

STANDARDS ABSTRACTED

**FROM RESOLUTIONS OF SHARI'A BOARD
OF BANK ALBILAD**

Standards Abstracted from Resolutions of Shari'a Board of Bank Albilad

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In case of any difference between Arabic and
English versions, the Arabic version shall prevail.**



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**FROM RESOLUTIONS OF SHARI'A BOARD
OF BANK ALBILAD**

Shari'a Board Advisory Department

In the Name of Allah, the Most Gracious, the Most Merciful

Standards Abstracted from Resolutions of Shari'a Board of Bank Albilad

Shari'a Board Resolution No. (135)

All Praise is due to Allah, the Lord of the Worlds, and Peace and Blessings be upon our Prophet Muhammad, his Household and his Companions.

In its 437th meeting held on Sunday 4/1/1434 A.H., corresponding to 18/11/2012 A.D., at the bank's headquarter in Riyadh, the Shari'a Board reviewed the *Standards Abstracted from Resolutions of Shari'a Board of Bank Albilad* submitted by the Shari'a Board Advisory Department. These standards represent a summary of the resolutions and instructions issued by the Shari'a Board and its Preparatory Committee from the beginning of their work at Bank Albilad until the end of the year 1432 A.H. (corresponding to 2010 A.D.). This summary is drafted in brief indexed standards that serve as a reference for researchers, bankers, and for the Shari'a Board and its Advisory Department.



Having examined the reports of the meetings held by the Preparatory Committee regarding these standards, namely 9 meetings,

Having reviewed the recommendations presented by the Preparatory Committee in its 197th meeting held on Monday 27/12/1433 A.H. (corresponding to 12/11/2012 A.D.), the Board passed the following resolution:

Approving the «*Standards Abstracted from Resolutions of Shari'a Board of Bank Albilad*» in its attached form.

The Board recommends printing, distributing and translating these standards for its wider utility for all stakeholders.

May Allah guide us to the Right Path, and Peace and Blessings be upon our Prophet Muhammad, his Household and his Companions.

The Shari'a Board

Sheikh Abdullah bin Sulaiman bin Manea
(Head of the Shari'a Board)



Prof. Dr. Abdullah bin Muhammad Al-Mutlaq
(Deputy Head of the Board)



Prof. Dr. Abdullah bin Mousa Al-Ammar
(Member)



Dr. Muhammad bin Saud Al-Osaimi
(Member)



Dr. Abdulaziz bin Fawzan Al-Fawzan
(Member)



Dr. Yusuf bin Abdullah Al-Shubaili
(Member)





Introduction

Praise be to Allah, and Peace and Blessings be upon the Messenger of Allah, Muhammad Ibn Abdullah, his Household, his Companions and those who follow him until the Day of Resurrection.

Based on the policy of Bank Albilad which states that the dealing and operation of the bank will be compliant with the rulings of the Islamic Shari'a, the Shari'a team was formed and they commenced their work along with the foundation team of the Bank early in 1425 A.H., corresponding to 2004 A.D. before the bank's foundation license was issued by the Royal Decree No. M/48 on 21st of Ramadan 1425 A.H., (corresponding to 4th November 2004 A.D.).

Currently, the Shari'a Board of Bank Albilad consists of following six reputable scholars:

1. Sheikh Abdullah bin Sulaiman bin Al-Manea, (Head of the Shari'a Board).
2. Prof. Dr. Abdullah bin Muhammad Al-Mutlaq, (Deputy Head of the Board).
3. Prof. Dr. Abdullah bin Mousa Al-Ammar.
4. Dr. Muhammad bin Saud Al-Osaimi.
5. Dr. Abdulaziz bin Fawzan Al-Fawzan.
6. Dr. Yusuf bin Abdullah Al-Shubaili.

At inception, the Board was consisting of the last four mentioned members, however, later on during the year of 1427 A.H. (2006 A.D.), Sheikh Abdullah bin Sulaiman bin Al-Manea (Head of the Board) and Prof. Dr. Abdullah bin Muhammad Al-Mutlaq (Deputy Head of the

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Board) joined the Board. In the same year, the Shari'a Board issued its resolution No. (82) constituting the «Preparatory Committee of the Shari'a Board». This Committee is branched from the Shari'a Board and consists of four of its members. The Committee's mission is to study the issues submitted to the Shari'a Board and make resolutions regarding the urgent matters. The resolutions and works of the Preparatory Committee are presented to the Shari'a Board so that it makes the final resolutions regarding them. The Shari'a Board and its Preparatory Committee consist of the same members until the date of the publication of this book.

From Corporate Governance perspective, the Shari'a Board is an independent body and it reports to the General Assembly. The Board's regulation states its objectives, missions, authorities and responsibilities. In addition to the Shari'a Board, the bank has formed Shari'a section which operates as any other department in bank for day to day functions; however, it simultaneously works independently under the supervision of Shari'a Board.

The Shari'a section is responsible for meeting the requirements of the Shari'a Board as well as implementing the Shari'a strategy for the bank. Functionally, this section is divided into two departments:

First; the Shari'a Board Advisory Department: It is entrusted with the task of preparing the studies and researches, organizing and coordinating the works of the Shari'a Board, reporting, archiving and documenting its resolutions and instructions, as well as its records and notes. In other words, the Shari'a Board Advisory Department works as a bridge between the bank and the Shari'a Board.

Second, the Shari'a Audit Department: Its role is to ensure that all the Bank's operations and transactions have been approved by the Shari'a Board and that they are executed and implemented in compliance with the relevant resolutions issued by the Shari'a Board.

During eight years of work (1425-1432 A.H / 2004-2011 A.D.), the Shari'a Board and its Preparatory Committee have scrutinized many products, contracts, agreements, supervisory notes, financial statements, *Zakat*-related issues and various other items. As a result, the Board has

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issued more than 1500 resolutions and instructions addressing major and inclusive issues, as well as partial and executives issues. Most of the resolutions and instructions issued by the Board have been issued with the consensus of all members, while some others have been agreed by the majority of members, in those cases, contradictory viewpoints are recorded and mentioned.

The Board relies on the rules of *Istidlal* (legal reasoning) approved by the scholars, observing the Shari'a objectives for transactions, overweighting the opinions evidenced by stronger proof regarding matters disagreed upon by the scholars, and following the *Takhrij* (analogical deduction) approach for contemporary issues. It also pays attention to conformity with the collective *Ijtihad*-based opinions, such as the resolutions issued by the Council of Senior Ulema in Saudi Arabia, Islamic Fiqh Academy of the Muslim World League, International Islamic Fiqh Academy of the Organization of Islamic Cooperation, and Standards of the Shari'a Council of Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). Moreover, the Shari'a Board considers and refers to the resolutions issued by other Shari'a Boards in other Islamic financial institutions.

Accordingly, the Shari'a Board Advisory Department has a great desire to share the internal scholarly outputs and to encourage the Islamic banking field by publishing these standards after organizing, rectifying and formatting them in a way that realizes the best possible benefits. This can be achieved through the use of brief standard statement in a way that makes such summary not only a good reference for the Shari'a Board and its Advisory Department at Bank Albilad, but also for bankers, researchers and those interested in the Islamic Finance field.

Role of the Shari'a Board Advisory Department in the Book

To achieve this work, the Shari'a Board Advisory Department has adopted the following methodology:

1. Collecting the resolutions, instructions, reports and notes issued by the Shari'a Board and its Preparatory Committee.

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2. Extracting the issues that build or outline a Shari'a ruling and arranging each issue in a separate standard.
3. Reforming the extracted issues in simple and precise statements that can be understood without the need to read the context where the views are mentioned, along with adhering to the terms used by the Shari'a Board and its Preparatory Committee whenever possible.
4. Gathering issues of similar nature in one standard and separating other issues in different standards based on *Ijtihad* and discretion without affecting the Shari'a rulings by any means.
5. Categorizing the book, using subtitles, into chapters based on the bank's operations and products.
6. Creating an index that includes keywords quoted from a number of relevant chapters of Fiqh transactions and banking terms. Under each term all numbers of relative standards are written for easy reference for the reader to reach his goal in a way other than that based on the bank's works and its products.
7. Presenting the final work at various meetings of the Preparatory Committee, where the Committee made some amendments to it.
8. Submitting the final work issued by the Preparatory Committee to the Shari'a Board; where the Board has made some amendments to it, and gave approval and recommendation to publish, distribute and translate it.

Further to afore-mentioned methodology used to complete the work, the Shari'a Advisory Department would consider it necessary to highlight the following points:

1. This work/book is published for record purpose and covers the rulings that have been issued by the Shari'a Board and its Preparatory Committee. We do not claim that this work is all inclusive. Points which are commonly known and understood are intentionally left out. Thus, the reader may notice a detailed coverage of certain points while other clear points are not mentioned. This is because no ruling concerning these well-known points has been issued.

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2. As the work adopted the approach of abbreviation, it has abbreviated the resolutions and instructions issued in standard articles characterized by precision and abridgment, omitting the unnecessary details. The reason why the work is arranged this way is that the reader does not often need all the details and minutes included in the resolutions and instructions, such as the number, date and place of the meeting, the sender and the recipient...etc. Moreover, the reader may not need to view the resolutions and instructions that are issued to confirm prior resolutions, to permit an action or to tackle any other matter that does not include a Shari'a ruling. In other word, this book, which consists of more than two hundred pages, would require more than three thousand pages if the resolutions and instructions were published in original form.
3. Following advisors of the Shari'a Board Advisory Department have participated in this work (Names are alphabetically arranged):
 - Abdul-Rahman bin Saud Al-Ankari.
 - Abdullah bin Ibrahim Al-Bassam.
 - Ali bin Muhammad Noor.
 - Ammar bin Abdullah Al-Hajjaj.
 - Dr. Khalid bin Muhammad Al-Sayari.
 - Majed bin Abdul-Rahman Al-Rasheed.
 - Dr. Mustaein bin Ali Abdul-Hamid.

May Allah, the Almighty, bless them All and make this work a part of their good deeds.

The Objectives behind Preparing and Publishing This Book:

1. Achieving a number of the objectives and missions of the Shari'a Board which are included in its regulation, such as:
 - a) Strengthening the Bank's participation in defining and developing the Islamic banking.
 - b) Participating in spreading awareness about the Islamic banking in Bank Albilad and in other aspects of the society.

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This work falls within the Shari'a Board's jurisdictions, as stated in its regulation, namely: "The original ruling concerning the resolutions issued by the Shari'a Board are to be published save those are excluded by the Shari'a Board".

2. Documenting the work of the Shari'a Board and keeping it in a unified form so that it can be easily accessed and referred to, especially those important issues that are difficult to be explained.
3. Finding an experiment-based practical guide for those who want to establish an Islamic banking business.
4. Sharing the resolutions and works made by the Shari'a Board of Bank Albilad with other Shair'a Boards in other Islamic institutions since these Boards have a great deal of similar works, which helps avoiding repetition and saving time and effort for other activities that need more study and research.
5. Enriching the scholarly arena with banking materials that benefit the bankers, researchers, and those interested in the field of Islamic banking.
6. Preparing these standards to satisfy the future fiqhi or regulatory need for the Islamic banking field.

Finally, it is important to highlight that the Shari'a Board Advisory Department worked diligently for more than one year to formalize these standards. We are hopeful that this work will inspire new ideas and we will improve and rectify this book in light of the opinions and comments of the reader. This is especially because some ideas and improvements have emerged during the preparation of this book; however, we decided not to include these ideas in this stage and chose to produce the book in its current form for timely publication of this book. May Allah help us to add these new ideas and improvements along with the comments and ideas that would be suggested by the readers later on.

We are hopeful that this book published based upon the Shari'a Board rulings would be stepping stone for other Shari'a Boards and they will follow suit. There is no doubt that introducing such products for those who

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are interested is an indication of transparency and clarity of methodology; rather it is a guideline for ourselves and the clients in particular and for the Islamic Finance field in general.

We ask Allah to make our efforts sincere and to forgive us for our wrong and forgetfulness. Allah knows best, and Peace and Blessings be upon our Prophet Muhammad, his Household and his Companions.

25 Muharram 1434

(9 December 2012)

Shari'a Board Secretary

Majed Bin Abdul-Rahman Al-Rasheed

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Murabaha



Murabaha

Mutual Understanding and Promise

Standard (1)

The concept of *Murabaha* in Islamic Fiqh differs from the concept of *Murabaha* to the purchase orderer used in banks. That is, *Murabaha* in Islamic Fiqh is a type of trust sales [e.g. *Wadi'ah* (a sale with a specified loss), *Tawliyyah* (to sell as per the purchasing price without making profit), and *Murabaha*] in which the seller shall disclose to the buyer any factors affecting the commodity price such as the price of purchase, and whether it will be paid on a deferred basis or on the spot, and so on. *Murabaha* to the purchase orderer, however, is a finance instrument composed of a number of steps that begin with the client's promise to purchase a commodity, then the bank purchases this commodity and resells it, after *Qabd* (taking possession) of it to the client on a deferred payment basis. This sale to the client may be a *Murabaha* sale in accordance with the Islamic Fiqh concept, which is the most preferable, or it may be a *Musawamah* (bargain) sale.

Standard (2)

It is not permitted to carry out the *Murabaha* on a deferred payment basis where the commodity involved is stipulated to be reciprocally possessed, such as gold or silver or currencies.

Standard (3)

Dealing in international metal markets shall be avoided in case there is a local market that can handle the big amounts of money. If the local

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market, however, is not sufficient, dealing in international market should be adopted only in case of necessity as long as it is difficult to find out whether the international metal market is compliant with the Shari'a.

Standard (4)

It is not permitted to finance individual clients through the international metal markets in case they can neither enter into the international market by themselves, nor verify the existence of commodities and the credibility of transactions. This can be avoided by executing the finance transaction in domestic commodities, such as shares and vehicles.

Standard (5)

It is not permissible for the client to agree with the first seller (supplier) to increase the price of the commodity so that the client obtains an extra amount higher than the commodity's value.

Standard (6)

Uncertainty and lack of knowledge are avoided by seeing the whole commodity or a sample thereof, by an accurate description of the commodity, or by an established custom.

Standard (7)

It is not permissible to buy a commodity sold on a deferred payment basis from its owner. Commodity buying and selling should not be done with the same party to create the debt which will be the difference between its current price and a higher price paid on deferred basis.

Standard (8)

When there is *Qabul* (acceptance) by the client for an *Ijab* (offer) from the supplier which is either addressed to him personally, or that has no addressee, then it is not permissible for the bank to carry on the *Murabaha* transaction on the commodity except after a genuine exclusion of any prior contractual relationship between the client and the supplier.

Standard (9)

It is not permissible to transfer a *Murabaha* contract that has been executed between the client (the purchase orderer) and the first seller (the supplier of the ordered commodity) to the bank.

Standard (10)

Iqala (termination) of *Murabaha* contract is permissible, whether in return for a compensation or not. It is permissible for the client to request the termination of *Murabaha* contract, and the bank may accept the compensation-based termination; however, it is preferable for the bank to accept it for no compensation. Moreover, it is possible that the three parties of *Murabaha* (i.e. the client, the bank, and the first seller) agree on termination, and thus, the commodity is returned and the price is paid back as if no sale transaction has taken place. In this context, the rules relating to the sale contract apply also to the compensation-based *Iqala*.

Standard (11)

It is not permitted to finance a particular commodity by means of *Murabaha* for a client who has paid *Urbun* (earnest money) to its owner; rather, it is essential to cancel the *Urbun* contract and document this cancellation and only then the financing operation can be undertaken.

Standard (12)

In the *Murabaha* contract, it is permissible for the bank to buy the commodity from the first seller on the basis of *Khiyarush-Shart* (sale with termination option), then it offers the commodity to the purchase orderer during the option period. The option does not expire by the presentation of the commodity to the client. If the purchase orderer does not purchase the commodity, the bank may return it to the first seller.

Standard (13)

Khiyarush-Shart (sale with termination option) is a condition that gives either or both of the contracting parties the right to cancel the contract during the period of option.

Standard (14)

The original principle is that when the period of *Khiyarush-Shart* (sale with termination option) expires without being exercised by its holder, the option terminates and the contract becomes binding.

Standard (15)

The contracting parties may agree that the contract will be terminated automatically upon the expiry of *Khiyarush-Shart* (sale with termination option) period in case the party having the option does not inform the other party with its desire to complete the contract.

Standard (16)

The *Murabaha* commodity may be shares in companies that are in compliance with the standards of permissible shares.

Standard (17)

The commodities financing contracts shall include a provision annulling any agreement or connivance to return the commodity to its first seller.

Standard (18)

It is permissible for the bank to purchase a vehicle which it has bought before on behalf of the client, even from the same vehicle dealer, provided that the following conditions are met:

1. At least, a month shall have elapsed between the first and the second transaction. This can be controlled by the chassis number.
2. The contract between the bank and the vehicle dealer (the seller to the bank) shall include a condition stating that the vehicle dealer is not permitted to buy the vehicle that the bank sells to its client in case the vehicle dealer sold this vehicle to the bank.
3. A form delivered to the client stipulating that the client is not permitted to sell the vehicle to the same dealer.

Standard (19)

It is permissible for the bank to buy a real estate for which the client failed to pay its price in full, and then to resell it to the client by means of *Murabaha*, provided that the sale transaction between the client and the first seller should be genuinely cancelled before the bank purchases the property.

Standard (20)

If the client purchases a real estate for which he pays an advanced payment, and after that he wishes to buy the same real estate through the bank by means of *Murabaha*, but he could not recover the advanced payment he paid to the seller, then the client and the seller should make a genuine written *Iqala* (termination) of the earlier sale transaction. In this case the advanced payment is deemed as a debt in the seller's liability and the finance may take place through one of the following ways:

1. The bank buys the real estate and pays its price in full to the seller, and then the seller refunds the amount in his liability to the client.
2. The bank and the client purchase the real estate by means of *Musharaka*. In this case the bank owns a share against the amount of cash it pays, and the client owns a share against the debt in the seller's liability.

In both above cases, the bank sells the real estate or its share thereof to the client on a deferred payment basis.

Standard (21)

It is permissible for the bank to buy the real estate upon the request of its client. In this case any prior contractual relationship between the purchase orderer client and the owner of the real estate shall be terminated. It is not permitted to transfer the concluded contract to the bank.

Standard (22)

If the owner of the real estate offers a statement of prices to which he is committed, then such a statement constitutes an *Ijab* (offer of sale) from the owner that is valid up to the end of the specified period. Once *Qabul* (acceptance) comes from the bank, the contract of sale is automatically concluded by the two parties. However, if the owner of the real estate is not committed to the statement of prices, then such a statement does not constitute an offer of sale from the owner according to Shari'a.

Standard (23)

The client (purchase orderer) may obtain statement of prices for commodities or real estate so as to offer them to the bank, whether they are addressed to the client by name, or with no reference to any named client. If the statement is addressed to the client by name, the statement is considered as an invitation to negotiate, and not as an offer of sale.

Standard (24)

If the commodity is registered in someone's name other than its real owner, due to regulatory reasons or for any other reason, then it is permitted to purchase the commodity on a spot payment basis and then resell it to the person registered in his name, provided that his claim that he does not own the commodity shall be ascertained.

Standard (25)

It is permitted to finance commodity by means of *Murabaha* to a client who previously owned this commodity provided that a (reasonable) period of time between the client's request to finance and the time of the sale of commodity must have expired to avoid the contract of *Inah*, and provided that the client signs an acknowledgment confirming that he did not use the former sale as a *Heela* (trick) for obtaining finance.

Standard (26)

In *Murabaha* to the purchase orderer, it is permissible for the client to register the commodity, after purchasing it from the bank, in any name other than that of the first seller.

Standard (27)

The client in *Murabaha* contract or anyone else may guarantee that the first seller (supplier) will deliver the sold commodity on the specified date to the bank. In this case it is preferable that the bank sells the commodity to a party other than the guarantor. However, in case the bank sells the commodity to the guarantor, the guarantor shall provide a written undertaking that he will not sell the commodity to the first seller (supplier).

Standard (28)

The bank or his agent (anyone other than the client) shall pay the price of the commodity of *Murabaha* to the supplier (first seller) at the time of purchase, and the bank shall not refer the final purchaser to the supplier (first seller).

Standard (29)

It is permissible for the bank to buy a particular commodity on a spot payment basis upon the request of the purchase orderer, and then resell it to him on a deferred payment basis after *Qabd* (taking full possession) of it as acknowledged by the Shari'a.

