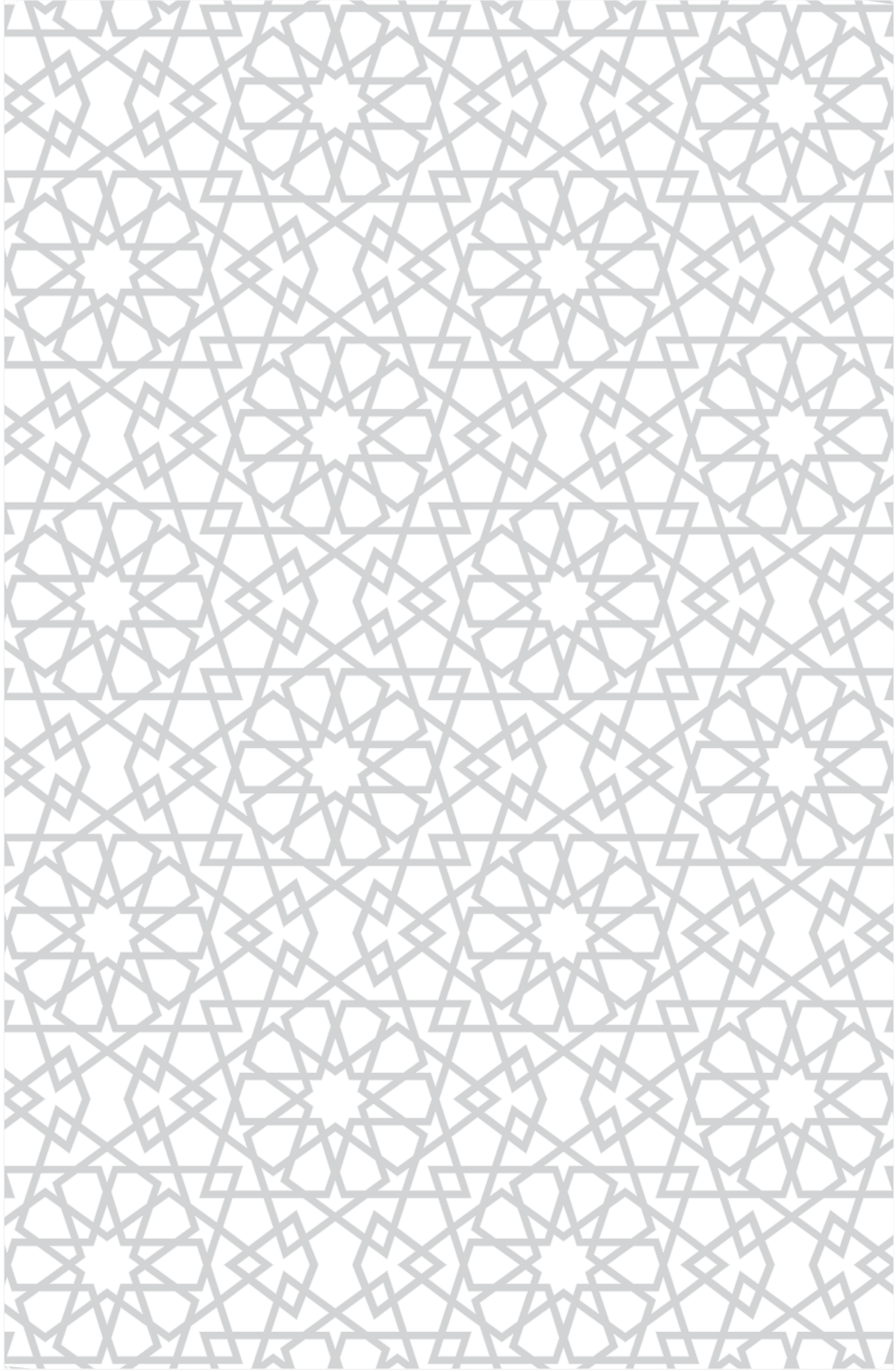


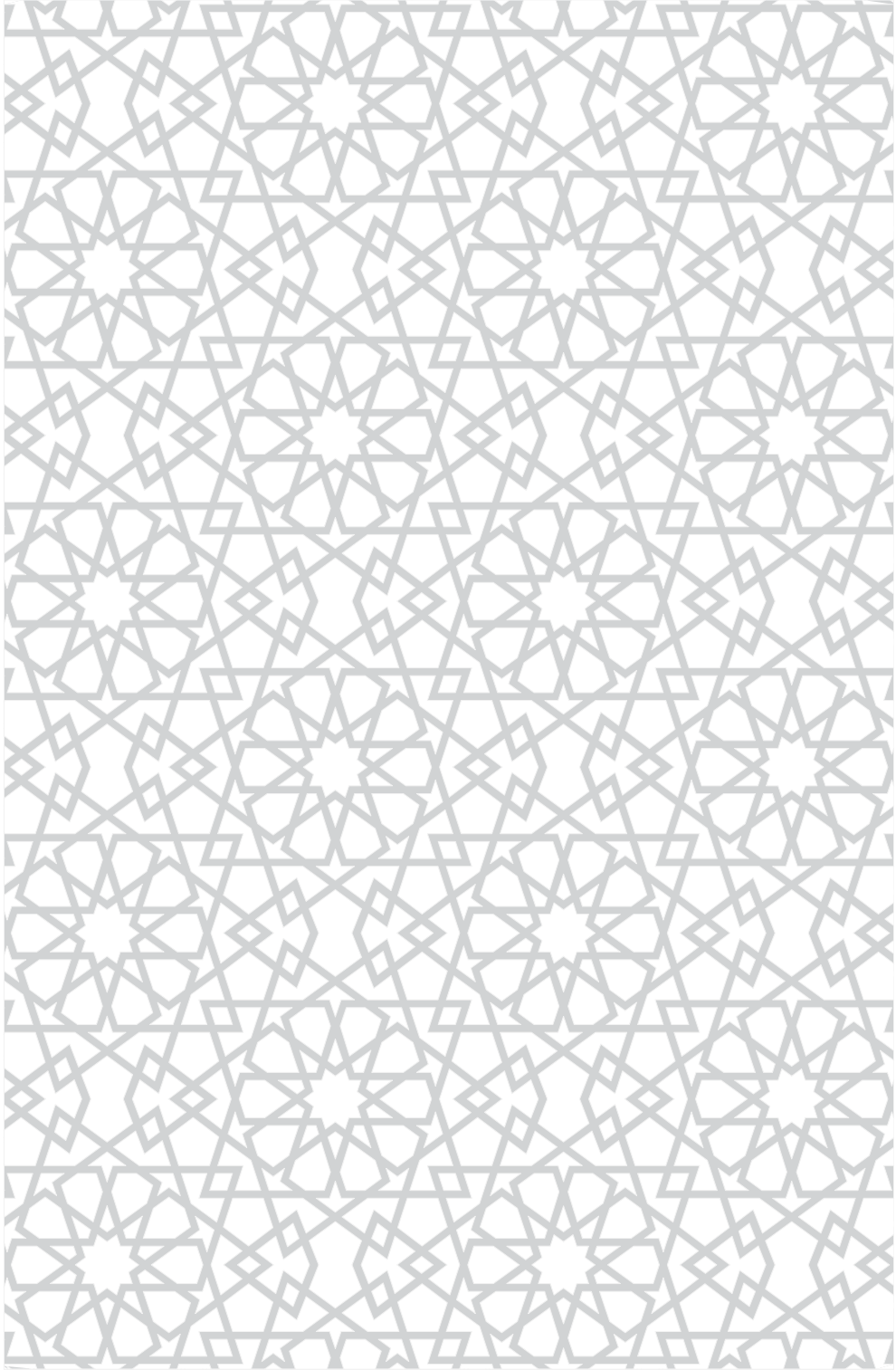
**Shari'ah Standard No. (7)**

**Hawalah**



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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 this standard is to explain the rulings, types, requirements and limitations of transfers (transfer of debts and transfer of rights), what is permissible or prohibited in this regard, and the applications of transfers in Islamic financial Institutions (Institution/Institutions).<sup>(1)</sup>

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(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 Hawalah transactions that involve a change of debtor, i.e. transfer of debt. The scope of this standard does not cover banking remittances except the remittances that take the form of Hawalah (transfer of debt).

