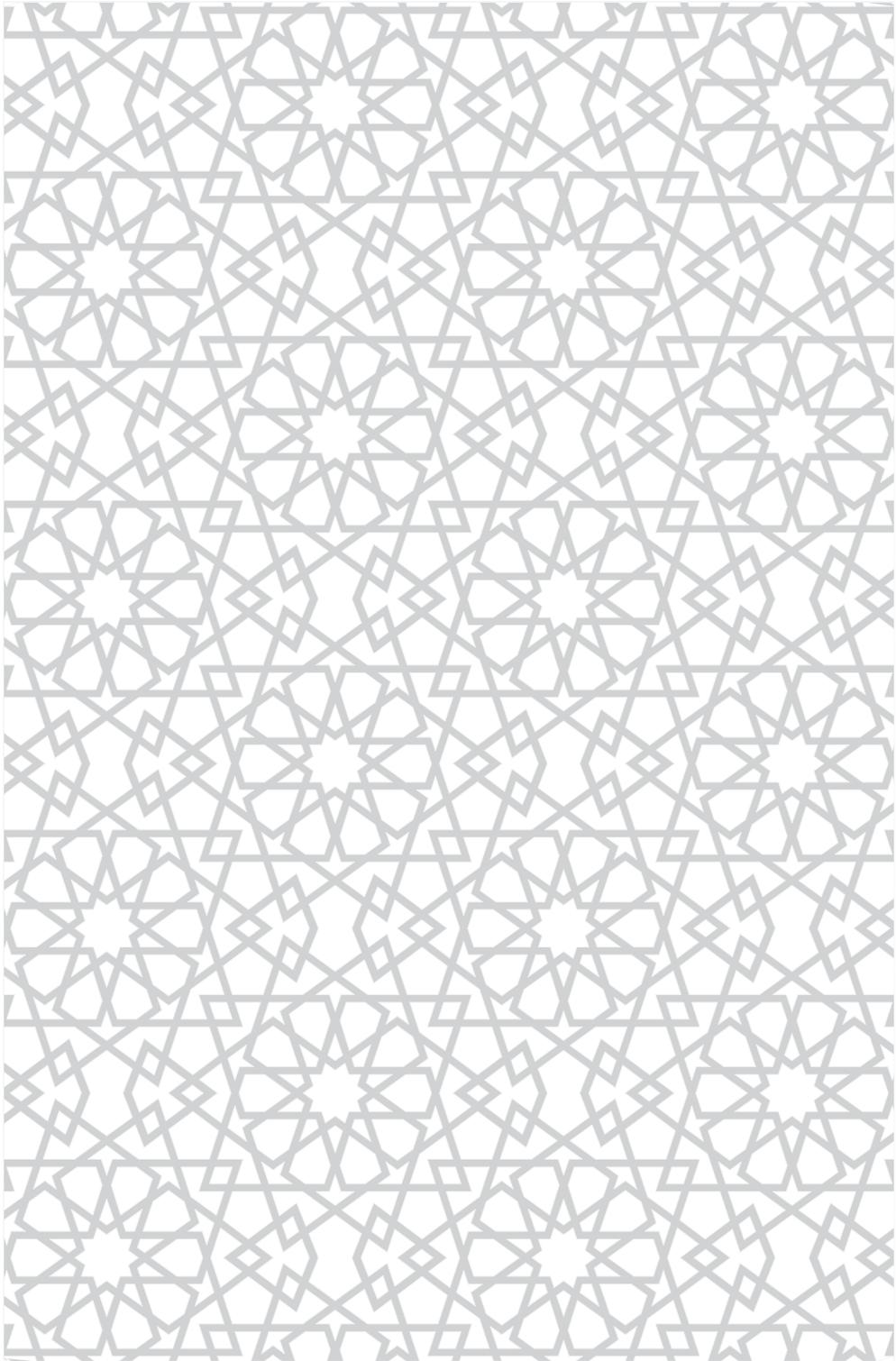


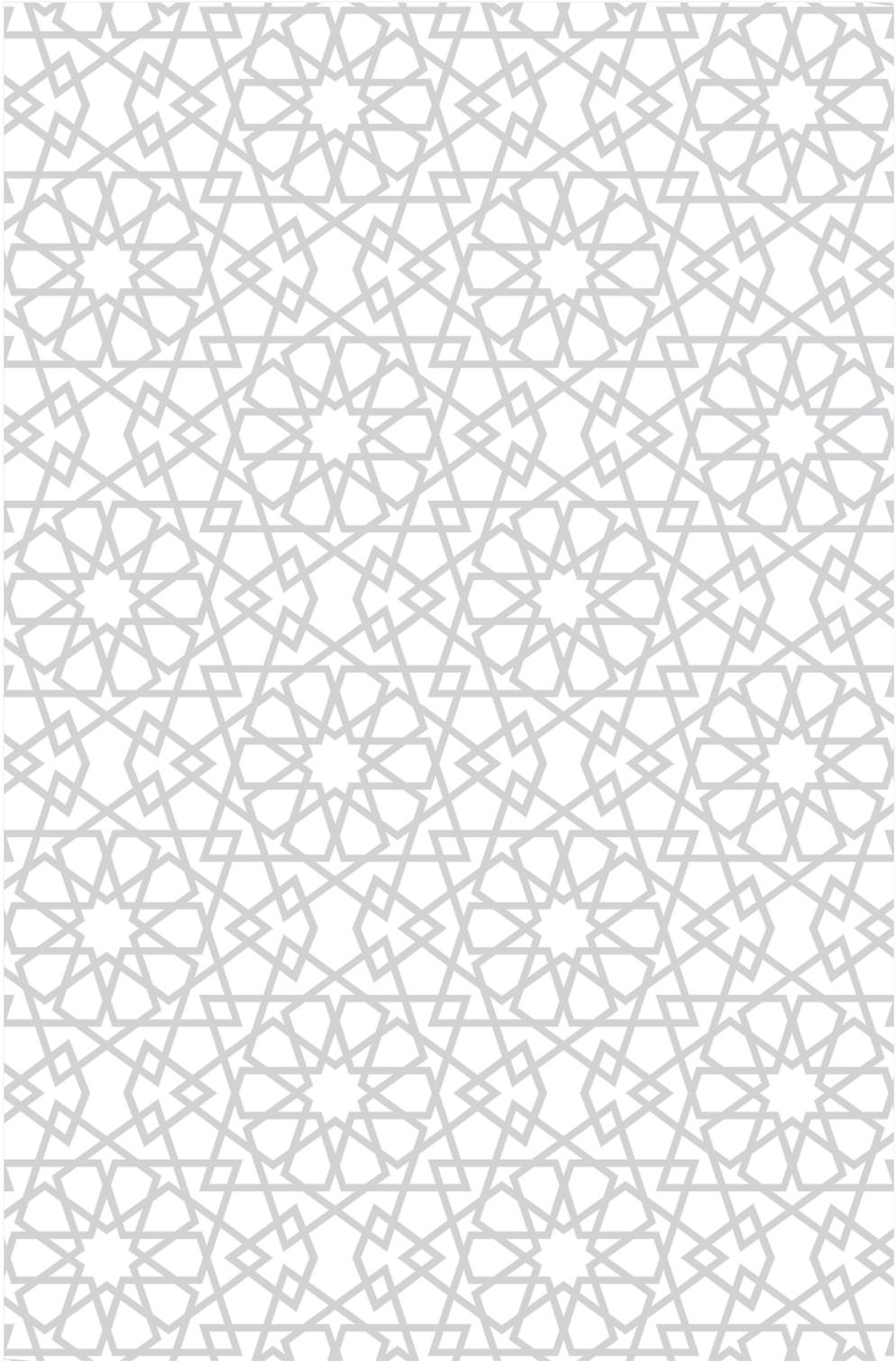
Shari'ah Standard No. (30)

Monetization (Tawarruq)



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IN THE NAME OF ALLAH, THE ALL-MERCIFUL, THE MOST MERCIFUL

All praise be to Allah, the Lord of all the worlds, and blessings and peace be upon our master, Muhammad, and his household and all his companions

Preface

The purpose of this standard is to indicate the essence of Monetization and explain the Shari'ah conditions for its validity, as well as the controls pertaining to its application in Islamic financial Institutions (Institution/Institutions).⁽¹⁾

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

Statement of the Standard

1. Scope of the Standard

This Standard covers the different applications of monetization, whether the beneficiary is the customer or the institution.

2. Definition of Monetization and Its Distinction from *Bay' Al-'Inah*

Monetization refers to the process of purchasing a commodity for a deferred price determined through Musawamah (Bargaining) or Murabahah (Mark-up Sale), and selling it to a third party for a spot price so as to obtain cash.

Whereas 'Inah refers to the process of purchasing the commodity for a deferred price, and selling it for a lower spot price to the same party from whom the commodity was purchased.

3. Mutawarriq (Monetization Beneficiary)

3/1 The Monetization beneficiary may be a customer who purchases the commodity from the Institution and sells it to a third party to obtain liquidity. It may also be the Institution itself when it purchases the commodity from the customer or another Institution and sells it to a third party to obtain liquidity. The controls for both cases are shown in items (4) and (5) below.

3/2 The institution should not perform Monetization for the benefit of conventional banks when it discovers that such banks are going to use the liquidity for interest-based lending instead of Shari'ah-compliant operations.