Standard (30)

It is permissible for the client to request the bank to purchase a certain commodity from a particular source of supply for the purpose of purchasing it from the bank by means of *Murabaha*. However, the bank is entitled to decline to carry out the transaction if the client refuses to accept offers from other sources of supply that are more suitable for the bank.

Standard (31)

The client is permitted to determine the specifications of the commodity he wishes to buy from the bank by means of *Murabaha*.

Standard (32)

The owner of a commodity may give an *Ijab* (offer) of sale that is limited to a period of time. Accordingly, the sale transaction is executed in case the purchaser makes a *Qabul* (acceptance) for the *Ijab* (offer) during this period, or otherwise a new offer shall be presented.

Standard (33)

It is not permissible for the client to relinquish a real estate he owns in the name of another person, such as his relative or friend, and then ask the bank to buy this real estate and resell it to him on a deferred payment basis.

Standard (34)

The purchase orderer/the client may incur the costs of evaluating the real estate in case he breaches his promise to buy it from the bank.

Standard (35)

The bank may stipulate that the purchase orderer/the client shall bring a real estate evaluation from particular authorities to which he pays the costs of such evaluation. The bank is not responsible for these costs whether the client breaches his promise to buy the real estate or not.

Standard (36)

It is permissible for the bank to stipulate that the client shall pay the evaluation fees of the real estate when he requests to buy it by means of *Murabaha*. The bank shall return the fees to the client in case the client breaches his promise to buy the real estate.⁽¹⁾

(1) The Shari'a Supervisory Board has recanted this Standard. Refer to Standards (34), (35), and (316).

Standard (37)

It is permissible for the bank, in case of a binding promise by the client, to ask the client to deposit an amount equal to the difference between the price of the commodity and the client's credit limits as an indication of his financial capability to purchase the commodity. This amount is considered as an advanced payment in case the client purchases the commodity from the bank. However, the bank shall return this amount in full to the client in case the client breaches his promise to buy the commodity.

Standard (38)

It is not permissible for the purchase orderer (the client) to make an extended *Ijab* (offer) of purchasing a commodity which is not yet owned by the seller (the bank) thus far. The original principle is that the purchase orderer's *Ijab* (offer) extends until the seller takes possession (*Qabd*) of the commodity and accepts the offer and the sale contract is then concluded.

Standard (39)

It is permissible for the client to give a non-binding promise to the bank to purchase the commodity from it by means of *Murabaha* before the bank purchases this commodity.

Standard (40)

In *Murabaha* contract, the promise is not permitted to be binding for either or both parties. Accordingly, the bank is not permitted either to take a binding undertaking from the client to buy the commodity, or to take any cash amount before the bank buys the commodity if such amount is not fully or partially refundable in case the buyer breaches his promise to buy the commodity, whether this cash amount is called *Hamish Jiddiyyah* (i.e. security deposit), advanced payment, or *Urbun* (earnest money).

Standard (41)

It is permissible to prepare a single set of documentation to include both the client's stated wish that the bank should buy the commodity

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from the supplier and a promise to buy the commodity from the bank, which the client signs. It is permissible for the client to prepare such a document, or it may be a standard application form prepared by the bank to be signed by the client.

Standard (42)

It is not permissible that the document of promise to buy (signed by the client) includes a bilateral promise which is binding on both or any of the two parties (the bank and the client). Also, it is not permitted to take from the client anything that binds him to buy during the promise stage.

Standard (43)

It is not permissible for the bank to take an approval, or anything binding, from the client determining the rate of profit in the *Murabaha* contract before the contract is concluded.

Standard (44)

It is permissible for the bank, during the promise stage, to inform the client (the purchase orderer) about the profit that will be deducted after the execution of the sale transaction.

Standard (45)

It is not permissible to charge a commitment fees paid by the purchase orderer in return for the unused portion of the finance (credit) limit given to him.

Standard (46)

The commodity of the *Murabaha* contract may be moral rights, such as trademarks and patents.

Standard (47)

The commodity of the *Murabaha* contract may be a usufruct, and thus it can be owned through *Ijarah* (lease) contract, and then it is re-leased for a known increase.

Standard (48)

The commodity of the *Murabaha* contract cannot be service charges, such as employees' wages, insurance and transportation costs, unless these fees charges are included in the commodity price.

Standard (49)

It is not permitted to impose a condition on the purchase orderer to guarantee the risks that may affect the commodity of *Murabaha* such as damage and destruction before selling it to him.

Standard (50)

It is permissible for the bank, during the stage of promise to buy the commodity of *Murabaha*, to take guarantees from the client; be they a liable guarantor, *Rahn* (mortgage), or a salary transfer provided that no stipulation is made under which the salary is retained for a specific period before or after the purchase or in case the client breaches his promise to buy the commodity, and provided that these guarantees shall not be used except after the *Murabaha* contract is concluded. In case of the liable guarantor, the guarantee should be conditional on selling to the client the commodity of *Murabaha* whose price becomes a debt established in the liability of the client.

Standard (51)

The bank may ask the client to provide lawful security in the contract of *Murabaha*, such as a third party guarantee, the *Rahn* (mortgage) of real or moveable property, the *Rahn* of current or investment accounts of the client, or the *Rahn* of the commodity of the *Murabaha* contract as a fiduciary *Rahn* (or a registered charge), with *Qabd* (taking possession) of the mortgaged commodity provided that the *Rahn* is released progressively according to the percentage of the total payment received.

Standard (52)

It is permitted to conduct a contract between the bank and the supplier by means of a meeting of the two parties at which point the contract

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may be executed. Likewise, it is permitted to conduct a contract through exchanging the notices of *Ijab* (offer) and *Qabul* (acceptance) by any form of modern communication.

Standard (53)

It is permissible to refer to any known indicator during the promise stage as a comfort indicator to determine the rate of profit, provided that the profit is determined at the time of concluding the *Murabaha* contract.

Fees and Guarantees

Standard (54)

Rahn (mortgage) of a real estate or its registration in the bank's name does not affect the right of the owner client regarding any benefits, compensation or proper evaluation of the real estate.

Standard (55)

It is permissible for the bank to include, in the commodity selling price in a new *Murabaha* transaction, the amount of loss it incurred as a result of the client's breach of his promise to buy the commodity in a previous *Murabaha* transaction.

Standard (56)

It is not permitted to deduct any expenses which are additional to the contract of *Murabaha* from the purchaser's account without his acknowledgment and consent.

Standard (57)

It is permitted to defer the receipt of the administrative fees of finance from the client until the client obtains money through the finance operation.

Standard (58)

The bank may give a *Qard Hasan* (free-interest loan) to the client seeking finance until the finance procedures are finished, provided that the bank

Murabaha

does not calculate the profit on *Qard* (free-interest loan) period as a part of its profits in the finance transaction.

Standard (59)

It is not permissible for the bank to stipulate that the ownership of the commodity of *Murabaha* will not be transferred to the client until the full payment of the selling price. However, it is permissible to postpone the registration of the commodity in the client's name as a guarantee of the full payment of the selling price. The bank, then, should issue a counter-deed to the client to establish the latter's right to ownership.

Standard (60)

It is permissible for the seller, in installment sale, to force the buyer to purchase insurance protection on the commodity through *Takaful* (cooperative insurance), and the returns of this insurance go back to the buyer. The seller may stipulate the *Rahn* (mortgage) of the *Takaful* returns so that he can recover the amount of the debt from them.

Standard (61)

It is permissible for the bank to register the vehicle representing the commodity of *Murabaha* in its name as a security; however, this will not hold the bank liable or entitled to the rights relate to the ownership of the vehicle or any consequences thereof.

Standard (62)

It is permissible for the bank in *Murabaha* to the purchase orderer to stipulate the issuance of a letter of guarantee (LG) from a third party other than the client.

Standard (63)

It is permissible for the bank to require the client to provide cheques or promissory notes after the execution of the contract of *Murabaha* to the purchase orderer as a guarantee for the indebtedness that has been created. This is possible on the written condition that the bank

is not entitled to use these cheques or promissory notes except on the indebtedness due date, even if they are due on the spot.

Acquisition and Qabd

Standard (64)

Qabd (taking possession) of a commodity may be physical or constructive, and the basis for determining that is the established custom.

Standard (65)

In *Murabaha* on shares, it is not permitted to transfer the shares to the client's portfolio before they are sold to him. Due to the fact that these transactions are numerous and difficult to be ascertained, the oral contract in the sale transaction is not sufficient. Rather, the contract should be documented by a way that can be referred to, such as signing paper contract, before the shares are transferred to the client's portfolio.

Standard (66)

The receipt of documents allocating base metals or their photocopies, or registering their data in an account in the name of the buyer is considered as a Shari'a-compliant *Qabd* (taking possession).

Standard (67)

Among the contemporary forms of *Qabd* (taking possession) are; the receipt of a bill of lading when purchasing commodities on the international market, the receipt of certificates of storage issued by warehouses following appropriate and reliable formalities, sorting the commodities in the presence of the buyer, and the receipt of documents proving the ownership of the sorted commodities if they are numbered and registered in the name of the buyer.

Standard (68)

Allocating the vehicle by the chassis number, in the sale contract, is considered as *Qabd Hukmi* (constructive possession) which allows

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the buyer to dispose of the vehicle by sale, *Ijarah* (lease) and so on, even though he does not take *Qabd Haqiqi* (physical possession) of the customs card or the vehicle itself.

Standard (69)

Allocating the oil as an undivided share of a particular tank in Palm Oil HQ is considered as a Shari'a-compliant *Qabd* (taking possession).

Standard (70)

Qabd Hukmi (constructive possession) of vehicle, be it new or used, is deemed to have taken place by allocating the vehicle in the purchase contract and enabling the purchaser to dispose of, such as receiving the vehicle keys.

Standard (71)

Qabd (taking possession) of a copy of the customs card is not deemed as a *Qabd Hukmi* (constructive possession) of the vehicle, as *Qabd* of the customs card is not sufficient to sell the vehicle to the client (the purchase orderer).

Standard (72)

The most secured forms of *Qabd* (taking possession) of vehicles in *Murbaha* is that the bank holds these vehicles in its stores before they are sold to the client (the purchase orderer).

Standard (73)

It is not permissible for the bank in *Murabaha* on vehicles to appoint the client (the purchase orderer) as its agent to buy a vehicle for the bank's account. Likewise, it is not permissible for the client (the purchase orderer) to appoint the bank as his agent to buy a vehicle on his behalf.

Standard (74)

Qabd Haqiqi (physical possession) of new or used vehicles is deemed to have taken place by the purchaser receiving the vehicle.

Standard (75)

It is permissible for the bank, after concluding the purchase contract between the bank and the owner of the real estate, to sell the real estate to the client, even though it has not been vacated and placed at the bank's disposal. This is because the purchase transaction has taken place by the seller offering the real estate to sale (*Ijab*) and the bank accepting the sale (*Qabul*). As for vacating the real estate, it is a documentation procedure of that contract.

Standard (76)

It is not permitted to sell a commodity before *Qabd* (taking possession) of it in a way that complies with the Shari'a.

Standard (77)

It is not permitted to sell a commodity on a spot payment basis to the one from whom it has been purchased on a deferred price which is higher than the spot payment. Likewise, it is not permissible to purchase a commodity on a deferred payment basis from the one to whom it has been sold on a spot price which is lesser than the deferred payment.

Standard (78)

The sale transactions should be documented by means of writing or recording conversations or any other means of documentation so that it can be reviewed and referred to in case of dispute.

Standard (79)

It is permissible for the bank, in the event that the client cannot carry out the sale himself due to regulatory procedures as is the case with the international commodity market, to appoint itself as the client's agent in selling the commodity purchased by the client on a deferred payment basis in the market for a price paid on the spot and deliver the price to him, whether the bank is a seller or a buyer on a deferred payment basis.

Standard (80)

In case the principal purchaser cannot buy the commodity himself, he can appoint the purchase orderer as his agent for purchasing it for a price paid on the spot. After *Qabd* (taking possession) and acquisition of the commodity, the principal purchaser may sell it to the purchase orderer for a deferred price, even though the purchase orderer is an agent in the first sale.

Standard (81)

It is not permissible for the client to give the bank an unrestricted authorization to sell any commodity the bank buys on his behalf; rather, the client should initially acquire the commodity and then authorize the bank to sell it.

Standard (82)

It is not permissible for the bank to appoint the client as its agent in purchase in favor of the bank, and then the client sells to himself for a certain profit which is mutually agreed upon within an agreed upon limit. This is known as the revolving *Murabaha*.

Standard (83)

It is permitted to register the commodity of *Murabaha* in a name other than the bank's name. The ownership of the commodity is ascertained by concluding the contract, and the registration in this case is just a regular procedure to document the ownership.

Standard (84)

It is not permitted to register the documents or contracts, when the bank buys the commodity from the first seller (supplier), in the name of the purchase orderer in his capacity as the owner of the commodity; however, his name may be mentioned for the purpose of acknowledgment only.

Standard (85)

The receipt of the commodity should entail transferring the guarantee from the first seller to the bank, then from the bank to the client, and this should be clear in every transfer.

Standard (86)

It is permissible for the bank to provide insurance cover for the commodity of *Murabaha* through *Takaful* (cooperative insurance) as the bank is the owner of the commodity, and also bears all the consequential risks. The bank is entitled to calculate expenses as part of the purchasing cost that may be subsequently built into the price of *Murabaha* deal.

Standard (87)

It is not permissible for the bank to appoint the first seller or the purchase orderer as an agent in receiving the commodity of *Murabaha*.

Standard (88)

It is permissible for the bank to appoint an agent to conduct the purchase transaction, other than the purchase orderer client.

Standard (89)

It is permissible for the bank to agree with its agent to carry out the acquisition of the commodity without disclosing the existence of the agency agreement. In this case, the agent will act as principal in dealing with other parties, and will undertake the purchase directly in his name but on behalf of the bank as principal. However, it is preferable to disclose the agent's role.

Standard (90)

It is permissible for the agent of the purchaser to demand his principal to confirm the discharge of his liability in front of the seller, and to state that he does not bear any burdens related to the debt of purchase.

Standard (91)

It is permissible for the bank to pay the person acting as an intermediary between it and the purchaser a commission, be it a lump sum of money or a certain percentage of the finance amount.

Standard (92)

It is not permissible for the agent in *Murabaha* to pay the price of the sold commodity to the principal except after he receives such a price from the purchaser.

Contracting with the Client

Standard (93)

It is permissible to vacate the real estate in the name of joint liability clients, regardless of each one's share of ownership, provided that this shall be based upon their consent and acquaintance.

Standard (94)

The bank is liable before the client for any hidden defects of commodity that were unknown to the client before the conclusion of the *Murabaha* contract. The bank has the right of recourse to the first seller to obtain compensation for any defects that are established; however, the bank remains responsible before the client regardless of the first seller's response. This excludes the commodities sold on the stipulation that the bank is free from responsibility for all or some of the defects of the commodity.

Standard (95)

It is not permissible for the seller to dispose of the sold commodity, either by selling or any other transaction, during the purchaser's ownership of it.

Standard (96)

It is not permissible for the client or his agent, in the *Murabaha* contract, to represent both parties of the contract, as is the case

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when the seller acts as an agent for the selling bank to conclude the contract. Also, it is not permissible for the bank to represent both parties to the contract.

Standard (97)

It is not permitted to refinance the client (conduct *Murabaha*) by a commodity that was the subject matter of a previous *Murabaha* contract with the same client.

Standard (98)

It is permissible for the bank and the client, after the latter has given a promise but before the execution of the *Murabaha*, to agree to revise the terms of the promise whether with respect to the deferment of payment, the mark-up or other terms.

Standard (99)

It is not permissible for the first seller in the *Murabaha* contract to be the purchase orderer (the client) or act as his agent.

Standard (100)

It is not permissible to sell the commodity of *Murabaha* to the purchase orderer in case he owns more than 50% of the institution that sells to the bank, and the purchase orderer has expressed his wish to acquire the commodity through this institution in particular while the commodity is available at another institutions.

Standard (101)

It is permissible to sell a commodity by means of *Murabaha* to the purchase orderer from an institution wherein the purchase orderer is a partner with others. This is in case the purchase orderer's share of ownership is less than 50% of the institution, or in case this institution has been chosen by the bank and not by the purchase orderer, and also in case such commodity with such desired specifications is only available at such institution.

Standard (102)

It is not permissible for the bank to enter into a *Murabaha* contract in case it is discovered that there is a potential intentional arrangement between the purchase orderer and the supplier (first seller) to return the commodity back for a specific price.

Standard (103)

It is not permissible for the bank to take an undertaking from the client to add something unknown to the commodity price after the conclusion of the contract of *Murabaha*.

Standard (104)

The bank shall conclude the contract of sale by means of *Murabaha* to the purchase orderer as a contract separate from the promise to purchase. Hence, the bank should state that this contract is a *Musawamah* (bargain) contract in case it does not comply with the due disclosure adopted in the Islamic Fiqh *Murabaha*.

Standard (105)

The contract of *Murabaha* to the purchase orderer may not be deemed automatically concluded once the seller on deferred payment basis takes possession of the commodity.

Standard (106)

It is not permitted to force the purchase orderer to receive the commodity and pay its price, if he refuses to conclude the *Murabaha* contract.

Standard (107)

It is permitted to disclose the selling price of *Murabaha* and its profit to the client, even though it is stipulated that the contract is a *Musawamah* (bargain), provided that the total selling price is fixed and known to both parties at the time of concluding the contract.

Standard (108)

It is not permitted, under any circumstances, to base the determination of the price or the profit on a time or an indicator that would be determined in the future.

Standard (109)

It is permissible to agree to pay the price of the commodity under *Murabaha* to the purchase orderer by installments, and the selling price of the commodity becomes a debt payable by the client.

Standard (110)

It is permissible for the bank to stipulate that in case the client has received the documents determining the commodity (subject matter) of *Murabaha* contract, the guarantee or responsibility for this commodity is transferred to the client once the contract is concluded, and the client has the option to cancel the contract if the commodity is not compliant with the specifications stated in these documents.

Standard (111)

It is permissible for the bank to determine a period after the sale contract is concluded after which the bank becomes free from responsibility before the client for the hidden 'Ayb (defect) unknown at the signature of the contract; this is known as *Bai' Al-Bara'ah* (sale on 'as is' basis).

Standard (112)

The bank (seller) is responsible for the hidden defects pre-existing the conclusion of *Murabaha* contract excluding any new defects (recent defects); unless the bank has stipulated in the sale contract that it is free from responsibility for the defects of the commodity.

Standard (113)

The bank is entitled to stipulate in the contract that in case the client refuses, after the execution of the *Murabaha* contract, to take delivery

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of the commodity at the prescribed time, the bank could revoke the contract or sell the commodity to a third party on behalf of the client and for his account. The bank could then recover from the selling price the amount due to it from the client under the contract, and would have recourse to the client for the balance if that price were not sufficient to cover the amount due to the client.

Standard (114)

It is permissible for the bank to purchase the share of the partners of the purchase orderer client in the commodity, and then resell it to the client on a deferred payment basis.

Standard (115)

It is not permitted to combine contracts in such a way that leads to *Riba*. This is like when a person purchases a commodity from a seller on a deferred payment basis, and then the purchaser resells it to the same seller for a price paid on the spot which is lesser than the deferred payment, or when a person sells a commodity on a spot payment basis, and then buys it back from the purchaser for a deferred price which is higher than the spot payment.

Standard (116)

It is not permissible to combine contracts in such a way that involves a considerable *Gharar* (uncertainty) or lack of knowledge. This is like the conclusion of two sales in one, where the commodity is sold at one of two prices; the first one is to be paid on a spot payment basis and the other is to be paid on a deferred payment basis, and then the two contracting parties move apart without agreeing upon a specific price.

Standard (117)

A written undertaking stating the prevention of selling the commodity to the first seller shall be taken in case of doubting the presence of a trilateral *Inah* sale in finance operations.

Standard (118)

Inah sale is to sell a commodity on a deferred payment basis, and then purchase it back for a lesser price paid on the spot. Reverse *Inah* is to sell a commodity on a spot payment basis, and then purchase it back from the purchaser for a higher deferred price. These two forms of transactions are prohibited.

Treatment of *Murabaha* Receivables

Standard (119)

It is permissible for the seller on a deferred payment basis and the buyer to agree on the treatment of *Murabaha* receivables in case of death in one of the following ways:

1. Discharging the debt in full or discharging a part thereof.
2. The debt becomes due in full, or the principal debt becomes due and its returns are discharged.
3. The debt remains enforceable and the inheritors settle it.

