

The AAOIFI Shari'ah Standard No. 57 on Gold and its Trading Controls

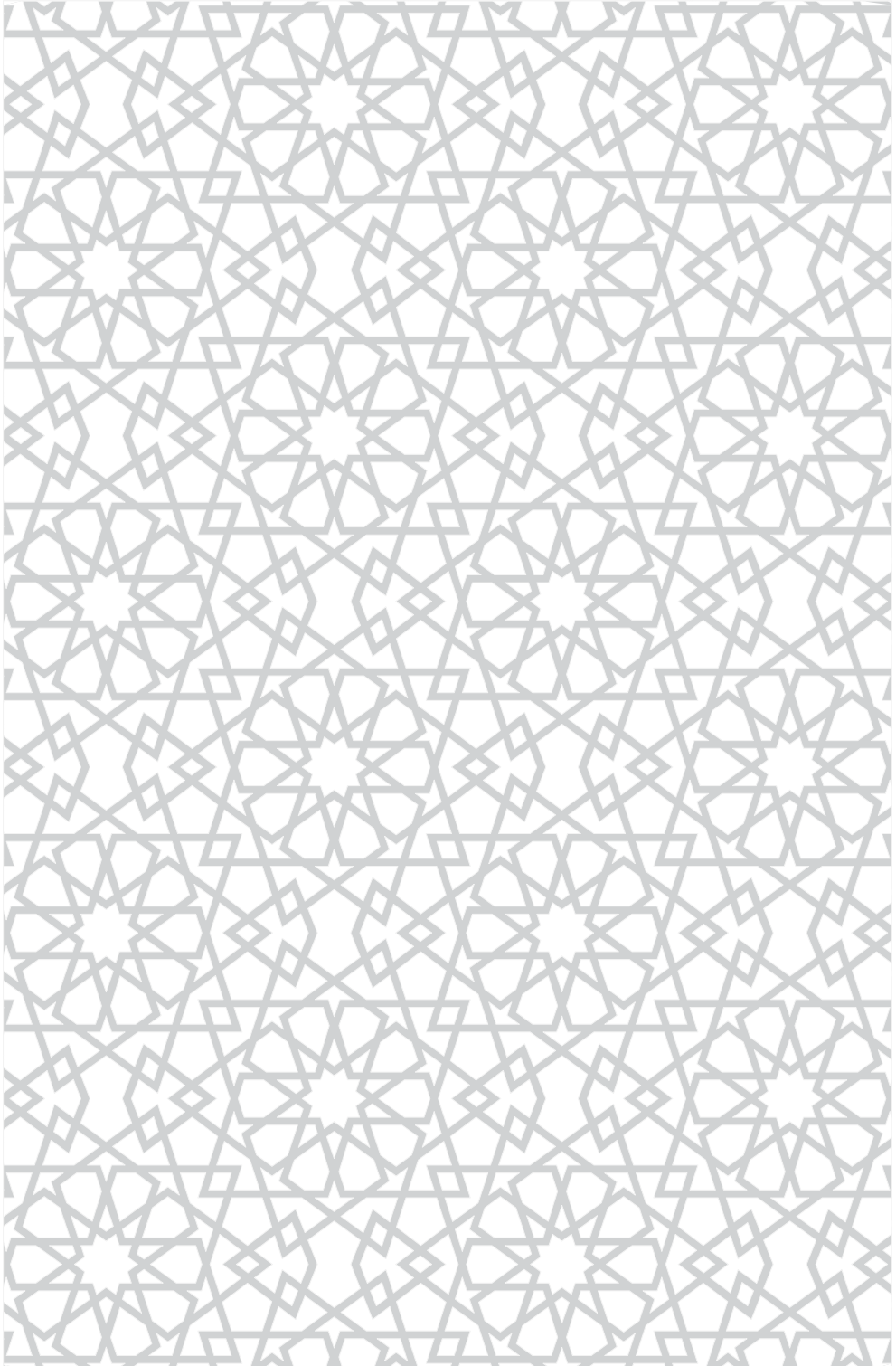


Developed in collaboration with the World Gold Council

Shari'ah Standard No. (57)

