

Shari'ah Standard No. (19)

Loan (Qard)



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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

This standard aims to elaborate the rules of the Shari'ah for loan (Qard). Among these are the rules for a benefit (Manfa'ah) arising from a loan whether or not this is stipulated (in the contract), just as it includes the regulations of the Shari'ah that must be followed by Islamic financial institutions (Institution/Institutions).⁽¹⁾ Likewise, the Standard includes the Shari'ah rules for some applications that the institutions need to implement, like current accounts, perquisites in return for loans, service charges for loans, and mutual overdrafts between the institution and its correspondents.

(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 loans and the accompanying benefits or costs irrespective of the institution being a lender or a borrower.

The Standard does not cover what is not a loan (Qard), like the price in a credit sale and investment accounts, because they have standards specific to them.

2. Definition of Qard

Qard is the transfer of ownership in fungible wealth to a person on whom it is binding to return wealth similar to it.

3. Elements (Arkan) of a Loan (Qard) Contract and Its Conditions

3/1 The contract of loan (Qard) is concluded through offer and acceptance by the use of the words Qard and Salaf or any other word or act that conveys the meaning of Qard.

3/2 The legal capacity for making a donation is stipulated for the lender.

3/3 The legal capacity to undertake transactions is stipulated for the borrower.

3/4 It is stipulated for the subject-matter of the contract that it be known fungible (Mithli) marketable wealth.

3/4/1 The borrower comes to own the subject-matter of Qard (the wealth loaned) through possession, and he becomes liable for (the repayment of) a similar subject-matter.

3/4/2 The applicable rule is the return of an amount similar to the loan amount at the place where it was delivered.

4. Rules for Excess Benefit Stipulated in the Qard Contract

4/1 The stipulation of an excess for the lender in loan is prohibited, and it amounts to Riba, whether the excess is in terms of quality or

quantity or whether the excess is a tangible thing or a benefit, and whether the excess is stipulated at the time of the contract or while determining the period of delay for satisfaction or during the period of delay and, further, whether the stipulation is in writing or is part of customary practice.

4/2 It is permissible to stipulate the satisfaction (repayment) of Qard at a place other than that where the loan was made.

5. Rules for Excess Benefit Not Stipulated in the Contract

5/1 It is not permissible to the borrower to offer tangible property or extend a benefit to the lender during the period of the Qard when this is done for the sake of Qard, unless giving of such benefits is a practice continuing among the parties from a time prior to the contract of Qard.

5/2 An excess over Qard is permissible in terms of quantity or quality, or offering of tangible property or extending of a benefit, at the time of satisfaction when it is not stipulated or is part of custom, irrespective of the subject-matter of Qard being cash or kind.

6. Stipulation of a Period in Qard

It is permissible to stipulate a period in Qard. The borrower is, therefore, under no obligation to return it prior to the termination of the period nor can the lender demand it back prior to the end of the period. If, however, no period is stipulated, it is binding upon the borrower to return its substitute (*Badal*) on demand.

7. Stipulation of a Contract in Qard

It is not permissible to stipulate a contract of Bay' (exchange, sale) or Ijarah or other commutative contract within the contract of Qard.

8. Stipulation of a Reward for Raising Loans for Another

It is permissible to stipulate a reward for raising loans for another as long as it is not a fictional device (*Hilah*) for dealing in Riba. [see item 8/3/2 of Shari'ah Standard No. (15) on Ju'alah at the end of which it is stated "with the condition that the transactions are not employed for raising interest bearing loans through stipulations, customary practice or dealings among Institutions"]

9. Service Charges for Qard

- 9/1 It is permissible to a lending institution to charge for services rendered in loans equivalent to the actual amount directly spent on such services. It is not permissible to the institution to charge an amount in excess of such a service charge. All charges in excess of the actual amount spent are prohibited, and it is necessary to ensure precision in the determination of the actual charges so that they do not lead to an excess that can be deemed a benefit. The fundamental rule is that each loan bears its own specific charges, unless this becomes difficult as in the case of a group or common loan, in which case there is no restriction in the way of bearing direct collective charges for all the loans on the basis of the entire sum. It is necessary that the method of determining the charges be laid down by the Shari'ah Supervisory Board of the institution in detail, and this is to be done by distributing the expenses incurred among all the loans and each loan is to bear its share proportionately. An explanation of such circumstances is to be presented before the Board along with suitable documents.
- 9/2 Indirect expenses incurred in rendering services for loans are not included in actual expenses, like the salaries of the employees, the rentals of space, assets and means of transport as well as other management and general expenses of the institution.

