

Adoption of AAOIFI Shariah Standards Nos. 19, 23 & 28

In order to standardize and harmonize Shariah practices in IBIs, AAOIFI Shariah Standards No. 19 - Loan (Qard), No. 23 - Agency and the Act of an Uncommissioned Agent (Fodooli), and No. 28 - Banking Services in Islamic Banks 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. 19 - Loan (Qard)

1. **Clause 3/2:** The following is added as footnote to the clause:
The term 'legal capacity' may be read as 'legally capable'.
2. **Clause 3/3:** The following is added as footnote to the clause:
The term 'legal capacity' may be read as 'legally capable'.
3. **Clause 3/4:** The following is added as footnote to the clause:
The clause shall be read as follows: It is stipulated for the subject-matter of the contract shall be Maal-e-Mutaqawwam (valuable, and permissible from Shariah perspective) known, and fungible (mithli).
4. **Clause 3/4/2:** The following is added as footnote to the clause:
The word 'applicable' may be read as 'principal'.
5. **Clause 4/1:** The following is added as footnote to the clause:
The text "determining the period of delay for satisfaction or during the period of delay and, further, whether" may be read as "extending the repayment period or during the credit period, regardless". Accordingly the clause 4/1 will be read as, "The stipulation of an excess for the lender in loan is prohibited, and it amounts to Riba, whether the excess is in terms of quality or quantity or whether the excess is a tangible thing or a benefit, and whether the excess is stipulated at the time of the contract or while extending the repayment period or during the credit period, regardless the stipulation is in writing or is part of customary practice."
6. **Clause 4/2:** The following is added as footnote to the clause:
The text 'the satisfaction' and brackets around the word 'repayment' shall be omitted.
7. **Clause 5/2:** The following is added as footnote to the clause:
The word 'satisfaction' may be read as 'repayment'.
8. **Clause 6:** The following is added as footnote to the clause:
The text 'return its substitute (badal)' may be read as 'repay.'
9. **Clause 8:** The following are added as footnotes to the clause:
The word 'another' may be read as 'others'.
The term 'stratagem' may be added within brackets with term 'Hilah' to read as "(stratagem/Hilah)."
The text 'dealings among institutions' may be read as 'collusion with institutions'.
10. **Clause 9/1:** The following are added as footnotes to the clause:
The Islamic Banking Institutions shall refer to Shariah Governance Framework and amendments therein as notified by State Bank of Pakistan from time to time.

*The text 'in consultation with the accounting department' shall be added after the text "...Shari'ah Supervisory Board of the institution in detail," to reflect the complete Arabic translation.
The accounting and relevant department(s) shall facilitate Shariah Board of the institution in validating the methods for determining the charges.*

11. **Clause 10/1/1:** The following are added as footnotes to the clause:
*The text 'and not deposits' shall be deleted.
The word 'reality' may be read as 'nature'.*
12. **Clause 10/1/2:** The following is added as footnote to the clause:
The words 'demand wages' may be read as 'charge fee'.
13. **Clause 10/1/3:** The following are added as footnotes to the clause:
*The text 'owners of the current accounts' may be read as 'current account holders'.
The text 'receiving the owners of some current accounts' may be read as 'some current account holders'.
This clause may be read with IBD Circular No. 1 of 2014 and any amendments therein as notified from time to time.*
14. **Clause 10/2:** The following is added as footnote to the clause:
This clause may be read as follows: "It is not permitted to the institution to present to the current accounts holders, in lieu of only such accounts, tangible gifts, financial incentives, services or benefits that are not related to deposits and withdrawals. Among these are exemptions from charges in whole or in part, like exemption from credit card charges, lockers, transfer charges and letter of guarantee and letter of credit. The perquisites and incentives that are not specific to current accounts are not governed by this rule."
15. **Clause 10/3/2:** The following are added as footnotes to the clause:
*This clause may be read as follows: "It is necessary that the charges imposed on credit cards for cash withdrawals from bank teller machines be a lump sum amount within the limits of reasonable charges (Ujrat ul Misl) that do not lead to making profit on qard. It is not permitted to link the charge to the amount withdrawn. It is not permitted for the institution to set slabs for withdrawals, as a device for obtaining repeated charges. (While determining the withdrawal charges) It is also not permissible to take into account the period of repayment of the amount withdrawn. Where there is a difference in currencies, the prevailing exchange rate shall be applied. See also item 4/5 of Shari'a Standard No. 2 pertaining to Credit and Charge cards."
The clause to be read with applicable Foreign Exchange Rules and Regulations/ Directions/ Instructions issued by State Bank of Pakistan from time to time.*

