

Shari'ah Standard No. (23)

**Agency and the Act of an
Uncommissioned Agent (Fodooli)**



Contents

Subject	Page
Preface	609
Statement of the Standard.....	610
1. Scope of the Standard	610
2. Agency	610
3. Conditions on the Agency Parties	612
4. Types of Agency.....	613
5. Commitments of the Principal and the Agent	616
6. Stipulations on the Agent.....	617
7. Expiry of Agency	619
8. Act of an Uncommissioned Agent (Fodooli).....	620
9. Date of Issuance of the Standard.....	620
Adoption of the Standard.....	621
Appendices	
Appendix (a): Brief History of the Preparation of the Standard.....	622
Appendix (b): The Shari'ah Basis for the Standard.....	624



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 clarify the Shari’ah rulings that govern the activities of Islamic financial Institutions (Institution/Institutions)⁽¹⁾ in appointing agents or becoming agents of others, whether in arranging contracts and disposing of property, or undertaking procedural tasks, or managing/investing funds. The Standard also indicates the underlying conditions of Agency, elaborates on its various forms, spells out its repercussions, and outlines the responsibilities of both the Principal and the Agent. Moreover, the Standard aims to embark upon the Act of an Uncommissioned Agent “Fodooli” and the Shari’ah rulings thereon.

(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 agency and the acts of an uncommissioned agent in concluding contracts on financial transactions (such as sale, Ijarah and compensatory reconciliation), disposing of assets, providing services and conducting practical acts such as receipt, payment and delivery. The Standard also covers areas such as fund management, real estate and investment agency. However, it does not cover agency and the act of an uncommissioned agent in several other affairs of life such as worshipping (like Zakah, for which there is a separate standard), personal affairs, penalty affairs, legal prosecution/advocacy, and documentary credits (which have also been dealt with in a separate standard).

2. Agency

2/1 Definition, permissibility and characteristics of agency

2/1/1 Agency is the act of one party delegating the other to act on its behalf in what can be a subject matter of delegation and it is, thus, permissible.

2/1/2 Agency is, basically, a non-binding contract for both the parties thereto. However, it may sometimes become a binding contract. [see 3/4 below]

2/2 Basic elements of agency

2/2/1 The basic elements of agency include the form, the subject matter of agency, and the two parties to the contract (the principal and the agent).

2/2/2 The form of agency comprises any act that customary practices traditionally consider a delegation of the right to acting by someone on behalf the other. Such delegation comprises of

offer and acceptance which has no standard form of wording and may be expressed through utterance of words, writing, messaging or gesture. In accepting non-paid agency, silence is also considered as sufficient acceptance, while a negative response is indicative of rejection of agency.

2/2/3 Agency may take place in any of the following forms:

2/2/3/1 Immediate Agency, as usually the case, where the contract becomes effective as soon as it is entered into.

2/2/3/2 Conditional Agency: where the validity of the contract is made subject to fulfillment of a certain condition, for instance when a debtor agrees to put his own assets under the management of his creditor in case of default.

2/2/3/3 Future Agency: where the contract becomes valid only at a specific date in the future.

2/2/3/4 Agency, whether free or limited, shall be subject to specific conditions. In case of free agency, consideration should be given to customary practices, interest and the state of the principal.

2/2/4 While conditionality and limitation may be resorted to in concluding agency contracts, they may also be confined to the disposal of the subject matter of agency. In this case, though the agency contract is immediately effective, disposal is made subject to the fulfillment of a specific condition, such as resorting back to the principal before disposal. The conditions set by the principal should be observed such as offering him a guarantee or lien.

2/2/5 The subject matter of agency is for what the contract is entered into. [see item 3/3]

2/2/6 The two parties to the contract are the principal and the agent. [see items 3/1 and 3/2]

3. Conditions on the Agency Parties

3/1 Conditions on the principal

3/1/1 The principal should possess legal capacity to enter into contract.

3/1/2 The principal should have the right to dispose of the asset in question. Agency, therefore, is not acceptable from a legally incapable person like a lunatic or an indiscriminating minor. A partially capable person, such as a discriminating minor, may appoint an agent for matters that result in absolute benefit to him, such as accepting donations from others, but he cannot appoint an agent in harmful matters like making donations. In acts that may be harmful or useful, such as buying and selling, a partially capable person may appoint an agent, but the acts of that agent remain pending the approval of the principal's guardian or whosoever enjoys the similar right on behalf of the principal.

