

**Adoption of AAOIFI Shariah Standards Nos. 15, 39 & 46**

In order to standardize and harmonize Shariah practices in Islamic Banking Institutions (IBIs), AAOIFI Shariah Standards No. 15 – Ju’alah, No. 39 – Mortgage and its Contemporary Applications and No. 46 – Al-Wakalah Bi Al-Istithmar (Investment Agency) 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. 15 – Ju’alah**

1. **Clause 4/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “With due consideration to item (6) below in respect to the revocation of Ju’alah, Ju’alah, in principle, is not a binding contract. The offeror (Ja’il) or the worker (’Amil) are entitled to revoke it unilaterally, however, it becomes binding for the Ja’il when the worker commences work. If the worker undertakes not to revoke the contract during a specified period, it is binding on him to abide by the undertaking.”*
2. **Clause 5/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “The existence of legal capacity is a condition for both parties to the contract. It is not a condition that the worker be specified, therefore, Ju’alah is concluded by the issuance of an offer directed at the general public. Any person whom the offer reaches may undertake the work himself or with the help of another. If, however, the worker is specified, it is obligatory for him to undertake the work himself or with the explicit or implicit consent of the offeror through someone under his supervision and control.”*
3. **Clause 5/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows:*  
**“Form of the contract**  
*The Ju’alah contract is concluded by an offer directed towards a specified worker or towards the general public, irrespective of such an offer being made verbally, in writing or through any other means that indicate an invitation to work and an obligation to pay the compensation. Acceptance of the offer by ’Amil is not necessary/required.”*
4. **Clause 5/3/1/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “When the period is over and the worker has done (part of) the work that will benefit the offeror, the worker is entitled to prevailing market compensation (Ujrat al-Mithl).”*
5. **Clause 5/3/2/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “The compensation should be known, valuable in the eyes of the Shari’ah, and deliverable. If the compensation is unknown, unlawful/Shari’ah non-compliant or not deliverable, payment of prevailing market compensation becomes binding.”*
6. **Clause 5/3/2/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “The compensation may be a portion of the object of work in Ju’alah, for instance, a percentage of a debt agreed upon for collection or the right to utilise, for a determined period, a project whose completion is agreed upon.”*
7. **Clause 5/3/2/3:** The following is added as a footnote to the clause:

*This clause may be read as follows: “As a rule, entitlement to compensation is not established until the work is completed and delivered to the offeror. The following are the exceptions to the rule:  
a) Where it is evident that the work undertaken by the worker belongs to someone other than the offeror and has been decreed as such, the worker is entitled to the compensation.  
b) Where an accident occurs during work undertaken by the worker causing loss in the value of the project that was not due to the tort or negligence of the worker, the worker is entitled to full compensation.”*

8. **Clause 5/3/2/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “It is permissible to stipulate that all or part of the compensation be paid in advance at the conclusion of the contract or thereafter, even though this is before the completion of the entire work, however, it is considered on account basis and the worker is not entitled to it without the realisation of the result, the offeror having the right to reclaim it if the work is not realised.”*
9. **Clause 6/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “If the offeror prevents the worker from working after commencement of the work, the offeror is bound to pay prevailing market compensation (Ujrat al-Mithl).”*
10. **Clause 6/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “If the contract is terminated due to a reason which is beyond control of the worker and the offeror has benefitted from the work, then the worker is entitled to the Ju’al up to the extent of which the offeror has benefitted.”*
11. **Clause 7/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “Entitlement to compensation depends on completion of work and delivery.”*
12. **Clause 7/5:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “As a rule, Ju’alah is non-binding, while Ijarah is binding.”*
13. **Clause 8:** The following is added as a footnote to the clause:  
*This clause may be read as follows:  
“**Applications of Ju’alah**  
Among the applications of Ju’alah in activities where the extent of work is not determinable and in which uncertainty is overlooked are:”*
14. **Clause 8/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows:  
“**Exploration for minerals and extraction of water**  
Ju’alah contract may be used for the exploration for minerals and the extraction of water in situations where entitlement to wages is contingent upon the finding of minerals or water without reference to the amount of work or the extent of the period.”*