AAOIFI Shariah Standard No. 23 - Agency and the Act of an Uncommissioned Agent (Fodooli)

16. The word '*uncommissioned*' may be read as '*Self-imposed*' in the title and throughout the text of AAOIFI Shariah Standard No. 23.
17. **Clause 1:** The following are added as footnotes to the clause:
*The text 'concluding' shall be deleted in the first para.
The text 'personal affairs, penalty affairs' may be read as 'civil law, criminal law'.
Accordingly, the clause may be read as follows: "This Standard covers agency and the acts of self-imposed agent in the sphere of financial transactions for the purpose of concluding contracts such as sale, Ijara and settlement (Sulah), and performing acts and rendering services such as receipt, payment and taking & giving delivery.*

The Standard is also applicable in areas such as fund management, real estate and investment agency. However, it does not cover agency and the act of self-imposed agent in the field of ibadat such as disbursement of Zakah for which there is a separate standard, civil law, criminal law, legal prosecution (advocacy), and documentary credits (which have also been dealt with in a separate standard)."

18. **Clause 2/1/1:** The following is added as footnote to the clause:

This clause may be read as follows: "Agency is the act of one party delegating the other to act on its behalf, with respect to matters which can be delegated and it (Agency) is permissible."

19. **Clause 2/1/2:** The following is added as footnote to the clause:

The text 'thereto' may be read as 'therefore both the principal and agent can revoke it unilaterally'.

20. **Clause 2/2/3/2:** The following are added as footnotes to the clause:

The word 'conditional' may be read as 'contingent'.

The word 'fulfilment' may be read as 'happening'.

The word 'condition' may be read as 'event'.

Accordingly, the clause may be read as follows: "Contingent Agency: where the validity of the contract is made subject to happening of a certain event, for instance when a debtor agrees to put his own earning assets under the management of his creditor in case of default."

21. **Clause 2/2/3/4:** The following is added as footnote to the clause:

The text 'Agency, whether free or limited, should be subject to specific conditions' may be read as 'Absolute Agency and Restricted Agency'. Accordingly the clause may be read as follows: "Absolute Agency and Restricted Agency: In case of absolute agency, consideration should be given to customary practices, interest and circumstances of the principal."

22. **Clause 2/2/4:** The following is added as footnote to the clause:

This clause may be read as follows: "Just as the conclusion of the agency contract can be contingent or restricted, in the same way, the act which is the subject matter of agency can be contingent or restricted. In this case, though the agency contract is immediately effective, its exercise is subject to the fulfilment of a specific condition, such as resorting back to the principal before disposal. The conditions set by the principal should be observed such as offering him a guarantee or lien."

23. **Clause 3/3/1:** The following is added as footnote to the clause:

The text 'dispensed with' may be read as 'ignored'.

24. **Clause 3/3/2:** The following is added as footnote to the clause:

The text 'deposing' may be read as 'disposing'.

25. **Clause 3/3/3:** The following are added as footnotes to the clause:

The text 'can be disposed of through agency' may be read as 'accepts delegation'.

The word 'personally' may be read as 'himself'.

The second para is numbered as 3/3/4 and the text 'and borrowing' may be added at the end of the clause.

Accordingly, the clause(s) shall be read as:

"3/3/3 It should be something that accepts delegation. This includes all types of financial contracts and dealings that a person can perform for himself. Any contract that a person is permitted by Shari'a to be involved in personally can be performed through agency.

3/3/4 It should not involve a Shari'a-banned practice, like trading in impermissible commodities or committing usurious lending and borrowing."