3/2 Conditions on the agent

3/2/1 The agent should have full legal capacity, because a lunatic or an indiscriminating minor cannot become an agent. A discriminating minor may become an agent, provided that all the contractual commitments are the sole responsibility of principal.

3/2/2 The agent should be aware of his status as an agent. When somebody acted on behalf of another and later on, the former comes to know that he is an agent of the latter, the preceding act does not fall under the agency contract. If, however, he does so with the intention of performing the act regardless of agency, the case should be subjected to the rules governing the act of an uncommissioned agent (*Fodooli*). [see item 8]

3/3 Conditions on the subject matter of agency

3/3/1 The subject matter of agency should be known to the agent. However, minor *Jahalah* (unknowability) that does not lead to

dispute, or temporary uncertainty, may be dispensed with. It can also be overlooked when, in absolute agency, the principal authorizes the agent to channel the funds in any form of investment. Nevertheless, the agent should observe the interest of the principal, as well as the norms and customary practices if necessary.

3/3/2 It should be owned by the principal, or he has the right of depositing thereof.

3/3/3 It should be something that can be disposed of through agency. This includes all types of financial contracts and dealings that a person can perform personally. Any contract that a person is permitted by Shari'ah to be involved in personally can be performed through agency.

It should not involve a Shari'ah-banned practice, like trading in impermissible commodities or committing usurious lending.

4. Types of Agency

4/1 Agency may take the following forms:

4/1/1 Specific versus general agency. General agency includes all methods of disposing of assets provided that the interest of the principal and the customary practices are well observed. Disposal of assets here does not include making donations, unless the principal authorizes the agent to do so.

4/1/2 Limited versus absolute agency. Absolute agency is bound by customary practices and the interest of the principal. It is not permissible in absolute agency to sell at less or buy at more than the market price, nor is it permissible to perform barter and deferred payment sales, except with the prior consent of principal.

4/1/3 Paid versus non-paid agency. [see item 4/2]

4/1/4 Binding versus non-binding agency. [see item 4/3]

4/1/5 Temporary versus continuous agency. [see item 4/4]

4/2 Paid agency

- 4/2/1 Paid agency is permissible in Shari'ah, whether remuneration is explicitly stipulated in the contract or ascertained in accordance with the customary practices, as when the agent does provide such service except for remuneration.
- 4/2/2 When agency is paid, it falls under the Shari'ah rulings on Ijarah. [see item 4/3]
- 4/2/3 The amount payable as remuneration for agency should be known, whether in lump sum or as a share of a specific amount of income. It may also be defined in terms of an amount of income to be known in the future, as when remuneration is linked to an indicator that may be quoted at the beginnings of different intervals of time. However, it is not permissible to leave remuneration for agency undetermined and allow the agent to take an unspecified share from the entitlements of the principal.
- 4/2/4 When remuneration for agency is not specified, it may be measured in terms of the prevailing market rate for similar effort.
- 4/2/5 Remuneration for agency may be any gain in excess of a specific amount of output of the operation, or a share of the output.
- 4/2/6 A certain share of the output may be added to the specific remuneration of the agent, as a motivation.
- 4/2/7 When the agent, for no reasonable excuse, refrains from carrying on agency that he has been paid for, and the work he has done was beneficial, he becomes entitled to the remuneration commensurate with the part of work done, and within the limits of the contract value for that part of work. The agent in this case is bound to indemnify the principal for any actual loss resulting from his refusal to continue the work.

When the principal, for no reasonable excuse, forces the agent to discontinue the work before the end of the agency period,

the agent becomes entitled to the full remuneration agreed upon.

When the principal, for a valid reason, forces the agent to discontinue the work before the end of the contract, the agent becomes entitled to remuneration for that part of work he has already performed.

4/2/8 Damage of the subject matter of agency does not relieve the principal from paying remuneration to the agent for the part of the work the latter has already performed. When the damage occurs because of misconduct or negligence of the agent, he is bound to indemnify the principal for it.

