Appendix-A

Adoption of AAOIFI Shariah Standard No. 59

In order to standardize and harmonize Shariah practices in Islamic Banking Institutions (IBIs), AAOIFI Shariah Standard No. 59 – Sale of Debt has been adopted. The Shariah Standard is applicable with the following clarifications and amendments as mentioned against each clause(s) of respective Standard:

AAOIFI Shariah Standard No. 59 – Sale of Debt

1. **Clause 1**: The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Scope of the Standard
   This Standard deals with the sale of the debt to the debtor and its sale to a third party, i.e., a party other than the debtor. [This Standard] does not deal with (i) the discharge of debt (istīfā' al-dayn) by the debtor, whether in whole or in part, if it does not take place through a commutative arrangement nor with (ii) novation (ḥawāla) or (iii) set-off (muqāṣa) since there is a different standard for both of them."

2. **Clause 2:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Definition of Debt
   Debt is a financial obligation established and owed, irrespective of its cause of establishment. It may be in the form of money, commodities, or usufructs. It includes debts arising out of (i) a loan or (ii) a commutative contract (ʿaqd muʿāwaḍa), or (iii) misconduct or negligence."

3. **Clause 3**: The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Types of Sale of Debt
   As far as the buyer is concerned, the sale of debt is one of the two types:
   3/1 Sale of debt to the debtor himself
   3/2 Sale of debt to a third party other than the debtor."

4. **Clause 4/1:** The following is added as a footnote to the clause:
   This clause may be read as follows: "It is permitted for the creditor to sell to the debtor a debt that is previously established between them, subject to the following three rules:"

5. **Clause 4/1/1/1:** The following is added as a footnote to the clause:
   This clause may be read as follows: "If the debt is a usurious commodity, then it has two situations:

a) The First situation: The consideration of the debt is a usurious commodity and not of the same kind of debt: it is required to take possession of the consideration in the contract session, even if there is a difference in the quantity. Such as: the debt is in gold and is substituted with silver, or the debt is in wheat and is substituted with dates, or the debt is in Egyptian Pounds and is substituted with Pounds Sterling. Subject to what is stated in Item No. (4/1/1/2).

b) The Second Situation: The consideration of the debt is a usurious commodity, and it is of the same kind as the debt: it is required that the quantities of the debt and its consideration are equal (tamāthul). The possession of the consideration of the debt shall be transferred in the contract session. Such as: the debt is in dates and is sold for another type of dates; the debt is in sea salt and is sold against rock salt."

6. **Clause 4/1/1/2/(a):** The following is added as a footnote to the clause:
This clause may be read as follows: "Possession of the substitute of the debt should be transferred in the contract session so that no part of the debt amount, which has been converted into another currency, remains outstanding.*

** The operational time required for settlement of such transactions is acceptable."*

7. **Clause 4/1/1/2/(b):** The following is added as a footnote to the clause:
This clause may be read as follows: "Before maturity, discharge of the debt in another currency should not: be stipulated [as a condition], be [noticeable] by anticipation, or a customary practice."

8. **Clause 4/1/1/2/(c):** The following is added as a footnote to the clause:
This clause may be read as follows: "[Discharge of the debt] should be at the exchange rate prevailing on the day of settlement, if: the debt was the result of a loan contract, or there was a delay by the debtor in settling the debt after it's maturity."*

Further, footnote mentioned in the original standard may be read as:
**"This clause clarifies the clause 2/10/2 of Shariah Standard on Trading in Currencies."*

9. **Clause 4/1/2:** The following is added as a footnote to the clause:
This clause may be read as follows:
"The Second Rule:
The transaction shall not be a stratagem (ḥīla) for ribā, such as when [the contracting parties] prior arrangement to have the buyer pay the cash amount on the spot in exchange for deferred delivery of the commodity. Upon the delivery of the commodity, it is substituted for an amount more than the currency itself."