Standard (120)

A part of the selling price of a commodity of installment sale shall be waived in case the seller demands an early payment of some installments due to the buyer's delay in payment.

Standard (121)

It is permissible for the bank to stipulate to the client that installments may become due before their originally agreed due dates in case the client defaults to pay any pre-determined installments. This is to establish the full indebtedness before the judiciary. The bank is only entitled to demand the payments of the delayed installments in addition to an equal number of the installments that have not been paid yet.

Standard (122)

As a way of hedging against the profit margin fluctuation, the client may be financed through deferred sale for a fixed profit. The amount obtained from the deferred sale is invested in several investment transactions for different rates of profit. Also, the client may be financed through deferred sale with the bank committing to make deduction in case the client makes an early payment, and then the amount obtained is invested for a fixed profit based on the following conditions:

1. The two transactions should be separate.
2. None of the two transactions should be a *Qard* (loan).
3. Each transaction should be concluded on a different commodity.
4. This product is limited to those who seek protection against the fluctuation of profit margin, and shall not be offered to those who seek *Mudaraba* on the future changes of the profit margin.

Standard (123)

It is permissible for the bank to give up a part of the selling price if the client pays early. However, it is not permitted to stipulate giving up part of the selling price in the contract; rather, this should be arranged according to mutual agreement when the earlier payment takes place.⁽¹⁾

Standard (124)

The method of calculating early payment including profit and deduction should be disclosed to the client of *Murabah*, whether such a method is degressive calculation, fixed profit, or any other method.

Standard (125)

It is permissible for the bank and the client to agree, at the time of settlement of the installments of credit transaction (such as *Murabaha*), that the payment shall be made in another currency on a condition of applying the spot exchange rate on the day of payment.



(1) The Shari'a Supervisory Board has recanted this Standard, Refer to Standard no. (309).





Ijarah



Ijarah

Standard (126)

The promise to transfer the ownership (of an asset) in *Ijarah Muntahia Bittamleek* (lease ending with ownership) may be binding for the party giving such a promise.

Standard (127)

It is permissible for the bank to require the lease promisor (client) to pay a sum of money to the bank. Upon the execution of the contract of *Ijarah* (lease), this sum of money shall be treated as an advance payment of the installment of the lease rental, provided that the money shall be repaid completely to the client in case he changes his mind regarding the promise to lease.

Standard (128)

It is not permissible for the bank to take any cash amounts from the lease promisor (the client) by any means if this amount is not refundable in case the client breaches his promise, be such an amount a security for the client's commitment to accept a lease on the asset, *Urbun* (earnest money) or anything else.

Standard (129)

It is permissible to terminate the *Ijarah* (lease) contract concluded between the lessee and the owner of the asset, so that the bank can lease it from the owner of the asset and then enter into a sublease contract with the lessee.

Standard (130)

In principle, the *Ijarah* (lease) contract is executed for an asset or a usufruct owned by the lessor. However, the client may request the bank to acquire the asset or the usufruct thereof on the basis of a non-binding promise to lease it.

Standard (131)

Any previous contractual agreement between the lease promisor (the client) and the first owner of the property to whom the promise of lease is given shall be terminated, and such *Iqala* (termination) shall be real not nominal.

Standard (132)

If the client pays a sum of money to the owner of an asset in return for reserving the asset from being sold to another person not related to the client and in return for giving the client the right to purchase or determine the one who purchase such an asset, such as the bank, this shall not be treated as *Urbun* (earnest money) even if such amount is not refundable in case the client breaches his promise to execute the transaction. Also, this cannot be treated as a contract that prevents the bank from purchasing the asset and then leasing it to client through an *Ijarah Muntahia Bittamleek* (lease ending with ownership) contract.

Standard (133)

The bank may stipulate that the lease promisor (client) in *Ijarah Muntahia Bittamleek* (lease ending with ownership) shall give securities of any kind; such as guarantees, charge over assets, salary transfer, bill drafts or promissory notes, provided that they should not be foreclosed until the *Ijarah* (lease) contract is concluded and the rental installments fall due.

Standard (134)

Ijarah (lease) contract is a binding contract which neither party may terminate or alter without the other's consent. However, one or both of the two parties may stipulate the right of termination in the contract or stipulate the option to terminate the contract during a specified period.

Standard (135)

The duration of an *Ijarah* (lease) contract must be specified in the contract. The period of *Ijarah* should commence on the date of execution of the contract unless the two parties agree on a specified future commencement date, resulting in a future *Ijarah*, that is, an *Ijarah* contract to be executed at a future date.

Standard (136)

The two parties may agree to terminate the *Ijarah* (lease) contract before and after it begins to run. The *Iqala* (termination) may or may not be executed for a compensation. The two parties may agree on compensation in the contract or at the time of *Iqala* (termination).

Standard (137)

The rules governing *Ijarah* (lease contract) must apply to the *Ijarah Muntahia Bittamleek* (lease ending with ownership) during the period of lease, and the general rules of *Ijarah* must apply to this contract.

Standard (138)

A master agreement may be executed covering a number of *Ijarah* (lease) transactions between the bank and the client, setting out the general terms and conditions of agreement between the two parties. In this case, there may either be a separate *Ijarah* contract for each transaction, in a specific written document signed by the two parties, or alternatively the two parties may exchange notices of *Ijab* (offer) and *Qabul* (acceptance) by referring to the terms and conditions included in the master agreement. A lease transaction may also be executed without being preceded by the drawing up of a master agreement, in which case the *Ijarah* contract is executed and signed directly.

Standard (139)

The bank may appoint the lease promisor to act as its agent in acquiring on its behalf an asset that is desired by that client, provided that its

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description and price are fixed. However, it is always preferred that the agent is someone other than the lease promisor (prospective lessee) as far as possible.

Standard (140)

It is permissible to promise to lease an existing asset or an asset undertaken by the lessor to be delivered to the lessee according to accurate specifications.

Standard (141)

It is not permissible to buy the usufruct (of an asset) from the lessee for a price paid on the spot and then sell such a usufruct back to him for a deferred price higher than the price paid on the spot. Likewise, it is not permissible to buy the usufruct from the lessee for a deferred price and then sell it back to him for a lower price paid instantly.

Standard (142)

The lessee may lease the asset back to the lessor for an agreed upon rental that is lower, same or higher than what he pays, provided that the two rentals are paid on a spot basis. However, if one or both of the two rentals are paid on a deferred basis, then the increase in the term of payment of one rental shall not result in any increase in the other rental.

Standard (143)

If the leased asset was purchased from the lessee before it was leased back to the lessee on the basis of *Ijarah Muntahia Bittamleek* (lease ending with ownership), then it is not permissible to transfer its ownership to the first seller for a price determined at the time of the contract which is higher than the price for which it was purchased from him, whether the increase is included in the price or in the rental, and whether the transfer is made by a promise, by a plain contract, or through a third party with the agreement of all parties to the contract. However, it is permissible to transfer the ownership to the first seller for a price higher than the price for which it was purchased from him

Ijarah

if the increase is in return for works that the lessor will perform to the leased asset, or if the increase is the result of a transfer based on the market price, an auction, or a price agreed upon.

Standard (144)

The asset may be purchased and then leased to the seller on the basis of *Ijarah Muntahia Bittamleek* (lease ending with ownership), provided that the transfer of ownership shall take place after a (reasonable) period of time, during which the leased asset could have changed.

Standard (145)

For the validity of an *Ijarah* (lease) contract concerning a specified asset, the lease contract should be concluded after acquisition of either the asset to be leased or the usufruct thereof. However, if the bank will acquire the asset by means of purchase, the *Ijarah* contract concerning such a specified asset shall not be executed unless and until the bank has acquired and received that asset.

Standard (146)

The bank may acquire the asset promised to be leased, even if the title is not registered in the bank's name, on condition that the bank should obtain a counter-deed or bill of sale to prove the actual transfer of its ownership of the asset.

Standard (147)

The client and the bank may jointly acquire an asset that he wishes to lease, and then lease the bank's share of the asset from the bank. In this case, the rental specified as receivable by the bank should only be in proportion to its share in the ownership of the asset.

Standard (148)

An *Ijarah* (lease) contract may be executed for an asset undertaken by the lessor to be delivered to the lessee according to accurate determined specifications, even if the asset so described is not owned by the lessor.

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In this case, an agreement is reached to make the described asset available during the duration of the contract, giving the lessor the opportunity to acquire or to produce it. It is not a requirement of this lease that the rental should be paid in advance as long as the lease is not executed according to the contract of *Salam* (or *Salaf*). Should the lessee receive an asset that does not conform to the description, then he is entitled to reject it and demand an asset that conforms to the description.

Standard (149)

For the validity of an *Ijarah* (lease) contract executed for an asset undertaken by the lessor to be delivered to the lessee according to agreed upon specifications, the leased asset shall be described accurately so as to remove the factors of ignorance and *Gharar* (uncertainty). Also, the date and place of delivering the leased asset shall be specified in advance.

Standard (150)

The rental *Inah* is not permissible; this happens when a person leases an asset for a certain period, and then leases it for the same period with an increase in the previously agreed rentals in exchange for a deferred period of payment.

Standard (151)

An *Ijarah* (lease) contract may be signed with several lessees entitled to the same specified usufruct of a particular asset and duration of rent, without specifying a particular period of time for a particular person. In this case, each lessee may benefit from the property during the time assigned to him in accordance with specified custom. This case is one form of time-sharing in benefiting from the usufruct.

Standard (152)

Ijarah (lease) contracts may be executed in respect of the same asset for different periods for several lessees, provided that two contracts are not executed in respect of the same asset for the same

Ijarah

period. Such an arrangement is called “successive leases”, because each *Ijarah* is considered as being successive to the previous one and not concurrent.

Standard (153)

An asset leased on the basis of *Ijarah Muntahia Bittamleek* (lease ending with ownership) may be purchased for a price paid on the spot, and then, sold back to the lessee for a deferred price after the purchaser takes possession (*Qabd*) of it.

Standard (154)

Ijarah (lease) contract may be executed on a usufruct estimated by units of business or time, even if the total number of units is not determined, such as leasing a number of rooms in a hotel for a certain amount of money per night or per room.

Contracting with the Client

Standard (155)

Urbun (earnest money) may be taken in respect of lease at the execution of the contract of lease and this is treated as an advance payment of the rental. The lessor may retain the *Urbun* (earnest money) in case the *Ijarah* (lease) contract is not executed for a reason attributable to the lessee, or if the lessee terminates the contract for nonacceptable reason.

Standard (156)

The lessor shall refund the *Urbun* (earnest money) of *Ijarah* (lease) contract in case the contract is not executed or is terminated for a reason which is not attributable to the lessee, such as natural calamities.

Standard (157)

A lessee of an asset may enter into a sublease contract with a party other than the owner for a rental that is either the same, lower or higher, payable either on spot or on a deferred basis, before or after the *Qabd* (taking possession) of the leased asset.

Standard (158)

The following are the conditions necessary for the sublease contract to be valid:

1. The consumption of the first lessee is the same or less than that of the second.
2. The first lessor shall not have stipulated the prevention of sublease.
3. The period of the second contract (sublease contract) shall be equal to or less than that of the first.
4. The sublease contract shall not be a *Heela* (trick) for performing *Riba*.

Standard (159)

It is permissible for the lessee to securitize the usufruct of the leased asset but not the asset itself.

Standard (160)

Periodical (ordinary) maintenance is the process of maintenance performed in specified times and through which some parts are replaced, renovated, or fixed, including all parts that can be determined by description, quantity or custom in the contract, whether the maintenance is the handwork process, or including the replacement of some parts and equipments, such as stipulating the painting of the leased house's walls and stipulating the replacement of machines' arms and gears at specified times.

Standard (161)

The responsibility for periodical (ordinary) maintenance in *Ijarah* (lease) contract shall be defined in accordance with the custom or conditions stipulated. In case of stipulating responsibility to be borne by the lessee, it shall be defined in a manner that eliminates *Gharar* (uncertainty). This can be achieved by the following:

Ijarah

1. Counting and determining works and parts that should be maintained or replaced in the leased asset according to a clear specific schedule known at the time of executing the contract.
2. Estimating the costs of maintaining the leased asset, and stating in the contract that this amount is deemed as a part of the rental due to the lessor, and the lessor may delegate to the lessee the task of carrying out the maintenance at the lessor's cost. The lessee shall not bear any additional costs in excess of the cost stated in the contract.
3. The custom known to all.

Standard (162)

Major maintenance is the work required to keep the leased asset itself according to the custom.

Standard (163)

Operating maintenance is the work required to keep the leased asset in the condition necessary to provide the contractual benefits under *Ijarah* (lease) according to custom.

Standard (164)

In *Ijarah Muntahia Bittamleek* (lease ending with ownership), the owner of an asset bears the expenses of major maintenance, and it is not permissible to stipulate that the lessee will undertake it. Therefore, such stipulation, but not the contract, is void in case it is made. However, the owner may sign a maintenance contract with a third party or with the lessee himself to bear the liability for maintenance.

Standard (165)

In *Ijarah* (lease) contract, it is permitted to purchase *Takaful* (cooperative insurance) on the asset, and the insurance expenses must be borne by the lessor. The lessor may take the insurance expenses into account implicitly when the rental is to be fixed in the *Ijarah* contract. However,

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the lessor may not, after the contract is signed, charge the lessee any cost in excess of the cost anticipated at the time of fixing the rental.

Standard (166)

The leased asset in the possession of the lessee is held by the lessee in a fiduciary capacity on behalf of the lessor. The lessee will not be held liable for any damage or destruction of the leased asset unless such damage or destruction is a result of misconduct or negligence on his part.

Standard (167)

It is not permitted to stipulate that the lessee, even if he is appointed by the lessor to purchase insurance, will cover any risks, including risks that are not covered by insurance companies, risks with higher insurance costs, or compensations in cases where insurance company bankrupts or does not pay or refuses to pay the compensation. This condition, but not the contract, shall be void in case it is stipulated.

Standard (168)

It is not permissible to use tricks to impose on the lessee the guarantee for the damage of the leased asset. This is like when the lessee is authorized to take out the insurance cover, with being liable for any deficit in the insurance compensation.

Standard (169)

It is permissible for the lessor to appoint the lessee as his agent in providing insurance protection on the leased asset by means of *Takaful* (cooperative insurance), provided that the lessee (agent) shall only held liable in cases of misconduct or negligence.

Standard (170)

In case the lessee who is the agent of the lessor has committed negligence in providing insurance on the leased asset, he shall bear the consequences

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of such negligence; however, the insurance company's failure to pay the compensation is not regarded as sufficient evidence on his negligence.

Standard (171)

The usufruct of leased asset shall be known, fundable, permissible, deliverable both lawfully and physically, and it can be used while preserving the asset.

Rules of Usufruct

Standard (172)

An *Ijarah* (lease) contract may be executed for a house or a chattel, even with a non-Muslim, if the use to be made of it is permissible, such as a house for residential purposes, and a vehicle for transport unless the lessor knows in advance, or has reason to presume, that the use will be for an impermissible purpose.

Standard (173)

The lessee must use the leased asset in a suitable manner or in conformity with the custom and conditions acceptable in Shari'a. He must also avoid causing damage to the leased asset by misuse, misconduct or negligence.

Standard (174)

In case of the partial destruction of the leased asset in a manner that impairs the benefits expected from the leased asset, the lessee may terminate the *Ijarah* (lease) contract. Both the lessee and the lessor may also agree to amend the rental. The lessor in this case is not entitled to rental for the period during which the lessee was not able to benefit from the asset. The lessor may agree with the lessee to benefit from the asset for a like period after the expiry of the contract.

Standard (175)

The lessor may take out cooperative insurance on the rental installments through participating to a *Takaful* (cooperative insurance) fund to cover

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the risks of not paying all or some of the rental installments. The lessor may also stipulate that the lessee shall participate in this fund.

Standard (176)

If the lessee becomes unable to enjoy the usufruct of the leased asset for a short usual period due to operating or major maintenances, or due to misconduct or negligence on the part of the lessee, then no deduction of the rental shall be made against this period.

Standard (177)

The lessor shall prepare the leased asset by all means necessary for enabling the lessee to enjoy its usufruct.

Standard (178)

The lessor shall incur all expenses and services stated in the contract, whether confirmed by the custom or not.

Standard (179)

The lessor must accept responsibility for any defects of the leased asset which impair the intended use of the asset, and may not exclude his liability for any impairment that the leased asset may sustain, either by his own doing or as a result of events outside his control, which affect the benefits intended to be available under the *Ijarah* (lease) contract.

Standard (180)

The leased asset is the responsibility of the lessor throughout the duration of the *Ijarah* (lease contract). Thus, it is not permissible to hold the lessee liable or stipulate his liability for the leased asset unless he commits misconduct or negligence.

Standard (181)

If the benefit from the leased asset is partially impaired as a result of the lessee's misconduct or negligence, while the asset remains under lease, the lessee is obliged to restore or repair the usufruct, and

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the rental for the time during which the benefit is lost is not to be waived. However, if the leased asset is wholly impaired as a result of the lessee's misconduct or negligence, the *Ijarah* (lease) contract is revoked, and the lessor is to be compensated by an asset of the same kind, if any, or otherwise the lessee shall bear its value as estimated at the time of destruction.

Standard (182)

A lessee may invite co-lessees to share him the usufruct to which he has a right, by assigning them shares in the usufruct before entering into a sublease. In this case, they become his sharers in the usufruct of the leased asset. If the property is subleased, each co-sharer is entitled to a share in the sublease rental pro rata to his share in the usufruct.

Standard (183)

It is not permissible for the lessor to lease an already leased asset to another lessee for the duration of the existing *Ijarah* (lease) period or for any remaining period thereof; however, this is permissible if the *Ijarah* contract is signed for a period that follows the period of the existing *Ijarah* contract.

Standard (184)

It is permissible to securitize and trade in the portfolios of the leased assets.

Standard (185)

The lessor may demand additional payment from the lessee, who wants to travel by vehicle from whom he leased, in return for using the vehicle, unless such travel is included in *Ijarah* (lease) contract according to the custom. The lessor and the lessee may agree on the amount of the additional payment and how it shall be calculated, whether such a payment is a lump sum of money, or a sum defined by the period or distance of travel.

Standard (186)

The lessor may demand the lessee, who wants to travel by the vehicle from whom he leased, to pay a sum of money held as a security until the return of the lessee from his travel. In case the lessor discovers any damages in the vehicle that is caused by the lessee, the cost of repair is deducted from the security amount and the remaining amount shall be refunded to the lessee. This is unless they agree in the contract upon the possibility of travel, or unless travel in such cases is allowed according to the custom.

Standard (187)

The lessee who wants to lease the asset he leased may appoint the lessor (the owner) or anyone else as his agent in collecting the rental provided that the agent shall not be liable to the *Ijarah* (lease) payments.

Rules of *Ijarah* (Lease) Rental

Standard (188)

The lessor may agree with the lessee to pay the rental before, during or after benefitting from the usufruct of the asset, whether this rental is paid entirely in advance or in installments.

Standard (189)

The rental is made obligatory by the contract and the lessor's entitlement to the rental runs from the time when the lessee starts to benefit from the asset or once the lessor makes the usufruct of the asset available to the lessee, and the entitlement to the rental does not necessarily commence on the date of signing the *Ijarah* (lease) contract. The rental may be paid entirely in advance or in installments during a period equivalent, or more or less, to the duration of the *Ijarah*.

Standard (190)

If the rental is paid before making the usufruct of the leased asset available, the lessor entitlement to this rental is not absolute, and

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accordingly he shall pay it back to the lessee in case of being unable to deliver the leased asset.

Standard (191)

It may be agreed that the rental should consist of two specified parts; one to be paid or transferred to the lessor and the other to be held by the lessee to cover any expenses or costs approved by the lessor, such as the cost of major maintenance, insurance, etc. The second part of the rental is treated as an advance by the lessor to the lessee on account.

Standard (192)

If the lessor fails to deliver the asset to the lessee on the date specified in the *Ijarah* (lease) contract, no rental is due for the period between the contract date and the date of making the usufruct of the asset available, and the rental should be reduced accordingly, unless it is agreed that the lease be extended by an equivalent period after its original expiry date.

Standard (193)

The *Ijarah* (lease) rental shall be deliverable and valuable according to the Shari'a. Also, it shall be known or will be known in a way that does not lead to dispute between the two parties.