26. **Clause 4/2/1:** The following is added as footnote to the clause:
The word 'doses' may be read as 'does'.
27. **Clause 4/2/3:** The following is added as footnote to the clause:
This clause may be read as follows: "The amount payable as remuneration for agency should be known, whether in lump sum or as a share of a specific amount. It may also be defined in terms of an amount to be known in the future, as when remuneration of the first period is known and linked to a benchmark that may be referred to at the beginning of subsequent periods. However, it is not permissible to leave remuneration for agency undetermined, for example allowing the agent to take an unspecified share from the entitlements of the principal."
28. **Clause 4/2/5:** The following is added as footnote to the clause:
*The text 'the output' appearing at the end of the sentence may be read as 'it'.
Accordingly, the clause may be read as follows: "Remuneration for agency may be any gain in excess of a specific amount of output of the operation, or a share of it."*
29. **Clause 4/2/7:** The following is added as footnote to the clause:
*This clause may be read as follows: "When the agent, for no reasonable excuse, refrains from carrying on agency that he has been paid for, and the work he has done was beneficial, he becomes entitled to the remuneration, as per market rate, commensurate with the part of work done, and within the limits of the contract value for that part of work. The agent in this case is bound to indemnify the principal for any actual loss resulting from his refusal to continue the work.
On the contrary, when the principal, for no reasonable excuse, forces the agent to discontinue the work before the completion of the work or the end of the agency period, the agent becomes entitled to the full remuneration agreed upon. However, if the principal, for a valid reason, forces the agent to discontinue the work before the end of the contract, the agent becomes entitled to remuneration for that part of work he has already performed."*
30. **Clause 4/3/1:** The following is added as footnote to the clause:
This clause may be read as follows: "When it involves rights of others, such as the mortgagor appoints the mortgagee or a third party to get possession of the mortgaged asset or sell it on maturity. Agency in these cases is binding to the mortgagor (the debtor). A further example of binding agency is a case when the owner of income-generating assets assigns an agent/ manager to collect his entitlements from the assets."
31. **Clause 4/3/3:** The following is added as footnote to the clause:
The word 'injury' appearing in the clause may be read as 'loss/damage'.
32. **Clause 4/4/1:** The following is added as footnote to the clause:
This clause may be read as follows: "In principle, agency has no time limit, because the agent can be terminated at any time. The two parties, however, may agree on a certain period after which the agency becomes invalid without a request from any of them to revoke the contract."
33. **Clause 5/1/1:** The following is added as footnote to the clause:
*The last line of the clause may be replaced with the following text: "It is not allowed to stipulate these expenses on the agent or to defer their payment in case of paid agency."
Accordingly, the clause may be read as follows: "In contract of procurement agency, the price and other expenses should be borne by the principal. Besides the price of purchased commodity, the principal should reimburse the agent expenses such as those of transportation, storage, taxation,*

maintenance and insurance. It is not allowed to stipulate these expenses on the agent or to defer their payment in case of paid agency.”

34. **Clause 5/2:** The following is added as footnote to the clause:
The word ‘best’ is added before the text ‘interest of the principal’ in the third line of the clause. Accordingly, the third line of the clause may be read as: “Breach of contract for this purpose does not include acts that serve the best interest of the principal, like selling at a higher or buying at a lower price.”
35. **Clause 6:** The following is added as footnote to the clause:
The heading may be read as ‘Rulings applicable to the Agent’.
36. **Clause 6/1/1:** The following is added as footnote to the clause:
This clause may be read as follows: “When an agent conducts deals with his ascendant or descendant relatives, who are not under his guardianship, or with the agent’s spouse, the deal is permissible unless it encompasses undue benefits or favouritism. In case there is any undue benefits or favouritism then the agent may deal with them with the consent of the principal.”
37. **Clause 6/1/2:** The following is added as footnote to the clause:
This clause may be read as follows: “An agent should not conduct deals with his own self or with his son/ daughter who is still under his guardianship, or with his partner (Shareek) in relation of the subject matter of the partnership (Sharika).”
38. **Clause 6/1/4:** The following are added as footnotes to the clause:
The word ‘guarantee’ may be read as ‘liability’.
The word ‘stemming’ may be read as ‘arising’.
Accordingly, the clause may be read as follows: “An agent may purchase what he has bought for the principal, by way of offer and acceptance. The deal should be concluded in such a way that the liabilities arising from the agency contract and the sale contract are kept separate. After the completion of the conclusion of the sale contract, the commodity becomes under the liability of the purchaser/agent (see Shari’a Standard No.8 on Murabaha - item 3/1/5).”
39. **Clause 6/2:** The following are added as footnotes to the clause:
The heading may be read as ‘Consequences of the Contract and its Rights’.
This clause may be read as follows: “Consequences of the contract relate with the principal, while rights arising from the contract relate with the agent. However, the principal, by virtue of ownership, may pursue the agent’s activities and demand the rights of the contract. Donations if made by agent on behalf of principal, are exempted from the above principle as this should be assigned to the principal and all rights in connection with donations relate with the principal.”
40. **Clause 6/3/1:** The following is added as footnote to the clause:
This clause may be read as follows: “When the agent breaches the contract in a way that does not serve the best interest of the principal, the contract will be contingent upon ratification of the contract by the principal, regardless of whether the breach of the contract relates to the subject matter or part thereof, or the price, or its term of being spot or deferred or acquiring of ownership (purchase) or transfer of ownership (sale) (see items 8 and 5/2).”
41. **Clause 6/3/2:** The following is added as footnote to the clause:
This clause may be read as follows: “When the agent for purchase breaches the contract by purchasing at a price that exceeds both the market price and the price set forth by the principal, he should compensate the principal for the difference between the purchase price and the market

