

Shari'ah Standard No. (29)

**Stipulations and Ethics of Fatwa
in the Institutional Framework**



Contents

Subject	Page
Preface	737
Statement of the Standard	738
1. Scope of the Standard	738
2. Definition of Fatwa and Istifta` (Seeking Fatwa)	738
3. Shari'ah Ruling on Fatwa and Istifta`	738
4. Scope of Fatwa (Content)	739
5. Conditions on Mufti (Fatwa Issuers)	739
6. Duties of the Institution That Seeks Fatwa.....	739
7. Methods and Means of Fatwa	740
8. Fatwa Controls	741
9. Text of Fatwa.....	743
10. Fatwa Manuscript (Document).....	743
11. Retreat From a Mistaken Fatwa	744
12. Morals of Fatwa (Ethics of Fatwa Issuers).....	744
13. Date of Issuance of the Standard.....	745
Adoption of the Standard	746
Appendices	
Appendix (a): Brief History of the Preparation of the Standard.....	747
Appendix (b): The Shari'ah Basis for the Standard.....	749
Appendix (c): Definitions.....	752



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 purpose of this standard is to indicate the meaning of Fatwa (Shari'ah opinion), elucidate the eligibility conditions for issuance thereof, and define its appropriate means and scope. The standard also aims to identify the observed methods of Fatwa presentation and explain how an erroneous Fatwa can be rectified.

Statement of the Standard

1. Scope of the Standard

This standard covers the area of Fatwa because it is one of the tasks assigned to Shari'ah Supervisory Boards (Board/Boards) of the Islamic Financial Institutions (Institution/Institutions).⁽¹⁾

2. Definition of Fatwa and Istifta' (Seeking Fatwa)

2/1 The term Fatwa refers to a Shari'ah opinion presented to a person who seeks it with regard to an incidence that has already occurred (the Fatwa incidence) or is expected to occur. It does not refer to answering queries pertaining to hypothetical incidences.

2/2 Istifta' refers to the act of seeking the Shari'ah opinion on an incidence that has already occurred or expected to occur.

3. Shari'ah Ruling on Fatwa and Istifta'

3/1 Originally, Fatwa is a collective duty that can be discharged of by any one of those who are able to do it. Fatwa could, however, become the personal duty of the individual if he happens to be the only one in the community who is eligible to issue it.

3/3 The board has to provide Fatwa to the Institution by virtue of their relationship.

3/4 It is the duty of the Institution to seek Fatwa on incidences that actually occur or are expected to occur. It should also seek Fatwa for every operation that it intends to pursue.

3/5 Although the seeker of the Fatwa is free to use his best efforts to determine the most appropriate source (both in terms of knowledge and integrity) from whom he will seek the Fatwa, yet according to

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

the rules and regulations, Institutions have to seek Fatwa from their own boards.

4. Scope of Fatwa (Content)

Fatwa in Institutions is confined to operational financial rulings and issues pertaining to them such as some rulings on worshipping, as well as permissibility and prohibition in some concerns such as Zakah.

5. Conditions on Mufti (Fatwa Issuers)

5/1 A board member shall be well versed in Fiqh (Islamic Jurisprudence), well informed of the contributions of diligent Fiqh scholars, and has the ability to use the Shari'ah-accepted methods of deriving reasonable rulings on emerging issues. He shall also be known for his discernment, cautiousness and knowledge about the circumstances and traditions of people, and should always remain alert against the different means of human misbehavior. Competence in Fiqh is usually manifested by the vast reputation of the scholar or his distinguishable contributions especially in the area of financial transactions performed by institutions.

5/2 Issuing Fatwa to institutions does not require competence in all areas of Fiqh. Fatwa can be issued by a scholar who is competent only in the area of financial transactions performed by institutions.

5/3 The member of the Board shall have no personal interest in the matter for which the Institution seeks Fatwa.

6. Duties of the Institution That Seeks Fatwa

6/1 The Institution is obliged to follow the Fatwa once it is issued regardless of whether it meets the satisfaction of the management or not. This obligation holds true when the Fatwa entails enforcement or prohibition of a certain act. When the Fatwa entails permissibility of the act in question, the institution has the right to refrain from following it, if it believes that for practical needs it has to do so. In this case, however, rejection of the board Fatwa should be reported to the General Assembly of the institution.