4/3 Binding agency

Agency is, basically, not binding, because each of the two parties has the right to revoke the contract without denying its effects that may continue after revocation. However, agency becomes binding in the following cases:

4/3/1 When it involves rights of others, as when the mortgagor appoints the mortgagee as an agent, or when the mortgagor is authorized to seize the mortgaged asset or sell it on maturity. Agency in the latter case is binding to the mortgagor (the debtor). A further example of binding agency is a case when the owner of an income-generating asset assigns the collection of his entitlements to an agent manager.

4/3/2 When agency is a paid agency. [see item 4/2]

4/3/3 When the agent commences tasks that cannot be discontinued or phased out without causing injury to him or to the principal. Agency in this case remains binding until it is possible to suspend the work, or phase it out without causing injury to any of the two parties.

4/3/4 When the principal or the agent undertakes not to revoke the contract within a certain period.

4/4 Temporary agency

- 4/4/1 Basically, agency has no time limit beyond which the contract becomes no longer valid, because the agent can be terminated at any time. The two parties, however, may agree on a certain period after which the agency becomes invalid without a request from any of them to revoke the contract.
- 4/4/2 The effect of specification of a time limit for agency is confined to restrain the agent from commencing new operations subsequently.
- 4/4/3 Unless the contract stipulates otherwise, the agent may commence new operations during the contract period even if the effects of such operations will succeed the period of the contract.

5. Commitments of the Principal and the Agent

5/1 Commitments of the principal

- 5/1/1 In contract of procurement agency, the price and other expenses should be borne by the principal. Besides the price of purchased commodity, the principal should reimburse the agent expenses such as those of transportation, storage, taxation, maintenance and insurance. In paid agency, such expenses should not be stated in the contract as payable by the agent now or in the future.
- 5/1/2 In paid agency, the principal should pay the agent the amount of remuneration agreed upon in the contract. [see item 4/2]

5/2 Commitments of the agent

The agent is considered as a trustee in holding the asset in question, and therefore, he is not bound to indemnify the principal for that asset in case of damage. He shall be held responsible for indemnity only when the damage results from his own misconduct, negligence or breach of terms or stipulations of the contract. Breach of contract for this purpose does not include acts that serve the interest of the

principal, like selling at a higher or buying at a lower price. In this regard, Shari'ah Standard No. (5) on Guarantees indicates under item 2/2/2 the following:

“It is not permissible to combine agency and personal guarantees in one contract at the same time (i.e. the same party acting in the capacity of an agent on one hand and acting as a guarantor on the other hand), because such a combination conflicts with the nature of these contracts. In addition, a guarantee given by a party acting as an agent in respect of an investment turns the transaction into an interest-based loan, since the capital of the investment is guaranteed in addition to the proceeds of the investment, (i.e. as though the investment agent had taken a loan and repaid it with an additional sum which is tantamount to Riba). But if a guarantee is not stipulated in the agency contract and the agent voluntarily provides a guarantee to his principals independently of the agency contract, the agent becomes a guarantor in a different capacity from that of agent. In this case, such an agent will remain liable as guarantor even if he is discharged from acting as agent”.

6. Stipulations on the Agent

6/1 Performing deals with one's self and relatives

6/1/1 When an agent conducts deals with his ascendant or descendant relatives, who are neither under his guardianship, nor are the agent's spouse, the deal is permissible unless it encompasses injustice or favoritism. In case of deals that involve relatives who are under the guardianship of the agent, or deals that involve the agent's spouse, the agent should obtain the consent of the principal.

6/1/2 An agent should not conduct deals with his own self or with his son/daughter who is still under his guardianship, or with his partner (*Sharik*) in the same contract.

6/1/3 The agent should not act for both parties to the contract.

6/1/4 An agent may purchase what he has bought for the principal, by way of offer and acceptance. The deal should be concluded

in such a way that the guarantees stemming from the agency contract and the sale contract are kept separate. After the completion of the conclusion of the sale contract, the commodity becomes under the guarantee of the purchaser/agent. [see Shari'ah Standard No. (8) on Murabahah – item 3/1/5]

6/2 Monitoring of the provisions and rights of the contract

Monitoring the provisions of contract is the responsibility of principal, whereas monitoring the activities stipulated in the contract (except donations that should be assigned to the principal) is the responsibility of agent. Nevertheless, the principal, by virtue of ownership, may pursue the agent's activities.

