



Sharia Fatwas



issued by

**Sharia
Supervisory Board**

Warba Bank

Fourth edition



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Fourth Edition



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Supervisory Board**

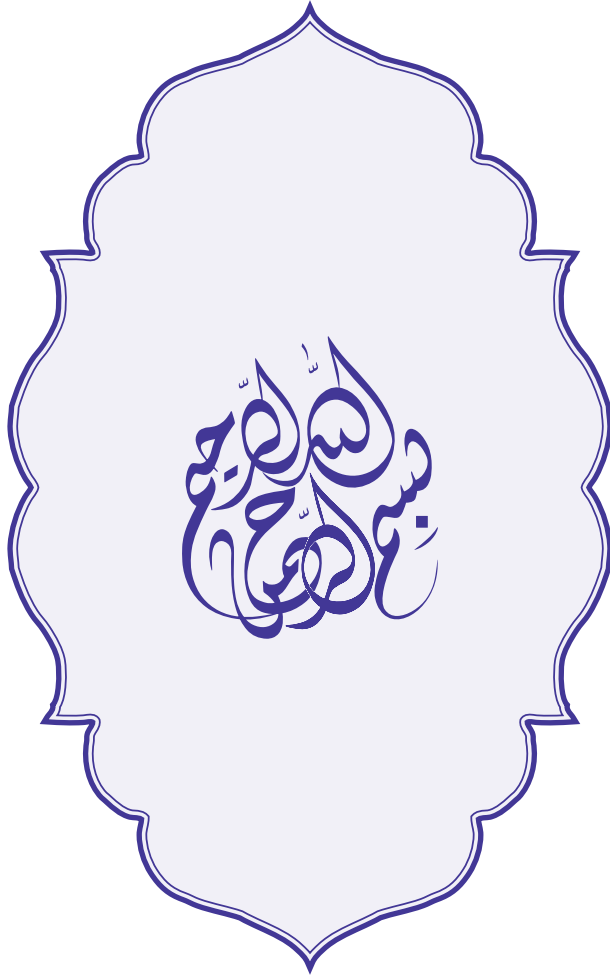
Warba Bank

Fourth edition



**WARBA
BANK** 

The logo for Warba Bank, featuring the words "WARBA" and "BANK" stacked vertically in a bold, sans-serif font. To the right of the text is a stylized graphic symbol composed of three parallel, slanted lines that form a chevron-like shape pointing to the right.



Former Shari'ah Board Members



Name	From	To
Sheikh / Prof. Ajil Jassim Al-Nashmi	02/06/2010	12/04/2015
Sheikh / Prof. Abdulaziz Khalifa Al-Qassar	02/06/2010	20/02/2017
Sheikh / Prof. Nayef Mohammed Al-Ajmi	02/06/2010	15/04/2014
Sheikh / Prof. Essa Zaki Essa	02/06/2010	04/10/2020
Sheikh / Prof. Mutlaq Jasser Al-Jasser	02/04/2019	04/10/2020

Current Shari'ah Board Members



Prof. Essam K. Al-Anazi
Chairman of Sharia Supervisory Board



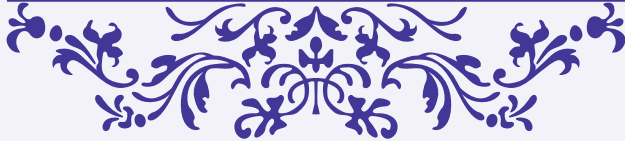
Prof. Ali Ibrahim Al Rashed
Member of Sharia Supervisory Board



Dr. Mohammad Al-Fuzai
Member of Sharia Supervisory Board



Introduction





Introduction

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

Praise be to Allah, the Lord of the worlds; and blessings and peace be upon the Prophet and Messenger of Allah, “Mohamed” PBUH who was sent a mercy to the worlds.

This is the fourth edition of the Fatwas issued by Warba Banks’s Sharia Supervisory Board (“SSB”). It includes the Fatwas issued by the SSB from 2010 to 2021. This edition aims at familiarizing the public, in general, and the Bank’s customers, in particular, with the Islamic principles on which all the bank’s transactions and activities are based, according to the Islamic Sharia opinions envisaged by the SSB. The fatwas state generally the rulings on the Islamic financial transactions and their contemporary applications, for general education. Also, the issuance of these Fatwas highlights the magnitude of the responsibility undertaken by the SSB in controlling the Bank’s transactions and activities in accordance with the Islamic Sharia rulings and in following up the Bank’s commitment to them. The SSB attests to the commitment of all the concerned departments at the Bank to the SSB’s decisions. This is in addition to their cooperation together which has a favorable impact in helping the SSB to accomplish its tasks of issuing Fatwas and oversight.

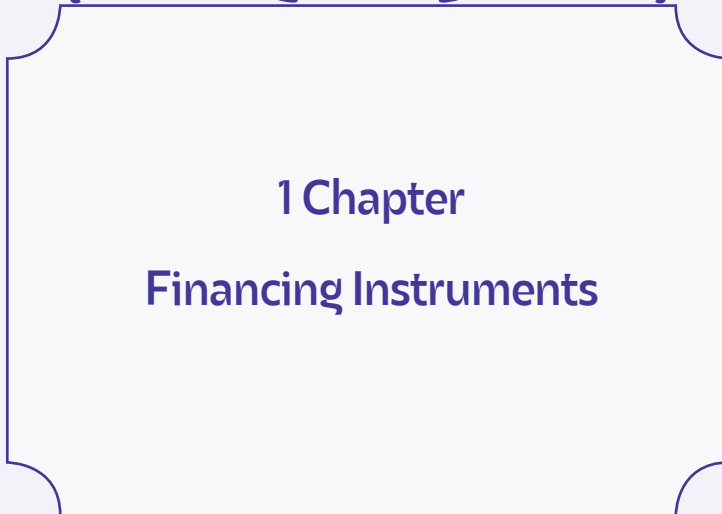
The other significant reason of issuing these Fatwas is to highlight the juristic effort of the SSBs of Islamic banks and companies, to infer expert rulings on contemporary financial issues. This is a form of collective juristic effort through which the Islamic financial institutions have managed to provide a financing investment environment taking into account the development of contemporary investment and financing instruments, along with commitment to the fundamentals and objectives of the Islamic Sharia.

Warba Bank's Sharia Department has been keen on compiling Fatwas from the minutes of the meetings of the SSB, and classifying them by subject so as to make it easier for the readers to find the Fatwas they need. So, thanks are due to them for their effort and diligence.

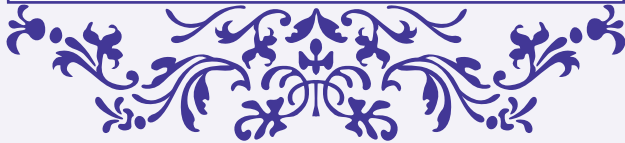
I ask Allah, Exalted and Glorified, that this edition will be useful and beneficial for whoever reads it, and be a valuable contribution to the rationalization of the work of Islamic financial institutions. I also take this opportunity to express our thanks and gratitude to His Eminence Dr. Ajeel Al-Nashmi, the former chairman of the SSB and His Eminence Dr. Issa Zaki, the former chairman of the SSB, for their successful management and fruitful work in the SSB. I would like also to extend thanks and gratitude to His Eminence Dr. Naif Al-Ajmey, His Eminence Dr. Abdul Aziz Al-Qassar and His Eminence Dr. Mutlaq Al-Jasser the former SSB's members, for their valuable participation in the Fatwas issued by the SSB. May Allah reward all these scholars for their contributions, and hoe these fatwas will be beneficial knowledge for the SSB in the performance of its functions. Finally, all praise be to Allah, the Lord of the worlds; O Allah, send blessings and peace upon our Prophet Muhammad, his family, and Companions.

Prof. Essam Khalaf Al-Enezi

Chairman of the Sharia Supervisory Board,
Warba Bank



1 Chapter
Financing Instruments



(1)

Using of Murabaha Transaction in the repayment of the Customer's existing debts

❖ Question:

What is Sharia opinion on using Murabaha transaction (Tawarruq i.e. Monetization) to repay the existing debts of the Bank's customers and what are the guidelines in this regards?

❖ The SSB's opinion:

The SSB stated that it is permissible to use Murabaha Transaction in the repayment of the Customers' existing debts, on condition of adhering to the following guidelines:

1. There shall be no linkage between the previous Murabaha Transaction and the new Murabaha.
2. The new Murabaha Transaction shall be performed before the maturity date of the existing debts.
3. A portion of the principal amount of the existing Murabaha shall be repaid before the date of performing the new Murabaha.
4. The customer shall be allowed to get for himself the profit of selling amount of the sale of the goods he has acquired; besides there shall be no attachment restriction of the bank account.

(1) Minutes No.: 11/2011

(2)

The customer's authorization in financing transactions

❖ Question

What is Sharia opinion on the customer's authorization to the Bank to sell the goods on his behalf such in commodities and metals Murabaha transactions which are performed through a local intermediary company firm?

❖ The SSB's opinion

The SSB stated that the Bank has entered into a contracted with a local intermediary firm company which will facilitating the performing execution of commodities and metals Murabaha transactions for the Bank's customers, this way allows them to dispose of their own commodities, whether to sell or keep them. Thereupon, the SSB decided that there is no need for the Bank to get authorization from the customer to sell the goods on his behalf. This is in order to avoid doubtful matters and the scholarly difference concerning the fatwa of the impermissibility of authorization in Murabaha transactions, like the last such as the latest fatwa issued by the Islamic Fiqh Academy in this regard.

(3)

Syndicated financing selling flight utilities**Question:**

What is the ruling on syndicated financing selling flight utilities usufructs / benefits?

**The SSB's opinion:**

The SSB stated that financing can be adapted to be for the sale of the benefits in the seats of the said flights. The remaining seats that are not disposed of the said seats shall be recovered at the same purchase price.

(4)

Using Murabaha contracts in the Letter of Credit**Question:**

What is Sharia opinion on using the structure and contracts of Murabaha transaction in the Letters of Credits?

**The SSB's opinion:**

The SSB accepted to use the proposed structure and contracts, and the Authority made the following observations:

- The period in which the Bank has the option whether or not to complete the goods sale transaction, shall be six

(3) Minutes No.: 14/2011

(4) Minutes No.: 3/2012

days from the receipt date of the documents of goods.

- It shall be stipulated in the appendices of the contracts that the Agent's purchase of goods for himself shall be after possessing those goods.

The SSB has approved dealing with the said structure and contracts after making the required amendments.

(5)

Determining a repayment of a part of the Murabaha debts before executing a new Murabaha transaction

❖ **Question:**

What is Sharia opinion on formulating a mechanism for applying the Islamic Sharia guidelines on the use of a Murabaha product to repay the existing debts of the Bank's customer, through determining the portion to be paid by the customer of his existing debts before making the new Murabaha transaction?

❖ **The SSB's opinion:**

The SSB accepted to formulate a mechanism for determining the portion to be paid of the existing debts of the Bank's customer before conducting the new Murabaha transaction, provided that the portion shall be mentioned in the Bank's internal policies shall be determined and not to be mentioned in the contracts of customer financing through the Murabaha product.

(5) Minutes No.: 4/2012

(6)

The prohibited business.❖ **Question:**

What are the things that the Bank shall refrain from trading in or financing?

❖ **The SSB's opinion:**

The SSB stated as for the matters which are prohibited to be traded in or financed, the SSB views that they include the following:

1. Pork and the animals not slaughtered according to the Islamic method.
2. Alcoholic drinks
3. Gambling
4. Conventional financing
5. Pornography
6. Cigarettes and tobacco
7. Gold and silver (in forward sales)
8. Weapons (except those permitted for governmental entities or for hunting purpose).

(7)

Guidelines on Granting Credit.**Question:**

What are the Islamic guidelines for granting Credit limits to the local firms?

**The SSB's opinion:**

The SSB accepted to grant of credit with the following guidelines:

– First: Contracting:

1. Using the contracts and forms, approved by the SSB, for granting Credit Limits.
2. If the customer wishes to make an amendment to the approved contracts, the amendment shall be submitted to the Sharia Supervisory Unit, in order to consider whether to submit it to the SSB or not.

– Second: The Contracting Party:

1. From the very beginning, it is not permissible to grant Credit Limits to the companies whose primary activity is prohibited (The prohibited activities: conventional financing, conventional insurance, forbidden meat, gambling, pornography, tobacco, weapons (except those allowed by the government or for the purposes of hunting). The same shall apply to companies that are non-compliant according to a list issued by one of

the providers of this service.

2. If these companies submit a request to finance a specific project entailing a permissible activity and it is ensured that the financing will be directed to this very project and not to be utilized by the company for impermissible purposes, then, the issue shall be submitted to the SSB as to decide whether to or not to approve the financing.

– **Third: Mortgages / Charge:**

1. It is impermissible to approve mortgaging / charging the shares of the following parties: conventional banks, conventional insurance companies, the companies that are non-compliant, according to a list issued by one of the providers of this service.
2. In case of requesting an exception, the subject shall be submitted to the SSB.

– **Fourth: Non-cash facilities-(Letters of Credit - Letters of Guarantee)**

It is impermissible to provide non-cash facilities in return for prohibited activities (such as: getting a riba (usury) “interest” -based loan, participating in a prohibited activity, importing prohibited goods).

(8)

**Purchase contract (with the option of cancelation)
for commodities to be sold by bargaining
"Musawama"**

❖ **Question:**

What is Sharia opinion on signing contracts with suppliers, giving the buyer the option of cancelling it?

❖ **The SSB's opinion:**

The SSB accepted to buy goods (inventory), with the option of cancelation. It emphasizes, however, that the goods must be examined after being purchased by the Bank and after being sold to the customer.

(9)

Financing merchants to supply goods to sales outlets

❖ **Question:**

What is Sharia opinion on financing merchants to supply goods to sales outlets?

❖ **The SSB's opinion:**

The SSB accepted this product, as the Bank can consider it a Musawama sale with the option of cancelling it. The SSB must review at the contracts and documents relevant

(8) Minutes No.: 1/ 2014

(9) Minutes No.: 3/2014

to the product once they are drafted.

(10)

Syndicated financing to buy seats usufruct in an airliner

❖ **Question:**

What is Sharia opinion on participating in a syndicated financing transaction to buy usufruct on seats for an airliner?

❖ **The SSB's opinion:**

The SSB accepted the bank's participation to the said financing process.

(11)

Selling to the customer after completing the purchase process from the supplier by phone

❖ **Question:**

What is the ruling if the Bank, in a personal financing operation, sells to a customer something after completing the purchase process from a supplier by telephone?

❖ **The SSB's opinion:**

The SSB stated that the transaction is endorsed from

(10) Minutes No.: 5/2014

(11) Minutes No.: 7/ 2014

Sharia point of view, based on the confirmation from the supplier and the Bank employee that the purchase has been completed via phone before the goods are sold to the customer. Furthermore, it is necessary that personal financing Sharia aspects be documented in order to avoid falling in such pitfalls in the future.

(12)

Financing aircraft purchase deals

❖ **Question:**

What is Sharia opinion on participating in an investment fund to finance the purchase of aircraft to be leased to airlines?

❖ **The SSB's opinion:**

The SSB accepted the Bank's participation in the fund.

(13)

Supplier offices at the Bank

❖ **Question:**

What is Sharia opinion on suppliers and merchants having offices at Bank branches?

(12) Minutes No.: 7/ 2014

(13) Minutes No.: 8/ 2014

- ❖ **The SSB's opinion:**
The SSB accepted this matter.

(14)

Transfer of sales revenues from a merchant's account to a customer's account

- ❖ **Question:**
What is Sharia opinion on transferring sales revenues from the account of a merchant to the account of a customer directly (Murabaha Express)?

- ❖ **The SSB's opinion:**
The SSB accepted this matter.

(15)

Refunding a portion of the profit from a financing transaction to a customer

- ❖ **Question:**
What is the ruling if the Bank pays back part of the profits of a financing operation to the customer?

- ❖ **The SSB's opinion:**
The SSB accepted the mentioned proposal provided it is

(14) Minutes No.: 8/ 2014

(15) Minutes No.: 8/ 2014

not stated in the contract or advertised. It should include all customers, new and old alike.

(16)

Completing a purchasing transaction from a supplier, in personal finance, by calling him

❖ Question:

In a personal financing, what is Sharia opinion on completing a purchase transaction from a supplier by calling him and later documenting this in a special form, given that the process currently applied causes delay in the financing transactions?

❖ The SSB's opinion:

The SSB stated that it is permissible to use the purchase process completion form in a personal financing transaction, provided that the employee carries out the purchase using available methods.

(17)

Amending the procedures of the interest-free loan product ("Qard Hasan")

❖ Question:

Considering the inquiries for amending Qard Hasan

(16) Minutes No.: 2/2015

(17) Minutes No.: 2/2015

procedures as follows:

- 1- What is Sharia opinion on offering customers Qard Hasan against opening a salary transfer account plus an investment savings account that has been previously approved, in order to avoid the difficulties encountered when trying to apply this product before?
- 1- Is it possible to transfer the loan directly to the customer account, instead of depositing it to prepaid cards?

❖ **The SSB's opinion:**

The SSB stated the following:

1. It is permissible to deal on the product of Qard Hasan against opening a salary account under the following conditions:
 - a) No minimum balance is imposed on the account;
 - b) No withholding debt installment amount
 - c) The customer's salary account is the guarantor for his debts.
2. It is permissible to transfer the loan directly to the customer account.

(18)

Waiver of Financing Profits upon Transfer of Debts

❖ Question:

Is it permissible to waive all profits due for the remaining period starting from the payment date until the end of the debt term resulting from Murabaha transactions of consumer goods/ Murabaha of local or international goods and metals pertaining to finance of individuals (consumer finance/ installments financing) in case the customer desires to obtain finance from other banks to repay the outstanding debt?

❖ The SSB's opinion:

The SSB accepted the later agree with the customer to deduct part of the remaining debt upon full repayment, without preconditioning that the Bank shall write off all or part of the required amount. This process shall apply to only Murabaha financing.

(19)

Increasing the Debt Amount upon Restructuring of the Finance Transaction

❖ Question:

Is it Sharia permissible to increase the amount of the

(18) Minutes No.: 4/2015

(19) Minutes No.: 4/2015

granted financing/ restructuring the outstanding debts of the outstanding financing transactions for consumer goods Murabaha/ local or international goods and metals Murabaha during the financing validity term “top-up phase” in case the customer so requests in light of the outstanding credit and regulatory approvals?

❖ **The SSB’s opinion:**

The SSB stated that it is permissible to agree with the customer to reschedule his outstanding debts without any increase of the debt amount, and the customer may afterwards be granted new finance, provided that the two transactions, of the debt rescheduling and the new financing, shall not be linked by any provision stipulated in a contract or the like so as not to obligate the customer to enter into a new debt.

(20)

Participating in syndicated Finance of International commodities Murabaha Guaranteed by Sukuk Mortgage

❖ **Question:**

What is the Sharia opinion on participating in syndicated international commodities Murabaha guaranteed by sukuk mortgage?

❖ **The SSB's opinion:**

The SSB accepted the Bank's participation in the said finance transaction.

(21)

Financing Customers' Cash Withdrawals by linking an Investment Agency "Wakala" with a Debt Resulting from a Tawarruq (Monetization) Transaction

❖ **Question:**

Is it Sharia permissible to finance customers' cash withdrawals by linking an investment Wakala to a debt resulting from a Tawarruq transaction, as per the following process:

1. The Bank grants the customer a Murabaha commodities limit for independent of the general credit limits as follows:
 - A commodities Murabaha limit amounting to for example one KWD million KD.
 - Payment after three months with the option of renewal for another period.
 - An annual profit of 6% to be paid quarterly upon renewal of the transaction.
2. A commodities Murabaha transaction shall be conducted with the full amount of the granted limit, thus resulting in a debt amounting to 1,015,000 KWD

on the customer.

3. The customer shall deposit the transaction amount in an investment account (investment Wakala) designated for investing the transaction amount at expected profit rate that matures every quarter (such profit is often equal to or a little less than the applied profit in the commodities Murabaha transaction).
4. In case the customer withdraws some or all of the money invested in the investment account, he shall lose the expected returns of the withdrawn amount. Supposing that the customer will not withdraw any amounts from the investment account, he shall generate, at the end of the phase, returns equal to a little less than the profits made by him from the commodities Murabaha transaction. The difference between the profit paid by the customer in the commodities Murabaha transaction and the return he generates from the investment account shall be the net cost of funding to be incurred by the customer in return for the amounts withdrawn from the investment account.



The SSB's opinion:

The SSB accepted to deal on the said product, provided that the following rules shall be applied:

1. The financing transaction (the Commodities Murabaha) shall not be linked to depositing the amount resulting from the transaction in the investment account.
2. The customer shall be entitled to deposit amounts in the investment account.
3. The ability to estimate expected profits generated

from the investment account independently for each customer.

4. There must be a mechanism for calculating the investment returns on daily basis so that settlement can be accurately conducted at the end of each period (on quarterly basis).

(22)

Financing a Customer Who has Paid Part of the Property Price to the First Seller

❖ Question:

What is Sharia opinion on financing a customer, who has paid part of a property price to the first seller, by an initial sale contract, then requested financing from the Bank to buy the stated property?

❖ The SSB's opinion:

The SSB stated that in case part of the price has been paid by an initial sale contract, such is deemed as a contract between the customer and the first seller., and The Bank is may not allowed to finance the customer unless such initial contract is terminated, for only then may the Bank can enter into a contract with the first seller.

The Bank may authorize the customer as per an official letter to pay the price of the property to the first seller on behalf of the Bank.

(23)

Financing a Residential Tower Development Transaction

❖ **Question:**

What is Sharia opinion on the Bank participating in a transaction to finance a residential tower development in the USA?

❖ **The SSB's opinion:**

The SSB accepted the Bank's participating in the stated financial transaction, provided that the SSB shall be provided with a fatwa issued by the SSB of the institution arranging the financing process proving that its SSB has scrutinized and approved the structure and documents of such financing.

(24)

The Customer's Authorizing the Bank to Conduct Murabaha Transactions in corporate Finance Transactions

❖ **Question:**

Due to the Bank's need to act as an agent of the customer in concluding Murabaha transactions and liquidation of goods, for the purpose of protecting the Bank's interests,

(23) Minutes No.: 7/ 2015

(24) Minutes No.: 1/ 2016

and to enhance business cycle without violation of the Islamic provisions, is it permissible to work on agency basis as per the following terms:

1. The agency shall be optional to the customer.
2. The customer shall submit an independent request for each transaction.
3. The Bank may not be entitled to do this automatically.

❖ **The SSB's opinion:**

The SSB stated that, due to technical difficulties and justifications that make it a necessity that the customer provides authorization to the Bank to conduct Murabaha transactions on behalf of the customer (among such justifications is the absence of an authorized signatory of the company on contracting), it is permissible to give the customer the option to choose whether to conclude the contracts in person and sell the goods automatically or to authorize the Bank to conduct the transaction and sell the goods on his behalf to a third party.

(25)

Amending the process of vendor financing product

❖ **Question:**

What is Sharia opinion on amending the process of the vendor's financing product to sales centers?

The new process is financing the supply of the vendor's

goods to the sales centers through Tawarruq transactions, and that the invoices of supplied goods are to be issued under the name of the Bank, as one of the available financing collateral options.

❖ **The SSB's opinion:**

The SSB accepted to apply the new process. This is because of the difficulties imposed by the regulatory authorities when applying the current process, due to the fact that cooperatives become debtors to the bank and it is difficult to obtain the financial positions of the cooperatives.

(26)

Dealing with benefits selling

❖ **Question:**

What is the Sharia opinion in working with the following products:

- Financing dental treatment benefits (Manafea Financing).
- Financing the benefits (Manafea Financing) of training courses with the Academy of Life Sciences.

❖ **The SSB's opinion:**

The SSB accepted the said product.

(27)

Issuance of Sukuk

❖ Question:

What is Sharia opinion in dealing with structure and contracts pertaining to Sukuk Mudarabah issued by the Bank?

❖ The SSB's opinion:

The SSB stated that the structure, process and mechanism of the sukuk to be issued by a special purposes vehicle of a legal person for tier 1 ("issued") capital ("issuer") shall be in accordance with the following controls:

First: Sukuk Structure:

The proceeds from issuing these sukuk shall be invested in the general business activities of the Bank. These Sukuk proceeds shall be compiled in a general Mudaraba investment pool (as defined in this fatwa) in accordance with the investment plan stipulated in the Mudaraba agreement on basis of unrestricted and, mixed Mudaraba. The capital of the Mudaraba contract shall be an integral part of the assets of the general Mudaraba pool, given that this capital shall be merged with the other assets in the general Mudaraba pool as of the date of the commencement of the Mudaraba agreement.

Second: Issuance of Sukuk:

1. The issuer (trustee) shall issue Sukuk (permanent sukuk with no prior expiration date) to the investors (sukuk holders) and shall collect issuance proceeds from them (the proceeds).
2. The issuer- as per the trust deed (trust deed), shall declare the trust in favor of the Sukuk holders concerning: (a) the proceeds to be allocated as per the provisions of the transaction documents, (b) all the holders' rights, ownership, current and future interests and benefits in and based on the assets constituting the assets of the Mudaraba agreement from time to time, (c) all the holders' rights, ownership, current and future interests and benefits in and based on the transaction documents, and (d) all the amounts recorded from time to time in the open transaction credit account in the name of the trustee (the transaction account) and all the returns generated from this account (the trust assets). The sukuk shall represent an undivided property right in the trust assets.

Third: Mudaraba Agreement

3. All elements of the Mudaraba contract shall fulfill Islamic Sharia conditions and rules. Whereas Mudaraba is a kind of investment of a capital on mixed and unrestricted basis by the Mudarib in the general business activities of the Bank for the purpose of making profits based on the investment plan, then Islamic Sharia conditions shall be fulfilled in all elements of the general business activities due to be implemented, not to mention the Sharia compliance of the company's business, projects or investments that

will be financed by the Sukuk as part of the Mudaraba agreement. Also, realized debts shall not exceed 33% of the invested capital.

As per the Mudaraba agreement (the Mudaraba agreement) concluded between Warba Bank (the Bank) in its capacity as capital user (“Mudarib”) and the trustee in his capacity as the money owner capital provider (“Rab al-Mal”) Almal”,. A Mudaraba agreement shall be created whereas the trustee shall submit provide the proceeds of the Sukuk issuance to constitute the principal capital of the Mudaraba agreement (the Mudaraba capital) to be invested as per the provisions of the Mudaraba agreement.

The Mudaraba agreement shall start on the date when the Rab Al-Mal pays the Mudaraba capital to the Mudarib (on the issuance date) and shall end on: (a) the date of the full recovery redemption of the sukuk after the liquidation of the Mudaraba transaction as per the provisions of the Mudaraba contract (the Mudaraba expiration date), or (b) in case of total cancellation, only on the date of cancellation due to unviability of the Mudaraba agreement. The Mudaraba agreement shall have no prior expiration date.

The general Mudaraba pool shall constitute of: (a) the rights associated with the capital of the Bank shareholders, (b) Mudaraba capital after submission of the Mudaraba capital on the date of Mudaraba commencement, (c) profits of all savings and current investment accounts in the Bank, and (d) any other fund resources included in the Mudaraba pool at the Bank from time to time.

Fourth: Profit sharing and Repayment of the Mudaraba Transaction Profits:

The net profit generated from the general Mudaraba pool (after deduction of the Bank's share of profits in proportion to its assets compared to the assets of the Sukuk holders mixed with the Bank's assets in the general Mudaraba pool) (the Mudaraba transaction profits) shall be distributed between the Rab Al-Mal and the Mudarib in accordance with the following agreed-upon profits ratios:

1. Ninety nine percent (99%) shall be paid to the Rab Al-Mal (Mudaraba transaction profits for Rab Almalal-Mal).
2. One percent (1%) shall be paid to the Mudarib.

The trustee shall use the paid Mudaraba transaction profits to Rab Al-Mal to distribute pay the periodic dividends distributed amount due to the Sukuk holders as per Sukuk provisions.

Rab Al-Mal shall agree that distribution of the Mudaraba transaction profits is the outcome of delivering such profits by the Mudarib to Rab Almal, at his own discretion. The Mudarib shall be entitled not to distribute such profits or not deliver the profits due to Rab Al-Mal on any date (except the date of the expiration of the Mudaraba agreement) (the non-payment choice). The Mudarib may not choose non-payment in case of notifying the trustee of liquidating the trust.

In addition to the foregoing, Mudarib shall be forbidden from distributing Mudaraba transaction profits or

delivering the profits due to Rab Al-Mal in the following cases:

1. In case the profits due to Rab Al-Mal, when added to any dividends distributed amounts or other amounts paid by the Bank on the same date in proportion to obligations of the same category, exceed the Bank's reserves and profits of the period (in case distribution is not banned by the law), subsequent to transferring any amounts to the non-distributable reserves.
2. In case the Bank (in the capacity of Mudarib or other), on the date of distribution of the Mudaraba transaction profits, is falling into a case of violation (or in case payment shall cause such violation) of the applicable requirements of regulatory authorities regarding capital as stipulated by the Central Bank of Kuwait.
3. In case the Central Bank of Kuwait decides: (a) banning the Bank from payment of any amount, or (b) banning the trustee from paying any periodic dividends distributed amount to the sukuk holders.

Each of the aforesaid cases constitutes a "non-payment instance event".

Consequences of the Non-Payment or Making the Non-Payment Choice

In case the Mudarib does not pay the Mudaraba transaction profits due to Rab Al-Mal on the fixed date of distribution of such profits as a result of: (a) a non-payment instance, or (b) in case Mudarib chooses non-payment, except in case of payment of Rab Al-Mal's profits on the date of expiration of Mudaraba agreement

(the final profits of Rab Al-Mal), Rab Al-Mal (and sukuk holders) shall not be entitled to demand payment of any of Rab Al-Mal's profits generated from the Mudaraba agreement. Any profits belonging to the appointed period that have not been paid to Rab Almal in such cases shall be registered in the reserve account (the Mudaraba Reserve). In case Mudarib does not pay the profits due to Rab Al-Mal on the date of the distribution of the Mudaraba transaction profits due to a non-payment instance event (except in the case of the final Rab Al-mal's profits) or in case of making the non-payment choice, the Bank shall not declare or pay any dividends distributed amount, profits, shares, or any amounts (directly or indirectly), or conducting refund redemption, purchase, cancellation, reduction, or ownership of Sukuk, shares, or any securities belonging to the same category or a lower category of Sukuk (and the obligations of Rab Al-mal as per the Mudaraba agreement) until full payment of two successive amounts of Rab Almal's profits (or an amount equal to such amounts or in case of freezing an amount equal to such amounts to the benefit of Rab Almal).

Fifth: The Mudaraba Reserve

In case the amount of Rab Al-Mal's profits, in any period of the Mudaraba transaction, is higher than the potential returns as per the Mudaraba agreement, Mudarib may withhold the surplus amount to be added to the Mudaraba reserve account, and the profits shall be reduced in proportion to the withheld amount. Mudarib may debit the amounts registered in the Mudaraba credit reserve account, provided that he shall repay such amounts in case this is necessary for repayment of an amount of the Mudaraba reserve account.

In case Rab Al-Mal's profits paid to the trustee on the date of distribution of the Mudaraba transaction profits are less than the amount of the periodic dividends paid as per the sukuk, Mudarib shall: (a) first use the amounts available at the Mudaraba reserve account, and (b) second by choosing, without any obligation, to cover the deficit from his own resources and cover such resources on a later date from the Mudaraba reserve account and the liquidation returns (the total of such amounts used to cover the deficit without being covered by Mudarib, "deficit coverage amount").

Sixth: Final Liquidation of the Mudaraba Transaction

Without prejudice to some terms, Mudarib, at his own discretion, may liquidate the Mudaraba capital, totally and not partially, in any of the following cases:

1. On the date of the end of the fifth year of the Mudaraba agreement (date of the first claim) or on the date of distributing profits after the date of the first claim,
2. On any date, upon or subsequent to the date of the Mudaraba agreement, in a case pertaining to tax issues (a case pertaining to tax issues), or
3. On any date upon or after the date of the Mudaraba agreement in the event of a case pertaining to capital requirements (in case the Central Bank of Kuwait notifies the Bank in writing that the outstanding nominal value of the Sukuk may not be depended on, totally or partially, as an efficient tool to be included in tier 1 capital (a case pertaining to capital)).

Any liquidation shall be subject to some terms which

include, in case of total liquidation, the liquidation returns which shall be equal to the required liquidation amount (this shall be referred to as a term for liquidating the Mudaraba capital). The required liquidation amount shall be equal to:

1. The outstanding nominal value of the sukuk, or in the event of final liquidation after the occurrence of a case pertaining to the requirements of the capital only, a hundred and one percent (101%) of the outstanding nominal value of the sukuk,
2. On condition that no non-payment instances event shall occur, the final Rab Al-Mal's profits, and
3. The amount of covering the deficit, if any.

In case Mudarib, at his own discretion, makes the choice of full liquidation of the Mudaraba transaction, then:

1. In case the returns generated from liquidation are less than the required liquidation amount, Mudarib shall acknowledge his failure to comply with the condition for the liquidation of the Mudaraba capital and that, as a result of such violation, Rab Al-Mal shall incur losses equal to the difference between (a) the liquidation returns and (b) the required liquidation amount (the deficit), or
2. In case the returns generated from liquidation are equal to or exceed the required liquidation amount, Mudarib shall liquidate the Mudaraba capital and pay the amount of the Mudaraba liquidation (bearing in mind the deduction that shall be made of the amount covering the deficit that shall be provided by Mudarib) to Rab Al-Mal on the date of the Mudaraba agreement

expiration. Any remaining liquidation returns after such payment shall be paid to Mudarib as incentives for his performance as per the Mudaraba agreement.

In any of the cases stipulated in Article above, Mudarib shall:

1. Continue to invest the outstanding capital of Mudaraba agreement, which means the Mudaraba capital shall not be liquidated, or
2. Continue with final liquidation of Mudaraba capital and compensate Rab Al-Mal for the deficit, and therefore Mudarib shall transfer sufficient amounts to the liquidation account to guarantee that the liquidation returns added to the transferred amounts shall equal the required liquidation amount after deduction of the amount covering the deficit, which shall be paid by Mudarib. Given that the liquidation of the Mudaraba capital in the aforesaid case shall be at the sole discretion of Mudarib, and the trustee shall not obligate Mudarib to conduct liquidation of the Mudaraba capital in case the final liquidation indicates the occurrence of a deficit or in case a deficit occurs in profits pertaining to the requirements of the capital, covering such deficit or any deficit in the profits in a case pertaining to the requirements of the capital paid by Mudarib to the trustee shall not be a sufficient guarantee in the SSB's opinion.

After the final liquidation, based on the full liquidation of the Mudaraba capital, the trustee shall allocate any amounts he receives in his capacity as Rab Al-Mal for the purpose of paying such amounts to the sukuk holders as per the provisions of sukuk.

Seventh: Mudaraba Agreement General Terms and Conditions

For the avoidance of doubt, the trustee shall agree and confirm that there shall be no guarantee for paying any returns of the Mudaraba assets. In case the trustee incurs any loss due to any violation on the part of Mudarib of the provisions of the Mudaraba agreement as a result of gross negligence, unlawful action, or deception on the part of Mudarib, the latter shall compensate the trustee for such loss upon the request of the trustee. Any payment obligations based on this passage shall support any obligations of a higher category with the Bank. The trustee shall solely incur any other losses.

Mudarib and trustee in the Mudaraba agreement shall amend sukuk where such amendments are required from the Bank in case of an occurrence relevant to tax issues or capital requirements. Both of them shall be committed to enforce such amendments in the Mudaraba agreement as necessary to ensure that the sukuk shall continue to form portion of the Instruments qualified to be included in tier 1 capital.

Eighth: Cancellation in Case of unviability of Continuation
Obligations of Mudarib as per the Mudaraba agreement shall be subject to total or partial cancellation in the event of unviability of continuation in the future.

Such case of unviability shall occur upon a notification from the Central Bank of Kuwait to the Bank informing the latter of the occurrence of a specific trigger event. As per the CBK instructions to Islamic banks in Kuwait concerning implementation of the Basel III, dated June 24th 2014, such a trigger event shall occur in any of the

following cases: (a) issuing directions of cancellation from CBK to the issuing Bank due to the occurrence of a case of unviability of continuation, or (b) instant financing of the Bank's capital by emergency intervention without which the Bank may not continue.

On the third business day following the date of the unviability case, Mudarib shall notify Rab Al-Mal of the same as per the terms of the Mudaraba agreement and Rab Almalal-Mal, in his capacity as the trustee, shall notify the sukuk holders and the main payment agent as per the terms and conditions of sukuk (a notice of the unviability of continuation).

Cancellation shall be on the date specified in the notice of unfeasibility, which shall not be beyond the tenth business day as of the date of the notice. As of such date, (a) only in case of total cancellation, the Mudaraba agreement shall be automatically cancelled, and (b) in case of partial cancellation, the Mudaraba capital shall be reduced in proportion to the nominal value of the cancelled sukuk. In case (a) above, Rab Al-Mal shall not be entitled to claim any amounts related to the Mudaraba assets of the reduced Mudaraba capital.

