Appendix-A

Adoption of AAOIFI Shariah Standards No. 36 & 37

In order to standardize and harmonize Shariah practices in Islamic Banking Institutions (IBIs), AAOIFI Shariah Standards No. 36 – 'Impact of Contingent Incidents on Commitments' and No. 37 – 'Credit Agreement' have been adopted. These Shariah Standards are applicable with the following clarifications and amendments as mentioned against each clause(s) of respective Standard:

AAOIFI Shariah Standard No. 36 – Impact of Contingent Incidents on Commitments

1. **Clause 2:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Definition of Contingent Incidents
   Contingent incidents in this standard refer to those incidents which occur suddenly and cause influence on transactions or commitments arising from those transactions after their valid occurrence. Therefore, contingent incidents are different from defects of will, which exist since the time of signing the contract, although their impact occurs later on. Contingent incidents are also different from termination of commitments on mutual consent of the two parties or as per the desire of any of them; when a party is entitled to such right by virtue of the nature of the contract or due to the condition stipulated in the contract."

2. **Clause 3:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Types of Contingent Incidents
   From the standpoint of its influence, a contingent incident can be either of the type that necessitates amendments in the commitments, or the type which constitutes an external reason for termination of the contract."

3. **Clause 4:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Contingencies Leading to Amendment of the Commitments
   The impact of such contingencies is confined to necessitating amendments in the commitment rather than leading to its complete termination. Practical examples of such contingencies include the following among others:"

4. **Clause 4/3:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Prevention of importation of the goods to be delivered in fulfillment of a contract such as Murabahah or Ijarah contract. The actual harm caused to the client or the Institution can, in this case, be removed by resort to reconciliation, arbitration or legal recourse."

5. **Clause 5:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Contingencies that terminate commitments due to external reasons:
   This type of contingencies leads to termination of commitments without intervention of any of the two parties. Bearing of the consequences in this case is to be assigned to whoever is responsible in the absence of commitments, such as when an owner has to bear the consequences relating to what he owns. Examples of such contingencies include, among others:"

6. **Clause 5/1:** The following is added as a footnote to the clause:
   This clause may be read as follows:

"When implementation becomes impossible or useless
When the implementation of commitment becomes impossible or useless; such as the commitment to supply the requirements of a conference could not be fulfilled before holding of the conference. In such case the commitment shall become null and void if:"

7. **Clause 5/1/2:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Failure to honor the commitment originates from the circumstances other than personal reasons."

8. **Clause 5/1/3:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Failure to honor the commitment is caused by third party other than the committed party."

9. **Clause 5/2:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Total or partial damage of the subject matter of commitment
   If the subject matter of commitment is damaged before being delivered to the committing party, the loss should be borne by the committed party. Similarly, when the subject matter is completely damaged due to an act of the committing party, that party should bear the loss. In case of partial damage of the subject matter of commitment in the possession of committed party before actual or constructive delivery, or the damage is caused by a heavenly factor (Sabab Samawi) which the committed partly can by no means avoid, the committing party should have the right of option."

10. **Clause 5/3:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Entitlement to the subject matter of commitment
    If the subject matter of commitment turned out to be owned by someone else other than the party who committed the delivery or has a right of use, the consideration (of the subject matter of the commitment) must be returned to the party from which the subject matter of the commitment has been taken. If the subject matter of commitment is partly owned by someone else, the commitment in that part becomes null and void, and the committing party shall have the right of option with regard to the remaining part of the subject matter; the committing party may choose to accept the remaining part against the corresponding consideration or he may terminate the contract due to fragmentation of the contract."