- 6/2 Fatwa should be sought again if there are new developments that should be presented to the Board. New developments may include change or improvement of conception, occurrence of new circumstances, or non-existence of some of the underlying reasons of the previous Fatwa.
- 6/3 The institution should not follow the Fatwas of other Shari'ah Advisory Boards except with permission of its own Board.
- 6/4 The institution should not demand Fatwa according to a specific *Madhab* (School of Fiqh) even if it is the official school in its host country, or the school that official Fatwa bodies adhere to. However, attention should be given to situations where the legal or judiciary system in the country observes a specific school, and the issue in question may be taken to the courts in the future.

7. Methods and Means of Fatwa

- 7/1 Fatwa should basically be founded on what has been explicitly stated in the Qur'an and the Sunnah along with what has been supported by *Ijma'* (consensus of Fuqaha) or proved by *Qiyas* (analogical deduction). After resorting to the preceding sources, the judgment of the Mufti (issuer of the Fatwa) with regard to the different viewpoints of the Fuqaha (scholars of Fiqh); i.e, *Istihsan* (Shari'ah approbation) and *Maslahah Mursalah* (public interest) may be considered as the basis for issuance of Fatwa.
- 7/2 Fatwa should not be based on a personal viewpoint that does not cater for the sources referred to in item (1/7) above, or contradict with the general texts of the Qur'an and the Sunnah that have explicit indications. Moreover, Fatwa shall also not fall in disparity with well-established *Ijma'* or the general rules derived from the Qur'an and the Sunnah.
- 7/3 Absence of explicit directives in the Qur'an and Sunnah on a given issue, or non-existence of the issue in the prevailing Fiqh literature, do not justify refraining from seeking Fatwa on that issue. Fatwa in this case may be derived through Shari'ah-sanctioned rules and methods of deduction.

7/4 The board may coordinate with the Institution to transfer the Fatwa, if necessary, to a board that is considered to be more reliable due, for instance, to its larger membership, or its inclusion of more specializations, such as Fiqh academies, AAOIFI Board and the Supreme Shari'ah boards.

7/5 Among the means that may be used for reaching the appropriate Shari'ah ruling on a given issue are the following:

7/5/1 Building detailed knowledge about the issue of the Fatwa through questioning the one who seeks it, consulting other boards, resorting to experts and specialized parties, and taking into consideration the prevailing norms and tradition.

7/5/2 Tracing the Shari'ah ruling on the issue in the different schools of Fiqh, and exerting due endeavors to ascertain if the issue encounters the existence of contradicting proofs, or it is an issue that has not been specifically dealt with in the Qur'an and the Sunnah or discussed by the Fuqaha.

7/5/3 Making use of collective Fatwas, such as the resolutions of the Islamic Fiqh Academy, other Shari'ah Advisory Boards, seminars, and conferences.

7/6 The board should issue Fatwa whenever the Institution approaches it for that purpose, except when it feels that the Institution may use the Fatwa for committing a impermissible action. In that case, the board may either refrain from issuing the Fatwa, or make it subject to certain restrictions.

7/7 Endeavors should be made for disseminating the Fatwas of the Institution and exchanging them with other Institutions and related bodies.

8. Fatwa Controls

8/1 Derivation of presumptive indications from the texts, or usage of unattested narrations about the Prophet (peace be upon him) should be avoided. Moreover, all the Sunnah texts used for supporting the Fatwa should be well-documented.