Standard (194)

The *Ijarah* (lease) rental may be cash money, other consideration (commodity) or benefit (service). It may be specified either as a lump sum covering the duration of the *Ijarah* contract, or installments paid for parts of the duration.

Standard (195)

The *Ijarah* (lease) rental may be specified by an asset that will be known in a way that does not lead to dispute. The following are examples:

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1. Determining the rental based on the rental specified by a considerable entity.
2. Determining the rental according to unit price, wherein each part of the usufruct is valuable.
3. Determining the rental based on the market price.
4. Determining the rental according to a common defined share of the subject matter or its product.
5. Determining the rental according to the custom, such as leasing a camel in return for providing its food.
6. Determining the rental in accordance with general pricing imposed by markets, such as the formal pricing of usufructs and/or similar market requirements.
7. Linking the rental to a certain indicator, which shall be subject to a limit on both maximum and minimum levels.

Standard (196)

The two parties may agree to amend the rental of future periods, i.e. the periods for which the lessee has not yet received any benefit, by way of renewal of the *Ijarah* (lease) contract. The rental of any previous periods which have not yet been paid become a debt owed to the lessor by the lessee, and therefore cannot be increased.

Standard (197)

It is permissible to agree with the lessee of an asset through *Ijarah Muntahia Bittamleek* (lease ending with ownership) on increasing the daily or monthly rental in return for decreasing the lease period, or on decreasing this rental in return increasing the lease period.

Standard (198)

The lessor may charge the lessee with paying the premiums due to the insurance company provided that the insurance cost shall be known at the time of concluding the *Ijarah* (lease) contract. In this case the premiums are deemed as a part of the rental.

Standard (199)

It is not permissible to stipulate that the lessee shall pay the future insurance costs which are not defined at the time of concluding the *Ijarah* contract even if they are called a part of the rental.

Standard (200)

In *Ijarah* (lease) for an asset undertaken by the lessor to be delivered to the lessee according to accurate specifications, the rental becomes due upon the delivery of the leased asset. If the rental is paid in advance at the time of contracting and the asset so described is undeliverable, the contract shall be terminated and the lessor shall return the rental paid in advance to the lessee.

Standard (201)

In principle, the new owner of the leased asset takes the place of the previous owner in his entitlement to the rental for the period remaining in the *Ijarah* (lease) contract.

Standard (202)

If the lessee pays in advance a part of the total rental, it is permitted to waive a part of the rental, or increase the duration of the contract in exchange for the payment in advance.

Standard (203)

The purchaser of the *Ijarah* (lease) portfolio may appoint its seller as his agent in managing and collecting the rental fees from the lessees. Yet, the seller shall not be liable to the rentals or a part thereof in case the lessees fail to pay them on time.

Standard (204)

When the rental for leased asset is not specified in contract, it may be measured in terms of the prevailing market rate for similar assets or according to the custom.

Guarantees and Treatment of *Ijarah* (Lease) Receivables

Standard (205)

It is not permissible to impose delay penalties on the lessee in case he fails to pay the rental installments on time, even if such penalties will be channeled to charity. The lessor may stipulate that the lessee should immediately pay the deferred rental installments or some of them.

Standard (206)

It is permissible for the lessor to take guarantees from the lessee, such as signing promissory note determining the amount with which he promised to buy the leased asset after the end of the *Ijarah* (lease) contract.

Standard (207)

In case of foreclosure of the security provided by the lessee, the lessor may deduct from such amounts only what is due in respect of the rental for previous periods, and not all rental installments, including installments which have not yet fallen due and in respect of periods for which the lessee has not had the benefit of the leased asset. The lessor may also deduct from the security all legitimate compensations necessitated by the lessee's breach of contract.

Standard (208)

The permissible security, of all kinds, may be taken to secure the rental payments or as a security against misuse or negligence on the part of the lessee, such as *Rahn* (mortgage), personal guarantees or an assignment of rights over assets of the lessee held by third parties, even if such rights are a permissible life or property insurance indemnity in favour of the lessee.

Standard (209)

The two parties may agree that the rental be paid instantly before enjoying the usufruct. The rental may be paid in installments, in which case the lessor may stipulate that the lessee should immediately pay the remaining installments if he, after receiving a specified period of due

notice, delays, without a good reason, payment of any installment. Any acceleration of the remaining rental installments in the case of default is subject to settlement at the end of the *Ijarah* period or, if the *Ijarah* (lease) contract is terminated earlier, at the time of such termination. Any extension of time by the lessor after the stipulated time for prompt payment is considered as a consent to deferral of payment throughout the extension period and not a right of the lessee.

Emergencies of *Ijarah* (Lease) Contract

Standard (210)

One or both of the two parties may stipulate that he has the right to cancel the *Ijarah* (lease) contract in case the other party violates a condition of the contract, such as the failure to pay the rental on time or committing misuse. Each of them may stipulate a condition of compensation in case of violation, provided that no increase shall fall upon the debt established in liability.

Standard (211)

In case the leased asset is totally destroyed because of misconduct or negligence on the part of the lessee, the lessor is entitled to rental for the period during which the lessee benefited from the asset. The lessor also has the right to claim the payment of the difference between the compensation taken from the insurance company and the cost of the damage caused by the lessee.

Standard (212)

The lessor bears the consequences of the destruction of the leased asset as being its owner unless the destruction is the result of misconduct or negligence on the part of the lessee.

Standard (213)

An *Ijarah* (lease) contract terminates with the total destruction of the leased asset or with the inability to enjoy the usufruct in the case

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of leasing a specific asset. It is not permissible for the lessor then to stipulate that the lessee shall pay the remaining rental installments.

Standard (214)

If the lessee stops using the leased asset or returns it to the owner without the owner's consent, the rental will continue to be due in respect of the remaining period of the *Ijarah*, and the lessor may not lease the property to another lessee for this period, but must keep it at the disposal of the current lessee.

Standard (215)

It is permissible to terminate the *Ijarah* (lease) contract by mutual consent. The lessee may terminate it if there is a *'Ayb* (defect) in the leased asset that materially impairs its use. Termination is also possible when one party secures a *Khiyarush-Shart* (sale with termination option) to terminate the contract in which case the party who holds the option may exercise it during the specified period.

Standard (216)

The *Ijarah* (lease) expires upon the expiry of its term, but it may remain operative for a good cause so as to prevent harm, such as the late arrival to the place intended in the lease of transportation vehicles, and the case of a late harvesting period for land leased for crop cultivation. The *Ijarah* (lease) then continues with the rental based on the prevailing market value.

Standard (217)

An *Ijarah* (lease) may be renewed for another term after the expiry of the first contract, and such renewal may be made before the expiry of the original term or automatically by adding a provision in the new contract for such renewal when the new term starts, unless either party serves a notice on the other of its desire not to renew the contract.

Standard (218)

If the lessee becomes unable to enjoy the usufruct of the leased asset for a long period for no reason on his part, then no rentals shall be paid

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against this period. Rather, the rental for this period should be deducted from the total rental, or otherwise an alternative asset or a period equal to the period during which the lessee could not benefit from the leased asset should be agreed upon.

Standard (219)

If the leased asset is destroyed, or if the continuity of the *Ijarah* (lease) contract becomes impossible up to the expiry period without the cause being attributable to the lessee in either case, then the rental is considered based on the prevailing market value. That is, the difference between the prevailing rate of rental and the rental specified in the contract must be refunded to the lessee if the latter rental is higher than the former. This is to avoid loss to the lessee, who agreed to a higher rental payment compared to the prevailing rate of rental in consideration of the lessor's promise to pass the title to him upon the expiry of the lease term.

Standard (220)

In an *Ijarah* (lease) contract for an unidentified asset undertaken by the lessor to be delivered according to the agreed specifications, the *Ijarah* contract is not terminated in case of total or partial destruction of the leased asset in a manner that impairs the benefits expected from the leased asset. The owner in these cases must offer an alternative asset having a specification similar to that of the destroyed asset. If it is not possible to provide a substitute asset, the contract will be terminated.

Standard (221)

In principle, it is permitted that the lessor disposes of the leased asset and transfers its ownership by means of Sale, Gift, *Waqf* (Endowment), Will and so on, to the lessee or to others as long as his disposal does not prevent the lessee from enjoying the usufruct of the leased asset during the lease period. In case the purchaser does not know about the *Ijarah* (lease) contract, he may terminate the sale contract.

Standard (222)

An *Ijarah* (lease) contract does not terminate upon the death of either party thereto unless this is stipulated in the contract. Excluded is the death of one party who has no inheritors to make use of the usufruct of the leased asset or the party whose inheritors cannot afford the burdens of the contract or find that the contract is in excess of their needs.

Transfer of Ownership in *Ijarah* (Lease) Contract

Standard (223)

In *Ijarah Muntahia Bittamleek* (lease ending with ownership), if the lessee wants to accelerate the possession of the leased asset through purchasing it before the end of the lease duration, then the rule of determining the price is the agreement of the two parties, be the price agreed upon equal to or lower than the remaining rental installments.

Standard (224)

In case the *Ijarah* (lease) contract is combined with *Hibah* (gift) or sale contract conditional on the payment of the remaining rental installments, then the ownership to the leased asset is transferred to the lessee if the condition is fulfilled, without the need for any other contractual procedure. However, if the lessee's payment is short of even one installment, the ownership to the asset is not transferred to him, until the condition is fulfilled.

Standard (225)

Both parties of *Ijarah* (lease) contract may stipulate that the owner (the lessor) is forced to sell the asset to the lessee at the end of the term of the *Ijarah* period for a price determined in the contract in case the lessee pays all rental installments on time and fulfills all his obligations.

Standard (226)

Transfer of the ownership of the leased asset cannot be made by executing, along with the *Ijarah* (lease) contract, a sale contract that will become effective on a future date.

Standard (227)

If the lessor sells the leased asset to the lessee, the *Ijarah* contract is terminated due to the transfer of the ownership of the leased asset along with its usufruct to the lessee.

Standard (228)

In *Ijarah Muntahia Bittamleek* (lease ending with ownership), the method of transferring the title to the leased asset to the lessee must be determined using one of the following methods:

1. By means of a promise to sell for a token or other consideration, or by accelerating the payment of the remaining amount of rental, or by paying the market value of the leased property.
2. A promise to give it as a gift (for no consideration).
3. A promise to give it as a gift, contingent upon the payment of the remaining installments.
4. A promise to sell it, contingent upon the payment of the remaining installments.

Standard (229)

It is permissible to sell the leased asset by means of operating lease or *Ijarah Muntahia Bittamleek* (lease ending with ownership) to the lessee or to someone else. In this case, the purchaser shall be informed about *Ijarah* contract as well as all conditions included in the contract. The *Ijarah* (lease) contract shall not terminate and the lessee has no option to cancel the contract, and the purchaser is entitled to the rental installments due for the remaining period.





3

Musharaka LC (Letter of Credit)



Musharaka LC (Letter of Credit)

Bilateral Promising and Contracting

Standard (230)

Musharaka contract may involve the opening of letter of credit to import the commodities of *Musharaka*. Accordingly, the bank enters into partnership with the client (applicant for the credit), in the uncovered part, to buy the commodity, then, the bank sells its share to the client on the basis of deferred sale after the bank takes acquisition of title to, and *Qabd* (taking possession) of its share, provided that the sale to the client (the partner) shall not be based on a binding promise, or stipulated in the *Musharaka* (partnership) contract, and that there shall be no prior contractual commitment between the client and the original supplier of the commodities.

Standard (231)

It is permitted for the bank to enter into partnership with the client to buy certain commodity. The bank may sell its share to the client by means of *Murabaha* after the two partners take acquisition of title to, and *Qabd* (taking possession) of the commodity.

Standard (232)

It is not permissible for the bank to conclude a *Musharaka* contract with its client on a commodity regarding which the client concluded a contract with a third party to buy.

Standard (233)

If the commodities of *Musharaka* LC are ascertained, the client may not contract with a supplier or make an advanced payment before signing the *Musharaka* contract with the bank, or otherwise the *Musharaka* contract is to be cancelled, and the bank shall only issue a letter of credit in case the client will buy the share of the bank.

Standard (234)

If the commodities of *Musharaka* LC are liabilities through description and the client has contracted with the supplier to buy them and paid him an advanced payment, then it is permitted to conclude the *Musharaka* contract between the bank and the client and the amount paid by the client is deemed as a share in the partnership.

Standard (235)

In *Musharaka* LC, it is not permissible to buy commodities from a particular source of supply whose majority ownership is with the client.

Standard (236)

In *Musharaka* LC, it is not permissible for the bank or the client to bind himself to sell his share to the other; however, he may make a non-binding promise to do so.

Standard (237)

If the client of *Musharaka* LC wants to increase his share, the bank may sell him the share he requests for a price higher than its cost for the bank, provided that the sale takes place after the bank takes acquisition of title to, and *Qabd* (taking possession) of commodities of *Musharaka* according to the Shari'a, such as receiving its documents, and provided that the bank discloses the increase in the price of sale.

Standard (238)

In *Musharaka* LC, it is not permissible for any partner to sell all his share or a part thereof for a price higher than its original price before he actually takes acquisition of title to, and *Qabd* (taking possession) of it or receives its documents.

Standard (239)

In *Musharaka* LC, the receipt of commodities by the bank may take place through international market, provided that the bank shall ascertain the existence of commodities.

Standard (240)

In *Musharaka* LC, finance may be directed towards usufructs which are valuable according to the Shari'a.

Standard (241)

In *Musharaka* LC, finance may not be directed towards financial obligations, such as insurance premiums, unless such obligations are secondary to the main subject matter, as in the case of buying a real estate along with its insurance cover.

Standard (242)

It is not permissible for any party of the *Musharaka* contract to bind himself to buy his partner's share for a price that equals its price at the time of incorporating the company, instead the price of the share shall be defined on the basis of market value or on whatever price they agree on at the time of the sale.

Standard (243)

In *Musharaka* LC, it is not permissible to liquidate the advanced payment and sell the commodities to the partner before the two partners allocate and take possession of the commodities; however, it can be done even if the commodities does not arrive yet.

Standard (244)

A partner may make a non-binding promise to sell his share to his partner, whether the sale is on the basis of spot or deferred payment, and whether it is at the market selling price or at a price to be agreed upon at the time of sale, provided that the sale contract is executed after the selling party takes acquisition of title to, and *Qabd* (taking possession) of the share to be sold and that the price of sale is defined.

Standard (245)

In *Musharaka* LC, the *Musharaka* shall be actual. That is, each partner should have a considerable share in the company's capital, which affects the guarantee, the profits and so on.⁽¹⁾

Standard (246)

The shares of *Musharaka* between the client and the bank shall not be restricted to specified proportion; rather, they can execute *Musharaka* by whatever proportions they agree on.

Standard (247)

The capital share of each partner shall be stipulated in the *Musharaka* contract, and their shares of profit shall be based on a predetermined profit sharing ratio.

Standard (248)

It is permissible for the bank to finance a client (company) by means of *Musharaka* LC, even if his activities include lawful and prohibited components, provided that the commodities of *Musharaka* shall be permissible by the Shari'a and the bank shall ascertain such permissibility.

(1) The Board has recanted this Standard. Refer to Standard (246).

Fees and Guarantees

Standard (249)

It is permissible to take fees from the client of *Musharaka* LC in order to execute his order which exceeds the credit limit given to him, be such fees a percentage share of the credit amount or a lump sum of money.

Standard (250)

In *Musharaka* LC, it is permissible to agree that in case the deal is cancelled by one party before the purchase, the party responsible for the cancellation shall bear the expenses incurred.

Standard (251)

In *Musharaka* LC, insurance expenses may be borne by the supplier.

Standard (252)

In *Musharaka* LC, the partner client may bear the responsibility for damages that may be inflicted upon the commodities due to amending the terms of conditions upon his own request, provided that such responsibility shall be limited to damages resulting from such amendment.

Standard (253)

In *Musharaka* contracts, guarantees may not be foreclosed except in cases of misconduct or negligence.

Standard (254)

It is not permitted to stipulate that one partner should bear all the costs of insurance and/or maintenance; rather, these costs shall be borne by the parties in accordance with the participation ratio of each partner.

Standard (255)

It is not permitted to require one partner of *Musharaka* contract to bear guarantee; rather, the guarantee shall be borne by all parties in

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accordance with the participation ratio of each partner as long as no partner commits misconduct or negligence.

Standard (256)

The purchaser shall bear the expenses incurred after the liquidation of *Musharaka* through sale contract. As for the expenses incurred before the liquidation of *Musharaka* and have been discovered after the liquidation, they shall be borne by all parties in accordance with the participation ratio of each partner.

Standard (257)

The partner may calculate his profits resulting from selling his share to his partner according to the way they agree upon, and accordingly, he may at the time of liquidation calculate his profits from his whole share in the *Musharaka*, including his share in the advanced payment based on the time of its delivery.

Hedging in *Musharaka* Contracts

Standard (258)

In *Musharaka* contracts, it is permitted that a third party may volunteer being a guarantor to protect one partner against fluctuation of exchange rates, provided that the volunteer shall not benefit from such guarantee by means of taking compensation or mutual guarantees. It is not permitted for one partner to guarantee the protection of the other partner.

Standard (259)

In *Musharaka* LC, it is permissible to hedge against the fluctuation of exchange rates by making the shares of *Musharaka* of different currencies, as when the two partners contribute in *Musharaka*, the first partner's share in Riyal and the second's share in Euro, whether the two shares are to be paid in advance, or at a future date, or whether one of them is to be paid in advance while the other is to be paid at a future date.

Musharaka LC (Letter of Credit)

Standard (260)

For the sake of hedging against the fluctuation of exchange rates, the client in *Musharaka* LC may deposit his share in a foreign currency at the beginning of *Musharaka*, and the bank may deposit his share by then or commit to pay his share in foreign currency at the time of payment to the supplier. The client's share remains unchangeable regardless of exchange rate at the time of the bank deposit.







Finance



Finance

***Rahn* (Mortgage) in Finance**

Standard (261)

Murtahen (mortgagee) may set a condition that *Rahen* (mortgagor) shall authorize him to sell the *Marhun* (mortgaged) asset at the market value when its value goes down below a certain percentage of the debt amount without resorting to judiciary, and mortgage the price instead; however, it is not allowed to make the price as a direct repayment of the non-matured/outstanding debt, and early repayment may be agreed upon at any time.

Standard (262)

Murtahen (mortgagee) may set a condition that *Rahen* (mortgagor) shall authorize him to sell the *Marhun* (mortgaged) asset in case of default (unsettled payment) without resorting to judiciary.

Standard (263)

It is permissible to mortgage real estate, shares of companies (whose original activities are permissible), units in Islamic investment funds, debts, current and investment accounts and all lawful assets from which the debt can be repaid.

Standard (264)

Murtahen (mortgagee) may allow *Rahen* (mortgagor) to sell the *Marhun* (mortgaged) asset on the condition that it shall not be released, so that the ownership of the *Marhun* is transferred to the new owner but it remains in *Rahn* (mortgage) for the *Murtahen* (mortgagee) himself.

Standard (265)

Murtahen (mortgagee) may allow *Rahen* (mortgagor) to trade in the *Marhun* (mortgaged) asset on the condition that the *Marhun* or its value should stay as *Rahn* (mortgage).

Standard (266)

Murtahen (mortgagee) has the right to foreclose the whole *Marhun* (mortgaged) asset against any part of the debt, and he may release part of the *Rahn* (mortgage) while foreclosing the remaining part.

Standard (267)

Murtahen (mortgagee) has no right to sell or keep the *Marhun* (mortgaged) asset as a collateral against a debt other than the original debt.

Standard (268)

Murtahen (mortgagee) and *Rahen* (mortgagor) may agree that the *Marhun* (mortgaged) asset is to be kept as a collateral against outstanding debts or against any other debts that may arise within a specific period in the future.

Standard (269)

Murtahen (mortgagee) and *Rahen* (mortgagor) may agree to transfer *Rahn* (mortgage) from one asset to another.

Standard (270)

The bank (mortgagee/creditor) has the right at the time of signing the contract to request from the client (mortgagor/debtor) to arrange *Takaful* (cooperative insurance) for the *Marhun* (mortgaged) assets. The compensation to be received from the insurance company on the damage of the *Marhun* (mortgaged) asset shall replace such an asset. However, if there is no a condition that the debt shall be due in case of damage, the client (mortgagor/debtor) has the right to choose from the following:

1. Agreeing with the bank on early repayment.
2. The *Marhun* (mortgaged) compensation shall be credited into a blocked investment account as property of the client (mortgagor/debtor).
3. The *Marhun* (mortgaged) compensation shall be credited into a blocked current account until the date of repayment.

