

رفع  
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أسكنه الله الفردوس

Shari'a Standard No. (9)

**Ijarah and Ijarah Muntahia Bittamleek \***

\* This standard was previously issued by the 1994 "Shari'a Rules for Investment and Financing Instruments No. (2) Ijarah and Ijarah Muntahia Bittamleek. It is reissued as a Shari'a standard following the resolution of the Shari'a Board to reissue all the Shari'a Rules in the form of Shari'a Standards.



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In the name of Allah, the Benevolent, the Most Merciful  
Peace be to Allah and peace be upon His messenger, and his family and the companions

## Preface

This standard outlines the basis of the Shari'a rulings on Ijarah and Ijarah Muntahia Bittamleek, beginning with the rules relating to the promise to lease, if there be any, and concluding with the rules of repossession of the leased property in an ordinary Ijarah by the lessor or transferring its ownership in case of Ijarah Muntahia Bittamleek. The Standard also aims to outline the Shari'a requirements that must be observed by Islamic financial institutions (institution/institutions)<sup>(1)</sup> with respect to Ijarah transactions.

(1) Referred to hereafter as institution or institutions to describe Islamic financial institutions including Islamic banks.

## Statement of the Standard

### 1. Scope of the standard

This standard is applicable to operating leases of properties or to Ijarah Muntahia Bittamleek, whether the institution is the lessor or the lessee. This standard is not applicable to the employment of persons (labour contract).

### 2. Promise to lease (an asset)

2/1 In principle, an Ijarah contract is executed for an asset owned by the lessor. However, it is for a customer to request an institution to acquire the asset or to acquire the usufruct of an existing asset which the customer wishes to take on lease.

2/2 A master agreement may be drawn up covering a number of Ijarah transactions between the institution and the customer, setting out the general terms and conditions of agreement between the two parties. In this case, there may either be a separate lease contract for each transaction, in a specific written document signed by the two parties, or alternatively the two parties may exchange notices of offer and acceptance by referring to the terms and conditions contained in the master agreement.

A lease transaction may also be executed without being preceded by the drawing up of a master agreement, in which case the Ijarah contract is drawn up and signed directly.

2/3 It is permissible for the institution to require the lease promisor (customer) to pay a sum of money to the institution to guarantee the customer's commitment to accepting a lease on the asset and the subsequent obligations, provided no amount is to be deducted from this sum except in proportion to the actual damage suffered by the institution. Thus, if the customer breaches his promise, he is charged either the difference between the cost of the asset intended to be leased and the total lease rentals for the asset which is leased to a third party, or, if the asset is sold, the difference between its cost and the total selling price. The amount of money deposited by the customer as security for his commitment can be either held on trust in the custody of the institution in which case the latter cannot invest it, or it may be held on an investment trust basis in which case the customer permits the institution to invest it on the basis of Mudaraba between the customer and the institution. It is permissible to agree with the customer, upon the execution of the contract of lease, that this amount shall be treated as an advance payment of the instalments of the lease rental.

### 3. Acquisition of the asset to be leased, or its usufruct, by the institution

3/1 For the validity of an Ijarah contract concerning a specified asset, the lease contract should be preceded by acquisition of either the asset to be leased or the usufruct of that asset.

(a) If the asset or the usufruct thereof is owned by the institution, which should in principle be the case, an Ijarah contract may be executed as soon as agreement is reached by the two parties.

- (b) However, if the asset is to be acquired from the customer (see item 3/2 below), or from a third party, the ijarah contract shall not be executed unless and until the institution has acquired that asset.

Ownership is possible under a sale contract, even if the title is not registered in the purchaser's name (the institution), on condition that the purchaser should obtain a counter-deed or bill of sale to establish the actual transfer of his ownership of the asset (see item 3/5 below).

- 3/2 An asset may be acquired from a party and then leased to that party. In this case, the ijarah transaction should not be stipulated as a condition of the purchase contract by which the institution acquires the asset.
- 3/3 A lessee of an asset may enter into a sub-lease contract with a party other than the owner for a rental that is either the same, lower or higher, payable either currently or on a deferred basis, unless the owner stipulates that the lessee should not assign or sublet the property to third parties, or should not do so without his approval.
- 3/4 The lessee may lease the asset back to its owner in the first lease period for a rental that is lower, same or higher than what he is paying, if the two rentals are paid on a spot basis. However, this is not permissible if it should lead to contract of *ijrah*, by varying the rent or the duration. For example, it is not permissible, if the first rental is one hundred dinars payable on a spot basis, for the lessee to sublet it to the lessor for one hundred and ten dinars payable on a deferred basis, or if the first rental is one hundred and ten dinars payable on a deferred basis, for the second to be for one hundred dinars payable instantly, or if the two rentals are of the same amount, but the payment of the first rental is deferred for one month and the second rental is deferred for two months.
- 3/5 An ijarah contract may be executed for an asset undertaken by the lessor to be delivered to the lessee according to accurate specifications, even if the asset so described is not owned by the lessor. In this case, an agreement is reached to make the described asset available during the duration of the contract, giving the lessor the opportunity to acquire or to produce it. It is not a requirement of this lease that the rental should be paid in advance as long as the lease is not executed according to the contract of *Salam* (or *Sajaf*). Should the lessee receive an asset that does not conform to the description, then he is entitled to reject it and demand an asset that conforms to the description.
- 3/6 An institution's customer may jointly acquire an asset that he wishes to lease with the institution, and then lease the institution's share of the asset from the institution. In this case, the rental specified as receivable by the institution should only be in proportion to its share in the ownership of the asset, since the lessee is a co-owner of the asset and therefore has to pay rent only on the share that he does not own.
- 3/7 An institution may appoint one of its customers to act as its agent in acquiring on its behalf an asset that is desired by that customer such as equipment, machinery, etc., whose description and price are fixed with a view to the institution's leasing such asset or assets to the customer after it has acquired their ownership through either actual or constructive possession. Although this type of agency (for the purchase of the assets) is permissible, it is always



preferred that the agent is someone other than the customer (prospective lessee) as far as possible.