Documents: The main documents in the transaction shall include the following:

- The trust documents
- The Wakala agreement
- The subscription agreement
- The Mudaraba agreement
- The prospectus

Ninth: Islamic Sharia Approval

The SSB, after review of the structure, mechanism and documents of the sukuk (taking into account cancellation in case of the unfeasibility of continuation) as explicated above, decrees under this Fatwa that the proposed structure and documents of the sukuk are in compliance with the Islamic Sharia.

(28)

Murabaha Financing Contracts for an Oil Equipment Company

❖ Question:

What is Sharia opinion on Murabaha financing contracts for an oil equipment company, which include the method of repaying the installments due by the said company as a result of such contracts, by the Bank's receiving 20% of the value of work orders received by the company from the Kuwait Oil Company from time to time, while the said company provides the Bank with a letter of guarantee as well as an assignment of the company's rights resulting from its contract with the Kuwait Oil Company to guarantee fulfillment of the company's obligations stipulated in the attached contracts?

❖ The SSB's opinion:

The SSB stated that treating financing amounts shall be by considering them one amount deferred to the end of the

financing period, provided that some of the amounts belonging to the company as a result of its contract with the Kuwait Oil Company (20% of the work orders) shall be transferred in favor of the Bank, as instant amounts to repay the financing amount.

(29)

Financing Product for Purchasing Property Overseas



Question:

What is Sharia opinion on financing customers to purchase property outside Kuwait by Mosawama “bargaining” of the building materials?



The SSB's opinion:

The SSB stated that the proposed product involves some Sharia observations. The method that should be applied in such product is that the Bank shall purchase the property directly from the owner for less than the declared price and then resell it to the customer by means of Mosawama for a total price not exceeding the price of the property declared by the owner.

(30)

Financing Individuals in Return for Charging of an Investment Account (Al Wafi Finance)

❖ Question:

What is Sharia opinion on financing individuals in return for charging on an investment account (Al Wafi Finance)?

❖ The SSB's opinion:

The SSB accepted the said product.

(31)

Providing liquidity to the treasury department

❖ Question:

What is Sharia opinion on dealing with banks that do not adhere to the provisions of Islamic Sharia in their business in order for providing liquidity for treasury management?

❖ The SSB's opinion:

The SSB accepted to deal with conventional banks with contracts that are compatible with the provisions of Islamic Sharia for the purposes of providing liquidity for treasury management. It is preferable for Warba Bank to conduct the transaction related to these instruments by itself, under the authorization of the conventional bank to do that.

(30) Minutes No.: 7/ 2016

(31) Minutes No.: 3/2017

(32)

Not to bear the loss in financing deals❖ **Question:**

A Participation (Musharakah) contract does not contain bearing the loss on any of the parties, so what is Sharia opinion on dealing with this contract?

❖ **The SSB's opinion:**

The SSB accepted to deal with conventional banks with contracts that are compatible with the provisions of Islamic Sharia for the purposes of providing liquidity for treasury management. It is preferable for Warba Bank to conduct the transaction related to these instruments by itself, under the authorization of the conventional bank to do that.

(33)

Sale contract with option of cancelation❖ **Question:**

What is Sharia opinion on the bank buying commodities with option of cancelation, then the bank sells the commodities to customers, and in the event that it is not possible to sell the commodities, then it cancels the first sale?

(32) Minutes No.: 3/2017

(33) Minutes No.: 5/2017

❖ **The SSB's opinion:**

The SSB accepted to deal with option of cancelation, with emphasis on the necessity of termination with the same purchase price, therefore the price of each unit sold must be indicated in the contract to avoid conflict in the event of termination.

(34)

Promise to buy with description without reviewing the product

❖ **Question:**

What is Sharia opinion on making a one-sided purchase promise without reviewing the product by mentioning the vehicle's chassis number?

❖ **The SSB's opinion:**

The SSB accepted to fulfill the promise as long as there is due description of the vehicle.

(35)

Guidance of Cosmetic surgery

❖ **Question:**

What are the guidance of financing a medical benefit for performing cosmetic surgeries?

(34) Minutes No.: 5/2017

(35) Minutes No.: 7/ 2017

❖ The SSB's opinion:

The SSB stated that cosmetic surgeries fall into two categories:

The first type: Therapeutic cosmetic surgeries: which are not intended for original beauty, but rather beautification is consequential, so this surgery is accepted in Sharia, provided that it is most likely to be successful and the patient's permission to perform it, because there is a need for that, either to remove a defect that affects health, or to benefit from the dead organ, or because there is a deformity Unusual in the usual human creation. Examples of operations that are performed to remove the following defects: (cleft lip, labial cleft, annular cleft, sticking fingers of the hand or leg, removal of tattoos, birthmarks and scars, removal of mustache and beard hair for women, Reshaping the ear, injecting or liposuction if accompanied by an injury or disease that necessitates it, breast reduction if accompanied by a disease that necessitates it, such as back diseases, breast implants for those who have had it removed, remedy of the nasal septum or the deformed nose, skin deformation due to burns or by cutting tools, or gunshots, Correction of facial fractures due to accidents, and other types of defects that have a health motive or to correct an accidental deformity or a defect that contradicts the origin of human creation or his usual image.

The second type: Elective Cosmetic Surgeries: which are intended for authenticity of beauty, and there is no need to perform them except with the patient's desire, as they are operations aimed at improving the look and appearance, not because there is a defect or deformity, but rather to achieve a better and more beautiful look,

or aim at rejuvenating youth and removing signs of aging, it is not permissible in Sharia. Examples of these operations include: forehead lift and eyebrow lift, face and neck lift, liposuction or injections other than the first type operations, rhinoplasty to reduce or enlarge, chin beautification, breast beautification to enlarge or reduce, and other operations that have no motive other than that the patient is not satisfied with his look and his desire to reform it to an acceptable level for him. The determination of whether the cosmetic surgery is of the first type, Therapeutic cosmetic surgery or the second type is Elective Cosmetic Surgeries, is due to the trusted doctor. In cases other than those cases, it is necessary to refer to SSB in order to express a Sharia opinion thereon. Accordingly, The SSB approved that it permissible to finance therapeutic cosmetic surgeries, not Elective Cosmetic Surgeries.

(36)

The customer is the beneficiary of the Letters of credit

❖ **Question:**

What is Sharia opinion on issuing Letters of credit to a customer whose beneficiary was found to be the customer himself or a branch thereof?

❖ **The SSB's opinion:**

(36) Minutes No.: 3/2018

The SSB stated that it is not permissible to issue a Murabaha letters of credit in the form presented because it is a buy-back sale (Eayna); Because the customer sold his product at an immediate price and then bought it at a deferred price.

(37)

Financing a company that has some forbidden deposits

❖ **Question:**

What is Sharia opinion on financing a company whose activity is permissible, but it has some profits from forbidden things?

❖ **SSB's opinion:**

The SSB stated that, whereas the aforementioned company is a service company, the origin of its activity is permissible, and the purpose of taking the facilities is to finance the payment of employee salaries, the purchase of the building, as well as the issuance of letters of guarantee for government agencies. Also, the company does not practice prohibited activities and operations by itself, but rather takes annual subscription sums from financial intermediation companies. Accordingly, it is possible to rely on the fatwa of the Ministry of Awqaf and Islamic Affairs regarding the permissibility of leasing aircraft to airlines that serve alcohol on board,

because the purpose of the lease is permissible, such as transporting passengers and non-prohibited goods and results of presenting or transmitting prohibited matters is sinful for the perpetrator.

(38)

Opening an account for an artistic production institution

❖ **Question:**

What is Sharia opinion about opening an account for an artistic production company for various TV series?

❖ **The SSB's opinion:**

The SSB accepted this transactions; because the artistic production in Kuwait is monitored by the Ministry of Information, and it has some kind of controls that the ministry is keen to have in the artistic production, just as the origin of the activity is mixed between purposeful and declining artistic production, therefore it is accepted to open an account, especially since the account has no direct relationship to the artistic work.

(39)

Financing Medical clinic❖ **Question:**

What is Sharia opinion on financing a clinic that provides a range of medical services and operations, some of which are related to cosmetic surgery?

What is Sharia opinion on issuing a promissory note for this company to purchase medical devices?

❖ **The SSB's opinion:**

The SSB accepted to finance the company to establish the clinic, and issue a promissory note for the purchase of medical equipment's; Because the principle in its activity is permissiveness, and the controls for performing cosmetic surgeries have already been clarified in the decision No. 2018-3/3, Funding and promissory note (not related to cosmetic surgery).

(40)

Bank purchase financing portfolios❖ **Question:**

What is the Sharia opinion on a bank purchasing portfolios of debtor clients of financing companies, according to the following procedures:

(39) Minutes No.: 10/2018

(40) Minutes No.: 1/ 2014

- The purchase will be at the present value equivalent to the amounts owed by customers and the purchase will not be at a discount.
- Most of the portfolios to be purchased are composed of a mixture of various Islamic financing products, operating lease, Murabaha, Tawarruq, and financing lease, in addition to some traditional financing products.
- The company will manage this portfolio for collection, follow-up, etc., in exchange for a percentage of the profit financing return provided to its clients and the remaining amount to Warba Bank. For example: 4% for the company and 3.5% for the bank, in addition to a management commission that any of these companies may request.
- These companies may provide a guarantee for any default by customers to pay any overdue amounts/ or replace defaulted customers with other customers/ or buy back the debts of defaulted customers.

❖ **The SSB's opinion:**

The SSB stated that it should be limited in this area to purchasing Islamic finance portfolios without the traditional ones at the present time, provided that the mechanism used in this matter is as follows:

- That the company that owns the portfolio be financed with a Murabaha product, Tawarruq, with an amount equal to the value of the current portfolio indebtedness.
- The company refers the bank to its clients who are debtors of the portfolio to collect its indebtedness from them.

- The bank can authorize the company to manage the portfolio and collect amounts from customers for the benefit of the bank.
- It is accepted for the company to provide a guarantee to the bank of the solvency of customers and that they will not failure to pay their obligations as a third party.
- As for the leasing portfolios, their assets are purchased at a value agreed upon between the two parties.

(41)

Place and expedite the requirement of the regulatory authorities

❖ **Question:**

The bank's management published the Central Bank of Kuwait's new regulations regarding (the rules and principles for granting banks, investment companies, and traditional financing companies personal loans for consumer and housing purposes, and for issuing credit cards).

The bank management provided SSB with all changes and amendments to the bank's contracts and procedures, following the Central Bank's instructions.

The management of the bank has formulated the jurisprudential treatment with regard to the issue of early repayment that Islamic banks are required to apply in the

cases mentioned in the instructions in detail?

❖ **The SSB's opinion:**

The SSB stated that it is permissible to dealing with early repayment procedures may be applied according to the procedures contained in the mentioned instructions based on the following:

- 1- Imam Ibn Abidin said in the matter of Debt settlement: "The debtor has settled the debt before it becomes due, or he died, and he took from his estate. : The answer is that it is not taken from the Murabaha between them except as much as the days passed. He said: Yes, he said: If the lender took the loan and the Murabaha before the term expires, then the debtor has to return with a share of the remaining days, and the commentator mentioned at the end of the book that he was given a fatwa by the late Mufti of Rum Abu Al-Saud, and he attributed it to kindness on both parties, I said: It was the fatwa by Al-Hanouti and others, and in Al-Hamidiyah Fatwas: He was asked whether Zaid owed Amr an amount of a known debt, and he paid it for one year, then twenty days later Amr the debtor died, so the debt was due and the heir paid it to Zaid, so is anything taken from the Murabaha or not? The answer is it shall not be taken from the murabaha between them except for the amount of days that have passed." Romans, Abu al-Saud, issued a fatwa in this regard." (Reference: Haashiyat Ibn Abidin (5/160))
- 2- It was stated in standard of (Guidelines of Transaction Profit) issued by the Accounting and Auditing Organization for Islamic Financial Institutions that: it is permissible for the institution to waive part of the profit when expediting the purchaser if it is not under an agreed upon condition,

taking into account the instructions of the supervisory authorities. (Reference: Sharia Standards, 2022 edition, pg. 1140).

- 3- As the bank will not stipulate in the contract in which the indebtedness is proven, its obligation to the debtor to waive its profit in the event of early repayment, but rather it will be referred to in the bank's policies, so it is an obligation of a third party and is not stipulated in the contract, so when the Central Bank of Kuwait changes its decision in this matter Procedures in question: The bank had the right to take the entire debt or waive part thereof.

(42)

Transferring the proceeds of a Mu⁽⁴²⁾rabaha sale without the customer making the actual sale to the merchant

❖ Question:

The bank employee bought a product from the supplier and sold it to the customer, after that the customer did not sell the product to the merchant, and the bank employee transferred the amount of the transaction to the customer from the bank account, and two mistakes occurred in this transaction:

First mistake: the customer did not sell the product to the merchant.

Second mistake: the employee transferred the amount of

(42) Minutes No.: 1/2019

the transaction to the customer from the bank account and not from the merchant account.

The management confirmed that this transaction is more than one year old.

What is the Sharia opinion in this case?

❖ **The SSB's opinion:**

The SSB stated that in order to validate the transaction, it shall be adopted the following:

1. The customer may own the product through the sale even if he did not receive it, because taking possession is one of the effects of the sale and does not indicate the invalidity of the sale.
2. The amount that the customer received from the bank is a free-interest loan (Qard Hasan).
3. The instalments that the customer pays to the bank are for the Murabaha transaction in which the customer purchased the product.
4. The bank has two rights from the customer, the debt of the loan and the debt of the Murabaha, and it is the owner of the product and did not receive or sell it.
5. The bank can pay off the customer's debt from a good loan in return for the product, so it is a matter of paying the debt in kind.
6. In this case, the debt remains due from the customer without taking profits, and the bank settles the debt by the product owned by the customer.
7. The SSB assures us to avoid such mistakes in the future.

(43)

The impact of the Central Bank of Kuwait's decision on Musawama contracts

❖ Question:

Based on the instructions of SSB to submit an inquiry to the Compliance Department to find out what return is required to be mentioned in individual financing contracts with customers, is the calculated return only in excess of the announced price, or the actual return in full, as it includes whether there is a discount on the declared price from the supplier to the bank?

This inquiry was directed to the concerned department and its response was as follows:

“Please note that by referring to the specialists of the Central Bank of Kuwait in this regard, they stated that the return calculated on the customer is the amount exceeds the declared price from the supplier. As for the deduction from the declared price that the supplier gives to the bank, it is considered as other revenues of the bank.”

So will Musawama contracts be retained in financing individuals, or will Murabaha contracts be used in all bank transactions?

❖ The SSB's opinion:

The SSB stated that it is permissible to maintain the Musawama contract, as these instructions in the question have no effect on the contract.

(44)

Sharia opinion on dealing with a regulatory agreement for syndicated financing operations that includes conditions for Islamic banks and others for conventional banks

❖ **Question:**

The bank intends to participate in syndicated financing, and some of the financiers participating in the financing are Islamic banks and some are conventional banks, and the financing documents contain a regulatory agreement that stipulates the terms agreed upon between the financiers - Islamic and conventional banks - so that all participants in financing are on the same line to pay payments, distribution of profits and other organizational matters, and so that each party knows that there is no preference between financiers, and this agreement contained traditional terms to include all participants.

What is Sharia opinion on dealing with such agreement?

❖ **The SSB's opinion:**

The SSB accepted to participate in the syndicated financing, provided that it is emphasized to separate Islamic contracts from usurious contracts.

(45)

The relationship of suppliers with merchants in financing individuals

❖ Question:

What is Sharia opinion on financial relationship between the suppliers of local commodities for Murabaha product “Tawarruq” transactions and the merchant - who buys commodities from customers - affiliated with each of these suppliers?

❖ The SSB’s opinion:

The SSB stated that the amounts transferred from the supplier's account to the merchant does not affect the legality of the transaction, since the bank had purchased the product from the supplier under a valid Sharia contract, and sold the product to its customer also with a valid Sharia contract. Thus, the bank's relationship with the customer ends, and a debt relationship remains between him and his customer. The customer then selling his commodities to a merchant of his choice does not affect the validity of the transaction from a legal point of view, although The SSB prefers to add a clause in the agreement between the bank and the supplier stipulating the supplier’s undertaking that there will be no financial dealings or financial transfers between him and the final merchant within the bank.

(46)

Linking renewable Murabaha contracts

❖ Question:

What is Sharia opinion on dealing with the operational Murabaha product, which is a Murabaha transaction conducted by the bank for the customer, then the customer makes the proceeds of the Murabaha a deposit with the bank to benefit from the profits of the deposit until the installments are paid. Sometimes the customer needs an additional amount during the repayment period, A new Murabaha operation is carried out separate from the first transaction, and so whenever he needs an additional amount. It is suggested that the bank conduct the new Murabaha transaction by the value of the existing Murabaha in addition to the amount required from the customer, through which the existing Murabaha indebtedness will be settled and the customer will be given the required remaining amount, so the customer will have one installment and one account so that there are no multiple accounts and installments, which causes confusion to the customer and the bank.

Example:

A customer was granted credit limits with a profit rate of 6% for one year to finance his emergency needs, and based on the bank's approval of the customer, the bank financed the customer with Musawama or Tawarruq transaction, so the result of the indebtedness became KD

106,000 due to be repaid after one year. Three months after the conclusion of the transaction, the customer needed an additional 10 thousand .

The current procedure in force with the bank:

A new transaction is concluded in the amount of KD 10,000 at a profit rate of 6% for 9 months, resulting in indebtedness of KD 10,450 as another installment due mostly on the same due date as the original deal, with another account number, another transaction number, another settlement account...etc., in addition to the installment of the first debt, which is due in the amount of KD 106,000, thus results in two installments of total amount KD 116,450 (106,000 + 10,450).

Whenever the customer needs an increase, the same transaction is repeated, which causes several limits, several accounts, several installments, several transaction...etc., in order to finance the same funded purpose, which is emergency cash needs.

Suggested procedure:

A new separate transaction of KD 110,000.00 (covering the existing financing and the required new financing) is concluded with a new indebtedness of KD 116,450 due on the same maturity date as the main transaction, and the profits for the remaining period of the existing deal (of KD 4500) are written off as the customer uses the new financing amount of KD 110,000 to pay off amount of 100,000 KD and he has KD 10,000 left to finance his new needs.

❖ The SSB's opinion:

The SSB states that the proposal and indicated that the

proposal contains two problems:

- 1- Connecting contracts.
- 2- Conditional deduction from the profits of the first indebtedness upon early repayment.

The SSB stated in its decision No. (2011-11/8) regarding the conditions for using Murabaha transaction to pay off the customer's indebtedness, that the bank may not link the current and new financing contracts in which the customer will pay the indebtedness of the current financing contract. The decision also required that the bank enable the customer to collect the entire balance of the new indebtedness. As for deducting the profits of the current indebtedness upon early repayment, SSB decided that deducting the profits is not binding on the bank.

In the event that the bank adheres to these conditions, then the SSB accepted the proposal, provided that the increase in the profits of the current indebtedness is not increased, so that if the profits of the first indebtedness were 3%, then this profit is also taken into account in the new Murabaha for the amount of the first Murabaha only, with the possibility of changing the profit in the new transaction amount.

(47)

Financing a company engaged in animal supplies❖ **Question:**

What is Sharia opinion on financing a company engaged in the animal supplies sector, where the sale of these supplies constitutes 90% of the company's sales, while the animals sold in this company constitute only 10% of the sales, and these animals are (birds, squirrels, rabbits... etc.)?

❖ **The SSB's opinion:**

The SSB accepted to finance client; Because the prohibition of selling is mentioned in some animals such as dogs and pigs, which not mentioned in the question.

(48)

Renewable Murabaha agreement❖ **Question:**

What is Sharia opinion on dealing with a Murabaha agreement that stipulates that its duration is three years, with a variable profit that is determined every three months?

(47) Minutes No.: 2/2020

(48) Minutes No.: 2/2020

❖ **The SSB's opinion:**

The SSB stated that the agreement stipulates that its term is three years with a variable profit. The period without renewing the contracts is not permissible, because the increase in the Murabaha debt after confirmation is prohibited by Sharia.

(49)

Financing a company engaged in massage service

❖ **Question:**

What is Sharia opinion on financing a company that provides massage services, and we inform you that the company is inside State of Kuwait and the law prohibits mixing and sharia prohibitions that usually occur in massage such as mixing and the like?

❖ **The SSB's opinion:**

The SSB accepted to finance this company, as there is state control to prevent any abuses, and similar cases must be presented to the Sharia Department.

(50)

**selling vehicles with a buy-back guarantee service
and additional Guarantee (Kafala)****❖ Question:**

What is the Sharia opinion on the bank financing its customers in the following way:

The supplier issues a quotation that includes the value of the vehicle, with a buy-back guarantee, and additional guarantee service from a third party (Takaful insurance company). Then the bank purchases the vehicle from the supplier with these services provided, and then sells the vehicle to the customer at a total price of the vehicle and services stipulated by the supplier in quotation.

❖ The SSB's opinion:

The SSB accepted the product; because the supplier is the one who purchase the additional guarantee and the guarantee of resale, and sells the vehicle with the additional services in one sale, but the detail is mentioned as a matter of transparency in explaining how the products are evaluated. One of the members was reserved, justifying his opinion that the price of the guarantee is considered in the price paid by the bank. Because the price offer separated the price of the product from the price of the guarantee, even if the price was the same, but for each part of the price there was a part of the valued thing (the product and the guarantee).

(51)

Authorization to renew Murabaha transaction**Question:**

As the current emergency conditions due to the spread of Coronavirus, which required disrupting work in banks as much as possible and reducing communication with customers in order to reduce the spread of the Coronavirus epidemic, please kindly approve the following:

- 1- The client authorizes the bank to conclude or renew Tawarruq transaction.
- 2- Assigning the bank as well to make all kinds of letters of credit and the consequent signing of applications, Murabaha contracts or promissory notes, in addition to application for letters of guarantee, so that the bank is authorized to complete the operations without the need for the customer to sign the required documents, during the work suspension period from 15/3/2020 to 26/3/2020.

We inform you of the following:**The power of attorney shall be applied as follows:**

- 1- In the current circumstances: This authorization and power of attorney is only to protect the bank from a legal point of view by approving the customer's electronic correspondence, where:
 - a. The bank will send the product sale document to the customer after the bank owns the product by

- e-mail, fax or WhatsApp in PDF format.
- b. The customer will print the document, sign and send it back to the bank employee.
 - c. There is an option in the document for the customer to authorize the bank to sell the product on his behalf to a third party, and the bank will demand the customer to activate this option.
- 2- In the event that the bank was unable to reach the customer due to the current circumstances or the state imposed an increase in the closure status: this power of attorney will be used to purchase the product from the bank itself on behalf of the client and resell it to a third party, and this will be in narrow circumstances and exceptional cases such as:
- a. Coronavirus cases were discovered by one of the administration employees, which required all employees to enter quarantine, then the Operations Department employees will carry out the renewals based on this power of attorney.
 - b. A curfew order is issued, as a result of which communication with the client is cut off.
 - c. Any matter that proves the inability to communicate with the client in each case separately.

This is so that the installments are not due to the client, and we assure that this will only be used in narrow circumstances.

The SSB's opinion:

The SSB accepted the cases and confirmed that:

- 1- All these decisions of SSB are exceptional for the

current emergency conditions only, and will not extend beyond the crisis.

- 2- The client authorized the bank as stated in the second case, in which the bank will purchase the product on behalf of the client and then selling it to him, then selling it to a third party that is used only in the narrowest circumstances. The reasons for using it to manage the internal Sharia audit in each transaction must be stated separately before starting the buying and selling operations.
- 3- It is necessary to send the power of attorney to the Sharia Department to correct the spelling errors contained therein.

(52)

Requesting exceptional approvals to manage companies as a result of the current circumstances

Question:

In view of the current emergency conditions due to the Coronavirus pandemic, which required the disruption of work in banks to the greatest possible extent, and the reduction of communication with clients in order to reduce the spread of the Corona virus epidemic, please review and express the Sharia opinion on the following:

Based on the instruction received from the Central Bank of Kuwait for local banks, which included in Item No. 8:

"Instructing to postpone the entitlements of those affected for three months without the application of any penalty fees."

Whereas, it is applicable before the current circumstances is to conclude a renewal deal for the financing amount only without the profits due, as we stipulate:

- 1- The client pays the profits from his own resources.
- 2- Paying part of the Murabaha capital at 0.5%.

We find that continuing with this requirement during the current crisis is not in line with the directives of the Central Bank of Kuwait, which call for facilitating the postponement of entitlements.

It was necessary to inform the SSB of the following:

- 1- The renewal of the indebtedness without profits, whether on the principal of the debt, and the profits result in certain harm to the bank, as these profits represent the revenues from which the bank pays its administrative costs and the expected returns to depositors.
- 2- Also, not calculating profits on renewing the amounts due is considered unfairly favouring the interest of the client over the interest of the bank, while the bank's approval of the renewal process itself is considered a facility from the bank to the client, as the bank waives its legal right to demand the collection of the full debt, and this waiver is meant by the easing called for by the Central Bank.

Also, allowing the Islamic bank to conclude a renewal deal for the entire indebtedness, including the profits, is considered the best way to preserve the bank's

accounting and financial rights. It should also be noted that many economic sectors were negatively affected by the crisis, while there are other sectors, on the contrary, that were positively affected, such as food and medical companies, and it is currently difficult to ascertain the extent of the impact. Therefore, not allowing the renewal of profits may be exploited by those companies at the expense of the interest of the bank.

- 3- As it is clear now, the general observation is that most of the economic sectors are negatively affected by the crisis at various levels and methods, and therefore it is difficult to define criteria for being affected at present, and the Credit Committee will be authorized to estimate each case or sector separately.
- 4- There are no new exceptional instructions regarding provisioning for this type of debt (a statement from the Compliance Department).
- 5- The instructions of the Central Bank of Kuwait to make things easier for clients are based on allowing the postponement of deductions amount owed to them, and the instructions did not include the banks' waiver of any profits, therefore the value of previous profits cannot be placed as an amount under collection from the client; Because it is considered inconsistent with the instructions of the Central Bank of Kuwait, and we do not have the power to suspend or postpone their collection.



The SSB's opinion:

The SSB has stated that, as the exceptional circumstances the country is going through and their impact on financial institutions, accepted to perform the following:

- In transactions that have become due: the Murabaha shall be renewed by taking profits on the full amount owed by the client represented by the principal and the profits; because it is a new transaction separate from the previous transaction, and there is no condition linking the two contracts to each other, with indicate the following:
 - 1- The transactions covered by this decision are those that are due or will be due to lack of time on the dates between (2020-3/18-12).
 - 2- Real Tawarruq transactions, buying and selling, must not be postponed. The maturity and profit increase should not be postponed without buying and selling (Tawarruq), and the Sharia observer must follow up thereof.
 - In transactions that have not yet due: Murabaha is renewed before its due date, and accepted for the bank to take a profit on the renewal process, which included the entire previous indebtedness, including the principal debt and the profits.
 - Subject to renewal terms approved by the SSB.

(53)

Financing private housing for bank employees

❖ Question:

What is Sharia opinion on the bank offering its

employees a reduced profit rate on financing private housing transaction, and when the employee submits his resignation, the bank raises the profit rate and returns it to its normal rate for non-employees?

❖ **The SSB's opinion:**

The SSB stated that if the re-pricing of the financing cost is conditional in the contract as stated in the question, then it is not permissible according to Sharia. Because the bank sold the property to the employee for a known price that was agreed upon, and in the presence of such a condition, it leads to uncertainty of the price.

(54)

Parallel Murabaha

❖ **Question:**

The bank wants to enter into a deal in which two Murabaha contracts are made, one of which is long-term with a fixed profit, and the other is short-term with a variable profit, in which the Murabaha is renewed every 3 months - this is as a precaution for the possibility of changing the interest rate, which affects the profit of the Murabaha - and at the end of the transaction, settlement between the long-term Murabaha profit and the short-term Murabaha profit.

This is because the central bank in some countries obliges banks to do a credit study before each renewal

process, and it is also required to deposit the full amount of the Murabaha in each renewal process and keep it in the account for 24 hours.

The procedure used previously in banks is to make short-term Murabaha, the profits of which are determined every period based on the variable interest rate, so that a Murabaha transaction is performed to pay off the previous debt, which is known as revolving Murabaha.

❖ **The SSB's opinion:**

The SSB accepted the proposed structure, and the Sharia Board has an opinion on the requirement that the full Murabaha amount be deposited in each renewal and kept in the account for 24 hours; as it believes that this condition is considered a technical condition, not sharia.

(55)

The client authorizes the bank to make Murabaha upon the arrival of the shipment obtained from the documentary credit

❖ **Question:**

Sometimes in documentary credits, the client takes the shipment and does not pay the amount, so the client is contacted to sign the necessary contracts to confirm the indebtedness and pay it, whether by placing the amount of credit in the client's account or Tawarruq transaction with the client. He may have spent it and not return it to

the bank until after a period of time, which affects the bank. Because he will pay from his account to pay for the client's goods.

What is Sharia opinion on taking a power of attorney from the client to establish a Murabaha in the event that the client does not cooperate after receiving the goods in the documentary credits?

❖ **The SSB's opinion:**

The SSB stated that it is not permissible to authorize the bank to make Murabaha transaction on behalf of the client, and accepted to register the products in such cases in the name of the client with the bank being the owner of them, according to power of attorney by the bank to the client to receive the products, and when the products arrive, it shall be sold to the client. In this case, insurance policies shall be in the name of the client, but it is endorsed in favor of the bank so that it is the beneficiary of the insurance. In the event that the client wishes to pay the Murabaha immediately upon the arrival of the goods, accepted to give up some or all of the profits.

(56)

Financing a mixed investment portfolio with mortgaging

❖ **Question:**

What is Sharia opinion on mortgaging an investment

portfolio that is characterized by the following:

- 1- The portfolio contains securities in the Kuwait market and the markets of the Gulf Cooperation Council countries.
- 2- This portfolio is managed by a trustee - a third party.
- 3- The nature of investment ranges between speculation and investment - part thereof flows if its price increases at any time, and other part is long-term.
- 4- It is difficult to determine the percentage of securities that are compatible with the provisions of Islamic Sharia because of the nature of the portfolio, where the client's shares can be used for speculation.
- 5- The client has other portfolios with an indication of the type of stocks he usually trades in, including (Kuwaiti stocks - Qatari stocks - investment funds in the United Kingdom and the United States - lease funds).
- 6- The client does not own any other unencumbered assets.
 - The SSB inquired about that the client may be obligated to buy shares compatible with the provisions of Islamic law at the beginning of the financing so that he does not spend part of the financing on forbidden things, and after the client owns these shares, he can buy and sell as he wishes.
 - The administration stated that the custodian had been contacted, and he assured us of his willingness to comply with this condition.
 - It also inquired about the possibility of obligating the client to limit part of his investments in shares

that are compatible with Islamic Sharia.

- The administration stated that the client had been contacted, and he stated that he was tending to keep part of his investments in securities that are compatible with Islamic Sharia, provided that this shall be implemented within one year, as the investment time is based on the opportunities available to him.

❖ **The SSB's opinion:**

The SSB accepted to grant the client Murabaha financing to purchase shares and place them in a portfolio, and mortgage this portfolio, under the following conditions:

- 1- The client, upon granting him the financing, buys shares that are compatible and acceptable to Sharia.
- 2- It is accepted for the client to trade the shares of this portfolio, provided that he keeps at least 30% of the assets of this portfolio with shares that are compatible and acceptable to Sharia; For the jurisprudential rule, it is forgiven in survival what is not forgiven in the beginning.

SSB has also affirmed the inadmissibility of mortgaging a portfolio whose components are all shares that are prohibited according to the jurisprudential rule. Everything that is permitted to be sold may be mortgaged.

The SSB also requested that this be an exceptional case beyond measure, and similar cases are presented to the SSB for opinion.

(57)

Addressing the impact of implementing the requirements for postponing financial obligations binding on the state

❖ Question:

In light of the Coronavirus pandemic crisis, State of Kuwait issued a law regarding postponing financial obligations to clients for six months under No. 3 of 2021, and the law contained the following:

- 1- Postponement is optional for clients, not obligatory. If a client wants to postpone his instalments, he must submit a request through the bank.
- 2- The deadline for clients to request the postponement of financial obligations was on May 18, 2021.
- 3- This postponement will not result in any increase in debt for clients.
- 4- The state will bear all the financial consequences resulting from this postponement through the Central Bank after the bank lists those consequences, and then the Central Bank audits them to determine fair compensation for each bank according to its postponement operations.
- 5- The bank's management has not yet finished calculating the financial consequences that this postponement will cause.

❖ **The SSB's opinion:**

The SSB has stated the following:

- 1- It is accepted for the state to donate to banks to compensate them for the damages and financial burdens that will befall them as a result of this postponement, as a donation; The state being a third party outside the scope of the contract; because the state's goal is to help people mitigate the effects of the COVID-19 pandemic.
- 2- The SSB confirms that it is not permissible to address the Central Bank that this compensation is for the cost of funds or for an alternative opportunity; Compensation for them is forbidden by Sharia, but they are told that this is the amount of damage that resulted from postponing financial obligations to clients.

(58)

Financing IVF operations

❖ **Question:**

What is Sharia opinion on financing bank clients to perform IVF operations?

❖ **The SSB's opinion:**

The SSB stated the following:

Intrauterine insemination (IUI), whether internal or

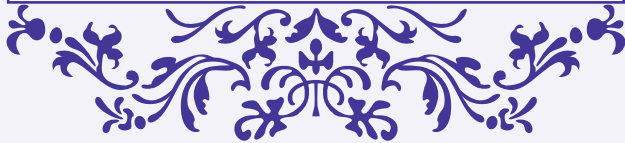
external, is permissible under the following conditions:

- 1- The IUI must be between two spouses, and it requires their consent and the establishment of marriage between them.
- 2- The impossibility of having children through the natural way, which leads to the necessity of using IUI as a barrier that prevents the sperm from connecting with ovum.
- 3- It should be done by a Muslim woman, otherwise a Muslim man.
- 4- The absence of harm to the parties to the operation.
- 5- Avoiding mixing of lineages.

If IUI takes place under these conditions, then it is accepted to finance the operation, otherwise it is not permissible.



Chapter 2
Investment



(1)

Participating in a real estate investment fund

❖ Question:

What is Sharia opinion on participating in a real estate investment fund?

❖ The SSB's opinion:

The SSB states that it is impermissible to invest in the said fund, for the following reasons:

- Stating that the fund may participate in real estate investments from which forbidden revenue percentage does not exceed 20% of the total revenues. This is contrary to the Sharia principle concerning investment in shares of mixed companies, which stipulates the following:
 - (The percentage of the revenue from a prohibited item shall not exceed 5% of the company's total revenues, whether such revenue is from a prohibited activity or out of possessing a forbidden prohibited item.)
- The possibility that the fund gets conventional financing, which the SSB views as impermissible.

(1) Minutes No.: 11/2011

(2)

Investment in a property leased by a telecommunications company

❖ **Question:**

What is Sharia opinion on investing in a UK property leased by a telecommunications company?

❖ **The SSB's opinion:**

It is accepted for the Bank to purchase the property, this shall be according to the Sharia guidelines for the sale transaction.

(3)

Guidelines for the real estate investment.

❖ **Question:**

What are the guidelines for the real estate investment?

❖ **The SSB's opinion:**

The SSB stated that Sharia guidelines for the real estate investments are as follow:

First: Direct Investment:

1. If the Bank owns or invests in the property for operational purpose:

(2) Minutes No.: 12/2011

(3) Minutes No.: 12/2011

- a. If the property involves a prohibited activity that is pure Haram, such as (discos, bars, gambling halls, hotels involving such activities and the like.), then from the very beginning it is impermissible to invest therein.
 - b. If the property involves a mixture of Halal and Haram activities such as restaurants, shops, malls, etc., and the percentage of the realized revenue from these mixed activities exceeds 5% of the property's total revenues, the investment in such cases is impermissible. This is whether the Bank operates the property itself, contracts with a company to operate it, leases it to another party to operate it, or the mixed activities are being leased when the Bank owns the property.
2. The Bank's management shall get rid of the revenue from the prohibited activities of the property.
 3. In case of investing in a property involving the following activities:
 - a. The property involves mixed (male/female) swimming pools and gyms:

The Bank shall do its utmost in preventing uncovering of `Awrah (private parts of the body that must be covered in public) and free mixing between men and women. This can be achieved by allocating swimming pools and gyms for men and ones for women, or by providing women's-only hours and men's-only hours, along with setting out guidelines for using these facilities.

b. Women's employment:

The Bank shall ensure that the female employees, who have been previously contracted, wear modest and covering clothing, as possible.

4- Renting the Property:

It is forbidden to rent a place in a property to a party practicing a prohibited activity therein such as riba-based banks, commercial insurance companies, discos, bars, gambling halls and the like.

5- The method of cleansing of the prohibited income:

- a. In case of knowing the prohibited income of the total revenues, it shall be cleansed directly.
- b. If the prohibited income is not known out of the total activity, then the business area of the prohibited activity shall be divided by the total business area of the activity.
- c. If the total business area of the prohibited activity is unknown, the Bank shall spare no effort to take out a proportion to discharge its responsibility regarding the prohibited revenues.

6- Insurance:

The Bank's Management shall use Takaful (mutual support) insurance policies. If there is no available Takaful insurance company in the country where the property is located, the approval of the SSB shall be required to form perception and an appropriate solution in this regard.

7- If the Bank wishes to get into real estate investment, the subject shall be submitted to the SSB to ensure

that it complies with the regulations set forth by the SSB in this regard.