Standard (271)

The bank may ask the client to write a promissory note including the amount of transactions that will be made later and their expected profits, provided that the note shall be used only after the debt becomes due, and that it shall not be used as a means to prove or receive an increase over the original debt.

Standard (272)

The creditor bank may assign a third party to recover its rights from the debtors who are in default, and the bank has the right to force the debtor in default to bear the actual expenses incurred by the creditor in order to recover his debt. In this case, such expenses cannot be regarded as an increment in the original debt which is forbidden by Shari'a.

Standard (273)

Murtahen (mortgagee) is not permitted to benefit from the *Marhun* (mortgaged) asset if the *Rahn* (mortgage) is a part of a *Qard* (loan) contract.

Standard (274)

It is permissible to mortgage an asset that has been sold on a deferred payment basis against a debt or a part thereof.

Standard (275)

Insurance policies (the insurance usufruct) may be taken as *Rahn* (mortgage) or guarantee in finance transactions.

Standard (276)

It is permissible to finance the client, under any investment instrument, in return for mortgaging an asset he owns, be such *Rahn* (mortgage) for the purpose of raising the finance limit for the client or reducing the risk of default on payment or any other purpose. However, if the asset to be mortgaged (*Marhun*) is already mortgaged for a third party, the bank may mortgage the product to be financed or the price of such a product. After this product is sold, the bank may give a cheque to the mortgagee (the third party) in return for releasing the *Marhun* (mortgaged) asset. The released asset then is mortgaged for the benefit of the bank.

Standard (277)

It is permissible for the bank to finance contractors (the standard construction contract), provided that progress billings are to be mortgaged (progress billing is a certificate that entitles its holder to payment for the percentage of work that has been completed in a project. Usually, a period of time exists between acquiring the progress billing and the execution of payment). This should be done with due consideration to the following:

1. In case the bank receives the due amount of progress billings before the maturity date of the client's debt, this amount shall be treated as a *Marhun* (mortgaged) money at the bank and is deposited in an investment account for the benefit of the client under his consent until the debt becomes due.
2. The bank may agree with its client that the client gives another guarantee or *Marhun* (mortgaged) asset acceptable to the bank, such as a letter of guarantee (LG), so that the client recovers the amount of progress billing.
3. It is not permitted to agree on utilizing the amount of progress billings, when it is received, as a direct repayment of the client's debt and a diminution of the profits of the remaining period, but it is allowed to agree on early repayment.

Standard (278)

It is permissible to mortgage banking accounts with the ability to withdraw and deposit money enabled. In this case, the deposited amount is considered as an increase to the *Rahn* (mortgage) while the withdrawn amount is regarded as a redeemed part of the *Marhun* (mortgaged) account. It is permissible to stipulate that the amount withdrawn shall be refunded during a certain period.

Standard (279)

Murtahen (mortgagee) may stipulate that he is entitled to request *Rahen* (mortgagor) to increase *Rahn* (mortgage) value when it becomes less than the remaining amount of debt.

Standard (280)

It is not permissible to accept prohibited *Rahns* (mortgages) in contracts, such as the interest-based bonds and the shares of companies dealing in prohibited activities.

Standard (281)

The bank may stipulate *Rahn* (mortgage) of the debtor client's accounts at the bank or the submission of any guarantees which are acceptable by the Shari'a in return for granting him a none interest-based specific moratorium.

Treatment of Finance Receivables

Standard (282)

Hawala may be transferred to a third party for a debt that is equal to the debt owed to the transferee in terms of kind, amount, and term.

Standard (283)

It is permissible for the client (debtor) to transfer the bank (creditor) to a third party to pay his debt upon the consent of all parties; i.e. the

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transferor (debtor), the transferee (creditor) and the payer. The creditor may stipulate that the *Rahn* (mortgage) - if any - shall remain under his possession.

Standard (284)

A company's indebtedness may be transferred to another company owned by it, provided that this does not lead to an increase in the indebtedness.

Standard (285)

It is not permissible for the bank to stipulate that the debtor pays a fine due to his delay in paying the debt, whether this fine is specified at the time the contract is concluded or at the time the default occurs, and whether the debtor is solvent or insolvent. The bank is entitled to set up all necessary procedures to recover its rights.

Standard (286)

It is not permissible to stipulate any financial compensation on the debtor in respect of his delay in settling his debt. This applies both to compensation in respect of opportunity loss and in respect of loss due to a change in the value of the currency of the debt or inflation and so on.

Standard (287)

It is not permissible for the bank to demand compensation from the client in return for his delay in paying his debt; however, the client may compensate the bank for the loss incurred without any obligation or claim made by the bank.

Standard (288)

It is not permissible to reschedule the indebtedness involving a deferment in the term of the debt in return for an increase in its amount, whether the debtor is solvent or insolvent and even if such reschedule is based

on the consent of the debtor and the creditor. Yet, it is permissible to reschedule the indebtedness in case it does not involve an increase in the amount of the debt.

Standard (289)

It is permissible to reschedule the indebtedness at the same currency without an increase in the amount; however, it is prohibited to reschedule the debt at another currency.

Standard (290)

It is not permitted to take delay penalties by means of *Heela* (trick) as in the case when the term of payment is increased (over the original term), and then the client pays the original debt in a shorter term (within the original term), and the bank undertakes to drop the profit on the remaining period in case the client pays the shorter term.

Standard (291)

It is not permissible to use *Heela* (trick) to take the delay penalties or interests through a compensation-based settlement between the creditor and the debtor on the condition that the creditor waives his right to claim payment from the debtor before judiciary.

Standard (292)

In case the client defaults in paying his indebtedness, the bank may grant him a moratorium for no increase in the debt amount, or liquidate his *Marhun* (mortgaged) asset for the purpose of recovering the debt, whether this is based on the request of the client or the bank, whether the client is solvent or insolvent, and whether his *Marhun* (mortgaged) asset covers the debt or not.

Standard (293)

The bank shall immediately refund any increase calculated on the client by mistake, if the bank has collected it; or otherwise, it shall notify the client immediately of dropping the increase from the remaining debt. The bank shall not delay this procedure.

Standard (294)

In case the debtor violates some conditions of the credit facilities granted to him, the bank may not increase his outstanding indebtedness, but it may increase the profits of any new contract as long as this new contract is based on their mutual consent.

Standard (295)

It is not permissible for the bank to finance the clients, who are in default to repay their indebtedness to the bank, on the stipulation that this indebtedness shall be paid from the proceeds of the new finance, whether the client is solvent or insolvent and whether such a stipulation is made upon a request from the client or from the bank.

Standard (296)

The bank may finance the clients who have outstanding indebtedness to another party, whether these indebtedness became due or not, whether the new debt is more or less than the first, and whether the bank stipulates the payment of the first indebtedness through this finance or not. The bank then is entitled to set up the procedures of payment, salary transfer, on behalf of the client, so as to protect its own rights.

Standard (297)

It is permissible for the bank to finance the clients, who are in default to repay their indebtedness to the bank, provided that the bank shall not stipulate the repayment of this indebtedness from the proceeds of the new finance, whether this finance is to pay their indebtedness to another party or to finance their commercial activities, provided that this finance shall not lead to the repayment of their indebtedness to the bank by any means. To guarantee this, the bank shall transfer the finance proceeds to the account of another party through a credit or a crossed cheque.

Standard (298)

The bank may agree with its clients who have immature debts to the bank on making early payment. Then, the bank sells the client

a real commodity, such as shares, on a deferred payment basis, which creates a new debt for a new period, then the client sells the commodity to a third party on spot payment basis from which he pays his old debt, and disposes of the remaining portion of the spot price. Hence, the contract made with the debtor shall be clear in terms of the limit granted to him, the amount of paying the previous indebtedness, the way of calculating the profits and the schedule of payment. It is not permissible for the bank to force the client to sign any paper that binds him to sell the commodity he has purchased. The client may pay his due indebtedness from his own sources; however, if he did not pay the debt during an agreed period of time, the bank then is entitled to sell the *Marhun* (mortgaged) commodity to recover its indebtedness from its price.

Standard (299)

The client indebted to the bank with a debt which is not due may be granted another finance from which he cannot benefit except after signing a promissory note of the total outstanding debts or after providing sufficient guarantees/securities.

Standard (300)

It is permissible to agree on performing a *Tawarruq* (monetization) transaction, and then mortgaging its proceeds to be paid for a specific purpose, such as the payment of an indebtedness to another bank.

Standard (301)

It is not permissible to refinance debts secured by *Rahns* (mortgages) through the creditor (mortgagee) by purchasing the *Marhun* (mortgaged) object from the debtor (mortgagor) against the debt, and then reselling it to him for new date of payment and profit.

Standard (302)

Indebtedness portfolios may not be purchased for cash money.

Standard (303)

It is not permissible to sell or purchase debts for money and its equivalent, such as settlement of a debt for less than its value, as well as the re-settlement of debt; however, debts may be sold and purchased in return for commodities.

Standard (304)

The exchange rate upon the payment of debt with another currency shall be the same exchange rate at the time of the actual deduction of the debt from the debtor's account. In case the exchange rate is uneven at the time of the deduction of the debt , then the sale shall be concluded at the average price.

Standard (305)

The creditor and the debtor may agree to pay the debt at a currency other than the original currency of the debt, provided that the exchange rate between the two currencies shall be the same exchange rate at the day of settlement and that the amount shall be paid in full before the two parties depart.

Standard (306)

The creditor and the debtor may agree to calculate the amount of discount granted due to early payment in accordance with local or international benchmarks, or they may agree on additional charges.

Standard (307)

In case of early payment, the agent of the creditor or agent of the debtor shall disclose to his principal the amount due or discounted.

Standard (308)

As an incentive for the debtor to repay the debt, the creditor may bind himself to discount an amount or a specific percentage from each installment paid by the debtor on its due date.

Standard (309)

The two contracting parties may make a prior agreement to drop an amount of the debt upon the acceleration of payment.⁽¹⁾

Standard (310)

It is not permitted for a third party to make discount or early payment on behalf of the debtor. This is considered as a form of debt sale to someone other than the debtor, and an invalid exchange of countervalues lacking the conditions of equality and *Taqabud* (reciprocal possession) in the session of the contract.

Standard (311)

In case of demonstrating commitment to a debt, the commitment shall be made in the currency in which the debt is established so as to avoid deferred exchange of countervalues.

Standard (312)

It is permitted to stipulate that all outstanding installments become due once the solvent debtor fails to pay an installment, or violates the guarantees and *Rahns* (mortgages), or submits false information, or when the debtor dies, or his legal entity is dissolved.

Standard (313)

It is permitted to stipulate that a number of future installments shall fall due immediately if the debtor defaults on payment for unreasonable reason.

General Regulations Regarding Finance

Standard (314)

Salam (payment in advance) at market price on the date of delivery is similar to regular *Salam* contract known in Islamic Fiqh with the

(1) Refer to Standards (123), (202), (261), (277), and (434). The Standard (309) is the latest.

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exception that *Muslam fihi* (commodity to be delivered) is defined by value not by quantity, as in the case of concluding *Salam* contract on an amount of wheat priced at 1000 Riyals (*Salam* at the market price) instead of 100 Sa' (2.7 kilos) of wheat.

Standard (315)

Salam (payment in advance) at market price on the date of delivery is permissible in commodities of specified and known price that will not lead to dispute. *Salam* at market price is a kind of *Salam* contracts where *Muslam fihi* (commodity to be delivered) is estimated based on the value not the quantity on the day of delivery. The product of *Salam* at market price on the day of delivery may be an alternative to the product of "debit current account".

Standard (316)

It is permissible to charge nonrefundable fees on the individual finance products, provided that such fees shall be estimated based on approximate costs.

Standard (317)

It is permissible to offer banking services, such as issuing letter of guarantee and letter of credit and finance services, for a contractor who works in lawful activities, such as construction and maintenance, even if his beneficiaries practice unlawful activities, such as the branches of traditional banks.

Standard (318)

It is not permissible to finance companies whose activities include a set of activities prohibited by the Shari'a, such as media companies whose activity relates to prohibited materials of media.

Standard (319)

The agreement of credit facilities is a general agreement to future finance contracts submitted by the client. This agreement is considered as a non-binding promise from the bank to its client to give him a credit limit

Finance

which includes deferred sale, *Ijarah* (lease), *Musharaka* (partnership), guarantee, credit, and *Qard* (free-interest loan) contracts.

Standard (320)

The agreement of credit facilities may include terms determining the profit percentage taken by the bank from the client in case he concludes any of the various finance contracts, provided that this will be within the sphere of non-binding promise.

Standard (321)

The bank may pay for one of its owned subsidiary companies an amount and take it back with an increase. This is also permissible among the departments of the bank. This increase is not deemed as *Riba*.

Standard (322)

Presents and discounts may be granted to clients of finance and credit cards.

Standard (323)

A third party may use the facilities agreed upon between the bank and its client after having their approval.

Standard (324)

The organizer of the syndicated finance may take rental from the parties participating in finance in return for his efforts.





5

Bank Cards



Bank Cards

Credit Cards

Standard (325)

In credit cards, the relation among the cardholder, the issuing bank and the merchant is considered as guarantee. Hence, the issuing bank is the guarantor of the cardholder before the merchant, the cardholder is the guaranteed (debtor), and the merchant is the guaranteed for (creditor). This guarantee occurs in brokerage, agency and *Qard* (loan). If the cardholder has no credit in its account at the issuing bank to pay the due debts, the relation between them is considered as guarantee that leads, after using the credit card, to *Qard*. However, if the cardholder has enough credit in its account at the issuing bank to pay the due debts, the relation between them is considered as the bank being the guarantor of the cardholder and his agent to pay the due debt.

Standard (326)

The relation between the issuing bank and the merchant is considered as guarantee and brokerage.

Standard (327)

The relation between the merchant's bank and the merchant is considered as brokerage and agency to collect the debt.

Standard (328)

The relation between international card regulatory organizations and all parties is considered as service-based relation that requires fees and commissions in return.

Standard (329)

Credit cards such as Visa and MasterCard may be issued provided that no prohibited interest is to be taken or given.

Standard (330)

It is not permissible to issue credit cards for people known or thought that they will use them in prohibited activities.

Standard (331)

A condition whereby the holders of credit cards and ATM cards shall not use them for purposes prohibited by the Shari'a must be stipulated.

Standard (332)

The bank shall block any digital tokens which allow cardholders to wholly or partially access prohibited services. Other tokens shall be allowed with a condition in the agreement that they are not to be used in prohibited activities. In case of a breach of this condition, a notice shall be sent to the cardholder to cease otherwise the card will be suspended.

Standard (333)

It is permissible to pay service charges and other fees to international card regulatory organizations, such as Visa and MasterCard corporations, as long as the services provided do not include prohibited activities such as *Riba*, be it direct or indirect.

Standard (334)

In credit cards, it is permissible to deduct money from merchants, be such deducted amount a percentage share or a lump sum of money. This is considered as the rental for brokerage.

Standard (335)

It is not permissible to charge more than the actual costs in return for issuing, renewing or replacing cards.

Standard (336)

It is not permissible to charge more than the actual costs for cash withdrawal from ATM via credit cards. Hence, the fees shall be a lump sum of money, and not a percentage share, paid for each transaction.

Standard (337)

Actual cost of credit cards is to be calculated according to the following formula:

[(Annual depreciation of the structure of credit card center + salaries of employees working in credit card center + rental of credit card website + annual fixed fees of international card regulatory organizations) ÷ number of issued cards].

Standard (338)

Actual cost of credit card fees shall be reviewed on a regular basis; for example, every 3 years.

Standard (339)

It is permissible to buy all commodities that require *Taqabud* (reciprocal possession) within the session of the contract through credit cards and ATM cards.

Standard (340)

It is permissible to pay the fees due to the Monetary Agency and other providers of interbank financial telecommunication services in return for card services.

Standard (341)

Concerning the fees of credit cards which are limited by the Shari'a to actual cost, such as issuance and cash withdrawal fees, it is not permissible to consider the fees of advertising as a part of actual cost.

Standard (342)

It is permissible to set a provision, to be an alternative to insurance for cards, where the bank deducts certain fees from credit cardholders to cover certain risks. The provision is assigned for clients and the compensations are to be deducted from it; meanwhile, the surplus is to be carried forward to the next period or otherwise its amount shall be cut down from the fees of the next period.

Standard (343)

It is permissible for the bank to grant lawful discounts, offers and privileges to the credit cardholder, provided that the cardholder shall not pay any fees to the card issuer in return for these grants and that the issuer shall not pay any fees to the international card regulatory organization.

Standard (344)

Regarding credit cards, it is not permissible to reschedule the debt established as liability of the client in exchange for an additional payment, whether directly or through converting the debt into another transaction.

Standard (345)

The receipt of the seller of the payment coupon signed by the credit cardholder (purchaser) is deemed as *Qabd Hukmi* (constructive possession) of currencies in case the bank issuing the card can pay the amount to the party accepting the card without any deferment.

Standard (346)

It is permissible to issue prepaid card in return for retaining an amount of current or investment account that equals the limits of the issued card. It is preferred that the retainment is executed on an investment account for the benefit of the client upon his approval.

Standard (347)

It is permissible for the bank issuing prepaid cards to gain profits from the fees of cash withdrawal, conversion between dollars and the card currency, issuing, renewing and replacing cards and so on, without being restricted to actual costs.

ATM Cards

Standard (348)

It is permissible to join membership of international card regulatory organizations, provided that any infringements of Shari'a guidelines prescribed by those organizations shall be avoided.

Standard (349)

ATM card may be issued as long as its holder withdraws from his own balance, and no interest is based on using this card.

Standard (350)

It is permissible for the bank to receive remuneration from merchants in exchange for providing points of sale services.

Standard (351)

For transactions executed through points of sale service, it is permissible to stipulate the determination of an appropriate period after which the merchant has no right to demand any entitlements which have not been automatically registered.

Standard (352)

It is permissible to charge fees on participation, membership, renewal, replacement and services provided for holders of ATM cards, unless they involve usurious interests, even being indirect.

Standard (353)

It is permissible to grant the ATM cardholder privileges that are not prohibited by the Shari'a, such as the priority of right to services or discounts on shops, restaurants or airlines, and so on.

Standard (354)

It is permissible for the bank, issuing ATM cards to charge a commission to the merchant accepting the card (deduction from the merchant), whether the commission is a percentage share of the purchase price or a lump sum of money.

Standard (355)

It is permissible for the bank to collect the fees determined by international card regulatory organizations for the transactions made by the client holding ATM card in return for using ATM network.





6

Letters of Credit (LC) and Letters of Guarantee (LG)



Letters of Credit (LC) and Letters of Guarantee (LG)

Letters of Credit (LC)

Standard (356)

It is permitted to transfer the letter of credit (LC) from one beneficiary to another provided that no increase shall be paid in return for delaying payment and no discount shall be made in return for early payment (purchase of debt).

Standard (357)

It is permissible to finance the client through *Tawarruq* (monetization) so as to cover his need to letter of credit (LC), provided that the bank should not have paid the amount of credit to the supplier before executing the *Tawarruq* transaction.

Standard (358)

It is permissible to execute letter of credit (LC) through *Murabaha* to the purchase orderer. In this case, the bank buys the commodities from the supplier based on a promise of the applicant/orderer to purchase it, and then sells it on a deferred payment basis to the applicant after the bank takes acquisition of title to, and *Qabd* (taking possession) of the commodities. However, it is stipulated that the opening of the letter of credit (LC) should not precede the conclusion of the sale contract between the applicant and the supplier irrespective of the applicant having *Qabd* (taking possession) of the commodities that are the subject-matter of the contract.

Standard (359)

It is not permitted to change the instrument of the transaction from letter of credit (LC) to *Murabaha* to the purchase orderer after the receipt of applicant's commodities. However, it is permitted to change the instrument of the transaction to *Musharaka* (partnership) on a condition that the commodities should not be sold to the client on a deferred payment basis.

Standard (360)

It is permissible for the bank to take the fees returned from the correspondent banks as a performance incentive when the executed letters of credit reach a certain limit.

Letters of Guarantee (LG)

Standard (361)

Letter of guarantee (LG) is considered as a cash guarantee contract (a personal cash guarantee).