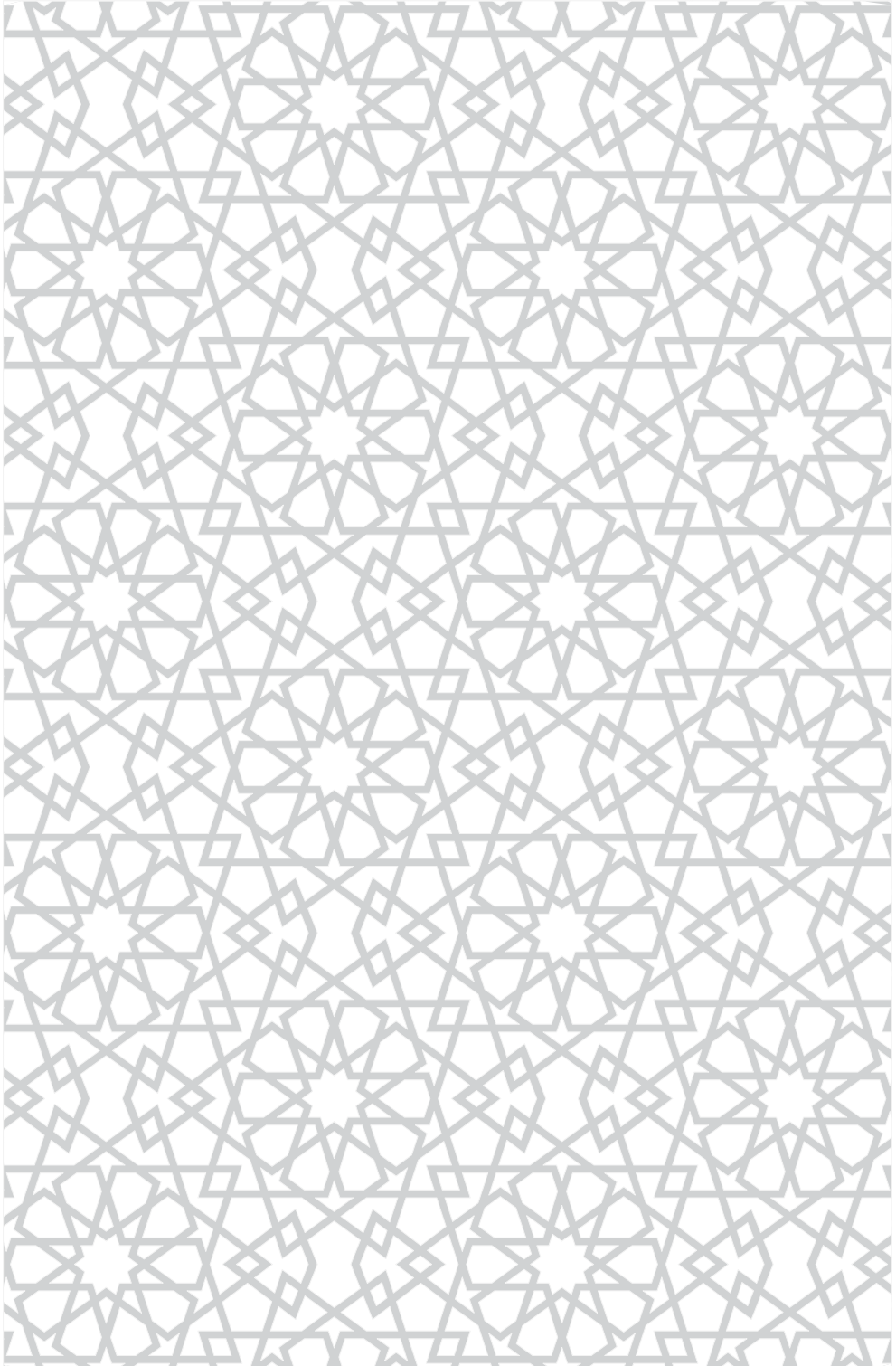
**Gold and Its Trading
Parameters in Shari'ah**

**This Standard has been prepared with the support
and cooperation of the World Gold Council.**



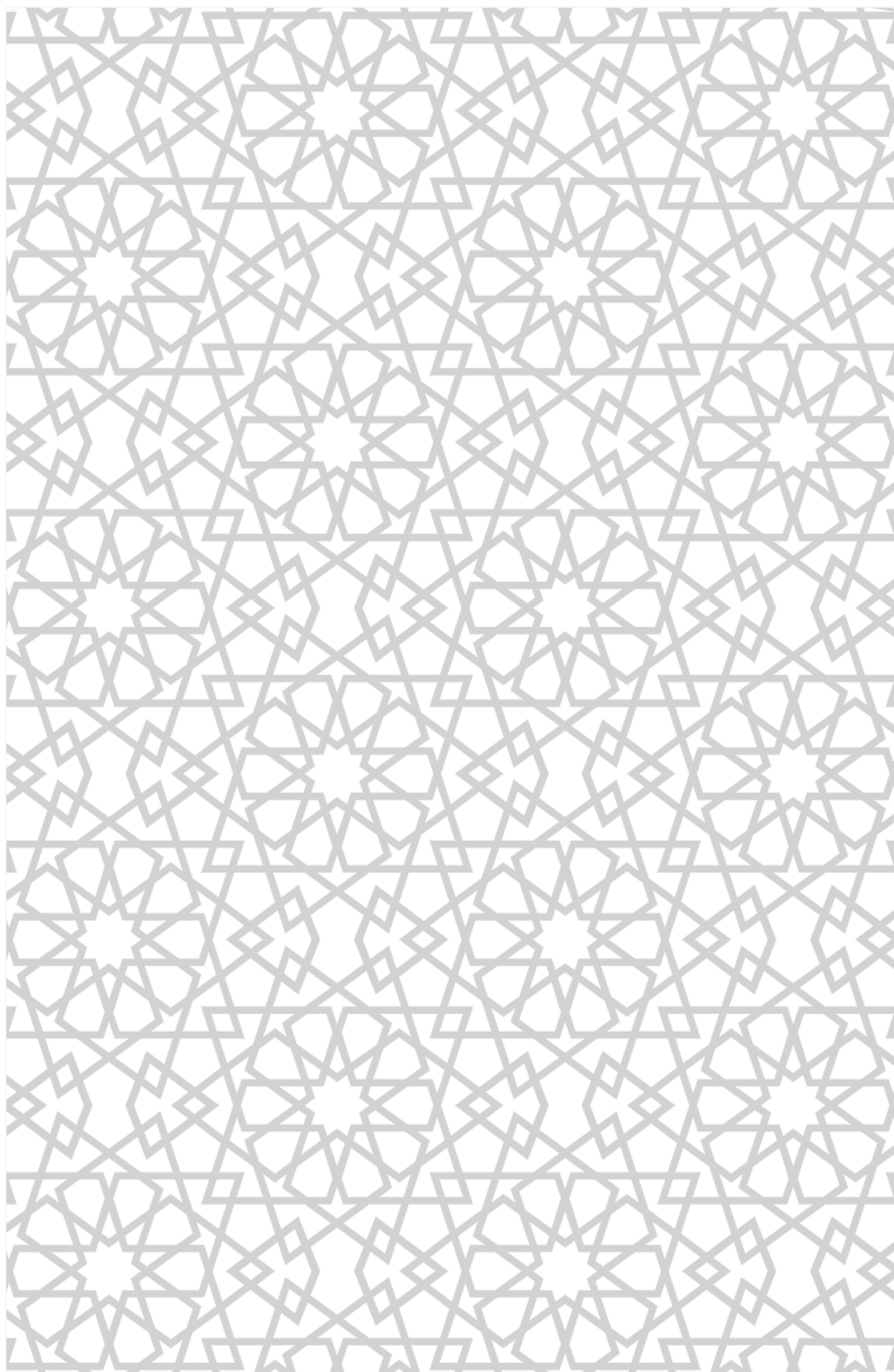
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IN THE NAME OF ALLAH, THE ALL-MERCIFUL, THE MOST MERCIFUL

All praise be to Allah, the Lord of all the worlds, and blessings and peace be upon our master, prophet Muhammad, and all his household and all his companions.