- 8/2 Fatwa issuers, while issuing the Fatwa, shall signify keenness to quote *Ijma'* and opinions of diligent Fuqaha from their accredited sources, as well as concentration on those opinions which have gained more accreditation in each School of Fiqh, and should resort to available Fiqh literature on principles of issuing Fatwa.
- 8/3 When the Fatwa offers the chance for choice between two permissible actions, preference shall be given to the easier. If choosing one of the two permissible actions would result in realization of a lawful interest while choosing the other would leave the door open for blight, leaving the door open for blight should be avoided, and efforts shall be exerted to resolve the repercussions that may subsequently result.
- 8/4 Fatwa issuers shall not always pursue Shari'ah exemptions to make matters easier for Institutions. A Shari'ah exemption should be sought only when it results from thorough examination of the issue and appropriate reasoning. Moreover, it has to be ensured that making use of the Shari'ah exemption does not embody a related act that the Fuqaha unanimously consider as prohibited, or lead to issuing different Fatwas for two identical incidences. Misuse of Shari'ah exemptions in this manner is known in Fiqh as "*Talfiq*" (fabrication).
- 8/5 Fatwa issuers shall not direct Institutions to impermissible tricks for escaping Shari'ah restrictions, or violating the objectives of Shari'ah legislation.
- 8/6 Fatwa shall not be issued hastily, declaring (for instance) prohibition of an act for the mere sense of condemnation that the one feels towards new habits and traditions, unless such habits and traditions contradict with the rules and principles of the Shari'ah. Similarly, declaring permissibility of an act shall not come for the mere sake of following rules and traditions.
- 8/7 It shall be made clear, when necessary, that declaring permissibility of an act is by no means amount to recommending that act or making a call for performing it.

9. Text of Fatwa

- 9/1 The Fatwa shall be clearly stated so that it may not be misunderstood by the layman, or taken to mean different things to those who have bad intentions.
- 9/2 When there are more than one Fiqh opinion on the same issue, the board shall declare the specific opinion that it subscribes to. If the issue is controversial the board has to explain the specific bases of its choice.
- 9/2 When the Fatwa has more than one aspect all such aspects have to be clearly indicated.
- 9/3 In principle, mentioning the proof is not an underlying condition for issuing the Fatwa, and the Institution has no right to impose it as a condition for accepting it. However, the board has to refer to the bases of its Fatwa.
- 9/4 The Fatwa statement shall be precise, concise and free from any confusing details and preachy expressions that have nothing to do with serving the purpose. If, however, the subject requires detailed statement for the sake of public interest or so as to convince the regulatory and supervisory bodies, it would be better to add such expressions, in order to justify the ruling, indicate the goal behind it, and warn against falling into blights.
- 9/5 There is no harm to provide more information than what has been requested by the seeker of the Fatwa in order to leave no room for confusion, or to distinct the opinion from other similar opinions, or to serve a future need of the Fatwa seeker.

10. Fatwa Manuscript (Document)

- 10/1 In principle, Fatwa can be issued by uttering, signaling or acting, but for Institutions it should be written to become an evidence or a document that can be referred to.
- 10/2 Fatwa shall be started by the Verse of *Basmalah* (i.e., In the name of Allah, the Most Gracious, the Most Merciful), along with praise to Allah and blessings on Prophet Muhammad (peace be upon him).

At the end of the Fatwa, the same expressions could be repeated or, in stead, expressions like "*Allahu A'lam*" (Allah knows best) could be introduced to indicate closing up of the Fatwa statement.

10/3 Fatwa shall be clearly handwritten or typed, and each page of it shall be initialed. It should also carry the date of its issuance and the official stamp of its issuing source, if such stamp is available.

10/4 Clear linkage between the Fatwa request and the Fatwa statement should be indicated. Preferably, there shall be a precise summary of the question.

10/5 When the Fatwa is issued by the concerned board of the Institution, the content of the Fatwa shall be stated in the formal proceedings of the board meeting.

11. Retreat from a Mistaken Fatwa

11/1 The board has to retreat from its Fatwa if it is proved to be wrong on reviewing, or on examination by a higher body. In such case, the board has to inform the Institution so as to rectify the ruling and its consequent effects. The Institution on its part has to correct all the actions that had been based on the wrong Fatwa and refrain from adopting it any more.

11/2 The board, on its own initiative or on request of the institution, has the right to review a previous Fatwa even if such revision would lead to issuing a new Fatwa that contravenes the former one. In such case, the Institution has to follow the new Fatwa in the future and rectify the effects and repercussions of the old one.

12. Morals of Fatwa (Ethics of Fatwa Issuers)

12/1 Being slow and cautious in explaining the Fatwa, and avoiding over-courage in making Fatwa decisions.

12/2 Avoidance of issuing different Fatwas, on the same subject and the same issue, according to the source of the Fatwa request.

12/3 Fatwa issuer should avoid issuing Fatwa when he is mentally involved in a personal affair that leaves him no room for offering correct judgment.