6/3 Breach of contract stipulations

6/3/1 When the agent breaches the contract in a way that does not serve the interest of the principal, the latter is free to maintain the contract or declare it invalid. Breach of the contract on the part of the agent may relate to the subject matter of agency or part thereof, the price, on spot or deferred payment, possession (purchase), or transfer of ownership (sale). [see items (8) and 5/2]

6/3/2 When the agent breaches the contract by purchasing at a price that exceeds both the market price and the price set forth by the principal, he should compensate the principal for the difference between the purchase price and the market price. Similarly, if the breach is by selling at less than the price specified by the principal, compensation should be for the difference between the selling price and the market price. Hence, the case here is similar to what happens in Mudarabah or investment agency whereby selling is stipulated to take place for a profit not less than a specified proportion. And hence, the agent (or the Mudarib) doesn't guarantee that proportion, but his guarantee is limited to any amount less than the price of a similar fungible good.

6/4 Appointing a sub-agent

The agent has no right to appoint a sub-agent except with the permission of the principal. Once a sub-agent is appointed, his termination does not spontaneously follow the termination of the first agent, but the principal can terminate him.

6/5 Appointing more than one agent

When more than one agent are appointed in the same contract, none of them should become the sole decision-maker unless with the authorization of principal. If they have been appointed by separate contracts, each of them has the right to discharge their responsibilities independently, unless the principal requires joint action from them.

7. Expiry of Agency

7/1 The agency contract expires in the following cases:

- 7/1/1 The contract expires when the principal or the agent dies or loses legal capacity or when the Institution undergoes bankruptcy or liquidation.
- 7/1/2 When the principal terminates the agent or the latter resigns. In case of termination, the principal has to inform the agent [see item 4/2/7], for compensation of loss resulting from refusal by the agent to continue the work, or forced discontinuation of work imposed by the principal before the expiration of contract or agency term, in regard to the consequent remuneration or damage compensation.
- 7/1/3 When the agent completes the work assigned to him in fixed-task agency or the principal performs the task in question.
- 7/1/4 When the principal no longer owns the asset in question or the principal has lost the right of disposing thereof. Agency also expires if the principal has performed the work, or the subject matter of agency no longer exists.
- 7/1/5 At the occurrence of the incidence that has been stipulated for ipso facto expiry of the agency.

Shari'ah Standard No. (23): Agency and the Act of an Uncommissioned Agent (Fodooli)

7/1/6 At the expiry of the contract term in temporary agency. In this case, the contract may be extended to the required term when necessary. [see item 4/3]

7/2 Interminable agency remains effective even after the death of the principal or liquidation of the Institution. It continues up to the end of the subject matter of agency.

8. Act of an Uncommissioned Agent (Fodooli)

8/1 An uncommissioned agent (Fodooli) is a person who discharges (in the absence of any need or urgency) the affairs of others without being an agent or having a right to do so by virtue of Shari'ah. The deal becomes subject to the rulings on the Fodooli, even when the acts of a real owner makes him appear an agent.

8/2 The approval or denial of a contract concluded by an uncommissioned agent is subject to the discretion of the owner. Approval of such contract by the owner should also precede revocation of the contract by either of the two parties; otherwise, a new contract has to be initiated. If the owner of the property does not approve the act of the uncommissioned agent, the act becomes binding to the latter, if he did not declare at the time of signing the contract that he had no authority.

8/3 The rulings on the uncommissioned agent are applicable to all financial contracts, including compensatory contracts like sale, purchase, rent and hiring contracts, donations by way of gift, and investment agency contracts.

8/4 When the owner of the asset approves the act of the uncommissioned agent, the contract becomes effective, and subject to all rulings on agency. The approval shall be retroactively effective, based on the date of such an act.

9. Date of Issuance of the Standard

This Standard was issued on 23 Rabi' I, 1426 A.H., corresponding to 30 April 2005 A.D.