#### 4. Concluding an Ijarah contract and the forms of Ijarah

##### 4/1 Signature of the contract and the consequences thereof

- 4/1/1 The lease contract is a binding contract which neither party may terminate or alter without the other's consent (see items 5/2/2, 7/2/1, and 7/2/2). However, an Ijarah contract may be terminated in accordance with item 7/2/1.
- 4/1/2 The duration of an Ijarah contract must be specified in the contract. The period of Ijarah should commence on the date of execution of the contract, unless the two parties agree on a specified future commencement date, resulting in a future Ijarah, that is, an Ijarah contract to be executed at a future date.
- 4/1/3 If the lessor fails to deliver the asset to the lessee on the date specified in the Ijarah contract, no rental is due for the period between the contract date and the date of actual delivery, and the rental should be reduced accordingly, unless it is agreed that the lease be extended by an equivalent period after its original expiry date.
- 4/1/4 *Urboun* (i.e. earnest money) may be taken in respect of lease at the execution of the contract of lease and this is treated as an advance payment of the rental. If the Ijarah contract is not executed for a reason attributable to the lessee, the lessor may retain the *urboun*. However, it is preferable for the institution to waive any amount in excess of the actual damage it has suffered, which is the difference between the rental specified in the contract of lease and the actual rental obtainable in an Ijarah contract with another lessee.

##### 4/2 Forms of the Ijarah contract

- 4/2/1 Ijarah contracts may be executed in respect of the same asset for different periods for several lessees, provided that two contracts are not executed in respect of the same asset for the same period. Such an arrangement is called "successive leases", because each Ijarah is considered as being successive to the previous one and not concurrent with it on the basis of its being a future Ijarah (see item 4/1/2 above).
- 4/2/2 If the lessor signs an Ijarah contract for a particular asset for a specified period of time, he cannot sign another Ijarah contract with another lessee for the duration of the existing Ijarah period or for any remaining period thereof (see item 7/1/2 below).
- 4/2/3 An Ijarah contract may be signed with several lessees being entitled to the same specified usufruct of a particular asset and duration of rent, without specifying a particular period of time for a particular person. In this case, each lessee may benefit from the property during the time assigned to him in accordance with specified rules. This case is one form of time-sharing in benefiting from the usufruct.
- 4/2/4 A lessee may invite co-lessees to share with him in the usufruct to which he has a right, by assigning them shares in the usufruct before

entering into a sub-lease. In this case, they become his sharers in the usufruct of the leased property. If the property is sub-leased, each co-sharer is entitled to a share in the sub-lease rental pro rata to his share in the usufruct.

## 5. Subject matter of Ijarah

### 5.1 Rules governing benefit and leased property

- 5/1/1 The leased asset must be capable of being used while preserving the asset, and the benefit from an Ijarah must be lawful in Shari'a. For example, a house or a chattel may not be leased for the purpose of an impermissible act by the lessee, such as leasing premises to a institution dealing in interest or to a shopkeeper for selling or storing prohibited goods, or leasing a vehicle to transport prohibited merchandise.
- 5/1/2 The subject matter of Ijarah may be a share in an undivided asset held in common with the lessee, whether the lessee is a partner with the lessor or not. In this case the lessee may benefit from the leased share in the same way in which the lessor used to benefit from it, i.e., by time-sharing or by identifying a particular part of the property.
- 5/1/3 An Ijarah contract may be executed for a house or a chattel, even with a non-Muslim, if the use to be made of it is permissible, such as a house for residential purposes, or a car for transport, or a computer to store data, unless the lessor knows in advance, or has reason to presume, that the use will be for an impermissible purpose.
- 5/1/4 The lessee must use the leased asset in a suitable manner or in conformity with common practice, and comply with conditions which are acceptable in Shari'a. He must also avoid causing damage to the leased asset by misuse through misconduct or negligence.
- 5/1/5 The lessor must accept responsibility for any defects of the leased asset which impair the intended use of the asset, and may not exclude his liability for any impairment that the leased asset may sustain, either by his own doing or as a result of events outside his control, which affect the benefits intended to be available under the Ijarah contract.
- 5/1/6 If the benefit from the leased asset is impaired wholly or partially as a result of the lessee's misconduct, while the property remains under lease, the lessee is obliged to restore or repair the usufruct, and rent for the time during which the benefit is lost is not to be waived.
- 5/1/7 The lessor may not stipulate that the lessee will undertake the major maintenance of the asset that is required to keep it in the condition necessary to provide the contractual benefits under the lease. The lessor may delegate to the lessee the task of carrying out such maintenance at the lessor's cost. The lessee should carry out operating or periodical (ordinary) maintenance.
- 5/1/8 The leased asset is the responsibility of the lessor throughout the duration of the Ijarah, unless the lessee commits misconduct or negligence. The lessor may take out permissible insurance on it



whenever possible, and such insurance expenses must be borne by the lessor. The lessor may take this into account implicitly when the lease rental is to be fixed. However, he may not, after the contract is signed, charge the lessee any cost in excess of the cost anticipated at the time of fixing the rent. The lessor may also delegate to the lessee the task of taking out insurance at the lessor's expense.