#### **AAOIFI Shariah Standard No. 39 – Mortgage and its Contemporary Applications**

1. The word ‘Mortgage’ may be read as ‘Rahn’ as defined in Clause 2 under the title, definition section and throughout the text of AAOIFI Shariah Standard No. 39.
2. **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 covers mortgages required by the Institution for securing the debts and commitments owed or to be owed to it by other individuals/Institutions. It also covers the mortgages presented by the Institution to other parties in order to secure the debts and commitments it owes to them. Furthermore, the standard covers the mortgages, which the Institution, in its capacity as a trustworthy person or agent, keeps for the benefit of other parties.”*

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

*This clause may be read as follows:*

**“Definition of Mortgage**

*To mortgage means to make a valuable asset or so, security against a debt so that the asset or its value is used to receive the debt in case of default.”*

*Following is added for clarity:*

*“Valuable asset or so’ includes Shari’ah compliant tangible and intangible assets.”*

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

*This clause may be read as follows: “The mortgage contract is binding for the mortgager once it is concluded, and the mortgager does not have the right to revoke it from his own side, whereas, the creditor mortgagee has the right to do so.”*

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

*This clause may be read as follows: “Possession of the mortgaged asset takes place on the basis of the same requirements as that of possession of a sold asset. It could be actual possession by taking the asset in hand also known as physical mortgage; or possession could be constructive such as through registration and documentation also known as security or customary mortgage. Both types of mortgages are governed by the same rulings.”*

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

*This clause may be read as follows: “The mortgagee has the right to appoint an agent to possess the mortgage on his behalf. The agent, thus appointed, shall have the same rights of disposition, which the principal has. The mortgage can also be put in the hands of the mortgagee or in the hands of a third party known as the trustworthy person, to be agreed upon between the two parties. When the mortgage is kept by a trustworthy person neither of the two parties has the right to transfer it to any other party.”*

7. **Clause 3/1/4:** The following is added as a footnote to the clause:

*This clause may be read as follows: “The mortgagee has the right to stipulate a condition that the mortgagor should appoint him or his representative or any other mutually agreed person as an agent to sell the mortgaged asset and pay the debt out of its value in case of non-payment of due amount, without resorting to court of law. The mortgagor does not have the right to revoke such agency once agreed upon.”*

8. **Clause 3/1/5:** The following are added as footnotes to the clause:

*This clause may be read as follows: “The death of the mortgagor or the mortgagee has no effect on the validity of the mortgage contract. The respective inheritors shall substitute the deceased persons.”*

*Following is added for clarity:*

*“The same rulings are applicable mutatis mutandis in case of dissolution of a legal entity.”*

9. **Clause 3/1/6:** The following are added as footnotes to the clause:

*This clause may be read as follows: “The mortgage contract is no longer valid when the mortgaged asset perishes unless a compensation is obtained, for example through takaful which will substitute it. The mortgage contract can also cease to be valid for other reasons such as termination of the contract by the mortgagee, settlement of or relief from the debt, or relinquishment of the mortgage right. Furthermore, the validity of the mortgage contract can also expire as a result of transfer of the ownership of the mortgaged asset (through sale, gift or will) on permission of the mortgagee; unless the new owner accepts to keep the mortgage contract. [see item 3/2/6].”*

*Following is added for clarity:*

*“Partial Sale /purchase of an asset, which is under Rahn: In case there is cushion available under the asset (which has been kept under Rahn) i.e. i) beyond the amount of the debt and ii) beyond the regulatory requirements of Security and margin etc. issued by SBP from time to time, following conditions shall be applicable:*

- i. From Shari’ah perspective partial sale of the asset (that has been kept under the Rahn) is allowed, without permission (i.e. seeking/obtaining NOC) of the party (Murtahin- that has kept the asset under Rahn) provided the rights of the party (i.e. Creditor(s)/ Murtahin) are not violated/compromised.*
- ii. If obtaining NOC is a legal or regulatory requirement or due to contractual agreement(s), in that case:*
  - a. NOC from counterparty must be obtained by IBI within 120 days or the specified time, whichever is earlier.*
  - b. If obtaining NOC requires more than 120 days then the IBI shall obtain permission, with genuine reasons/proper justification, from its own Shari’ah Board and document the permission granted along with genuine reasons/proper justification.”*

10. **Clause 3/1/7:** The following is added as a footnote to the clause:

