

**Shari'ah Standard No. (15)**

**Ju'alah**

**(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 purpose of this standard is to elaborate the definition of Ju'alah, to distinguish it from Ijarah, to describe its elements, conditions, legal status in the Shari'ah, fundamental rules, and applications in the transactions of Islamic financial Institutions (Institution/Institutions),<sup>(1)</sup> irrespective of the institution acting as the general offeror (demanding performance) or as the worker (under an obligation to perform), even when this is through another, parallel Ju'alah.

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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 sets out fundamental rules of the Shari'ah on Ju'alah and its application in activities for which the extent of the work required cannot be precisely determined for it continues throughout the determined period. It is for this reason that it does not cover the contract of Ijarah for employment/service or leasing, just as it does not cover maintenance contracts or stipulations of maintenance in relation to other contracts, such as the requirement of maintenance in a sale contract or an Istisna'a contract (construction contract).

### 2. Definition of Ju'alah

Ju'alah is a contract in which one of the parties (the Ja'il) offers specified compensation (the Ju'l) to anyone (the 'Amil) who will achieve a determined result in a known or unknown period.

### 3. Permissibility of Ju'alah

Ju'alah is permissible deeming the determination of the end result to be realised through it as sufficient, and it is not affected by the uncertainty that prevails with respect to the subject-matter of the contract, that is, the work to be done. It is for this reason that Ju'alah is suitable for activities for which Ijarah, which requires that the desired work be clearly specified, is not.

### 4. Shari'ah Status of Ju'alah

4/1 With due consideration to item (6) below in respect to the revocation of Ju'alah, Ju'alah, in principle, is not a binding contract. The general offeror (Ja'il) or the worker ('Amil) are entitled to revoke it unilaterally, however, it becomes binding for the Ja'il when the worker commences work. If the worker undertakes not to revoke the contract during a specified period, it is binding on him to abide by the undertaking.

- 4/2 The possession of the worker exercised over the property of the offeror is that of a trustee. He is, therefore, not liable except in the case of negligence, misconduct or violation of the conditions stipulated by the offeror.

## **5. Elements of Ju'alah and Its Conditions**

The elements of Ju'alah are: The two parties (the offeror and the worker), the form of the contract and the subject-matter of the contract (the compensation and the work).

### **5/1 The two parties to the contract (the offeror and the worker)**

The existence of legal capacity is a condition for both parties to the contract. It is not a condition that the worker be specified, therefore, Ju'alah is concluded by the issuance of an offer directed at the general public. Any person whom the offer reaches may undertake the work himself or with the help of another. If, however, the worker is specified, it is obligatory for him to undertake the work himself or with the express consent of the offeror through someone under his supervision and control.

### **5/2 Form of the contract**

The Ju'alah contract is concluded by an offer directed towards a specified worker or towards the general public, irrespective of such an offer being made verbally, in writing or through any other means that indicate an invitation to work and an obligation to pay the compensation. Acceptance of the offer is not stipulated as a condition.

### **5/3 The subject matter of the contract (compensation and work)**

The subject matter of the contract is the work that is agreed upon through Ju'alah as well as the compensation for the work.

#### **5/3/1 Work that produces the desired result**

5/3/1/1 Among the forms of activity that may be agreed upon on the basis of the Ju'alah contract are the following:

- a) An activity that is intended, through the agreement, to produce a result such as the extraction of minerals.

- b) Any information in which the offeror has an interest such as presenting a report or study or the completion of scientific works that realise a result, but in which the extent of the work cannot be determined.
- c) An activity that is intended, through the agreement, to return lost property to its seeker.

5/3/1/2 It is permissible to stipulate that the job is done within a specified period so that the worker will not be entitled to compensation after this period, except when the period is over and the result is close to realisation, in which case the period will be automatically extended.

5/3/1/3 When the period is over and the worker has done (part of) the work that will benefit the offeror, the worker is entitled to reasonable wages (*Ujrat al-Mithl*).

5/3/1/4 The Ju'alah contract is valid despite uncertainty as to the nature of the work, provided that the required result realised by the work is determined.

5/3/1/5 It is a condition that the work involves some type of effort.

5/3/1/6 It is a condition that the work not be obligatory for the worker.