Preface

This Shari’ah standard aims to explain the types and forms of gold, the Shari’ah parameters for trading in gold, and the Shari’ah rulings for gold-based financial products in the institutions.⁽¹⁾

(1) The term “Institution(s)” has been used as a short form for Islamic Financial Institutions, which include Islamic banks.

The Text of the Standard

1. Scope of the Standard

This standard covers the Shari'ah rulings for gold in its various types and forms, the Shari'ah parameters for trading in gold, and the Shari'ah rulings for gold-based financial products in the institutions.

This standard does not cover the Shari'ah rulings related to precious metals other than gold and silver, nor does it cover the Shari'ah rulings for currencies, as they are covered in a separate standard.

2. Gold and Its Shari'ah Characterization

Gold is the well-known natural element and precious metal. It is, in principle, a fungible item (measured by weight) and a Ribawi commodity, and is subject to the Shari'ah rulings for currency exchange (*al-Sarf*).

3. Shari'ah Rulings for Trading in Gold

Shari'ah rulings for trading in gold vary according to the following considerations:

3/1 On the Basis of Equality or Disparity in Weight

3/1/1 The sale of gold for gold is permissible provided the counter-values are equal in weight regardless of being new or old (used or unused) and provided both the counter-values are exchanged as required by Shari'ah. See item (2/6) of Shari'ah Standard No. (1), on "Trading in Currencies".

3/1/2 If gold is not the primary asset of a commercial entity whose activities do not involve trading in gold, silver and currencies, and the entity or a part thereof is sold, along with that gold, the permissibility of the sale is not subject to the Shari'ah rulings for currency exchange (*al-Sarf*). However, it is not permissible

to [deliberately] establish a portfolio for the specific purpose of trading in gold, unless it complies with the Shari'ah rulings for currency exchange (*al-Sarf*).

3/1/3 Sale of gold for silver is permissible regardless of disparity in the weight of the counter-values; and sale of gold for currencies is permissible at any mutually agreed price. In both cases [gold for silver and gold for currencies] the counter-values must be exchanged as required by Shari'ah. See item 3.1.1 above.

3/1/4 Sale of gold for anything other than gold, silver or currencies—as in the case of selling gold for commodities (other than gold, silver, or currencies) or usufruct or service—is permissible at any price without the requirement of immediate exchange of the counter-values.

3/2 On the Basis of Immediate or Deferred Exchange of the Counter-values

3/2/1 In case of sale of gold for gold, or silver or currencies, the two counter-values must be delivered during the contracting session, physically or constructively. If gold is sold for anything other than the above, deferment of one of the counter-values is then permissible. This Shari'ah ruling invariably applies to gold in all states of purity, used or unused.

3/2/2 It is not permissible that the sale contract be contingent on an event or occurrence, nor is it permissible to be a forward contract (deferred to the future). Similarly, stipulation of *Khiyar al-Shart* (cooling-off option)⁽²⁾ in the sale of gold is impermissible.

3/2/3 It is not permissible to stipulate deferment of both the counter-values when selling gold, as in the case of forward or futures contracts. This is because in these cases, the Shari'ah requirement of exchange of the counter-values is not met.

(2) See Shari'ah Standard No. (54) on Revocation of Contracts by Exercise of a Cooling-off Option.

3/3 On the Basis of Gold Purity

3/3/1 Gold alloys:

Gold mixed with other elements/substances may be categorized into three types:

3/3/1/1 **The first type:** gold mixed with another metal, wherein each metal in the alloy/mixture is intended per se. This comes in several forms including the following:

The first form: Gold mixed with silver. It is permissible to sell it for pure gold or pure silver, provided that the exchange of the counter-values is spot, and that the weight of the pure counter-value is more than that of the counter-value in the alloy/ mixture. If the pure counter-value is equal in weight or lighter than its kind in the alloy/ mixture, the sale is not permissible. If the alloy/ mixture is sold for another alloy/ mixture of gold and silver, or for currencies, only the spot exchange of the counter-values is required.

The second form: gold is mixed with elements/ substances other than silver. This has two types:

The first type: the percentage of pure gold exceeds 50%, in which case sale of the alloy is permissible in exchange for:

- a) pure gold, provided that the exchange is spot and the pure counter-value weighs more than its kind in the alloy/mixture, so that the excess in the pure gold is the counter-value to the non-gold substance in the alloy/ mixture.
- b) pure silver or gold mixed with any substances other than silver, or for currencies, provided that the counter-values are exchanged on spot.
- c) elements/ substances other than silver or currencies, in which case the spot exchange of counter-values is not required.

The second type: where the percentage of pure gold is 50% or less, in which case it is not deemed a sale of gold, unless it is sold for gold, silver or currencies, in which case spot exchange of counter-values is required.

3/3/1/2 The second type: where gold is mixed with a substance not intended per se; rather the substance is intended for the purposes of standardizing or coloring gold, etc. For example, when a substance is added to gold in specific proportions to render it of a certain standard (karatage), such as 21K or 18K. In this case, the substances added to the gold are not intended per se. Therefore, the exchange of one counter-value for the other must be spot and the weight of pure gold in each of the two counter-values must be equal.