10. Key Modern Applications of Qard

Among the most important modern applications of Qard are the following:

10/1 Current accounts

- 10/1/1 The reality of current accounts is that these are loans and not deposits. Thus, the institution comes to own the amounts and a liability to repay the amount is established against it.
- 10/1/2 It is permissible for the institution to demand wages for services rendered to the holders of the current accounts.
- 10/1/3 It is permissible for the institution to render services related to deposits and withdrawals to the owners of the current accounts with or without compensation like chequebooks and ATM cards and the like. There is no restriction on the institution

if it distinguishes between owners of current accounts with respect to what relates to deposits and withdrawals, like exclusive booths for receiving the owners of some accounts, or like distinguishing between the types or cheques.

10/2 Perquisites for Qard

It is not permitted to the institution to present to the owners of current accounts, in lieu of such accounts, material gifts, financial incentives, services or benefits that are not related to deposits and withdrawals. Among these are exemptions from charges in whole or in part, like exemption from credit card charges, deposit boxes, transfer charges and letters of guarantee and credit.

The perquisites and incentives that are not specific to current accounts are not governed by this rule.

10/3 Charges on credit cards for cash withdrawals from ATMs

10/3/1 The charges imposed on cards for cash withdrawals from bank teller machines are a charge for services and are independent of the loan.

10/3/2 It is necessary that the charges imposed on credit cards for cash withdrawals from bank teller machines be an amount that is certain within the limits of reasonable charges excluding profit from Qard. It is not permissible to link the charge to the amount withdrawn. It is not permissible to the institution to slice the withdrawals as a device for obtaining repeated charges just as it is not permissible (for this purpose) to take into account the period of repayment of the amount withdrawn. Where there is a difference in currencies, the application of the rate for the prevailing currency is stipulated. [see also item 4/5, Shari'ah Standard No. (2) on Credit and Charge Cards]

10/4 Overdrafts between the institution and its correspondents

In order to avoid interest between the institution and its correspondents, there is no restriction if the institution comes to

an agreement with other correspondent banks to place a ceiling upon the overdrafts of one drawn upon the other without any claims for profits (interest). [See item 2/4/a of Shari'ah Standard No. (1) on Trading in Currencies]

11. Date of Issuance of the Standard

This Standard was issued on 30 Rabi' I, 1425 A.H., corresponding to 19 May 2004 A.D.

Adoption of the Standard

The Shari'ah Standard on Qard was adopted by the Shari'ah Board in its meeting No. (12) held in Al-Madinah Al-Munawwarah during the period of 26-30 Rabi' I, 1425 A.H., corresponding to 15-19 May 2004 A.D.

Appendix (A)

Brief History of the Preparation of the Standard

In its meeting No. (8) held in Al-Madinah Al-Munawwarah during the period of 28 Safar to 3 Rabi' I, 1423 A.H., corresponding to 6-11 May 2002 A.D., the Shari'ah Board decided to issue the Shari'ah Standard on Qard (loan).

On 24 Rajab 1423 A.H., corresponding to 1 October 2002 A.D., the Shari'ah Standards Committee decided to commission a Shari'ah consultant to prepare an exposure draft on the Shari'ah Standard on Loan (Qard).

In its meeting No. (7) held in the Kingdom of Bahrain on 16 Muharram 1424 A.H., corresponding to 19 March 2003 A.D., the Shari'ah Standards Committee (1) discussed the Shari'ah study and required the consultant to incorporate necessary amendments in the light of the discussions and observations of the members.