Standard (362)

It is not permissible to issue letters of guarantee for prohibited transactions.

Standard (363)

It is permitted to issue letter of guarantee (LG) for a debt established as an obligation in the liability of the beneficiary (the one to whom a guarantee is made or given), or for a possible future debt.

Standard (364)

It is permissible to take remuneration for issuing the letter of guarantee (LG), whether it is covered by the client or not, be such remuneration a lump sum or a certain percentage unless the guarantee amounts to a *Qard* (loan).

Standard (365)

In case the bank liquidates the letter of guarantee, it shall take the following into consideration:

1. If the letter of guarantee (LG) is not covered, the bank deserves nothing from the rental (issuance fees) but only the actual expenses incurred upon the issuance of the letter of guarantee (LG), such as Post, Telex and SWIFT fees, the expenses of collection, and the legal claims, if any. Any additional amounts should be repaid to the client.
2. If the letter of guarantee (LG) is covered, the bank deserves the entire rental, and the payment is considered as a kind of paid agency.
3. If the letter of guarantee (LG) is partially covered, then any amounts over the actual expenses should be repaid in proportion to the part which is not covered.

N.B. Liquidation may be partial, then it shall take place on a pro rata basis.

Standard (366)

It is permitted to take cash or tangible *Rahns* (mortgages) when issuing the letter of guarantee (LG). These mortgages are deposited into an investment account for the benefit of the *Rahen* (mortgagor) after his consent. The *Rahen* deserves the profits these mortgages generate.







Current Account



Current Account

Current Account, Its Fees and Benefits

Standard (367)

It is permissible to open current accounts, and they are juristically considered as being *Qards* (loans) to the bank. The bank shall return similar amounts on demand.

Standard (368)

It is permissible for the bank (the debtor) to invest the money of current accounts owners (loaner) provided that the bank shall be under obligation to return the amounts of these accounts on demand without the client being eligible for the profits achieved by the bank.

Standard (369)

It is permissible for the bank to open current or investment accounts for the benefit of commercial insurance companies, provided that the bank shall not be an agent in collecting insurance premiums.

Standard (370)

It is permitted for the bank to exempt VIP clients from charges of services if their classification as VIPs is based upon funding relationship as well as current and investment accounts. However, if such a classification is based only on the current account, then exemption is not permitted.

Standard (371)

It is not permissible for the bank (loaner) to present to all or some of the owners of current accounts any gifts, services or privileges that may result in any financial incentive or service that is not related to the process of opening the current account or refunding the client. Also, it is not permissible to stipulate these gifts at the time of opening the account, even if such gifts are presented to charitable organizations.

Standard (372)

It is permissible for the bank (debtor) to present to the clients of current accounts (loaners) all kinds of moral support or services related to the process of opening current accounts or refunding the clients, such as distinguished types of cheques, ATM cards, exclusive booths for receiving the owners of accounts, and other kinds of proper customer care.

Standard (373)

The bank (debtor) may present kinds of services that are not restricted to the owners of current accounts, such as advertising materials.

Standard (374)

It is not permissible to give charitable societies any amounts from the *Tatheer* (eliminating the prohibited earnings) account in return for opening current accounts in the bank.

Standard (375)

Overdraft: It occurs when the client is allowed to withdraw from his current account where he has no available balance. In this case, the bank becomes a creditor to the client and the amount withdrawn is considered as a *Qard* (loan) and becomes subject to the rules governing loans.

Standard (376)

It is permissible for the bank to demand fees for services rendered to the holder of overdraft account provided that these wages shall be equal to the actual cost, and not related to the amount of *Qard* (loan) or to its term.

Current Account

Standard (377)

It is permissible for the bank to intermediate between the clients of current accounts and other parties making permitted offers, privileges and discounts, provided that the bank shall not give any amounts to these parties in return for the services offered.

Standard (378)

It is permissible for the bank to pool, without consulting the client, the balances of current accounts or consolidate them in any currency at one of the bank branches so as to fulfill any obligations due on the client to the bank.

Standard (379)

It is not permissible for the bank to demand wages from the holders of current accounts in return for services customarily known as being prerequisite to open the current account, paying obligations and collecting dues, such as the issue of ATM cards and checkbook, or normal process of cash deposit and withdrawal.

Standard (380)

The bank may take fees payable in a lump sum or as a percentage share of the service value in return for the services rendered to the holders of current accounts which are not customarily known as being prerequisite to open the current account, paying obligations and collecting dues, such as getting copies of documents, unusual processes of counting, examining and sorting deposited money, issuing additional checkbooks or special privilege cheques, or standing orders.

Standard (381)

The bank may set remunerations or bonuses for its employees who attract the clients of current accounts to the bank, and this shall be considered as *Jua'la* (a stipulated reward for the accomplishment of a specified task) contract.

Standard (382)

It is permissible to change the fees of banking services and their tariff from time to time, provided that the client shall be notified before applying such changes.

Services for Current Account

Standard (383)

It is permissible for the bank to provide bill payment service of all activities for the client except for transactions which are in contravention of Shari'a rulings.

Standard (384)

In the case of intermediation in bill payment, it is permissible for the bank to take fees payable in a lump sum or as a percentage share of the paid amount from the paid company against providing the service.

Standard (385)

If the employee got a bonus for attracting a current account, it is not permissible for him to share this bonus with the holder of the current account, or to give him any cash money, gifts or benefits in return for such attraction, be it under a prior agreement or not.

Standard (386)

As a reward, it is permissible for the bank to refund the client benefitting from the bank services a part of the fees he paid to the bank in case his transactions exceed certain limit or amount.

Standard (387)

The bank may issue credit solvency certificate for its clients in return for fees, or for free. This certificate indicates the client's credit record or his accounts in the bank.

Current Account

Standard (388)

The bank may issue a certificate of indebtedness for its clients in return for fees, or for free. However, in estimating the fees, the bank should take into account the costs borne by the bank, and when the client asks for additional copies; only nominal fees shall be added.

Standard (389)

The bank and the client may agree that when depositing amounts of small categories of currency, they can initially depend on the approximate amount mentioned by the client, and then the amount is deposited after being counted by the bank's employees for the matter of precision, even if it was more or less than the amount mentioned by the client. In this case the client cannot object towards the discrepancies.

Standard (390)

It is permissible for the bank to stipulate that its clients of supply contracts shall open current accounts at the bank provided that no certain balance shall be stipulated to be deposited.

Standard (391)

It is permissible to deal in Escrow Accounts; they are banking accounts whose owners are prevented, for a specific period of time, from funds withdrawal for systematic purposes.

Standard (392)

In case usurious interests are deposited in the bank account without prior agreement, the bank shall not pay them back to the depositor; rather, the bank shall keep them in the *Tatheer* (eliminating the prohibited earnings) account, without driving any financial or moral benefit from them.

Standard (393)

It is permissible for the bank to block the client's current account as a guarantee for repaying a finance granted to him.

Standard (394)

It is permissible for the bank to organize competitions among clients in general and present gifts to winners, provided that the participants shall not pay anything to engage in these competitions.

Standard (395)

It is permissible for the bank to present gifts to government institutions and agencies in which the bank wants to market its products, provided that these gifts shall be presented for the benefit of the institution or agency, and shall be given officially, and the bank shall set policies and procedures necessary for controlling such actions.

Standard (396)

When marketing the products and services of the bank and offering their advantages, the bank employee shall be honest, and shall avoid misrepresentation or brag about these products in a manner that does not comply with their real specifications.



Hawala (Remittance)



Hawala (Remittance)

Execution of *Hawala*

Standard (397)

The concept of remittance (bank transfer of money) differs from the concept of *Hawala* in the Islamic Fiqh. That is, remittance is considered as a paid agency to transfer the money from one place to another, but *Hawala* in the Islamic Fiqh is the transfer of debt from one liability to another.

Standard (398)

The remittance transactions between the bank and the correspondent banks shall be considered as paid agency.

Standard (399)

It is permissible for the bank to take rental from the client in return for the remittance transactions, be it a percentage or lump sum of money. The bank may also take fees from the correspondent bank.

Standard (400)

It is not permissible for the bank to execute the remittance transaction in case the bank knows that it will be used for a forbidden (*haram*) purpose.

Standard (401)

In principle, the bank should not ask the client about the purpose of remittance transaction unless it knows that its purpose is forbidden.

Dealings with Correspondent Banks Regarding Remittances

Standard (402)

The Correspondent Bank is the bank which deals with the main bank to cover the services and withdrawals of the client inside and outside the country.

Standard (403)

The bank shall prefer choosing and supporting Islamic banks as correspondent banks to avoid any unforeseen Shari'a-related issues while transacting with conventional banks. However, in case no Islamic banks are available to meet the bank's need, it is permissible to open current/Nostro accounts with conventional local and/or international banks.

Standard (404)

It is permissible for the bank to open current accounts in correspondent banks. This action is considered as a *Qard* (loan) contract and is subjected to the Shari'a rulings for loan contracts.

Standard (405)

The correspondent bank may take a lump sum or a percentage share in return for the services of the accounts payable.

Standard (406)

The bank shall suspend the payment of remittance and other payments if there is no enough balance in its account at the correspondent bank. The bank shall notify the correspondent bank to stop disbursing what the bank demands by mistake.

Standard (407)

When concluding agreements with correspondents, it is not permissible to stipulate the receipt of interest under any name, be this name delay fines, opportunity costs, interests on cash amounts paid before feeding the bank's (executor of the transaction) account or interests on evaluating funds with retroactive effects in case of default.

Standard (408)

When concluding agreements with the correspondents, it shall be stipulated that the bank shall not receive or pay interests, and it shall dispose of all interest amount deposited in its account contrary to the contract concluded. The bank also shall refuse to pay interests when required to do so; however, if these interest amounts were deducted without its approval, then they should be treated as expenses, and the bank shall continue to claim them after the deduction as agreed upon. Moreover, the bank shall not make set-off between credit interest and debit interest.

Combination of Currency Exchange and Remittance

Standard (409)

It is permissible to execute a financial transfer of money (remittance) in a currency different from that presented by the applicant for the transfer, provided that the contract of currency exchange is concluded and the money to be exchanged is possessed by the applicant for the transfer before being transferred. The delay of the bank to whom the transfer is made in delivering the transferred has no effect on the currency exchange contract.

Standard (410)

Any account differences at the time of set-off shall be deposited in a charitable account in case these differences are for the benefit of the bank or otherwise shall be paid to their owner. This is done under the condition that the proportion of these differences born by the client of the local or international bank (i.e., the transferee) is unintended in itself and small compared to the size of the transaction.

Standard (411)

When concluding agreements with correspondents, it is permissible, for the sake of dealing with the issues relating to the drawing of the bank account, to stipulate one of the following procedures:

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1. Prohibiting the credit and debit interest.
2. Keeping the accounts of the bank (that performs the transaction) at the correspondent banks payable. But, if the accounts are not payable, the transaction shall not be executed unless the account is funded in advance.

However, if it is not possible to deal with the correspondent bank which requires either of two aforementioned arrangements in agreement, then scoring (*Nimar*) method can be applied in dealing with the correspondent bank. In this system, the bank whose account is overdrawn deposits an amount equal to the amount it withdrew from the correspondent bank for the same period during which its account was overdrawn (1:1), regardless of interest rates on the days of exposure and deposit. Thus, the benefit will be common and equal between the bank and the correspondent bank.

Standard (412)

The bank shall compensate the client for the mistake made in determining the currency of remittance in the way it sees appropriate by mutual consent with the client, such as, refunding the currency difference or a part thereof to the client, or buying the currency from the client at the same price of sale.

Standard (413)

Whoever made the administrative error bears the consequent expenses or charges, be it the correspondent bank, the bank or the client.





Cheques



Cheques

Standard (414)

Cheques serve as cash money and abide by the same rulings of cash money. Also, *Qabd* (taking possession) of cheques is legally considered as *Qabd* of their value unless the custom state otherwise.

Standard (415)

It is permissible to issue cheques and deal with them, provided that this does not result in any contravention of the Shari'a.

Standard (416)

It is permitted to charge fees either as a percentage or a lump sum of money for collecting the amount of cheques. This is considered as paid agency service and not as guarantee or discounting of commercial papers.

Standard (417)

It is not permissible for the bank to impose fees over the actual cost in case of issuing cheques against an overdrawn account such as overdraft account.

Standard (418)

It is permitted to deal with conditioned cheques, and they shall be considered binding, such as crossed cheque and account payee cheque.

Standard (419)

In case the exchange rate changed after the cheque has been issued, then the beneficiary shall gain the profits and bear the losses.

Standard (420)

It is not permitted to cash the cheque for less than its value when the cashing process is carried out in the same currency.

Standard (421)

It is permitted to charge a percentage share or lump sum of money in return for issuing extra chequebooks, certified cheques, banker's cheques, and cheques drawn against a correspondent, and for stopping payment on cheques, collection of cheques, providing documents relate to cheques, and repurchasing the certified cheques and cheques drawn against correspondents.

Standard (422)

The original principle regarding the credit of cheque to the client's account is to be final; however, the bank may agree with the client on a specified period of time during which the cheques are collected, and when an amount comes to the bank before this period, the bank shall immediately deposit it into the client's account.

Standard (423)

The bank may credit the amount of cheque to the client's account before collecting its value. This is considered as *Qard* (loan) from the bank to the client until the amount of the cheque is credited to the bank's account. The bank is entitled, under any circumstances, to recourse to the client for any uncollected amounts.

Standard (424)

In case the bank is collecting the amounts of cheques in a currency which is different from the currency of the cheque, the bank has to deliver the amounts after collection. The bank may give the client the approximate value of the cheques as *Qard* (loan), and if the collected amounts turned to be bigger than the *Qard* (loan) amount, the amount in excess goes to the client, but if otherwise, the bank recourses to the client for the amount of difference.

Standard (425)

In case the bank is collecting the amounts of cheques in a foreign currency, the exchange rate shall be the same as the rate at the time of crediting the money to the account of the client after the bank collects the amount of cheques. This is because what is important is the actual date of the currency exchange transaction, which takes place at the time of crediting to the client's account.

Standard (426)

It is permitted to sell and buy due cheques by any kind of money, such as paper money, cheques, or credit cards. In this case the conditions pertaining to currency exchange should be applied.

Standard (427)

In case a cheque is exchanged for the same currency in which the cheque has been issued, then equality in amount as well as *Taqabud* (reciprocal possession) of the two countervalues is a must.

Standard (428)

In case a cheque is exchanged for a currency that is different from that in which the cheque has been issued, then only *Taqabud* (reciprocal possession) of the two countervalues is a must. The exchange rate shall be defined as per agreement.

Standard (429)

It is not permitted to sell the post-dated cheque for cash.

Standard (430)

It is permitted to use the post-dated cheque as a price for a specific immediate commodity other than gold, silver and currencies.

Standard (431)

Taqabud (reciprocal possession) of cheques either sold or purchased is achieved by the bank receiving the money or deducting it from the

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client's account, and the client receiving the cheque at the same time on a condition that the cheque is payable immediately once it is delivered to the drawee.

Standard (432)

It is permitted to use cheques of bank transfers for transactions when the amount intended to be transferred is in the same currency in which payment is to be made; however, where the currency is different from that in which payment is to be made, it is necessary first to apply the process of conversion between the two currencies, deeming *Qabd Hukmi* (constructive possession) to be sufficient, and then undertake the transfer.

Standard (433)

It is not permitted to recourse to the seller of cheque after the purchase is carried out except for the defects pre-existing the purchase, such as forgery and signature mismatch. As for the defects appearing after the purchase, such as the bankruptcy of the drawee bank after the purchase of cheque, the buyer has to guarantee.

Standard (434)

Cheque discounting is not permitted, but it is permitted for the cheque issuer to pay an amount that is less than the value of the cheque to the first beneficiary prior to the date of maturity as long as this is not based upon an agreement concluded prior to the date of maturity.

Standard (435)

The receipt of banker's, certified or travelers' cheques or what is legally deemed a banker's, certified or travelers' cheque, is considered *Qabd Hukmi* (constructive possession) of its amount, and in such a case, it is permitted to use them for transactions for which *Taqabud* (reciprocal possession) in the session of the contract is stipulated, such as the purchase of gold or silver or the exchange of currencies as well as treating the cheque as capital (*ra's al-mal*) of *Salam* (payment in advance).

Standard (436)

Qabd Hukmi (constructive possession) of currencies includes receipt of personal cheque if the issuer has a balance and it is customarily established that *Qabd* (taking possession) of the cheque is deemed as a receipt of its value.

Standard (437)

It is permissible to receive fees for agency in selling the travelers' cheques, whether such a compensation is a lump sum of money or a certain percentage.

Standard (438)

It is permissible to charge fees in return for intermediation in purchasing travellers' cheques from the corporations issuing these cheques.

Standard (439)

All forms of endorsements are binding with respect to their legal effects provided that the endorsements fulfill the legal conditions and regulations determined for them. Endorsement is a statement written by the beneficiary from the commercial paper on its back or on a receipt attached to it, by means of which some or all rights included in the commercial paper are transferred from him to another person (known as the endorsee).

Standard (440)

It is permissible to charge fees for the issuance of a substitute cheque if such issuance is based on the beneficiary's request; however, if the issuance is made because of a mistake committed by the bank, then it is not allowed to charge fees therein.





10

Currencies



Currencies

Standard (441)

It is permissible to trade in currencies in compliance with the following Shari'a rules and precepts:

1. Both parties must reciprocally possess (*Taqabud*) the countervalues before dispersing, being such *Qabd* (taking possession) physical or constructive.
2. The countervalues of the same currency must be of equal amount, even if one of them is in paper money and the other is in coin of the same country.
3. The contract shall not contain a *Khiyarush-Shart* (sale with termination option) or a deferment clause regarding delivery of one or both countervalues.
4. The dealing in currencies shall not aim at establishing a monopoly position, nor should it entail any evil consequences for individuals or societies.
5. Currency transactions shall not be carried out on the forward or futures market.

Standard (442)

In currency exchange, the countervalues must be of equal amount if they are of the same currency, even if one of them is in paper money and the other is in coin.

Standard (443)

Khiyarush-Shart (sale with termination option) is not permitted in the exchange of currencies.

Standard (444)

The dealing in currencies shall not aim at establishing a monopoly position, nor should it entail any evil consequences for individuals or societies.

Standard (445)

Currency transactions shall not be carried out on the forward or futures market.

Standard (446)

The bank shall not grant the client of currency trading any credit facilities (*Qard*/loan), if this transactions include a benefit stipulated to the bank. This includes:

1. An interest-bearing *Qard* (loan).
2. Stipulating that the client's trade in currencies must be executed through the bank.
3. Taking commissions for the client's transactions.

Standard (447)

A delay in transferring a sum of money to the account of the client (the actual receipt) for the period of time customarily used in the spot currency markets (a day or two) is allowed in case of necessity, provided that the transaction shall be evidenced by a bank draft at the time of contracting as a preliminary transfer, and that the payee is not entitled to dispose of the currency during the preliminary transfer period, unless and until the final transfer has taken effect so that the payee is able to make an actual delivery of the currency to a third party.

Standard (448)

Qabd Haqiqi (physical possession) takes place by means of simultaneous delivery hand by hand.

Standard (449)

Qabd Hukmi (constructive possession) of an asset is deemed to have taken place by the seller enabling the other party to take its delivery and dispose of it, even if there is no *Qabd Haqiqi* (physical possession). Among other forms of *Qabd Hukmi* (constructive possession) that are approved by both Shari'a and business customary practices are the following:

1. To credit a sum of money to the account of the client, such as the case in which the bank deposits to the credit of a client's account a sum of money.
2. When the client enters into a spot contract of currency exchange between himself and the bank, in case of the purchase of a currency against another currency already deposited in the account of the client.
3. When the bank debits, by the order of the client, a sum of money to the latter's account and credits it to another account in a different currency, either in the same bank or another bank, for the benefit of the client or any other payee.

Standard (450)

It is permissible to appoint an agent to sell currencies, or take possession (*Qabd*) of and deliver the countervalues. The rules governing currency exchange applies to the agent as well as the principal.

Standard (451)

A bilateral exchange of currencies using modern communication means is permissible and has the same obligations of the ordinary exchange transactions as well as the same juristic consequences.

Standard (452)

If the transaction includes multiple transfers of money among the accounts of several clients, then it is permissible to register the net transfer transactions without evidencing each transaction by a separate bank draft, unless registering each transfer separately is a Shari'a requirement, such as *Qabd* (taking possession) in currency exchange.