#### 5/2 Rules governing lease rentals

- 5/2/1 The lease rental may be in cash or in kind (goods) or benefit (service). The rental must be specified, either as a lump sum covering the duration of the *Ijarah* contract, or by instalments for parts of the duration. It may also be for a fixed or variable amount, according to whatever designated method the two parties agree upon (see item 5/2/3 below).
- 5/2/2 The rental is made obligatory by the contract and the lessor's entitlement to the rental runs from the time when the lessee starts to benefit from the asset or once the lessor makes the usufruct of the asset available to the lessee, and the entitlement to the rental does not necessarily commence on the date of signing the *Ijarah* contract. The rental may be paid entirely in advance or in instalments during a period equivalent, or more or less, to the duration of the *Ijarah*.
- 5/2/3 In case the rental is subject to changes (floating rental), it is necessary that the amount of the rental of the first period of the *Ijarah* contract be specified. It is then permissible that the rentals for subsequent periods be determined according to a certain benchmark. Such benchmark must be based on a clear formula which is not subject to dispute, because it becomes the determining factor for the rentals of the remaining periods. This benchmark should be subject to a ceiling, on both maximum and minimum levels.
- 5/2/4 It may be agreed that the rental should consist of two specified parts: one to be paid or transferred to the lessor and the other to be held by the lessee to cover any expenses or costs approved by the lessor, such as the cost of major maintenance, insurance, etc. The second part of the rental is treated as an advance by the lessor to the lessee on account.
- 5/2/5 The two parties may agree to amend the rentals of future periods, i.e. the periods for which the lessee has not yet received any benefit, by way of renewal of the *Ijarah* contract. The rentals of any previous periods which have not yet been paid become a debt owed to the lessor by the lessee, and therefore cannot be increased.

#### 6. Guarantees and treatment of *Ijarah* receivables

- 6/1 Permissible security, of all kinds, may be taken to secure the rental payments or as a security against misuse or negligence on the part of the lessee, such as a charge over assets, guarantees or an assignment of rights over assets of the lessee held by third parties, even if such rights are a permissible life or property insurance indemnity in favour of the lessee.

- 6/2 The two parties may agree that the rental be paid instantly. The rental may be paid in instalments, in which case the lessor may stipulate that the lessee should immediately pay the remaining instalments if he, after receiving a specified period of due notice, delays, without a good reason, payment of any instalment. Any acceleration of the remaining instalments in the case of default is subject to settlement at the end of the *Ijarah* period or, if the *Ijarah* contract is terminated earlier, at the time of such termination. Any extension of time by the lessor after the stipulated time for prompt payment is considered as a consent to deferral of payment throughout the extension period and not a right of the lessee, subject always to item 5/2/2 above.
- 6/3 No increase in the rental due may be stipulated by the lessor in case of delay in payment by the lessee.
- 6/4 It may be provided in the contract of *Ijarah* or *Ijarah Muntahia Bittamleek* that a lessee who delays payment for no good reason undertakes to donate a certain amount or percentage of the rental due in case of late payment. Such donation should be paid to charitable causes under the co-ordination of the institution's Shari'a supervisory board.
- 6/5 In case of foreclosure of the security provided by the lessee, the lessor may deduct from such amounts only what is due in respect of rental for previous periods, and not all rental instalments, including instalments which have not yet fallen due and in respect of periods for which the lessee has not had the benefit of the leased asset. The lessor may also deduct from the security all legitimate compensations necessitated by the lessee's breach of contract.

## 7. Changes to the *Ijarah* contract

### 7/1 Selling of or damage to the leased asset

- 7/1/1 If the lessor sells the leased asset to the lessee, the *Ijarah* contract is terminated due to the transfer of the ownership of the leased asset and ownership of usufruct to the lessee.
- 7/1/2 The lessor may sell the leased asset to a third party other than the lessee, and the title to the asset together with the rights and obligations of the lessor under the *Ijarah* contract is thereby transferred to the new owner, because the asset and the rights and obligations attached to it become the right of the third party. The lessee's consent is not necessary when the lessor decides to sell the asset to a third party. If the purchaser does not know about the *Ijarah* contract, he may terminate the sale contract, but if he knows about it and consents to it, he takes the place of the previous owner in his entitlement to the rental for the remaining period.
- 7/1/3 In case of total destruction of the leased asset, the *Ijarah* contract is terminated if it is concluded on an identified asset. In such a case, it may not be stipulated that the rest of the instalments should be paid.
- 7/1/4 The leased asset in the possession of the lessee is held by the lessee in a fiduciary capacity on behalf of the lessor. The lessee will not be held liable for any damage or destruction of the leased asset unless such damage or destruction is a result of misconduct or negligence on the part of the lessee. In this case, he is obliged to replace the asset if it

is replaceable, otherwise he is liable for the amount of the damage to be determined by valuation.

- 7/1/5 In case of the partial destruction of the leased asset in a manner that impairs the benefits expected from the leased asset, the lessee may terminate the Ijarah contract. Both he and the lessor may also agree to amend the rental in case of partial destruction of the leased property, if the lessee waives his right to termination. The lessor in this case is not entitled to rent for the period during which the lessee was not able to benefit from the asset unless the lessor makes it up (by agreement with the lessee) with a like benefit after the expiry of the period specified in the contract. However, in an Ijarah contract for an unidentified asset undertaken by the lessor to be delivered according to the agreed specifications, the owner in cases of total and partial destruction must offer an alternative asset having a specification similar to that of the destroyed asset, for the Ijarah to continue for the remaining time of the contract. If it is not possible to provide a substitute asset, the contract will be terminated (see item 3/5).
- 7/1/6 If the lessee stops using the leased asset or returns it to the owner without the owner's consent, the rental will continue to be due in respect of the remaining period of the Ijarah, and the lessor may not lease the property to another lessee for this period, but must keep it at the disposal of the current lessee (see item 7/2/1 below).