4. Controls on Monetization Transactions

4/1 The requirements of the contract for purchasing the commodity on deferred payment bases should be fulfilled, for both Musawamah and Murabahah transactions, with due consideration to Shari'ah Standard

- No. (8) on Murabahah. There shall also be a real commodity that the seller owns before selling it. If the process is to involve a binding promise, it shall be from only one party. As regards the commodity sold, it shall not be gold or silver or any type of currency.
- 4/2 The commodity sold shall be well identified so as to become distinct from the other assets of the seller. This may be done by separating the commodity from the other assets of the seller, or recording the numbers of its identifying documents such as storing certificates. [see Shari'ah Standard No. (20) on Sale of Commodities in Organized Markets, item 4/2/2]
- 4/3 If the commodity is not made available at the time of signing the contract, the client shall be given a full description or a sample that indicates the quantity of the commodity and the place of its storage, so that his act of purchasing the commodity becomes real rather than fictitious. In this sense, using local commodities for Monetization is more preferable.
- 4/4 The commodity shall be actually or constructively received by the buyer, and there remains no further condition or procedure for receiving it.
- 4/5 The commodity (object of Monetization) must be sold to a party other than the one from whom it was purchased on deferred payment basis (third party), so as to avoid 'Inah which is strictly prohibited. Moreover, the commodity shall not return back to the seller by virtue of prior agreement or collusion between the two parties, or according to tradition.
- 4/6 The contract for purchasing the commodity on deferred payment basis, and the contract for selling it for a spot price shall not be linked together in such a way that the client loses his right to receive the commodity. Such linking of the two contracts is prohibited whether it is made through stipulation in the documents, acceptance as a normal tradition, or incorporation in the procedures.

- 4/7 The client shall not delegate the Institution or its agent to sell, on his behalf, a commodity that he purchased from the same Institution and, similarly, the Institution shall not accept such delegation. If, however, the regulations do not permit the client to sell the commodity except through the same Institution, he may delegate the Institution to do so after he, actually or constructively, receives the commodity.
- 4/8 The Institution should not arrange proxy of a third party to sell, on behalf of the client, the commodity that the client purchased from the Institution.
- 4/9 The client shall not sell the commodity except by himself or through an agent other than the Institution, and shall duly observe the other stipulations.
- 4/10 The Institution shall provide the client with the information that he or his appointed agent may need for selling the commodity.

5. Controls on Monetization When the Institution Is the Beneficiary

- 5/1 Monetization is not a mode of investment or financing. It has been permitted when there is a need for it, subject to specific terms and conditions. Therefore, the Institutions shall not use Monetization as a means of mobilizing liquidity for their operations, and exert no effort for fund mobilization through other modes such as Mudarabah, investment agency, Sukuk, investments funds, and the like. The Institution shall resort to monetization only when it faces the danger of a liquidity shortage that could interrupt the flow of its operations and cause losses for its clients.
- 5/2 The institutions shall avoid proxy in selling the Monetization commodity, even if proxy is to be arranged with a third party. In other words, Institutions shall use their own bodies for selling the monetization commodity, though using brokers for this purpose is permissible.

6. Date of Issuance of the Standard

This Standard was issued 1 Dhul-Qa'dah 1427 A.H., corresponding to 13 November 2006 A.D.

Adoption of the Standard

The Shari'ah standard on Monetization was adopted by the Shari'ah Board in its meeting No. (17) held in Makkah Al Mukarramah on 26 Shawwal – 1 Dhal-Qad'ah 1427 A.H., corresponding to 18-23 November 2006 A.D.

Appendix (A)

Brief History of the Preparation of the Standard

The Shari'ah Board decided in its meeting No. (7) held on 9-13 Ramadan 1422 A.H., corresponding to 24-28 November 2001 A.D., in Makkah Al Mukarramah, to issue a Shari'ah Standard on Monetization, as practiced by banks.

On 17 Sha'ban 1423 A.H., corresponding to 3 October 2005 A.D., the Shari'ah Standards Committee (2) decided to commission a Shari'ah consultant to prepare an exposure draft on Monetization.

On 6 Rabi' I, 1426 A.H., corresponding to 15 April 2005 A.D., the Shari'ah Standards Committee (2) decided to commission another Shari'ah consultant to redraft the Monetization Standard in the typical format of the other Shari'ah Standards.

The Committee (2) discussed the exposure draft in its meeting No. (15) held in Manama, Kingdom of Bahrain on 8 Jumada I, 1426 A.H., corresponding to 15 June 2005 A.D., and introduced necessary changes in the light of the comments and observations of the members.

A joint committee comprising members from Shari'ah Standards Committees (1) and (2) discussed the exposure draft in a meeting held in the Kingdom of Bahrain on 1 Safar 1427 A.H., corresponding to 1 March 2006 A.D., and introduced further changes in the light of the comments and observations of its members.