*This clause may be read as follows: “The mortgagee has the right to keep the whole mortgaged asset for any part of the debt, unless he accepts partial releasing of the mortgage. On repayment of the debt the mortgagee has no right to keep the mortgaged asset as a collateral for any other debt for which the asset is not mortgaged, except when the two parties agree to keep the mortgaged asset as a collateral for any debt between them within a specific period.”*

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

*This clause may be read as follows: “The mortgaged asset should be a Shari’ah-permissible asset. It should also be well specified (through pointing, naming or description) and be deliverable.”*

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

*This clause may be read as follows: “In principle, the mortgaged object should be a tangible asset, yet it can be a debt, a cash amount, a fungible asset or a consumable commodity. Perishable objects can also be mortgaged in a way as they should be sold and replaced by their value. Moreover, a mortgaged object can be a known share of an undivided asset (Musha) which can be sold separately.”*

*Following is added for clarity:*

*“In case mortgaged object is undivided share of asset, which cannot be sold separately, an NOC shall be required from other partner(s) in order to create Rahn.”*

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

*This clause may be read as follows: “The mortgaged asset is a trust in the hands of the mortgagee, the trustworthy person or the agent and is still owned by the mortgagor as long as it is mortgaged.*

*Therefore, when the mortgaged asset perishes in the hands of the mortgagee, or the trustworthy person, for a reason other than transgression or negligence, no responsibility shall rest with him, and the debt shall still remain valid. If the perishment of the mortgaged asset is due to transgression or negligence of the mortgagee, or the trustworthy person, he shall be held responsible for compensation at the value of the asset on the date of its perish, whereas the debt shall remain valid. In this case, the two parties have the right to perform set off arrangements between the debt amount and the value of the perished mortgage asset. If the mortgaged asset perishes in the custody of mortgagor, he shall be liable to substitute another asset except when the mortgagee relinquishes his right to obtain mortgage.”*

14. **Clause 3/2/5:** The following are added as footnotes to the clause:

*This clause may be read as follows: “The mortgagor can mortgage the asset that is owed to him by the mortgagee, whether the asset is kept by the mortgagee as a trust (such as an asset kept under the arrangement of ‘Wadi’ah (trust keeping)’ or ‘Aariyah’ and investment accounts); or as a guaranteed liability (such as current accounts and assets retained in invalid contracts). In the latter case, the status of the mortgagee will consequently change from keeping the asset on guarantee basis to keeping it on the basis of trust.”*

*Following is added for clarity:*

*“This clause may be read with clause 5 of this Shari’ah Standard.”*

15. **Clause 3/2/6:** The following are added as footnotes to the clause:

*This clause may be read as follows: “The mortgagor can also mortgage an Aariya asset (Musta’ar mortgage), or a rented asset (rented mortgage), on permission of the owner in both cases. If a borrowed or rented mortgage is used for repayment of the defaulted debt, the owner of the asset should have the right of recourse on the mortgagor for compensation (subject to no adverse stipulation); in kind if the mortgaged asset is a fungible asset, or in value if otherwise. When a borrowed or rented mortgage asset perishes in the hands of the mortgagor, the mortgagor has to compensate the owner of the borrowed asset, whereas for the rented asset compensation is deserved only if the perish of the mortgaged asset is due to transgression or negligence of the mortgagor.”*

*Following is added for clarity:*

*“The ‘Borrowed asset’ means ‘Aariyah’ which refers to transfer of mere usufruct (i.e. without transfer of ownership) without any consideration/compensation.”*

16. **Clause 3/2/8:** The following is added as a footnote to the clause:

*This clause may be read as follows: “Any increase (attached and detached accession/improvement) in the mortgaged asset as well as its income is considered to be mortgaged along with the principal, unless the two parties agree otherwise.”*

17. **Clause 3/2/9:** The following are added as footnotes to the clause:

*This clause may be read as follows: “The mortgagor can benefit from the mortgaged asset on permission of the mortgagee, whereas the mortgagee has no right at all to take benefit free of charge from the mortgaged asset with or without the permission of the mortgagor. However, on permission of the mortgagor the mortgagee can utilize the mortgaged asset against the market consideration/Ujrat al-Mithl (اجرة المثل) for similar assets. [see items 3/3/ and 4/3]”*