In its meeting No. (8) held in the Kingdom of Bahrain during the period of 16-17 April 2003 A.D., the Shari'ah Standards Committee (1) discussed the exposure draft of the standard on Qard and made necessary amendments in the light of the discussions and the observations of the members. The Committee discussed the exposure draft of the standard in its meeting held on 25 and 26 Rabi' II, 1424 A.H., corresponding to 25 and 26 June 2003 A.D., and incorporated necessary amendments in the light of the discussions and observations of the members.

The Committee discussed the exposure draft of the standard in its meeting No. (9) held in Amman, the Hashimite Kingdom of Jordan, on 23 and 24 Jumada I, 1424 A.H., corresponding to 23 and 24 July 2003 A.D., and made necessary amendments in the light of the discussions and observations of the members.

The revised exposure draft of the Shari'ah Standard was presented to the Shari'ah Board in its meeting No. (11) held in Makkah Al-Mukarramah during the period of 2-8 Ramadan 1424 A.H., corresponding to 27 October-2 November 2003 A.D. The Shari'ah Board made amendments to the exposure draft of the standard and decided that it be sent to specialists and interested parties in order to obtain their comments in preparation for the discussion of the exposure draft in a public hearing.

A public hearing was held in the Kingdom of Bahrain on 29 Dhul-Qa'dah 1424 A.H., corresponding to 21 January 2004 A.D. The public hearing was attended by more than fifteen participants representing central banks, institutions, accounting firms, Shari'ah scholars, academics and others interested in the field. The members of the Shari'ah Standards Committees (1) and (2), 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 Committees (1) and (2) in a joint meeting in the Kingdom of Bahrain on 30 Dhul-Qa'dah 1424 A.H., corresponding to 22 January 2004 A.D., discussed the comments that were made during the public hearing as well as the observations received in writing. The Committees made amendments that were deemed suitable.

The amended exposure draft was presented to the Drafting Committee in its meeting held in the Kingdom of Bahrain on 25 Safar 1425 A.H., corresponding to 15 April 2004 A.D.

The Shari'ah Board in its meeting No. (12) held in Al-Madinah Al-Munawwarah during the period of 26-30 Rabi' I, 1425 A.H., corresponding to 15-20 May 2004 A.D., discussed the amendments suggested by the Shari'ah Standards Committee and the Drafting Committee, and incorporated the amendments deemed suitable. The Shari'ah Board unanimously adopted some of the items of the Standard and some items were adopted by the majority vote of the members of the Shari'ah Board, as recorded in the minutes of the meetings of the Shari'ah Board.

Appendix (B)

The Shari'ah Basis for the Standard

- The basis for stipulating that wealth given as Qard be known is to enable the borrower to return a similar substitute of the wealth of Qard.
- The basis for the rule that the borrower does not come to own the wealth lent except through possession is that the contract of Qard is one in which commutative aspect and that of donation stand combined, however, the act of donation is predominant. It is for this reason that the rule is similar to that for gift (Hibah) in which ownership is transferred with the taking of possession.
- The basis for the rule that the subject-matter of Qard be a fungible item is that it is only such an item that can be returned by the borrower. Further, fungible items are compensated through similar substitutes in usurpation and destruction.
- The basis for the obligation of returning the counter-value of Qard at the same place where it was granted, when there is no contrary stipulation, is that this is the governing rule.

Stipulation of an Excess in the Counter-Value of Qard

- The basis for the prohibition of stipulating an excess in the counter-value of Qard for the lender are evidences from the Qur'an, the Sunnah, consensus of Fuqaha (Ijma') as well as rational arguments that convey the prohibition of Riba (usury) in Qard.