3/3/1/3 **The third type:** where a proportionately insignificant amount of gold, not intended per se, is mixed with a large quantity of non-gold element/ substance that is intended per se. Examples include gilding gold and decoration of non-gold articles. The sale of such items/ articles is not subject to the Shari'ah rulings for sale of gold.

3/4 Sale of Gold Ingots for Currencies

When gold ingots are sold for currencies, the counter-values must be exchanged during the contracting session. Possession of the ingot by the buyer, or his agent, is realized either physically or constructively. Constructive possession is realized by allocation of the ingot and by enabling the buyer to dispose of it, or by holding a certificate that represents ownership of a specified ingot that is distinguishable (an allocated ingot) from others, by serial numbers or other distinct marks from other ingots, provided the certificate is issued the day the contract is concluded [Trade Date "T+0"], by officially or customarily recognized agencies, enabling the buyer to take physical possession of the purchased ingot at his request. Hence, it is not permissible to sell

an unspecified ingot (technically known in the market as unallocated ingot) without physical possession.

3/5 Shari'ah Rulings for Joint Ownership of Gold

3/5/1 It is permissible to jointly own gold where each partner owns an undivided share of a specified percentage in the pool of gold. Such ownership is subject to the rulings set out in item 3/4 above.

3/5/2 The owner of the undivided share may request the segregation of his share, if possible, without prejudice to the other partners. He may sell his undivided share without segregation.

3/5/3 In case of loss or damage, each co-owner shall bear the losses/damages pro rata.

3/5/4 Ingots stored in a warehouse and not distinguishable by serial numbers are considered unallocated and are thus subject to the Shari'ah rulings for joint ownership. However, if the ingots have distinguishing serial numbers, each owner shall own his allocated ingots and be liable for their loss, unless they all agree that the ownership of the stored ingots shall be joint and undivided, in which case the rulings of joint ownership shall apply. In the event of loss or damage of the jointly owned ingots, each owner shall bear the loss pro rata, provided that the overall amount in storage is specified at all times.

4. Gold in Contracts of *Musharakah* and Modern Corporations and Companies

4/1 The use of gold as capital in *Musharakah*, *Mudharabah* and Investment *Wakalah* is permissible provided that gold is valued and its monetary value in the currency of capital is determined at the contract date by mutual agreement of the contracting parties. This valuation is carried out for the purpose of determining the shares of the partners in *Musharakah* or the capital of *Mudharabah* and Investment *Wakalah*. If valuation of the gold is not possible, the use of gold as capital is not permissible.

4/2 It is permissible for the parties to distribute the profit in gold provided it is at the market value of gold at the time of profit distribution.

4/3 It is permissible for the parties to redeem their capital in gold, upon liquidation, provided it is at the market value of gold at the time of redemption.

4/4 It is permissible to buy the shares of a company that operates in extraction of gold provided that the relevant Shari'ah parameters are complied with. See Shari'ah Standard No. (21) on Financial Papers.

5. Gold in Commutative Contracts (*Mu'awadhat*)

5/1 Gold in Sale Contract

5/1/1 It is permissible for an institution to purchase gold from a supplier at spot, and sell it at spot by way of *Murabahah* or *Musawamah*, provided the Shari'ah requirements set out in items (3) and (2/2/6) in Shari'ah Standard No. (8) on *al-Murabahah* are complied with.

5/1/2 It is not permissible to purchase gold by way of documentary credit unless Shari'ah requirements set out in item (3) are complied with, including payment of the price of the documentary credit without deferment. See item (3/1/3) of Shari'ah Standard No. (14) on Documentary Credit.

5/1/3 It is permissible to appoint an agent to purchase and take possession of gold (*Wakalah*). After purchase and taking possession, it is permissible for the agent to purchase from the principal the gold purchased by way of *Wakalah* through an exchange of Offer (*Ijab*) and Acceptance (*Qabul*). In that case, liability for the purchased gold is transferred to the agent as purchaser in the latter contract. See item (6.1.4) of Shari'ah Standard No. (23), on "Agency and the Act of an Uncommissioned Agent (*Fodooli*)"; and also item (3/1) of Shari'ah Standard No. (8) on *Murabahah*.

5/2 Gold in the Contracts of *Salam* and *Istisna'a*

5/2/1 It is permissible to use gold as capital of *Salam*, provided that the subject matter of *Salam* sale (*al-Muslam Fehi*) is not gold, silver or currencies.

5/2/2 It is permissible to purchase gold through a *Salam* contract, provided the capital of *Salam* is not gold, silver or currencies.

5/2/3 It is permissible to execute an *Istisna'a* contract in gold, provided the price of *Istisna'a* is not gold, silver or currencies.

5/3 Gold in *Ijarah* (Lease and Services) Contract

5/3/1 It is permissible to lease gold whether in the form of jewelry or ingots provided the corpus of the leased asset is not consumed during the lease. The rent may be payable in advance or in arrears, and whether the lease contract is for an identified asset or it is *Ijarah Mawsufah Fi Zhimmah*.

5/3/2 It is permissible for the lessee to purchase the [leased] gold from the lessor at a spot price agreed upon at the time of purchase.

5/3/3 It is permissible to pay the rent amount (*Ujrah*) in gold, even if the leased asset is gold. See 5.3.1 above.

5/3/4 *Ijarah* is permissible in gold smithery, where gold is provided by the hirer [service recipient] and work is provided by the goldsmith [service provider]; the remuneration (*Ujrah*) may be in advance or in arrears. The laborer's remuneration (*Ajr*) can be paid out in gold.

5/4 Gold in Deposit Contract (*Wadi'ah*)

5/4/1 Deposits of gold shall be held in trust with the depository. It is not permissible for the depository to use or dispose of deposits of gold (gold deposited with it), or commingle them with its gold or any other gold held in its safekeeping without allocation. In case the depositor permits that his gold deposits are commingled with gold held in his depository's safekeeping, item (3.5) shall apply.