#### 5/3/2 The compensation

5/3/2/1 The compensation should be known, valuable in the eyes of the Shari'ah, and deliverable. If the compensation is unknown, unlawful or not deliverable, payment of reasonable compensation becomes binding.

5/3/2/2 The compensation may be a portion of the object of work in Ju'alah, for instance, a percentage of a debt agreed upon for collection or the right to utilise, for a determined period, a project whose implementation is agreed upon.



5/3/2/3 As a rule, entitlement to compensation is not established until the work is completed and delivered to the offeror. The following are the exceptions to the rule:

- a) Where it is evident that the work undertaken by the worker belongs to someone other than the offeror and has been decreed as such, the worker is entitled to the compensation.
- b) Where an accident occurs during work undertaken by the worker causing loss that was not due to the tort or negligence of the worker, the worker is entitled to full compensation.

5/3/2/4 It is permissible to stipulate that all or part of the compensation be paid in advance at the conclusion of the contract or thereafter, even though this is before the completion of the entire work, however, it is considered "subject to accounts" and the worker is not entitled to it without the realisation of the result, the offeror having the right to reclaim it if the work is not realised.

## **6. Revocation of Ju'alah**

- 6/1 If the offeror, or the worker, revokes the contract prior to the commencement of work, the worker is not entitled to compensation.
- 6/2 If the offeror prevents the worker from working after commencement of the work, the offeror is bound to pay reasonable wages.
- 6/3 If Ju'alah contract is terminated by the worker after the work is commenced; the worker is not entitled to a reward, except when the parties agree to otherwise.
- 6/4 If the worker revokes the contract after commencing the work, he has no claim against the offeror, unless they had agreed to the contrary.

## **7. Distinction between Ju'alah and Ijarah**

Ju'alah is distinguished from Ijarah on the following grounds:

- 7/1 Ju'alah is valid despite uncertainty of work deeming the determination of the required result by the offeror as sufficient.
- 7/2 Ju'alah does not require acceptance.
- 7/3 Entitlement to compensation depends on completion of work and delivery of result.
- 7/4 Ju'alah is valid even if the other party is not known.
- 7/5 As a rule, Ju'alah is terminable, while Ijarah is binding.

## **8. Applications of Ju'alah**

Among the applications of Ju'alah in activities where the extent of work is undetermined and in which uncertainty is overlooked are:

### **8/1 Exploration for minerals and extraction of water**

Ju'alah contract may be used for the exploration for minerals and the extraction of water in situations where entitlement to wages is contingent upon the finding of minerals or water without reference to the amount of time or the extent of the period.

### **8/2 Collection of debts**

Ju'alah is used for collecting debts in cases where the entitlement to compensation is contingent upon the collection of all of the debt, in which case entitlement to the entire compensation is established, or part of the debt so that compensation proportionate to the amount of debt collected is due.

### **8/3 Securing permissible financing facilities**

8/3/1 Securing permissible financing facilities means that the worker undertakes some work that leads the institution to agree to the granting of financing facilities to the offeror or to arrange syndicated financing.

8/3/2 Ju'alah contract may be used for securing facilities provided that the condition of the permissibility of Ju'alah is met, that is,

the subject-matter of Ju'alah must be valid such as the creation of debt through Murabahah on deferred payment, Ijarah with deferred rental, raising of loans without interest, issuance of letters of guarantee or the opening of documentary credit with the condition that the transactions are not employed for raising interest bearing loans through stipulations, customary practice or dealings among institutions.

#### **8/4 Brokerage**

Ju'alah is used in brokerage activities in cases where the entitlement to compensation is contingent upon the conclusion of the contract for which intermediation is undertaken.

#### **8/5 Discoveries, inventions and designs**

Ju'alah is used for the realisation of scientific discoveries, innovative inventions and designs, such as symbols and trade marks, where entitlement to compensation is contingent upon the realisation of the discoveries, the registration of patents or the creation of designs conforming to the conditions elaborated by the offeror.