10. **Clause 4/1/3/1:** The following is added as a footnote to the clause:
This clause may be read as follows: "It is not permitted to sell the debt to the debtor in exchange for a new debt, which is established as an obligation upon him, if [the new debt] is more than the [existing debt], and this shall be as a form of revocation of debt in debt (faskh al-dayn) by another debt which is prohibited as per Shari'ah."

11. **Clause 4/1/3/3:** The following is added as a footnote to the clause:
This clause may be read as follows: "All such things are prohibited, which may lead to an increase in the amount or the value of the debt against increasing the debt tenure or could be a means to it, irrespective of whether the debtor is solvent or insolvent. This includes substituting the debt by the creditor for a commodity and then selling it to the debtor for a deferred price higher than the amount of debt, and it is in the form of the sale of 'Inah, which is impermissible."

12. **Clause 4/1/3/4/(b):** The following is added as a footnote to the clause:
This clause may be read as follows: "The contract of the new Murabaha should be a valid contract resulting [its respective] Shari'ah effects, such as: the customer is entitled to take actual delivery of the subject of the sale even though it is a constructive delivery, and [the customer] is entitled to retain ownership [of the subject of sale], and to dispose of the subject of sale as he deems fit with no obligation to sell thereof. What is stated in the Shari'ah Standard No (8): Murabaha, Shari'ah Standard No. (30): Tawarruq, and Shari'ah Standard No. (20): Sale of Commodities in Regulated Markets shall apply."

13. **Clause 4/1/3/4(c):** The following clarification is added as footnote to the clause:

"In case of any regulatory requirement, the condition of one working day may be relaxed subject to the approval of the Shariah Board of IBI."

14. **Clause 4/1/3/4/(d):** The following clause is added as per original standard to be numbered as clause 4/1/3/4/(d):
This clause may be read as follows: "If the new transaction is entered with a delinquent customer, then:it is not permitted for the Institution to compensate itself, either directly or indirectly, for the delinquency [of the customer] in settling the first debt, and the profit rate in the new Murabaha should not exceed the rate for such a customer if he were not delinquent."

15. **Clause 5/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "It is permitted to sell a monetary debt for a commodity with spot delivery or for a usufruct or service wherein the subject matter of the usufruct or service is ascertained. Hence, it is not permitted to sell a monetary debt against a commodity with deferred delivery, for example, making a debt owed by a third party as the Salam capital. See Item No. (3/1/4) of Shari'ah Standard No. (10): Salam and Parallel Salam. Similarly, it is not permitted to sell [a monetary debt] for a usufruct or a service wherein the subject matter of the usufruct or service is not ascertained."

16. **Clause 5/4:** The following is added as a footnote to the clause:
This clause may be read as follows: "It is not permitted to sell the debt if it was a usufruct or a service that is a specified obligation (mawṣūfa fī dhimma) (where the subject matter is not specific), regardless of whether [such usufruct or service] are sold for cash, commodity, usufruct, or service."

17. **Clause 5/5:** The following is added as a footnote to the clause:
This clause may be read as follows: "It is not permitted to sell the debt to a third party if it has excessive gharar (uncertainty), such as:"

18. **Clause 5/5/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "Amount of debt is unknown."

19. **Clause 5/7:** The following is added as a footnote to the clause:
This clause may be read as follows: "The buyer shall have the option to revoke for misrepresentation (khayār al-taghrīr) if the debt seller is aware of the debtor's insolvency or procrastination. Still, the buyer was not informed about that. See Item No. (2) of the Shari'ah Standard No. (48): Options for Breach of Trust."

20. **Clause 7/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "If the debt is secured via an established pledge or an established guarantee, then the pledge (Rahn) and the guarantee will transfer to the buyer along with the sold debt, if: The buyer stipulated it upon the seller of the debt, or The custom admitted it, and the pledgor or the guarantor has not stipulated the non-assignability of the pledge or the guarantee".