5/4/2 It is permissible for the depository to charge fees for safekeeping the gold. The fees may be charged as a lump sum amount or as a percentage of the value of the deposited gold. If the gold is deposited as collateral against a loan borrowed by the depositor,

the fees shall not exceed the actual cost incurred in safekeeping the deposited gold.

5/4/3 If the deposited gold is damaged or defected due to misconduct, negligence, or violation of the contractual terms and conditions by the depository, the depository shall be liable to indemnify the depositor with equivalent gold amount of the same kind, if possible. Otherwise, indemnification shall be of the value of the damaged or defected gold at the time of occurrence of the damage or defect.

6. Gold in Noncommutative contracts (*Uqud al-Tabarru'at*)

6/1 It is permissible to lend [*I'arah*] non-fungible gold, and fungible gold [if identifiable].

6/2 It is permissible to lend [*Qard*] gold if it is fungible.

6/3 It is permissible to endow gold as *Waqf*, such as endowment for lease whereas the rent amount constitutes the yield (*Ray'*), or to endow it for lending [*I'arah*] or to extend it as a loan [*Qard*].

7. Gold in Security Contracts (*Uqud al-Tawtheeqat*)

7/1 Use of Gold as a Pledge/ Collateral (*Rahn*)

7/1/1 It is permissible to use gold as a pledge/ collateral [for loans/ debts], whether it is in the form of jewelry or any other form, and whether the collateral is the gold itself or the certificate of its ownership.

7/1/2 The gold shall be held by the pledgee in a fiduciary capacity; hence not being liable except in cases of misconduct, negligence, and violation of contractual terms and conditions. If the pledged gold is lost, stolen or damaged due to the pledgee's misconduct, negligence, and violation of contractual terms and conditions, the pledgee shall be liable to indemnify the pledgor in equivalent gold amount of the same kind, if possible. Otherwise, indemnification shall be of the value of the damaged gold at the time of occurrence of the damage.

7/1/3 If the debtor defaults in settling his debt at maturity, the creditor may demand sale of the pledged gold in order to recover his dues from the sale proceeds, and return the remaining amount to the debtor. The gold shall be sold at market value prevailing at the time the debt is recovered from the sale proceeds.

7/1/4 It is not permissible for the pledgee to stipulate any entitlement to dispose of the pledged gold by way of sale or by using it as pledge in another transaction or by leasing it etc., even if the pledgee undertook to return it to the pledgor.

7/1/5 The pledgee's possession of ownership certificates of the gold stored in a warehouse is a constructive possession of the pledged gold as long as the pledgor/owner cannot dispose of the gold without presenting these certificates of ownership.

7/1/6 The pledgor shall bear all actual expenses incurred in maintaining and safekeeping the pledged gold. If the pledgee pays the expenses -with or without the pledgor's permission- the pledgee has recourse to the pledgor with respect to the amount paid, or may benefit from the pledged gold to the extent of the amount of expenses [without consuming its corpus]. The pledgee may bear these expenses if stipulated in the contract.

7/2 Use of Gold as *Hamish Jiddiyyah*

7/2/1 It is permissible to take from the customer, who is a purchase orderer [in *Murabahah*], an amount as *Hamish Jiddiyyah* (security deposit) in the form of gold to secure a binding promise (*Wa'd Mulzim*). This amount shall be held as a trust and shall not be considered *'Arboun* (down payment) for lack of any contract at that time. In case of default, only the amount of actual loss - i.e., the difference between the cost and the selling price to a third party- shall be deducted. In this case, the gold shall be evaluated at the prevailing market price of gold at the time of deduction [from *Hamish Jiddiyyah*]. See item (2/5/3) of Shari'ah Standard No. (8) on *Murabahah*.

7/2/2 It is permissible to agree in a commutative contract (*'Aqd al-Mu'awadhah*) that the gold given as *Hamish Jiddiyyah* is made part of the price or rent (*Ujrah*). In this case, the gold shall be evaluated at the prevailing market price of gold at the time of payment.

7/2/3 *Hamish Jiddiyyah* shall be subject to the rulings pertaining to expenses associated with pledged items (*Marhoon*). See item (7/1/6).

7/3 Use of Gold as 'Arboun (Earnest Money)

In a commutative contract where *'Arboun* is permissible, gold may be used as *'Arboun* provided that the subject matter is not gold, silver or currencies. The seller owns the *'Arboun* whether the sale is completed or terminated. See Shari'ah Standard No. (53) on *'Arboun*.

7/4 Gold in Debt Assignment (*Hawalat al-Dayn*)

7/4/1 It is permissible to use gold as subject matter of a debt assignment subject to Shari'ah requirements. See Shari'ah Standard No. (7) on "*Hawalah*".

7/4/2 If the subject matter of *Salam* (*Muslim Fehi*) is gold (see item 5.2.2), the seller (*Muslim Elaihi*) may assign the buyer to the assignee (the seller's debtor) provided the debt or the assigned portion of the debt are equal. See item (6/6) of Shari'ah Standard No.(7) on *Hawalah*.

7/4/3 If the assignee (the seller's debtor) chooses to prepay the *Salam's* gold to the principal creditor (*Muhaal* i.e., *Muslim*), the latter may relinquish part of the *Salam's* gold (subject matter of *Salam*), and the assignee may prepay the remainder.

7/4/4 It is permissible that the creditor (*Muhaal*) foregoes part of the amount of gold (subject matter of *Salam*) provided the assignee prepays the remaining amount.

7/5 Set-off (*Muqassah*) in Gold

7/5/1 Set-off is permissible between two back-to-back debts denominated in gold. If the amounts of the two debts are different,

set-off takes place on the lesser amount. See Shari'ah Standard No. (4) on "Settlement of Debt by Set-Off".