Second: Investment in real estate companies and trusts (REIT):

In this case, the guidelines for investment in the shares of mixed companies, whose main activity is Sharia acceptable but they engage in some prohibited activities, shall be applied.

These guidelines are as follows:

The basic principle is that it is Haram “prohibited” to hold and invest or trade in shares of companies that sometimes deal in prohibited things such as riba “usury” and the like, despite the fact that their main activities are Sharia acceptable. Shareholding, investment or trading are exceptions to this ruling under the following conditions:

- 1- The Company shall not stipulate in its Articles of Association that one of its objectives is to deal in riba, or to deal in prohibited things such as pork and the like.
- 2- The total amount of the riba-based loan, whether a long-term loan or a short-term loan, shall not reach 30% of the Market Cap or of the Net Asset Value of the company’s total shares. Bearing in mind that the riba-based loan is prohibited, whatever the amount is.
- 3- The total amount of deposited money in return for interest, whether the period of depositing is short, medium or long, shall not reach 30% of the Market Cap or of the Net Asset Value of the company’s total shares. Bearing in mind that depositing money in return for interest is prohibited, whatever its amount is.

- 4- The amount of the revenue from a prohibited item shall not exceed 5% of the company's total revenues, whether this revenue is from engaging in a prohibited activity or owing a prohibited object. If the percentages of some revenues are not disclosed, every effort then shall be exerted to know them, to be on the safe side.
- 5- The determination of such percentages shall be based on the latest audited balance sheet or financial position.

The prohibited revenue of the shares which have been mixed with those companies' revenues shall be cleansed.

(4)

Investment in a company of chemical products involving skin care products

❖ **Question:**

What is Sharia opinion on investing in a company of chemical products that involves medical and skin care products?

❖ **The SSB's opinion:**

The SSB stated that the Bank should not invest in the said company because it is difficult to adhere to the Sharia guidelines for investment in mixed companies in such a situation. Besides, the percentage that the Bank

wishes to invest is too small to allow the Bank to make strategic decisions, such as refraining from receiving any conventional financing for the said company in the future. This leads to the company's incompliance in terms of Sharia principles.

(5)

Investment in a property containing restaurants and a women's club

❖ **Question:**

What is Sharia opinion on purchasing an investment property that composes multiple commercial activities, including restaurants and a women's health club?

❖ **The SSB's opinion:**

The SSB accepted to purchase the said property, on the condition of counting the irregularities that may be involved in the leases of the property. Besides, the leases shall not enter into effect and shall not be renewed, until making the necessary amendments thereto.

(6)

Purchase of a property in the UK involving a party that receives conventional financing❖ **Question:**

What is Sharia opinion on investing in a UK-based property purchase transaction where the structure involves a party that receives conventional financing to fund the property purchase?

❖ **The SSB's opinion:**

The SSB stated that the Bank has nothing to do with the company that has obtained the conventional financing. This does not affect the permissibility of the investment. Therefore, the SSB confirms its approval on the said investment.

(7)

Establishment of an investment company 7❖ **Question:**

What is Sharia opinion on establishing an investment company wholly owned by Warba Bank?

❖ **The SSB's opinion:**

The SSB initially accepted the Bank establishing the said

(6) Minutes No.: 2/2012

(7) Minutes No.: 5/2012

company. Provided, the company's Memorandum of Association and Articles of Association shall be submitted to the SSB upon the completion thereof.

(8)

Investing in a hotel in the United States 8



Question:

What is Sharia opinion on investing in a hotel in the USA?



The SSB's opinion:

The SSB asserts on the necessity to apply real estate investment guidelines previously approved to the said investment. In addition, compliance with the following should be maintained:

1. It is necessary to provide exclusive timings for men different from the time specified for women at the swimming pool, to avoid mixing between both sexes.
2. The restaurant of the hotel shall be rented to a third party, to avoid engaging in a prohibited activity such as providing alcohol. If this is not possible, the Bank may operate the restaurant itself, and shall discard the prohibited activity's revenue in all cases.

The SSB accepted to invest in the said hotel while adhering to the said guidelines

(9)

A property includes a brokerage company

❖ **Question:**

What is Sharia opinion on that the Bank owns an investment property containing an office leased to a brokerage firm?

❖ **The SSB's opinion:**

The SSB stated that the brokerage company is classified as a mixed activity. Therefore, the SSB accepted to own the said property, on the condition of disposing the prohibited revenue according to the real estate investment guidelines.

(10)

Establishing a real estate Assessment company

❖ **Question:**

What is the Sharia ruling on the Bank's participation with other local banks in establishing a real estate assessment company?

❖ **The SSB's opinion:**

The SSB initially accepted the Bank's participation in establishing the said company. However, the company's

(9) Minutes No.: 7/2012

(10) Minutes No.: 7/2012

business shall be in compliance with the rulings of the Islamic Sharia. Provided, the company's Memorandum and Articles of Association shall be submitted to the SSB upon the completion thereof, for consideration and approval.

(11)

Investing in Sukuk Al- Ijarah (a partial ownership of an asset)

❖ **Question:**

What is Sharia opinion on investing in Sukuk Al- Ijarah?

❖ **The SSB's opinion:**

The SSB accepted the said investment, on the condition of ensuring that the ownership of the leased assets can be transferred to the Sukuk (Islamic bonds) holders.

(12)

Late penalty for actual damages

❖ **Question:**

What is the Sharia opinion on entering into syndicated financing with a Murabaha contract that stipulates a delay penalty that is used to compensate the financing parties for their direct expenses related to the late payment, and

(11) Minutes No.: 7/2012

(12) Minutes No.: 7/2012

the excess of those expenses is donated to charitable organizations?

❖ **The SSB's opinion:**

The SSB accepted to participate in financing, because the fees that are charged to the debtor customer in this case are not pre-Islamic usury that is prohibited by Sharia, but rather it is an obligation on the part of the debtor to donate to charitable organizations deducting from them the actual expenses of the creditor resulting from the debtor's failure to pay, which is adopted by sharia standards.

(13)

Exception to the interest waiver clause

❖ **Question:**

What is the Sharia opinion on dealing with documentary credits for the customer's supply of products from a company outside Kuwait, with the products being registered in the name of the bank from the outset to receive it on behalf of the customer, the original owner? However, the contract between the customer and the company selling the product benefiting from the credit provides for arbitration to English courts to resolve disputes and assess the damages incurred by the parties, and the other party refused to add a clause to waive interest on the said credits form – according to the

statement of the concerned department.

❖ **The SSB's opinion:**

The SSB accepted to exclude this case from waiver of interest clause, provided that a Tawarruq financing transaction is carried out for the customer, in order to cover the documentary credit, and it is permissible that the products being in the name of the bank from the start, so that it receives them on behalf of the customer who is the actual owner and entails all consequences of the contract.

(14)

Conventional terms

❖ **Question:**

What is the opinion of the Sharia on dealing with a contract that includes conventional terms? Loan, interest, derivative, bond, borrow.

❖ **The SSB's opinion:**

The SSB stated that the usurious terms should be modified and replaced with legitimate terms financial, profit, sukuk; As the terms have specific meanings in Sharia, law and custom, and in case of conflict, it is referred to the meaning of these terms in Sharia, law and custom.

(14) Minutes No.: 6/2017

(15)

Guarantee of Murabaha bonds amount❖ **Question:**

Is it permissible to engage in syndicated financing with a Murabaha product, with bonds to guarantee payment of the Murabaha amount?

Is it permissible to indicate that the buyer is not entitled to return the purchased item if it is defective?

Is it permissible to take into account the amount of delay in payment the delay penalty of the new Murabaha amount?

❖ **SSB's opinion:**

The SSB has stated the following:

1. It is not permissible to enter into finance after deleting reference to bonds
2. It is not permissible to indicate that the buyer is not entitled to return the purchased item if it is defective.
3. The bank may add the profits it sees in the new Murabaha, and it is not permissible to stipulate that the amount of delay penalty be taken into account in the value of the new Murabaha.

(16)

Restricting arbitration by Islamic sharia**❖ Question:**

How to deal with contracts that do not provide for arbitration in matters that does not contradict Islamic sharia?

❖ The SSB's opinion:

The SSB stated that in this case the following steps should be taken:

1. Arbitration must be restricted to a matter that does not contradict Islamic sharia.
2. In the event that the counterparty does not agree to the amendment, provision must be made for the waiver of the delayed interest, if the judge ruled it in favor of any of the parties.
3. In the event that the counterparty does not agree to the previous text, and the bank is in dire need to contract with this company, the bank must pay the full cost of the contract when it is concluded so that the bank is not subject to this condition.

(17)

Is it permissible for the issuer of mixed sukuk to undertake to redeem the sukuk at the nominal value?

❖ **Question:**

Is it permissible for the issuer of mixed sukuk to undertake to redeem the sukuk at the nominal value?

❖ **SSB's opinion:**

The SSB stated that it is not permissible to trade mixed sukuk unless the total assets of the tangible sukuk are more than 50% of the total assets of the sukuk. Also, it is not permissible for the issuer of the Mudarabah, Musharaka and wakala sukuk to investment by undertake to recover them at the nominal value, because it leads to capital guarantee.

(18)

Sharia opinion on buying shares of a conventional company and converting them into a company that operates in accordance with the provisions of Islamic Sharia?

❖ **Question:**

The bank wants to buy the shares of a company licensed

(17) Minutes No.: 8/2018

(18) Minutes No.: 2/2019

for financial investment, with the intention of transforming the company's activity from a conventional activity into an activity operating in accordance with the provisions of Islamic Sharia after obtaining the necessary regulatory approvals, in coordination with the Sharia Supervisory Board.

After the bank management study the investment company, the following was found:

- The company does not have legally prohibited assets that have a significant impact on the company's budget, therefore the conversion of its activity to work in accordance with the provisions of Islamic Sharia is easy, as the bank has developed a plan of approximately three years for the complete transformation from a conventional company to a company operating in accordance with the provisions of Islamic Sharia.
- The company manages several investment portfolios, all of which are portfolios of shares listed on the stock exchange. Some of these portfolios are managed by the company, and most of them are managed by the clients themselves.
- The company has debt that may be with interest, and the owners of the company have promised to pay this debt before selling it to Warba Bank.
- One of the most important features of this company is that it owns a trading company in the Kuwait stock Exchange, and it also owns a system for trading shares, and this activity may help the bank in its activity in securities later.
- The bank can get out of all the company's investments upon purchase, provided that the company's assets are

not less than the minimum allowable ceiling imposed by the regulatory authorities.

- The management of the bank indicated that an agreement must be concluded in a special contract for the purchase of the company's shares, and this contract, according to the instructions of the Capital Markets Authority, must be at a special price. In the event that the Capital Markets Authority does not agree, the company's shares must be offered in a public auction, and the price of the special deal is the minimum in the auction, and the bank has the right to enter the auction and change the price. In the event that the auction is awarded to Warba Bank, the owner shall agree to the same terms of the special deal.
- What is the opinion of Sharia on buying the shares of this company?
- What is the opinion of Sharia in signing the contract for the purchase of shares?

❖ **The SSB's opinion:**

The SSB accepted to purchase shares of a money investment company under the following conditions:

- The company must appoint a Sharia Supervisory Board, which authorizes it to monitor the procedures that will be implemented to transform the company into a company operating in accordance with the provisions of Islamic Sharia, after the approval of this SSB on those procedures.
- The bank shall be given a grace period to convert the company into a company operating in accordance with the provisions of Islamic Sharia.

As for the share purchase contract, a specific price must be determined, and it may be suspended on a rescinding clause, which is the approval of the Capital Markets Authority. The text will be as follows: "The sale price (...), and in the event that the Capital Markets Authority does not approve, the auction will be entered."

(19)

Issuing mixed assets sukuk

❖ Question:

What is the opinion of Sharia on issuing sukuk that represent mixed assets - tangible and intangible assets - by establishing a Special Purpose Vehicle (SPV), and this company is a trustee to keep the tangible and intangible assets of the bank, then the company certifies the assets, and then authorizes the bank to manage these assets, as follows:

- The company will comply with the fatwa of the Bank's Sharia Supervisory Board regarding the ruling on sukuk trading, that debts do not exceed 49%. The tangible assets - real estate, leased assets and corporate shares - will not be less than 51% or more. Intangible assets - Murabaha, speculation and investment agency - will not exceed 49%, lest the instrument be a debt, which would prevent it from being legally traded.
- The issuer of the sukuk - the bank - will promise the sukuk holder to buy at the nominal value in case the

sukuk holder wishes to sell it.

- The term of the sukuk ranges from one to ten years, and each issuance has a time according to the bank's needs, and according to the nature of the assets.

The SSB's opinion: The SSB accepted the proposed sukuk structure with the need to present each sukuk issuance to the SSB. The majority agreed that the issuer of the sukuk may promise to purchase the sukuk at face value; because the majority of these assets are leased assets, in comparison to previous the SSB decisions that agreed to purchase sukuk whose leased assets are more than 50% at nominal value, due to the presence of a mixture, given that the promise is intended to promise to purchase the leased assets represented by the sukuk.

(20)

Investment in stock trading company that is not listed on the stock exchange

❖ Question:

What is the opinion of Sharia on investing in a company for trading shares that are not listed on the stock exchange, bearing in mind that this company supervises brokerage offices for trading shares that are not listed on the stock exchange, as it is similar to the stock exchange company in terms of business. Most of this company revenues come from the fees it collects from brokerage commissions from the sellers and buyers of shares,

and these shares that are traded are mixed, and there are no conventional banks among them. Rather, most companies have a permissible basis for their activity, and some of them are compatible with the standard of mixed companies and some are not, and in most cases these companies are compliant with the provisions of Islamic Sharia. Earned profits are difficult to discern or estimate; because every year the supply and demand for different companies increases according to the market and profit opportunities.

❖ **The SSB's opinion:**

The SSB accepted by majority to invest in the company; because this company does not buy and sell by itself, but rather supervises brokerage offices in the unlisted stock market, and because most of the existing companies have a permissible activity, just as the company does not carry out operations that are prohibited by Sharia, such as derivatives and options that are prohibited by Sharia and the like.

(21)

Entrepreneurs Deposit Product

❖ **Question:**

The bank's management presented the Entrepreneurs' deposit product in cooperation with small and medium-sized enterprises (SMEs), and its description was as follows:

First: Mechanism of the “Entrepreneurs Deposit” product:

1. The Investment Agency (Wakala) Deposit “Entrepreneurs Deposit”:

It is completely similar to the Wakala investment deposits currently in force in that it has a fixed term, but it differs from the current Wakala investment deposit products at Warba Bank as follows:

- 1) Depositors' funds are used to purchase inventory for a specific SME, and the name SME shall be included in the name of the deposit for marketing purposes. For example, if the name of the SME is "Shurooq Electronics Company", then the "Entrepreneurs Deposit" will be marketed as "Shurooq Electronics Company Deposit".
- 2) The Entrepreneurs Deposit offers customers a defined profit rate range instead of the regular Wakala Deposit rate, the prospective minimum rate is disclosed before customers put their money into any deposit, and the profit rate ranges are expected to be higher than the Wakala Investment Deposit products currently available with Bank Warba.
- 3) Warba Bank and SMEs shall participate their own funds to the inventory purchase. For example, the Entrepreneurs' deposit funds could represent 60% of the required amount, and each of Warba Bank and SME will contribute 40% to reach the target amount.
- 4) The funds that Warba Bank and the SME contribute to are not placed in the "Entrepreneurs' deposit".

Rather, these funds are used to complete the purchase of inventory purchases.

- 5) The upper limit shall be determined by the amount required to purchase the associated inventory, once the required total deposit amount is reached, clients will not be able to participate in the Entrepreneurs' deposit.
- 6) Participation in the " Entrepreneurs' deposit" shall be made according to predetermined segments, and customers may only participate to a specified number of segments. For example, the of segment amount for any deposit can be set at KD 10,000 per of segment, and the maximum of segment a customer can participate to is no more than 3 segments.

2. Inventory purchases service from Warba Bank:

The Inventory Purchase service from Warba Bank is designed to support SMEs by purchasing Inventory on behalf of SMEs.

The main features of this service are as follows:

- 1) The purchased inventory is contractually owned by Warba Bank, and SMEs have been appointed as a sales agent for Warba Bank to sell the inventory through the channels of SMEs, taking into account that the inventory will be booked in the Warba Bank accounting as inventory.
- 2) The funds required to purchase the inventory are provided by three parties:
 - i. Warba Bank contribution.

- ii. Contribution of small or medium companies.
 - iii. Initiators deposit.
- 3) The SME is required to sell the inventory within the same predetermined period as the Entrepreneurs' deposit.
 - 4) Warba Bank and SME agree on the selling price of the inventory, and the agreement includes a special clause to adjust the inventory price based on the current market conditions.
 - 5) The SME is contractually obligated to purchase any surplus of unsold Warba Bank inventory at the end of the period.
 - 6) The profit from selling the inventory is divided between the initiators' deposit, the small or medium enterprise, and Warba Bank, and the profit rate may differ for the three parties according to the agreement.

Second: Product mechanism for the client "Entrepreneur Deposit" -:

1. The SME contacts Warba Bank to request financing for the purchase of inventory.
2. Warba Bank studies the request and the feasibility of selling the inventory.
3. Warba Bank and the SME agree on the following:
 - 1) The share of each of Warba Bank and SME in the inventory, so that the share of the SME is not less than a certain percentage determined by Warba Bank (for example, but not limited to 30% paid in advance when Warba Bank purchases inventory

- and 10% paid in advance by Warba Bank to be 40% in total.
- 2) Agree on the selling price of the inventory, and the agreement will include a special clause to adjust the inventory price based on the current market conditions.
 4. Warba Bank communicates with its customers to find out their desires and acceptance to create a Wakala deposit by investing in the name of the company or the type of activity for the purpose of marketing to complete the inventory value.
 5. Signing the agreement officially and launching the deposit product for Warba Bank clients.

Third: Selection of SMEs:

Warba Bank evaluates all SMEs properly to ensure that they are able to sell inventory within the agreed timeframe. The selection process of SMEs will consist of the following selection criteria:

1. The business plan of SME should be comprehensive and complete.
2. The SME must be effective for a period of not less than 3 years.
3. The operating model of the SME must indicate that its profit margins are high enough to enable the appropriate distribution of profit to the three parties (customer - Warba Bank - small or medium enterprise).
4. SMEs must have a strong reputation in the market so that any “Entrepreneurs Deposit” product bearing the name of SME attracts customers to put their money in

the “Entrepreneurs” deposit.

Forth: Risk Management:

Warba Bank considers the protection of the "flexible deposit" clients' money as one of its top priorities, and accordingly, the following items will be included in the "Entrepreneurs Deposit" agreement:

1. The agreed term of the deposit is a necessary condition that the customer is committed to, and it may not request cancellation before the end of that period, except with the approval of Warba Bank.
2. In the event that Warba Bank agrees to cancel the deposit before the expiration of the agreed period, it is subject to the following conditions:
 - a. The customer shall be refunded the original amount of the deposit without any profits in the event that it was achieved by waiver from the depositor, along with bearing his percentage of the loss, if any.
 - b. The bank guarantees the principal amount invested and the profit generated in the event of proven infringement, negligence, or violation of the terms of the Wakala.
3. Warba Bank guarantees the payment of the minimum expected profit rate that was offered to the customer, regardless of whether all the associated inventory has been sold, or if market conditions require a reduction in the price of the inventory.

Fifth: Benefit of this product:

The advantages of this initiative include access to capital

savings for SMEs and higher returns for the bank's customers.

The SSB indicated the following:

- 1- The method of distributing the expenses in these deposits. The expenses borne by the shareholder, the expenses borne by the bank and the common expenses must be clarified.
- 2- How to deal with the loss of these deposits.
- 3- Who is responsible for guaranteeing the inventory that will be financed in this product?
- 4- The undertaking to purchase must be clarified, and will the undertaking be from one of the parties of the financing, or by third party?
- 5- Is this financing from within the bank's general saving pool, or a special pool to be created later?

The concerned department stated the following:

First:

The bank prefers to choose to work by investment Agency (wakala).

Second:

Is the deposit absolute or restricted?

- 1- Is it permissible to make the deposit absolute in contracts, and restricted announcement to purchasing a specific product only, or only for a specific period?

Third: Deposit guarantee:

- 1- Is it permissible to guarantee the capital and profit in the event of proven infringement, negligence, or violation of the terms of the agency?

- 2- Is it permissible to retain a reserve through which deposit profits are paid to depositors?
- 3- Is it permissible for the bank to guarantee the capital and the expected returns as a donation from it and to protect its reputation without stipulating that in the contracts?

Fourth: the nature of announcement:

The deposit shall be announced that the bank will give an expected return between -Sunbula account return and the new expected return (for example, but not limited to: Sunbula account return is 1.5% [Screen Rate] and the expected return for this product is 6%).

Fifth: Expenses:

- All expenses related to this product (shipping, customs, currency exchange rate, ... etc.) are calculated within the invested capital.

Sixth: The deposit General Pool:

- The deposit will be within the bank's general pool, meaning that the depositors' money will be among the bank's liabilities and reflected in the assets, whether in cash or in inventory.

Seventh: Nature of Relationship:

- There are two contracts related to the nature of this product. The first contract is between the bank and the merchant, while the second contract is between the bank and the customer (the depositor):
- The first contract between the bank and the customer (the depositor):

The customer authorizes the bank to invest the deposited

amount on the basis of the investment agency (Wakala), and the bank expects the customer to achieve an expected percentage of profits, provided that the bank fulfills all the terms of the Wakala without default.

- The second contract between the bank and the merchant:

The bank will authorize the merchant in the following cases:

- 1- The first case: if the goods are outside Kuwait:
 - If the entire inventory is purchased by Warba Bank from the exporter (the exporting country), the merchant will be appointed as an agency agent for the goods stated in the contract, according to the agreed period, and he will provide the bank with a binding promise to purchase the remaining goods from the inventory from him at the cost price, after the expiry of the period of agency.
 - The percentage of the bank's profit will be determined in this contract, and anything more than that will be waived by the bank in favour of the merchant.
- 2- The second case: If the inventory is with the merchant (inside the State of Kuwait), Warba Bank will purchase the inventory from the merchant himself, at an agreed upon price, provided that the merchant is appointed as an investment agent, an agency registered in the goods mentioned in the contract according to the agreed period, and the conditional option is added. In the event that the goods do not leave the merchant's store for a certain period, the bank has the right to

return them to him.

Eighth: Cases of loss and Breaking the deposit:

First: Between the bank and the depositing customer:

Loss cases:

1- In the event of loss or achieving a percentage of profit less than the expected return:

- In case of breaching and default:

The bank guarantees the capital and the expected profit rate.

- In the event of non-breaching and default due to the bank:

The bank guarantees the capital and the expected returns as a donation therefrom and to protect its reputation without stipulating this in the contracts.

2- In case of profit in excess of the expected returns: the customer waives this excess in favor of the bank.

Deposit Breaking Cases:

If the deposit is broken before completing the investment period:

The customer cannot break his deposit before completing the investment period until another customer replaces him, and the returns shall be recalculated on the basis of Sunbula account profit margin according to the deposited amount.

Second: Between the bank and the merchant:

1- In the event of a loss:

- In the event of breaching and default by the

merchant: the merchant guarantees compensation for amount of loss from the capital and the percentage of expected returns in favour of the bank, by letter of guarantee as agent of the bank for investment.

- In the event that the merchant does not violate and default: the bank bears the loss.

2- In the event of a profit less than the expected returns:

- In case of breach and default of the merchant, the merchant guarantees the bank the capital and the expected returns.

3- In the event of profit exceeding the expected returns:

- The bank will waive this increase in favour of the merchant as support and encouragement for future investment opportunities.

The SSB inquired about the following:

- In the event that one of the depositors exits the deposit while bringing a client who buys his share, how are the profits that were waived by the existing client dealt with, do they return to the bank's records or return to the deposit pool?

The concerned department replied as follows:

- It will return to the bank's records, where the customer waives these profits in favour of the bank.



The SSB's opinion:

The SSB stated the following:

1- It is permissible to make the deposit absolute in

contracts, and restricted in the announce to purchasing a specific product only, or a specific period only; because this is a matter of announcing some of the investment methods used and not a restriction on the type of investment.

- 2- With regard to the question about the guarantee of profit and capital: the SSB stated the guarantee in case of breaching and default without detail as to whether it guarantees or capital only, capital and expected profit, or capital and realized profit.
- 3- It is not permissible to retain a reserve from the depositors' money, but the reserve is retained from the profits of the deposit, and this must be reversed on the terms and conditions, with an explanation of how to deal with the surplus from the reserve, especially in the event of an investor's exit, so that the surplus returns to the deposit pot and not the bank's pool.
- 4- The bank may guarantee the capital and the expected returns as a donation from it and to protect its reputation without stipulating in the contracts.

After reviewing the product, providing the problems about it, and answering the inquiries, the SSB approved to deal with the offered product, with the necessity of presenting all contracts, agreements, terms and conditions related to the product, whether between the bank and its customers, or between the bank and the merchant.

(22)

Additional capital sukuk (tier 1)**❖ Question:**

What is the opinion of SSB on the Financial Services Board's fatwa on sukuk?

❖ The SSB's opinion:

The SSB discussed the most important Sharia issues related to first-class sukuk, and reviewed the fatwa of the Financial Services Board, and the Sharia Supervisory Board of Warba Bank issued its fatwa as follows:

All Praise be to Allah, Lord of the worlds, and prayers and peace be upon our prophet Muhammad and his family and companions,

It is known and established that Islamic finance is developed by the development of Islamic fiqh, and tolerance of Islamic sharia, therefore God Almighty has been grateful to His servants by facilitating obedience, Almighty said: "We have indeed made the Qur'an easy to understand and remember: then is there any that will receive admonition "

From this standpoint, this paper included some of the most important sharia issues related to first-class sukuk, or what is termed as "additional capital sukuk," which were issued by many Islamic banks based on contemporary jurisprudence (ijtihad) that achieves the technical and financial purpose of issuing them

at the same time. It maintains the legal view through jurisprudence considered contemporary.

Despite the issuance of these sukuk by many Islamic financial institutions on a large scale, the Sharia Committee of Islamic Financial Services Board (IFSB) issued a declaration showing the illegality of some issues in which ijthihad is justified. As a matter of showing the capacity of Islamic jurisprudence and its absorption of all the considered jurisprudential sayings, we wanted to present this paper, and it contains a statement of the most important legal starting points that show the other legal point of view on which these instruments were based in terms of jurisprudence after they were proposed by the International Basel Committee. The aim is not to restrict a single jurisprudential opinion to all Islamic financial institutions in the Islamic world as a whole. It is not of flexibility of Islamic sharia nor the approach of the righteous predecessors to force people to one opinion, and the opinions of jurists, ancient and modern, have multiplied without denial by anyone throughout Islamic history and eras.

Before indicating some of the most important Sharia issues, we begin by defining the first-class sukuk, or “additional capital sukuk,” and their most important characteristics as follows:

It is known that Basel (3) decisions allowed the inclusion of instruments other than ordinary shares in a second element of Tier 1 capital called Additional Tier 1 Capital AT1, and Additional Capital (AT1) is an additional form of Tier 1 capital. .

The criteria require (3) that the additional Tier 1 capital be

neither secured nor covered by a guarantee of the issuer or related entity or any other arrangement that legally or economically enhances the seniority of the claim with respect to the creditor banks.

Accordingly, the additional capital (AT1) is considered a source of the bank's sources and one of its resources to obtain additional capital in a special way that has its specific conditions, and may differ from the basic capital in some aspects, but the general idea for it is that the additional capital enters into equity to lead its role as working capital in the bank according to specific controls.

After a brief explanation of the concept of additional capital (AT1), we explain the most important Sharia issues related to it as follows:

The first issue: the ruling on converting sukuk into shares:

Conceptualization of the issue: the possibility and ability to convert the issued sukuk into ordinary shares of the financial institution is achieved through the increase of the institution's capital first, and then the conversion takes place according to the value and other regulatory conditions, and the ruling on this issue from the legal point of view is as follows:

conversion of sukuk can be done in two ways:

- 1- The first method: Either it is through a promise issued by the bank to the sukuk holders to sell the shares of the capital increase, and this fulfilled by starting with the promise and ending with the sale, so the bank promises the sukuk holders to sell the shares of the capital increase, and the pillars of sale are fulfilled, as the bank is a seller, the sukuk holder is a buyer, and the

seller of shares to be issued, the price of the invested sukuk, and the promise to buy may be from the sukuk holders.

It may be said: Sukuk are debts, so it is forbidden to be a price or capital?

The answer is: if the debt is pure, then its image is not realized here, and if it is mixed, then the legal criterion permits its sale accordingly based on the principle of originality and subordination, which permitted considering the mixture in the assets, and it must work in the deposits, and no one stated to prevent it. It is also added that the reason for prohibiting the sale of debt: usury and deception, so if the first is negated, if it is assumed that it is cleared by commodities, the second is permissible according to the Malikis. because it is easy, but if we consider capital offers; Ahmad Ibn Hanbal stated its permissibility, and he extracted it from the validity of speculation by offerings, and the scholar Ibn al-Qayyim confirmed it and stated: “And it is the most correct in the evidence, and there is nothing in the legal evidence that prevents the permissibility of this, so it is not appropriate for the virtues of Sharia to prevent it.”

The blog stated in term of the company with offers, “I said: Is it permissible to company with offers, when I have clothes and my friend has wheat or cattle, so we shared therein, is the company between us permissible according to Malik’s statement or not? He said: Malik said: Yes, It is accepted that. Ibn said Al-Qasim: and the interpretation of that is for me, if they share according to the value of each one commodity, and the work for each one of them is according to his capital, and it is for him

from the menial according to his capital. That they share it on the value according to what Malik said? He said: Yes.

2- The second method: initial sale, but it is conditional on a condition in the future. Ahmad, a narration of permissibility was chosen by Sheikh Al-Islam Ibn Taymiyyah and Ibn Al-Qayyim, and Al-Saadi and Ibn Uthaymeen favored it. Ibn Al-Qayyim said: "And the suspension of contracts, annulments, donations, obligations, and other conditions is something that may be called for by necessity or need." And Imam Ahmad stipulated that it is permissible to suspend the sale by condition as he stated: "If I sell this slave girl, I have more right to her for the price." Al-Saadi said: Suspending contracts is permissible, like suspending annulments and mandates, and this is the correct view. The statement that suspending contracts is not permissible and there is no evidenced in the holy Quran, Sunnah, or analogy, and the comments must have intentional matters for which they are attached, and those matters have no caveats, and the principle is that it is permissible and permissible in all contracts. In a forbidden matter, and there is no departure from an imperative matter, but rather it is in the interest of the contracting party. Where he commented it on a condition meaning that: If it is necessary, otherwise it is not." He said: "What is prohibited from contracts is what contains deception, usury, or injustice, and if the comment does not include one of these things or other caveats, then what is prevented from it?"

The second issue: the priority of payment:

It is known that the bank has two characteristics: a partner with his money, and a speculator (Mudareb) in the money of others, so if the sukuk holders enter with him, he is called a speculator (Mudareb) from Maliki's point of view, and a partner and a Mudareb from Hanbali's point of view. The jurists have unanimously agreed that the loss is only by the amount of money, and one of the parties initially waived his right if it was voluntary with consent, so there is no objection to its permissibility on the grounds that rights can be forfeited from the outset. It is a kind of guarantee that obeyed his commitment, so he obliged him.

The third issue: Sukuk write-off:

Sukuk holders are either partners or owners of money. If a loss occurs without breaching or failure, they bear the loss. The jurists have decided that the loss in Mudaraba is in the speculation money, where the worker loses his effort and the owner of the money his money, as for company, the loss will be in the capital each according to his share in the company. It is accepted from sharia point of view to the state deciding - through the Central Bank - to organize the write-off of sukuk in the event of loss, because the Central Bank does not accept the write-off of investors' sukuk as a matter of protection for them, or to stipulate in the conditions for issuing sukuk with write-off in case of loss. Otherwise, there is no room for write-off it, from sharia point of view or in reality. It is possible to apply the write-off of sukuk according to many Sharia bodies approved of the write-off of doubtful debts (write-off of a debt that the creditor does not expect to recover in terms of accounting entries) in the event that collection is not possible, noting that there is no way to

write off sukuk in other than the form of loss; as there is no legal justification for the depreciation of the funds of the sukuk holders; Because it is considered a matter of consuming people's money unlawfully.

The fourth issue: making debt as capital of the company:

We previously mentioned the permissibility of converting sukuk into shares as a sale of known assets, whether they are pure real estate or a mixture of assets and debts with their legally established controls, and the principle in the company is that it be in the prices according to the majority of jurists. As for the Malikis, the company is valid according to them if each of the partners gives gold or silver, just as it is valid if one of them gives out gold and silver and the second gives out the same.

It is also valid for them by kind on one side and an offer on the other, or with an offer from each of them, whether they agree in gender or disagree, and the Sharia standards also allow the offers to be capital in the company if they are evaluated.

If it is said: Part of the sukuk is debt, so it is not permissible to be a price in the purchase, nor capital in company?

The answer is: The instrument is either purely for debt or mixed, and the first is forbidden. Because the sukuk in the case of additional sukuk are part of the bank's general fund and it is certain that they are mixed and not debts, but if they are mixed, then the Sharia criterion permits it with its controls, and it must work in deposits. Accordingly, there is no objection to considering making it the capital of the company or the speculation, its differ from making the capital in the company and the speculation from the debts.

In conclusion, we affirm that Islamic Fiqh accommodates all the developments of the era, and it is one of the signs of the continuation of this religion with its sublime teachings and its strict jurisprudential rules. We affirm that the jurisprudential dispute has existed since Muhammadan message and has continued and will continue until the Day of Resurrection as long as understandings differ, perceptions diverge, and evidence is bearable, and everyone is rewarded for his diligence, and that is what was narrated on the authority of Amr ibn al-Aas, and it is in the two Sahihs on the authority of the Prophet, peace and blessings be upon him, he said: “When a judge gives a ruling, having tried his best to decide correctly, and is right (in his decision), he will have a double reward; and when he gives a ruling having tried his best to decide correctly, and is wrong (in his decision), he will have a single reward.”

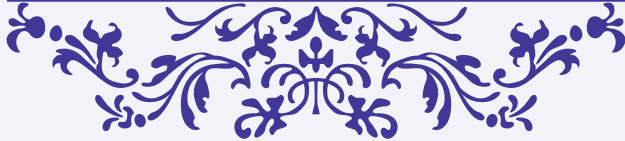
We ask Allah Almighty to guide everyone to what he loves and is pleased with, and our last prayer is that praise be to Allah, Lord of the worlds.





Chapter 3

Investment Agency (Wakala)



(1)

Conditions of the Investment Wakala contract

❖ Question:

What are the general conditions that should be provided in investment Wakala contracts?

❖ The SSB's opinion:

The SSB stated that the following conditions should be provided in the investment Wakala contracts:

1. If the Bank authorizes another party to invest its funds, then this party should be an Islamic financial institution or an entity having a SSB that supervises its business.
2. In contracts where the Bank undertakes the investment of third party (Wakala Deposit contract), the following shall be observed:
 - a. The funds of Wakala deposit shall not be mixed with treasury fund. Rather, separate portfolios shall be created for investing the Wakala funds at expected rate of return.
 - b. Determining the incentive that the Wakeel deserves for good performance.
 - c. Distributing the realized profit agreed upon to the two parties

(1) Minutes No.: 2/2011

(2)

Wakeel donation of a portion of its funds to the Mowakeel

❖ Question:

Is it allowed from Sharia point of view that the Bank, being Wakeel in investment Wakala transactions, donates a portion of its money to the customer in case the realized profit from the investment transaction is less than determined as expected profit in the Wakala contract without stipulating so doing in the Wakala contract?

❖ The SSB's opinion:

The SSB stated that the Wakeel can donate a portion of its money in case the realized profit from the investment transaction is less than determined as expected profit in the Wakala contract without stipulating so doing in the Wakala contract. SSB advises the bank not to expand this practice so that it may not lead to burdening the bank's budget in future.

(3)

Obligation to donate❖ **Question:**

What is the Sharia opinion on imposing a delay penalty on a party that is late in paying the investment Wakala amounts with its profits, So that this does not happen again in the future?

❖ **The SSB's opinion:**

The SSB stated that if the Wakeel allocates the invested money on the day specified by the principal (Mowakeel), then this balance has become a debt owed by the Wakeel. In this case, it is not permissible according to Sharia to obligate the Wakeel to pay any delay fine or the cost of the lost opportunity, because it is the forbidden usury of uncertainty. It is permissible to hold the Wakeel responsible for the actual damage that occurred to the Mowakeel, and since the contract is an investment Wakala, The SSB proposes adding a clause obliging the Wakeel to make a donation in the event of default.

(4)

Assignment of shareholder profits to depositors**Question:**

What is the Sharia opinion on assigning part of the shareholders' profits in favor of depositors?

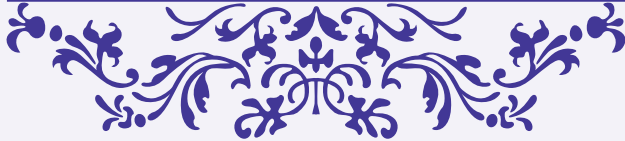
❖ The SSB's opinion:

The SSB accepted for the bank's board of directors, on behalf of its shareholders, assigning the shareholders' profits in favor of depositors as a donation, after obtaining the approvals of the competent authorities.



Chapter 4

Shares



(1)

Purchasing shares of K-Net Company**Question:**

What is Sharia opinion on the Bank's purchase of K-net company's shares?