12/4 Keeping the secrets of the Institution and its employees, as well as the application mechanisms, which have been revealed to the board in the Fatwa process. Dealing with such secrets should not surpass the limits of illustrating the Fatwa, to indulge into unnecessary disclosure of information on technical means and procedures of application.

13. Date of Issuance of the Standard

This Standard was issued on 1 Dhul-Qadah 1427 A.H., corresponding to 23 November 2006 A.D.

Adoption of the Standard

The Shari'ah standard on Controls and Ethics of Fatwa in the Institutional Framework was adopted by the Shari'ah Board in its meeting No. (16) held in Al-Madinah Al-Munawwarah on 1 Dhul-Qādah 1427 A.H., corresponding to 23 November 2006 A.D.

Appendix (A)

Brief History of the Preparation of the Standard

The Shari'ah Board decided in its meeting No. (14) held in Dubai (U.A.E) on 21–23 Rabi' I, 1426 A.H., corresponding to 30 April – 2 May 2005 A.D., to issue a Shari'ah Standard on Controls and Ethics of Fatwa in the Institutional Framework.

On 29 Jumada I, 1426 A.H., corresponding to 6 July 2005 A.D., the Shari'ah Standards Committee decided to commission a Shari'ah consultant to prepare a study on Controls and Ethics of Fatwa in the Institutional Framework.

The study was discussed in a meeting of a joint committee comprising Shari'ah Standards Committees (1) and (2) held in Makkah Al-Mukarramah on 8–9 Rabi' I, 1427 A.H., corresponding to 6–7 April 2006 A.D., and the consultant was advised to incorporate necessary changes, in the light of the discussions and observations raised in the meeting.

The revised draft of the Standard was submitted to the Shari'ah Board in its meeting No. (16) held in Al-Madinah Al-Munawwarah on 7–12 Jumada I, 1427 A.H., corresponding to 3–8 June 2006 A.D. Further changes were introduced in the draft and the board decided to send it to the concerned experts for review and observations before discussing it in a public hearing.

AAOIFI then held, in the Kingdom of Bahrain on 6 Rajab 1427 A.H., corresponding to 31 July 2006 A.D., a public hearing which was attended by more than 30 participants representing central banks, institutions, accounting firms, Shari'ah scholars, university teachers and other interested parties. Several observations were made in the session to which the members of the Shari'ah Standards Committees (1) and (2) duly responded.

Shari'ah Standard No. (29): Stipulations and Ethics of Fatwa in the Institutional Framework

In its meeting No. (17) held in Makkah Al-Mukarramah on 26 Shawwal – 1 Dhul-Qa'dah, 1427 A.H., corresponding to 18–23 November, 2006 A.D., the Shari'ah Board accepted the changes proposed by the participants in the public hearing and adopted the Standard (unanimously for some clauses and with the majority for others), as indicated in the minutes of the Board's meetings.

Appendix (B)

The Shari'ah Basis for the Standard

- Fatwa is considered as a collective duty that can be discharged of by any one of those who are able to do it, because it is one of the religious functions that serve public interest. Therefore, what is required is to have someone in the Muslim community who can issue Fatwa, rather than to have each and every individual of the community able to do so. Fatwa would become the duty of a specific individual or a group only if that individual or group is the only one who can issue it. If Fatwa were to become the duty of every member of the society, things would be more complicated.⁽²⁾
- It is the duty of the institutions to seek Fatwa because otherwise they would not be able to meet their commitments to observe the rules of the Islamic Shari'ah. Therefore, Institutions should approach the boards for obtaining Fatwa. Similarly, it is the duty of the board to issue Fatwa to the Institution due to the relationship that binds the two by virtue of the decision of the general assembly (equity owners) of the Institution.
- Acceptance of the Fatwa of a Shari'ah scholar whose knowledge is confined to only one branch of Fiqh, such as financial transactions in institutions, is based on the viewpoint that Ijtihad (reasoning) and Fatwa may be made partially.⁽³⁾
- Preventing the Institution to adopt the Fatwas of other boards, except when allowed by its own board to do so, stems from the need to bar the way to any tendency of fabrication or attempt to pursue Shari'ah exemptions without observing their relevant controls or their context and circumstances, an act which leads to adoption of irrelevant Fatwas.
- Permissibility of referring the Fatwa to a higher Shari'ah board or to a Fiqh forum for reconsideration, or making use of collective Fatwa, rests on the

(2) *"Sifat Al-Fatwa Wa Al-Mufti Wa Al-Mustafti"*, Ibn Hamdan Al-Hanbali (P. 52)

(3) *ibid.* (P. 28).

fact that an opinion that gains support from a large group of eligible scholars is likely to be more reliable. Moreover, collective Fatwa may facilitate more coordination, and avoidance of discrepancies in the Fatwas of the different boards on the same subject.