7/5/2 It is permissible to conduct set-off between two back-to-back debts where one of the debts is gold and the other is silver or denominated in a currency, provided the rulings for currency exchange (*al-Sarf*) are complied with. See Shari'ah Standard No. (1) on "Trading in Currencies".

8. Unilateral and Bilateral Promises (*Wa'd and Muwa'adah*) in Gold

8/1 It is permissible to issue a unilaterally binding promise to sell gold; however, bilaterally binding promises for sale of gold are impermissible. See item (2/9/1) of Shari'ah Standard No. (1) "Trading in Currencies".

8/2 It is permissible to make the execution of a unilateral promise to purchase gold contingent upon the performance of a specific index.

8/3 It is permissible to pay *Hamish Jiddiyyah* when promising to purchase gold. If the promissor fails to fulfill the binding promise, the promisee may request him to pay for the actual damage resulting from this failure to fulfill. See item (3/4) of Shari'ah Standard No. (49) regarding Unilateral Promise (*Wa'd*) and Bilateral Promise (*Muwa'adah*); and item (2/5/3) of Shari'ah Standard No. (8) on *Murabahah*.

8/4 Trading in promises in any form is not permissible.

9. Zakat of Gold

Zakat of gold is obligatory when the relevant Shari'ah rules are met. See Shari'ah Standard No. (35) on "*Zakat*".

10. General Shari'ah Rulings and Applications

10/1 All Shari'ah rulings relating to gold, set out in this standard, also apply to silver.

10/2 Unless the seller expressly absolves himself of any latent defects in the sold gold, the buyer has the right to exercise the Option to Revoke Due to Defect, if and when defects appear. In this case, the buyer may conclude or terminate the contract and return the gold [back to the seller].

- 10/3 Investment *Sukuk*, units of investment funds, and units of exchange-traded funds (ETFs) whose entire assets are gold, shall be also subject to the rulings for gold.
- 10/4 It is permissible to purchase gold using debit card, credit card or charge card or any Shari'ah-compliant alternatives to credit cards, even if the seller of gold is the bank (institution) issuing these cards. See Shari'ah Standard No. (2) on Debit Card, Charge Card and Credit Card.
- 10/5 It is permissible for the importer of gold to deposit a certain amount of money with the exporter (supplier) on the condition that once the exporter has a specific shipment of gold ready for delivery, a contract for sale of the same shall be concluded at a price mutually agreed on at the date of the contract. In this case, the sold gold shall be delivered and the price shall be deducted from the deposited amount on the date of the contract. However, if the exporter utilized the amount of the deposit, the gold must be sold at the market price prevailing on the date of the contract.
- 10/6 All Shari'ah rulings for gold also apply to white gold.⁽³⁾ However, these rulings do not apply to metals such as platinum, palladium and nickel, which are called white gold in some countries.
- 10/7 It is permissible to charge a fee for safekeeping, allocating, minting, and physical delivery of gold, among other services. If these services involve exchange of gold for gold the fee shall be based on the actual expenses.
- 10/8 It is permissible to open a current account in which gold with specific weight and karatage is deposited. This account (gold denominated account) shall be subject to the rulings for current accounts. See item (10/1) of Shari'ah Standard No. (19) on *Qard*.

11. Date of Issuance of the Standard

This Standard was issued on 19 Safar 1438H corresponding to 19 November 2016.

(3) See the technical definition from the World Gold Council regarding white gold, which appears in Appendix C of this Standard.

Adoption of the Standard

The Shari'ah Standard on Gold was adopted by the Shari'ah Board in its meeting No. 46 held in the Kingdom of Bahrain from 17-19 Safar 1438H, corresponding to 17-19 November 2016.

Appendix (A)

Brief History of Preparation of the Standard

On the proposal of the World Gold Council and Amanie Advisors, LLC, that Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) prepares a comprehensive Shari'ah standard on gold, AAOIFI's Shari'ah Board decided, in its meeting No. 42 held in the Kingdom of Bahrain on 22-23 Safar 1437 A.H., corresponding to 4-5 December 2015 A.D., to approve and initiate the project. The board formed a subcommittee to discuss the detailed study prepared on the topic, and to vet the draft standard.

In this respect, the subcommittee held five extended meetings in Dubai, UAE, during which it discussed the study and the draft standard, and incorporated the amendments it deemed appropriate, then forwarded the draft standard to the Shari'ah Board.

The Shari'ah Board thoroughly reviewed the draft standard and discussed relevant Shari'ah rulings in its meeting No. 44, which was held in al-Madinah al-Munawwarah from 24 – 26 Rajab 1437 A.H. corresponding to 1 – 3 May 2016 A.D. The board recommended that the subcommittee held another meeting to rearrange the items and paragraphs of the draft standard, and to review and amend the Shari'ah rulings on certain issues, where the draft standard could be submitted to the Board in its meeting No. 45 to finalize discussion of the remaining items and paragraphs of the draft standard.

The subcommittee held two extended meetings, one in Dubai on 16 July 2016, and the other in the Kingdom of Bahrain on 8 September 2016, where it discussed draft standard again, especially in relation to the issues the Shari'ah Board requested to be reviewed. The subcommittee incorporated the amendments it deemed necessary, and then forwarded the draft standard again to the Shari'ah Board.

In its meeting No. 45, held from 28 Dhul Hijjah 1437 A.H., corresponding to 29 September 2016 A.D. to 1 Muharram 1438 A.H., corresponding to 2 October 2016 A.D., the Shari'ah Board discussed the draft standard, incorporated the amendments it deemed necessary, and decided to present the draft standard to public hearings.