**The SSB's opinion:**

The SSB accepted the Bank's purchase of the said company's shares.

(2)

Sharia Guidelines for investing in shares**Question:**

What are the Sharia guidelines for purchasing shares of companies?

**The SSB's opinion:**

The SSB stated that it is permissible to adopted the decision of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), in its standards for securities. Besides, there shall be dealing with one of the entities that issue a list of listed companies that are Sharia compliant so that dealings will be undertaken through them. In addition, the percentage of the prohibited

(1) Minutes No.: 2/2013

(2) Minutes No.: 1/ 2014

revenue from mixed companies' shares should be known to be cleansed.

As for the shares of unlisted companies, these shall be submitted on case-by-case basis to the SSB, to decide whether it is permissible or not to deal with

.

(3)

Dealing with a company to provide lists of Sharia-compliant companies

Question:

Is it permissible to deal with an asset management company for trading - conventional and Islamic - to obtain lists of companies that are compatible with Islamic Sharia?

The SSB's opinion:

The SSB stated that the bank's management should address the aforementioned asset management company about the possibility of dealing with another index of Sharia-compliant listings that matches the standards adopted by the SSB in this regard as in Resolution 2014-1/3, if this not available, so it is accepted to deal with the company, while providing it with the standards adopted by the SSB for companies that are compatible with the provisions of Islamic Sharia.

(4)

Priority Rights

❖ Question:

The SSB has reviewed the bulletin for subscription to the capital increase shares, it is similar to what the SSB previously approved, but the Capital Markets Authority added the right of priority, and this addition was reflected in the bulletin.

What is the opinion of Sharia on dealing with the bulletin with this addition?

❖ The SSB's opinion:

The SSB stated to issue its fatwa on priority rights as follows:

All Praise be to Allah, Lord of the worlds, and prayers and peace be upon our prophet Muhammad and his family and companions.

Priority rights:

When the company increases its capital, the company offers its current shareholders the opportunity to subscribe to the capital increase, which means buying additional shares at a reduced price, and the subscription period for the capital increase is usually limited to a period, and this subscription gives investors who already own shares in the company the right, but not the obligation, to buy additional shares. The price of these additional

shares is usually lower than the current market value of the company's shares in order to encourage investors to subscribe for the capital increase.

Whereas the shareholders have the right to subscribe to these new shares, some shareholders want to sell this right to other investors because they do not want to subscribe to the capital increase.

The definition of priority rights came according to the official website of Kuwait Stock Exchange as: "a tradable security that grants its owner the priority right to subscribe to increase the capital of the issuer in proportion to the securities he owns in the capital of this issuer."

This paper discusses the permissibility of selling this right:

1- The position of the jurists on (selling rights):

First: Easement rights: which are the right of irrigation, the right to stream, the right to water flow, and the right to pass. The Maliki, Shafi'i, and Hanbali permitted the sale of these rights without their assets, and it was stated in Sharia Standard (Financial rights and disposal thereof) No. (42), edition 2022 AD, page 1049, "It is permissible to substitute easement rights by selling and the like." "

Second: The right of heightening (over the roof), which, as expressed by the Malikis, is the sale of air, which in our time is the upper floors of the property. If a person has the right to build these floors (the right of heightening), then he may sell this right to third party.

The Hanafis, although they did not allow the sale of abstract rights, but they permitted compensation for them through conciliation. The scholar Khaled Al-Atassi

- may God have mercy on him - the commentator of Al Majallh says: “Based on what they mentioned regarding the permissibility of substituting for abstract rights with money, it should be permissible to substitute money for the right to raise, for the right of irrigation, and for the right of flow, because these rights were not established for their owners in order to prevent the harm, rather it is proven they have a legal right therein.” Explanation of Al Majallh by al-Atassi 2/121.

Third: The right of Plot demarcation: this means that the ruler allocates a plot for one person in order to Reclaim it for agriculture and building thereon, and this right means specialization and entitlement over others, and although it does not mean ownership, the jurists permitted the waiver of this right for a compensation.

Fourth: Selling sukuk: It is a deed on which the guardian writes the provision of food for the beneficiary, so the bearer of this deed has the right to receive the food, and the Maliki and Shafi’i schools permitted selling this right, not trading it, so that the buyer has the right to receive food only.

Fifth: The Malikis permitted the waiver of the right of pre-emption in exchange for compensation.

Sixth: Waiver of jobs in return for compensation, as the Maalikis, Shafi’is and Hanbalis considered it permissible, and this a waiver of his right to that job.

Seventh: The Malikis permitted the waiver of entering the bidding in exchange for compensation, which is merely waived his right to enter the bidding.

Eighth: The right of key money, and the Islamic Fiqh

Academy issued its permissibility in Decision No. 31 (4/6)

Second: The Islamic Fiqh Academy Decision No. 43 (5/5) regarding moral rights, it stated the following:

“The trade name, trade title, trademark, copyright, invention or innovation are special rights of their owners, which in contemporary custom have a significant financial value for people to finance. These rights are legally reliable, and it is not permissible to transgress them.” The Islamic Fiqh Academy permitted the sale of the right, if this right became money according to the custom of the people, and priority rights became recognized by the regulating laws and regulated their circulation.

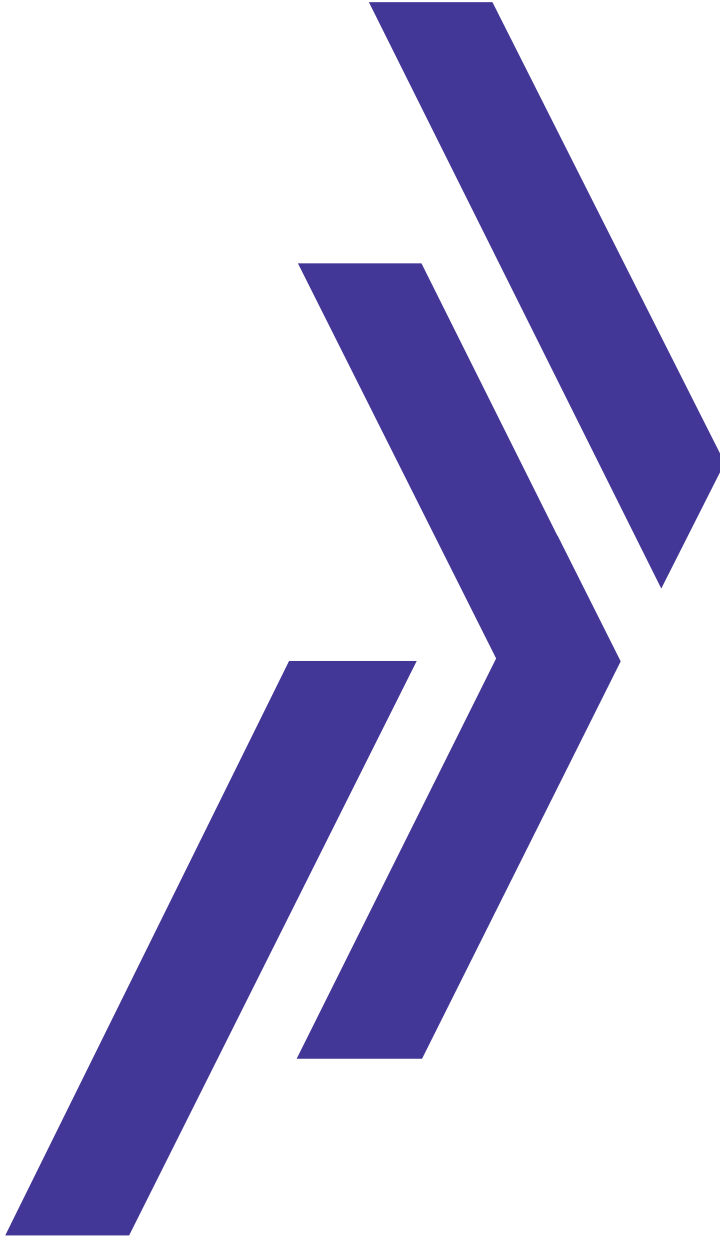
The sale of the priority right to subscribe for a capital increase has been approved by most of the Sharia boards of Islamic banks in the Kingdom of Saudi Arabia, and traded in the stock market.

Accordingly, it is accepted to sell this right under the following conditions and controls:

1. The right shall be existed and owned by its owner, and it is not valid to sell or buy a right that is non-existent, or imagined, or that is not owned by its owner; because that is from selling what a person does not own, or it involves deceit and uncertainty that are not forgiven, or it contains sharia prohibitions such as gambling and the like.
2. There is a commercial custom of the value of that asset, which can take compensation therefor.
3. The right shall be transferable or forfeited from one liability to another.

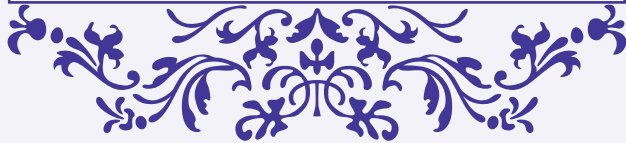
4. The right shall be issued for a legitimate asset that may be bought and sold.

In the event that the owner of the right is exposed to damage or destruction of the asset; as if the company went bankrupt, or was written off from the stock market (stock exchange); The owner of the right bears the loss in proportion to the period of the right.





Chapter 5
Dealing with
Conventional Institutions



(1)

Appointing a conventional bank as an agent❖ **Question:**

Is it permissible to appoint a conventional bank as an agent in Murabaha transactions?

❖ **The SSB's opinion:**

The SSB stated that it is impermissible to appoint a conventional bank as an agent of Warba Bank in the Murabaha transactions.

(2)

Financing a conventional bank via the Treasury Department❖ **Question**

Is it permissible for the Bank to finance conventional banks through the Treasury Department using a Murabaha product in international commodities?

❖ **The SSB's opinion**

The SSB stated that it has confirmed its previous decision to approve this finance, according to the bank's discretion and need. The SSB advises the Bank's management to coordinate with the other Islamic banks', in order to find alternatives that obviate the Islamic banks' need for dealing with conventional institutions.

(1) Minutes No.: 11/2011

(2) Minutes No.: 11/2011

(3)

Contracting with a conventional bank to provide credit card services❖ **Question:**

What is Sharia opinion on contracting with a conventional bank to provide credit card services?

❖ **The SSB's opinion:**

The SSB accepted to sign the said agreement as it is necessary for the Bank, after the SSB heard the technical justifications for signing the agreement with the conventional bank to provide the said services.

(4)

The fees list of a conventional bank❖ **Question:**

What is Sharia opinion on applying a service fees list provided by a conventional bank?

❖ **The SSB's opinion:**

The SSB stated that the submitted document contains several Sharia incompliant irregularities and obligations. Therefore, it is impermissible for the Bank to apply the list in its transactions. The Bank should instead have a

(3) Minutes No.: 14/2011

(4) Minutes No.: 3/2012

contract for each case if the Bank wishes to establish a contractual relationship with a conventional bank, so that it shall be reviewed by the SSB case by case.

(5)

An annex indicating exceptions of Sharia non-compliant obligations in dealing with a conventional bank

Question:

What is the ruling of applying an annex to the previously-discussed on general terms and conditions and the fees regulation for dealing with a conventional bank, which stipulates the exclusion of the Sharia non-compliant obligations and terms mentioned in the said conditions?

The SSB's opinion:

The SSB accepted to deal in accordance with the said document. This is because the Bank is in need to deal with conventional parties to collect funds and pay the obligations. However, compliance should be maintained with the following:

- Not allowing the bank's account to be overdrawn under any circumstances, and deleting whatever refers to this in the submitted document.
- keeping the funds as much as needed for collection purposes and the excess amounts shall be carried over.

- Adding to the submitted document a paragraph about waiving the interest.

(6)

Dealing with an electronic platform for managing and trading sukuk

❖ Question:

What is the opinion of Sharia on dealing with an agreement with an electronic platform that allows the bank to manage the process of issuing sukuk, and also allows trading in global markets, and the bank can only trade through it. The bank cannot establish a trading company because it requires many international approvals and procedures, it did not approve the platform to amend the agreement?

❖ The SSB's opinion:

The SSB stated that it is permissible to deal with the agreement, provided that the bank pays the fees due in full before its due date, as there is a clause that requires the bank to pay delay fees when it is late in paying its financial obligations in favor of the platform.

The SSB also asked the bank to submit a request to the company not to open any transaction for the bank until after the bank paid the fees for this transaction so that the bank would not be late and incur additional delay fees.

The statement that this agreement is permissible while it includes this condition is based on the fact that the bank's

commitment to this condition makes the condition of paying the delay penalty null and void, because it will not be applied to the bank. Emphasizing that this decision is excluded until another platform is provided that performs the work that the bank needs

(7)

Opening a current account in a conventional bank

❖ Question:

What is the opinion of Sharia on opening two current accounts in a conventional bank, one in euros and the other in sterling pounds, noting that the contracts are not subject to modification, and the conditions of the account are devoid of any usurious returns thereon, and the account will not be subject to disclosure under any condition, “i.e., it does not have a feature Overdraft?”

❖ The SSB’s opinion:

The SSB stated that it is permissible to open a current account with conventional banks under the following conditions and controls:

1. If the bank needs to open these accounts - which are current accounts - in order to be able to deal with the bank.
2. The bank must not overdraft it.
3. In the event that the conventional bank makes any cash distribution on the current account - as is the

(7) Minutes No.: 6/2012

case in some banks - then the bank must dispose of this distribution in charitable causes, because it is usurious interest

(8)

Opening a current account in a conventional bank



Question:

What is the opinion of Sharia on financing a conventional insurance company that has a Takaful insurance window, and this financing covers the company's need to pay the accumulated sums from a government contract, then the bank collects its money from the government?



The SSB's opinion:

The SSB stated that it has not approved this financing because it is conventional insurance company financing provided by the company, and the SSB previously decided to prohibit conventional insurance company financing.

(9)

Request to issue credit cards for Al-Masi customers



Question:

The bank management asked the SSB to approve the issuance of credit cards from an international company

(8) Minutes No.: 6/2012

(9) Minutes No.: 3/2014

that has many advantages, but it refuses to amend its contracts in accordance with the provisions of Islamic Sharia. The bank management gave the following justifications?

- 1- With regard to delay penalties, the credit card company gives the customer a period of 90 days to pay off the debt, and then imposes delay fees. The proposal to solve this problem is as follows:
 - a- If there is a balance in the customer's account; the customer authorizes the bank to pay off this debt before completing the 90-day period.
 - b- In the event that there is insufficient balance in the customer's account, the bank shall pay on behalf of the customer by free-interest debt (Qard Hassan) before 90 days of debt.
- 2- With regard to restricting the customer's use of permissible things; customer will promise the bank upon issuing the card that he will not to use the card in prohibited places such as gambling halls and liquor stores, as is the list in Visa and MasterCard cards that are compatible with the provisions of Islamic Sharia.
- 3- With regard to cash withdrawals and prohibited withdrawal fees incurred by the customer, the management suggested two solutions:
 - a- The first solution: The customer shall pledge that he not to use the card for cash withdrawals, bearing in mind that the statistics of the credit card company issuing this card indicate that only 3% of the card issuers used this card for cash withdrawals.
 - b- The second solution: establishing a Takaful fund

among Al-Masi clients to pay these fees.

This request came from the management because this card is different from Visa and MasterCard cards, as it is considered the highest in the world in terms of personal assistant (concierge) services. The concerned department indicated that it only requests approval for this card without the rest of the credit card company's cards. Providing an opportunity for Al-Masi customers to possess this card is a great attraction for customers with high balances, as only a limited number of wealthy people in the world have this card..



The SSB's opinion:

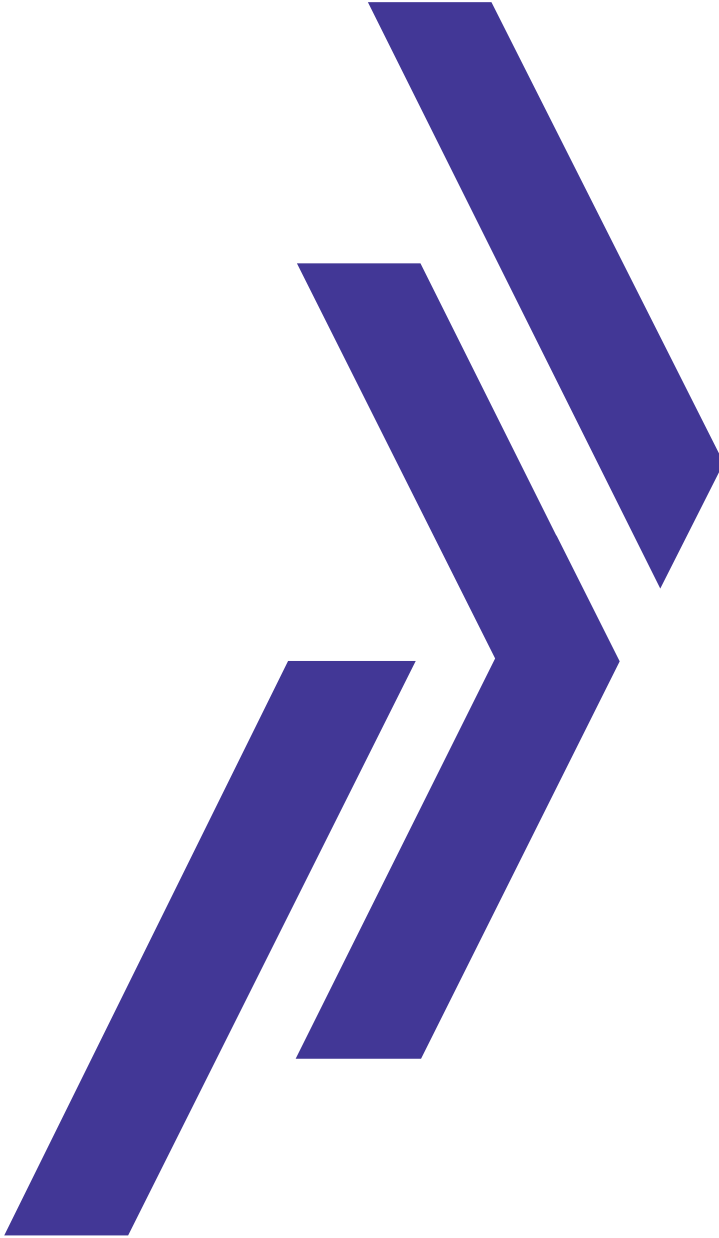
The SSB stated that it has not approved the proposal, for the following reasons:

- 1- It is stipulated that usury interest must be paid in violation of Sharia rulings.
- 2- The companies that refuse to concede to Islamic banks must be pressured to change its conditions as other companies to comply with the provisions of Islamic Sharia.
- 3- The services associated with the card are not clear and the cost of the card subscription is high and its estimation is due to the company only. Sometimes it approve things that correspond to the value of the card subscription and increases, and sometimes it does not approve it, therefore the customer does not get service for his subscription the card.
- 4- The Takaful Fund may not pay these fees and interests; Because these fees and interests are not permissible for individuals, so they are not permissible for the

Takaful Fund.

The SSB suggested adding these and other services to Visa and MasterCard cards; in order to attract customers with high balances.







Chapter 6

Cards



(1)

Taking a percentage on credit cards withdrawals in foreign currency

❖ **Question:**

What is Sharia opinion on taking a percentage of (2.5%) on foreign currency credit cards withdrawals?

❖ **The SSB's opinion:**

The SSB stated that it is impermissible to take a percentage of (2.5%) on cash withdrawals in foreign currency. As for purchases in foreign currency from the points of sales, it is permissible for the Bank to take the said percentage.

(2)

Purchasing gold and silver with credit cards

❖ **Question**

What is Sharia opinion on purchasing gold and silver by credit cards?

❖ **The SSB's opinion**

The SSB stated that in gold and silver purchases by credit cards, the money of the transaction is not directly deposited in the merchant's account. However, the transaction is credited directly in the account of the customer and the merchant which is considered as constructive payment of the purchase amount. Therefore,

(1) Minutes No.: 11/2011

(2) Minutes No.: 11/2011

the SSB views that it is permissible to purchase gold and silver by credit cards.

(3)

Agreement to provide free access to VIP airport lounges, for the credit card holders



Question:

What is Sharia ruling on concluding an agreement to gain free access to VIP airport lounges for credit card holders?



The SSB's opinion:

The SSB accepted the said agreement, on the following conditions:

- Deleting the reference to the payment of interest in case of delay.
- Adding a paragraph about waiving the interest if ruled by the judge.

(4)

Issuing new cards**Question:**

What is the Sharia opinion on issuing new cards (Visa signature - World master (card - Deposit card - Diamond card?

**The SSB's opinion:**

The SSB has approved these cards.

(5)

Credit card advantages**Question:**

What is Sharia opinion in the event that the bank takes excessive fees on a type of credit card because it is in installments and is compatible with the full payment card in terms of the advantages for the fees?

**The SSB's opinion:**

The SSB stated that based on the SSB's previous decision that the fees charged on credit cards must be matched with work or benefits, the SSB stated that it is necessary to refund the increase in the installment credit card fees to the customer for full-paid credit card fees of the same Kind, whether the amount is returned in cash or in kind:

(4) Minutes No.: 3/2012

(5) Minutes No.: 4/2012

(6)

Linking AI Masi segment customers at Warba Bank with American Express

❖ **Question:**

Can AI Masi segment customers be linked with American Express to use the credit card service issued by the company as follows:

- Warba Bank will not market the card and there are no obligations on it, but the aim of this product is the desire of American Express to communicate directly with customers.
- This offer is not for all customers, but for a specific category of customers (AI Masi segment).
- This offer does not apply to all cards offered by American Express, but only one card (CENTURION card, which is the highest category).
- There will be no announcement through the bank.

❖ **The SSB's opinion:**

The SSB stated that it has confirmed its decision No. (4/2-2020) regarding preventing the granting of credit cards through the aforementioned company, and the SSB approved the proposal under the following conditions:

- 1- The request for the names of clients who have financial solvency be from American Express and not from the bank, but rather the bank informs them of the reality,

then the American Express company chooses from these clients who it wants to grant this card to and it is the one that communicates with the client and not the bank.

- 2- The bank should not be an mediator between American Express and the customer, and the bank should not sign any contract in this transaction, and the deduction shall be directly from the customer's account.
- 3- The bank does not announce this service or inform its customers about it; because it is not originally provided by Warba Bank, but rather by American Express.
- 4- If a customer inquiries about this card, he must be informed of the Sharia ruling on it and it is prohibited by Sharia.

(7)

American Express fees

❖ Question:

After the SSB approved to enable American Express to inquire about its customers at Warba Bank and collect its money from its customers' accounts at the bank, the bank's management inquired about the fees to be collected in this process (as special fees for Warba Bank to cover the costs of employees who handle communications and inquiries to and from the bank's customers, in addition

to dealing with collection operations, which Warba Bank will collect from American Express). These fees are summarized as follows:

- Fees for providing information for each successful card application process (taking into account that American Express will conduct a study), as this fee amounts to \$ 500.
- Fees for each payment process for the amounts used from the cards (if any), and these fees are linked to a certain percentage that is difficult to determine (collection fees).



The SSB's opinion:

The SSB has stated that fees are of two types:

1. The first type: fees that may not be taken, which are for every successful operation; because this involves cooperation with the American Express Company, which the SSB prevented in its decision (2021-2/5).
2. The second type: fees that may be taken, which are in return for collection as an agency in the collection and this is a legally permissible benefit whether these fees are attributed or lump sum.

(8)

Multi-currency prepaid cards**Question:**

The bank's management introduced a multi-currency prepaid card product, and its description was as follows:

- The product is a prepaid card in which the customer uses the available balance and does not have credit.

First: Number of currencies contained in the card:

- The card contains 14 different currencies, and the minimum number of activated currencies is one activated currency and the maximum number is 3 currencies activated currencies.

Second: Base currency and card balance:

- The main currency of the card is Kuwaiti Dinar.
- The card is charged (filled) from the customer's account for free.
- The minimum balance allowed to be on the card is 0 Kuwaiti Dinars, meaning that a specific amount is not required to activate it.
- The minimum value of filling the card is KD 10 in one transaction.
- The maximum value filling the card is KD 300 in one transaction.
- The maximum value filling per month for the card is

KD 500.

Third: Fees and commissions:

- Card issuance fee of KD 0, i.e. free of charge.
- MasterCard membership fees of KD 5 annually.
- Account and card maintenance is free.
- Card filling fee of KD 0, i.e. free of charge.
- Purchase fees in a currency of which the card does not have a balance: 2.5%, in addition to the average currency exchange rate.
- Currency conversion fees: not exceeding 3%, in addition to the rate of the currency exchange rate.
- SMS messages are free of charge.

Examples for clarification:

- 1) The customer shall transfer KD 300 from his personal account to the card, and this process is free of charge.
- 2) When the customer exchanges the amount into the dollar currency inside the card, the exchange difference will be made - related to the dollar exchange rate on the same day at the bank.
- 3) In the event that the customer travelled to America and did not exchange the amount on the card for dollars and purchased in Kuwaiti dinars or any other currency not available on the card other than dollars, an international transaction fee of 2.5% will be deducted in addition to the exchange rate of the country's currency on the same day at the bank.
- 4) If the customer travels to America and uses the card in US dollars, fees will be charged for use.

- 5) In the event that the dollar balance in his card has finished, the main currency will be returned to, or according to what the customer requests, the priority of currency reference in the deduction mechanism.

Example:

- He has \$100 in balance on the card and bought a watch for \$200, it will be returned to the balance of the Kuwaiti dinar or the balance of any other currency available in the card, and a 2.5% commission for international operations will be deducted in addition to the exchange rate of the dollar currency on the same day at the bank.
- If there is no balance in any other currency, the transaction will be cancelled, and this card will not finance the customer with the missing amount.

**The SSB's opinion:**

The SSB accepted the terms and conditions for Multi-Currency Prepaid Cards; Since the fees are agreed upon and announced with the customer, the customer is aware of the value of the fees before the exchange transaction.

The SSB has also stressed the need for the customer to know the rate of exchange rate before making the transaction.

(9)

Differences between credit card services according to the cost of issuance

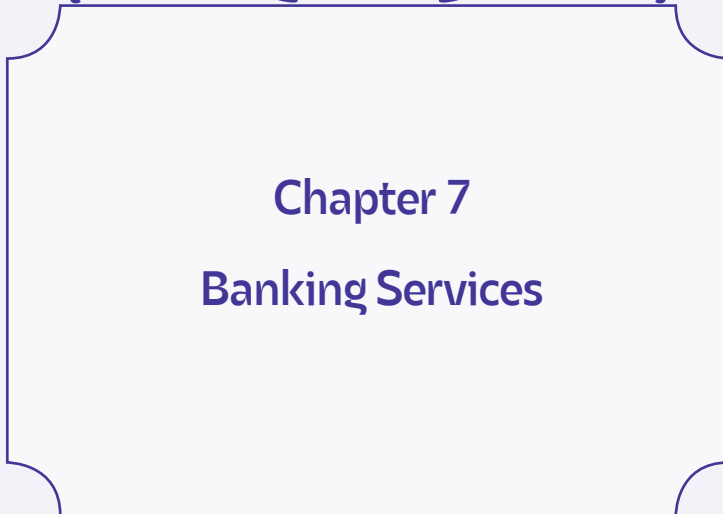
❖ Question:

What is the opinion of Sharia on the bank issuing credit cards that are consistent in terms of the services of the card, and different in terms of issuance fees?

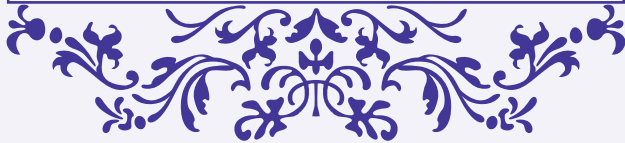
❖ The SSB's opinion:

The SSB stated that - After reviewing the advantages of credit cards and the services provided to their holders, the SSB stated that the increase in issuance fees should be linked to an increase in the services provided to customers of installment credit cards with a higher credit limit, or to amend the fees, as the value of the fees applied to them is twice the value of Fees for the category with the lowest credit limit, with no tangible differences in the services between them. Therefore, services must be provided in exchange for the issuance fees, so that the fee is not in return for increasing the credit limit





Chapter 7
Banking Services



(1)

Commodities trading through a local company❁ **Question:**

What is the Sharia ruling that Warba Bank concludes an agreement with a local company for commodities and assets trading in local and international markets?

❁ **The SSB's opinion:**

The SSB accepted the Bank's agreement with the said firm company for commodities and assets trading in the local and international markets.

(2)

Retail Banking Services❁ **Question**

What is the Sharia ruling on working with the following documents related to the Retail Banking Group:

- Accounts' general terms.
- Saving account terms.
- Salary account terms.
- Investment deposits terms.
- Current account terms.
- Investment agency contract (Wakala)

(1) Minutes No.: 11/2011

(2) Minutes No.: 11/2011

❖ **The SSB's opinion**

The SSB stated that some observations shall be taken in consideration:

- The profit ratio of both the bank and customer in investment deposits and accounts is not determined.
- The calculation method and distribution time of profits shall be determined.
- In case of a change in the profits ratio, the customers should be informed via known methods.
- The paragraph referring to the Bank getting management fees, shall be deleted. Rather, the Bank is entitled to a proportion of the profit ratio being a Mudarib.
- For annual deposits with a monthly return, the monthly payments shall be considered payments on demand, and not a part of the profits.
- the clause indicating that investing the deposited funds is restricted to Murabaha and Ijara transactions should be deleted.
- Deposits Investment ratios should be amended as previously agreed upon.
- Adding a clause about the "Banking confidentiality" in the General Conditions.

(3)

Remaining funds in ATMs❖ **Question:**

How to deal with the remaining amounts in the Bank's ATMs, whose owners have not been identified, and which have not been claimed for more than a year?

❖ **The SSB's opinion:**

The SSB stated that the said amounts shall be put in a suspense account for one year. If it is not claimed, the Bank shall transfer it to the charity account. Besides, there shall be coordination with the SSB's Executive Committee to determine the channels where such amounts will be spent. Yet, in case the customer claims it back, it shall be refunded to the customer.

(4)

Opening mixed (men and women) banking branches❖ **Question:**

A question from the Retail Banking Group concerning the permissibility of the following:

Opening new branches (small size), that are mixed between men and women, along with providing an office and a female employee to serve the ladies for reducing

(3) Minutes No.: 14/2011

(4) Minutes No.: 3/2012

the expenses.

❖ **The SSB's opinion:**

The SSB stated that the applicable general policy is to completely separate male and female sections in the banking branches. Thus, when searching for new places for branches, they should be wide enough, allowing complete separation between the men and women sections.

- If the branch is small and cannot be divided, it is exceptionally accepted, in this case, with providing the banking service, on the following conditions:
 1. providing a special office for female employee, and special seats for the female customers separated from men by a barrier/ partition.
 2. All branch designs shall be submitted to the Sharia Department for approval.

(5)

Warba Bank's prepaid cards in foreign currencies

❖ **Question:**

What is Sharia opinion on offering prepaid cards in foreign currencies by Warba Bank?

❖ **The SSB's opinion:**

The SSB stated that it is permissible to provide the

said cards in foreign currencies, with the necessity for clarifying how the customer will recover the remaining amounts on the card upon expiry or his desire to cancel it..

(6)

Concierge service agreement



Question:

What is Sharia opinion on the agreement of Concierge service for the A class customers?



The SSB's opinion:

The SSB has approved the agreement and advised to link the services provided under this contract to the services related to one of the credit card segments.

(7)

Queries on new accounts on the basis of investment agency



Question:

What is the Sharia ruling on applying the following procedures for the deposit and investment account?

1. An investment deposit with profits distributed in

(6) Minutes No.: 6/2012

(7) Minutes No.: 6/2012

- advance, (when the deposit is created).
2. Giving the customer 30% of the expected profit when the deposit is withdrawn before maturity.
 3. Customer waives the profit of the entire month when he withdraws from the investment saving account.
 4. Allowing the customer to withdraw up to 30% of the deposit value.
 5. Discrepancy of the expected profit rate on the investment accounts based on the different amounts in the investment (accounts).



The SSB's opinion:

The SSB stated the following:

1. The SSB has reservations as far as distributing profits for a deposit before the actual investment of the deposit. However, it is permissible to give a customer advance payment, to be settled later, sometime after the investment process has started, i.e., after real profits have been realized. In such a case, the difference between what he has been paid and the actual profits should be settled at the deposit maturity.
2. SBB is of the view that when a deposit is withdrawn before its due date, the customer shall get a profit rate equal to that of an investment saving account. This does justice for both the customer and the Bank, as the investment savings profit rate is a fair benchmark for all customers. Therefore, the profit rate is linked to the investment saving account whenever the deposit is withdrawn before maturity.

3. The SSB does not approve a condition mentioned that the client waives all profits in investment accounts.
4. The SSB accepted a condition allowing the customer to withdraw 30% of the deposit amount.
5. The SSB accepted to set different profit rates for different accounts based on the amount of money invested in each account

(8)

Electronic Purchase wallet product

❖ **Question:**

What is Sharia opinion in case the Bank provides an electronic wallet service (MWallet, much like Paypal)? The service allows customers to transfer money into their wallets using electronic payment gateway?

❖ **The SSB's opinion:**

The SSB stated that the Bank runs this service, provided that the Sharia Department is notified with a list of the parties that will participate in providing this service (Merchants subscribing to the Wallet).

(9)

Fitness Account❖ **Question:**

What is Sharia opinion on setting Wakala investment account that defines various expected profit rates to customers based on the number of steps each customer walks?

❖ **The SSB's opinion:**

The SSB accepted to determine a fixed rate for all customers on the said type of account. Then, the Bank can reward the customers based on the number of steps they walked in the form of additional amounts, provided that these rewards are from the money of the Bank's shareholders, not the money of the investment account owners. In all cases, the Bank shall supply the SBB with the documents pertinent to the offered product as soon as it is completed.

(10)

Customer salary prepayment service❖ **Question:**

What is Sharia opinion on offering customers, whose salaries are transferred to the Bank, with a service

(9) Minutes No.: 3/2014

(10) Minutes No.: 5/2014

through which the customer can transfer an amount within the limits of his salary from his credit card “full payment” to his current account without any fees via the Bank’s website, given that the transferred amount will be deducted when the salary is already credited to the Bank?

❖ **The SSB’s opinion:**

The SSB stated that it is permissible to offer this service, provided the customer does not pay any fees in return for the money transferred from his credit card to his current account.

(11)

Sunbula Account

❖ **Question:**

What is Sharia opinion on enacting the following amendments in the Rewards Account (Sunbula Account)?

1. Giving the customer the chance to enter draw once for each KD 10, instead of the current KD 100.
2. Amending the expected profit rate to be 0.1% instead of the current 0.25%.

❖ **The SSB’s opinion:**

The SSB accepted these amendments.

(12)

Commodity financing outside the State of Kuwait**❖ Question:**

How can a product be implemented in which the customer is financed to buy consumer goods from outside Kuwait, with a quotation that includes product details?

❖ The SSB's opinion:

The SSB stated that this product could be implemented in several ways, including:

1. Contract be concluded to purchase a commodity outside Kuwait, provided that the inspection and delivery to the customer takes place through an agent of the bank. Or
2. The other party, the supplier, purchases the commodity, provided that the bank purchases it from him and resells it to the customer later, taking into account the principle of defects warrantee, in addition to the case of different specifications required by the customer.

(13)

Cashback benefit for credit card holders❖ **Question:**

What is the Sharia opinion on carrying out a marketing campaign for the bank that is a cash refund for purchases made with any of the bank's credit cards, and the refund for those who used the card is not less than KD100?

❖ **The SSB's opinion:**

The SSB accepted to place multiple segments for customers with varying rates of cashback for use; Because the refund amount provided by the bank to the customer is considered a gift from the bank to the customer, as the SSB believe that use amounts below KD 100 cannot be excluded from the cashback of credit cards; So that there is fail among the bank's customers.

(14)

Bank products support❖ **Question:**

What is the opinion of Sharia on the bank receiving financial support for the products of the banking group from one of the contracting parties?

(13) Minutes No.: 8/ 2014

(14) Minutes No.: 8/ 2014

❖ **The SSB's opinion:**

The SSB has stated that it has not approved the bank's acceptance of the financial donation, as it is considered a prohibition of what may lead to committing sins.

(15)

Providing foreign currency to an exchange company

❖ **Question:**

What is the opinion of Sharia on establishing a strategic partnership with an exchange company, through which the necessary foreign currencies are provided for the company?

❖ **The SSB's opinion:**

The SSB has accepted for the bank to provide foreign currencies to the aforementioned company, provided that dealings be limited to currency exchange transactions.

(16)

Dormant accounts

❖ **Question:**

What is Sharia opinion in transferring the balances of the dormant accounts to the General Ledger account, the

(15) Minutes No.: 8/ 2014

(16) Minutes No.: 8/ 2014

expense account, fees or the set aside return account, in order to close it?

Note that it will apply to amounts less than KD 50.

“According to the applicable policy, active accounts are transformed into dormant accounts one year after the last transaction on the account, in order to preserve the money of depositors, with whom the bank spared no effort to communicate with them to activate or close their accounts, and most of these accounts have small amounts that cannot be withdrawn from ATMs, which makes some customers can't be bothered, yet these accounts represent a huge burden on the bank in monitoring them.”