### 2. Definition of Hawalah

Hawalah of debt is the transfer of debt from the transferor (*Muheel*) to the payer (*Muhal Alaihi*). The transfer of right, on the other hand, is a replacement of a creditor with another creditor. The transfer of debt differ from transfer of right in that in transfer of debt a debtor is replaced by another debtor, whereas in a transfer of right a creditor is replaced by another creditor.

### 3. Permissibility of Hawalah

- 3/1 Hawalah is a legitimate and an independent contract made out of courtesy and is not a contract of sale. It is permitted in order to facilitate payments and recovery.
- 3/2 The acceptance of Hawalah is recommended for the transferee if the potential payer is known to be solvent and a person who honours payments. This is because Hawalah benefits the creditor and gives relief to the debtor. If the financial status and creditworthiness of the potential payer are unknown, then Hawalah becomes *Mubah* (permissible).

### 4. Form of a Hawalah Contract

- 4/1 A contract of Hawalah can be concluded by an offer from the transferor and acceptance from the transferee (*Muhal*) and the payer in a manner that clearly indicates the intention of the parties to conclude a Hawalah contract and the transfer of the liability or obligation in respect of

a debt from one party to another party. It is not necessary that the word transfer be used.

4/2 Hawalah is a binding contract. Therefore, it is not subject to unilateral termination.

4/3 It is a requirement that a transfer of debt take effect immediately, not to be suspended for a period of time and not to be concluded on a temporary basis or contingent on future events. However, it is permissible to defer payment of the transferred debt until a future specified date.

## **5. Types of Hawalah and the Applicable Rulings**

5/1 Hawalah is divided into restricted and unrestricted Hawalah.

5/1/1 Restricted Hawalah is permissible. It is a transaction where the payer is restricted to settling the amount of the transferred debt from the amount of a financial or tangible asset that belongs to the transferor and is in the possession of the payer.

5/1/2 Unrestricted Hawalah is permissible. It is a kind of transfer of debt in which the transferor is not a creditor to the payer and the payer undertakes to pay the amount of the debt owed by the transferor from his own funds and to have recourse afterwards to the transferor for settlement, provided that the transfer for payment was made on the order of the transferor.

5/1/3 It is permitted to conclude a Hawalah on a spot payment basis. This is a Hawalah in which the debt transferred to the payer becomes payable on the spot, whether the debt has already fallen due and the obligation is then transferred to the payer for immediate settlement, or the transferred debt is yet to fall due and the transferee has required, as a condition for accepting the transfer, that it be paid immediately by virtue of transfer.

5/1/4 It is permissible to conclude a Hawalah contract on a deferred payment basis. This is a Hawalah in which the debt transferred to the payer is to be paid in the future, whether the payment of the debt is not yet due and was transferred as such to the payer,

or the payment of such debt is due but the payer required that it should be transferred for future payment at an agreed date. In the latter case, the payer cannot be asked for payment before the agreed date.

## **6. Conditions of Hawalah**

- 6/1 The permissibility of Hawalah requires the consent of all parties, namely the transferor, the transferee and the payer.
- 6/2 The permissibility of a Hawalah requires that the transferor be a debtor to the transferee. A transaction in which a non-debtor transfers another is an agency contract for collection of the debt and not a transfer of debt.
- 6/3 It is not a condition in a Hawalah that the payer be a debtor to the transferor. If the payer is not a debtor to the transferor, the Hawalah will be an unrestricted Hawalah. [see item 5/1/2]
- 6/4 It is a condition that all Hawalah parties be legally competent to act independently.
- 6/5 It is a condition in Hawalah that both the transferred debt and the debt to be used for settlement be known and transferable.
- 6/6 It is a condition for concluding restricted Hawalah that the transferred debt or the transferred portion of the debt be equal to the debt owed to the transferee in terms of kind, type, quality and amount. However, the transferor may transfer a lesser amount of a debt owed to the transferee to be settled from a larger amount owed by the transferor on condition that the transferee be entitled only to the equivalent amount of his debt.

