis for the requirement that the capital of Salam must be known to the two parties is that a Salam contract is one of the exchange contracts in which the consideration need to be known so as to remove any uncertainty.<sup>(8)</sup>
- The basis for the requirement that the capital must be paid at the conclusion of a Salam contract is the saying of the Prophet (peace be upon him): “Whoever pays on a deferred delivery basis should do so on the basis of specifying the scale”.<sup>(9)</sup> The *Taslif* or *Islaf* means payment in advance. Salam was so named because the capital must be paid in advance. If payment is delayed, the transaction is not called Salam.<sup>(10)</sup> Again, any delay in payment of the capital and dispersal of the parties renders the transaction a sale of debt for debt<sup>(11)</sup> which is prohibited, and the scholars agreed on its prohibition. Ibn Rushd said: “As for sale of debt for debt, Muslim scholars are unanimous regarding its prohibition”.<sup>(12)</sup>
- The basis for it not being permitted that a debt be capital in Salam is because this would render the transaction a form of sale of debt and this is prohibited by the Shari'ah.
- The basis for the impermissibility of Salam where the subject matter is a specific and identified thing is the Hadith stating that “A man came

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(6) Al-Dardir, “*Al-Sharh Al-Saghir*” [4: 347].

(7) Al-Buhuti, “*Sharh Muntaha Al-Iradat*” [2: 37].

(8) Al-Qadi Abdul-Wahhab, “*Al-Ma'unah*” [2: 987]; Ibn Juzay, “*Al-Qawanin Al-Fiqhiyyah*” (P. 202); Al-Kasani, “*Bada'i' Al-Sana'i*” [5: 301]; Ibn Qudamah, “*Al-Mughni*” [6: 411]; and Al-Shirazi, “*Al-Muhadhdhab*” [1: 300].

(9) The Hadith has been related by Al-Bukhari, Muslim and others: “*Sahih Al-Bukhari*” [2: 781], Damascus: Dar Al-Qalam edition; and “*Sahih Muslim*” [3: 1226], Beirut: Dar Al-Fikr edition.

(10) Ibn Qudamah, “*Al-Mughni*”, [6: 408]

(11) See: Al-Kasani, “*Bada'i' Al-Sana'i*” [5: 202]; Ibn Rushd (the grandson) “*Bidayat Al-Mujtahid Wa Nihayat Al-Muqtasid*” [2: 205], Beirut, Dar Al-Qalam edition; Al-Qadi Abdul-Wahhab, “*Al-Ma'unah*” [2: 988]; and Al-Zayla'i, “*Tabayin Al-Haqa'iq Sharh Kanz Al-Daqa'iq*” [4: 117].

(12) Ibn Rushd, “*Bidayat Al-Mujtahid*” [2: 150].

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

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

#### **Changes to a Salam Contract**

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

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

permitted for the sale of tangible goods in consideration of the need of contracting parties to be able to deal with regret and a desire to withdraw from the contract. In the case of Salam, the possibility that the parties may regret concluding the transactions is greater than in the sale of tangible goods because Salam is a low cost form of sale for which permissibility of Iqalah is easily applicable in Salam.<sup>(14)</sup>

#### **Delivery of al-Muslam Fihi**

The basis for not allowing penalty clauses in Salam is because al-Muslam Fihi is considered to be a debt; and it is not permitted to stipulate payment in excess of the principal amount of debts.

#### **Parallel Salam**

- The basis for the permissibility of Parallel Salam is that it represents two Salam deals that are separable from each other despite the fact that the descriptions of the subject-matter in the two contracts are similar. However, the contract does not lead to two sales in one, which is impermissible.
- The basis for the impermissibility of tradeable Salam Sukuk is because trading with such Sukuk is a form of sale of debt which is prohibited.

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(14) See: Al-Kasani, "*Bada' i' Al-Sana' i*" [5: 214].



## Appendix (C)

### Definitions

#### **Salam**

A Salam transaction is the purchase of a commodity for deferred delivery in exchange for immediate payment. It is a type of sale in which the price, known as the Salam capital, is paid at the time of contracting while the delivery of the item to be sold, known as al-Muslam Fihi (the subject-matter of a Salam contract), is deferred. The seller and the buyer are known as al-Muslam Ilaihi and al-Muslam or Rab al-Salam respectively. Salam is also known as Salaf (literally; borrowing).

#### **Parallel Salam**

If the seller enters into another separate Salam contract with a third party to acquire goods, the specification of which corresponds to that of the commodity specified in the first Salam contract, so that he (the seller) can fulfil his obligation under that contract, then this second contract is called, in contemporary custom, Parallel Salam or *Salam Muwazi*. The following is an example of such a contract. An Institution on one hand buys a specified quantity of cotton from farmers on a Salam basis and, in turn, the buyer in the first Salam contract enters into a new separate Salam contract with textile mills so as to provide them, by means of that new Salam contract, with cotton, the specifications of which are similar to the specifications of the cotton to be acquired under the first Salam contract, without making the execution of the second Salam contract contingent on the execution of the first Salam contract.

#### **Iqalah**

Iqalah or cancellation of a contract is a bilateral agreement of the contracting parties to abate and remove the legal effect of a contract.

**Mithlis (Fungibles)**

Items that are mutually interchangeable, i.e., items whose units are identical (in specifications), and if destructed, are guaranteed by other identical units without consideration to their value.