❖ **The SSB's opinion:**

The SSB has stated that A clause should be added to the conditions for opening accounts to address the issue in the future, indicating the fate of the account and the funds accumulated in it in the event of suspension, and how to dispose of the funds after that.

With the need to exert effort in communicating with customers, with differentiation in the issue of current accounts:

- If the account is current, it is a loan from the customer to the bank, and there is no objection to the bank benefiting from it, and if the customer is known and requested it, then it is returned to him upon request.
- If the account is on an investment basis, then it is not valid to take these invested funds without their consent, and therefore they are placed in a suspended account for a specific period, after which they are

donated to charitable causes, and in the event that the customer requests them thereafter, the amount shall be returned to him.

(17)

Buying foreign currencies at a specified price

❖ **Question:**

A customer expressed his desire to buy specific foreign currencies at a specific exchange rate on a specific future date, and all are indicated in this promise. What is the opinion of Sharia in carrying out this transaction?

❖ **The SSB's opinion:**

The SSB accepted to deal with the promise if it binding to one of the parties, because the promise of exchange is not exchange and does not take into account the provisions of the contract.

(18)

Opening an account for a restaurant that serve shisha

❖ **Question:**

What is the opinion of Sharia on opening an account for a restaurant license that serves shisha (tobacco)?

(17) Minutes No.: 8/ 2014

(18) Minutes No.: 2/2015

❖ **The SSB's opinion:**

The SSB accepted to open an account for it; As its commercial license authorizes to work in selling food and serving shisha, which means that his work is a mixture of permissible and forbidden things, and this differs from financing that was previously prohibited by the SSB, as the account is personal and the owner manages it and the responsibility for its use falls on him.

(19)

Fees for low balances

❖ **Question:**

The bank take effort to manage accounts with low balances, and this work does not bring any benefit to the bank, and because of it, the bank cannot invest the existing amounts, and accordingly the bank management wants to reduce this phenomenon by working with two proposals, namely:

- 1- Imposing fees on those whose balances are less than a certain amount.
- 2- Setting a specific limit for opening the account, and another specific limit for entering the draw.

❖ **The SSB's opinion:**

The SSB has stated the following:

1. The SSB has deferred consideration of the matter

until it has been provided with more real business and costs incurred by the Bank on account of these accounts.

2. Approval to set a certain minimum to open the account or to enter the withdrawal due to the efforts that cost the bank to follow up on the existing accounts, and the SSB does not require the management to adhere to this limit, and in this copying the previous decision of the SSB (3/2015) that prevented the minimum to enter the withdraw

(20)

Amounts collected from canceling transfers

❖ Question:

What is the opinion of Sharia on the bank's acquisition of amounts obtained from returned transfers that benefited from the exchange rate difference in currency conversion, and the full amount will be returned to customers except for the excess collected, in which case the bank requests to benefit therefrom?

❖ The SSB's opinion:

The SSB has stated that the full amounts should be returned to the owners, without the benefit of any amounts received from the exchange transactions; because these profits is part of the finds and belongs to the customer.

(21)

Opening accounts for mixed activities for men and women

❖ Question:

What is the opinion of Sharia on opening accounts for clubs and co-educational schools, if the SSB had more than one decision in this regard:

- 1- The SSB's decision (2017 - 7/1 (7)) on opening an account for salons, which stipulates that accepted to open an account for a ladies' salon.
- 2- The SSB's decision (2019-8/8(7)) on opening an account for the "Shisha Cafe and Restaurant" company, which stipulates that the license for a restaurant, its business is mixed, and it is accepted to open an account therefor, and this differs from the financing that The SSB previously prevented as the account is managed by its owner

❖ The SSB's opinion:

The SSB has stated the following:

- The SSB confirms its decision (2019-8/8(7)) which stipulates accepted to open an account for companies with mixed activities between men and women, such as some schools and clubs; as the origin of the activity is legally permissible and it has been mixed with some forbidden matters, and this account is managed by the account holder.

- It is also accepted to provide points of sale for these companies, as the activity of these companies is not purely forbidden, but rather mixed.

(22)

Tax refund

❖ Question:

What is the opinion of Sharia on signing an agreement with a company that refunds tax amounts on purchases of bank customers traveling to specific countries?

❖ The SSB's opinion:

The SSB stated that after reviewing the agreement that it is permissible to sign it, provided that the exchange rate in case of refunding the amounts is at the price of the day they were received in favor of the customer, and if the delay a short time for the exchange procedures, then it is accepted the condition that the delay is not so much that the customer bears the damage of this delay.

(23)

Opening an account for an artistic production institution

❖ Question:

What is the opinion of Sharia on opening an account for

(22) Minutes No.: 4/2015

(23) Minutes No.: 5/2015

an artistic production company for various TV series.

❖ **The SSB's opinion:**

The SSB accepted that ; Because the artistic production in Kuwait is monitored by the Ministry of Information, and it has some kind of controls that the ministry is keen to have in the artistic production, just as the activity is mixed between purposeful and declining artistic production, therefore it is accepted to open an account, especially since the account has no direct relationship to the artistic business.

(24)

Opening an account by the mother for her minor children

❖ **Question:**

According to the procedures of Warba Bank, an account is opened for the minor by the normal guardian (the father) or his representative based on a guardianship letter from the court. In the event that the mother applies to open the account with the absence of a court ruling regarding guardianship, the account shall not be legally opened.

The mother wants to prevent the legal guardian (the father) from disposing of the account until the minor reaches the age of majority and uses his money in this account.

Note that some banks open the account in this case in the form of a gift from the mother to the minor, and she is not entitled to dispose of or view the account, and the matter differs between banks according to the discretion of each bank and the internal policies of the banks.

Noting that the bank's legal advisor stated the following: (We legally state that it is possible to open a savings account for a minor under the management and signature of the mother under a custody or guardianship ruling, and after submitting a certificate of non-appeal, or if she donated the money with which the account will be opened,

As for the authority to deal at the expense of the minor, the mother does not have the right to dispose of the minor's account, as this right is proven to the normal guardian, she has to sign a declaration stating that the amounts in the account are a donation from her own money, and stipulating that no one else is allowed to deal in the account.)

❖ **The SSB's opinion:**

The SSB accepted to open an account from sharia point of view, as the sums deposited in the account are considered as a conditional gift and it is permissible according to Sharia.

(25)

Real estate property management product**Question:**

The bank's management provided a real estate property management product, its description was as follows:

First: About the product:

It is a digital product that the bank would like to offer as a service to individual real estate owners, enabling them to manage their real estate properties in their leased units, by collecting rents, following up, and submitting summary and detailed reports on the status of their cash flows, all through the Warba Bank application.

Second: the practical steps of the product:

- 1- The customer who owns the property will log into the Warba Bank application for online banking services to register for this service.
- 2- The owner must accept the terms and conditions while adding any new property.
- 3- The owner will add the following information to each property (name of the property, the location of the property, number of units, image of the property - optional -).
- 4- Then he adds the details of each rental unit contained in each property he registered (tenant's name, tenant identification number, mobile phone number, monthly

rent in Kuwaiti dinars, monthly payment day, unit number, uploading a copy of the contract).

- 5- As soon as the owner adds a new unit, an SMS will be sent to the tenant which will take him to secure the page to authenticate himself and confirm that the unit information is true and he is a tenant in the aforementioned property with the monthly amount xxx and the monthly payment day is xxx.
- 6- The customer who owns the property is provided with a rental cash flow chart, which will show them the amount collected on a monthly basis, and the amount that has not yet been collected.
- 7- The customer who owns the property will also be able to see statistics for the tenants that will show him the collected and pending amounts for all tenants or a specific tenant.
- 8- The system will send an automated SMS to each tenant asking him to pay the due amount.
- 9- The owner will be able to send a payment reminder.
- 10- The owner will be able to update the property and unit information.
- 11- The landlord will be able to mark a specific month due as collected in cash (in case the tenant gives the landlord rent in cash).
- 12- Once the tenant has successfully paid the due amount, the transaction will be updated on the system and the tenant will receive an electronic invoice with all the details and can download and save it.

Third: The product general rules:

- 1- This service will be provided to individual customers only through the application of online banking services from Warba.
- 2- The owner of the property must be a Warba Bank customer, while the tenants may be a bank customer or others.
- 3- The owner must identify the account number in Kuwaiti dinars to which the collected amounts will be added when adding any new property. (i.e. if the customer has an account in dollars or sterling pounds, he cannot choose it as a collection account).
- 4- The service will be provided to real estate owners of the individuals category not real estate companies category or real estate property management companies.
- 5- The collection is made by the tenants through the K-Net payment gateway, even if one of the tenants is a Warba Bank customer, the system will not allow him to transfer the amount from his account through the application, so he must pay through the K-Net payment gateway.
- 6- A new k-net payment portal will be identified and prepared to be dedicated to this service and not be mixed with other application services in which the k-net payment gateway is used.
- 7- The customer who owns the property must have a valid civil ID and the “Know Your Customer” KYC form before registering for this service and adding any new property.

- 8- The tenant must confirm and acknowledge that on the details of the property unit before activating the unit details for the customer who owns the property, and in the event that the tenant does not confirm or reject the unit details, the status of the unit will be updated with one of the two phrases: (the tenant refused or the invitation expired).
- 9- There is no need for the tenant to register for this service, all he has to do is confirm and approve the invitation sent by the property owner (and once he confirms and approves the invitation request sent to him while adding the owner to his unit), this is tantamount to confirming the monthly due while receiving the text message and entering the civil ID card and they will first get an OTP to validate before showing the payment due if any.
- 10- Tenants are notified with a secure payment link each time the invoice is due.
- 11- There will be a limit set to control the number of properties that each owner can add under his/her user (4 properties initially).
- 12- A new limit will also be entered to control the number of units under each property to ensure that we are dealing with an individual customer and not with a real estate company or real estate property management (6 initially).
- 13- In the event that the owner can prove that, he owns more than the specified limit, we can increase the limit (each case separately).

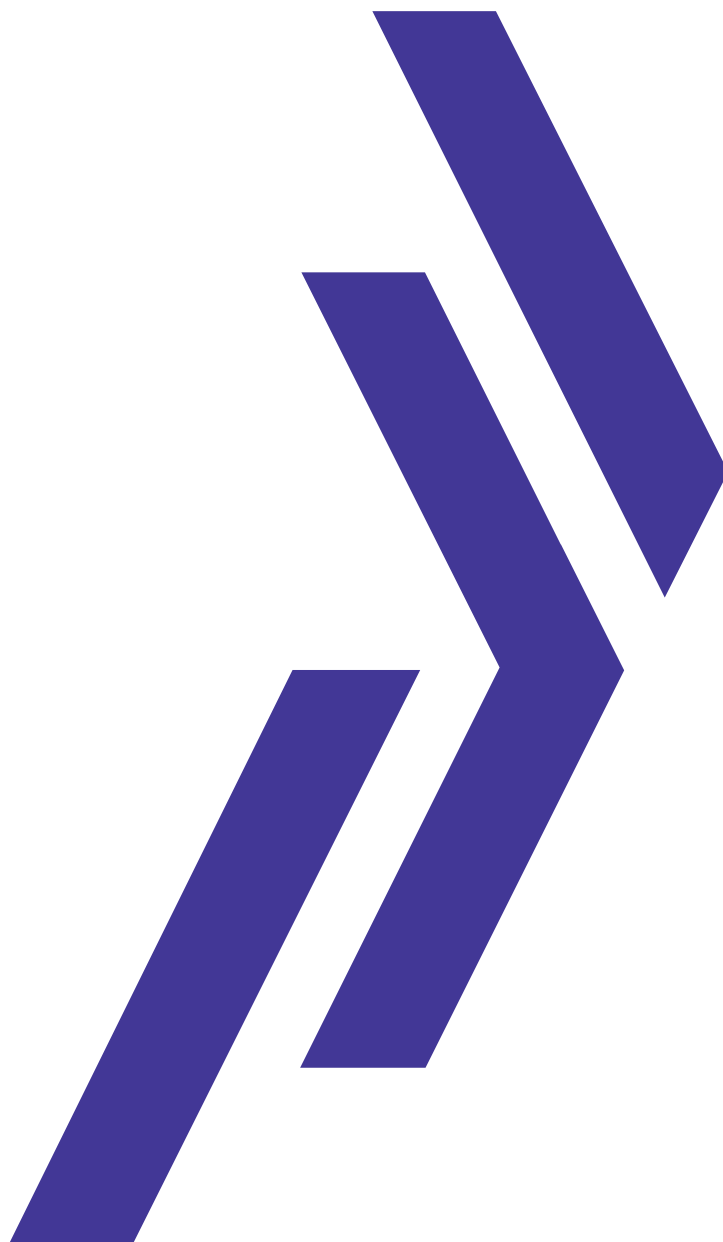
Fourth: Fees and expenses (if any)

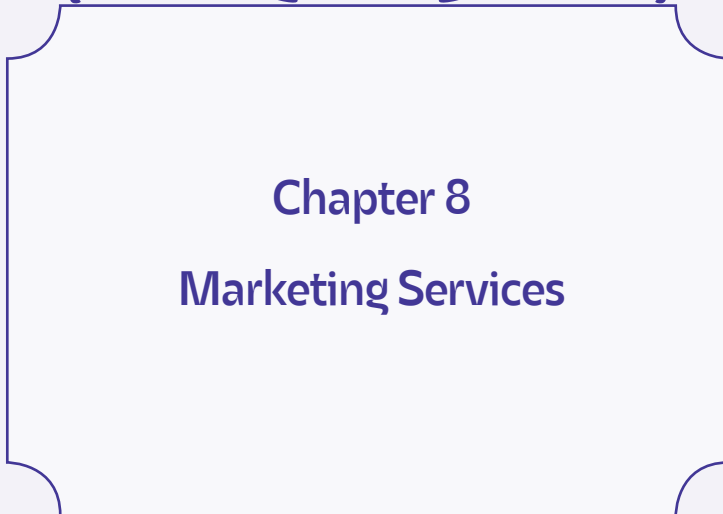
- 1- A fee is collected from the owner for each amount collected (initially 0.250 Kuwaiti dinars per transaction: xxx will be transferred to K-Net as a fee and KD xxx is the net income of Warba.)
- 2- The expected income for one year is KD xxx based on the numbers and assumptions below:
 - The current number of Internet banking users is xxx users.
 - Assuming that 2% will join this service, so we will have xxx customers.
 - The average number of units owned by each owner is 3 units, so that it has xxx units.
 - So the expected monthly income fee (net): KD xxx and the annual KD xxx.

 **The SSB's opinion:**

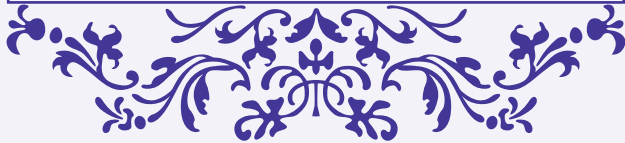
The SSB stated that the product is Wakala with a fee by the customer to the bank to pay the rent to the property owner (the bank customer) by the customer's tenants, and it is accepted to deal with the product, provided that all contracts and fees that will be concluded with the customer are presented after executing and obtaining approvals.







Chapter 8
Marketing Services



(1)

Advertising Guidelines for the Bank❁ **Question:**

What are the guidelines on advertising for the Bank?

❁ **The SSB's opinion:**

The SSB stated that The bank's advertising guidelines must be adhered to, which are as follows:

1. The ads shall not be on the channels and radio stations where there are many forbidden things, such as films and songs channels, music radio stations and cinemas. Documentaries, cartoons channels and TV public channels are exceptions.
2. The ads shall not include whatever provokes desires.
3. The ads shall not include dispraising others' goods and services .
4. There shall be credibility and accurate information in the ads.
5. The Ads shall avoid anything that symbolizes religions and beliefs which are non-Islamic in nature.
6. The appearance of women in the Bank's ads shall be in accordance with the Sharia guidelines, and shall not provoke desires. This is besides wearing proper Islamic veil and not wearing too much makeup.
7. There shall be no music in the Bank's ads, for protection of the Bank's reputation. Music shall be replaced with

(1) Minutes No.: 11/2011

real sound effects.

8. The Ads shall not be placed on media accounts known to be contrary to public morals.

These guidelines are not inclusive of all requirements for the new products, competitions and campaigns whereby it. These should be submitted to the Sharia Department.

(2)

Guidelines for the Bank's sponsorship of social activities

❖ Question

What are the guidelines for the Bank's sponsorship of social activities?

❖ The SSB's opinion

The SSB stated that it has approved the following guidelines:

First: The sponsored activity shall not be contrary to the Islamic Sharia rulings.

Second: there shall be focus on sponsoring activities that promote morals and social values, which serve the Bank's mission.

(3)**Offering discounts for Warba Bank card holders****❖ Question:**

What is Sharia opinion on providing shopping guide services contract under which a discount booklet is prepared for Warba Bank card holders?

❖ The SSB's opinion:

The SSB has accepted to work under the said contract while complying with the following observations:

1. The value of each service provided by the Company shall be detailed separately.
2. Setting a minimum value for the discounts that the company seeks to obtain from the merchants, in favor of the Bank.

(4)**Participation in (Health Fitness and Beauty) exhibition****❖ Question:**

What is Sharia opinion on the Bank's participation in (Health, Fitness and Beauty) exhibition?

(3) Minutes No.: 11/2011

(4) Minutes No.: 11/2011

❖ **The SSB's opinion:**

The SSB has accepted to lease a space in the said exhibition for the purpose of marketing the Bank's products in general.

However, it is impermissible to finance customers for cosmetic operations, without the SSB's approval and making regulations guidelines for such matter.

(5)

A marketing campaign for Diwaniya (a Kuwaiti term meaning a reception hall and the gathering held in it) visitors

❖ **Question:**

What is Sharia opinion on that the Bank conducts a marketing campaign for Diwaniya visitors, including distribution of gifts in kind (playing cards, draughts, incense).?

❖ **The SSB's opinion:**

The SSB has accepted to provide in-kind gifts to the Diwaniya visitors. SSB has reservation with on distributing playing cards which should be replaced with another gift, taking into account the general image of the Bank being an Islamic financial institutions.

(6)

Sharia's opinion on optical illusion



Question:

What is the Sharia's opinion on presentation of optical illusions in one of the bank's events?



The SSB's opinion:

The SSB has accepted to perform optical illusions; because it is not forbidden magic.

(7)

Criteria for choosing famous people for marketing the bank's products



Question:

What are the controls for the bank's advertisement of its services to famous people on social media?



The SSB's opinion:

The SSB stated that if a bank wants to advertise to famous persons, it must comply with the following criteria:

- 1- Modesty and lack of vulgarity in dress and appearance.
- 2- He should not be known to adopt ideas and principles that contradict Islamic sharia.

(6) Minutes No.: 11/2011

(7) Minutes No.: 11/2011

3- To be known for presenting benefit or interest to people.

Names of the celebrities to be hosted shall be provided to the Sharia Department to ensure that the decision issued by the SSB in their regard is not violated.

(8)

A trip for a group of women

❖ **Question:**

What is the opinion of Sharia on supporting a trip for a group of women - without their mahrams (male guardian) - during which a training course is held for ice skating, and a cultural course to inculcate values and some self-reliance skills?

❖ **The SSB's opinion:**

The SSB stated that its not permissible finance this activity in order to protect the reputation of the bank.

(9)

Offers and discounts on cosmetic services

❖ **Question:**

What is the Sharia opinion regarding offers and discounts

(8) Minutes No.: 11/2011

(9) Minutes No.: 11/2011

to bank customers on the following services - outside Kuwait:

- 1- Services related to nails and care for them for men and women, installing artificial nails, and dyeing nails.
- 2- Men's facial care services.
- 3- Body hair removal service for men and women. (laser + non-laser)
- 4- Adding false eyelashes.
- 5- Teeth whitening, polishing and cleaning.

❖ **The SSB's opinion:**

The SSB stated that it has not approved the offers for these activities except for teeth whitening, polishing and cleaning; This is because these activities are outside Kuwait and do not comply with Sharia rules and often involve men providing services to women and vice versa, and cannot be controlled in accordance with the provisions of Islamic Sharia.

(10)

Immediate purchase and installment payment product

❖ **Question:**

The management of the bank presented a product (immediate purchase and installment payment) in cooperation with a company to finance the purchase of consumer goods, and its description was as follows:

- 1- The bank will arrange and cooperate with the finance company in order for the company to be under the umbrella of the bank, because the Central Bank refuses to open such activities without being under the umbrella of a specific bank. As for other countries, the company has worked in this field for more than two years without having to be affiliated with a particular bank.
- 2- The company's business is based on being a broker in payment between the customer and the stores cooperating with it, as the customer comes to a specific store and buys goods from him that do not exceed 500 KD, and the amount of the goods is paid by instalments over 3 months without profit.
- 3- The financing company will collect the amount from the customer, bearing in mind that the stores that will provide this service with are specific and do not contain prohibited matters.
- 4- Also, this amount does included in the customer's credit limit of 40% of his salary.
- 5- The benefit of the company from this service is it will collect fees from the stores that provide this service by discount on the goods when the company pays the merchant the price of the commodity.
- 6- The benefit of the bank from this cooperation is it will share with the company the fee collects from the cooperating stores, and the bank will also benefit from using its points of sale on the payment page, whether payment is by credit card or by debit card.

The SSB inquired about the reason for resorting to this company when there are installment credit cards that provide the same service:

The bank's management replied that installment credit cards are not widespread in the Gulf, and the majority used in the Gulf are instant debit cards, prepaid cards, and full-paid credit cards, and the fees for issuing installment cards are also high.

This system is also features transparency, as each transaction has a beginning and an end. As for the installment credit cards, the customer's purchases overlap, which leads to his dispersion when calculating his expenses.

Sharia issue:

- 1- The company wants to impose a delay penalty on those who fail to pay the obligation at the rate of 1% of debt, to be paid for donations, because some customers do not payment unless there are delay penalties.
- 2- In the event that the SSB does approve this, the company wants to take 1% as a service fee, as the bank will follow up the customer to pay and communicate with him to complete this and remind him of the various means.

The bank and the financing company will sign many agreements that regulate the relations, such as the policy of retrieving goods, determining the profit, ...etc. The offer is intended to obtain the initial approval to be provided to the Central Bank and obtaining the necessary approvals to conclude the relationship with the company.

❖ **The SSB's opinion:**

The SSB accepted to deal with the product in general, and indicated the following:

- 1- This service is free-interest loan (Qarrd Hassn) from the finance company to the customer who buys commodities from merchants, and the company will pay the amount by instalments to the customer over a period of time agreed upon between the customer that does not exceed 4 months.
- 2- There is no objection to the company obtaining a discount on goods and merchandise from stores, and for Warba Bank to share this discount with the financing company; Whereas, Warba Bank will provide the legal cover for the company's work in the State of Kuwait.
- 3- The SSB requested to provide it with contracts and agreements regulating the relations between the parties.
- 4- There is no objection to taking lump-sum collection fees that will be detailed in subsequent agreements, and it is stipulated that these fees are not related to the loan amount or to the term, and this proposal works instead of obligating the donation.

(11)

Takaful guarantee**Question:**

The bank's management presented the takaful guarantee product, and its description was as follows:

The product is to provide a service to customers wishing to purchase vehicles through Warba Bank, whereby Warba Bank purchases a takaful guarantee and adds it to the customer in the vehicle sale invoice, and the profit will be calculated only on the amount of the vehicle only. As for the guarantee, it will be at-cost sale (Tawlia Sale) without profit.

The takaful guarantee contained a fatwa from a Sharia consulting firm.

The SSB has objected selling the Takaful document as it is not negotiable.

The management indicated that the document will be registered in the customer's name directly, and the bank will pay the amount only until the completion of the financing transaction, then the company will register the document in the customer's name directly.

The SSB's opinion:

The SSB has stated the following:

The Takaful guarantee is a Takaful insurance, and since it is a donation; it is not permissible to sell it; Because it is not for sale.

The appropriate solution is for the customer to authorize the bank to participate in the Takaful insurance, then the bank takes the amount he paid for the insurance from the customer without profit, and there is no objection to including the subscription amount in Murabaha contract with the following conditions:

- 1- To explain to the customer that this amount represents Takaful insurance.
- 2- Not to profit from the amount of Takaful guarantee.
- 3- The policy must be issued by the Takaful Insurance Unit in the company.

(12)

Sharia opinion on electronic pictures of real personalities for education

❖ Question:

What is the opinion of Sharia on the attached photo of a real person who appears in the application of the bank for women to explain some of the application steps. Has the Sharia Board previously decided to prohibit drawn pictures of real personalities?

❖ Answer:

The SSB accepted to use these photos here; Because it is for education, so it is allowed as is the fatwa of the Ministry of Awqaf and Islamic Affairs in Kuwait in this regard.

(13)

Participation in a marathon organized by Kuwait Banking Association

❖ Question:

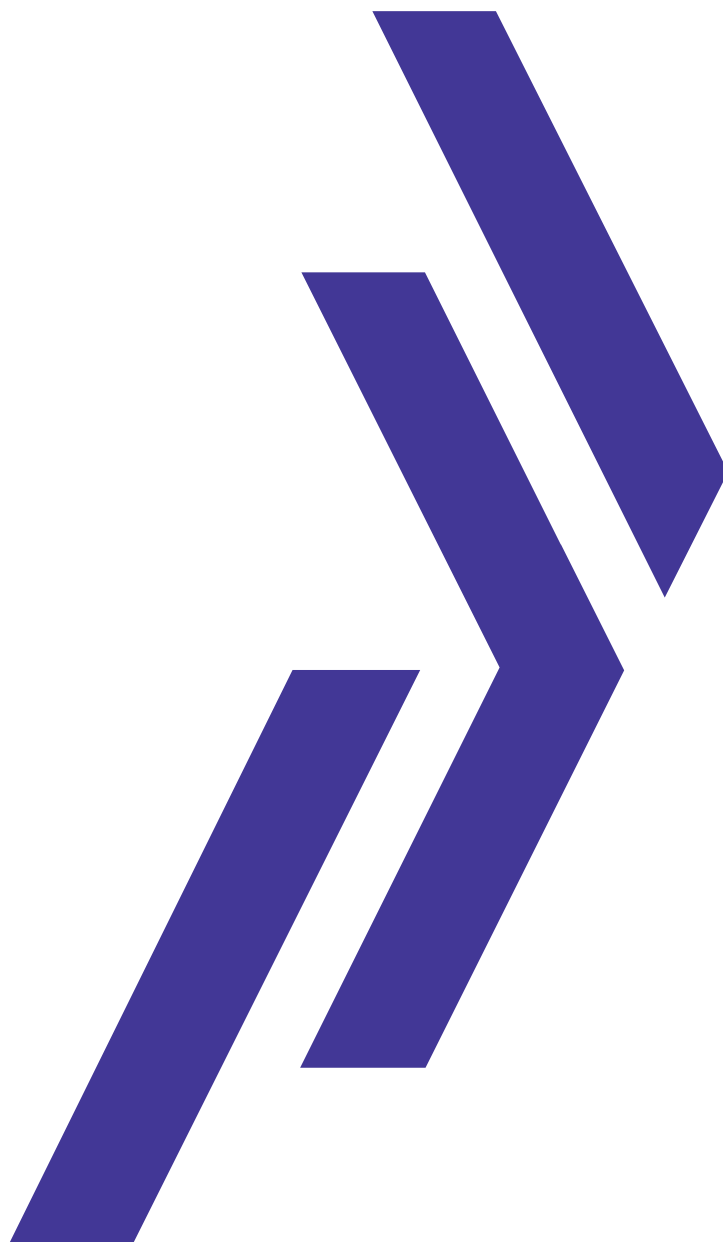
What is the opinion of Sharia on the bank's participation in a marathon organized by Kuwait Banking Association, as the bank intends to participate in it under the name of the "Fayez" application that the bank launched to motivate its users to practice walking, and explained that the marathon has complete separation between males and females, as women go first, then men, and will there be a male winner and a female winner?

❖ The SSB's opinion:

The SSB accepted to participate in the marathon under the following conditions:

- 1- There should be no mixing between men and women, so that men go first or vice versa.
- 2- There should be a prize for men and a prize for women to ensure complete segregation.
- 3- The marathon should not contain matters that the SSB examines, such as musicians and the like.
- 4- Not to advertise with the Warba logo, but with the (Fayez) application logo, in order to preserve the bank's reputation.

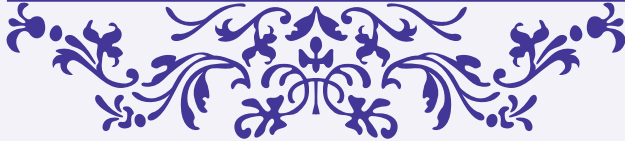






Chapter 9

Fees and Commissions



(1)

Fees and commissions on the Bank services❖ **Question:**

What are key guidelines for collection of fees and commissions in consideration of the Bank services?

❖ **The SSB's opinion:**

The SBB accepted to apply some Sharia guidelines for Bank fees and commissions as follows:

First: It is permissible to collect fees and commissions for any legitimate service provided by the Bank to the customers as long as the two parties agree as per CBK guidelines.

Second: The fees and commissions must be within competitive rates and commensurate with the service provided.

Third: Concerning frozen accounts, the Bank must:

- 1- Define the freeze period.
- 2- Consider the amounts in those accounts.

The SBB has recommended that a technical committee should be established to study the observations of the SBB regarding the fees and commissions. It has also recommended that a committee be established on the level of all Islamic banks in Kuwait to coordinate accordingly.

(1) Minutes No.: 11/2011

(2)

Fees paid by the Bank for the customer then charged on the customer within the finance amount

❖ Question

What is Sharia opinion on adding fees and commissions paid by the Bank, either as an obligation or by agreement, to the financing amounts granted to the customers?

For Example: When a customer applies for financing a property lease that ends with ownership, the financing process includes, but is not limited to, the following:

- 1- Value of property: KD 1,000,000
- 2- Down payment: KD 400,000
- 3- Financing sum used to calculate the lease: KD 600,000
- 4- Property registration fees at the Ministry of Justice: KD 5,000
- 5- Broker commission "Dallal": KD 10,000

The questions now are:

1. How far it allowed to accept financing Sharia compliant to ask the customer to pay the fees and commissions, in case whereby these such fees and commissions are charged in principal or in agreement. It is customary to oblige the buyer to pay some fees and commissions. But in case of bank financing, the Bank becomes the buyer, and an agreement is made as follows.

- A) Either the fees and commissions are added to the selling price, i.e. the seller pays them first then adds them at sell time to the selling price, or
 - B) The customer pays them, but at times, he has not enough money so he the customer asks the Bank to add them to the financing amount.
2. If (B) above is allowed from Sharia point of view, are the fees and commissions added to the cost of buying the property by the Bank, with the sum used to calculate the lease? Or the customer is financed separately by Tawarruq deal transaction to raise provide the fees, commissions and any other payments?

Fees paid by the Bank when purchasing a property which is the subject of the contract, can be included in the overall selling price of Murabaha contract and in the total lease amount in a lease contract, or in the final selling price of the property when transferring its ownership to the customer. Thus, the fees and commissions should not be charged to the customer separately.

The SSB's opinion

The SSB stated that the fees incurred by the bank when owning the property subject to the contract can be included in the total sale price in the Murabaha contract, and in the total rent in the lease contract or in the final sale price when transferring the property ownership to the customer, and these fees shall not be charged by the customer separately.

(3)

Tender Document Fees❖ **Question:**

What is Sharia opinion if the Bank charge fees on tender documents to the tenderers, in order to ensure their seriousness, without refunding the amounts to those that lost the tender?

❖ **The SSB's opinion:**

The SSB stated that it is permissible for the Bank to charge fees for tender documents, as these cost the Bank financially and administratively for their preparation. As such, the Bank is entitled to the fees paid by the tenderers that lost the tender, as the contractor has already benefited from the documents at the time of receiving them.

(4)

Renewal of a letter of guarantee issued by a conventional bank❖ **Question:**

A company submitted a request for reinforcing letters of guarantee that it extracted from a conventional bank, so is it permissible to participate in reinforcing and renewing letters of guarantee for this company?

(3) Minutes No.: 11/2011

(4) Minutes No.: 11/2011

❖ **The SSB's opinion:**

The SSB stated that it has not approved to participate with the other party - the company - in issuing any letters of guarantee that contradict the provisions of Islamic sharia, but rather the bank's participation in such cases is at the beginning of the letter of guarantee so that the fees are not only for enhancing the letter of guarantee. Enhancing the letter of guarantee is just guarantee. The issuance of the letter of guarantee must also include actual work carried out by the bank, such as the feasibility study and the credit study in exchange for fees related to the value of issuing the letter of guarantee.

(5)

Fees not specified in the contract

❖ **Question:**

Is it permissible to conclude a contract that does not specify fees, but is between... to...?

❖ **The SSB's opinion:**

The SSB stated that it is not permissible to take these fees that will be charged by the second party because they are not specified. They range from ... to ... dollars, which leads to uncertainty in these fees, so the fees that will be charged by the second party must be determined.

(6)

Credit study fee❖ **Question:**

Is it permissible to collect fees from the customer in the event of conducting a credit study in the credit facilities transaction?

❖ **The SSB's opinion:**

The SSB stated that it is permissible to charge fees for conducting a credit study that enables the customer to benefit from it, by signing a separate contract requiring the bank to conduct this study in his favor, whether these fees are lump sum, provided that these fees are not exaggerated, but according to the prices customary in the market.

(7)

Company account management fees❖ **Question:**

What is the Sharia opinion regarding taking fees for managing Escrow Account, which is an account of the company, in which certain amounts are deposited that are mortgaged for the benefit of the company's customers, so the bank transfers an amount of the money deposited

(6) Minutes No.: 11/2011

(7) Minutes No.: 11/2011

to the company's customers according to the data that the company provides to the bank, then the bank transfer the rest of the amount to the company's account, and this account has two cases:

1. The first case: the bank shall be financier for the company, in this case this is a service provided by the bank without fees.
2. The second case: the bank is merely a manager of this account and not a financier of the company, such as if the company is a contracting company and entered into a government tender, if the payments are received from the government, the bank transfers the payments to the subcontractors, then deposits the remainder in the company's account?

❖ **The SSB's opinion:**

The SSB stated that it is not permissible to take the account management fee if the bank is financier of the customer, but these fees are added to the cost of financing, but if the bank is not financing the customer. Therefore it is accepted to take these fees, because the bank is making an effort that is not required of it, taking into account the value of the fees with other banks that operate with this account.

(8)

Applying a commission to suppliers in return for marketing bank customer transactions

❖ Question:

What is the opinion of the Sharia on the bank taking a commission from the suppliers in return for the bank marketing the goods owned by the suppliers to the bank's customers, and the bank's management requests that the fees be as follows:

- 1- Lump-sum commission (...KD) from the international supplier (Mediator) for each transaction.
- 2- A commission of (...%) from the local supplier on the financing amount

❖ The SSB's opinion:

The SSB has stated the following:

- 1- It is permissible to take a commission from the international supplier on the grounds that it is a marketing commission from the bank in favor of the supplier. Without the bank, the customers would not have dealt with the supplier.
- 2- As for the local supplier, it is not permissible for the bank to take this commission because the company from which the bank takes this commission is the owner of the commodity. If the bank wishes to take this commission, it must be taken into account in the price of the commodity in the sales contract with the customer.

(9)

Applying fees to unused credit limits

❖ Question:

The bank spends many efforts to grant the customer credit limits, such as studying credit, following up on accounts, etc. Then, after granting these limits, the customer often uses all these limits, but in some cases he does not use all of these limits, so the bank shall keep the value of these limits in his portfolio. Whenever the customer requests it, and the Central Bank requires the bank to take an allowance for these granted and unused limits.

What is the legal ruling on applying fees on these unused limits that compensate the bank for the damages it incurs if these limits are not used?

❖ The SSB's opinion:

The SSB stated that it has not approved these fees, as it stated that these fees are for the cost of money, and this is contrary to Islamic sharia, because it leads to usury. The SSB suggested that the bank take administrative fees (arrangement fees), whether advanced or deferred, to manage the credit limits, in which the bank pays for addressing the other parties, studying the customer's situation and following it up, provided that it is compared to rules applicable in other Islamic banks.

(10)

Amending letters of guarantee fees❖ **Question:**

The bank wants to determine the fees for the uncovered letter of guarantee related to the amount of the letter instead of being a lump sum commission.

❖ **The SSB's opinion:**

The SSB has stated the following:

- 1- Refusing to agree to change the Sharia specification of the product, as this contradicts the applicable Sharia standards for the letter of guarantee.
- 2- The SSB has no objection to increasing the fees of the amount of the letter of guarantee in exchange for the work that the customer performs and benefits from, such as a feasibility study, provided that to be enabled to the credit study.
- 3- Provided that the bank prepares a comparative study with the current fees charged on letters of guarantee in other Islamic banks so as not to exceed the similar fee.