Standard (453)

It is also prohibited to deal in the forward currency market even if the purpose is hedging to avoid a loss of profit on a particular transaction effected in a currency whose value is expected to decline, whether such contracts are effected through the exchange of deferred transfers of debt or through the execution of a deferred contract in which the concurrent *Qabd* (taking possession) of both of the countervalues by both parties does not take place.

Standard (454)

It is permissible for the bank to hedge against the future devaluation of the currency by executing back to back free-interest *Qards* (loans) using different currencies without receiving or giving any extra benefit, provided these two loans are not contractually connected to each other. Also, it is permissible to buy commodities or execute *Murabaha* with the same currencies.

Standard (455)

It is permissible for the client to hedge against the fluctuation of exchange rate by purchasing a commodity on a deferred payment basis in a specific currency (e.g. Saudi Riyal), and then sells it, after *Qabd* (taking possession) of it to a third party in another currency intended to fix its exchange rate (e.g. Euro) on the same deferred period, provided that these two contracts are not connected to each other. In this regard, the following points should be observed:

1. It is necessary to make payment of the selling price in both transactions, and it is not permitted to make set-off between the two debts.
2. The client may appoint the bank as his agent in executing the two transactions of sale and purchase, and the bank is entitled to stipulate that the agency is to be binding and inclusive of both contracts of sale and purchase.
3. The bank may act as the client's guarantor regarding the payment of the price in the purchase contract only.

4. The bank may take guarantees from the client (the principal) to ensure his commitment to contracts, such as stipulating the *Rahn* (mortgage) of the due deferred price of the commodity.

Standard (456)

It is permissible for the client to hedge against the future fluctuations of currency exchange rates by purchasing a commodity from the bank on a deferred payment basis in a specific currency, and then appoint the bank as his agent to sell it to a third party on a spot payment basis, and mortgage its price to the bank. The client then invests the mortgaged price in purchasing a commodity from the market on a spot payment basis, and then sells it to the bank on a deferred payment basis in a different currency. In this regard, the following points should be observed:

1. The bank shall not sell a commodity to the client and then repurchase it from him on the same deferred period in a different currency.
2. The two transactions shall be separate, and each one is concluded on a different commodity.
3. Observing the standards applied to the product of “Finance by way of deferred sale” (*Tawarruq*) and the product of “Investment by way of deferred sale”.

Standard (457)

It is not permissible to sell a commodity on a deferred payment basis in a specific currency (Saudi Riyal), and then buy it back for the same deferred period in a different currency (Euro).

Standard (458)

If either party of currency exchange contracts makes a fixed-term *Ijab* (offer) using modern communication means, then this party remains bound by this *Ijab* (offer) during the determined period. The contract is not completed until the other party accepts the offer (*Qabul*), and the two parties reciprocally possess (*Taqabud*) the countervalues.

Standard (459)

A bilateral promise that is binding on both parties to the contract of currency exchange is not permissible.

Standard (460)

Parallel purchase and sale of currencies is not permissible, since it is a contract that amounts to deferred sale of currency, and makes a contract of currency exchange conditional on another contract of currency exchange, as well as it includes bilateral promise that is binding on both parties to the contract of currency exchange.

Standard (461)

An exchange of amounts denominated in currencies that are debts established as an obligation on the debtor is permissible, if this results in the settlement of the two debts in place of a bilateral exchange of currencies, and in the fulfillment of the obligations in respect of these debts. This covers the following cases:

1. Discharge of two debts when one party owes an amount from another party denominated in (Saudi Riyals) and the other party owes an amount from the first party denominated in (Dollars). In this context, both may agree on the rate of exchange between the Riyals and the Dollars in order to extinguish the debts, wholly or partially. This type of transaction is juristically known as *Muqassah* (Set-off).
2. The creditor's receipt of a debt due to him in a currency different from that in which the debt was incurred, provided the settlement is effected as a spot transaction at the spot exchange rate on the day of settlement.



Mutual Funds



Mutual Funds

Assets of Investment Funds

Standard (462)

It is not permitted to invest in units of the investment funds whose assets involved are gold, silver or currencies except when the standards of exchange are achieved. But since it is usual that streamline market practices are violating the standards of exchange, investment in these units is prohibited until such standards are proven to be met.

Standard (463)

It is permissible for the bank to trade in investment funds where there are Shari'a Supervisory Boards to review and audit the transactions exercised in these funds.

Standard (464)

It is permitted to establish investment funds for the shares compliant with the standards set by the Shari'a Board of the bank, whether in local or international markets.

Standard (465)

It is not permitted to invest assets of investment funds in shares where there is no enough information available about their compliance with the Shari'a.

Standard (466)

It is permitted to sell the units of funds invested in *Murabaha* even though they include cash assets and debts since funds are the main

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sold object while cash assets and debts are secondary to it. This main object, which is an independent legal entity, is affected by a number of factors, such as the fund manager efficiency, licenses and the contractual relationships with the investment bodies.

Standard (467)

It is permitted to carry out *Murabaha* to the purchase orderer and *Tawarruq* (monetization) on units of investment funds provided that the units purchased are not to be sold except after the assessment following the purchase assessment, and that the assets of fund should not be debts.

Standard (468)

It is permissible for the bank (the investment agent) to buy a real estate for the purpose of establishing an investment fund on the basis of *Khiyarush-Shart* (Sale with termination option) that the amount received from contributors is completed during a certain period, or otherwise, if the amount agreed upon is not completed during this period, then the purchase contract should be terminated.

Management of Investment Funds

Standard (469)

It is permissible for the bank to market international funds permitted by other Shari'a Supervisory Board, even though its standards are different from the standards set by the Shari'a Board of the bank.

Standard (470)

It is permissible to charge fees for the processes of participation, sale and redemption in investment funds.

Standard (471)

It is permitted to participate and redeem contributions to investment funds on the basis of the subsequent assessment of the fund's unit. Lack of knowledge about such assessment at the time of participations or

Mutual Funds

redemption is of no harm, as it is a kind of sale and purchase transactions concluded at the market price which is to be known subsequently.

Standard (472)

Investment agency, *Mudaraba* or *Musharaka* are permissible forms of private investment portfolios management contract.

Standard (473)

It is permissible to manage the investment funds and portfolios by means of paid agency or *Mudaraba* contract; in this case, the amount payable as remuneration for the manager shall be defined.

Standard (474)

It is permitted to determine the amount payable as remuneration for the manager of the investment funds and portfolios as a lump sum of money, a percentage share of the profit gained in excess of the capital, a percentage share of the capital, or a percentage share of the market value of the portfolio for a temporary period such as three months. The portfolio manager is entitled to remuneration, whether profit is gained or not as long as there is no misconduct or negligence on his part.

Standard (475)

The management of investment fund is entitled to take a performance incentive as a certain percentage known to the investor in return for the excess profits over the rate agreed upon certain limit.

Standard (476)

The management of investment funds may state the expected rate of profit in the subscription prospectus of investment funds based on the study of the market.

Standard (477)

The manager of investment fund should make every possible effort to invest the assets of the fund properly and in the purpose for which the fund is established, or otherwise he should bear the consequences of his negligence.

Standard (478)

The manager of investment fund is entitled to conclude a contract with another party to manage the fund that is under his management, if he stipulated this entitlement at the time of contracting with the investors.

Standard (479)

The manager of investment fund is entitled to adjust the salaries or bonuses, provided that he shall inform the investors about this adjustment before it takes place. However, the investor is allowed to terminate the contract in case of his refusal to this adjustment.

Standard (480)

The fund manager should fully disclose all expenses charged on the fund.

Standard (481)

The investor should pay the *Zakat* due on his owned units of investment funds. He may also appoint an agent to calculate and pay the due amount of *Zakat* on his behalf.

***Zakat* on Investment Funds**

Standard (482)

The owner of the units of investment funds has to pay the *Zakat* due on these units. But in case the fund manager pays the Shari'a prescribed *Zakat*, then the investor's liability is discharged.

Standard (483)

Zakat on the units of investment funds has to be paid on the basis of the underlying assets of the fund; if they are *Urud Tejarah* (trade assets), gold and silver, cash assets, or debts, the rate of *Zakat* applicable is 2.5%. If the underlying assets of the fund are agriculture products and livestock, the rate of *Zakat* applicable is determined according to the details of the Shari'a-prescribed amounts.

Standard (484)

The elapse of a full lunar year is required as a prerequisite for the obligation of paying the *Zakat* for the units of investment funds. In this regard the following points shall be taken into consideration:

1. If the investor pays the *Zakat* due on all his properties on a specific day of the year, which is easier in calculation for the payer of *Zakat*, he should calculate these units as part of his properties liable to *Zakat* on that day regardless of the date of purchase.
2. If the investor does not pay the *Zakat* due on all his properties on a specific day of the year, then the date of paying the *Zakat* due on these units should be the elapse of a full lunar year starting from the date of purchase. However, if the price of these units before purchase is invested in *Urud Tejarah* (trade assets), or is cash assets, gold, silver, or debts liable to *Zakat*, then the date of paying the *Zakat* due on these units should be the date of paying the units' prices before the purchase and not the date of purchase.

Standard (485)

The way of calculating the *Zakat* on *Urud Tejarah* (trade assets) funds, gold and silver is the following:

[The number of units in possession × the last assessment of the units at the elapse of a full lunar year × 2.5%].

Standard (486)

The principle regarding *Hawl* (*Zakat* year) is the elapse of a full lunar year with no consideration to the solar year except in case of necessity. In case of adopting the solar year, the *Zakat* rate should increase in accordance with the days of the solar year outnumbering the lunar one; [2.577% for the normal year, and 2.5775% for the leap year].

***Tatheer* (Eliminating the Prohibited Earnings) of Investment Funds**

Standard (487)

The managers of investment funds should eliminate any prohibited earnings from the funds, or provide the investors with the rate of *Tatheer* (eliminating the prohibited earnings) on a regular basis.

Standard (488)

The manager of investment fund or portfolio should eliminate the prohibited earnings from the shares he trades in. He is not forced to eliminate a part of his commission or wage given to him in lieu of the work he has undertaken.

Standard (489)

The manager of investment fund should eliminate the shares of companies which are not compliant with the Shari'a standards governing the fund. The manager has to sell these prohibited shares within 90 days if they covered the capital; this is when the share price plus the distributed profits reach the amount equivalent to the purchase price of these shares. However, if these shares have not covered the capital, they shall be sold within a maximum period of one year.

Standard (490)

The mechanism for *Tatheer* (eliminating the prohibited earnings) of share funds when it is difficult to calculate the prohibited earnings in them accurately is as follows:

1. The rate of the last *Tatheer* calculated in a previous period is taken as benchmark for the current period.
2. At each assessment, an amount equivalent to this rate should be retained as a provision that shall be deducted from the assessment of the fund units.

Mutual Funds

3. Upon issuing the financial statements and calculating the actual rate due, the actual rate due should be compared with the rate retained as a provision, and then the shortfall amount is taken away or otherwise the amount in excess is returned to the fund.





Shares and Sukuk



Shares and Sukuk

Subscriptions

Standard (491)

The subscription manager is entitled to receive a remuneration in return for the management of the subscription process, the feasibility studies conducted and the marketing of shares, etc.

Standard (492)

The subscription manager may agree with the banks, who receive the subscription amount, to be committed to provide the subscription services through their branches in return for a rental, and the contract shall be considered as paid agency.

Standard (493)

It is not permissible to drop the fees of service given by the subscription manager to the banks receiving the subscription in return for keeping the amounts of such subscription for a certain period in a current account with the bank. Also, it is not permissible for the bank to pay amounts to the subscription manager that exceed the amounts collected in return for keeping them into the account.

Standard (494)

It is permissible to manage the subscription of the companies whose shares are permitted to be traded by the Shari'a supervisory board of the bank, and the contract between the subscription manager and the company whose shares are to be traded shall be considered as a contract of *Ijarah* (lease).

Standard (495)

The remuneration of the subscription manager shall be defined at the time the contract is concluded, either it will be a lump sum delivered at the end of the subscription period, or fixed fees received for each subscription form.

Standard (496)

It is permissible to agree that the bank, who receives the amounts of the subscription, invests these amounts for its benefit. In this case the amounts of subscription are to be considered as *Qard* (loan) due on it for the benefit of the company whose shares are to be traded.

Standard (497)

It is permissible for the subscription manager to agree that the bank, who receives the funds of subscription, invests these funds for the benefit of the company whose shares are to be traded in return for a rental. The contract, therefore, is considered as a contract of *Ijarah* (lease) for employment/service (paid agency). In this case, it is not permissible to stipulate the guarantee of the capital or a specific profit of the investment.

Standard (498)

Subscription guarantee (underwriting the subscription of shares issued) is an agreement between a person and the company on the date of incorporation of the company or the date of a share issue, that such a person is undertaking to buy all or part of the shares issued. It is an undertaking to subscribe all the remaining shares that are not subscribed at its nominal or certain value.

Standard (499)

Subscription guarantee (underwriting the subscription of shares issued) is permissible when it is done without compensation in lieu of underwriting.⁽¹⁾

(1) Refer to Standard (502).

Standard (500)

It is permissible for the issuer of shares to add a certain percentage to the actual value of the shares on the subscription date in order to recover issuing expenses, provided that such percentage is appropriately estimated to reflect the actual expenses incurred.

Standard (501)

It is permissible to split the value of the shares into installments at the time of subscription so that one installment is paid and the remaining installments are deferred. The subscriber will be considered as a participant to the extent of what he has paid up and will undertake to increase his share of capital in the company. This is on the condition that the installments apply to all the shares and that the liability of the company remains restricted to the value of the shares subscribed to.

Standard (502)

It is not permitted to consider the subscription guarantee of securities offered to underwriting as a kind of guarantee contracts known in Islamic Fiqh Books. However, it can be considered according to one of the following two ways:

1. The bank undertaking the subscription shall buy all the securities issued since the contract of underwriting the subscription of securities issued is concluded, then the bank offers the securities for subscription so as to sell all the securities issued, otherwise the remaining securities stay in its possession.
2. The contract of underwriting the subscription of securities issued is to be a mere commitment to buy all the remaining securities that are not subscribed after offering all the securities issued for subscription at the nominal value of securities, and the bank is entitled to receive the consideration agreed upon in return for its commitment; whether all the securities issued are sold or not.⁽¹⁾

(1) Refer to Standards (498) and (499); the Standard (502) is the latest.

Kinds of Shares

Standard (503)

It is permissible to participate in the incorporation of joint stock companies, provided that their activities shall be lawful and their articles and memorandum of association and subscription prospectus shall not include any Shari'a contravention, such as interest-based loans (*Qards*) and prohibited investments.

Standard (504)

It is permitted to trade in shares of companies whose activities are lawful and their financial statements do not contain any Shari'a-prohibited elements.

Standard (505)

It is permissible to trade in shares of joint stock companies whose primary activity is lawful, even if they sometimes undertake prohibited transactions, based on the following conditions:

1. The prohibited finance shall not exceed 30% of the total assets.
2. The cost of prohibited finance or other prohibited expenses shall not exceed 5% of the total expenditures.
3. The forbidden investments shall not exceed 30% of the total assets.
4. The amount of income generated from prohibited components shall not exceed 5% of the total income.

The investor shall be committed to *Tatheer* (eliminating the prohibited earnings) and shall not allow the company to trade in prohibited transactions; rather, he shall seek for correction where possible.

Standard (506)

In accordance with the standards approved by the Shari'a Board of the bank, it is permissible to trade in shares of companies whose primary

Shares and Sukuk

activity is lawful, but sometimes undertake prohibited transactions, such as making deposits or borrowing on the basis of interest, whether such trade is made through buying, selling, intermediating, undertaking the subscription or similar activities, based on the following considerations:

1. The shareholder shall eliminate the prohibited earnings at the day the returns are due, namely the convention date of the General Assembly.
2. Advice shall be given to the General Assembly and to the Board of Directors and Executives that the elimination of prohibited earnings shall be observed as possible.

Standard (507)

Joint stock companies are classified by the Shari'a based on their total assets or liabilities, not their market value.

Standard (508)

Companies performance shall be evaluated based on their audited annual statements. Quarterly statements may be also used. Excluded from evaluation are all activities undisclosed and proved by competent authorities to be prohibited.

Standard (509)

When evaluating the performance of joint stock company, any transaction permitted by a considerable Shari'a supervisory board shall not fall within the forbidden category.

Standard (510)

The terms of forbidden transactions involved in the financial statements of a company, such as banking facilities, bonds and banking commissions, are considered as proofs that the activity of such company includes prohibited transactions, unless otherwise proved.

Standard (511)

Doubtful terms used in financial statements which are neither prohibited nor permissible, such as cash in hand or cash in bank, accounts payable and miscellaneous income are judged through analysis of indications and evidence, considering the notes attached to the financial statements, corresponding with companies, etc.

Standard (512)

Some of the prohibited forms of investments are to own shares or bonds in companies whose activities are prohibited, to own units in prohibited funds, or to have interest-based deposits or revenues of lease to companies involved in prohibited activities.

Standard (513)

If some revenues are not properly detailed in financial statements, a considerable effort shall be exerted to determine such revenues giving due care and caution for the sake of discharging liability.

Standard (514)

The shares of companies whose classification changes to be prohibited shall be suspended according to a mechanism that neither inflicts harm upon the market nor the clients.

Standard (515)

It is permissible to issue new shares in order to increase the capital of the company if these shares are issued at the fair value of the old shares, which is worked out through expert valuation of the assets of the company or on the basis of the market-value whether this is at a premium or not.

Standard (516)

It is not permitted to issue preference shares, i.e. shares that have special financial characteristics that give them a guarantee for the capital or profits or give them a priority at the date of liquidation of the company or at the date of distribution of profit.

Standard (517)

It is permissible to issue preference shares that entitle their holder to receive higher percent of profits or grant him certain procedural and administrative privileges, such as a right of vote. In this case he shall guarantee the capital as other holders.

Standard (518)

It is permitted to register the shares in the holder's name, to his order, or for the bearer.

Standard (519)

It is permissible to apply *Urbun* (earnest money) sale to the purchase of shares as being an alternative to unlawful Options, based on the following conditions:

1. The contracted upon shares shall be owned by the seller.
2. The contracted upon shares shall be kept in a private portfolio.
3. The seller shall not dispose of these shares during the period of *Urbun* (earnest money) option.
4. The buyer shall enjoy the shares' profits and guarantee the shares during the period of the option.

Standard (520)

It is not permitted to conclude future contracts (FUTURES) for shares.

Standard (521)

It is not permitted to conclude option contracts (OPTIONS) for shares.

Standard (522)

It is not permitted to conclude SWAP contracts (SWAPS) for the future returns of shares. SWAP contract is an agreement between two parties to exchange at a subsequent date the average return on a specified share, or a group of shares for the average return on the share or another financial asset.

Trading and Intermediation

Standard (523)

It is permitted to trade and intermediate in shares of companies for the purposes of investment or trade (*Mudaraba*) in order to take advantage of price differences, based on the following conditions:

1. The shares shall not be of companies whose activities are unlawful, such as the companies of liquor, tobacco, pork, gambling, conventional banks and the commercial insurance companies.
2. The shares shall not be of companies whose main activities are the sale and purchase of debts unlawfully.
3. The shares shall not be unlawful in themselves, such as the unlawful kinds of preference shares.
4. The activities of the companies shall not include unlawful transactions, such as interest-based loans, which are not compliant with the standards approved by the Shari'a supervisory board of the bank.

Standard (524)

It is permissible to trade and intermediate in the companies whose activities are lawful and whose assets include debts and cash without looking at their percentage, as long as they are secondary and not the primary objective of the contract.

Standard (525)

If the client's portfolio includes any unlawful shares, the bank should only display the related unlawful share on the screen of the related employer and the holding client, but not the others, so as to allow him to eliminate these unlawful shares.

Standard (526)

The intermediation in global shares shall be limited to spot sale for lawful companies shares, excluding short sale, options, deferred contracts, or futures.

Standard (527)

It is not permissible to intermediate in trading in the shares of insurance companies who are applying commercial insurance concepts, even though such insurance is called *Takaful* (cooperative insurance).

Standard (528)

It is permissible to accept portfolios of shares transferred from other companies. However, if these portfolios include any prohibited shares, the client shall only be allowed to eliminate these prohibited shares. The client shall be urged to eliminate these prohibited shares as soon as possible.