*Following is added for clarity:*

*“Refer to AAOIFI Shari’ah Standard No. (9): Ijarah.”*

18. **Clause 3/2/12:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The possession of receivables to be mortgaged actually takes place when document of the debt is deposited with the mortgagee or this particular mortgage is duly witnessed. When a debt is mortgaged, the mortgagee becomes entitled to it more than anyone else."*
19. **Clause 3/3/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The debt for which the mortgage is signed should be a permissible debt such as sale price, indemnity against damage, Salam commodity, Istisna'a commodity or an owed usufruct. Concluding a valid mortgage contract need not necessarily be preceded by an already established debt. The mortgage contract can be signed before or at the same time of signing the debt contract. The debt for which the mortgage is signed should not be an impermissible debt (such as a usurious loan); or a non-debt deal (such as an identified asset as price, the usufruct of a specific asset, and a spot sale identified subject matter that is still in the hands of the seller)."*
20. **Clause 3/3/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is impermissible to stipulate mortgage as a condition in trust-based contracts such as agency, Wadi'ah (trust keeping), Musharakah, Mudarabah and leased asset with the lessee. If mortgage in such contracts is to be confined to indemnity in case of transgression, negligence or breach of the contract, then it is permissible. [see Shari'ah Standard No. (5) on Guarantees, item 2/2/1]."*
21. **Clause 3/4:** The following is added as a footnote to the clause:  
*The heading may be read as follows: "Exercise of the rights in case of default."*
22. **Clause 3/4/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "With due consideration to item 3/1/4, the mortgagee has the right to sell the mortgaged asset in case of default. After repayment of the mortgagee's debt the remaining price of the mortgaged asset should be given to the mortgagor by virtue of the mortgage contract. If the sale price of the mortgaged asset happened to be less than the due debt, the difference shall be subject to Shari'ah rulings on normal debt, and the mortgagee should have the right of recourse to the mortgagor for settlement of such difference."*
23. **Clause 3/4/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "When the mortgagor is bankrupt, the mortgagee should have the priority over other creditors, for getting his debt repaid from the sale value of the mortgaged asset. If the sale value of the mortgaged asset is less than the mortgagee's debt, he becomes in the same standing with other creditors with regard to the residual indebtedness."*
24. **Clause 4/3:** The following is added for clarity as a footnote to the clause:  
*"Exception to this clause may be given by the Shari'ah Boards of the IBIs provided that debt instruments (Shari'ah non-compliant) may be accepted up to the issued price (Ras al-Mal) or face value, whichever is less."*
25. **Clause 5:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "If the customer is willing to convert his current account into Mudarabah account, this clause should be applicable, otherwise clause 6/5/2 of Shari'ah Standard No. (5): Guarantees will be applicable."*

*(Note: In case, where the customer has freely, willingly and absolutely agreed that his current account is to be frozen (e.g. lien is marked on the current account), this would not be considered as Rahn)."*

26. **Clause 6/1:** The following is added as a footnote to the clause:

*This clause may be read as follows: "The Institution can accept mortgage in the form of investment units in Islamic investment funds. In this case the Institution as a mortgagee can suspend the right of the client to get back or draw from the account, absolutely, or in proportion to the amount of the debt and this is preferable."*

27. **Clause 8:** The following are added as footnotes to the clause:

*This clause may be read as follows: "The mortgagee has the right at the time of signing the contract to require from the mortgagor to arrange Islamic insurance for the mortgaged asset whenever it is possible. When the mortgagor accepts to do so the compensation to be received on the damage of the mortgaged asset shall replace it. If the compensation is received in the form of a cash amount such amount shall be mortgaged along with its returns by depositing it in a frozen investment account owned by the mortgagor. [see Shari'ah Standard No. (5) on Guarantees, item 4/8]."*

*Following is added for clarity:*

*"It is also permissible that mortgagee on behalf of the mortgager may arrange Islamic insurance."*

#### **AAOIFI Shariah Standard No. 46 – Al-Wakalah Bi Al-Istithmar (Investment Agency)**

1. The word 'uncommissioned' may be read as 'Self-imposed' in the title and throughout the text of AAOIFI Shariah Standard No. 46 [as has been advised also for AAOIFI Shariah Standard No. 23 - Agency and the Act of an Uncommissioned Agent (Fodooli) adopted vide IBD Circular No. 01 of 2020 dated January 3, 2020].