(11)

Management and follow-up commission**Question:**

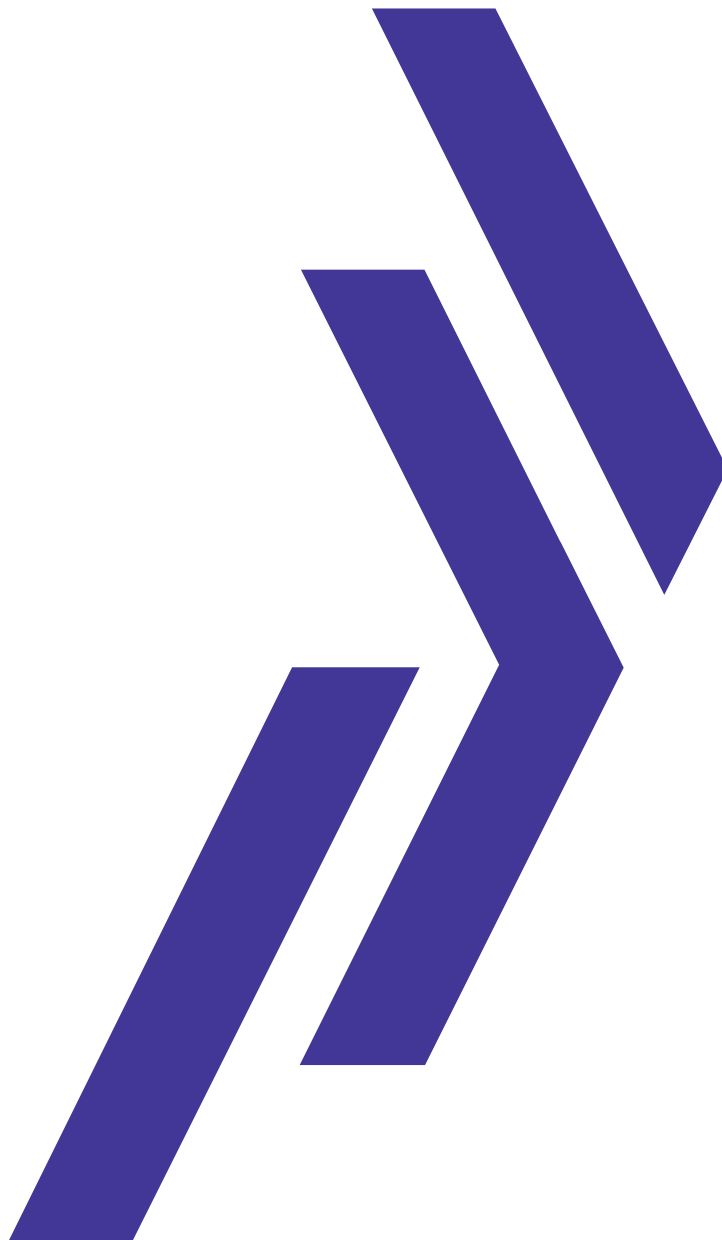
What is the opinion of the Sharia to take a management and follow-up commission from companies that have tenders with the state and the bank is a guarantor for them by a letter of guarantee, at the same time the bank follows up on the work of the contractors and their payments even though it is not at the core of the bank's work?

Commission Name: Management and Follow-up Commission.

Commission description: It is calculated on medium and long-term financing, which requires follow-up and review over long periods, and to be included in the financing price.

.The SSB's opinion:

The SSB stated that fees may be taken on the grounds that they should be in return for additional works that are not at the core of the Bank's work, such as following up on contractors' work and their payments, because it is extra work that has nothing to do with finance. The phrase (and to be included in the financing profit) should be deleted, because the fee has nothing to do with the profit of the financing. It should also be stipulated that this item is specific to a specific segment, which is the segment of contractors and clients who have projects, and not all financing





Chapter 10

Zakat



(1)

Effect of the amounts kept by K-Net and penalties paid by employees on the Zakat

❁ Question:

What is Sharia opinion on adding or deducting the following amounts on Zakat?

1. Money paid to the Shared Electronic Banking Services Company (K-net) as insurance to run the Bank's ATM computer system representing 30 % of the withdrawals of the preceding month. This amount is adjusted and settled month-to-month.
2. The amounts deducted from employees being disciplinary penalties which are kept in a special account as liabilities on the Bank as per Labor law

❁ The SSB's opinion:

The SSB stated the following:

- 1- The amounts kept by K-net shall be added to the Zakat pool.
- 2- On the other hand, the amounts collected as penalties from employees are deducted from Zakat pool.

(1) Minutes No.: 11/2011

(2)

Zakat on pledged funds❖ **Question**

Is zakat obligatory on the amounts retained by the bank in return for the financing granted to customers by the bank? And when it is paid.

❖ **The SSB's opinion**

The SSB stated that the retained money as a mortgage requires zakat on the customer according to its legal conditions, and the customer pays zakat on it for all years after releasing of these funds and making them available to be disposed, and the customer may also pay zakat on them every year, paid by the customer from his unretained funds.

(3)

The impact of the sukuk in which the bank invests on zakat pool❖ **Question:**

Are investment sukuk considered zakat assets?

❖ **The SSB's opinion:**

The SSB stated that the zakat on sukuk in this case varies according to the type of sukuk:

(2) Minutes No.: 11/2011

(3) Minutes No.: 11/2011

- a. As for Murabaha instruments, zakat is paid on debts and are not deducted from the zakat pool.
- b. As for Mudaraba and investment Wakala, zakat is paid on trade offers and is not deducted from the zakat pool.
- c. As for the lease sukuk, it will be deducted from the zakat pool, and as for its yield, it will be recognized in the cash assets or what it evolves on.
- d. As for the sukuk issued from the Kingdom of Saudi Arabia, it should be inquired from the SSB General for Zakat, Income and Customs in the Kingdom. If it is zakat, it shall be deducted from the zakat pool and not paid again, and if zakat not paid, then it is dealt with according to points (a, b).

This is according to the decision of the Zakat House in the twenty-first symposium.

(4)

The impact of the general provision contained in the international standard IFRS9 on Zakat

Question:

Is the general provision mentioned in the International Financial Reporting Standard IFRS9 deducted from the Zakat pool?

❖ **The SSB's opinion:**

The SSB stated that the general and prudential provisions that the bank is committed to in light of the IFRS9 standard should not be deducted from the zakat pool, because it is not a confirmed commitment, but a potential. It is permissible to deduct the allowance that the bank takes for the end of service, bad debts, vacations, and other things, because it is an obligation on the bank that must be paid according to the Labor Law, so the bank does not have these provisions.

(5)

How to calculate zakat

❖ **Question:**

The Sharia Department provided the SSB with rules for calculating zakat for approval, and they were as follows:

First: assets:

- 1- Including the item “cash and balances with banks” in full in the assets of the Zakat pool.
- 2- Including the item “deposits with banks” in full in the assets of the Zakat pool.
- 3- Including the item “finance debtors” after deducting the lease debtors in the assets of the Zakat pool.
- 4- With regard to the item “financial assets carried at fair value through profit and loss”:

- a- Projects under construction and development are not included in the assets of the Zakat pool.
 - b- Fixed assets in funds - such as leasing funds and the like - are not included in the assets of the Zakat pool, and it is sufficient to pay zakat for their yields in the asset.
 - c- Funds intended for investment and acquisition of unlisted companies with the aim of exiting from them at a higher price enter the assets of the Zakat pool at their market value; because it is one of articles of merchandise. Due to not obtain the market value, it enter the NAV value, which expresses its book value.
 - d- Securities purchased for the purpose of speculation are included in the assets of the Zakat pool at their market value because they are articles of merchandise . Due to not obtain the market value, enter the NAV value, which expresses its book value.
- 5- With regard to the item “financial assets carried at fair value through other comprehensive income”:
- Excluding the value of the bank's investment in the Shared Automated Banking Systems Company (K-NET) from the assets of the Zakat pool because it includes the Zakat balance owed directly by the bank.
 - Inclusion of SWIFT company with its book value in the assets of the Zakat pool as a precaution, as the bank does not have any financial data or reports on it to be able to calculate its zakat.

- Excluding Ijarah sukuk in which the bank subscribed from the assets of the Zakat pool.
- Introducing Wakala sukuk for investment and Mudaraba in which the bank has subscribed to the assets of the Zakat pool.
- Excluding the item of investments in joint ventures from the assets of the Zakat pool as it is the bank's shares in real estate that are intended for investment, zakat shall be paid for its yield only.
- Excluding the item of investment real estate from the assets of the Zakat pool; Because it is the bank's investment properties, so only its yield is zakat.

6- In the item "other assets":

- The SSB confirmed its decisions above regarding the calculation of zakat for each item of other assets.

7- Excluding the item "real estate and equipment" from the assets of the Zakat pool.

Second: Liabilities:

- 1- Deducting the "item due to banks and other financial institutions" in full from the Zakat pool because it is a debt on the bank that must be paid.
- 2- Deducting the item "depositors' accounts" in full from the Zakat pool, because it is a debt on the bank that must be paid.
- 3- Deducting the "item of investment agency sukuk issued by the bank" in full from the Zakat pool, because it is a debt on the bank that must be paid.

4- In the “other liabilities” item:

- The SSB confirmed its decisions above regarding the calculation of zakat for each of the items listed under other liabilities.

The sharia observer asked the following question:

Is the item related to “employees’ penalties” deducted from the assets of the Zakat pool? this item refer to the sums that are deducted from employees due to delay or absence and other administrative violations, especially since the Labor Law requires the bank to spend it on activities related to employees.

The SSB replied: The amount collected in the item “employees’ penalties” is a zakat asset, because it still belongs to the bank.

Third: Provisions:

1- Zakat shall be paid for following provisions, and shall not be deducted from the zakat assets:

- General provisions.
- Reserve provisions.
- IFRS 9 provisions.

2- The provisions of doubtful debts may be deducted from the item (finance receivables).

Fourth: equity:

1- Keeping all items of equity because they are zakat liabilities, so they are not deducted from the assets of the Zakat pool, except for the item of permanent sukuk segment 1, which is deducted from the assets of the Zakat pool as a zakat liability according to the

previous the SSB Resolution No. (2019-3/9-18).

After the SSB confirmed to act according to its jurisprudence above, the Zakat pool appeared to be required, because the zakat liabilities are higher than the assets.

The bank will pay 1% zakat tax, which is zakat paid in advance by the bank on behalf of the shareholders.

❖ **The SSB's opinion:**

The SSB has decided to adopt the method of calculation stating the following:

- 1- The new investments in the item of financial assets are listed at fair value through profits and losses, that the Zakat deal with them is as follows:
 - Investments made for the purpose of Mudaraba and for the purpose of investing and acquiring unlisted companies for the purpose of separate from them at a higher price are included in the assets of the Zakat pool at their market value. If it does not have a market value, then its book value, NAV, shall be taken, because it is articles of merchandise.
 - Investments made for the purpose of developing and establishing infrastructure shall not be included in the assets of the Zakat pool, because they are undeveloped assets under construction and development.
 - Investments made for the purpose of renting and developing real estate shall not be included in the assets of the Zakat pool because they are

undeveloped assets, and it is sufficient to pay tribute to their yields that appeared on the assets side.

- 2- The amount of employee penalties is entitled to the bank and one of its assets, so it shall not be deducted from the assets of the Zakat pool.
- 3- The SSB warns the shareholders and owners of the Bank's shares for the purpose of Mudaraba that their zakat is calculated on the market value of the Bank's shares on lapse of a complete year, with deduction of what was paid to the Zakat House on their behalf.

(6)

Zakat of (auto cash) Product

❖ Question:

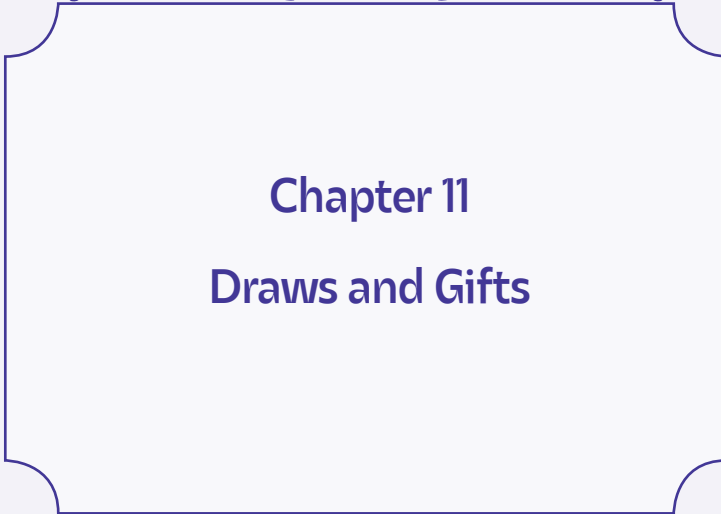
In the (auto cash) product, the customer buys a car from the bank on credit, and in exchange for the purchase, a deposit is created with the same purchase amount, so that the customer can benefit from the profits of the deposit during the financing period. Is the customer required to pay zakat on the money for the deposit?

❖ The SSB's opinion:

In the (auto cash) product, the customer buys a car from the bank on credit, and in exchange for the purchase, a deposit is created with the same purchase amount, so that the customer can benefit from the profits of the

deposit during the financing period. Is the customer required to pay zakat on the money for the deposit fees (arrangement fees), whether advanced or deferred, to manage the credit limits, in which the bank pays for addressing the other parties, studying the customer's situation and following it up, provided that it is compared to rules applicable in other Islamic banks.





Chapter 11
Draws and Gifts



(1)

Providing Prizes for Opening Salary Accounts❁ **Question:**

What is Sharia opinion on offering in-kind gifts and draws for prizes to the Bank's customers who open new salary accounts?

❁ **The SSB's opinion:**

The SSB stated that it is permissible to offer in-kind gifts to customers and conduct drawings for prizes in return for customer's transferring his salary to the Bank, provided that the value of such gifts and prizes shall be from the money of the shareholders not the depositors

(2)

Depositing the Value of the Customer's Gift in Cash Directly in His Account in Return for Salary Transfer❁ **Question**

What is Sharia opinion on depositing the value of the customer's gift in cash directly to his account in return for transferring his salary to the Bank?.

❁ **The SSB's opinion**

The SSB stated that it is permissible to offer gifts in return for salary transfers in the form of cash to be directly deposited in the customer's account, in addition to the

(1) Minutes No.: 11/2011

(2) Minutes No.: 11/2011

previously approved gifts cards. Permissibility is based on the fact that the purpose of offering such gifts is to encourage customers to use the Bank's various services, not solely in return for salary transfers.

(3)

Investment Account with Prizes to Customers Who Win in Draws

❖ **Question:**

What is Sharia opinion on offering the service of investment account that involves giving prizes to customers who win in draws, as per the following details:

- The account type is a savings account with quarterly profits.
- Prizes are offered quarterly as per specific criteria.
- The more the customer saves larger amounts in his account for long periods, the higher his opportunity to win and make more profits.
- The principles of Islamic Mudaraba are applied since the customer participates in both profits and losses.
- The customer may withdraw any amount from his account whenever the need arises and with no restrictions

❖ **The SSB's opinion:**

The SSB stated that prizes offered on investment

accounts, as detailed here, can be permitted on the basis of *ebdaa' Ebdaa'* (a deal run by a volunteer that scholars of Islamic jurisprudence have thus defined: sending money with a volunteer to trade in and all the profit goes to Rab al-Mal).

The Maliki school of thought (in Islamic jurisprudence) permits conditioning that all the profit generated from Mudaraba transaction should go to Rab al-Mal, or to Mudarib as per the famous juristic view of Malikis.

Evidence for that ruling can be inferred from the incident that took place between Abdullah and Ubaidullah, sons of Umar ibn ulal-Khattab- may Allah be pleased with all- when Abu-Musa Al-Ash'ari lent them money that he wanted to send to Umar ibnul-Khattab. He gave them that money to trade in so the profit would go to them and the capital would be given to Umar ibn ulal-Khattab. They did and paid the capital to Umar who commanded them to pay him both the capital and the profit. One of the attendants was of the opinion that it would better be treated as a Mudaraba transaction, and Umar approved that. So, he received the capital and half of the profit and gave the other half to his sons.

Based on the foregoing, the SSB deems it permissible to offer prizes through drawings on investment accounts where the account balance is fully invested. This is due to the fact that such prizes have a different juristic characterization from the practices of conventional banks done on the basis of interest loans. However, the Bank should comply with the following terms:

- 1) The investment account balance shall be fully invested and no part of such balance may be treated as a current

account, and the Bank shall permit cash withdrawals from such accounts without setting a minimum for such withdrawals.

- 2) Such prizes shall be in the form of a donation offered by the shareholders in the Bank.
- 3) Offering such prizes shall not be a condition for opening the aforesaid accounts.

The SSB approved this service provided that the said conditions are fulfilled.

(4)

Customers' Refund a portion of the Value of Their Purchases by Credit Cards

Question:

What is the Sharia opinion on the campaign conducted by the Bank to conduct a campaign where the customers can refund/redeem a portion of the value of their purchases by credit cards, provided that the refund/redemption is made in the following manner:

First: fixed redemption: upon using Warba credit cards, all customers shall receive a fixed refund/redemption of (1%) of the total value of their purchases.

Second: incentive redemptions:

In case purchases exceed 100 KWD per month, the customer shall receive an incentive redemption by

(4) Minutes No.: 11/2011

getting an opportunity to participate in a drawing where prizes amount to a 100% redemption (one opportunity per each 100 KWD).

Value of the fixed/ incentive refund redemption shall be deposited in the credit card account at the end of each month of the promotional campaign

❖ **The SSB's opinion:**

The SSB stated that it is permissible for all the customers to redeem portion of the value of their purchases by credit cards, provided that in case a customer's use of his credit card exceeds the stated value, such customer shall make an additional redemption by participating in a draw.

(5)

A Promotional Campaign for Salary Accounts

❖ **Question:**

What is Sharia opinion for running a campaign to encourage salaries transfer to the Bank? Such campaign involves granting customers the freedom to choose any of the following offers upon salary transfer:

1. An instant cash gift amounting to KD xxx ;
2. A benevolent loan "Qard Hasan" amounting to KD xxx
3. Expected returns at xxx% on investment agency deposits;

4. Credit cards without subscription fees
5. Personal finance up to KD xxx at four –year profit instead of five years;
6. Enjoying benefits and services given to Safwa customers:

❖ **The SSB's opinion:**

The SSB stated it is permissible to run a campaign to encourage salaries transfer to the Bank as per the stated details, while stressing that the profits of the investment agency deposit are expected returns, and without preconditioning customer's salary transfer to the Bank account whereby submitting a salary certificate shall be sufficient to be entitled to the said offers.

(6)

Deposit the salary in advance, equivalent to the amount available on the credit card

❖ **Question:**

Is it permissible for the bank to provide a service to the customer by depositing his salary in advance, according to the amount available on the credit card in return for a certain fee?

❖ **The SSB's opinion:**

The SSB accepted to deal with the offered product under

the following conditions:

- 1) The amount transferred from the credit card to the account must be in the same currency.
- 2) The service fee is fixed and in the actual cost.

(7)

Birthday Gift

❖ **Question:**

What is the Sharia opinion on bank giving gifts to its employees on birthdays?

❖ **The SSB's opinion:**

The SSB stated that it is permissible to give the employee a gift on his birthday, provided that there are no signs of celebration inside the bank, which may lead to some Sharia violations, but rather the gift is sent to the employee's home.

(8)

The requirement that the customer keep his salary for one year in the event that he receives a salary transfer gift

❖ **Question:**

If a bank offers its customer a gift - Qarrd hasan - on

(7) Minutes No.: 11/2011

(8) Minutes No.: 11/2011

the condition that the customer transfers his salary to the bank, is it permissible for the bank to stipulate that the customer not transfer his salary to another bank until after one year?

❖ **The SSB's opinion:**

The SSB stated that it has affirmed its following decision:

- 1- Decision No. (2012-4) stipulating that gifts should be from the shareholders' money and not the depositors' money.
- 2- Decision No. (2015-2) which prevented retention of an installment amount from the debt of Qarrd hasan that is presented when transferring a salary.
- 3- Decision No. (2015-3) which prevented the awarding of gifts from being conditional when opening an account.
- 4- Decision No. (2015-8) which prevented the requirement to transfer one salary from the customer due to his entitlement to salary transfer campaign offers.

Based on the previous decisions, SSB not approved the submitted proposal.

(9)

Points program



Question:

What is the opinion of Sharia on dealing with the points program in which each customer has an independent account to collect certain points? according to the following:

How to earn points:

The customer earns points for any transaction with the bank, such as using credit cards, depositing amounts in his accounts with the bank - current, savings, and deposit, or inviting his friends to open an account with the bank, winning competitions that the bank periodically holds, etc.

How to use points:

The bank enables the customer to use the points in several ways, such as using them to purchase some goods through the shops with which the bank cooperates through the QR code, and the customer can obtain discounts with these points, or miles with some airline companies, and he can also convert these points into cash in his account banking.

In case of death:

These points shall be as part the customer's account and his heirs take them according to the legal division.

Points validity:

These points contain an expiration date. If the date expires and the customer does not use the points, the bank will withdraw these points from his account, and the bank will remind the customer of the need to use these points before their expiry

 **The SSB's opinion:**

The SSB stated that this product is a gift promised by the bank to the customer, and there is no legal objection to deal with the product even if the promise is temporary, provided that the terms of gifts are adhered to in the previous decision of the SSB (3/3/2015), which stipulated the following:

- 1- The account balances be fully invested, without a part in the provision of the current account, with the bank's approval of customers' cash withdrawals from those accounts, without there being a minimum limit.
- 2- The prizes should be donated from the money of the bank's shareholders.
- 3- The awarding of prizes shall not be conditional within the aforementioned account opening conditions.

The SSB excluded the permissibility of giving gifts on the current account in this case; because it is affiliated with the group of things that benefit from collecting points.

(10)

Adding some conditions to Sunbula accounts

❖ Question:

What is the opinion of Sharia on adding the following conditions to Sunbula accounts?:

- 1- Doubling the opportunities in Sunbula account for employees of companies that transfer the salaries of their employees to Warba Bank.
- 2- The customer is not entitled to win in Sunbula withdraws if his account is closed before the date of the withdraw or on the day of the withdraw itself, and he is replaced by one of the reserve winners.
- 3- In the event that an amount was withdrawn from Al-Sunbula account in the first two days of depositing the cheque, the amount withdrawn and the number of opportunities shall be deducted from the previous balance of the customer's account before depositing the cheque.

❖ The SSB's opinion:

The SSB has stated the following:

- 1- With regard to the first condition for promoting corporate employees: (the SSB requests the Product Management to reconsider these offers and present them again to them, as this matter may lead to unequal opportunities among all account holders, which

- affects the bank's reputation)
- 2- With regard to the second condition: the SSB views reformulating the condition to become as follows: (For the customer to enter Sunbula withdraws, the customer must not close the account until the day of the withdraw)
 - 3- With regard to the third condition: the SSB believes that this condition is not approved because the customer has the authority to withdraw this amount, and therefore owns this amount in full, so it must be entered into the account prizes in full.

(11)

Buying Loyalty Program Points (Pocket)

❖ Question:

Is it possible to add a new service to the bank's mobile application that enables the customer to increase his points in the loyalty program (Pocket) by debiting from one of his bank accounts and adding the equivalent value in points (KD 1 is equal to xxx points)?

The customer can benefit from the points to purchase products and goods with a monetary value available in the loyalty program, such as the stores affiliated with Bokki Company. He can also purchase electronic coupons, subscribe to the Entertainer service, or buy miles from the Oasis Club of Kuwait Airways

❖ **The SSB's opinion:**

The SSB accepted to offer the point purchase service to the Bank's customers; Points are considered services and benefits that may be exchanged for money.

(12)

Electronic graphics for employee pictures

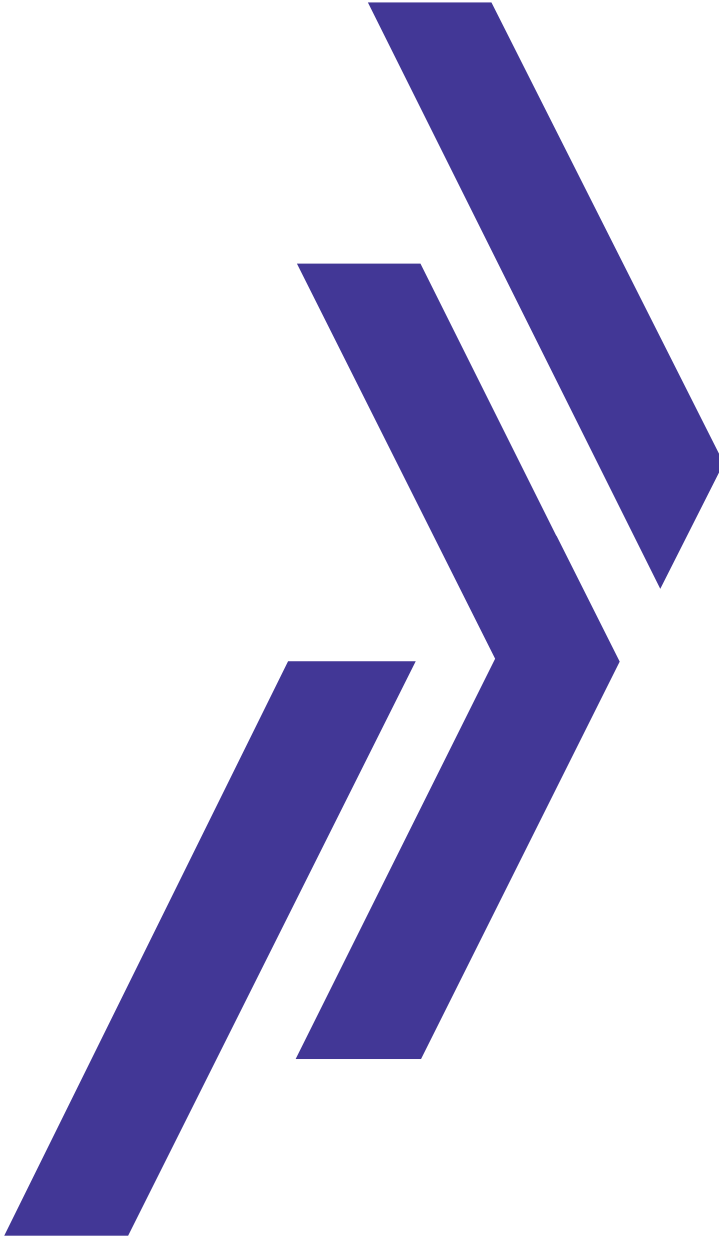
❖ **Question:**

What is the opinion of Sharia regarding drawing pictures of distinguished employees with electronic drawings in which the features and shape change, and what is intended to be made as a souvenir in the bank for distinguished employees?

❖ **The SSB's opinion:**

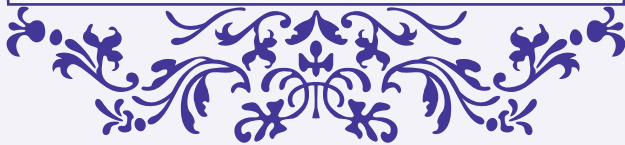
The SSB not approved the proposal of drawing the staff pictures; because it is not like photography, but it is like in the drawing of animate which are forbidden.







Chapter 12
Guarantees



(1)

Exchange of Deposits

❖ **Question:**

What is Sharia opinion on signing deposit exchange contracts with Islamic banks?

❖ **The SSB's opinion:**

The SSB stated that it has approved such contracts based on the Sharia Standard issued by the Accounting and Auditing Organization for Islamic Financial Institutions, which stipulates the following:

“To avoid future currency fluctuation, the institution may run loan exchange transactions in different currencies without taking or giving any interests and provided that the two loans are not linked”.

The basis for the permissibility of such transactions is the general need. The benefit generated from such transactions is not confined to the lending institution alone, but it is mutual benefit. The transaction does not stem from the same loan rather it is considered dealing with your counterparty. Thus the issue related to “lend me and I borrow you” is irrelevant

(1) Minutes No.: 11/2011

(2)

Commissions on Letters of Guarantee

❖ Question

What is Sharia opinion to receive a commission for issuing letters of guarantee?

❖ The SSB's opinion

The SSB stated that with regard to charging of fees in issuing letters of guarantee as follow:

- 1- If the said letters are not covered by the customer and the Bank conducted studies associated with the issuance of the letters upon the request and for the benefit of the customer, it is permissible to charge customer fees, whether a certain percentage or lump sum of the amount of the letter of guarantee in lieu of the services rendered by the Bank.
- 2- In case the letter is fully covered by the customer whereby the Bank is normally not required to conduct any studies, the Bank may charge only the actual cost of issuing the letter in a form of lump sum amount.

(3)

Obligatory Donation in Case of Payment Delay

❖ Question:

What is Sharia opinion to impose a penalty, to be spent on charity works, in case of payment delay in some contracts signed with foreign parties which have its own independent Sharia supervisory boards?

❖ The SSB's opinion:

The SSB stated that the general rule is that in case the debtor fails to fulfill payment obligations on the due date under Murabaha sale contract of commodities and metals, the creditor has the right to claim compensation for the actual damage incurred as a result of delay, excluding compensation for the cost of funds and alternative opportunities. In case the transaction is made with foreign banks that do not acknowledge the aforesaid principle and insist on imposing a delay fine on the party that fails to fulfill its payment obligations to be spent on charity works, the SSB permits imposing such fine on the said parties to preserve the Bank's rights and prevent such parties from breaching their obligations.

(4)

Imposing Late Payment Charge on Procrastinating Customers

❖ Question:

Is it allowed from Sharia point of view to impose a late payment charge on procrastinating customers, bearing in mind that the number of procrastinating customers is increasing due to the fact that the Bank does not impose late payment charge?

❖ The SSB's opinion:

The SSB stated that the Bank must find alternative solutions for the problem of procrastinating customers, conduct a detailed study on the rate of procrastination, state the adequate justifications for imposing such charges and submit the whole issue to the SSB for deliberation.

(5)

Conditioning POS Equipment Installation in a Credit Limit Agreement

❖ Question:

Is it allowed to put condition to install POS equipment in a credit limit agreement. This is to guarantee transfer of

(4) Minutes No.: 11/2011

(5) Minutes No.: 11/2011

cash flows directly to the customer's account at the Bank to pay his obligations:

❖ **The SSB's opinion:**

The SSB stated that it is permissible to put condition to install POS equipment in a credit limit agreement provided that the Bank shall incur the charges of such installation, being the main benefactor of such equipment. Charges may be obtained in case installation of POS equipment is implemented upon the request of the customer, without conditioning this in the credit limit agreement.

(6)

Sharia non-compliant securities as collateral in Return for obtaining financing

❖ **Question:**

What is Sharia opinion on a customer's collateral of Sharia non-compliant securities to the Bank in return for obtaining financing?

❖ **The SSB's opinion:**

The SSB stated that the general rule is that it is impermissible to take securities of conventional institutions as collateral. However, due to lack of guarantees and in certain circumstances, it may be permissible to use such securities as a guarantee on condition that such securities shall be held with a trustworthy third party

“custodian” to keep and sell them, in case the pledger breaches his obligations whereby the price is deposited at the Bank’s account. Such collateral shall be based on binding contracts that preserve the Bank’s right to collect its due debts. Evidence for this ruling can be inferred from the following incident of Umar ibn al-Khattab, PBUH, regarding the issue of Kharaj (Islamic tax) on alcohol, a trade practiced by Jews and Christians, when he said: “Let them undertake selling it (alcohol) and collect proceed from its price.” Any exceptional cases should be submitted to the Sharia Supervisory Department for Sharia consideration.

(7)

Failure to deliver the shipping documents to the customer

❖ **Question:**

What is the sharia opinion on not handing over the shipping documents to the customer until he has fulfilled his obligations to the bank?

❖ **The SSB’s opinion:**

The SSB stated that it is permissible to deal with the request based on the fact that the basis for Murabaha credits is that the goods are owned by the bank, and the customer has promised to buy the goods from the bank as soon as the goods arrive, and there is no obligation

(7) Minutes No.: 11/2011

for the bank to sell the goods to the customer. However, in this case, the bank will bear the risk of damage to the goods because they belong to it. In the event that the Murabaha contract is signed with the customer, the customer is given a counter-deed stating that the owner of the goods is the customer, and the goods were registered in the name of the bank with the agreement of the parties, with the bank not bearing any risks in the goods except in case of breaching and failure.

(8)

Payment of the debt of the deceased from his deposit with the bank

❖ **Question:**

A customer who owed indebtedness to the bank passed away, and he has a deposit with the bank that has not yet come due. Can the deposit be liquidated and the incurred debts paid off?

❖ **The SSB's opinion:**

The SSB accepted to carry out the liquidation of the deposit before its due date and depositing it in the indebtedness account to pay off the remainder of the debt, due to the expiry of the debt due to the death of the debtor. The bank has the right to pay from its assets with it, and in view of the terms of the deposit, it is considered a mortgage. The bank can fulfill its rights

from the deposit by liquidating it, and it has priority over all other creditors.

(9)

Excluding some clients from debt insurance

❖ **Question:**

Is it permissible to exclude some segments of customers in financing from debt insurance, as the cost of insurance is high

❖ **The SSB's opinion:**

The SSB accepted to exclude some segments of debt insurance, and the matter of determining them is left to the concerned department as it deems appropriate, noting that the insurance shall be Takaful.

(10)

Commercial license mortgage

❖ **Question:**

What is the sharia opinion on mortgaging a commercial license, which, according to the legal statement, is a mortgaging of the material and intangible assets of the company, including the trade name, goodwill, and store, and this mortgage is carried out according to a

(9) Minutes No.: 11/2011

(10) Minutes No.: 11/2011

mortgage contract that includes indebtedness. It must be documented at Ministry of Justice, then registered at Ministry of Commerce and marked on the license in case of renewal. Should it be sold at auction, like any mortgaged property, and it is flawed by the multiplicity and difficulty of the procedures, in addition to the inability to properly assess the mortgaged property and expose the value to collapse, as the strength of the company is linked to its commercial reputation and success in the market.

❖ **The SSB's opinion:**

The SSB stated that there is nothing in sharia with mortgaging the commercial license, because it is a kind of mortgaging of rights, and rights are considered money, provided that the activity of the mortgaged license is legally permissible so that the bank can sell it if the customer is unable to pay the debt.

(11)

Granting the bank the exclusive usufruct right in properties of a charitable association

❖ **Question:**

What is the sharia option on signing a memorandum of understanding with a charitable association, according to which the bank is granted the exclusive right of usufruct in charitable properties?

(11) Minutes No.: 11/2011

❖ **The SSB's opinion:**

The SSB accepted to deal with the aforementioned memorandum of understanding, provided that the following notes shall be amended:

- Adding a paragraph related to the early termination of any of the usufruct contracts due to the withdrawal of the site by state property, and compensating the second party for the actual damages resulting from this procedure.

(12)

Issuing letters of guarantee with conventional banks in some cases

❖ **Question:**

There are some clients who participate in projects in the Gulf countries, and sometimes these projects are governmental and the client needs a letter of guarantee issued by a local bank.

It is currently in practice that Warba Bank issues a letter of guarantee to the Gulf Bank, and this local bank issues a letter of guarantee to the customer so that he can participate in government projects.

When dealing in such a transaction with banks that operate in accordance with the provisions of Islamic Sharia, the client is exposed to delay, so that he sometimes misses the time to participate in this project. This delay is caused

by the fact that banks that operate in accordance with the provisions of Islamic Sharia prohibit taking fees on a letter of guarantee, except for what corresponds to the actual works. This makes the bank not give more attention to letters of guarantee, so that a single transaction may take nearly two weeks, which misses the customer's opportunity to participate in some government projects.

In conventional banks, the customer can issue the letter of guarantee on the same day, due to the high fees that the conventional bank takes from the customer, and the customer has no objection to paying these fees in return for the speedy completion of the transaction.

What is the sharia opinion on dealing with a conventional bank in countries where there are banks operating in accordance with the provisions of Islamic Sharia in such a case?

The SSB's opinion:

The SSB stated that there is no objection to issuing a letter of guarantee in favor of a conventional bank in such cases, with the following conditions:

- 1- The subject matter of the letter of guarantee must be acceptable in Sharia.
- 2- That the letter of guarantee be issued for the principal of the debt only, does not contain delay penalty or usurious interest.
- 3- The letter of guarantee shall be presented to the Sharia Department before issuing it case by case to ensure that it is free of interest and delay penalties.

(13)

Letters of guarantee and commission due date❖ **Question:**

- a. Is the letter of guarantee commission calculated from the date of issuance of the letter of guarantee or from the validity date of the letter of guarantee?
- b. Sometimes the guarantee is on a previous date, so is the commission calculated on an earlier date or from the actual issuance of the letter of guarantee?

❖ **The SSB's opinion:**

The SSB states that since the bank takes a fee for the credit studies that it conducts for the benefit of the customer, there is no nothing with issuing a letter of guarantee with a previous date and taking the amount, because the fee is in return for the credit study and not for the letter of guarantee, so it does not matter that the letter of guarantee fee is dated earlier or later than the release date.

(14)

Conducting Murabaha before the letter of guarantee to cover it and Conducting another Murabaha for the same customer after the letter of guarantee

❖ **Question:**

Is it permissible to issue a letter of guarantee according to the following procedures?:

- The bank conducts a Murabaha transaction in favor of the customer and deposits the balance due to the customer in the customer's account upon his request.
- This amount is used to issue a covered letter of guarantee, and the bank takes its fees as an amount of the balance of the letter of guarantee.
- The bank extends the Murabaha to the customer by making a new Murabaha in which he pays the first Murabaha, and the profit of the new Murabaha is added to it

❖ **The SSB's opinion:**

The SSB stated that there is nothing with taking fees of the balance of the covered letter of guarantee because the bank is the agent for the customer in this case and there is nothing to do with the Murabaha contract that was concluded to cover the letter of guarantee by issuance. To restructure the Murabaha, a new Murabaha is required and the previous Murabaha is closed with terms and conditions previously approved by the SSB.