## **7. Effect of Hawalah on the Relationship between the Transferor and the Transferee**

- 7/1 A valid Hawalah discharges the transferor from both the debt liability and any claims in respect of it. In other words, the transferee will have no right of recourse against the transferor for payment. However, if



the acceptance of the transfer was based on the condition that the payer must be solvent, then the transferee will have a right of recourse if the payer is not solvent.

- 7/2 The transferee is entitled to have a right of recourse against the transferor in situations of (I) death of the payer in bankruptcy, (II) liquidation of an Institution that is the payer in the case of bankruptcy before payment of the debt, (III) the payer is declared bankrupt in his lifetime, or he denies concluding the Hawalah contract and has taken a judicial oath to this effect and there is no evidence to prove otherwise and (IV) the Institution that is the payer is declared bankrupt by a court order.

#### **8. Effect of Hawalah on the Relationship between the Transferor and the Payer**

After the conclusion of a restricted Hawalah, the transferor is no longer entitled to reclaim from the payer an amount transferred to the payer in respect of the debt to be settled, because the right to receive this amount has now passed to the transferee.

#### **9. Effect of Hawalah on the Relationship between the Transferee and the Payer**

- 9/1 The transferee is entitled to claim the amount of the debt assigned to him through Hawalah from the payer in accordance with conditions of Hawalah contract. The payer, on the other hand, is obliged to pay him and has no right to refuse payment.
- 9/2 The payer takes the place of the transferor in respect to all rights, legal protections and obligations. The transferee in restricted Hawalah takes the place of the transferor in respect to all rights, legal protections and obligations against the payer.

#### **10. Effect of Death and Bankruptcy on a Hawalah Transaction**

- 10/1 A Hawalah shall not be annulled by the death of the transferor or liquidation of a transferor Institution. The transferee is the sole owner of the amount of the debt payable by the payer and, after

a Hawalah transaction, such a debt cannot be included in the assets of the transferor that are available to be distributed, after death or liquidation, among creditors on a pro rata basis.

10/2 A Hawalah transaction shall not be annulled due to the death of the payer or the liquidation of the Institution acting as payer. In these cases, the transferee will have the right of recourse against the estate of the payer for recovery, a personal guarantor, if any, or pre-distribution assets of the liquidation. However, if the payer dies in the state of bankruptcy, then the transferee shall be entitled to have recourse to the transferor. [see item 7/2]

10/3 A Hawalah transaction shall not be annulled due to the death of the transferee and the heirs shall replace the transferee. The Hawalah will also not be void in case of liquidation of a transferee Institution in which case the liquidator takes the place of the Institution for settlement.

## **11. Termination of a Hawalah Liability**

A Hawalah liability will come to an end by settlement of the debt or by a mutual agreement to terminate it or by the debt being written-off by the transferee.

## **12. Modern Applications of Hawalah Rules**

### **12/1 Withdrawals from a current account**

An issuance of a cheque against a current account is a form of Hawalah if the beneficiary is a creditor of the issuer or the account holder for the amount of the cheque, in which case the issuer, the bank and the beneficiary are the transferor, the payer and the transferee respectively. If the beneficiary is not a creditor to the issuer of the cheque, then this is not a Hawalah transaction because there can be no Hawalah transaction without an existing debt. In the absence of a debt, the transaction becomes an agency contract for recovery of the amount of the debt on behalf of the transferor, which is permissible by Shari'ah.

## **12/2 Overdrawing from an account or overdraft**

If the beneficiary of the amount of a cheque is a creditor to the issuer, then issuing a cheque against the account of the issuer without a balance is unrestricted transfer of debt if the bank accepts the overdraft. If the bank rejects the overdraft, then this is not considered a transfer of debt, in which case the potential beneficiary may have recourse to the issuer.

## **12/3 Travellers' cheques**

The holder of a travellers' cheque, the value of which has been paid by him to the issuing Institution, is a creditor to such an Institution. If the holder of the travellers' cheque endorses the cheque in favour of his creditor, it becomes a transfer of debt in favour of a third party against the issuing Institution that is a debtor to the holder of the traveller's cheque. This is a restricted transfer of debt and the amount of the debt is the value of the cheque for which the Institution received payment.