price. Similarly, if the breach is by selling at less than the price specified by the principal, compensation should be for the difference between the selling price and the market price only, and he will not be responsible for compensating the difference between selling price and the price specified by the principal. Hence, the case here is similar to what happens in Mudaraba or investment agency whereby selling is stipulated to take place for a profit, not less than a specified ratio and hence, the agent (or the Mudarib) will not be held responsible for this ratio, but he will be held responsible for any amount less than the Market price.”

42. **Clause 7/1/3:** The following are added as footnotes to the clause:

The word ‘fixed’ may be read as ‘specific’.

Accordingly, the clause may be read as follows: “When the agent completes the work assigned to him in the specific task agency.”

43. **Clause 7/1/4:** The following are added as footnotes to the clause:

In the second sentence, the word ‘himself’ may be added after the word ‘work’.

Accordingly, the second sentence of the clause may be read as follows: “Agency also expires if the principal has performed the work himself, or the subject matter of agency no longer exists.”

44. **Clause 8/1:** The following is added as footnote to the clause:

This clause may be read as follows: “A self-imposed agent (Fodooli) is a person who discharges the affairs of others without being an agent or having a right to do so by virtue of Shari’a, even if the affairs may not be essential or urgent in nature. The deal becomes subject to the rulings on the Fodooli, even when the Fodooli shows himself as the real owner.”

45. **Clause 8/3:** The following is added as footnote to the clause:

This clause may be read as follows: “The rulings on the self-imposed agent are applicable to all financial contracts, including compensatory contracts like sale, purchase, rent, hiring contracts, and non –compensatory contract such as donations by way of gift. Similarly, these rulings are applicable in agency for investment contracts.”

46. **Clause 8/4:** The following is added as footnote to the clause:

The word ‘retroactively’ may be read as ‘retrospectively’.

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47. **Clause 1:** The following are added as footnotes to the clause:

The term ‘lending and borrowing’ may be read as ‘any debt based transactions’.

The second sentence of the clause may be read as follows: “It does not cover loan and investment services, or other banking services for which separate Shari’ah standards have already been issued, such as trading in currencies, debit and credit cards, investment accounts, remunerative and non-remunerative accounts, profit distribution and investment Sukuk.”

48. **Clause 2/1:** The following is added as footnote to the clause:

This clause may be read as follows: “Institutions may receive Shari’ah permissible documents and financial papers from their customers as a custodian of such documents and financial papers on trust basis, and will be liable to return them the same on their demand, and may charge fees for such custodial services.”

49. **Clause 2/3/1:** The following is added as footnote to the clause:

The term ‘Shariah accepted’ may be read as ‘Shariah compliant’.

50. **Clause 2/6/2:** The following are added as footnotes to the clause:

This clause may be read with IBD Circular No. 1 of 2014 and any amendments therein as notified from time to time.

The text 'owners of its investment or current accounts' may be read as 'investment or current account holders'.

51. **Clause 2/7:** The following is added as footnote to the clause:

The heading 'Services of safe deposit vaults' may be read as 'Locker Services'.

52. **Clause 2/7/1:** The following is added as footnote to the clause:

This clause may be read as follows: "The institution may provide locker services (based on Ijarah) to its customers. This is done through signing a contract according to which the Institution allocates a locker within its premises for the customer to use against a specific fee. The deal here is based on Ijarah contract that entitles the customer to the locker's usufruct."
