

Adoption of AAOIFI Shariah Standard No. 49

In order to standardize and harmonize Shariah practices in Islamic Banking Institutions (IBIs), AAOIFI Shariah Standard No. 49 - Unilateral and Bilateral Promise has been adopted. This Shariah Standard is applicable with the following clarifications and amendments as mentioned against each clause(s) of respective Standard:

AAOIFI Shariah Standard No. 49 - Unilateral and Bilateral Promise

1. **Clause 1:** The following is added as footnote to the clause:
The text "or effecting a disposal" may be read as "or taking an action later-on".
2. **Clause 2/1:** The following is added as footnote to the clause:
The text " with the other having the option to avail itself of the promise" may be read as "with the other having an option to exercise the promise".
3. **Clause 2/2:** The following is added as footnote to the clause:
*The text 'two back to- back promises' may be read as 'two promises'.
The term 'and time' shall be added at the end of the clause.*
4. **Clause 3:** The following is added as footnote to the clause:
The heading may be read as 'Types of Promises and their General Rules'.
5. **Clause 3/1:** The following is added as footnote to the clause:
This clause may be read as follows: "It is impermissible to promise an act prohibited by Shariah and fulfilling it is also prohibited, and the promisor is bound to break such promise, which includes such a promise that is intended to be a ruse to circumvent the prohibition of interest bearing (Riba) transactions."
6. **Clause 3/2:** The following is added as footnote to the clause:
*The term 'Qard' shall be added with the term 'loan'.
The term 'debt' may be read as 'loan'.
The text 'even if the promise is granted in a document separate from the loan contract' shall be replaced with the text 'even if the promise is granted separate from the loan contract.'
Accordingly, the clause may be read as follows: "Any promise in a loan (Qard) contract that procures benefit for the lender, over and above the repayment of the loan (Qard), is prohibited by the Shari'ah even if the promise is granted separate from the loan contract."*
7. **Clause 3/4:** The following is added as footnote to the clause:
The clause may be read as "It is religious/moral obligation to fulfill a promise made to perform an action or a financial transaction permissible in the Shariah; meaning that breaking a promise without an excuse is a sin. However, a promise is not legally binding except in case of not fulfilling the promise results in a loss to the promisee then it is compulsory on the promisor to compensate the promisee legally as well. For example, if a person says to a merchant that you purchase a specific item for yourself and I promise you that I will then buy it from you. The merchant purchases the item solely in reliance on the promise and afterwards the promisor doesn't fulfill his promise, then it is legally binding on him to compensate the actual loss incurred by the trader/promisee; if the merchant is unable to sell the item for a price that covers the cost of the item, the promisor is required to bear the difference between the cost of the item and the selling price obtained by the merchant for it. Actual loss does not include opportunity cost."

The clause shall be read with Clause 3/6 of Shariah standard 49.

8. **Clause 3/6:** The following is added as footnote to the clause:
 - a. The text '*moral*' shall be added in front of the term '*religious*'.
 - b. The text '*except in case of a valid excuse*' is added after the text '*Fulfilling a benevolent promise (such as a promise to make a gift or lend an item) is a religious/moral obligation*'.
 - c. The text '*the promisee performing*' being redundant in relation to the sentence is deleted
Accordingly, the clause may be read as "*Fulfilling a benevolent promise (such as a promise to make a gift or lend an item) is a religious /moral obligation, except in case of a valid excuse, but is not binding legally, except if the promise is conditional upon an action that causes the promisee to incur a liability, in which case it is legally binding. For example, if the promisor says to the promisee: "If you buy this item from me, I will give you a gift of another specified item", fulfilling such a promise is a religious/moral obligation and is legally binding.*"
9. **Clause 3/7:** The following is added as footnote to the clause:
There is a referencing error, the text should be read as 'see item 3/4' instead of 'see item 3/5'".
10. **Clause 4/3:** The following is added as footnote to the clause:
The last sentence of this clause shall be applicable after explicit approval of Shariah Board of respective bank. The rationale of the same shall also be documented.
11. **Clause 5:** The following is added as footnote to the clause:
The heading shall be read as '*Permissible Applications of Unilateral and Bilateral Promises*'
12. **Clause 5/1:** The following is added as footnote to the clause:
There is a referencing error, the text should be read as 'item 3/4' instead of 'item 3/5'.
13. **Clause 5/2:** The following is added as footnote to the clause:
The clause shall be divided into two clauses to reflect the sequence of the Arabic version of the Shariah Standard. The sequence will be as follows containing two clauses:
Clause 5/2: The promise given by the institution in Ijarah Muntahia Bittamleek transactions to grant the leased asset to the lessee as a gift conditional on that he pays all the lease installments is legally binding as in item 3/6 of this Standard. [see Shari'ah Standard (9) on Ijarah Muntahia Bittamleek].
Clause 5/3: The promise given by the institution in diminishing Musharakah transactions that it will lease its share of the asset to the other co-owner is legally binding and the promise given by the client that he will buy units of the institution's share at stipulated intervals are legally binding by virtue of item 3/5 of this Standard. [see para 5 of Shari'ah Standard No. (12) on Sharikah (Musharakah) and Modern Corporations].
