Release Date: 26.08.2020

TKBB

Participation Finance Standards No: 1

SHARE CERTIFICATE ISSUANCE AND TRADE

Release Date: 26.08.2020

CONTENTS

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Contents of the Standard

This standard contains Islamic provisions related to trade and other transactions subjected to the share certificate issuance and issued share certificates.

The share certificate is a valuable paper which represents partnership in the capital and assets of a joint stock company and in the rights that arise when the capital is transformed into property, benefit, or receivables.

Documents standing for share certificates also have the same provision.

Release Date: 26.08.2020

1.Provisions of Share Certificate Issuance

1.1. It is permissible to establish companies whose activity areas are in compliance with Islamic principles and provisions and to issue the share certificates of these companies. It is not permissible to establish companies that do not follow this fundamental principle and to issue their share certificates. These are the main activities that do not comply with Islamic principles and provisions:

Alcoholic drink production and trade,

Production and trade of drugs other than medical purposes,

Gamble and activities that are considered as gambling,

Production and trade of pigs and their products,

Interest-based financial transactions,

Forward transactions between money and/or money-equivalent assets,

Publication contrary to morality and Islamic values,

Entertainment, hotel management, and similar activities that do not comply with Islamic values,

Activities that cause great harm to the environment and the living,

Biological/genetic activities to change human nature,

Producing and trading tobacco products that are harmful to health.

1.2. If the company issues a new share certificate, its value should be fairly determined by taking the value of current share certificates into account.

1.3. It is not permissible to issue privileged share certificates which provide a preferential right to its owner during profit distribution or liquidation. However, there is no Islamic objection to the issuance of share certificates that grant certain privileges to its owner for management and execution or provide the preferential right to get a share when the capital is increased.

Release Date: 26.08.2020

2. Legal Transactions for Share Certificates

2.1. It is permissible to trade share certificates of companies whose establishing aims and activity areas are allowed. But share certificate trade should avoid impure transactions and manipulations that can lead to an improper personal benefit.

2.2. The trade of the share certificates can either be in cash or forward.

2.3. General conditions required for sales contracts are also needed for the trade of share certificates. In this respect, it is not permissible to buy share certificates with credit on interest. The transactions made by taking an interest-based loan from an intermediary firm and pledging share certificate (margin sales) are also subject to the same provision.

2.4. It is not permissible for a person to sell share certificates that they do not own (short sale).

2.5. A person can sell the share certificate they purchased and conduct similar lawful transactions before final registration in their name.

2.6. The share certificate may be the sale price (*ra'su'l-mâl*) in the contract of *salam*; however, it cannot be sold by being subject (*muslemun fih*) to the contract of *salam*.

2.7. Derivative transactions such as future, option, and swap cannot be made on the share certificates.

2.8. It is not permissible to loan share certificates.

2.9. It is permissible for share certificates to be subject to pledge agreement.

2.10. It is not permissible to treat share certificates as a rental contract. The fact that the tenant will repay the same or as much as the share certificate subject to the contract does not change this provision.

2.11. It is permissible to give the share certificate as a bailment for pledging.

3. The Provision of Making Transactions on the Share Certificates of Companies Whose Activity Areas Are

Permissible but with Occasionally Objectionable Activities

3.1. It is permissible to become partners with companies whose activity areas comply with the Islamic principles but that also make interest-bearing or objectionable transactions and to make transactions with the share certificates of such companies only on the following conditions:

3.1.1. The main contract must not contain an article stating that the company will engage in transactions with interest and that goods or services that are legally considered haram, such as alcohol, pig, gambling, will be produced or traded.

3.1.2. It is essential that such companies do not receive any loan on interest and keep deposits in interest-bearing accounts. However, in case of exceptional situations arising from the company's obligation to continue its existence, interest-bearing loans (loans used and bonds issued, etc.) should not exceed 33% of the larger of the company's "total assets" and "market value", and the assets and rights (interest-bearing deposit, bonds, etc.) held in the interest-bearing deposit accounts due to operational obligations should not exceed 33% of the larger of the company's "total assets" and "market value". The obligation to keep assets in interest-bearing deposit accounts due to legal regulations is considered outside this rate and under necessity provisions.

3.1.3. The objectionable income (interest, illegitimate sale of goods, etc.) obtained by the company due to exceptional situations arising from the legislation or the obligation to continue its existence and activities, which do not comply with the Islamic principles, should not exceed 5% of its total income. Activities that violate human rights, tarnish their honour, and disregard human values such as prostitution, human and organ trafficking cannot be approved and evaluated under this article.