(15)

A letter of documentary credit containing a late payment penalty

❖ Question:

The management of the bank inquired about the sharia opinion on working with a documentary credit that differs from the documentary credit known in commercial norms as follows:

- 1) It does not have an expiration date.
- 2) No documents are needed for liquidation, just the order from the beneficiary.
- 3) It contains a delay penalty and usurious interest.
- 4) It is not adjustable because it is with Saudi Aramco.

The management inquired about the possibility of obliging the bank to pay the full amount directly upon claim, as happened with some government company contracts.

It stated that the bank can pay the beneficiary as soon as the claim is made and disclose the account of its customer so that the bank does not fall into a legal prohibition, such as calculating usurious interest on the value of the documentary credit, or calculating a delay penalty in addition to the interest.

The management indicated that the usurious interest is stipulated on the date of the customer's default, not

the date of the claim, therefore if the claim provides two working days after the customer's delay, for example, interest will be calculated on these two days, and the bank will not be able to exceed it with the guarantee and will be forced to pay it, even if the amount is paid on the day of the claim and is not late.

Legal opinion:

With regard to the document attached to the letter below, please be kindly informed that the Legal Department has no notes on the format of the book, and has no objection to signing, except that it notes the following:

- The Kuwaiti law does not regulate this type of documentary credits, and the regulation is only for opening the credit, and the documentary credit (which requires an agreement between the applicant and the beneficiary in the manner of disbursement and entitlement and the obligation of the bank to adhere to this agreement), and the last is the letter of guarantee which is the payment of an amount at the request of the beneficiary . In fact, I did not know the law that regulates this type of documentary credits, and how to disburse it in the event that the beneficiary requests the amounts. Because it is clear that this required credit is more like its provisions for a letter of guarantee than for a documentary credit.
- The annex contained an interest agreement in the event of the bank's delay in payment, which is something that I kindly ask you to present to the Sharia Department to view it and express a Sharia opinion on this contract

❖ **The SSB's opinion:**

The SSB stated that it is not approved to act on the attached form; because simply entering into a contract that contains a condition contrary to the provisions of Islamic sharia is forbidden, and because the contract is an investment opportunity and the bank has no need to conclude it.

As for the exception contained in some contracts, it is for other reasons, such as if the bank needs this contract and there is no other company that provides such a service, or if the contract is with a government agency, in which it is difficult to amend the contracts due to the requirement of the approvals of multiple government agencies. It is understood that the government agencies not to charge interest from an applied point of view except in rare cases, and the taking of financial fines by government agencies comes out as a monetary penalty, and it is permissible for the guardian to do so.

(16)

Mortgage of the investment portfolio

❖ **Question:**

What is the Sharia opinion on financing a customer with Tawarruq for the purpose of investing in securities while mortgaging a portfolio featured by the following?:

1- The portfolio contains securities in the Kuwait market

and the markets of the Gulf Cooperation Council countries.

- 2- This portfolio is managed by a custodian - an external third party -.
- 3- The nature of investment ranges between speculation and investment - part of it is liquidated if its price increases at any time, and part of it is long-term.
- 4- The client does not own any other unencumbered assets

❖ **The SSB's opinion:**

The SSB accepted to mortgage the portfolio in principle, based on the saying of the Malikis in the permissibility of mortgaging the unknown; The purpose of the mortgage is to collect the right from the debtor. If the creditor is satisfied with this mortgage, he has waived part of his right represented in the balance of the outstanding debt.

(17)

Late payment fees for corporate clients

❖ **Question:**

The bank's management presented the controls for delay fees and how to pay them as follows:

First: Definition: A fee applied on overdue amounts to procrastinating Corporate Banking Group customers solely to ensure timely payment of dues.

Second: Corporate finance portfolio default ratio:

- xxx% on 30/9/2021 as indicated below:
- The total outstanding amounts are KD xxx.
- The total financing portfolio is KD xxx.
- The default rate is xxx%.

Third: Justifications for the proposed fee:

It is noted that some customers take advantage of the fact that Islamic banks do not collect any profits after the expiration of the Murabaha period, therefore they do not rush to pay the overdue amounts owed by them.

Fourth: Fee application:

- Fees will be applied by the Corporate Banking Group.
- Not for all default customers, but for procrastinators only.

Fifth: Suggested fee:

xxx KD per KD xxx per month.

Sixth: Fee value in other banks:

Kuwait Finance House calculates the same proposed fee.

Seventh: Implementation mechanism:

When the customer delays paying the dues, Warba Bank deducts the late payment fees from the customer's account, and transfers them to the donations account with the bank, provided that the bank donates all the amounts collected from this fee to charitable organizations, under the supervision of the Sharia Department and under the guidance of the Sharia Supervisory Board and the Board of Directors .

Eighth: Guidelines for working with fees set by the Corporate Finance Department:

- Only applicable to Trade Finance customers of the Corporate Banking Group.
- It does not apply to an insolvent person or company.
- It is calculated on the client, if applied, from his default in payment until the time of payment or the transfer of the client's file to the legal department to take legal action against him.
- The customer is given a period of two weeks before applying the commission to him, so that he can be contacted to pay the dues within the mentioned period.
- Applied to procrastinating customers only, according to the vision of the Corporate Banking Group.
- Applies to amounts due that exceed KD xxx or its equivalent in other currencies.
- The aforementioned fee amounts are spent on charitable causes and under the supervision of the Bank's Sharia Supervisory Board



The SSB's opinion:

The SSB stated that the customer must donate in accordance with the controls set by the management, taking into account the following:

- 1- The amounts collected must be in a special account separate from the bank's base, so that the bank will never benefit from it.

- 2- The amounts collected in this account must be disbursed as soon as possible, and under the supervision of the Sharia Supervisory Board.
- 3- The aforementioned grace period shall be increased from two weeks to one month.
- 4- All controls set by the Corporate Finance Department above must be observed.

In this regard, the SSB consulted Murabaha standard (8) of the Sharia standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions, which stipulated the following:

(5/6 the Murabaha contract may stipulated that of the buyer customer must pay an amount or a percentage of the debt on the basis of his obligation to give it in charity in case he is late in paying the installments on the prescribed dates, provided that it is spent in charitable causes with the knowledge of the Sharia Supervisory Board of the institution, and does not benefit from it Enterprise).

The criteria proof is the saying of Abi Abdullah bin Nafeh and Muhammad bin Ibrahim bin Dinar, one of the Maliki jurists.

(18)

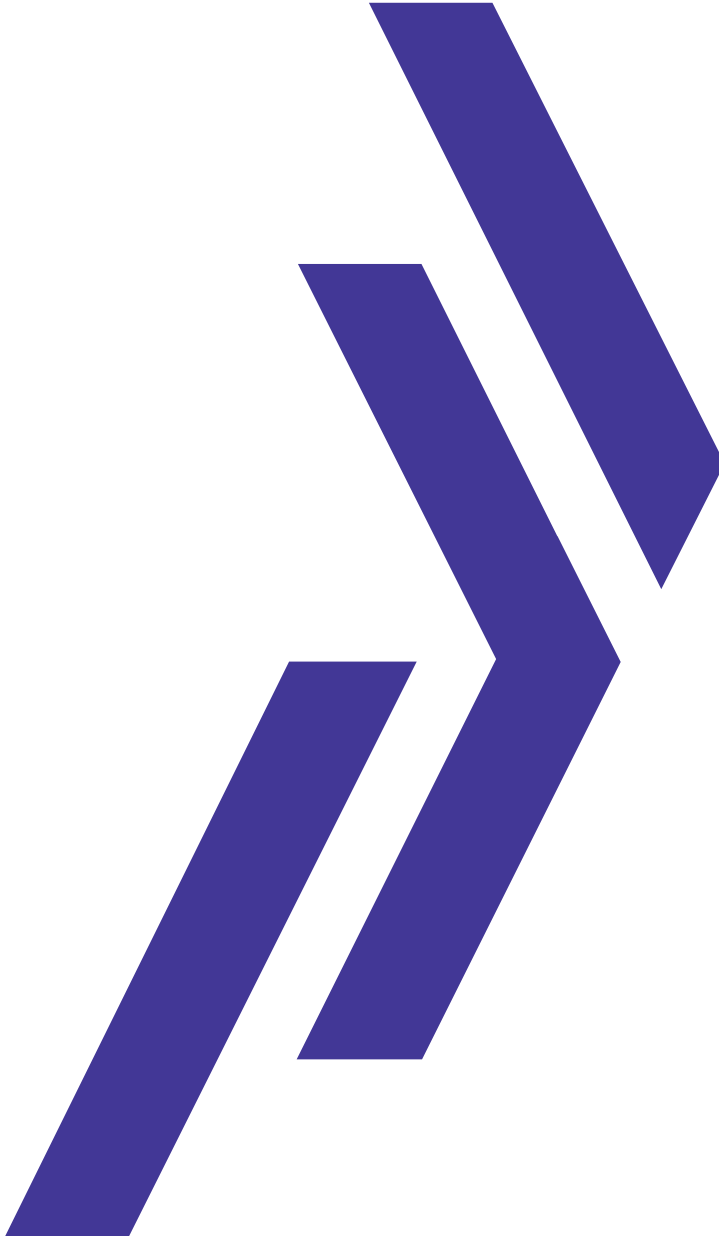
Mortgage of a hotel that has a place to serve liquor❖ **Question:**

What is the Sharia opinion on accepting a mortgage from a debtor customer, which is represented by a hotel in another country that sells liquor? .. If the real estate contains activities that are prohibited by Sharia, and they are purely forbidden, such as (discos, bars, gambling halls, etc.), then it is not permissible to invest in them).

❖ **The SSB's opinion:**

The SSB accepted for the debtor customer mortgaging a hotel that sells alcohol thru a third party for the bank, provided that the third party undertakes to sell the mortgaged asset for the benefit of the customer in the event that he fails to pay the debt. This is based on what Omar Ibn Al-Khattab - may God be pleased with him - said about wine: "Tell them to sell it and take its price".

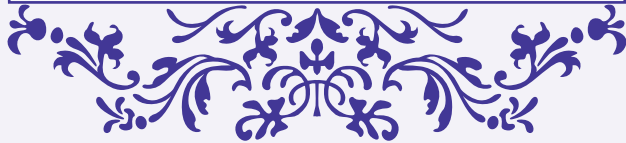






Chapter 13

Administrative Contracts



(1)

Contractor Agreement❖ **Question:**

What is Sharia opinion on dealing under a Contracting Agreement?

❖ **The SSB's opinion:**

The SSB accepted the contract, provided that the title of the contract shall be changed from a Contracting Agreement to a Parallel Istisna'a Agreement.

The SSB also states that if the Bank wishes to use the contract as a Contractor Agreement, it shall amend the fourth item, so that the Bank will bear the materials in the Contractor Agreement

(2)

Law firm contract❖ **Question**

What is Sharia opinion on signing a contract with a law firm to carry out legal tasks related to the bank's activities and operations, and to collect the bank's debts, provided that the bank bears all litigation and collection expenses resulting from its claim to the bank's rights, and the law firm is entitled to a lump sum annually in addition to xxx% of the value of amounts collected amicably without

(1) Minutes No.: 11/2011

(2) Minutes No.: 11/2011

completing the lawsuit, with a minimum of xxx KD, and xxx% of collected amounts through the judiciary?.

❖ **The SSB's opinion**

The SSB accepted to conclude the contract; Whereas the law firm is agent with a fee on behalf of the bank, and the fee is set at a lump sum amount agreed upon annually, and the percentage due to the law firm in excess of the fee is considered as consideration for good performance in collecting the bank's debt, and the percentage will come to knowledge, there is no uncertainty in the fee.

(3)

Maintenance and spare parts contract

❖ **Question:**

What is Sharia opinion on working with a maintenance contract that includes periodic maintenance of money-counting machines in addition to spare parts included in the contract, since it is difficult to separate the spare parts in a separate contract?

❖ **The SSB's opinion:**

The SSB stated that the maintenance contract is a compound contract that combines the lease and Istisna'a contracts, therefore it is an innovative contract to which neither the provisions of the lease contract nor the provisions of the Istisna' contract can be fully applied.

(3) Minutes No.: 11/2011

The main contract in the maintenance contract is the preventive works, which the maintainer is committed to periodically and continuously throughout the term of the contract. Spare parts shall be part of to this contract, otherwise the maintenance contract becomes a sale contract and is not intended by the contracting parties. The maintenance intended in this contract is to update the software of the machine, and the spare parts are part of this contract, therefore it is accepted the maintenance contract contains spare parts.

(4)

Employment contracts

❖ **Question:**

What is Sharia opinion on dealing with employment contracts that the bank will conclude with its employees?

❖ **The SSB's opinion:**

The SSB accepted to deal with the contract after amending the following notes:

1. The first item: Adding the phrase “monthly fee” after the phrase “indefinite contract” in the two contracts, and the SSB believe that adding this phrase indicates that the contract is a goodwill contract between the two parties, so it leads to fixed period.
2. The second item: cancelling the phrase “Due to the bank was issuing a regulation for human resources,

(4) Minutes No.: 11/2011

which leads to making adjustments to the wage structure, therefore, you will be informed of any amendments to the above-mentioned salary and any benefits that may be decided in accordance with its regulations approved by the bank's board of directors."

3. The fifteenth item: the phrase "during working hours" shall be added.

(5)

Institute of Banking Studies fees

❖ **Question:**

What is the Sharia opinion on the bank's contribution to paying the annual fees of the Institute of Banking Studies?

❖ **The SSB's opinion:**

The SSB stated that the amount of the bank's contribution to the aforementioned institute should not be spent on training courses that are inconsistent with the provisions of Sharia and its promotion. The SSB proposes to write a unified letter to be signed by all local Islamic banks related to this matter, provided that it is directed to the management of the institute to do the necessary.

(6)

A reviewing and auditing contract with a company that guarantees illegitimate obligations

❖ **Question:**

What is the Sharia opinion on dealing with a review and audit contract with a company that includes illegitimate obligations that the company refused to amend?

❖ **The SSB's opinion:**

The SSB accepted to deal after the SSB heard the management's statement that the other party refused to make the amendments previously requested by the authority to the aforementioned agreement. Due to the need for the bank to sign the aforementioned agreement for the purposes of issuing the annual financial statements report, in addition to the fact that the agreement is of a technical nature.

(7)

Not determining the maintenance period (administrative contracts)❖ **Question:**

Is it permissible to sign a contract that does not stipulate a specific maintenance period?

❖ **The SSB's opinion:**

The SSB stated that the maintenance period should be stipulated in the contract; So as not to lead to uncertainty.

(8)

Sharia opinion on concluding standard contracts that the state obliges the bank to sign with its employees❖ **Question:**

What is the Sharia opinion on working in the form of employment contract proposed by some government oversight agencies? bearing in mind that the clauses included in it are guiding and not obligatory, based on the issuance of previous rulings issued by the Kuwaiti courts stating that the contract for the bank is the main contract and the government agency's contract is not considered.

(7) Minutes No.: 11/2011

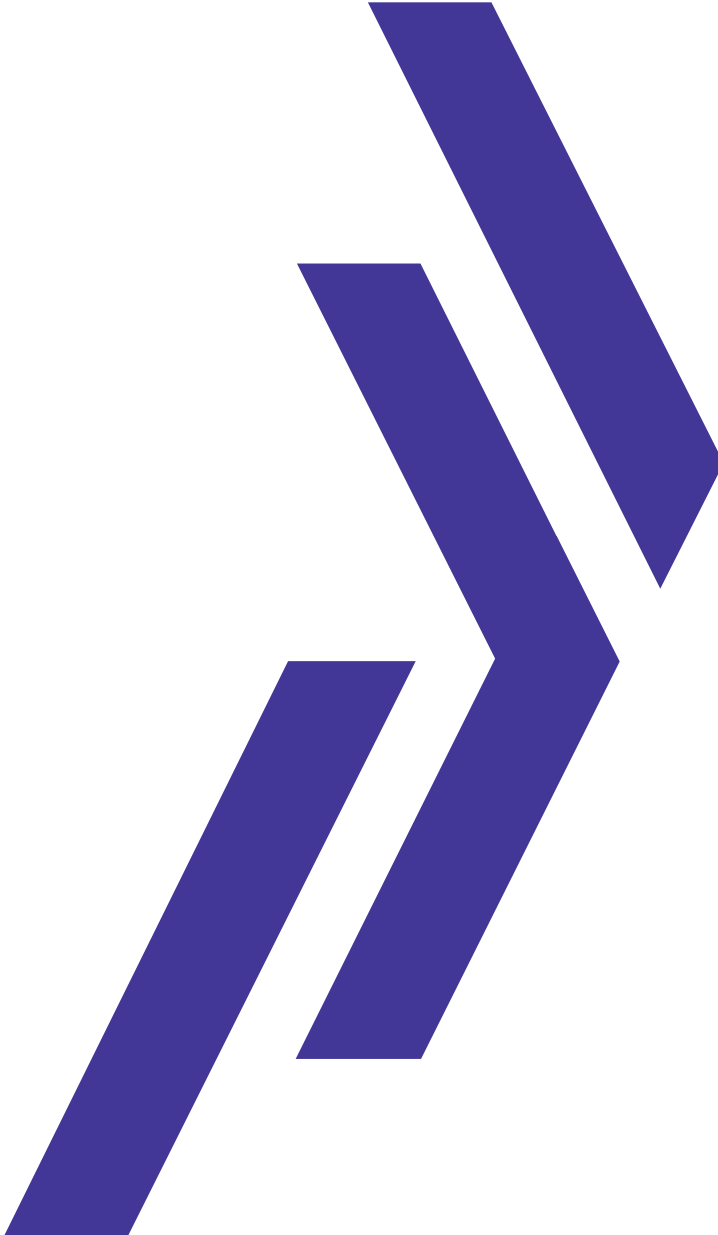
(8) Minutes No.: 11/2011

- The bank contract includes more and better additional features than the government agency contract, the employee usually does not need it.
- The contract of the government agency is a guiding contract that cannot be radically modified

❖ **The SSB's opinion:**

The SSB stated that the approved employment contract shall be the reference in the terms and conditions in the contract with the employee, and it is accepted to conclude a contract (work permit) with the employee because it is a guiding contract, which the contract of the bank, this because Manpower Department application in the country.







Chapter 14

Qard Hasan (interest-free Loan)



(1)

Lending customers in return for salary transfer❖ **Question:**

What is Sharia opinion that the Bank grants benevolent loan to customers who transfer their salaries to the bank?

❖ **The SSB's opinion:**

The SSB accepted for the Bank to provide benevolent loan to customers who transfer their salaries, provided that such salaries are transferred to fully investment accounts. This is in order to avoid the suspicion of a loan that brings a benefit

(2)

The bank's commitment to pay on behalf of the customer❖ **Question**

What is the Sharia opinion on the bank to disclose the customer's account and consider him a debtor of the amount that the bank paid in such cases until he paid off this debt?

Due to the existence of contractual cases in which the bank shall pay amounts to other parties on behalf of the customer in the event that these amounts are not available in the customer's account, such as the case of the bank

(1) Minutes No.: 11/2011

(2) Minutes No.: 11/2011

as a guarantor paying the value of a letter of guarantee to the beneficiary at the request of the beneficiary, or the bank, as a guarantor, pays the value of a documentary credit to the issuing bank, as payment is due.

❖ **The SSB's opinion**

The SSB has accepted for the bank to pay an amount on behalf of its customer in the cases mentioned in the question, as the bank is considered to have loaned the customer a benevolent loan, accordingly it is not permissible to exceed the amount that the bank paid on behalf of the customer.

(3)

" Jam3eya " Product

❖ **Question:**

What is the Sharia opinion on dealing with "Jam3eya" product, a new product in which the bank's work is summarized as follows?:

- 1- (Jam3eya) product inspired by the idea of takaful monetary associations, in which participants agree to pay an amount of KD 100, for example, for 12 months, and the number of participants shall be 12 persons, and each person takes an amount of KD 1200 each month.
- 2- The bank will create an electronic application for this product, so that whoever wants to establish an

association can establish it and invite whoever wants to.

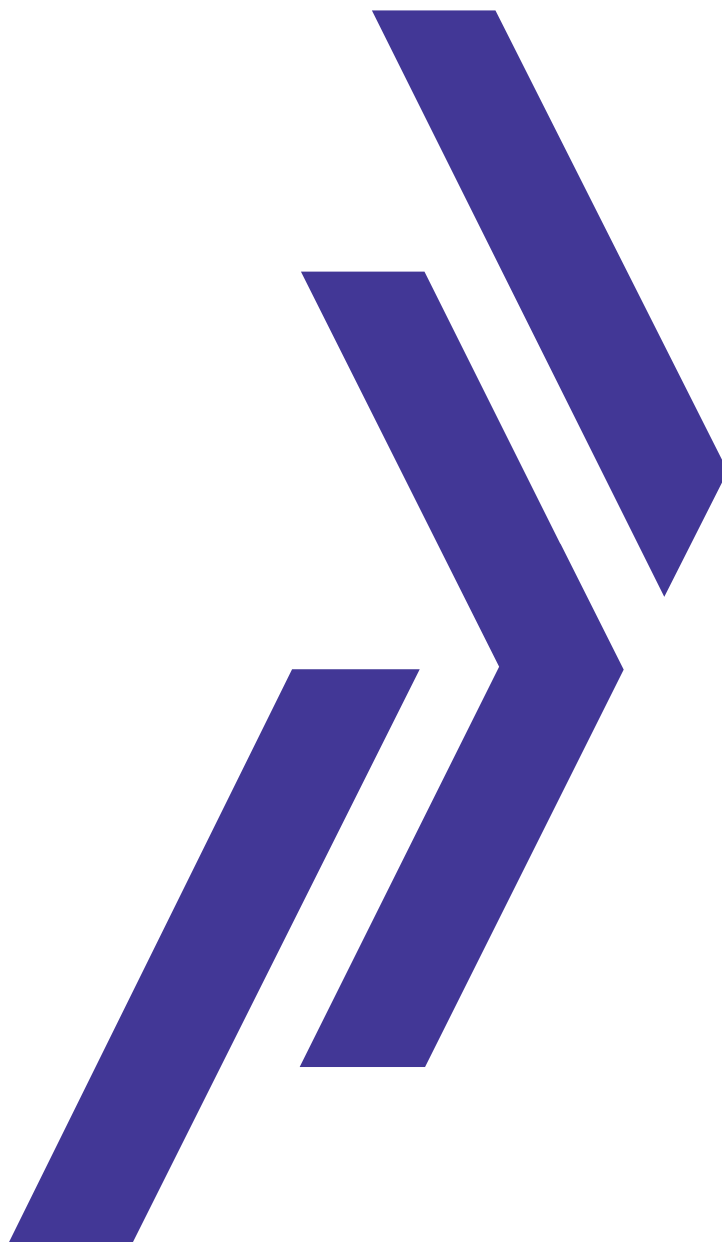
- 3- Participants shall record their required data.
- 4- The program sends a link to each participant to pay the association's subscription every month. Thereafter, it transfers it to the account of those entitled to it according to the arrangement set by the association's manager.
- 5- The bank does not take any fees for the application and does not bear any legal responsibility towards any of the participants in the application.
- 6- In the event that any of the members of the association fails to pay, the bank has no responsibility from a legal point of view, and the bank does not guarantee or bear this breach, as this is the responsibility of the association manager, not the bank

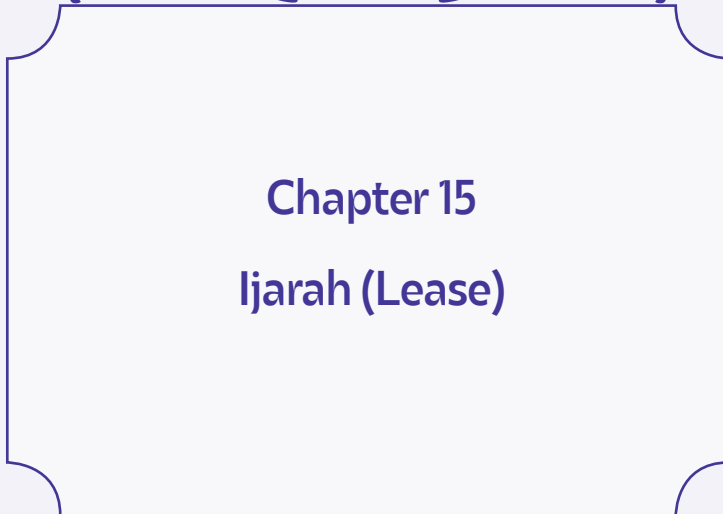


The SSB's opinion:

The SSB accepted to work with this product; because its aim is takaful between the subscribers, but not (lend me and I will lend you).

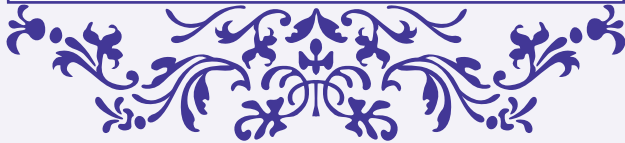






Chapter 15

Ijarah (Lease)



(1)

Payment of key-money to lease sites for Bank branches❖ **Question:**

What is Sharia opinion on paying an amount of money, conventionally called key money, in exchange for leasing sites to be used as Bank branches? given that such money shall be paid for the owners of such sites or the beneficiary owners at the time

❖ **The SSB's opinion:**

The SSB accepted for the Bank to pay key money for leasing such sites. The following is the decision of the Islamic Fiqh Academy concerning the rule of key money:

First: There are four forms for key money contracts:

- 1) The agreement is between the property owner and the tenant at the contract ; commencement.
- 2) The agreement is between the tenant and the property owner during the lease contract period or after its completion.
- 3) The agreement is between the tenant and a new tenant during the lease contract period or after its completion.
- 4) The agreement is between the new tenant and both the property owner and the first tenant either before or after the period.

Second: If the property owner and the tenant agree that the latter pays the former a lump sum plus the periodic

(1) Minutes No.: 11/2011

rent—called in some countries key money—, there is no Sharia restriction as long as it is considered part of the rent. In case the contract is terminated, the rules applied to a rent must apply to the key money.

Third: The property owner and the tenant may agree that during the rent the former can pay the latter an amount of money in return for the latter's waiving his rights to remain to the end of the contract. This agreement is Sharia permissible from Sharia point of view, as the money constitutes a compensation for the tenant who willingly gave up his rights in the property. However, if the period of the lease expires and the contract is not renewed—explicitly or implicitly by an automatic renewal mechanism, no key money can be paid to the tenant as the property owner has the right to claim his property after the elapse of the tenant right to the property.

Fourth: The first tenant may agree with the new tenant that, during the rent period, the new tenant can give up the rest of the contract time in return of an amount of money, other than the rent. Such an agreement is allowed from Sharia permissible point of view, provided that it has to observing observe the terms of the contract signed between the property owner and the first tenant, and to observing observe the provisions of the binding laws without prejudice to the Sharia opinions.

In the case of a long term lease, as opposed to a rent as governed by some laws, it is not permissible for the tenant to rent the property to someone else, nor to take key money except under the consent of the property owner.

If the first tenant agrees with the new tenant after the expiration of the period, then the key money is not

permissible because of the expiration of the first tenant's right to use the property

(2)

Car rent contract

❖ Question

What is Sharia opinion on making an agreement with a local company for car rent.

❖ The SSB's opinion

The SSB accepted to deal with the said agreement, and concluded that the following amendments should be made:

1. Amending the two articles (fifth and -sixth) as follows. Remove "the lessor has the right to ask the lessee to pay the entire contract value if the lessee terminates the contract or violates its terms" and add instead, "the lessor has the right to get from the lessee the rent of two months, for example, as a compensation for terminating the contract." The rationale here is that this compensation is considered a sort of compromise for the two parties, and this an accepted norm.
2. Adding the phrase "so long as it does not contradict the rulings of the Islamic Sharia", to the 12th article.

(3)

Variable-rate lease contract❖ **Question:**

What is Sharia opinion on concluding a long term lease contract with the customer (e.g. for five years), where the lease rental consists of the discount rate declared by the Central Bank plus a fixed profit margin (currently applicable), with a condition that there is a ceiling for the discount rate, whereby the Bank can ask to settle the lease contract if the discount price has reached certain rate, either by sale or by changing the components of the lease rental?

❖ **The SSB's opinion:**

The SSB stated that if the lease value is fixed and the duration of the lease is long, the Bank can agree to review the rent annually- for example, in case the declared discount rate by The Central Bank increases above or falls below a certain limit. This must be stated at the start of the lease contract. Moreover, as the increase of the discount rate by the Central Bank is an exceptional and rare event, it can be agreed that in such case the contract can be terminated.

(4)

Financing a customer by purchasing a property, from a third party, then renting it to the customer**❖ Question:**

What are the Sharia steps for financing a customer through buying a property leased by another financing institution and renting it to the customer?

❖ The SSB's opinion:

The SSB stated that the process that can be followed in this case should be one of the following two ways:

- Warba Bank can either Purchase the property from its current owner and then rent it to the customer under lease ending with ownership "Ijara Montahia BitTamlik", or
- The Bank buys the property from the customer under a sub-contract after the latter has bought it from its owner, in which case the Bank hands the customer the price, which he uses to pay his dues to the financing institution and retain the rest, if any.

(5)

Collecting evaluation amounts and insurance policies from clients who rent the bank's property

❖ Question:

Is it permissible to take evaluation fee and rental property insurance policy fees from clients' accounts in the form of a lump sum fee, to be determined in a separate letter, a letter of renewal of a lease contract signed by the client at the beginning of the rental period?

❖ The SSB's opinion:

The SSB accepted to deal with the proposed lease contract renewal letter, which stipulates that the client shall pay a lump sum fee, deducted from the client's account with the bank, including the annual insurance and evaluation fees on the leased property for the next rental period. In the event that the bank deducts these fees from the customer's account directly for the previous rental period, it states that this fee has been paid as an advance fee.

(6)

Sharia opinion on buying a building then renting it to the seller for using in permissible activity

❖ **Question:**

What is the Sharia opinion on buying a building for an employment company in the United States, then assigning a company with a special purpose to lease the property to the owner on lease-to-own?

❖ **The SSB's opinion:**

The SSB accepted the transaction, the partnership contract between Warba Bank and the company, the owner the property, shall be submitted in addition to the lease contract ending with ownership that the special purpose company will sign with the property owner.

(7)

Leasing to a company engaged in Forex business

❖ **Question:**

What is the Sharia opinion on leasing a unit owned by Warba Bank to a company engaged in Forex?

❖ **The SSB's opinion:**

The SSB stated that it has not approved leasing the unit

(6) Minutes No.: 11/2011

(7) Minutes No.: 11/2011

to this company, the company's activity includes legal violations such as selling currencies on credit and other violations.

(8)

Fees deduction in case of delay in work

❖ **Question:**

What is the Sharia opinion on signing a contract with a postal company to provide workers and cars to transport mail for a specified amount to provide internal and external mail service, and the contract stipulates that there is a discount for the customer in the event that the work fails for any reason?

❖ **The SSB's opinion:**

The SSB accepted this contract, because it is a lease contract and it is accepted to deduct amount in case of delay in completing the work; as the amount is not for late payment or for late payment of financial obligations, but rather for the services provided to the bank.

(9)

Linking the fee to the discount rate specified by the Central Bank

❖ **Question:**

Is it permissible for the client to charge the evaluation and insurance fees, or to indicate that they are included in the rent for the first rental period?

Is it permissible to link the fee to the discount rate specified by the Central Bank?

❖ **The SSB's opinion:**

The SSB stated that it is permissible to take into account the costs of valuation and insurance in the rent for the first rental period, provided that the reference to their inclusion in the rent shall be deleted.

A clause may be added stating that the rent is adjusted by increase or decrease equivalent to any change that occurs in the discount rate determined by the announced Central Bank, and this amendment shall be in the rent in the subsequent rental periods, because the benefit in the lease contract is generated and it is accepted to amend the rent later.

(10)

Sharia opinion on granting the customer a Tawarruq to pay rent installments

❖ Question:

Is it permissible to finance customers with Tawarruq to pay the leasing installments for cars in an operating lease or a lease-to-own, since the application of leasing involves some difficulties for the bank, such as:

1. Many employees need to follow up on cars and transactions, and this is not possible at the present time for the expected small number of customers.
2. It is difficult to track traffic violations if the car is registered in the name of the bank.
3. The difficulty of registering the car in the name of a third party due to the high risk on the bank in these cases.

❖ The SSB's opinion:

The SSB stated that it has not approved the proposal submitted by the concerned department with alternatives to financing clients by Ijara. It asked the concerned department to provide a vision about the procedures for financing clients in this case through operational or financing leases, and to execute appropriate contracts for them, to deal with lease contracts instead of tawarruq.

(11)

A lease-to-own with the registration of the property in the name of the client and taking a real estate❖ **Question:**

What is the Sharia opinion on financing a property by lease-to-own, while registering the property in the name of the customer, and then taking a real estate wakala whereby the bank authorizes the entire disposal of the property, in order to avoid charging the customer the property registration fees twice and for other accounting reasons?

❖ **The SSB's opinion:**

The SSB accepted this proposal, provided that the final version of the lease contract was presented after adding the real estate Wakala clause to the SSB.

(12)

A lease-to-own contract with the promise of renting and buying❖ **Question:**

What is the Sharia opinion on a lease-to-own with a binding promise from the customer to rent and buy the property?

(11) Minutes No.: 11/2011

(12) Minutes No.: 11/2011

Is it permissible to renew the lease contract unilaterally by one of the parties?

Is it permissible to charge the customer the full price of the property in the event that his promise to buy is fulfilled?

❖ **The SSB's opinion:**

The SSB stated that the two promises must be separate, so the first promise is to rent the property and the second to buy it, and it is not valid to renew the contract unilaterally with one of the parties. If the customer is obligated to fulfill his promise to buy, then he must pay the rent due until the day of sale and not until the price is paid.

(13)

Lease contract with a deposit

❖ **Question:**

What is the Sharia opinion on renting a real estate space with a deposit amount, an amount paid in advance, provided that this guarantee is a deposit, and in the event of termination, the deposit amount belongs to the owner of the property?

❖ **The SSB's opinion:**

The SSB stated that if the termination is done by the consent of the parties, then the compensation will be in the amount of the actual damages only, and in the event

that the contract is not concluded, the deposit amount will be deducted because it is a deposit.

(14)

Mortgage before the real estate Wakala

❖ Question:

Is it permissible, in a lease-to-own contract, to register the property in the name of the customer and then create a real estate wakala that gives the bank full freedom to dispose of the property without enabling the customer to dispose of it until the wakala is terminated? The benefit of this is not to pay registration fees twice and other technical and accounting matters. Is it permissible to mortgage the same property from the client from the beginning of the contract until the real estate wakala? Because the real estate wakala procedures may take from one to two working days?

❖ The SSB's opinion:

The SSB accepted to deal with a real estate wakala. As for the mortgage to solve the expected risks, the SSB expressed its reservations about the proposed solution, as the client in the lease-to-own contract is not the owner, but rather the tenant, so how does he dispose of the real estate and mortgage it?! This proposal perpetuates the misconception of making the client as the owner of the property. It is true that the bank is the real owner of the

property, but it was resorted to registering the property in the name of the client to avoid incurring real estate registration fees twice, so the client may not dispose of what he does not own, and the SSB suggested taking a promissory note from the client or taking any other guarantees to avoid the risk that existed before the establishment of the real estate wakala. It also stated that in some cases the real estate wakala was established with the direct transfer of ownership.

(15)

Forward Lease on a property

❖ **Question:**

What is the Sharia opinion on concluding a forward lease on a property, but it is cannot be used?

What is the Sharia opinion on taking guarantees from the lessor on the leased property?

❖ **The SSB's opinion:**

The SSB stated that it must be stipulated that the lease is forward in the event that the project is incomplete at the start of the lease, then it is not permissible to specify the property in the contract, but rather specify the descriptions only, or the lease begins at the end of the first phase of the project so that the lease for a property.

(16)

Granting new financing in return for increasing the value of industrial voucher guarantees

❖ Question:

Sometimes the renting customer develops the leased property as a lease-to-own, so its value increases. What is the opinion of Sharia on refinancing the customer by selling the voucher with a separate contract, and making the rest of the debt owed by him, then the bank buys the voucher from the customer at its new price after re-evaluation, then the bank leases it to the customer as a lease-to-own, and a settlement between the customer's debt from the first sale and the payment Provided by the agreed rent contract fee?

❖ The SSB's opinion:

The SSB accepted the proposal on the following terms:

- 1- Contracts must be separated.
- 2- There is no obligation for the customer to make a second sale; Lest there be two sales in one sale.
- 3- Complying with chronological order of the contracts; So that neither party sells thins does not own.

(17)

Termination of lease-to-own contract❖ **Question:**

What is the Sharia opinion on concluding a lease-to-own contract stipulating that the amount of sale of the leased property in the event of termination is allocated to pay the amount due to the bank before the termination?

❖ **The SSB's opinion:**

The SSB stated that the paragraph should be rephrased to state that the entire sale amount is due to the Bank; because it is the real owner of the leased property, then if the bank wants to waive part of the sale price to the customer in the event of termination, this is a matter of permissibility, not obligation for the bank.

(18)

Sharia opinion on charging the client insurance and valuation fees in certain cases❖ **Question:**

What is the Sharia opinion on charging the customer insurance and valuation fees for the leased property as a lease-to-own in the following cases?:

- 1- In the event that the customer requests the evaluation of the properties leased by the bank, and the bank

(17) Minutes No.: 11/2011

(18) Minutes No.: 11/2011

does not need and wish to conduct an evaluation of the property for many reasons.