21. *Clause 8: The following is added as a footnote to the clause:*
The heading may be read as ***"Sale And Negotiability of the Debt When Combined with Other Assets*** *[1]*

Further, following footnote present in the Arabic standard is inserted in the heading:
[1]"This clause modifies the clauses 3/18 and 3/19 of Shariah Standard on Commercial papers."

22. **Clause 8/1:** *The following is added as a footnote to the clause:*
This clause may be read as follows: "If: the debt is part of the assets of an entity that is in existence and has ongoing permissible activities, whether these activities were commercial, financial, industrial, related to real estate, services, agricultural, import-export, sale and purchase of commodities and the like, then: It is permitted to sell such an entity or its share without considering the provisions of the sale of debt about [the portion] of the debts out of its assets, whatever would be the ratio of debts, as long as such debts are generated from the turnover [of business] because such debts are ancillary to the activity [of the entity]. For example: shares of joint-stock companies, including Islamic banks, investment fund units, Sukuk are based on Mudaraba and are investment agencies, provided the entity is not entirely composed of debt."

23. **Clause 8/2:** *The following clarification is added as footnote to the clause:*
"The Sukuk which have been issued under a legal framework will deem to have been issued under the legally recognized structure, no matter a special purpose vehicle was created for the said purpose or not."

24. **Clause 8/2/2:** The following is added as a footnote to the clause:
This clause may be read as follows:
    i) *" The ratio of tangible assets and other like assets shall be at least 33% of the value of the assets."*
    ii) *"This clause is also applicable to the Sukuk which consists of Ijarah/Diminishing Musharakah assets and Debt which has been created through Tawarruq."*

25. **Clause 8/3:** The following is added as a footnote to the clause:
This clause may be read as follows: "If: Debts, other tangible assets, and the like were combined or separated for the purpose of selling them under single transaction, without such assets being in an entity where the principle of Shari'ah compliant commingling, as set out in paragraph (8/2), is materialised, for example: [debts and tangible assets] are: combined in a sale contract, subjected to accounting separation, or separated in an account held with the Institution, even if it was in the form of a portfolio that is not registered with the relevant authorities, then: The provisions of the sale of debt, as set out in Para No. (5) of this Standard apply."

26. **Clause 9/2/1**: The following is added as a footnote to the clause:
This clause may be read as follows: "It is not permitted to trade in Shari'ah non-compliant bonds, whether by their sale, purchase, or otherwise. See Item No. (5) of the Shari'ah Standard No. (21): Securities (Stocks and Bonds)."

27. **Clause 9/5/1:** The following is added as a footnote to the clause:
This clause may be read as follows: "Securitization of receivables is a mechanism for converting debts to financial securities that can be traded in the financial markets."

28. **Clause 9/5/2***:* The following is added as a footnote to the clause:
This clause may be read as follows: "It is not permitted to trade in financial securities based on securitization of monetary debts unless their trading is against a commodity, a usufruct, or a service wherein the subject matter of the usufruct or service is ascertained. This shall be under Item No. (5/2) of this Standard."

29. **Clause 9/6:** The following is added as a footnote to the clause:
This clause may be read as follows: "Purchase of trade receivables at discount (Factoring)."

30. **Clause 9/6/1:** The following is added as a footnote to the clause:
This clause may be read as follows: "Purchase of trade receivables at discount (Factoring); it is a contract whereby an institution assigns its trade receivables, which are invoiced in whole or only in specific types thereof, frequently to a factor, [a party] that takes the place of the creditor-institution with regards to the debts it assumes and stands obliged to pay its amounts to the institution immediately on the spot or upon maturity, regardless of whether these debts were recovered or not, and [this shall be] in return for a pre-agreed monetary amount."

31. **Clause 9/6/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "As per Shari'ah, it is not permitted to deal in a contract of purchasing the invoices on a discount (factoring) unless their purchase was for a commodity, or a usufruct or a service wherein the subject matter of the usufruct or service is ascertained, according to Item No. (5/2) of this Standard."

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