## 7/2 Termination, expiry and renewal of the Ijarah contract

- 7/2/1 It is permissible to terminate the lease contract by mutual consent but it is not permissible for one party to terminate it except in case of force majeure or there is a defect in the leased asset that materially impairs its use. Termination is also possible when one party secures an option to terminate the contract in which case the party who holds the option may exercise it during the specified period.
- 7/2/2 The lessor may stipulate that the Ijarah contract be terminated if the lessee does not pay the rent or fails to pay it on time.
- 7/2/3 An Ijarah contract does not terminate with the death of either party thereto. However, the heirs of the lessee may terminate the Ijarah contract if they can prove that the contract has become, as a result of the death of their legator, too onerous for their resources and in excess of their needs.
- 7/2/4 An Ijarah contract expires with the total destruction of the leased asset in the case of leasing a specific asset or with the inability to enjoy the usufruct owing to the loss of the benefit that the asset was intended to provide.
- 7/2/5 The two parties may terminate the Ijarah contract before it begins to run.
- 7/2/6 The lease expires upon the expiry of its term, but it may remain operative for a good cause, such as the late arrival to the place intended in the lease of transportation vehicles, and in the case of a late harvesting period for land leased for crop cultivation. The lease



then continues with the rental based on the prevailing market value. An Ijarah may be renewed for another term, and such renewal may be made before the expiry of the original term or automatically by adding a provision in the new contract for such renewal when the new term starts, unless either party serves a notice on the other of its desire not to renew the contract.

#### 8. Transfer of the ownership in the leased property in Ijarah Muntahia Bittamleek

8/1 In Ijarah Muntahia Bittamleek, the method of transferring the title in the leased asset to the lessee must be evidenced in a document separate from the Ijarah contract document, using one of the following methods:

- (a) By means of a promise to sell for a token or other consideration, or by accelerating the payment of the remaining amount of rental, or by paying the market value of the leased property.
- (b) A promise to give it as a gift (for no consideration).
- (c) A promise to give it as a gift, contingent upon the payment of the remaining instalments.

In all these cases, the separate document evidencing a promise of gift, promise of sale or a promise of gift contingent on a particular event, should be independent of the contract of Ijarah Muntahia Bittamleek and cannot be taken as an integral part of the contract of Ijarah.

8/2 A promise to transfer the ownership by way of one of the methods specified in item 8/1 above is a binding promise by the lessor. However, a binding promise is binding on one party only, while the other party must have the option not to proceed. This is to avoid a bilateral promise by the two parties which is prohibited in Shari'a because it amounts in essence to a contract.

8/3 In all cases of transfer of ownership by way of gift or sale, it is necessary, when the promise is fulfilled, that a new contract be drawn up, since the ownership to the property is not automatically transferred by virtue of the original promise document that was drawn up earlier.

8/4 In case the Ijarah contract is combined, through a separate document, with a gift contingent upon the condition that the remaining rent instalments be paid, the ownership to the leased property is transferred to the lessee if the condition is fulfilled, without the need for any other procedure to be adopted or a document to be signed. However, if the lessee's payment is short of even one instalment, the ownership to the property is not transferred to him, since the condition has not been fulfilled.

8/5 If the leased asset was purchased from the lessor before it was leased back to the lessee on the basis of Ijarah Muntahia Bittamleek, a (reasonable) period of time, between the lease contract and the time of the sale of the asset to the lessee, must have expired, to avoid the contract of Ijarah. This period must be long enough so that the leased property or its value could have changed.

8/6 Subject to item 8/6 below, the rules governing Ijarah must apply to the Ijarah Muntahia Bittamleek, i.e. when a promise is made by the lessor to transfer the ownership in the leased asset to the lessee. None of these rules should be

breached under the pretext that the leased asset was bought by the lessor on the basis of a promise by the lessee that he would acquire it or that ownership of it would devolve upon him, or that he would pay rentals in excess of those payable in respect of a similar property which are similar in amount to the instalments of an instalment sale, or that local laws and conventional banking practices consider such a transaction as an instalment sale with a deferred transfer of the ownership.

- 8/7 Transfer of the ownership in the leased property cannot be made by executing, along with the Ijarah, a sale contract that will become effective on a future date.
- 8/8 If the leased asset is destroyed or if the continuity of the lease contract becomes impossible up to the expiry period without the cause being attributable to the lessee in either case, then the rental is adjusted based on the prevailing market value. That is, the difference between the prevailing rate of rental and the rental specified in the contract must be refunded to the lessee if the latter rental is higher than the former. This is to avoid loss to the lessee, who agreed to a higher rental payment compared to the prevailing rate of rental in consideration of the lessor's promise to pass the title to him upon the expiry of the lease term.

**9. Issue Date**

This standard was issued on 4-Rabi al-Awwal 1423H corresponding to 16 May 2002.



### Adoption of the Standard

The Shari'a standard for Ijarah and Ijarah Muntahia Bittamleek was adopted by the Sharifa Board in its meeting No.(4) held on 25-27 Safar 1421H corresponding to 29-31 May 2000.

In its meeting No. (8) held in Mecca on 28 Safar-4 Rabi al-Awwal 1423H corresponding to 11-18 May 2002, the Sharifa board readopted a resolution to reformat the Sharifa Rules for Ijarah and Ijarah Muntahia Bittamleek in the form of a Shari'a standard.