Adoption of the Standard

The Shari'ah Board adopted the Shari'ah Standard on Agency and the Act of An Uncommissioned Agent in its meeting No. (14) held in Dubai on 21 – 22 Rabi' I, 1426 A.H., corresponding to 30 April – 2 May 2005 A.D.

Appendix (A)

Brief History of the Preparation of the Standard

The Shari'ah Board decided in its meeting No. (10), held on 2–7 Rabi' I, 1424 A.H., corresponding to 3–8 May 2001 A.D., in Al-Madinah Al-Munawwarah to issue a Shari'ah Standard on Agency and the Act of Uncommissioned Agent.

On 17 Sha'ban 1423 A.H., corresponding to 13 October 2002 A.D., the Shari'ah Standards Committee decided to commission a Shari'ah consultant to prepare a draft standard on Agency and the Act of Uncommissioned Agent.

In its meeting No. (10) held on Friday and Saturday 26-27 Safar 1425 A.H., corresponding to 16-17 April 2004A.D., in the Kingdom Of Bahrain, the Shari'ah Standards Committee (2) discussed the Shari'ah study and advised the consultant to make necessary changes in light of the discussions and observations of its members.

In its meeting No. (11) held on Wednesday 28 Rabi' II, 1425 A.H., corresponding to 16 June 2004 A.D., in Dubai (U.A.E), the Shari'ah Standards Committee (2) discussed the draft Standard on Agency and the Act of Uncommissioned Agent (Fodooli) and introduced some changes thereto in light of the discussions and observations of the members.

Once again, the committee discussed the draft standard in its meeting held on 24–25 Rajab 1425 A.H., corresponding to 9-10 September 2004 A.D., and made further changes in light of the discussions and observations of its members.

The revised draft of the standard was then submitted to the Shari'ah Board in its meeting No. (13) held in Makkah Al-Mukarramah on 26-30

Shari'ah Standard No. (23): Agency and the Act of an Uncommissioned Agent (Fodooli)

Sha'ban 1425 A.H., corresponding to 10–14 October 2004 A.D. The Board made some changes in the document and decided to send the amended document to a number of experts for their comments before discussing it in a public hearing.

A public hearing was held in the Kingdom of Bahrain on 15 Safar 1426 A.H., coresponding to 25 March 2005 A.D., and attended by more than 35 participants representing central banks, financial Institutions, accounting firms, Shari'ah scholars, academics and other concerned parties. Several comments were made before and after the public hearing. Some members of the Shari'ah Standards Committees (1) and (2) responded to the quires made during the session.

In the meeting of the Shari'ah Standards Committees (1) and (2), held in the Kingdom of Bahrain on 15-16 Safar 1426 A.H., corresponding to 25-26 March 2005 A.D., the comments made during the public hearing were discussed and some changes were made to the document.

The Shari'ah Board convened its meeting No. (14) on 21–23 Rabi' I, 1426 A.H., corresponding to 30 April - 2 May 2005 A.D., held in Dubai (U.A.E) and adopted the Standard.

Appendix (B)

The Shari'ah Basis for the Standard

- Permissibility of agency by Shari'ah is demonstrated in the noble Qur'an, where Allah, Exalted be He, says: {*"...So send one of you with this silver coin of yours to the town, and let him find out which is the good lawful food..."*}.⁽²⁾ Similitude of this incidence to agency is that the one who was sent to the town to buy the food was the agent of the others.⁽³⁾ In Sunnah, a Hadith was narrated by Urwah Al-Bariqi (may Allah be pleased with him) who said that the Prophet (peace be upon him) had given him one dinar to purchase a sacrificial sheep for the Prophet,⁽⁴⁾ an incidence that involves agency. As regards to Ijma' (consensus of Fuqaha), the author of the "*Al-Bahr Al-Zakhkhar*" and others have demonstrated permissibility of agency. Also, in common sense agency is well demonstrated in terms of the help of others that one may sometimes need, especially for things that he cannot do himself.⁽⁵⁾
- Permissibility of initiating agency in any wording which indicates initiation thereof is based on the fiqh principle that "What matters in contracts are intentions and meanings rather than wording and constructions". Therefore, whatever indicates delegation, which is the essence of agency, is acceptable for initiating the contract. The underlying reason for consideration of silence as acceptance in case of non-paid agency is that acceptance in this case is considered to have been given implicitly⁽⁶⁾. Effectiveness of the agency contract can be linked to fulfillment of a certain condition or to a future date because agency is delegation of power rather than an act of ownership

(2) [Al-Kahf (The Cave): 19].