Standard (529)

The bank shall urge the clients to eliminate the prohibited shares of companies existing in their portfolios, by allowing the sale and not the purchase option of these shares, such as the shares of companies whose activities are prohibited which are part of the clients' existing portfolios transferred from other companies, or the shares whose classification changed to be prohibited, or the shares added to the portfolio based on a forced subscription by the bank.

Standard (530)

It is permissible to offer trading and subscription services to companies whose activities include media services such as television and radio, provided that their articles of association and documents shall not include any matter that contradicts the Shari'a and shall not broadcast anything of such kind.

Zakat on Shares

Standard (531)

The *Mudarib* (who manages the shares of joint stock companies) shall pay *Zakat* 2.5% of the market value of the shares at due time. The investor, however, pays *Zakat* based on the company's assets liable to *Zakat*.

Standard (532)

The joint stock company has to disclose to the shareholders the amount of *Zakat* payable as well as the amount it paid.

Standard (533)

The shareholders may appoint the joint stock company to pay the due *Zakat* on behalf of them as is the common practice in Kingdom of Saudi Arabia.

Standard (534)

In case the joint stock company does not pay the *Zakat* in full, the shareholder shall pay the remaining portion of the *Zakat* due. This portion can be calculated by a specialized entity such as the Shari'a Supervisory Boards, or by an individual by himself.

Standard (535)

In case the joint stock company does not pay the *Zakat* due, and the shareholder aiming at investment is unable to calculate exact amount, he shall, as a precaution, pay 2.5% of value of his equity holding.

(Total shares of shareholders ÷ total number of shares × number of the shares owned by the *Zakat* payer × 2.5%).

Tatheer (Eliminating the Prohibited Earnings) of Shares

Standard (536)

In case the prohibited earnings have been eliminated from a company shares, the shareholders is not required to eliminate their profits whether such profits are cash or share dividends.

Standard (537)

The shares shall be purified against the prohibited earnings, whether the company has declared a profit or suffered a loss and whether or not the profits have been distributed.

Standard (538)

In case it is not possible to determine the actual amount of *Tatbeer*, more effort should be exerted to calculate its approximate amount. Moreover, a percent of 5% should be taken from the rate of return on the market portfolio (market return) invested in mixed companies (which are involved in permissible and prohibited activities) companies, and 30% from the returns that are not disclosed in the statements of companies.

Standard (539)

All earnings of prohibited investment such as bonds shall be eliminated.

Standard (540)

It is permissible to charge a commission in return for the services of purifying the prohibited shares of companies. This commission shall not be purified.

Standard (541)

It is not permissible for the bank to utilize amount which is set aside to purify the prohibited earnings for its own benefit, such as paying taxes and fees, sponsoring external activities, or training its staff, etc.

Standard (542)

Any prohibited earnings accumulated intentionally or unintentionally shall be eliminated through channeling them to charity and for the welfare of general public with the purpose of elimination and not charity. These earnings shall not bring any financial or moral benefit to the entity aiming to purify earning.

Sukuk

Standard (543)

Sukuk are certificates representing undivided shares in ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects.

Standard (544)

The issuer of *Sukuk* or other agents shall not guarantee the profit or the asset of investment unless they commit misconduct or negligence.

Standard (545)

It is permissible to issue *Mudaraba Sukuk* in which the bank is a *Mudarib* and the certificate holder is the provider of capital. The bank (*Mudarib*) is entitled to a share of the investment profit. In case of loss, the certificate holder (the provider of capital) loses his capital, and the bank (*Mudarib*) loses its effort and guarantees nothing unless he commits misconduct or negligence.

Standard (546)

It is permissible to issue *Sukuk Wakalah Bi-Ajr* (*Sukuk* of paid agency) in which the bank is an agent for a remuneration and the certificate holder is the principal. The bank is entitled to remuneration whether it declares profit or suffers loss, and guarantees nothing unless it commits misconduct or negligence.

Standard (547)

The *Mudaraba* and paid agency (the agency in investment) contracts match with regard to the responsibility of *Sukuk* manager, as in both, the *Mudarib* and the agent guarantee nothing of the capital unless they commit misconduct or negligence. However, the two contracts differ in the entitlement. That is, the *Mudarib* is entitled to a share in the profit of investment, however, in case of loss, he loses nothing but his effort. Meanwhile, the agent is entitled to the agreed upon remuneration whether the profit is declared or not.

Standard (548)

It is permissible to deal with Shari'a-compliant *Sukuk* by means of issuance, providing advisory services, purchase, sale, intermediation, *Rahn* (mortgage), *Hawala* (remittance), or otherwise.

Standard (549)

Issuance of negotiable *Sukuk* for the *Murabaha* receivables is not permissible in case the price paid for these *Sukuk* is any form of money including gold and silver; however, it is permissible in case the price is something else such as commodities.

Standard (550)

It is not permissible to deal with bonds, whether by purchase, sale, intermediation, *Rahn* (mortgage), *Hawala* (remittance) and so on. Bonds are financial papers offered by their issuer in order to raise loans with a commitment to repay it with an interest. Bonds are interest-based instruments which are unanimously forbidden by Shari'a Scholars.





13

Investment Agency in International Commodities



Investment Agency in International Commodities

Standard (551)

In case the regulations of international metal markets permit only transactions through banks, it is permitted for the client to appoint the purchase orderer (the bank) as his agent to purchase the commodities. After *Qabd* (taking possession) of the commodities, the client may sell them to the bank.

Standard (552)

In case the client appoints the bank as his agent to purchase any commodity from the international markets; the client shall have the option to either sell the commodity to the agent himself or to any other party, or to retain its ownership.

Standard (553)

The amount payable as remuneration for the investment agent should be known upon the conclusion of the contract or defined in terms of an amount to be known in the future in a way that does not lead to dispute. The Permissible forms of remuneration may include:

1. A lump sum of money.
2. A percentage share of the invested capital.
3. A percentage share of the net assets.
4. A percentage share of the total revenues.
5. The prevailing market rate for similar service.
6. A rental determined based on a certain benchmark that can be referred to, such as: SAIBOR or LIBOR.

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Some of the abovementioned forms may be combined together on the condition that such combination does not lead to an act prohibited by the Shari'a. Also, the remuneration may be one of the abovementioned forms in addition to a performance incentive for the agent in case he exceeds a certain limit of transactions, be this incentive a specified percentage share or a lump sum of money, and this is considered as a kind of *Jua'la* (a stipulated reward for the accomplishment of a specified task).

Standard (554)

The amount paid as remuneration for the investment agent should not be specified by an element involving a significant ignorance or *Gharar* (uncertainty). The prohibited forms of remuneration may include:

1. A percentage share of a particular transaction profit.
2. A remuneration that is not linked to a certain benchmark.
3. Any of two remunerations without one being determined.
4. A remuneration that is subject to the agent's determination without the knowledge of the principal about it.

Standard (555)

In deferred sale agency, it is permitted to specify the profit of the principal (the client) through a certain percentage share or at a certain benchmark. The agent (the bank) in this case takes, in addition to its remuneration, any excess over the profit specified for the principal, provided that the agent shall not guarantee in the event of incurring loss or making an insufficient profit.

Standard (556)

The investment agent (the bank) is not entitled to invest the money of the principal (the client) after the expiry of agency, or otherwise the bank should guarantee the capital and should deliver it to the client upon his request. In this case, the bank gets the investment profits and bears the losses, unless the client permits the bank to dispose of

his capital. In the latter case, the bank shall not guarantee the capital and the client gets the investment profits and bears the losses.

Standard (557)

It is permissible for the investment agent (the bank) to enter into partnership with the principal (the client) on the basis of paying a share of investment capital, particularly if the nature of investment requires certain amounts of money that cannot be met by the capital secured by the principal. The two partners share the profits as agreed upon and bear the losses proportionally; this should be disclosed to the client.

Standard (558)

In deferred sale agency, the investment agent (the bank), as an alternative to the purchase of debt which is forbidden, may choose, in case the principal creditor (the client) wishes to early recover his debt from the debtor, one of the following alternatives:

1. Acting as the client's agent for demanding the debtor for an early payment of debt. The agent is entitled to stipulate a remuneration in return for this task, be it a percentage share or a lump sum of money.
2. Purchasing the principal's debt for tangible assets.
3. Lending the entire debt to the principal, and then the agent recurses to the debtor for payment. This is considered as a kind of providing facility.

Standard (559)

In deferred sale agency, the investment agent is entitled to refuse, for considerable reason, the request of his principal creditor for demanding the debtor to make an early payment.

Standard (560)

In deferred sale agency, it is not permissible for the investment agent, when the creditor demands an early payment, to pay the debt from

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his own money so as to receive the debt at its due date and get its profit; this is considered as a form of the purchase of debt which is prohibited by the Shari'a.

Standard (561)

In deferred sale agency, if the principal creditor asks his investment agent to demand the debtor for an early payment and the debtor agreed, the agent is entitled to take a remuneration, that does not exceed the amount payable as his remuneration in the original transaction, in return for his effort and in order not to exploit the creditor's need to recover his debt.

Standard (562)

If the client appointed the bank as his agent to invest his money, but the bank negligently failed to invest it, the bank shall give the client a sum of money that is equal to the amount of the profit agreed upon in case this money would have been invested.

Standard (563)

It is permitted to open accounts for the metal intermediaries so as to be used in the *Tawarruq* (monetization) transactions, on a condition that these accounts shall not be used to settle the accounts between the purchaser on a deferred payment basis and the first seller.

Standard (564)

It is permitted for the bank to offer capital protection product, which is based on investing a share of the client's capital in low-risk investments such as *Murabaha* (the investment turns after the sale transaction into a secured debt in the liability of the purchaser), and investing the remaining share in high-risk investments, provided that the relevant Shari'a standards shall be observed in each contract.

Standard (565)

It is preferable to deal with Islamic banks in all products. However, there is no objection to deal in the products offered by conventional banks after assuring they are free of Shari'a infringements, such as *Riba* (interests and delay penalties) and *Gharar* (uncertainty). This can be achieved by relying on a Shari'a Audit Board to monitor and audit the products.





14

Mudaraba Account



Mudaraba Account

Standard (566)

The account of *Mudaraba* is an investment account based on the contract of *Mudaraba* in which the bank (*Mudarib*) and the client who is provider of the capital (*rab al-maal*) share the returns of investment transactions resulting from the amounts deposited in the account of *Mudaraba*. The profits are distributed between them based on their agreement, and the provider of the capital (*rab al-maal*) can dispose of the capital by means of withdrawal, deposit, and the like.

Standard (567)

The signature of the client (*rab al-maal*) on the agreement of opening the account of *Mudaraba* is deemed as an *Ijab* (offer) and the receipt of the bank employee to the agreement and then opening the account is deemed as a *Qabul* (acceptance).

Standard (568)

In the accounts of *Mudaraba*, the provider of the capital (*rab al-maal*) may be allowed to dispose of the capital through withdrawal, deposit, and the like. The withdrawal of a portion from the capital by the provider is deemed as a termination of the *Mudaraba* contract in relation to the withdrawn portion.

Standard (569)

The *Mudarib* (the bank) may distinguish between the owners of *Mudaraba* funds (the client investors) in the ratios of profit, durations and others, provided that this shall not inflict harm upon any of them.

Standard (570)

Mudaraba may be unrestricted or restricted to specific agreed upon activities.

Standard (571)

In the account of deferred *Mudaraba* (temporary *Mudaraba*), the *Mudarib* may stipulate that an amount shall be deducted from the provider of the capital in case he terminates the *Mudaraba* contract before its due date. The amount deducted shall be taken from the profit and not from the capital.

Standard (572)

The *Mudarib* performs constructive liquidation periodically as agreed upon with the client, for the purpose of determining the profits of *Mudaraba* account, so that both of the *Mudarib* and the provider of the capital know his due share.

Standard (573)

A common share of the profits shall be determined for each of the two parties to the *Mudaraba* account. The share of any of them may not be determined as a lump sum of money, or a certain percentage of the capital, or the profit of a certain deal.

Standard (574)

It is not permissible to stipulate the guarantee of the capital or a part of the income on the *Mudarib*. However, the *Mudarib* may volunteer to bear the loss or a portion thereof, if any, without including this as a condition in the contract.

Standard (575)

In *Mudaraba* account, it may be agreed on calculating the profit of *Mudaraba* based on the lowest balance which the account reaches during the period of *Mudaraba*, or based on the average balance.

Standard (576)

In *Mudaraba* account, it may be agreed that the account entitled to gain profit shall not be less or more than a specific ratio. The account which is lesser than the minimum ratio or more than the maximum ratio shall remain a secured *Qard* (loan) on the bank for the benefit of the account owner.

Standard (577)

The provider of the capital (*rab al-maal*) and the *Mudarib* may agree on a duration for the *Mudaraba* which is renewed automatically unless the provider of the capital withdraws the capital or unless one party notifies the other of his wish to terminate the contract.

Standard (578)

The *Mudarib* may stipulate a bonus for his performance in addition to his ratio agreed upon in the *Mudaraba* contract. This bonus may be a fixed amount, a certain percentage of the profit, a redistribution of the profits at new ratios, or a determination of a limit for the profits of *rab al-maal* (the provider of the capital) on a pro rata basis to the capital, while the *Mudarib* receives the surplus.

Standard (579)

It is permissible to present moral or material gifts to the clients of investment accounts (such as *Mudaraba* accounts) in lieu of these accounts.





15

Administrative Contracts and Agreements



Administrative Contracts and Agreements

Standard (580)

Forward and Future Contracts are contracts in which both the countervalues are deferred to buy or sell a specified quantity and specific type of commodities such as shares and currencies. The legal effects of these contracts take place at a determined future date and at a price agreed upon at the time the contract is concluded.

Standard (581)

Option is a contract that allows the holder to buy or sell an underlying security at a given price for a specific period, known as the strike price. This kind of contracts falls within the sales involving *Gharar* (uncertainty) and gambling.

Standard (582)

It is permissible for the bank to contract with a company specialized in feeding automated teller machines (ATMs) with cash or paper receipts. The remuneration shall be calculated for each machine and the kind of service provided. This can be considered a determination of remuneration in a way that leads to knowledge and certainty.

Standard (583)

Intermediation in paying bills and other payments for lawful activities and services is permissible.

Standard (584)

If the bank stipulated that the contractor implementing its projects shall provide insurance cover for the benefit of the bank, the bank, in case of claiming compensation from the insurance company for damages inflicted, shall take only the value of actual damages, and the surplus amount is repaid to the contractor.

Standard (585)

It is permissible to agree on imposing a (financial) penalty clause against failure to fulfill non-financial obligations.

Standard (586)

It is permissible for the bank to purchase new appliances and stipulate that the seller buys the old appliances of the bank. This is permissible in both *Ijarah* (lease) and sale.

Standard (587)

It is not permissible for the employee to accept gifts from clients for any reason, unless it is based on a policy approved by the relevant authority.

Standard (588)

If the employee accepted gift from a client in a way that contradicts the approved policies of work, he shall return it to the client, or inform the relevant authority. If this is not possible, he shall get rid of it.

Standard (589)

It is permitted for the bank to provide the medical care service for its employees through appointing a company for medical services management that issues cards to the employees of the bank, contracts with hospitals, audits bills, and so on. The bank bears the costs of its employee's treatment bills. The contract between the bank and the medical service company is considered as an *Ijarah* (lease) contract, in which the company is a joint venture in return

for a determined remuneration. This contract is neither considered a commercial nor a *Takaful* (cooperative insurance) contract.

Standard (590)

It is not permissible to lease a real estate to a person who will use it in a forbidden activity.

Standard (591)

It is permissible to lease an asset to the banks whose transactions are compliant with the rulings of the Islamic Shari'a.

Standard (592)

It is permissible to lease *Waqf* (endowment) to Islamic banks.

Standard (593)

If there are no *Takaful* (cooperative insurance) companies available to serve the purpose, then matters needed urgently may be excluded from the prohibition of the commercial insurance, such as health insurance for low income people due to high costs of medicine, and the obligation of supervisory bodies to apply commercial insurance, taking into consideration that necessity should not be exaggerated.

Standard (594)

It is permissible in Shari'a to combine more than one contract in one set as long as their combination does not lead to forbidden transactions, such as *Riba* or *Gharar* (uncertainty).

Standard (595)

It is not permissible to combine a *Mu'awada* (commutative contract) and a *Qard* (loan) contract unless the absence of favoritism in the *Mu'awada* contract is confirmed.

Standard (596)

It is not permissible to combine contracts that contradict or oppose each other in terms and provisions if this combination will lead to

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contradiction in purposes and consequences, such as the combination of sale and *Ijarah* (lease) contracts on one asset at the same time.

Standard (597)

The original ruling on contracts and conditions is their validity. However, due to the prevalence of the forbidden transactions, one shall be sure that the subject matter of the contract is permissible, and that any contract or agreement shall be free from the following elements:

1. Charging explicit *riba*-bearing profits.
2. Charging penalties on delay, even if they are channeled to charity.
3. Guarantying the investment returns.
4. Deferred transactions in currency, gold and silver.
5. Trading in derivatives, be they Options or Futures, which are not compliant with the Shari'a.
6. Trading in shares and bonds which are not compliant with the Shari'a.
7. Referring to laws other than the Islamic Shari'a, or laws contradicting it.

Standard (598)

Caution shall be exercised when drafting contracts and agreements against using terms that arise doubt in the legitimacy of these contracts or give names contradicting Shari'a nature of transactions, such as using the terms "interest" and "bonds", or naming "finance" as *Qard* (loan).

Standard (599)

Lawsuits shall not be carried on before any judiciary that holds the permissibility of interest-based transactions.

Standard (600)

It is not permissible to enter into interest-based transactions, even if their *riba*-bearing profits are agreed to be channeled to charity. Moreover, channeling such profits to charity does not change the interest-based nature of the transaction.

Standard (601)

It is not permissible to approve any agreement or contract that expressly or implicitly stipulates paying or receiving any *riba*-bearing profits.

Standard (602)

If a contract between the bank and the client has been signed on a specification incompatible with their agreement before signing, due to a mistake on the part of the employee or the client, or due to a technical error, then the following cases shall be considered:

1. The two parties accept the change made, and then there is no problem.
2. The change made inflicts harm upon one of the two parties, and then the other party shall, on ethical ground, accept the amendment of the contract so as to be compatible with their prior agreement, or otherwise they shall agree on the termination of the contract.
3. The change made inflicts harm upon both of the two parties, and then they must agree on terminating the contract or amending it to be compatible with their prior agreement.

Standard (603)

It is not permissible that the insurance contract include *Mu'awada* (a commutative contract) under which the insurance company is entitled to the insurance premiums in return for being liable to the compensation. This is deemed as a commercial insurance, even if it is called *Takaful* (cooperative insurance).

Standard (604)

It is permissible to stipulate the right of terminating contracts and agreements, in case one party violates his obligations, without recourse to the courts.

Standard (605)

Islamic banks shall comply with the Shari'a standards in their marketing and advertising activities, and shall give the proper appearance in accordance with the Shari'a.

Standard (606)

It is not permissible to pay credit interest-based profits to cover debit interest-based profits (i.e. making set-off between credit interest and debit interest).

Standard (607)

The issue of arbitration and jurisdiction may be treated by one of the following seven options on sequence so that one shall not move to the next option except when the application of the preceding one becomes impossible. These options are as follows:

1. Recourse to Islamic Shari'a in Islamic courts.
2. Recourse to Islamic Shari'a in foreign courts.
3. Choosing an arbitration entity represented by a member from each party and the third party is to be chosen by an Islamic institution and the reference of the panel is the rulings of the Islamic Shari'a.
4. Recourse to a foreign law before foreign courts in a manner that does not contradict the Islamic Shari'a.
5. Recourse to a non-Islamic law in a manner that does not contradict the Islamic Shari'a.
6. Recourse to arbitration without defining a certain arbitrating entity.
7. Dropping the clause of arbitration and jurisdiction.

Standard (608)

The two contracting parties may agree on correcting decimal fractions between them according to any available mechanism, be it for the benefit of the two parties or the benefit of one of them.





Keywords



Keyword

Std. No

Agency

Act of an Uncommissioned Agent 556
(*Fudooli*)

Investment Agency 468, 470, 472, 473, 475, 476, 477, 478,
479, 551, 552, 553, 554, 555, 556, 557,
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Paid Agency 90, 164, 324, 398, 470, 472, 473, 475, 476,
477, 478, 479, 488, 491, 492, 494, 495, 540,
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