## Appendix A: Brief history of the preparation of the Standard

In its meeting No. (1) held on 11 Dhul Hijja 1419H corresponding to 27 February 1999, the Shari'a Board decided to give priority to the preparation of the Shari'a rules for Ijarah and Ijarah Muntahia Bittamleek.

On Tuesday 13 Dhul Hijja 1419H corresponding to 30 March 1999, the Fatwa and Arbitration Committee decided to commission a Shari'a consultant to prepare a juristic study and an exposure draft on the Shari'a Rules for Ijarah and Ijarah Muntahia Bittamleek.

In its meeting held on 13,14 Rajab 1420H corresponding to 22,23 October 1999, the Fatwa and Arbitration Committee discussed the exposure draft of the Shari'a Rules for Ijarah and Ijarah Muntahia Bittamleek, and asked the consultant to make the amendments in light of the comments made by the members.

The revised exposure draft of the Shari'a Rules was presented to the Shari'a Board in its meeting No. (3) held in Mecca on 10-15 Ramadan 1420H corresponding to 18-22 December 1999. The Shari'a Board made further amendments to the exposure draft of the Shari'a Rules and decided that it should be distributed to specialists and interested parties in order to obtain their comments in order to discuss them in a public hearing.

A public hearing was held in Bahrain on 29 -30 Dhul-hijja 1421H corresponding to 4-5 April 2000. The public hearing was attended by more than thirty participants representing central institutions, institutions, accounting firms, Shari'a scholars, academics and others who are interested in this field. The members responded to the written comments that were sent prior to the public hearing as well as to the oral comments that were expressed in the public hearing.

The Shari'a Standards Committee and the Fatwa and Arbitration Committee held a joint meeting on 21-23 Muharram 1421H corresponding to 26-28 April 2000 to discuss the comments made about the Shari'a Rules. The committee made the amendments which it considered necessary in light of the discussions that took place in the public hearing.

The Shari'a Board in its meeting No. (4) held on 25 - 27 Safar 1421H corresponding to 29 - 31 May 2000 in Madina Al Munawara discussed the amendments made by the Shari'a Studies Committee and the Fatwa and Arbitration Committee, and made the amendments which it considered necessary. **Some paragraphs of the this standard were adopted in the name of Shari'a Rules for Ijarah and Ijarah Muntahia Bittamleek by the unanimous vote of the members of the Shari'a Board, while the other paragraphs were adopted by the majority vote of the members, as recorded in the minutes of the Shari'a Board.**

In its meeting No. (7) held on 9-13 Ramadan 1422H corresponding to 24-28 November 2001 in Makkah al-Mukarramah, the Shari'a Board decided to convert all Shari'a rules for Investments and Financing to Standards and a committee was formed for this purpose.

In its meeting No. (8) held in Medina al-Munawara on 28 Safar - 4 Rabi'ul Awwal 1423 corresponding to 11-16 May 2002, the Shar'a Board adopted the reformatting of Shar'a Rules for Ijarah and Ijarah Muntahia Bittamleek in the name of Shar'a Standard No. (9) Ijarah and Ijara Muntahia Bittamleek. This committee did not make any changes to the substance.

## Appendix B: Basis of the Sharī'a rulings

### The Legitimacy of Ijarah and Ijarah Muntahia Bittamleek

- Ijarah derives legitimacy from the Qur'an, the Sunnah, consensus of the legal community and reasoning.
- On the level of the Qur'an, Allah, the Almighty says: "said one of them 'O my father engage him on wages"<sup>(2)</sup> and "If you had wished, surely you could have exacted some recompense for it".<sup>(3)</sup>
- The authority for the legitimacy of Ijarah in the Sunnah is the saying of the Prophet (pbuh) that *whoever hired a worker must inform him of his wages*<sup>(4)</sup> and his saying that *give a worker his wages before his sweat (body odour) is dried*.<sup>(5)</sup>
- The legitimacy of Ijarah also generated consensus among the legal community. The Ijarah is also acceptable by reasoning because it is a convenient means for people to acquire right to use assets that they do not own since not all people may be able to own tangible assets.
- The Ijarah Muntahia Bittamleek, on the other hand, is not different in its rules from an ordinary Ijarah, except that it is associated with a promise by the lessor to transfer ownership at the end of the Ijarah term. The validity of this form of Ijarah is confirmed by the resolution of International Islamic Fiqh Academy which explained the impermissible and the permissible forms of Ijarah Muntahia Bittamleek.<sup>(6)</sup>
- It must be noted that the permissible Ijarah Muntahia Bittamleek is different from hire-purchase as commonly practised by the conventional banks in the following respects. In hire-purchase, the terms and provisions of sale and leasing are applied to the subject matter at the same time, and subsequently the ownership of the subject matter is transferred to the lessee (buyer), once he pays the last instalment without the need for a separate contract for the transfer of ownership. In the permissible Ijarah Muntahia Bittamleek, on the other hand, the provisions governing Ijarah are applied to the leased asset until the end of the Ijarah term, after which the lessee obtains ownership of the asset in the manner explained in this Standard.
- It must be noted also that the Ijarah contract intended in this Standard is the lease of tangible assets (chattels or property), which is a contract giving a legal title to legitimate and identified usufruct for a defined period of time in exchange for a legitimate and determined consideration.

### Promise to lease an asset

The basis for allowing the institution to demand payment of money by a party who has promised to take the property as lessee is the need to confirm the commitment of the promisor. This is because a binding promise has financial implications if the promisor retracts the promise. The request for payment of a commitment fee is to cater for

(2) Surah al-Qisas verse 26.