- 2- Some customers request evaluation from the concerned authorities directly, whether from resident banks or companies, without referring to Warba Bank.
- 3- Sometimes the real estate evaluation is issued in favor of the customer and not in favor of the bank.
- 4- Some clients make real estate insurance on their own with companies they used to deal with by virtue of annual contracts with them without referring to the bank.
- 5- In the case of residential real estate, it is not the bank's policy to insure the real estate, but there are some clients who wish to make insurance.

❖ **The SSB's opinion:**

The SSB stated - regarding the cases related to the customer charging the evaluation and insurance fees for real estate leased from the bank - as follows:

1. If the bank does not request the evaluation or insurance of the property and the customer evaluates or insures the property, the bank is not obligated to pay the evaluation or insurance fees to the customer.
2. If it is not included in the credit approval that the customer be insured, and the customer insures this property, then the customer is the one who bears the insurance and evaluation fees as a donor.

(19)

A lease contract with illegal terms❖ **Question:**

What is the Sharia opinion on concluding a rental contract that stipulates that one of the parties has the right to terminate the contract whenever he wants, and does not stipulate a specific period for the contract?

❖ **The SSB's opinion:**

The SSB stated the following:

- 1- The lease contract is one of the necessary contracts, and it follows from this necessity that one of the parties to the contract does not unilaterally terminate the contract without the consent of other party.
- 2- It is established among the jurists that it is required in the leased contract that it be fixed term, accordingly: it is required to specify the term of the contract.

(20)

The effect of postponing installments on lease-to-own contracts❖ **Question:**

Whereas the Central Bank allowed financing clients for the purpose of acquiring residential real estate (private

(19) Minutes No.: 11/2011

(20) Minutes No.: 11/2011

housing) to postpone the due installments for a period of 6 months and add them to the final installments (extending the due date of the last installment in proportion to the number of deferred installments), noting that this type of financing is fixed term and fixed periodic installments. The bank wants to collect profits on the total amount of deferred installments, so what is the Sharia opinion on increasing the fee for customers for the remaining period?

❖ **The SSB's opinion:**

The SSB stated the following:

- 1- Whereas the benefit was not used by the customer in subsequent benefits, it is accepted to amend the rent by agreement of the parties, and this amendment be according to an appendix to the contract.
- 2- Or these amounts are taken into account in the sale price at the end of the lease.

(21)

The customer requested a reduction the due rent amount

❖ **Question:**

One of the clients of the lease-to-own of private housing property paid part of the principal of the debt in excess of the agreed-upon installment, then the customer requested reducing the rent due from him for subsequent periods, and the question:

- Does the bank have the option to adjust the profit rate to match what prevails in the market at the time of repayment until expiration of the repayment period, noting that at the beginning of the transaction the financing was based on a fixed profit/fee rate?
- Does the bank have to terminate the current lease contract and payment schedule and profit percentage therein, and execute a new lease contract with the value of the remaining ownership payment and at the same end of the main contract, or is it permissible to keep the current lease contract without termination? The percentage of profits is adjusted - according to the conditions prevailing in the market - at the time of payment, because the debt and the percentage of profits are less than those mentioned in the contract, meaning that it is in the interest of the customer, and there is no increase therein, in the event that the bank approves the customer's request to reduce the percentage of the rent?
- Is the bank obligated to accept the customer's request to make the aforementioned amendments, since early payment is an initiative of the customer, and the bank may prefer to continue with the main agreement?

❖ **The SSB's opinion:**

The SSB stated that the lease contract is binding to both parties, it cannot be terminated except with the consent of the parties, in the event that the parties to the contract wish to amend the rent, there is nothing wrong to do that as agreed upon, and this by appendix attached to the main contract without the need to terminate the contract, and the bank is not obligated to terminate the contract, so both parties must agree.

(22)

Recording a profit from selling a property owned by the bank

❖ Question:

Kindly advise us of the Sharia opinion for the following case:

- If the bank owns real estate and recognizes it and measures it in its assets at fair value as it is an investment property except for a part of it - used for the purposes of the bank's activities - it was recorded at cost value because it is among the fixed assets and is depreciated,
- If the bank decides to lease the property as a lease lease-to-own, then the question is:
- What is the Sharia opinion on recording the profits resulting from the lease contract in the bank's profits?
- What is the Sharia opinion on recording the profits resulting from the sale contract - which is promised in the lease contract - within the bank's profits?

❖ The SSB's opinion:

The SSB stated the following:

- In a lease contract with a promise to own, the bank owns an asset then leases it - whether this asset was owned by the bank before the customer's request, or the bank bought it from another party and owned it at the request of the customer and then rented it to the customers - in this case the bank is obligated not to

lease the property before owning it; because Warba Bank owns this asset and it is registered in its name, it is accepted in Sharia that the asset is owned by the bank before the customer's request, as stipulated in the Sharia standards in the criterion of lease-to-own.

- As for profits, it is accepted in Sharia to record immediate or deferred profits in the bank's books in return for financing the customer with the lease-to-own product, like other financing transaction with the same product, because the lease contract is one of the necessary contracts that cannot be rescinded except after consent the parties of the contract. Accordingly, the profit can be considered realized, and the profit may be recorded in the bank's books, taking into account the accounting aspects related to this matter.

(23)

Processing the tenant's payment as a down payment to the seller

❖ Question:

The bank's management suggested that the mechanism for implementing residential real estate financing in the form of lease-to-own should be as follows:

- It was customary in the private housing property for the customer to pay a deposit to the seller (the original owner), and the customer signs a preliminary sale

contract, so that the customer can reserve the property until the completion of the transaction with the bank.

- After the bank's approval of the client's financing, the bank will pay the full value of the property, including the amount paid by its client to the property owner as a deposit, with the stipulation in the property purchase contract from the owner that he waives what corresponds to the deposit that was previously paid to him from the property purchase value in favour of the Warba Bank customer.
- The bank adds the value of the down payment that the owner waived in favour of his client on the rental payment submitted by the client to the bank to rent the residential property.

❖ **The SSB's opinion:**

The SSB stated that it has not approved the residential property financing mechanism, due to overlapping contracts, and stated that - when the bank purchases the property and then re-leases it to the client as a lease-to-own after the client pays a down payment to the property owner - the following structure shall be implemented:

- When the bank approves the purchase of the property, the customer signs an acknowledgment to terminate any previous contract with the seller on the real estate subject of the contract.
- The SSB suggested that a tripartite declaration (the bank, the customer and the seller) be signed for termination to prove Warba Bank's right to the assigned amount in favor of Warba Bank.

- The amount paid by the customer as a down payment after termination is a deposit with the seller.
 - The customer acknowledges the assignment of the amount paid as a down payment in favor of Warba Bank after the termination of the initial sales contract.
 - The bank purchases the property for its full value, including the amount paid by the customer to the property owner as a down payment.
 - The bank pays the remaining amount to complete the purchase price of the property, and the customer waives the down payment that was paid to him in advance of the purchase value of the property in favor of Warba Bank.
 - After Warba Bank owns the property, it leases it to the customer as a lease -to-own.
 - The bank makes a settlement by adding the value of the down payment that the customer waived on the rental payment submitted by the customer to the bank to rent the residential property.
- **The SSB confirmed the following:**
- The need to terminate the previous contract between the client and the property owner.
 - A waiver of the amounts paid by the customer to the seller should be signed, and it should be stated that these amounts are leased in favour of Warba Bank.

(24)

Two prices in the sale contract**Question:**

What is the Sharia opinion on adding the following text to the lease-to-own contract:

(It is agreed that the amounts mentioned in the application of registering this real estate in the name of the tenant or others is the sale amount contained in the real estate sale contract concluded in implementation of the promise or at the price that is determined by the Evaluation Section of the Real Estate Evaluation Department at Ministry of Justice, which may be different from the agreed price of the real estate in the sale contract between the two parties. If there is difference between the sale price indicated in the sale contract and the price specified by Ministry of Justice, the price agreed upon in the sale contract shall prevail.

The legal consultant indicated that aforementioned is not a hesitation in the price, as the price of the property on which the contract will be signed is mentioned in the sale contract that was previously signed. This item was mentioned to protect the bank legally in the event that the Real Estate Registration Department requests that the price be referred to the real estate evaluation expert, as the price of the property may vary from the time the lease lease-to-own contract is signed until the time the property is registered. In this case, the contract signed with the bank will be considered , not the one mentioned in the application of registering.

❖ **The SSB's opinion:**

The SSB accepted to keep the price mentioned in the sale contract and not mentioned in the registration application, and the legal evidence is that the will of the parties considered the price that was agreed upon in the contract concluded between the bank and the customer, which was signed by the consent of the parties, and confirms that the jurists have stipulated that if a woman had two dowries, one of them in secret and the second in public. The price mentioned in secret is taken into account, not the one in public.

(25)

The customer bears the insurance fee

❖ **Question:**

The bank management requested that the customer be charged the property insurance fees in cases of lease -to-own, and provided the following justifications:

- 1- Loading the customer for insurance is in the interest of the customer in obtaining a suitable price and suitable services, as the bank works with certain companies in insurance and semi-fixed conditions, and it is charged to the customer in the fare, which leads to an increase in the fee for the customer.
- 2- The lessee or the bank's customer often does not care about insuring the asset after obtaining financing, and

we find the necessity to oblige the customer to insure it as a user of the asset.

- 3- Equating Warba Bank with Islamic banks that charge the customer insurance fees.
- 4- Charge the customer the insurance fees as an agreement, not as an obligation related to the ownership, but for transferring the right.

❖ **The SSB's opinion:**

The SSB accepted to change its previous decision regarding the impermissibility of charging the customer insurance fees, after examining the matter, and reviewed its justifications as follows:

- 1- The jurists did not allow the tenant to require maintenance of the property. Because it leads to uncertainty of the rent, so the lease became illegal by this condition according to the agreement of the schools, so the ruling according to our jurists - - is reasoned that this leads to uncertainty of the rent, and the reality today is that insurance and maintenance fees are mostly a known cost, so the tenant's responsibility does not lead to uncertainty of the rent.
- 2- All contemporary applications in Islamic banks calculate the cost of maintenance and charge it to the rent, which means that the lessee pays this cost, albeit indirectly, and the fact that the lessee knows the cost of maintenance and bears it is more clear and transparent in dealing. The lessee may have companies that carry out maintenance and insurance at a lower price, so the lessee benefits from this reduction. Accordingly, the lessee's agreement to bear these costs shall be

part of the rent, even if it is not explicitly detailed in the contract. Because today's basic maintenance and insurance contracts are often well known and cost specific.

- 3- The new reality and custom has an impact on the Sharia opinion, especially in the lease of properties that are linked to multiple uses, which makes it difficult for the lessor to bear these costs due to the different nature of those properties - such as aircraft, ships, heavy equipment, etc. - as the cost of maintaining these properties is very large, even if they are included in The fare would have been very high. The lessee is also willing to bear the maintenance of these properties because he has trained cadres in such works. In addition, the lessor's burden of maintenance incurs great losses, as the property is in the hands of the tenant and is absent from him. Therefore, most international lease contracts pay the basic maintenance and insurance costs to the lessee.
- 4- It is accepted in sharia with transferring some of the burdens of the landlord to the tenant by mutual consent, condition or custom, and it came in the Indian fatwas: "they stated about the tenant, if the lease term has expired and the house has dust from his sweeping, then he must remove it, because it caused by his act and it became like dust that he put therein. If its areas and sewers are filled with his action, then the analogy is that he must transfer it, because it happened by his due to his act, so he must move it like sweeping and ashes, except that they preferred and made transferring that to the owner of the house due to custom among people that whatever was hidden in the land, then he

transferred it to the owner of the house, so they applied that according to custom, even if the tenant repair things, did not count the amounts he spent, and he was a as a donator.

- 5- It also cites a narration by Imam Ahmad - regarding the condition of the guarantee on the lessee in the lease contract, where it was stated in Al-Mughni: its condition is not valid, because what is not required to be guaranteed does not become guaranteed by the condition, and what must be guaranteed does not negate its guarantee on the condition that it is negated. Imam Ahmed was asked about that, he said: "Muslims must abide by their conditions (which they have made). This indicates the denial of the guarantee on its condition, and its obligation on its condition, according to hadith of our prophet, may God's prayers and peace be upon him, said "Muslims must abide by their conditions (which they have made)." If it is correct to load the lessee for the guarantee, which is one of the dependencies of ownership, then it is correct to load the customer for the other accessories of ownership, such as insurance and the like.

Based on the above, the SSB has decided the following:

- It is accepted to charge the cost of basic maintenance and insurance on the lessee in lease contracts, whether operating lease or lease with a promise to own, for the above-mentioned justifications.
- It is accepted to the rental customer choosing between two types of rental costs:
 - **First:** including basic maintenance and insurance.

- **Second:** not included.

Provided that one of the two methods is chosen in the rental contract concluded between the parties.

- It is accepted to perform the basic maintenance and insurance by the tenant in long-term leases, in which the tenant is considered the owner's disposal.
- When charging the tenant the costs of basic maintenance and insurance, the laws governing lease contracts in the contracting countries must be observed.

(26)

Charging the customer the evaluation fee

❖ Question:

The bank's management requested that the customer be charged the property evaluation fees in cases of financing lease lease-to-own, and provided the following justifications:

1. It is in the interest of the customer, as the customer will follow the price of the property that he will own, and in the event of an increase in the price of the property, he can benefit from that in executing the sale before its specified time and conducting another transaction on the property from financing operations or selling the property.
2. The bank has purchased the property based on the

customer's direction, and accordingly, the fluctuation in the property price leads to an unrealized loss for the bank in increasing the provisions, and accordingly, the customer bears the evaluation because it follows his direction.

3. Charging the customer the evaluation fee is as agreement, not as obligatory ownership, but as transfer of right.
4. Equating Warba Bank with Islamic banks that charge the client evaluation fees.

❖ **The SSB's opinion:**

The SSB has stated the following:

The owner of the property is the one who bears the cost of the evaluation; because he is the one who benefits from this evaluation and is done for his interest, as the evaluation is considered one of the owner's responsibilities. Whereas the banks finance clients based on lease contracts, the cost of evaluation can be divided into several parts:

- 1- If the evaluation is a pure benefit for the bank, such as the bank doing the evaluation during the financing period based on the requirements of the regulatory authorities, in this case the customer does not benefit from this evaluation, nor did he request it, the bank is the one who bears the cost of the evaluation as the owner of the property, and because the evaluation was for his benefit, and it is accepted to the bank including this cost to fee.
- 2- If the evaluation is purely for the benefit of the client:
 - a- If the customer needs financing from the bank to

- buy the property, and the bank will not provide financing to the customer unless there is an evaluation, in which case the customer bears the cost of the evaluation, as the bank does not own the property.
- b- The customer needs to increase the amount of financing, and the bank will not finance unless there is an evaluation, so the customer performs the evaluation at his expense; because it is for his interest.
 - c- The customer performs the evaluation without the bank requesting that, or the customer requests the bank to perform the evaluation, in which case the customer bears the cost of the evaluation.
- 3- The benefit shall be shared between the bank and the customer, as both of them will benefit from the evaluation, regardless of whether the benefit is for the bank or the customer.
- a. As in the case of registering the property with the Real Estate Registry Department at Ministry of Justice, and the Department requested the evaluation of the property, It is accepted to either of them bearing the cost of the evaluation.
 - b. In the event that the lease contract is renewed when the lease term has expired, and the customer wishes to rent the property for an additional period, It is accepted to the customer with bearing the cost of the evaluation.

(27)

Lease-to-own contract with the owner of the property❖ **Question:**

The bank management inquired about a lease contract in which the customer sells the property to Warba Bank, then the bank pays part of the price and the other part becomes a debt on the bank, then the customer leases the property from the bank with an advance payment of the same amount required for him from the sale contract, then the customer and the bank make a set-off between the bank's debt is from the sale contract and the customer's debt from the lease contract, then the customer pays the rent as agreed.

❖ **The SSB's opinion:**

The SSB stated that it has not approved this transaction; because of the overlapping effects of the contracts included therein. The SSB believed that the appropriate solution for such a situation is for the bank to buy a part of the property and then lease it to the customer as a Lease-to-own.

The SSB has provided the Bank's management with appropriate solutions for real estate financing to deal with cases of leasing and the mechanism for implementing it for the Bank's clients, as follows:

First: Closing an Ijara and re-granting leasing financing for the same property due to an increase in the value of the property:

- 1- The customer requests a new real estate lease financing according to the current property price.
- 2- After approval of the customer's request by our bank.
- 3- The customer requests payment of the full value of the rent due and the price of owning the property.
- 4- A real estate sale contract shall be executed between the bank and the customer.
- 5- After two working days, property purchase contract (internal) shall be prepared between the bank and the customer at the current value of the property value.
- 6- The client signs a real estate lease contract with the new rent amount and implements all the current steps used in the real estate lease in terms of implementation on the IBS bank system.

Second: Closing a lease and re-granting lease financing on the same property to another customer of the bank:

- 1- Customer (A) shall apply application to terminate the lease contract concluded with the bank and settle any outstanding accounts before the start of the existing lease closings.
- 2- The application of customer (a) shall be approved by our bank.
- 3- Customer (A) requests payment of the full value of the rent due and the price of the property.
- 4- Property sale contract is executed between the bank and customer (A).

As for the customer of Bank (B):

- 1- The customer requests a real estate lease financing.

- 2- After approval of the customer's request by our bank.
- 3- An internal purchase contract shall be prepared between the bank's customer (A) as a selling party and customer (B) as a buyer at the new purchase value.
- 4- A property purchase contract (internal, because the property is in the name of the bank) is prepared between the bank and customer (B) at the current value of the real estate value. The method of paying the purchase value shall be determined in the internal purchase contract as depositing a part in his account and transferring part to the account of customer (A) to pay the full outstanding amount of rent from the lease agreement concluded with the bank.
- 5- The client will sign a real estate lease contract and a delivery and receipt record.
- 6- Internally, the lease of the customer (A) shall be closed and the real estate data shall be transferred to the customer (B) on the bank's IBS system or the Phoenix system for the variable fare.
- 7- Coordinating with the Legal Department regarding the guarantees provided for the existing lease and transferring them to the new lease.

Third: Buying a property by (another bank (B), for example) and renting it back to a client of our bank - the property either in the name of our client or in the name of another client of Bank (B).

- 1- The customer requests a real estate lease financing.
- 2- After approval of the customer's request by our bank.

- 3- A letter is issued to Bank (B) stating our desire to purchase the property, specifying the purchase price, and undertaking to pay the property value due for their client's property.
- 4- A copy of the sale contract of Bank (B) is received indicating the purchase amount and that the customer of Bank (B) authorized his Bank (B) to register the property in the name of our bank.
- 5- Receiving the original real estate document after providing a cheque to the representative of Bank (B) for required amount.

Accordingly, the following is done:

- In the event that the client of our bank and Bank (B) are the same person, an (internal) purchase contract shall be executed between our bank and our client at the agreed purchase value.
 - In the event that the client of our bank and Bank (B) are different, a declaration shall be obtained from the client of our bank that he owns the property from the client of Bank (B) in order to confirm the sale process and the client of our bank owns the property. Based on this declaration, an (internal) purchase contract shall be executed between our bank as a buyer and our client as a seller.
1. The client signs a real estate lease contract and a record of delivery and receipt.

After the decision of the SSB, the management of the bank proposed to implement the lease in another way because it does not prefer the participation of the client, and the proposal submitted is that the industrial plot be sold at the

price that the client wishes to finance from the bank, and not the valuation price.

The Legal Department did not see any objection to this, as the contract will not be registered in the real estate registry, but rather a sale contract between two parties, and it does not need a specific form in the state.

Example:

- 1- The property has been valued at two million Kuwaiti Dinars, and the customer wants to finance the bank at one million Kuwaiti Dinars.
- 2- The property is purchased from the customer for one million Kuwaiti Dinars.
- 3- The lease-to-own contract is concluded with the customer himself.

The SSB has stated that the proposal made by the management of the bank is permissible.

(28)

Sharia opinion on obligating the tenant to pay the full rent without enabling him to benefit from the leased property

❖ Question:

Is it permissible for the bank to conclude a lease contract that stipulates, among its paragraphs, the following:

- If the second party vacates the leased property before

the end of the original contract period, he shall pay the full amount of the prescribed rent for the remainder of the contract period.

- The contract shall automatically be considered cancelled in the event that the leased property is destroyed in whole or in part due to fire, disasters, wars or any other matter, with the right of the first party to claim the second party for the rent when the leased property is destroyed in whole or in part.

❖ **The SSB's opinion:**

The SSB stated that it has not approved the first paragraph, because the rent is due in return for the use, and this condition is unfair, as the second party – the tenant – is charged with the full amount of the prescribed rent for the rest of the period in the event of eviction before expiration of the contract period, either the contract stipulates that the tenant must be empowered throughout the period and not be rented to others, or that the lessor can dispose of the property and the second party will compensate him for the actual damages only.

With regard to the second point, it is not permissible that the second party to be obligated to pay the rent when the leased property is destroyed as there is no benefit for to the rent.



Index

Table of Contents

Introduction 10

Chapter 1

Financing Instruments

(1) Using of Murabaha Transaction in the repayment of the Customer's existing debts..... 14

(2) The customer's authorization in financing transactions..... 15

(3) Syndicated financing selling flight utilities..... 16

(4) Using Murabaha contracts in the Letter of Credit 16

(5) Determining a repayment of a part of the Murabaha debts before executing a new Murabaha transaction 17

(6) The prohibited business. 18

(7) Guidelines on Granting Credit. 19

(8) Purchase contract (with the option of cancelation) for commodities to be sold by bargaining "Musawama" 21

(9) Financing merchants to supply goods to sales outlets 21

(10) Syndicated financing to buy seats usufruct in an airliner 22

(11) Selling to the customer after completing the purchase process from the supplier by phone 22

(12) Financing aircraft purchase deals 23

(13) Supplier offices at the Bank 23

(14) Transfer of sales revenues from a merchant's account to a customer's account 24

(15) Refunding a portion of the profit from a financing transaction to a customer 24

(16) Completing a purchasing transaction from a supplier, in personal finance, by calling him 25

(17) Amending the procedures of the interest-free loan product ("Qard Hasan") 25

(18) Waiver of Financing Profits upon Transfer of Debts 27

(19) Increasing the Debt Amount upon Restructuring of the Finance Transaction	27
(20) Participating in syndicated Finance of International commodities Murabaha Guaranteed by Sukuk Mortgage	28
(21) Financing Customers' Cash Withdrawals by linking an Investment Agency "Wakala" with a Debt Resulting from a Tawarruq (Monetization) Transaction	29
(22) Financing a Customer Who has Paid Part of the Property Price to the First Seller	31
(23) Financing a Residential Tower Development Transaction	32
(24) The Customer's Authorizing the Bank to Conduct Murabaha Transactions in corporate Finance Transactions	32
(25) Amending the process of vendor financing product	33
(26) Dealing with benefits selling	34
(27) Issuance of Sukuk	35
(28) Murabaha Financing Contracts for an Oil Equipment Company	46
(29) Financing Product for Purchasing Property Overseas	47
(30) Financing Individuals in Return for Charging of an Investment Account (Al Wafi Finance)	48
(31) Providing liquidity to the treasury department	48
(32) Not to bear the loss in financing deals	49
(33) Sale contract with option of cancelation	49
(34) Promise to buy with description without reviewing the product	50
(35) Guidance of Cosmetic surgery	50
(36) The customer is the beneficiary of the Letters of credit	52
(37) Financing a company that has some forbidden deposits	53
(38) Opening an account for an artistic production institution	54
(39) Financing Medical clinic	55
(40) Bank purchase financing portfolios	55
(41) Place and expedite the requirement of the regulatory authorities	57
(42) Transferring the proceeds of a Murabaha sale without the customer making the actual sale to the merchant	59
(43) The impact of the Central Bank of Kuwait's decision on Musawama contracts	61
(44) Sharia opinion on dealing with a regulatory agreement for syndicated financing operations that includes conditions for Islamic banks and others for conventional banks	62
(45) The relationship of suppliers with merchants in financing individuals	63
(46) Linking renewable Murabaha contracts	64
(47) Financing a company engaged in animal supplies	67

(48) Renewable Murabaha agreement	67
(49) Financing a company engaged in massage service	68
(50) selling vehicles with a buy-back guarantee service and additional Guarantee (Kafala)	69
(51) Authorization to renew Murabaha transaction	70
(52) Requesting exceptional approvals to manage companies as a result of the current circumstances	72
(53) Financing private housing for bank employees	75
(54) Parallel Murabaha	76
(55) The client authorizes the bank to make Murabaha upon the arrival of the shipment obtained from the documentary credit	77
(56) Financing a mixed investment portfolio with mortgaging	78
(57) Addressing the impact of implementing the requirements for postponing financial obligations binding on the state	81
(58) Financing IVF operations	82

Chapter 2

Investment

(1) Participating in a real estate investment fund	86
(2) Investment in a property leased by a telecommunications company	87
(3) Guidelines for the real estate investment.	87
(4) Investment in a company of chemical products involving skin care products	91
(5) Investment in a property containing restaurants and a women's club	92
(6) Purchase of a property in the UK involving a party that receives conventional financing ..	93
(7) Establishment of an investment company.....	93
(8) Investing in a hotel in the United States	94
(9) A property includes a brokerage company	95
(10) Establishing a real estate Assessment company	95
(11) Investing in Sukuk Al- Ijarah (a partial ownership of an asset)	96
(12) Late penalty for actual damages	96
(13) Exception to the interest waiver clause	97
(14) Conventional terms	98
(15) Guarantee of Murabaha bonds amount	99
(16) Restricting arbitration by Islamic sharia	100
(17) Is it permissible for the issuer of mixed sukuk to undertake to redeem the sukuk at the nominal value?	101
(18) Sharia opinion on buying shares of a conventional company and converting them into a	

company that operates in accordance with the provisions of Islamic Sharia?	101
(19) Issuing mixed assets sukuk	104
(20) Investment in stock trading company that is not listed on the stock exchange	105
(21) Entrepreneurs Deposit Product	106
(22) Additional capital sukuk (tier 1).....	118

Chapter 3

Investment Agency (Wakala)

(1) Conditions of the Investment Wakala contract	128
(2) Wakeel donation of a portion of its funds to the Mowakeel	129
(3) Obligation to donate	130
(4) Assignment of shareholder profits to depositors	131

Chapter 4

Shares

(1) Purchasing shares of K-Net Company	134
(2) Sharia Guidelines for investing in shares	134
(3) Dealing with a company to provide lists of Sharia-compliant companies	135
(4) Priority Rights	136

Chapter 5

Dealing with Conventional Institutions

(1) Appointing a conventional bank as an agent.	144
(2) Financing a conventional bank via the Treasury Department	144
(3) Contracting with a conventional bank to provide credit card services	145
(4) The fees list of a conventional bank	145
(5) An annex indicating exceptions of Sharia non-compliant obligations in dealing with a conventional bank	146
(6) Dealing with an electronic platform for managing and trading sukuk	147
(7) Opening a current account in a conventional bank	148
(8) Sharia opinion on financing a conventional insurance company to cover its needs with a government agency	149
(9) Request to issue credit cards for Al-Masi customers	149

Chapter 6

Cards

(1) Taking a percentage on credit cards withdrawals in foreign currency	156
(2) Purchasing gold and silver with credit cards	156

(3) Agreement to provide free access to VIP airport lounges, for the credit card holders.....	157
(4) Issuing new cards	158
(5) Credit card advantages	158
(6) Linking Al Masi segment customers at Warba Bank with American Express	159
(7) American Express fees	160
(8) Multi-currency prepaid cards	162
(9) Differences between credit card services according to the cost of issuance	165

Chapter 7

Banking Services

(1) Commodities trading through a local company.....	168
(2) Retail Banking Services	168
(3) Remaining funds in ATMs	170
(4) Opening mixed (men and women) banking branches	170
(5) Warba Bank's prepaid cards in foreign currencies	171
(6) Concierge service agreement	172
(7) Queries on new accounts on the basis of investment agency	172
(8) Electronic Purchase wallet product	174
(9) Fitness Account	175
(10) Customer salary prepayment service	175
(11) Sunbula Account	176
(12) Commodity financing outside the State of Kuwait	177
(13) Cashback benefit for credit card holder	178
(14) Bank products support	178
(15) Providing foreign currency to an exchange company	179
(16) Dormant accounts	179
(17) Buying foreign currencies at a specified price	181
(18) Opening an account for a restaurant that serve shisha	181
(19) Fees for low balances	182
(20) Amounts collected from canceling transfers	183
(21) Opening accounts for mixed activities for men and women	184
(22) Tax refund	185
(23) Opening an account for an artistic production institution	185

(24) Opening an account by the mother for her minor children	186
(25) Real estate property management product	188

Chapter 8

Marketing Services

(1) Advertising Guidelines for the Bank	196
(2) Guidelines for the Bank's sponsorship of social activities	197
(3) Offering discounts for Warba Bank card holders	198
(4) Participation in (Health Fitness and Beauty) exhibition	198
(5) A marketing campaign for Diwaniya (a Kuwaiti term meaning a reception hall and the gathering held in it) visitors	199
(6) Sharia's opinion on optical illusion	200
(7) Criteria for choosing famous people for marketing the bank's products	200
(8) A trip for a group of women	201
(9) Offers and discounts on cosmetic services	201
(10) Immediate purchase and installment payment product	202
(11) Takaful guarantee	206
(12) Sharia opinion on electronic pictures of real personalities for education	207
(13) Participation in a marathon organized by Kuwait Banking Association	208

Chapter 9

Fees and Commissions

(1) Fees and commissions on the Bank services	212
(2) Fees paid by the Bank for the customer then charged on the customer within the finance amount	213
(3) Tender Document Fees	215
(4) Renewal of a letter of guarantee issued by a conventional bank	215
(5) Fees not specified in the contract	216
(6) Credit study fee	217
(7) Company account management fees	217
(8) Applying a commission to suppliers in return for marketing bank customer transactions	219
(9) Applying fees to unused credit limits	220
(10) Amending letters of guarantee fees	221
(11) Management and follow-up commission	222

Chapter 10

Zakat

- (1) Effect of the amounts kept by K-Net and penalties paid by employees on the Zakat .. 226
- (2) Zakat on pledged funds227
- (3) The impact of the sukuk in which the bank invests on zakat pool227
- (4) The impact of the general provision contained in the international standard IFRS9 on Zakat 228
- (5) How to calculate zakat 229
- (6) Zakat of (auto cash) Product 234

Chapter 11

Draws and Gifts

- (1) Providing Prizes for Opening Salary Accounts 238
- (2) Depositing the Value of the Customer's Gift in Cash Directly in His Account in Return for Salary Transfer 238
- (3) Investment Account with Prizes to Customers Who Win in Draws 239
- (4) Customers' Refund a portion of the Value of Their Purchases by Credit Cards 241
- (5) A Promotional Campaign for Salary Accounts 242
- (6) Deposit the salary in advance, equivalent to the amount available on the credit card .. 243
- (7) Birthday Gift 244
- (8) The requirement that the customer keep his salary for one year in the event that he receives a salary transfer gift 244
- (9) Points program 246
- (10) Adding some conditions to Sunbula accounts 248
- (11) Buying Loyalty Program Points (Pocket) 249
- (12) Electronic graphics for employee pictures 250

Chapter 12

Guarantees

- (1) Exchange of Deposits 254
- (2) Commissions on Letters of Guarantee 255
- (3) Obligatory Donation in Case of Payment Delay 256
- (4) Imposing Late Payment Charge on Procrastinating Customers257
- (5) Conditioning POS Equipment Installation in a Credit Limit Agreement257
- (6) Sharia non-compliant securities as collateral in Return for obtaining financing 258
- (7) Failure to deliver the shipping documents to the customer 259

(8) Payment of the debt of the deceased from his deposit with the bank	260
(9) Excluding some clients from debt insurance	261
(10) Commercial license mortgage	261
(11) Granting the bank the exclusive usufruct right in properties of a charitable association	262
(12) Issuing letters of guarantee with conventional banks in some cases	263
(13) Letters of guarantee and commission due date	265
(14) Conducting Murabaha before the letter of guarantee to cover it and Conducting another Murabaha for the same customer after the letter of guarantee	266
(15) A letter of documentary credit containing a late payment penalty	267
(16) Mortgage of the investment portfolio	269
(17) Late payment fees for corporate clients	270
(18) Mortgage of a hotel that has a place to serve liquor	274

Chapter 13

Administrative Contracts

(1) Contractor Agreement	276
(2) Law firm contract	276
(3) Maintenance and spare parts contract	277
(4) Employment contracts	278
(5) Institute of Banking Studies fees	279
(6) A reviewing and auditing contract with a company that guarantees illegitimate obligations	280
(7) Not determining the maintenance period (administrative contracts)	281
(8) Sharia opinion on concluding standard contracts that the state obliges the bank to sign with its employees	281

Chapter 14

Qard Hasan (interest-free Loan)

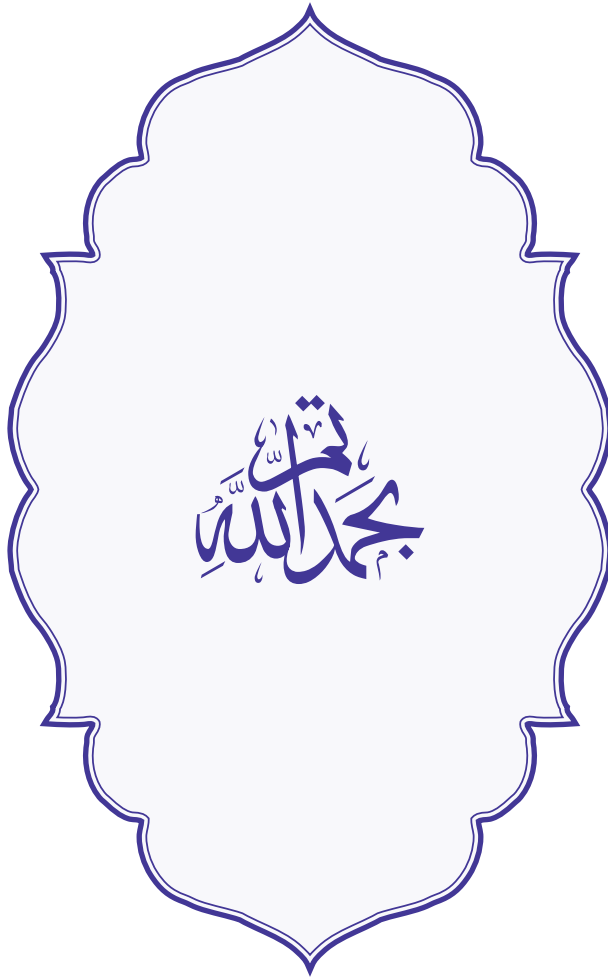
(1) Lending customers in return for salary transfer	286
(2) The bank's commitment to pay on behalf of the customer	286
(3) " Jam3eya " Product	287

Chapter 15

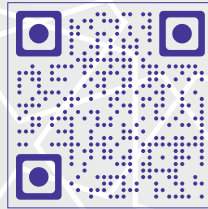
Ijarah (Lease)

(1) Payment of key-money to lease sites for Bank branches	292
(2) Car rent contract	294

(3) Variable-rate lease contract	295
(4) Financing a customer by purchasing a property, from a third party, then renting it to the customer	296
(5) Collecting evaluation amounts and insurance policies from clients who rent the bank's property	297
(6) Sharia opinion on buying a building then renting it to the seller for using in permissible activity	298
(7) Leasing to a company engaged in Forex business	298
(8) Fees deduction in case of delay in work	299
(9) Linking the fee to the discount rate specified by the Central Bank	300
(10) Sharia opinion on granting the customer a tawarruq to pay rent installment	301
(11) A lease-to-own with the registration of the property in the name of the client and taking a real estate Wakala	302
(12) A lease-to-own contract with the promise of renting and buying	302
(13) Lease contract with a deposit	303
(14) Mortgage before the real estate Wakala	304
(15) Forward Lease on a property	305
(16) Granting new financing in return for increasing the value of industrial voucher guarantees	306
(17) Termination of lease-to-own contract	307
(18) Sharia opinion on charging the client insurance and valuation fees in certain cases	307
(19) A lease contract with illegal terms	309
(20) The effect of postponing installments on lease-to-own contracts	309
(21) The customer requested a reduction the due rent amount	310
(22) Recording a profit from selling a property owned by the bank	312
(23) Processing the tenant's payment as a down payment to the seller	313
(24) Two prices in the sale contract	316
(25) The customer bears the insurance fee	317
(26) Charging the customer the evaluation fee	321
(27) Lease-to-own contract with the owner of the property	324
(28) Sharia opinion on obligating the tenant to pay the full rent without enabling him to benefit from the leased property	328



This book contains contemporary fatwas from a group of scholars who served as members of the Sharia Supervisory Board at Warba Bank from its establishment until the issuance of this document Far Al-Mubarak, and these fatwas are based on jurisprudential interpretations based on everything that is new to be implemented in Islamic banking. Let us be a seat of a behavior that works according to the rulers of the Islamic project. Her prayer is for every time and possibility, just as this book is considered a reference for the two lists There are those who are lost in their fatwas, where they made them effortlessly to fulfill the judgment of the question Methods of sound jurisprudential foundation, enlightened by the Holy Qur'an, the noble Sunnah of the Prophet, and the sayings of the predecessors and scholars from this blessed nation.



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