Stipulation of Repayment in a Land (Place) Other Than That of Qard

- The basis for the permissibility of repayment in a land other than that where Qard was granted so as to provide a facility to the borrower whether or not the lender benefits from this, is as follows:
 1. The reports⁽²⁾ from the Companions, may Allah be pleased with them, which indicate the permissibility of stipulating repayment in

(2) "*Al-Musannaf*" by Ibn Abu Shaybah [6: 279]; and "*Al-Sunan Al-Kubra*" by Al-Bayhaqi, [5: 352].

a land other than that where Qard was made. This is a view upheld by the Malikis and the Hanbalis and it was preferred by Ibn Taymiyyah and Ibn Al-Qayyim Al-Jawziyyah.

2. The stipulation of repayment in a land other than that of the Qard is in the interest of both the lender and the borrower without causing injury to either along with the existence of a need. The Shari'ah does not lay down the prohibition of interests that bear no injury. In fact it lays down their permissibility. It does prohibit those that are injurious, but here the benefit is mutual and they are cooperating to arrange this. It, therefore, belongs to the category of cooperation and participation.
3. The basic rule in transactions (Mu'amalat) is permissibility, and the stipulation of repayment of a loan in a land other than that of the Qard is not expressly prohibited by the texts, nor is the meaning expressly stated in the texts so that prohibition could be extended through analogy. Thus, the repayment falls under the rule of permissibility.

Stipulation of a Period in Qard

- The basis for the permissibility of stipulating a period in Qard, for Qard can be delayed by stipulating a period, are evidences about the permissibility of a period of delay, the obligation of abiding by conditions and contracts, for the realisation of the purposes of the Qard, and for repelling injury.

Stipulating a Contract of Sale within the Contract of Qard

- The bases for the prohibition of stipulating a contract of sale within the contract of Qard are the following:
 1. The saying of the Prophet (peace be upon him): *"A Salaf (loan) and sale (in one contract) are not permitted nor are two conditions in a sale nor the profit from a thing for which the liability for loss is not borne nor the sale of what you do not have".*⁽³⁾

(3) Related by Abu Dawud. The text of this Hadith belongs to him as narrated from Abdullah Ibn Amr Ibn Al-'Ass (may Allah be pleased with him), chapter on the person who =

2. The underlying reasoning is that the word *Salaf* in the words of the Prophet (peace be upon him): "*A Salaf (loan) and sale (in one contract) are not permitted*", means Qard. The Hadith indicates the impermissibility of combining a Qard and a sale in a single contract. The generality of its meaning includes the impermissibility of stipulating a contract of sale in a contract of Qard as well as the impermissibility of stipulating a Qard contract within a contract of sale.
 3. The stipulation of a contract of sale within a contract of Qard is a means towards obtaining an excess in Qard as he may oblige him with respect to the price for the sake of Qard, and in this way the Qard will be created with a stipulated excess, which is Riba. These are means that, by agreement, are to be prevented and blocked.
 4. The stipulation of a contract of sale within a contract of Qard removes the contract of Qard from its main purpose, which is to provide a facility. The reason is that Qard is not a commutative contract, it is rather a contract of piety and virtue; thus, it is not valid if compensation is stipulated in it. If Qard is linked to a commutative contract, it will receive a part in the compensation and this will take it out of its required purpose. This will nullify it and nullify the commutative contract linked to it as well.
- The basis for the prohibition of a stipulation by the lender that the borrower gives him a gift is that in reality this amounts to Qard with an excess that is stipulated for the benefit of the lender and this excess is the gift. Thus, it amounts to prohibited Riba and removes the contract from the category of a compassionate contract moving it to one of Riba. Further, this stipulation

= sells what he does not have, "*Kitab Al-Buyu*", (H: 3504): "*Sunan Abu Dawud*" [3: 283]; Al-Tirmidhi, chapter on the disapproval of selling what one does not have, "*Kitab Al-Buyu*" (H: 1234): "*Sunan Al-Tirmidhi*" [3: 526-27]; Al-Nasa'i, chapter on two conditions in a sale, "*Kitab Al-Buyu*" (H: 4644): "*Sunan Al-Nasa'i*" [7: 340]; Ahmad in "*Musnad Al-Mukthirin Min Al-Sahabah*" (H: 6633): "*Musnad Ahmad*" [2: 3730] through different channels, all of them: From Ayyub, who said: "Amr Ibn Shu'ayb related to me saying, 'My father related to me from ...' till he mentioned Abdullah Ibn Amr reporting it". The Hadith is deemed *hasan* Hadith, but rises to the level of *Sahih Li-ghayrihi* due to its numerous channels.

generates a benefit for the lender and the Jurists have unanimously agreed that any contract that yields a benefit stipulated for the lender is impermissible. The benefit in this stipulation is that the lender will benefit from a second loan from the borrower, and this benefit is not in lieu of anything other than the very Qard that he gave him.