(3) Surah al-Kahf verse 77.

(4) This hadith is reported by Ibn Majah, Sunan Ibn Majah 2/317. See al-Hafthany, *Majma' al-Zawa'id* 4/98.

(5) This hadith is reported by Ibn Majah, Sunan Ibn Majah, 2/317; and al-Tabrani in *al-Musad* (See al-Hafthany *Majma' al-Zawa'id* 4/98).

(6) Resolution of the International Islamic Fiqh Academy No. 110 (4/12).



financial damage that the institution may have incurred as a result of the promisor taking back the promise or defaulting in payment. The unified Shari'a Board of al-Barakah issued a fatwa in respect to *hamish jiddiyah* (commitment fee) in *Murabaha*.<sup>(7)</sup> This ruling is also applicable to *ijarah*.

#### The acquisition of the asset to be leased, or its usufruct, by the institution

- The basis for not allowing the leasing of an asset that is not owned by the lessor is the hadith that prohibits one from selling what he does not own,<sup>(8)</sup> and *ijarah* proper is a sale of usufruct. The basis for allowing the leasing back of an asset to the person from whom the asset was acquired is because such a transaction does not involve any *inah sale*.
- The basis for not allowing a simultaneous combination of *ijarah* and sale is because making purchase contracts contingent upon leasing contracts is impermissible by an explicit text in the view of a number of jurists. This is prohibited by a well-known hadith which prohibits two sales in one sale.<sup>(9)</sup>
- The basis for the permissibility of sub-leasing when the lessor has allowed it is because the lessee has ownership of the usufruct by virtue of the *ijarah* contract, in which case he is entitled to transfer such usufruct for consideration as he deems fit. The basis for impermissibility of sub-leasing when the lessor has not allowed it is because the ownership of usufruct by the lessee is limited in which case the lessee is obliged to consider any limitations on this ownership.
- The basis for the permissibility of leasing a property on the basis of specifications even if the lessor does not own it is that this will not lead to dispute, in which case it is similar to a *Salam* contract. However, in this case the lessor should not request advance payment of the rentals according to one of the views of the Shafi'is and Hanbalis.
- The basis for preferring that the agent who purchases on behalf of the institution be someone other than the customer (lessee) is to avoid fictitious transactions and to demonstrate the genuine role of the institution in making the usufruct of the asset available to the lessee.

#### Contract of *ijarah*

- The basis for the binding nature of an *ijarah* contract is because *ijarah* is one of the contracts for transferring ownership that depends on an exchange of counter-values. The Shari'a principle is that these contracts are binding because of the saying of Allah, the Almighty fulfil all obligations.<sup>(10)</sup> The basis for allowing cancellation of an *ijarah* contract due to contingencies is because without the right to cancel the *ijarah* contract the lessee would waste money by paying rent for unneeded usufruct due to an event of which he did not contribute to the occurrence.
- The basis for requiring a designated term for the lease is because without such a designated term there would be an uncertainty that might lead to dispute. The basis for allowing an *ijarah* contract take effect based on future events is because *ijarah*

(7) The fatwa of United Shari'a Board of al-Barakah No. (817).

(8) The hadith is reported by Abu Dawud, Sunan Abu Dawud, 3/285.

(9) The hadith is reported by Ahmad, al-Nisa'i and al-Tirmidhi. Al-Tirmidhi authenticated the hadith (see Nayt al-Awta 3/248).

(10) Sunn al-Makalah, volume 1.



is, unlike a sale contract, a contract that involves time and for this it is relevant that it be contingent on future events.

- The basis for the permissibility of obtaining *uḍboun* (earnest money) to secure performance is the practice of Umar Ibn al-Khattab, may Allah be pleased with him, in the presence of some companions of the Prophet (pbuh). This practice is also permitted by Imam Ahmad. A resolution has been issued in connection with the legality of earnest money (down payment) by the international Islamic Fiqh Academy.<sup>(11)</sup>
- The basis for the impermissibility of re-leasing after the lease of the asset is that under the first contract, the usufruct of the asset no longer belongs to the owner, and a new contract may not be signed with another lessee before the contract with the first lessee is terminated. Hence, this form of *Ijarah* is not suitable as an investment instrument, because it constitutes an impermissible sale of the rent receivable pursuant to providing new lessees with an asset already leased out to the existing lessee. The form just described is different from the transfer, by the owner, of the ownership of the leased assets to an investor, so that the latter takes his place, wholly or partially, with regard to the ownership of all or some parts of the assets, as well as in the ownership of the usufruct of, and entitlement to his share of the rent from, those assets. The al-Barakah Forum has issued a resolution disallowing multiple leases of the same asset after the first *Ijarah* contract.<sup>(12)</sup>
- The basis for allowing successive leases on the same specified usufruct of a particular asset without specifying a particular period for a particular person is because the usufruct—in line with the term assigned to each party—can accommodate the parties. The justification for not allowing a specific term for each person is that each party will know the term to which he is entitled in his turn and because their applications are considered in order. This rule was supported by a resolution of al-Barakah Forum.<sup>(13)</sup>
- The basis for the requirement that incorporating co-lessee must take place before any sub-lease contract is signed is because sub-leasing the property means the sub-lessor no longer owns the usufruct, and thus he would be leasing out a benefit of the usufruct that he does not own, which is not permissible in Shari'a as stated earlier. The jurists have considered a bankrupt lessor—a person who leases things he does not own—among those who must be restricted in using their property.