## **12/4 Bills of exchange**

12/4/1 A bill of exchange is a form of Hawalah if the beneficiary is a creditor to the drawer. The drawer is, in this case, the transferor who gives orders for the paying bank to pay a certain sum of money at a specified date to the defined beneficiary. The party executing payment of such amount of money is the payer whereas the beneficiary, i.e. the holder of the bill, is the transferee. If the beneficiary is not a creditor of the drawer, then the issuance of the bill of exchange becomes an agency contract to recover or collect the amount of the bill of exchange on behalf of the drawer.

12/4/2 In the absence of a debt obligation between the drawer and the paying bank, the issuance of a bill of exchange becomes an unrestricted Hawalah.

## **12/5 Endorsement of a negotiable instrument**

- 12/5/1 An endorsement of a negotiable instrument in a manner that transfers title to its value to the beneficiary is a form of Hawalah if the beneficiary is a creditor to the endorser. If the beneficiary is not a creditor to the endorser, the endorsement becomes one of agency contract for collection of the amount of the debt.
- 12/5/2 An endorsement of a bill of exchange on behalf of a client who requires the Institution to transfer, after collection, the amount of the instrument into his account is not a Hawalah. This is a contract of agency that is permissible with or without consideration.
- 12/5/3 Subject to item 12/5/1, it is permissible for the first beneficiary from a bill of exchange to endorse it in favour of any other party. The second beneficiary may also endorse such a bill of exchange in favour of a third party and so on, in which case the revolving of endorsements is a form of successive Hawalah which is not objectionable in Shari'ah.
- 12/5/4 It is not permissible to discount bills of exchange by transferring the ownership of their value, before their due date, to an Institution or others for a discounted immediate payment. This is because the transaction in this manner is a form of Riba.

## **12/6 Transfer of money (remittances)**

The request of a customer for the Institution to transfer a certain amount of money in the same currency from his current account to a particular beneficiary is a transfer of debt if the applicant is a debtor to such a beneficiary. The fee that the Institution gains from this transaction is consideration for the delivery of the money and it is not an additional amount gained by the Institution over the amount transferred. However, if a remittance is to take place in a currency different from that presented by the applicant

for the transfer, then the transaction consists of a combination of currency exchange and a transfer of money that is permissible.  
[see item 2/11 of the Shari'ah Standard on Trading in Currencies]

**13. Date of Issuance of the Standard**

This standard was issued on Rabi' I, 1423 A.H., corresponding to 16 May 2002 A.D.

## **Adoption of the Standard**

The Shari'ah Standard on Hawalah 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 Hawalah.

On 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 in order to discuss them in a public hearing.

A public hearing was held in Bahrain on 29-30 Dhul-Hajjah 1422 A.H., corresponding to 2-3 February 2002. 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-Hajjah 1422 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.

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 Hawalah

The contract of Hawalah derives its permissibility from the Qur'an, the Sunnah, Ijma' (consensus of Fuqaha) and reasoning. Abu Hurayrah (may Allah be pleased with him) narrated that the Prophet (peace be upon him) said: *"Default on payment by a solvent debtor is unjust, and if anyone of you is transferred to a solvent person, he must accept the transfer."*<sup>(2)</sup> In another text of the Hadith, related by Ahmad and Al-Bayhaqi, the Prophet (peace be upon him) said: *"If one is referred to a solvent person for the recovery of his right, such a person must accept the transfer"*. The Prophet's order that the creditor must accept the transfer means transfer of debt is legal, otherwise he would not give that order.

The permissibility of Hawalah has enjoyed unanimity in Muslim societies and communities from time immemorial and there is no report that anyone has disapproved of it.<sup>(3)</sup>

The acceptance of a Hawalah contract is recommended for the transferee if the potential payer is known to be solvent and keeps his promises in respect to payments because it benefits the creditor and gives relief to the debtor from liability by the transfer.