Stipulation of a Reward for Raising Loans on the Basis of Credit-Worthiness

- The basis for permitting the stipulation of a reward for raising loans on the basis of credit status is that this is a counter-value for a service rendered, and this is what is upheld by the Jurists that a reward may be acquired for recommendations and lending of status.

Charges for Services Actually Rendered

- The basis for the permissibility of the lender charging only what is equivalent to the actual costs incurred is that these are in lieu of the costs alone. The lender is doing a favour and the person doing a favour is not to be penalised. The basis for the prohibition of charging in excess of this is that in such a case it would amount to an excess in lieu of the Qard. Resolution No. 13 (1/3) was issued by the International Islamic Fiqh Academy (OIC) regarding the recovery of actual costs.

Material Benefits at the Time of Repayment That Are Not Stipulated

- The basis for the permissibility of giving an excess, in terms of quantity or quality, at the time of repayment by way of generosity and goodwill, when these are neither stipulated nor is there a practice of paying them, is the Hadith reported from Abu Rafi', may Allah be pleased with him, that the Messenger of Allah (peace be upon him) borrowed a very young camel from a man and then wished to present to him one of the camels of the Sadaqah (Zakat), so he asked Abu Rafi' to repay the man his camel. Abu Rafi' returned it to him and said, "I do not find anything there except a full grown four year old camel." The Prophet (peace be upon him) said, *"Give him this camel. The best people are those who do better in of repayment"*.⁽⁴⁾ It is reported from Abu Hurayrah that a man came to the

(4) Related by Muslim in his *"Sahih"* in the Book of *"Musaqat"*, chapter on the person who borrows may return what is better.

Messenger of Allah (peace be upon him) seeking alms. The Messenger of Allah (peace be upon him) borrowed food amounting to one-half of a Wasq and gave the man this. When the lender came demanding his loan, he gave him a full Wasq saying, *"One-half of this is your repayment and the other half is a present from me"*.⁽⁵⁾

Material Benefits Not Stipulated Prior to Repayment

- The basis for the prohibition of material benefits not stipulated prior to repayment, unless these benefits are not for the sake of Qard or in lieu thereof, are the following:
 1. From Anas Ibn Malik, may Allah be pleased with him, who said: "The Messenger of Allah (peace be upon him) said, 'When one of you grants a Qard and a gift is made to him by the borrower or he offers him a free ride on his animal, he is not to accept this from him, unless such a practice was prevalent among them prior to the Qard.'"⁽⁶⁾
 2. Reports of precedents laid down by the Companions, may Allah be pleased with them, which indicate the prohibition of accepting the gift of the borrower and other types of benefits, unless there is an evidence that this is not for the sake of the loan, and that the lender responds with a similar gift or adjusts it as repayment of the debt.

Current Accounts

- The basis for the determination that current accounts constitute loans (Qurud), are the following:
 1. That the bank comes to own the deposits in the current accounts and has the right to undertake transactions in the amounts and to seek growth in them (through investment). Further, it is under an obligation to return a similar amount on demand. This is the very meaning of Qard, which is the giving of wealth to one who benefits from it -that is, employs it and consumes it in pursuit of his aims- and then returns its counter-value. This differs from Wadi'ah (deposit) in the terminology of Fiqh, which is wealth deposited with a person for safe-custody so that he does not employ the wealth and returns this very wealth to the owner.

(5) Related by Al-Bayhaqi, *"Al-Sunan Al-Kubra"*, [5: 351].