#### The subject matter of *Ijarah*

- The basis for the requirement that the leased asset must be capable of being used while preserving the asset is that the subject of a lease is usufruct and not the asset, as leasing is not possible for things that perish by use. The basis for the requirement that benefit from *Ijarah* must be permissible is that leasing an asset that will be used in impermissible way makes the lessor an accomplice in doing evil and this is prohibited as per the saying of Allah, the Almighty **Help ye one another in righteousness and piety.**<sup>(14)</sup>

(11) Resolution no. 72 (3/8) in respect of earnest money (down payment).

(12) Resolution No. 13/4.

(13) Resolution No. 10/1.

(14) Surah al-Maidah, verse 2.

- The basis for the impermissibility of stipulating a defect exclusion clause in respect to the leased asset is that such a condition defeats the purpose of the contract, which is exchange of usufruct for rentals. If the usufruct is partially or wholly impaired, the receipt of the rentals by the lessor becomes a form of unjust enrichment. The resolution of the International Islamic Fiqh Academy has declared that the lessor must accept responsibility for any destruction or impairment of the leased asset insofar as these events are not sustained as a result of misconduct or negligence on the part of the lessee.<sup>(15)</sup> The fatwa of the unified Shari'a Board of al-Barakah states that the lessor is not entitled to exclude his liability in respect of defects in the leased asset.<sup>(16)</sup>
- The reason why the lessor may not stipulate that the lessee will undertake the major maintenance of the leased asset is that this condition defeats the purpose of an *Ijarah* contract. Again, it is the duty of the lessor to ensure that the usufruct is intact, and this is not possible unless the asset is maintained and kept safe so that the lessor may be entitled to the rentals in consideration for the usufruct. The unified Shari'a Board of al-Barakah issued a fatwa supporting this.<sup>(17)</sup>
- The reason why insurance expenses must be borne by the lessor is that the owner of the asset is responsible for insuring it, and the lessor is the owner. This is supported by the resolution issued by the International Islamic Fiqh Academy.<sup>(18)</sup>
- The basis for the permissibility of using a certain benchmark or price index to determine rentals of subsequent periods after the expiration of the first period of an *Ijarah* contract is that the rentals will subsequently be known. This is similar to the principle of *ijrah al-mithl* (common market rate of rental) and does not lead to dispute. Again, using a benchmark to determine the rentals is to the benefit of all parties since there is possibility of rental fluctuation that may be in favour of either the lessee or the lessor in view of the fact that the contract remains binding on both parties throughout its term. This rule is supported by a fatwa issued during al-Barakah's 11<sup>th</sup> forum.
- The basis for the permissibility of restructuring the rentals for the future periods is that such an act is deemed to create a new contract for a new term for which the rentals are not yet due. Hence, the rentals are not regarded as a debt, in which case the prohibition of rescheduling rentals in return for higher payment is not applicable to this. However, increasing previously agreed rentals in exchange for a deferred period of payment is a form of *riba*.

#### Guarantees and treatment of *Ijarah* receivables

- The basis for the legitimacy of obtaining guarantees for payment is that this is not contrary to the purpose of an *Ijarah* contract. Rather guarantees are relevant to credit transactions because they secure performance.
- The basis for the permissibility of a payment acceleration clause is the saying of the Prophet (pbuh) Muslims are bound by the conditions they made, and because payment on a deferred basis is the right of the lessee (the debtor as to rentals), and the lessee may, based on agreement, choose to pay before time and relinquish the deferral of the date of payment entirely. The lessee may also agree

(15) Resolution of the International Islamic Fiqh Academy No. 13 (1/0).

(16) The Fatwa of the Unified Shari'a Board of al-Barakah No. (1/07).

(17) The Fatwa of the Unified Shari'a Board of al-Barakah No (9/9).

(18) Resolution of the International Islamic Fiqh Academy No. 13 (1/0).



to a stipulation that bases acceleration of payment on the event of default in payment.

- The basis of the prohibition of increasing the amount of lease receivables in exchange for a deferral of payment is because this is a form of riba.
- The basis for the permissibility of stipulating that a solvent debtor should undertake to make a payment to charity in case of default is that this is similar to an undertaking to make a donation that is approved by the Maliki scholars, notably Abd. Allah Ibn Nafi' and Muhammad Ibn Ibrahim Ibn Dinar.<sup>(19)</sup>

#### Changes to the Ijarah contract

- The basis for allowing the lessor to sell the leased asset to a third party without the consent of the lessee is that the lessor owns the asset and is acting within the limits of his ownership without affecting the right of the lessee that is materialised in the usufruct. If the Ijarah expires, enabling the buyer to take possession of the asset is sufficient to discharge the seller from any responsibility as to delivery in which case the buyer will own the asset excluding the right of the lessee to the usufruct which is attached to the asset even if the ownership is transferred. The Shari'a Board of al-Rajhi Banking and Investment Corp.,<sup>(20)</sup> and the Shari'a Board of the Jordan Islamic Bank<sup>(21)</sup> have issued a resolution in support of this ruling.
- The basis for the termination of the lease contract due to a total destruction of the leased asset is that the rent is in consideration of the benefit of the leased asset and if the latter is destroyed, there is no justification for the payment of the rental.
- The basis for the entitlement of the lessor to the rentals even though the lessee returns the leased asset to the owner or stops using it is that Ijarah is a binding contract that cannot be terminated unilaterally by the lessee.
- The basis for the validity of terminating the lease contract in case of intervening contingencies or *force majeure* is that there is a pressing need which calls for this. This is because if the contract were to be binding in spite of such contingencies, then a person with a valid excuse may incur loss that was not a result of a contract. The Shari'a Board of the Kuwait Finance House<sup>(22)</sup> and the unified Shari'a Board of al-Barakah<sup>(23)</sup> have issued a supporting fatwa in this regard.
- The basis for the permissibility that the lessor may stipulate that an Ijarah contract be terminated due to non-payment of rental by the lessee is that contractual stipulations are primarily valid and enforceable. This stipulation does not legalise impermissible acts or invalidate permissible acts. Therefore, the validity of this stipulation comes under the hadith *Muslims are bound by the conditions they made except a condition that legalises impermissible act or invalidates permissible act.*<sup>(24)</sup>

(19) See al-Hotabi, *Tahrir al-Kalam fi Masa'il al-Hizam*, pp. 170 ff. This view appeared in the Fatwas of Kuwait Finance House.