- Withdrawal or refraining from dissemination of a certain Fatwa for fear of being misused is based on the principle of *Sadd al-Zara'i* which advocates the prohibition of a permissible act if it would (certainly or probably) lead to blight.
- Pursuing Shari'ah exemptions is prohibited because it leads to relaxation of the rules of the Islamic Shari'ah and induce loss of keenness to observe them. Therefore, some Fuqaha hold that pursuing Shari'ah exemptions amounts to *Fisq* (rebellion against Allah's Obedience).⁽⁴⁾
- Choosing the easier ruling when two alternative options are available is supported by the Qur'an in Allah's Saying: *{“Allah intends for you ease, and He does not want to make things difficult for you”}*,⁽⁵⁾ and by the Sunnah in the Prophetic Hadith stating: *“Make things easier not harder...”*.⁽⁶⁾ All these directives are to be considered after reviewing the specific proofs.⁽⁷⁾
- The controls relating to the text of the Fatwa are meant to ensure that the Fatwa would achieve its goal without deviating to an invalid meaning. As indicted by Ibn Hamdan⁽⁸⁾ in his book *“Sifat Al-Fatwa”*, drawing attention to these controls and what the ancestor Fuqaha had said about them is meant to ensure the appropriateness of the Fatwa.
- Permissibility of offering additional information with the Fatwa is shown by the statement of the Prophet (peace be upon him) when he was asked about using seawater for *Wudu'* (ablution): *“Seawater is pure and sea carcasses are permissible”*.⁽⁹⁾

(4) *“Tlam Al-Muwaqqi'in”* by Ibn Al-Qayyim [1: 222]; and *“Sifat Al-Fatwa Wa Al-Mufti Wa Al-Mustafti”* by Ibn Hamdan (P. 32).

(5) [Al-Baqarah (The Cow): 185]

(6) *“Sahih Al-Bukhari”* (H: 69); and *“Sahih Muslim”* (H: 1734).

(7) *“Rasm Al-Mufti”* by Ibn Abidin (P. 11).

(8) *“Sifat Al-Fatwa Wa Al-Mufti Wa Al-Mustafti”* by Ibn Hamdan (pp. 58–66).

(9) *“Sunan Ibn Majah”* (H: 386 and 388).

- The controls on the Fatwa document aim to preserve Fatwa from being misused.⁽¹⁰⁾
- The ruling that a wrong Fatwa should be rectified is supported by the incident when the Caliphate Umar in one case issued a Fatwa that denied some of the brothers the right of inheritance, and later on he issued another Fatwa that granted such brothers the inheritance right. Having done so he said: the former case was subject to my previous Fatwa, and the new one is subject to the new Fatwa.⁽¹¹⁾
- Avoidance of hasty Fatwa should be observed because it was the practice of the *Sahabah* (Companions of the Prophet) and the other leading Fuqaha who succeeded them. In issuing Fatwa, one should not feel shy to say: I do not know, or to postpone the Fatwa until he is in a position to answer it properly.⁽¹²⁾

(10) See more elaborations on "*Sifat Al-Fatwa Wa Al-Mufti Wa Al-Mustafti*" by Ibn Hamdan (P. 63).

(11) "*Jama' Al-Jawami*" by Al-Subki (with elaborations by Al-Mahalli) [2: 391].

(12) "*Sifat Al-Fatwa Wa Al-Mufti Wa Al-Mustafti*" by Ibn Hamdan (pp. 6-11).

Appendix (C)

Definitions

- Judgment entails the issuance of a verdict which is binding to the two litigants. In this sense, Fatwa differs from judgment as the latter entails offering a Shari'ah ruling without enforcing commitment towards it. Fatwa also differs from education, because the latter is not restricted to a specific incident. Therefore, Fatwa is quite distinct from an initiation to teach Shari'ah rulings, or a mere act of seeking knowledge about hypothetical incidences.