11. **Clause 5/4:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Termination due to excuses
    When the emergence of an incidental excuse in Ijarah leads to abnormal harm, the harmed party has the right to terminate the contract. The party who encounters the incident may also terminate the contract if his excuse is obvious. If acceptability of the excuse is doubtful the issue may be resolved by mutual agreement, or resort to law in case of dispute. [see Shari'ah Standard No. (9) on Ijarah or Ijarah Muntahiah Bittamleek; and Shari'ah Standard No. (34) on Hiring of Persons]"

12. **Clause 5/5:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Jawa`ih (calamities)
    The term Jawa`ih refers to any incident (other than human acts) which cannot be avoided even if known. The effects of such incidents are – originally - noticeable in selling of fruits and other agricultural products, where the occurrence of an incident of this type leads to reduction in the

price in proportion to the damage in the product. An example of this can also be seen in the "Ijarah Muntahia Bittamleek Contract". In this case the amount of rent in excess of the normal rent of similar property is reduced when ownership cannot be transferred to the lessee for a reason which cannot be attributed to the lessee. [see Shari'ah Standard No. (9) on Ijarah or Ijarah Muntahia Bittamleek, item 8/8]"

AAOIFI Shariah Standard No. 37 – Credit Agreement

1. **Clause 2:** The following is added as a footnote to the clause:
   This heading may be read as follows:
   "Objectives of Credit Facilities"

2. **Clause 2/1:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "The term credit refers to the financial transaction according to which one of the two or more parties becomes indebted to the other. Indebtedness in such transactions can arise at the beginning of the transaction, and this is known as direct cash credit such as loans and discounting of commercial papers by conventional financial institutions. Instead, indebtedness could be probable at the end of the transaction, and that is incidental credit, such as bank suretyship, letters of guarantee, bills of acceptance, and letters of documentary credit. The term "credit facilities" is used to denote credit in both of its types i.e., cash and incidental credit. The concepts of credit and credit facilities are more comprehensive than the concept of financing which relates to the case of actual deferment of one of the two transacted objects."

3. **Clause 2/1:** The following is added as a footnote to the clause:
   Following is added for clarity: "The term 'Credit facilities' also include Islamic Financing facilities"

4. **Clause 2/2/1:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   *"Cash facilities: This type includes the transactions in which the Institution presents funds for the execution of transactions, whether in the form of cash - as is the case in Qard Hasan (benevolent loan), Musharakah and Mudarabah**;** or in the form of an asset (tangible assets or usufruct) - as is the case in Murabahah and lease financing. It should be noticed here that Musharakah and Mudarabah do not result in a debt owed by the client except in case of transgression or negligence."*

5. **Clause 2/3:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Transactions that entail instant delivery of the transacted objects (counter values) are not considered as part of credit facilities."

6. **Clause 2/4:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "The decision of granting credit facilities:
   It refers to the approval of the Institution to enter into a credit facility with a specific client. The approved facility will be subject to a specific financial limit that can be used during a specific period of validity and subject to a certain date of maturity. The credit facility would also comprise specific conditions relating to guarantees, method of repayment and regulatory requirements. The decision of granting the facility is usually issued in the form of a letter addressed from the Institution to the client, indicating that the letter does not constitute any commitment from the

part of the Institution unless transactions are actually commenced. In some banking practices, it is endorsed/confirmed through credit facility agreements. An example of granting facilities is approval of renewal, or extension of the period of already approved facilities."

7. **Clause 2/5:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Using Credit Facilities
   It refers to commencement of the client to utilize the facility such as by submitting a request for a letter of guarantee, or a letter of credit, or the customer presenting a request of offer, or making a promise to purchase a commodity, or hiring an asset through the Institution."

8. **Clause 3/1:** The following is added as a footnote to the clause:
   This heading may be read as follows:
   "Types of conventional credit facilities used by banks:"

9. **Clause 3/1/1:** The following is added as a footnote to the clause:
   This clause may be read as follows:
   "Loans
   Loans refer to facilities payable on a specific date agreed upon between the conventional financial Institution and the client. Loans can be extended directly to the client, or through participation with other conventional financial Institutions, or through acquisition of bonds issued by the client."

10. **Clause 3/1/2:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Overdraft
    Overdraft is a facility which the conventional financial institution puts at the disposal of the client to draw from it on need, up to a specific limit and within a given period."

11. **Clause 3/1/3:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Discounted papers
    Discounted papers comprise of commercial papers and bonds to order discounted in the conventional financial institution."