### **9. Role of Institutions in Ju'alah**

9/1 It is permissible for an institution to have the status of a worker in Ju'alah by contract, for work benefiting others irrespective of the institution undertaking the work itself or by contracting out the work through another Ju'alah that is in the nature of a parallel, unless it is stipulated that the institution will carry out the work itself. It is obligatory that the two Ju'alahs are not linked.

9/2 It is permissible for an institution to have the status of the offeror whether the work benefits the institution or is for the fulfilment of its obligation in a Ju'alah for the benefit of another (parallel Ju'alah) ensuring that the two Ju'alahs are not linked.

### **10. Date of Issuance of the Standard**

This Shari'ah Standard was issued on 7 Rabi' I, 1424 A.H., corresponding to 8 May 2004 A.D.

## **Adoption of the Standard**

The Shari'ah Standard on Ju'alah was adopted by the Shari'ah Board in its meeting No. (9) held during the period of 11-16 Ramadan 1423 A.H., corresponding to 16-21 November 2002 A.D.

## **Appendix (A)**

### **Brief History of the Preparation of the Standard**

In its meeting No. (7) held in Makkah Al-Mukarramah during the period of 9-13 Ramadan 1422 A.H., corresponding to 24-28 November 2002 A.D., the Shari'ah Board resolved to give priority to the preparation of the Shari'ah Standard for Ju'alah.

On Saturday 14 Shawwal 1422 A.H., corresponding to 29 December 2001 A.D., a Shari'ah consultant was commissioned to prepare a juristic study and an exposure draft on the Shari'ah Standards for Ju'alah.

In its meeting No. (1) held on 9 Safar 1423 A.H., corresponding to 20 April 2002 A.D., in the Kingdom of Bahrain, the Shari'ah Standards Committee discussed the exposure draft of the standard and made some amendments.

In its meeting No. (2) held on 20 and 21 Rabi' I, 1423 A.H., corresponding to 1 and 2 June 2002 A.D., in the Kingdom of Bahrain, the Committee also discussed the exposure draft of the standard and asked the consultant to make the necessary amendments in light of comments and discussions of the members.

In its meeting No. (3) held on 20 Rabi' II, 1423 A.H., corresponding to 1 July 2002 A.D., in the Kingdom of Bahrain, the Committee further discussed the exposure draft and made amendments that it deemed suitable in preparation of the submission of the exposure draft to the Shari'ah Board.

The revised exposure draft of the Shari'ah standard was presented to the Shari'ah Board in its 9th meeting held in Makkah Al-Mukarramah during the period of 11-16 Ramadan 1423 A.H., corresponding to 16-21 November 2002 A.D. The Shari'ah Board made further amendments to the exposure draft of the standard and resolved that it be distributed to specialists and interested

parties for soliciting their comments in preparation of their discussion in a public hearing.

A public hearing was held in Bahrain on 18 Dhul-Hajjah 1423 A.H., corresponding to 19 February 2003 A.D. The public hearing was attended by more than thirty participants representing central banks, institutions, accounting firms, Shari'ah scholars, academics and others having interested in this field. The public hearing was based on the observations made whether these transmitted prior to the public hearing or were raised during the public hearing. The members of the Shari'ah Standards Committees (1) and (2) responded to the observations and comments.

The Shari'ah Standards Committees (1) and (2) held a joint meeting on 2 Muharram 1424 A.H., corresponding to 5 March 2003 A.D., in the Kingdom of Bahrain to discuss the comments made during the public hearing as well as those sent received in writing, inserting amendments deemed suitable.

The Shari'ah Board in its 10<sup>th</sup> meeting held in Al-Madinah Al-Munawwarah during the period of 2-7 Rabi' I, 1424 A.H., corresponding to 3-8 May 2003 A.D., discussed the amendments suggested by the Shari'ah Standards Committee, and incorporated the amendments that it found 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.

The Shari'ah Standards Review Committee reviewed the standard in its meeting held on 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. (41) held in Al-Madinah Al Munawwarah, Kingdom of Saudi Arabia during the period of 27-29 Sha'ban 1436 A.H., corresponding to 14-16 June 2015 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 Ju'alah

Ju'alah contract is permissible according to the majority of the Fuqaha on the basis of the Qur'an, the Sunnah, Ijma' (consensus of Fuqaha) and Ijtihad (reasoning).