As instructed by the Shari'ah Board, the General Secretariat of AAOIFI held three public hearings in the Kingdom of Oman, on 23 Muharram 1438 A.H., corresponding to 24 October 2016 A.D.; in Sudan, on 24 Muharram 1438 A.H., corresponding to 24 October 2016 A.D., and in Malaysia, on 4 Safar 1438 A.H., corresponding to 4 October 2016 A.D. The public hearings were attended by a number of scholars, jurists and experts, including representatives of central banks, Islamic financial institutions, accounting and auditing firms, and law firms, academics, and other interested parties. The draft standard was discussed in detail, and comments and suggestions of scholars and experts were collected.

The Shari'ah Standards Committee (Dubai) held a meeting in Dubai, United Arab Emirates, on 12 Safar 1438 A.H, corresponding to 12 November 2016 A.D, in which it discussed in detail and sorted out the comments and suggestions collected at the three public hearings, in addition to the remarks submitted by scholars and experts from the broader Islamic finance industry. The committee approved a number of worthwhile remarks and forwarded them to the Shari'ah Board for final decision.

In its meeting No. 46, held from 17 - 19 Safar 1438 A.H., corresponding to 17 - 19 November 2016 A.D., the Shari'ah Board discussed the comments and suggestions raised in the three hearing sessions, as well as the comments and proposals received from a number of experts, and incorporated the amendments it deemed appropriate, and adopted the standard.

In its meeting held in the Kingdom of Bahrain on 19 Safar 1438 A.H., corresponding to 19 November 2016 A.D., the Shari'ah Standards Drafting Committee reviewed the standard, and made a few amendments relating to formulation, and officially adopted and issued the standard.

Appendix (B)

The Shari'ah Basis for the Standard

- The basis for fungibility of gold is its conformity with the definition of fungibles (fungible items), which are measured in terms of weight or counting. The value of gold is determined and measured by weight. In case gold is in the form of coins, i.e., minted currencies, individual units are identical in weight, a feature common in fungibles.
- The basis for classification of gold as a Ribawi item is the several Prophetic traditions (Hadiths) reported on sales, such as the following narration by “Ubaidah bin al-Samit (may Allah be pleased with him) that the Prophet (peace be upon him) said: Gold for gold ... like for like, ... and if these kinds differ, then sell as you wish so long as they are [exchanged] hand in hand.”⁽⁴⁾
- Jurists are unanimous on the Shari'ah requirements for spot exchange of countervalues in gold trading, in conformity with the aforementioned Hadith. In this regard, the International Islamic Fiqh Academy issued resolution No. 84 to that effect.
- The basis for the permissibility of selling gold for a non-gold item, silver and currencies without the requirement for spot exchange of countervalues is the consensus of jurists (*Ijma' al-Fuqaha*) on the permissibility of *Salam* when gold is one of the countervalues.
- The basis that the rulings for currency trading (*al-Sarf*) do not apply in cases where gold is not the primary asset of a commercial entity whose activities do not involve trading in gold, silver, and currencies, and where the entity or its shares is/are sold, along with that gold, is the Shari'ah maxim “A thing which is not permissible in itself, may be permissible as an accessory”⁽⁵⁾ and “a thing may be permissible implicitly if it is made

(4) Reported by al-Imam Muslim in his Sahih, 3/1211.

(5) Article (54) from the Majelle, al-Suyuti's al-Ashbahwa al-Nadhair, p.120.

impermissible intentionally”⁽⁶⁾. See the “the Shari'ah Basis for the Standard” in Shari'ah Standard No. (21) on Financial Papers [Shares and Bonds], and the “the Shari'ah Basis for the Standard” in Shari'ah Standard No. (25) on Combination of Contracts.

- The basis for impermissibility of a conditional sale and *Khiyar al-Shart* (Cooling-off Option) in gold trading is that it contravenes the Shari'ah requirements for spot exchange of countervalues.
- The basis for the sale of gold-silver alloys for pure gold or pure silver, with the condition of spot exchange of the countervalues, and the requirement that the pure counter-value exceeds in weight its kind in the alloy is that the pure counter-value is equal in weight to its kind in the alloy, and that the excess in the pure gold shall be considered in lieu of the silver substance in the alloy. This is the view of the Hanafi School.
- The basis for not deeming assets whose gold content is less than 49% as gold is to adhere to the principle of majority based on the maxim that in terms of ruling (*Hukm*), majority is tantamount to the whole.
- The basis for considering constructive possession in the sale of gold ingots in exchange for currencies, is that the possession of a gold certificate, in line with this standard, is deemed as good as taking physical possession of the gold in terms of legal effect, transfer of risk and benefits, including growth potential, and ability to dispose of, especially that gold ingots nowadays are stored in dedicated, licensed safes, which are maintained according to specific conventions and controls by service providers which act as agents on behalf of the certificate holders in relation to storage, safekeeping and insurance of gold, and so on.
- The basis for permissibility of joint ownership of gold is that it fulfills the Shari'ah requirements of gold ownership and does not contravene the rulings for currency trading (*al-Sarf*).
- The basis for permissibility of using gold as capital in *Musharakah*, *Mudharabah* and *Investment Wakalah* after determining its value in the currency of the capital at the time of entering into the contract by mutual agreement of the contracting parties, is that it fulfills the requirement of

(6) Radd al-Mukhtar, (4/170).

express determination of the capital amount in these contracts; and the evaluation of the gold determines the respective shares.