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

*This clause may be read as follows: "It is permissible to make the appointment of an agent contingent upon the fulfillment of certain conditions or to cause to take effect on a specified future date. It is also permissible to stipulate conditions/restrictions that are compliant with Shari'ah. For further details, see Shari'ah Standard No. (23)."*

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

*This clause may be read as follows: "It is not permissible for any one of the parties to unilaterally amend the restrictions in the restricted (المقيدة) agency contract. [see Shari'ah Standard No. (23) for the types of agency]."*

4. **Clause 4/1:** The following is added as a footnote to the clause:

*This clause may be read as follows: "Investment agency contracts, whether remunerated or unremunerated, are binding when applied by institutions because they are invariably fixed term contracts in which both parties agree not to terminate within a specified period."*

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

*This clause may be read as follows: "Where the parties agreed not to terminate for a specified period, it is permissible to stipulate in the contract the right of one of the parties to terminate the contract unilaterally in specific circumstances."*

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

*This clause may be read as follows: "When the term of an agency expires, the agent is required not to enter into new investment activities, but is required to conclude existing investments."*

7. **Clause 5/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "If the agency is remunerated, the agent's fee must be known by way of a fixed amount or a percentage of the amount invested. It is also permissible to link the fee to an established index/benchmark that is known to both parties and is referred to before every investment period after the fee of the first period has been determined. It should, however, be capped and floored (by assigning it maximum and minimum limits)."*
8. **Clause 5/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "If the fee was not specified in the contract and the agent customarily charges a fee as is normal practice in institutions then the agent will be entitled to a fee which is prevalent in the relevant markets (Ujrat al-Mithl). This also applies when the agent does not complete the task required after starting and realizing returns that are beneficial to the principal."*
9. **Clause 5/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible to stipulate that the investment agent, in addition to his fee, is entitled to all or part of any amount over and above the expected profit as a performance incentive."*
10. **Clause 6/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The agent may start investment activity before receiving the funds (from the principal), with the principal's permission, by:"*
11. **Clause 6/3/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Advancing a loan (Qard) to the principal for purchasing something on his behalf."*
12. **Clause 6/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Any loan advanced by the agent for purchasing is construed as an interest free loan which may not bring any benefit to the agent as creditor. The agent is entitled to its fee and performance incentive, without consideration to the loan advanced."*
13. **Clause 7/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The investment agent acts in a fiduciary capacity in relation to the investment and therefore is not liable for any loss in cases other than willful misconduct, negligence, or breach of contract unless the breach happens to be advantageous to the principal such as selling an asset for a price higher than the price required by the principal. In situations mentioned above where the agent is held liable for indemnification, such liability is limited to the capital amount and the agent is not liable for loss of expected profit whether the capital was invested immediately or delayed or not invested at all."*
14. **Clause 8:** The following is added as a footnote to the clause:  
*This clause may be read as follows:*  
**"Consequences of the Contract and its Rights**  
*The results of the contract (like transfer of ownership and entitlement to the consideration) belong to the principal. However, the rights arising from contract (like pursuit of payment and litigation) belong to the agent."*



15. **Clause 11:** The following is added as a footnote to the clause:

*This clause may be read as follows:*

***“Rules of Investment Agency***

*If the agent co-mingles his own funds with the principal’s funds or with the funds that he manages, he may not then purchase, for his own account any assets from the assets owned by the co-mingled funds without giving notice on each occasion. This is to establish the transfer of ownership and liability for the asset from the co-mingled funds to the agent’s account. This requirement is impracticable in relation to investment accounts (and therefore this requirement may be waived). [see item 6/1/4 of AAOIFI Shari’ah Standard No. (23) as adopted by SBP vide IBD Circular No. 1 of 2020].”*

16. **Clause 12/1/1:** The following is added as a footnote to the clause:

*This clause may be read as follows: “It is permissible to co-mingle funds on the basis of Investment Agency with funds from Mudarabah investment accounts. Such funds are treated as if they were extra funds provided by a capital provider in a Mudarabah investment or shareholder funds when they are co-mingled with funds in Mudarabah investment accounts. Allocation of profits is calculated by the standard prorated method (usually daily weighted average method) for funds invested in Mudarabah which takes into account each investor’s amount and the tenor of the investment. All the profits of the invested funds in Mudarabah belong to the principals and the agent is entitled to his fee and any performance incentive stipulated. The agent is not entitled of Mudarib’s share in profit against capital invested under agency.”*

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