12. **Clause 3/1/4:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Issued credit cards
    In this conventional form of credit facility, the indebtedness which can arise from using the credit card is determined for each client within a certain limit, and he can repay it in installments along with the interest."

13. **Clause 3/1/5:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Documentary credits
    Documentary credits are among the facilities which conventional financial Institutions extend to their clients. In this case the Institution assumes the commitment to pay to beneficiaries the value of the credits opened for its client, whether the value of such credits is due on sight of the documents or on a date thereafter (at the maturity of Usance LC)."

14. **Clause 3/1/6:** The following is added as a footnote to the clause:
    This clause may be read as follows:

"Bank acceptances
This type of facilities which conventional financial Institutions offer to their clients entails a commitment from the Institution, on behalf of a client or for its own behalf, to pay to beneficiaries the value of the accepted papers when they are due."

15. **Clause 3/1/7:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Bank guarantees
    Conventional financial Institutions offer this type of facility to their clients. In such facility the bank, upon request of its client, undertakes to pay to a third party the amounts indicated in the guarantees, on request and within a specific period."

16. **Clause 3/1/8:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Foreign exchange operations
    Foreign exchange operations constitute a conventional facility offered to clients in deferred contracts of buying and selling foreign currency."

17. **Clause 3/2/1:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Murabahah and Musawamah
    Murabahah and Musawamah are two types of sale transactions which constitute methods of financing used by Islamic financial institutions to cater for client needs for owning moveable as well as immovable assets. Contrary to Musawamah, in Murabahah the cost incurred by the Institution for obtaining the goods must be indicated. [see Shari'ah Standard No. (8) on Murabahah]"

18. **Clause 3/2/2:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Mudarabah
    Mudarabah is a method of financing which institutions use for financing various economic activities. According to this method the institution enters the deal as the partner who subscribes the funds (Rab al-Mal) while the other partner (Mudarib) subscribes the work and performs the managerial duties. The determined profit will be distributed according to the ratios agreed in the contract while the entire loss has to be borne by Rab al-Mal, unless it is due to transgression or negligence of the Mudarib. [see Shari'ah Standard No. (21) on Financial Papers: Shares and Bonds]"

19. **Clause 3/2/4:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Operating and finance lease (Ijarah)
    It is a method used for financing clients' needs for usufructs and assets. According to this method the institution purchases the assets and rents them to clients for specific periods, against periodical amounts of rent stipulated in the contract. [see Shari'ah Standard No. (9) on Ijarah and Ijarah Muntahia Bittamleek]"

20. **Clause 3/2/6:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Salam

Salam is a method of financing which institutions use for extending finance to owners of farms and merchants who want to spend on their business as well as on their personal needs. Under this mode of financing the Institution has the right to arrange parallel Salam with another party."

21. **Clause 3/2/7:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Other financing operations
    Finance can also be extended to clients through other financing operations which include among others: Qard Hasan, customer overdraft balances, letters of guarantee, letters of credit etc."

22. **Clause 5/1:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "It is impermissible to use any of the conventional facilities mentioned in item 3/1 if it involves interest or would lead to an interest-bearing loan as is the case in guarantees and uncovered credits, or it would result in deferment of one of the two or both transacted objects, as is the case of currency exchange contracts. [see Shari'ah Standard No. (14) on Documentary Credit; Shari'ah Standard No. (2) on Debit, Charge and Credit Cards; and Shari'ah Standard No. (1) on Trading in Currencies]"

23. **Clause 5/2:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "The institution is not committed to pay any compensation to the client on rejection of his application to utilize the approved facilities, whereas the client is free to use or not to use the facilities within the specified period. When the client refrains from using the facilities, he is not committed to pay any compensation to the Institution."