- The basis for permissibility that the contracting parties agree to distribute profits in gold at market price at the time of distribution and also the basis for the permissibility that capital be recovered in gold, after liquidation, at market price at the time of the recovery is that such practices serve valid purposes and needs of the two contracting parties, and do not contravene Shari'ah rulings as happens when capital is guaranteed or profit sharing is denied [to a specific party].
- The basis for of the requirement that the sale of gold is effected at spot price if sold by way of *Murabahah* or *Musawamah* is that it fulfills the requirement of spot exchange of the counter-values.
- The basis for of impermissibility of purchasing gold using documentary credit is that it contravenes Shari'ah rulings set out in item (3), in which case taking possession of the purchase price of the gold does not take place in the same contracting session as required by Shari'ah.
- The basis for permissibility of using gold as capital of *Salam* or the subject matter of *Istisna'a* (*al-Mustasna'a*) provided that the subject matter of *Salam* sale or the price in *Istisna'a* is not gold, silver or currency, and the permissibility of using gold as the subject matter of *Salam* provided that the capital of *Salam* is not in the form of gold, silver or currency, is that there is no *Riba* involved for the reason of a different *Illah* (ratio legis) in each of the counter-values.
- The basis for permissibility of leasing gold is that the lessee can utilize its usufruct while its corpus remains intact, and the subject matter of the lease is the usufruct rather than the corpus of gold.
- The basis for permissibility of paying rent (*Ujrah*) in gold, even if the leased item is also gold, is that the gold paid as rent is in lieu for the usufruct rather than the corpus.
- The basis for the requirement that the rent shall not exceed actual expenses of safekeeping the gold pledged against a loan is to avoid charging *Riba* in a loan contract.
- The basis for permissibility for endowing gold by way of *Waqf* is the precedent of early jurists who considered endowment of money and movable assets permissible.

- The basis for permissibility of using gold as a pledge (*Rahn*) is that gold constitutes a valuable item of wealth (*Mal Mutaqawwim*) whose sale is permissible. Every item of wealth that is salable may also be used as a pledge (*Rahn*), particularly that gold can be allocated and assigned specific symbols and serial numbers. The remaining rulings on pledging gold are identical to the rulings and Shari'ah basis for Shari'ah Standard on *Rahn* with respect to the physical asset used as a pledge (*Rahn*), and the sale of that asset.
- The basis for impermissibility for the pledgee to stipulate the right to utilize the gold used as a pledge (*Rahn*)- for its own benefit- is to prevent the combination of loan contract and sale contract in a single arrangement, as this stipulation renders the pledged asset (*Marhoon*) a loan that the pledgee shall be liable for.
- The basis for responsibility of the pledgor [or a customer who has deposited a *Hamish Jiddiyyah*] to pay the expenses of safekeeping the pledge [or *Hamish Jiddiyyah*] is that it serves his own interest. As for expenses of 'Arboun, it shall be borne by the seller as it is for his own benefit.
- The basis for the requirement that the evaluation of gold should be based on the prevailing market price at the time *Hamish Jiddiyyah's* gold is liquidated or converted to be used as part of the price of the purchased asset in case of no default, is to ensure fairness in practice since the liquidation or conversion takes place in the absence of the depositor of gold [as *Hamish Jiddiyyah*].
- The basis for impermissibility of trading a promise (*Wa'd*) through sale or purchase in any form is that promise cannot be used as subject matter of a commutative contract.
- The basis for the right of the buyer to have the option to revoke due to defect (*Khiyar al-Ayb*) in case any latent defect appears in the purchased gold, which the seller did not absolve himself from its responsibility, is that the Shari'ah requirements of safeguarding the rights of the contracting parties and preventing harm. This will not contravene the rulings for currency trading (*al-Sarf*).
- The basis for permissibility of the case set out in item (10/5) is fulfilling the requirement of taking possession at the inception of the contract, as the exporter fulfills the requirement by debiting the selling price from

the deposit. The requirement of selling gold at market price in case the exporter utilizes and derives benefits from the deposited amount: this aims to prevent rendering the deposit into a loan that is associated with benefits.

Appendix (C)

Definitions

Allocated gold/unallocated gold

- **An allocated account is an account** with a bullion dealer, which may also be a bank, to which individually identified gold bars owned by the account holder are credited. The gold bars in an allocated gold account are specific to that account and are identified by a list which shows, for each gold bar, the refiner, fineness, serial number and weight.
- **In an unallocated gold account**, a customer does not own specific bars but has a general entitlement to a set amount of gold.
- **Fine gold:** The actual quantity of gold in the ingot. This is measured in fine troy ounces. 1 fine troy ounce equals 31.1034768 grams.
- **Gold nuggets (Tibr):** A piece of gold in its natural form. There is no standard technical definition for a gold nugget. Its price/value is determined by the quantity of gold in the metal ore.
- **Gold coins:** Also known as bullion coins. They are issued by governments or government agencies. They have both a face and the market value. They take various forms and have different levels of purity. The market value depends on its gold content.
- **Karat:** Is a measure of purity of gold. It represents the proportion of fine gold in an alloy based on 24 parts. Thus 24-karat gold is pure gold, but it is usually mixed with metals like copper or silver to make jewelry. 21-karat gold contains 87.5% of gold and 12.5% of other metals. Meanwhile 18-karat gold consists of 75% gold and 25% of other metals, mostly copper and silver. The 10-karat gold is the legal minimum accepted standard of gold in the U.S and the 14-karat gold is the most popular and widely circulated. In France, the UK, Australia, Portugal and Ireland, 9-karat gold is the legal minimum accepted standard of gold. This legal standard drops to 8-karat gold in Denmark and Greece.

- **Investment gold ingots:** Investment gold bars: come in a range of sizes from 1g (a gold wafer) to 1 kg to “Good Delivery” bars weighing approximately 12.5 kilograms or 400oz, which form the basis of the global wholesale gold market. Good Delivery bars must meet stringent standards set by the London Bullion Market Association (LBMA), including a minimum fineness of 995 parts per thousand fine gold and weigh between 350 and 430 fine troy ounces.
- **White gold:** It is a mixture of gold with other white metals, like nickel, palladium and platinum. Gold may be mixed with usually small quantities of other metals in the manufacturing of gold jewelry to harden the alloy or to alter its color. Silver and Zinc may also be found in white gold alloys not specified and is not owned by specific individuals.