The basis that a Hawalah transaction is also *Mubah* (permissible) for the transferee if the financial status and creditworthiness of the potential payer are unknown is that the order in the above-mentioned Hadith does not make it a condition that the payer be solvent for the permissibility of Hawalah. If

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(2) "Sahih Al-Bukhari" [3: 123]; and "Sahih Muslim" [3: 119].

(3) Ibn Qudamah, "Al-Mughni" [4: 336]; Al-Buhuti, "Kashshaf Al-Qina" [3: 382]; Al-Buhuti, "Sharh Muntaha Al-Iradat" [2: 134]; Ibn Nujaym, "Al-Bahr Al-ra'iq" [6: 269]; and Al-Zayla'i, "Tabayin Al-Haqa'iq" [4: 171].

the payer is not solvent then the acceptance of the Hawalah by the transferee remains permissible.

### **A Hawalah Contract is Binding**

If all its conditions are met, a Hawalah contract becomes binding without any difference of opinion among the scholars.

### **Form of a Hawalah Contract**

The contract of Hawalah cannot be concluded on a deferred basis or subject to the happening of a particular event, as it has the character of a contract of (immediate) exchange. This is because by virtue of the Hawalah contract both the transferee (the payee) and the payer have immediately entered into a new contractual relationship. Also, a Hawalah cannot be concluded on a temporary basis nor can it be contingent on future events, because this conflicts with the nature of Hawalah which is the immediate transfer of the debt to the payer.<sup>(4)</sup>

### **Types and Rulings of a Hawalah Contract**

- The scholars have unanimously endorsed the permissibility of restricted Hawalah, whether it is restricted to a debt owed to the transferor by the payer or it is restricted to the value of a tangible good belonging to the transferor in the possession of the payer. The unrestricted Hawalah is permitted by the Hanafis only. They based this permissibility on the Prophet's order that a Hawalah deal must be accepted, without indicating that the payer must be a debtor to the transferor or not. This shows the permissibility of both the unrestricted and restricted Hawalah.<sup>(5)</sup>
- The basis for the permissibility of a deferred Hawalah contract is that the payer is liable to make payment to the payee (transferee) by virtue of Hawalah. This permissibility is analogous to the permissibility of a deferred guarantee contract. As a matter of principle, a right that is due by virtue of Hawalah is similar to a right that is due by virtue of a guarantee

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(4) Ibn Abidin, "*Radd Al-Muhtar*" [5: 349]; "*Durar Al-Hukkam Fi Sharh Majallat Al-Ahkam*" [2: 52]; and "*Al-Mawsu'ah Al-Fiqhiyyah Al-Kuwaytiyyah*" [18: 191-192].

(5) Al-Kasani, "*Bada'i' Al-Sana'i*" [6: 16]; Al-'Ibadi, "*Al-Jawharah Al-Nayyirah*" [1: 316]; Al-Zayla'i, "*Tabyin Al-Haqa'iq*" [4: 174]; and "*Majallat Al-Ahkam Al-'Adliyyah*", article (686).

contract. Since the latter can be concluded on a deferred basis, so a Hawalah transaction.<sup>(6)</sup>

- The basis for the permissibility of *Hawalat al-Haqq* (transfer of a right) as advocated by the Hanafis is that its essence is similar to suretyship which is permitted by all four schools of Islamic law, regardless of the name of the contract in this regard.<sup>(7)</sup> Again, *Hawalat al-Haqq* does not significantly differ from restricted transfer of debt. If one looks at the change of creditor, then the transaction is one of transfer of rights, and if one looks at the change of debtor, it is a restricted transfer of debt. The differences between transfer of debt and transfer of right are evident in some forms, such as when the creditor makes a gift of the amount of his debt claim against the payer to a person who is not a debtor to the transferor. Here, there are not two debts, hence there is a transfer of right and not a restricted Hawalah because of the lack of two debtors, as the transferor here is not a creditor of the beneficiary from the gift.