(3) Related by Al-Bukhari, Abu Dawud and Al-Tirmidhi: "*Al-Talkhis Al-Habir*" [3: 304].

(4) "*Nayl Al-Awtar*" [5: 352]; "*Fath Al-Qadir*" by Ibn Al-Humam [6: 554]; "*Al-Mughni*" by Ibn Qudamah [5: 203]; and "*Al-Bahr Al-Zakhkhar*".

(5) "*Al-Bahr Al-Ra'iq*" by Ibn Nujaym [7: 153].

(6) "*Al-Minhaj*" by Al-Nawawi [2: 164]; and "*Fath Al-Qadir*" [6: 553].

transfer that could be required immediately. On the contrary, a person may need to tie delegation to the occurrence of a certain incidence, or to a specific date in the future.

- The principal shall possess the right of disposing of the asset in question because the agent is going to derive such right from him; hence the former cannot delegate a right that he does not own⁽⁷⁾.
- As for the detailed rulings pertaining to partial legal capacity of the agent, these rulings hold true for all dealings including agency.
- The ruling that agency should be known to the agent is manifested in the fact that knowledge in this case is a necessity for completion of the process of offer and acceptance, and hence distinction between a real agent and an uncommissioned agent.
- Imposition of four conditions on the subject matter of agency is necessary to facilitate conclusion and validity of the contract that cannot be attained without these four conditions namely: existence of the asset, asset ownership by the principal, possibility of disposing of the asset through agency and the absence of any Shari'ah restriction that prevents the deal.
- Permissibility of paid agency stems from the fact that agency is a useful work for which the agent has the right to ask remuneration. An agent who is known to be providing agency services only against payment is entitled to remuneration even when remuneration is not explicitly mentioned in the contract, because a customary practice is acceptable as long as it does not encounter a Shari'ah restriction. Non-paid agency is also permissible because it is considered, in this case, as a form of donation.
- The justification for the clauses relating to remuneration of the agent is that such clauses are essential to make remuneration well known at either the time of the contract conclusion or in the future. Temporary uncertainty about the exact amount of the remuneration is overlooked because knowledge of the amount in the future will leave no room for dispute.⁽⁸⁾ Permissibility of adding a certain share of the profit to the principal remuneration rests on the fact that such addition does not distort knowledge of the principal

(7) *"Al-Lubab"* by Al-Maydani [2: 139].

(8) *"Al-Insaf"* [5: 403]; *"Al-Rawdah"* by Al-Nawawi [4: 301]; *"Al-Khurashi"* [7: 5]; *"Al-Fatawa Al-Hamidiyyah"* [1: 324]; and *"Tadhkirat Al-Fuqaha"* by Al-Hilli [2: 114].

amount. In this case, the commitment to offer the agent a certain share of the profit is in the sense of a pledge to offer donation. Thus, the offered share of the profit can be considered as a conditional gift, or as Ju'alah. There is another viewpoint that considers the pledged share of the profit as a subsidiary addition to the principal remuneration, and concludes that in a subsidiary we can overlook what we cannot overlook in the principal.