24. **Clause 5/3/1/2:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Commission for offering credit facilities
    This commission refers to the amount which the Institution charges against allocating and specifying the limit of the facility. The institution usually charges such commission whether the deal is finalized or not. However, it is impermissible for the Institution to obtain commission for offering credit facilities, because the mere indication of willingness to enter into a financing transaction does not justify remuneration. [see item 2/4/2 of Shari'ah Standard No. (8) on Murabahah]"

25. **Clause 5/3/1/3:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "Commission for renewal or extension of credit facilities
    Commission for renewal or extension of credit facilities will have the same ruling as that of commission for offering credit facilities. [see item 5/3/1/2 above and Shari'ah Standard No. (8) on Murabahah]"

26. **Clause 5/3/1/4/1:** The following is added as a footnote to the clause:
    This clause may be read as follows:
    "The cost of preparing the contracts to be signed between the Institution and the client should be shared between the two parties unless the contract indicates that the cost is to be borne by one of the parties. Such cost should be fair and commensurate with the actual workload so as not to comprise an implicit fee for commitment or for offering the credit facility."

27. **Clause 5/3/1/6:** The following is added as a footnote to the clause:
This clause may be read as follows:
"Hamish Jiddiyyah (security deposit)
The institution may charge the Hamish Jiddiyyah (security deposit) which refers to an amount paid as a token of seriousness forwarded by the client at the stage of offering his binding promise in Murabahah. In case of refusal to enter into the contract by the client, the amount of actual harm caused to the institution shall be deducted from the security deposit. [see item 7/8/2 of Shari'ah Standard No. (5) on Guarantees]"

28. **Clause 5/3/2:** The following is added as a footnote to the clause:
This clause may be read as follows:
"Second type: Commissions and considerations which arise on signing of the financial contract."

29. **Clause 5/3/2/1:** The following is added as a footnote to the clause:
This clause may be read as follows:
"Commitment fee
The institution should not charge the commitment fee which relates specially to conventional facilities of interest-bearing loans, whether in the case of direct loans or the indebted current (overdraft) loans. Such fee is charged to the client even if he has not used the facility; is also known as the "loan fee", or the "indebted current facility fee", or the "financing fee". [see item 2/4/1 of Shari'ah Standard No. (8) on Murabahah]"

30. **Clause 5/3/2/3:** The following is added as a footnote to the clause:
This clause may be read as follows:
"Guarantee return
The institution should not obtain any considerations on the guarantee relating to documentary credits, letters of guarantee, and bank suretyship, except actual expenses, whereas it can obtain returns for agency in documentary credits. [see item 7 of Shari'ah Standard No. (5) on Guarantees; and item 3/3 of Shari'ah Standard No. (14) on Documentary Credit]"

31. **Clause 5/3/2/4:** The following is added as a footnote to the clause:
This clause may be read as follows:
"Considerations on debt rescheduling"

32. **Clause 5/3/2/4/1:** The following is added as a footnote to the clause:
This clause may be read as follows:
"The institution should not obtain returns against extending the date of repayment of debts in all credit facilities. It is permissible for the institution to charge the actual cost only from indebted customer for the rescheduling. [see item 5/7 of Shari'ah Standard No. (8) on Murabahah; Shari'ah Standard No. (3) on Procrastinating Debtor, and item 3/3/1 of Shari'ah Standard No. (14) on Documentary Credit]"

33. **Clause 5/3/2/4/2:** The following is added as a footnote to the clause:
This clause may be read as follows:
"It is impermissible to renew or extend the facility by extension of existing facility, it should be done by entering into new contracts."

34. **Clause 5/3/2/4/2:** The following is added as a footnote to the clause:
Following is added for clarity:
"Financing facilities may be rescheduled or rolled over, however, in sale based modes of financing e.g., Murabahah, Musawamah, Salam, Istisna'a etc., profit cannot be increased due to rescheduling or roll over."
35. **Clause 6:** The following is added as a footnote to the clause:
This clause may be read as follows:
"Obtaining Guarantees on Credit Facilities
The institution has the right to use permissible forms of guarantee in order to ascertain the fulfillment of the commitments by its client. [see item 3/4/1 of Shari'ah Standard No. (14) on Documentary Credits, and item 4/1/1 of Shari'ah Standard No. (5) on Guarantees]"

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