#### Conditions of Hawalah

- The basis for the necessity of the consent of all the three parties in a Hawalah contract is as follows:
  - a) The transferor is required to consent because he might not want a third party to pay the debt on his behalf. Therefore, his consent is necessary for the permissibility of the Hawalah contract.
  - b) The transferee must also consent to the Hawalah contract because the Hawalah contract necessitates a transfer of his right to payment from the transferor as debtor to another person (the payer), and people differ in various aspects when it comes to payment of debts.
  - c) The payer must also consent in the unrestricted Hawalah because the effect of the Hawalah contract is to make the payer liable for payment and, as a principle; there is no liability without there first being an acceptance of such liability.<sup>(8)</sup>

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(6) Al-Sarakhsi, *"Al-Mabsut"* [20: 71-72]; Ibn Nujaym, *"Al-Bahr Al-Ra'iq"* [6: 270]; *"Durar Al-Hukkam"* [2: 52]; and Al-Balkhi, *"Al-Fatawa Al-Hindiyyah"* [3: 298].

(7) Wahabiah Al-Zuhayli, *"Al-Fiqh Al-Islami Wa Adillatuhu"* [5: 171].

(8) Ibn Abidin, *"Radd Al-Muhtar"* [5: 341]; and Mullah Khasru, *"Durar Al-Hukkam"* [2: 308].

- The basis for the requirement that the transferred debt or the transferred part of a debt be equal to the payable debt in kind, type, quality or amount is to avoid Riba. However, this condition does not mean that the liability of the transferor must be similar in quantity to the liability of the payer towards the transferor in order to make a Hawalah contract valid. In other words, a Hawalah contract is permissible even if the amount of one of the two liabilities is either greater or lesser than the other liability provided that the transferee will be paid only an amount equivalent to his debt. For example, one can transfer the right to his creditor to collect 10 dinars, the equivalent amount of his debt, out of the 20 dinars he is owed. The transferor may also direct the transferee to collect five dinars being his right against the payer out of the ten the transferor owes the transferee. Therefore, the similarity in amount that is required here is that the transferee must not take more than the actual amount of his debt. The intention of this is to avoid Riba.<sup>(9)</sup>

#### **Effect of Hawalah on the Relationship Between the Transferor and the Transferee**

- The reason for saying that the transferor is discharged from liability after the conclusion of a Hawalah transaction is because this is the legal effect of Hawalah. Hawalah means that the other party (the transferee) is deemed to have received his right to payment by the payer outright, which connotes its obligatory nature. Therefore, the transaction cannot be reversed for the simple reason that if something is transferred then it cannot be argued that it remains in the same place. This means the transferee is not entitled to ask the transferor for payment and the payer, on the other hand, becomes liable for payment.<sup>(10)</sup>
- The right of the transferee to have recourse, in the event of non-performance by the payer, to the transferor as advocated by the Hanafis is based on a Hadith. It is reported that Uthman Ibn Affan was asked about a situation in which a transfer of debt is concluded and the transferee

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(9) Al-Ruhaybani, *"Matalib Uli Al-Nuha"* [3: 325]; Al-Buhuti, *"Kashshaf Al-Qina"* [3: 308]; *"Hashiyat Al-Dusuqi 'Ala Al-Sharh Al-Kabir"* [3: 327]; and Al-Sawi, *"Hashiyat Al-Sawi 'Ala Al-Sharh Al-Saghir"* [3: 426].

(10) Ibn Qudamah, *"Al-Mughni"* [4: 338].

found the payer had died in a state of bankruptcy. The answer was that the transferee is entitled to return to the transferor for payment, as the right of a Muslim cannot go unfulfilled.<sup>(11)</sup> This report reveals that the transferor has a right of recourse to the original debtor if the payment is not attained due to bankruptcy or death of the payer.

- The Hadith that says, Muslims are bound by the conditions they made<sup>(12)</sup> is the basis for the view of the majority of jurists that the transferee has a right of recourse to the transferor if he had stipulated that he accepts the transfer on the basis that the payer is solvent and is capable of paying the amount of the debt. Moreover, this stipulation serves the purpose of the contract; hence, termination of the contract takes place if such a condition is not met.<sup>(13)</sup>

#### **The Effect of Hawalah on the Relationship Between the Transferor and the Payer**

The basis for the rule that the transferor loses his claim over the amount of the debt against the payer after the Hawalah transaction is that the right to this claim has shifted to the transferee by virtue of the contract of Hawalah.