- Agency is, originally, non-binding because it is an act of delegation that neither the principal nor the agent should be forced to continue. The exceptional cases of binding agency have been dealt with to preserve whatever rights of others involved therein. Moreover, an exceptional treatment is also needed for paid agency that should be subjected to the rulings on Ijarah, as well as the case when there is a pledge not to revoke the contract within a specific period because breaching such commitment may cause injury to others.
- It is permissible to specify a time limit for agency, because agency is nothing but a contract that could have a specific duration, like Ijarah for instance.
- The justification for defining the commitments of the principal and the agent is – as set out in the Standard- the need to honor contractual obligations of agency and pursue the acts and liabilities that emerge from it.
- The agent is considered as a trustee in holding the asset because he works for the interest of others (the principal) and trusteeship is the normal status in similar engagements. Moreover, the principal's act of choosing the agent for the purpose in question is an indication of his good faith on him, and therefore the principal should not reverse that good faith, except for misconduct, negligence or breach of the contract's limitations.
- Impermissibility of combining agency and guarantee in the same contract, is based on their opposing implications, in addition to the fact that guarantee by the agent entails a suspicion of Riba (usury). Therefore, the status of the agent as a trustee contradicts with provision of guarantee.
- Impermissibility for the agent to represent both parties to the contract – as per the Hanafi School and the predominant view in the Shafi'i School – is to avoid assigning both offer and acceptance to the same party, and hence prevent any probable self bias. Adopting the viewpoint of these two Schools is, therefore, most suitable for Institutions to avoid malpractices and

misleading formalism in making transactions and prevent overlapping of guarantees.

- Monitoring of the contract's provisions is assigned to the principal because he is the principal party of the contract, whereas the agent, who is just a contractor, has to monitor the activities of the contract.
- Suspension of an agent act that breach the contract without adding to the benefit of the principal, until obtaining the principal's approval conforms to the normal Shari'ah practice of exerting the best possible effort to rectify an act of a Muslim.⁽⁹⁾ The act here remains pending approval of the principal to safeguard him against injury.
- An agent who breaches the contract by selling or buying at a price other than the price agreed upon has to indemnify the principal for the difference between the price he accepted/offered, and the market price. The justification for this ruling is the need to establish justice and compensate the principal for loss, without committing the Shari'ah-banned practice of accepting capital on pre-fixed return, which entails a suspicion of Riba. This case has been discussed in "*Al-Mughni*" by Ibn Qudamah, who referred also to another viewpoint that suggests revocation of the deal.⁽¹⁰⁾
- Agency in selling a mortgaged asset is treated as an exceptional case where the contract does not expire on the death of the agent (agency to be pursued by inheritors), in order to preserve the rights of the mortgagee. Moreover, such agency is originally irrevocable before fulfillment of its purpose, for thereto is attached others' rights.
- The justification for adopting the fiqh viewpoint that advocates suspending the act of the uncommissioned agent rather than revoking the deal (for uncertainty about its confirmation by the principal), is the fact that an act of a Muslim should, as far as possible, be preserved from cancellation.⁽¹¹⁾ Preservation of the act against cancellation is possible here through suspension, in addition to the fact that the act may prove to be useful to the

(9) "*Al-Mughni*" by Ibn Qudamah [5: 135-136].

(10) Ibid.

(11) In "*Al-Bada'i*" [5: 177], it is stated: "The act of the Muslim should, as far as possible, be perceived as correct"; and in "*Fath Al-Qadir*" [2: 445], it is stated: "Making the best possible effort to rectify the act of the Muslim".

owner of the property in question. In this connection, Ibn Al-Humam said: "When the case is viewed from the standpoint of Gharar (uncertainty), the contract appears to be invalid, whereas if it is viewed from the standpoint of benefit and absence of harm the contract appears to be permissible. Therefore, Ibnul Humam supports reconciliation of the two standpoints by suggesting permissibility with suspension."⁽¹²⁾ It has also been narrated that the Prophet (peace be upon him) said: "*Whoever can offer a benefit to his Muslim brother, should do so*". If, however, the act turned to be harmful to the principal, he can revoke it by virtue of the right he has.

Moreover, permissibility of suspending the act of the uncommissioned agent until approval of the principal can also be derived from the Hadith narrated by Hakim Ibn Hizam (May Allah be pleased with him) stating that the Prophet (peace be upon him) gave him one dinar so as to buy a sheep that the Prophet (peace be upon him) wanted to sacrifice. Hakim purchased the sheep for one dinar and sold it for two. Then he purchased another sheep for the Prophet (peace be upon him) for one dinar and handed over the remaining dinar to him. The Prophet (peace be upon him) took the remaining dinar and spent it on charity and then prayed to Allah to bless Hakim's trading business.⁽¹³⁾



(12) "*Fath Al-Qadir*" [5: 317].

(13) Related by Abu Dawud and Al-Tirmidhi.