In its meeting No. (16) held in Al-Madinah Al-Munawwarah on 7-12 Jumada I, 1427 A.H., corresponding to 3-8 June 2006 A.D., the Shari'ah Board discussed the amendments suggested by the joint meeting of the two Shari'ah Committees and accepted what it deemed appropriate.

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

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

Appendix (B)

The Shari'ah Basis for the Standard

- Differentiation between Monetization and 'Inah with regard to permissibility and prohibition stems from the fact that, contrary to the former, the latter is a trick for practicing Riba (usury). 'Inah takes place between two parties who are in fact a borrower and a lender. The lender sells the commodity to the borrower for a deferred price and buys it back from him for a less price payable on spot. The majority of the Fuqaha subscribe to prohibition of 'Inah and permissibility of monetization, except Ibn Taymiyyah and Ibn Al-Qayyim who consider monetization as prohibited or worthy of aversion.
- Permissibility of constructive receipt of the commodity has already been catered for in the Shari'ah Standard No. (18) on Possession (Qabd) and the Shari'ah Standard No. (1) on Trading in Currencies.
- Permissibility of monetization transactions that observe the Shari'ah controls indicated in this Standard can be traced in the texts of the Qur'an and the Sunnah that permit sale transactions. It has also been confirmed by two resolutions issued by the Islamic Fiqh Academy of the Muslim World League,⁽²⁾ and the Standing Committee of the Supreme Board of Shari'ah Scholars of the Kingdom of Saudi Arabia (Fatwa No. 19297), as well as the Fatwas of several Shari'ah Supervisory Boards. Therefore, monetization is an exit for avoiding Riba rather than a trick for performing it, as it is usual-

(2) Resolution of the 15th Session which imposes no condition other than that Monetization should not be performed like 'Inah. Also, the Resolution of the 17th Session which comprises other conditions (well-observed in this standard) most important of which is non-commitment of the bank to become the agent of the client in selling the commodity which "makes Monetization similar to 'Inah" – using the same words of the Resolution – and non-violation of the condition relating to receipt of the commodity: (the Resolution here did not impose actual receipt only, similar to what it did in its 11th Session where it considered legal receipt to be sufficient in currency exchange, which requires more controls than sale transactions).

ly practiced by those who do not want to be involved in interest-based borrowing. It has been reported by Abdullah Ibn Al-Mubarak⁽³⁾ that 'A'ishah (may Allah be pleased with her) practiced it.

- Prohibition of joining together the contract for purchasing the commodity and the contract for selling it is justified by the fact that joining them together would impose a commitment on the client to sell the commodity right away. Hence, such immediate transfer of the ownership of the commodity may not enable the client to receive it. This is again the same reason for prohibition of agency-related commitments.
- Permissibly of resorting to agency of the Institution when the client, by virtue of law, cannot sell the commodity directly, is meant to safeguard the deal from being nullified by the law.
- The ruling that the Institution shall provide detailed information about the commodity to the client aims at preventing fictitious transactions and helping the client to obtain liquidity. Such requirement holds true whether the commodity in question is a commodity, a car, shares of a company, international goods, or local goods. The latter are more suitable for monetization due to the easiness of ensuring their existence, and the chance available to the client to actually hold them if he so desires.
- The ruling that the Institution shall provide the client with a full description or a sample of the commodity is to ensure that the latter's act of purchasing the commodity is actual rather than fictitious.
- Monetization (where the client or the Institution is beneficiary) shall be subjected to strict controls and restrictions so that institutions fulfill the main objectives underlying their presence and the interest of customers to make dealings with them.
- Principally, institutions have to show strict commitment towards using modes of investment and financing such as the various forms of Musharakah (Partnership) and exchange of goods, usufructs and services that conform to the very nature and basic activities of Islamic banking. Hence, imposition

(3) Al-Azhari Al-Shafi'i, *"Al-Zahir"* (P. 216); and *"Al-Fa'iq Fi Ghrib Al-Hadith"* [2: 108]. For permissibility of Monetization see also Al-Mardawi, *"Al-Insaf"* [4: 250]; *"Kashshaf Al-Qina"* [2: 447] and [3: 185]; *"Al-Mughni"* [4: 127]; Al-Sarakhsi, *"Al-Mabsut"*, [11: 211]; and Al-Nawawi, *"Al-Rawdah"* [3: 416].

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of controls and restrictions on monetization would curb any tendency for expanding monetization to the extent that jeopardizes the extensive use of the original modes of investment and financing. Therefore, Institutions shall not use monetization except in the limited scope defined in this Standard. They shall also restrict the use of monetization to the cases of clients whose transactions cannot be disposed of through other modes of financing and investment such as Musharakah, Mudarabah, Ijarah, Istisna'a and the like. Monetization may also be used as a means for helping the clients to dispose of their previous interest-based debts, after ensuring that they have developed genuine intention not to deal in usurious transactions any more.