(6) Related by Ibn Majah in his *"Sunan"* (H: 2457).

2. It is binding on the bank to return a similar amount on demand for the current deposit, and it guarantees such return even upon loss of the wealth, whether or not it was negligent. This is the purpose of the contract of Qard, as against Wadi'ah in Fiqh terminology insofar as the Wadi'ah is a trust in the possession of the custodian, thus, if it is destroyed due to his transgression or negligence, he is held liable for it, but if it is destroyed without such transgression or negligence, he is not liable. Resolution No. 86 (3/9) was issued by the International Islamic Fiqh Academy (OIC) regarding the status of current accounts.
- The basis for the permissibility of the bank demanding service charges -for maintaining current accounts- for the services rendered, is an excess over the duty owed by it, because it is entitled to such charges in lieu of the acts undertaken by it and services rendered to the client.
 - The basis for the permissibility of the owner of a current account utilising a chequebook and ATM card without compensation are the following:
 1. The additional benefit arising out of this issue is common for both parties -the lender and the borrower- as both benefit from it, thus, both benefits are set off against each other. In fact, the benefit that goes to the client through the issuance of a chequebook and an ATM card is secondary and is not a primary benefit insofar as the bank has set up this system for serving its own numerous aims and objectives, thus, the benefit accruing to the bank from this system is a primary benefit, while the realisation of the benefit for the client from this system is a consequence of the employment of this system by the bank for its aims and objectives.
 2. The benefit derived by the owner of a current account -the lender- from this system without a counter-value is not a benefit separate from the Qard. In fact, it is a means for the satisfaction of the loans acquired by the bank insofar as these are ways for the repayment of loans for every lender as when he demands them.
 - The basis for the prohibition of presents and gifts, when the underlying cause is Qard, insofar as the bank gives these presents and gifts to one who gives it a Qard, is that these are by way of gifts to the lender prior to

the satisfaction of the loan when these are due to the Qard.⁽⁷⁾ As for the basis of presents and gifts in general, they are not related to Qard and there is no suspicion about them.

Overdrafts between the Institutions and Their Correspondents

- The basis for the permissibility of overdrafts between institutions and their correspondents is general need and that the benefit derived from this practice is not specific to the lender alone. In fact, the benefit is mutual. Further, it does not fall under the category of Qard rather it is a step for transacting with one who deals with you. Thus, the issue does not resemble the case of “You give me a loan and I will give you a loan.”⁽⁸⁾

(7) Resolution No. (355) of the Shari'ah Board of Al Rajhi Banking Corporation was issued with respect to presents and gifts in lieu of loans (Qurud).

(8) “*Al-Mughni*” by Ibn Qudamah, [6: 436]; Resolutions and Recommendations of Al Baraka, No. (8/10) and (11/6); Shari'ah Rulings on economic Matters, issued by Bayt Al-Tamwil Al-Kuwayti, [1: 178].

Appendix (C)

Definitions

Benefit Arising from Qard

It is a benefit or an interest that is derived by the lender in a contract of Qard due to this contract.

Current Accounts

These are loans that constitute the current accounts insofar as the bank comes to own these amounts and it is possible for the owner of these accounts to withdraw these amounts at any time he likes.

Mithlis (Fungibles)

These are cash, things subjected to cubic measure, weight, linear measure and very similar countable things that do not differ to an extent that their difference will lead to a difference in their value.

Qimis (Non-Fungibles)

These are types of wealth whose difference, one from another, leads to a difference in their value, as in the case of animals.

Legal Capacity for Donation

It is the ability of the subject (Mukallaf) to grant wealth or a benefit to another in the present or in the future without compensation in lieu thereof and with the usual intention of piety and the doing of good.

Legal Capacity to Undertake Transactions

It is the ability of a person to commit an act or to issue a statement in a manner that is acknowledged by the Shari'ah, and the underlying basis is discretion, reason and puberty.

Deficient Legal Capacity for Execution

It is the ability of a person to undertake certain transactions and not others so that the execution of such transactions depends upon ratification by another.