(20) The Resolution of the Shari'a Board of al-Rajhi Banking and Investment Corp. No. (11).

(21) The Fatwas of the Shari'a Board of Jordan Islamic Bank No. (16).

(22) The Fatwa No. 233 and 253.

(23) The fatwa No. (9/9) of the Unified Shari'a Board.

(24) This tradition has been reported by a number of the companions and it was narrated by Ahmad (1012); Ibn Majah through a good chain of transmission (2783), printed by Mustafa al-Sabi al-Halabi, Cairo, 1372H/1952 A.D.; al-Hakim (printed in Hyderabad, India, 1356H); al-Bayhaqi (6/70, 156, 1/133), printed in Hyderabad, India, 1355H) and al-Darqutni (4/228, 377, printed by Dar al-Mansur fi al-Tiba'ah, Cairo, 1372H/1852 A.D.).

- The basis of the rule that *Ijarah* does not terminate with the death of either party thereto is that the subject-matter of the contract is the asset and as long as the asset is available the *Ijarah* contract remains unaffected. The basis for the right of the lessee's heirs to terminate the *Ijarah* if they can prove that the contract has become too onerous for their resources is to avoid inflicting damage on the heirs. This exceptional ruling is taken from the Maliki School of law since it serves the interests of the lessee. The heirs of the lessor may not terminate the *Ijarah* in the event of the death of the lessor because there is no any potential damage to them, as they will receive the rentals for the remainder of the term of the contract.

#### Transfer of the ownership in the leased asset in *Ijarah Muntahia Bittamleek*

- The basis of the rule that the documents of the lessor's promise to sell and the methods of transfer of ownership be separated from the *Ijarah* contract is to ensure that the obligations and liabilities are not linked to each other. The International Islamic Fiqh Academy has issued a resolution in this regard.<sup>(25)</sup>
- The basis for the rule that the promise of a client to take an asset acquired by the institution on lease is binding is that the institution has acquired the asset in order to lease it to the client due to the promise. Therefore, the rule that the promise to take the asset on lease is binding will protect the promisee.
- The basis for not allowing bilateral promises is that the resemblance of these promises to a contract, i.e. a contract is effected before taking ownership of the subject matter of the contract. The International Islamic Fiqh Academy has issued a resolution in this regard.<sup>(26)</sup>
- The basis for the legitimacy of a gift contingent upon the expiry of the *Ijarah* term is that a conditional gift is valid. The Prophet (pbuh) sent a gift to Negus (the former emperor of Ethiopia) on condition that he was alive at the time of the arrival of the messenger.<sup>(27)</sup>
- The basis for the permissibility of leasing an asset to the person from whom it is purchased by way of *Ijarah Muntahia Bittamleek* on condition that the parties observe the lapse of a period of time is that this prevents the contract from becoming an *Iyah* transaction. This is because the physical changes to the asset or changes in the value of the asset during this period give it the economic characteristics of a different asset.
- The basis for the requirement that all the rules prescribed for an ordinary lease are applicable to *Ijarah Muntahia Bittamleek* is that a mere promise to transfer ownership does not exclude the contract from becoming an *Ijarah* contract or from the applicable rules. This requirement is necessary in order to prevent a linking of contracts (the sale contract and lease contract). The International Islamic Fiqh Academy has issued a resolution in support of this ruling.<sup>(28)</sup>
- The basis for the rule that ownership cannot be made in contingent on a future date is that a sale contract cannot be dependent on a future date, as the term 'sale' means that its effect (transfer of ownership) immediately takes place.

(25) The International Islamic Fiqh Academy's resolution No. 13 (1/7).

(26) The International Islamic Fiqh Academy's resolution No. 40-41 (2/5 and 3/5).

(27) The hadith is reported by Ibn Hibban (Sahih Ibn Hibban 1/516) and Ahmad (Musnad al-Imam Ahmad 6/404).

(28) See note 25.

- The basis for allowing recourse to the prevailing market rate of rental when the transfer of ownership becomes impossible without any cause attributable to the lessee is to protect the lessee against any loss as the lessor has paid more than the prevailing rate of rental in order to acquire title to the asset. If this acquisition of title becomes impossible, then the rental must be adjusted retrospectively to the prevailing market rate. This ruling is analogous to the principle that the price must be discounted when a sold crop has suffered damages due natural calamities.



## Appendix C: Definitions

### **Ijarah**

The term *ijarah* as used in this standard means leasing of property pursuant to a contract under which a specified permissible benefit in the form of a usufruct is obtained for a specified period in return for a specified permissible consideration.

### **Ijarah Muntahia Bittamleek**

One of the forms of *ijarah* used by Islamic financial institutions is *ijarah Muntahia Bittamleek*. This is a form of leasing contract which includes a promise by the lessor to transfer the ownership in the leased property to the lessee, either at the end of the term of the *ijarah* period or by stages during the term of the contract, such transfer of the ownership being executed through one of the means specified in the Standard.