#### **The Effect of Hawalah on the Relationship Between the Transferee and the Payer**

The basis for the rule that the transferee no longer has a financial claim against the transferor is that the contract of Hawalah transfers the liability to pay to the payer.<sup>(14)</sup>

The right of the payer to be entitled to all rights associated with the securities that were available to the debtor (the transferor) is based on the fact that these securities are associated with the debt of the transferor, which are the subject matter of the Hawalah contract. These rights are

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(11) Ibn Qudamah, *"Al-Mughni"* [4: 339].

(12) This Hadith has been related by Al-Bayhaqi in *"Al-Sunan Al-Kubra"* [6: 79] and [7: 249], Maktabat Dar Al-Baz; and Al-Daraqutni in his *"Sunan Al-Daraqutni"* [10: 27], Dar Al-Ma'rifah.

(13) Ibn Qudamah, *"Al-Mughni"* [4: 339]; Al-Buhuti, *"Kashshaf Al-Qina"* [3: 387]; and Al-Buhuti, *"Sharh Muntaha Al-Iradat"* [2: 136].

(14) Al-Balkhi, *"Al-Fatawa Al-Hindiyyah"* [3: 297], *"Durar Al-Hukkam Fi Sharh Majallat Al-Ahkam"* [2: 36]; and Al-Kasani, *"Bada'i' Al-Sana'i"* [6: 18].



therefore transferable with the transfer of the debt liability. Hence, the payer is entitled to all these rights as well.<sup>(15)</sup>

#### **Effect of Death and Bankruptcy on a Hawalah Contract**

The basis that the death of the transferor will not affect the Hawalah contract is that the transferor, after the Hawalah contract, is not entitled to the transferred debt.<sup>(16)</sup> In addition, the reason why the death of the payer will not affect the Hawalah contract is that the heirs or the guarantor of the payer, if any, will be liable for payment.<sup>(17)</sup>

The practices of overdrafts, negotiable instruments and endorsing cheques and bills of exchange are valid because they are practical applications of the concept of Hawalah.

#### **Transfer of Money (Remittances)**

The International Islamic Fiqh Academy has issued a resolution in respect to the permissible solutions for the combination of transfer of money (banking remittances) and currency exchange.<sup>(18)</sup>

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(15) *“Al-Mawsu'ah Al-Fiqhiyyah Al-Kuwaytiyyah”* [18: 225]; *“Qanun Al-Mu'amalat Al-Sudani”*, article (510); and Jordanian Civil code, Article (1005).

(16) Al-Babarti, *“Al-'Inayah Sharh Al-Hidayah”* [7: 249]; Al-Zaylai, *“Tabayin Al-Haqa'iq”* [4: 174]; Ibn Abidin, *“Tanqih Al-Fatawa Al-Hamidiyyah”* [1: 293]; Malik, *“Al-Mudawwanah”* [4: 126-127]; Ibn Nujaym, *“Al-Bahr Al-Ra'iq”*, [6: 274]; and Al-Kasani, *“Bada'i' Al-Sana'i”* [6: 17].

(17) *“Durar Al-Hukam Fi Sharh Majallat Al-Ahkam”* [2: 36]; and *“Al-Mabsut”* [20: 72].

(18) International Islamic Fiqh Academy Resolution No. 8 (1/9).

## Appendix (C)

### Definitions

#### **Hawalah**

Hawalah is the transfer of a debt liability from the transferor to the payer (i.e. it is a process of changing debtors and creditors)

#### **Muheel (the transferor)**

The transferor is the principal debtor and who usually refers his creditor to a third party for the collection of the debt. In some forms of Hawalah, he may be a creditor.

#### **Muhal**

Muhal or the transferee is the creditor or the party who accepts the offer to collect his due from the transferor's debtor. He is also known as Muhal Lahu or Muhtal Lahu.

#### **Muhal Alaihi**

Muhal Alaihi is the party accepting the debt liability that will be collected from him by the transferee. He is also called Muhtal Alaihi.

#### **Hawalat al-Haqq**

The transfer of a right from one creditor to another