- As for the Qur'an, the evidence is in the story of Yusuf (Joseph) and his brother after the announcement of the loss of the King's great beaker, *{“For him who brings it is the (reward of) a camel load; I will stand surety for it”}*.<sup>(2)</sup>
- As for the Sunnah, the evidence is in the report from Abu Sa'id Al-Khudri<sup>(3)</sup> about the stipulation of Ju'l (compensation) if the chief of the tribe was cured through him and the tacit approval of the Prophet (peace be upon him) of this.
- There is Ijma' (consensus of Fuqaha) about the contract of Ju'alah in essence with some disagreement about its scope insofar as some Fuqaha restricted it to reward for the return of a runaway slave, as is recorded in the Sunnah.
- As for Ijtihad (reasoning), there is a general need for Ju'alah in the case of acts that cannot be performed by a person himself nor can he find someone who will volunteer for him. Further, it is suitable for cases for which the contract of Ijarah is not suitable, like the return of lost property from an unknown location.

#### Shari'ah Status of Ju'alah

- The basis for the principle that Ju'alah is not binding for the offeror is that accrual of the compensation is contingent upon a condition, thus,

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(2) [Yusuf (The Prophet Joseph): 72].

(3) “Sahih Al-Bukhari” [5: 2166].



it resembles bequest, which is not binding. The basis for Ju'alah being non-binding for the worker is that the work to be done is uncertain, thus, it resembles Mudarabah, which is not binding.

- The basis for regarding Ju'alah as binding when the worker has commenced work is that at this stage Ju'alah is similar to Mudarabah in which the Mudarib has commenced work. Like Mudarabah, Ju'alah is considered binding by the Maliki scholars in such a case. The basis for considering it binding when the two parties undertake not to terminate the contract during the period of the contract is that unilateral revocation leads to the loss of the effort put in by the worker or the likelihood of injury for the offeror.
- The basis for the entitlement of the worker to receive reasonable wages, when the contract is revoked after commencement of work, is that the work done by the worker is legally valid and loss is not to be caused to him. He, therefore, has recourse to reasonable compensation as is the case in Ijarah when it is revoked due to a defect.

#### **Elements of Ju'alah and Its Conditions**

- The basis for the rule that it is obligatory in Ju'alah that all its elements (two parties, form, work and compensation) be found is that it is a contract and must have these elements. Further, Ju'alah is a commutative contract that must have a form to indicate the task required as well as the amount of compensation.
- The basis for permitting the worker to seek assistance from others, when there is no stipulation for his personal services, is that Ju'alah is similar to agency in which seeking help from others is valid.
- The basis for not stipulating the identification of the worker and directing the offer towards the general public is that the offeror does not know of a person who is able to achieve what is required.
- The basis for not stipulating acceptance on the part of the worker, when he is unknown, is that it is not possible to obtain his acceptance.
- The basis for allowing the work to be uncertain is the general need along with the impossibility of determining the extent of work.
- The basis for stipulating that compensation be known is that compensation is like wages and that there is no need to validate Ju'alah when



the compensation is unknown as against the uncertainty about the work and the worker.

- The basis for recourse to reasonable compensation upon the vitiation of the named compensation is analogy constructed upon Ijarah with recourse to reasonable wages upon the vitiation of the named wages.
- The basis for the permissibility of compensation being a portion of the subject-matter of Ju'alah, even though it is uncertain and does not exist, is that it is a type of uncertainty that does not prevent delivery and involves no Gharar (uncertainty) since entitlement to compensation is not established until the task is accomplished.
- The basis for the rule that entitlement to compensation is not established until the work is completed and delivered, is that work in Ju'alah is not determined or certain, therefore, stipulating payment as compensation would amount to compensating something that has not compensation because the work has not been completed.

#### **Applications of Ju'alah**

- The basis for permitting an institution to undertake Ju'alah, as a worker or as an offeror, is the permissibility of Ju'alah for which natural persons and juristic persons have the same legal capacity.
- The basis for the permissibility of Ju'alah for debt collection, and other similar acts stated in the standard, is that these are acts whose precise determination is difficult and Ijarah is not suitable for them, while Ju'alah is legally valid despite the uncertainty with respect to work.