3.1.4. The latest balance sheet of the company is taken as the basis to determine whether it complies with the principles and rates specified in the articles above.

3.1.5. If any rate in the standard is exceeded by the companies, a balance sheet period (3 months) is waited, provided that the amount of excess does not exceed 10% of the said rate. If the excess continues in the next period, the share certificate is removed from the index.

3.2. Real or legal persons holding share certificates of companies that make objectionable income as per the articles above must get rid of the objectionable income in their share at the end of the financial period.

3.2.1. The earning to be gotten rid of is the amount per share certificate of the company's objectionable income. In this respect, there is no difference between whether the dividends have been distributed and whether the company has made a profit or a loss.

3.2.2. The portion that exceeds the inflation rate is taken as a basis in calculating the interest income to be got rid of.

3.2.3. The amount that needs to be got rid of cannot be used and must be spent for charitable services such as education, health, public works, aid to the poor, etc. in accordance with Islamic principles.

4. The Provision of Making Transactions on the Share Certificates of Companies, the Majority of Whose Assets Consist of Cash and/or Receivables

4.1. It is permissible to trade share certificates of companies that have cash or receivables in their assets. The ratio of cash and/or receivables to other assets is not taken into account in this regard.

Sharia Bases for Provisions of Share Certificate Issuance and Trade

1. Sharia Bases for Provisions of Share Certificate Issuance

1.1. It is permissible to establish a capital company with capital divided into certain shares, and it is also permissible to become partners in such companies by taking the divided shares. The legitimacy of establishing a contract-based partnership is based on the Quran, sunnah, and ijma. Partnerships are not prohibited in Islam and in fact, are mentioned in the Holy Book, Quran (Sâd 38/24; Zumer

39/29), Our Prophet himself made partnerships (Hâkim, Mustedrek, II, 61), approved of the partnerships of His companions (Buhârî, Şerike, 10), and stated that Allah the Almighty would be the third partner of any partnership unless one party breached the trust of the other (Ebû Dâvûd, Büyû, 26); such examples constitute the basis of this legitimacy. The most important validity requirement to establish this partnership, which is called a joint-stock company, is that the company's field of activity complies with Islamic principles and provisions. It is forbidden by religion to personally commit acts prohibited by Islam for harming people, the environment, and society, and it is also forbidden to establish and run a company that contains them. A share certificate is a valuable paper that is owned by partners, documenting their capital shares in the company. The shareholder who owns the capital will benefit from the dividend of their share and participate in proportion to the actual loss, as well as can trade, grant, etc. Because a person can use their property as they wish as long as they comply with the Islamic principles.

1.2. Share certificate represents the company's value and assets divided into shares. This division must be conducted on the real value of the company according to Islamic principles. This way, reasons of voidability that negatively affect the contract such as deception (trickery), lesion (gabn), and confusion (tagrir) are avoided. The fact that it is strictly forbidden to change ownership of property in a way that people would not consent to and by methods contrary to the religious-legal provisions (Nisa 4/29) requires this. And since they are divided equally, new share certificates to be issued must be the same value as the existing share certificates. Otherwise, it leads to unfair competition, unfair gain, and deception, and all of them are prohibited by Islam.

1.3. Since share certificates represent equal ownership in the company, shareholders participate in the loss and profit equally. At this point, each shareholder has the same rights and responsibilities. Righteousness, fairness, and consent-based contract require this. Therefore, it is not legitimate to get a privileged share from the capital or have priority in profit distribution. It is also not permissible to issue such privileged share certificates. However, as company management requires a certain professionalism and management success will result in the benefit of all partners, it is permissible to issue share certificates that give privileges to those with this ability regarding management and administration. The right to decide who will be accepted as a shareholder in the company and which shareholders will increase their shares belongs to the company’s legal entity. Therefore, in the event of a capital increase, it is permissible to issue privileged share certificates that give priority to receive shares. The company may even need this to take measures against the possibility of damage from changes that may occur in the shareholding structure.

2. Sharia Basesfor Provisions of Legal Transactions for Share Certificates

2.1. Just as the establishment of companies, whose purpose and field of activity are permissible, is allowed in Islamic terms according to the al-ibâha al-asliyye rule, it is also permissible to buy and sell the share certificates of these companies. However, share certificate trade transactions must be exempt from manipulation, speculation, and all kinds of deception that may mean gambling. Such transactions are forbidden as they constitute unfair gain.

2.2. Even if its assets include cash and/or receivables, the market value of a company consists of face values such as its brand, customer portfolio, its licenses, and franchises. In this case, cash and/or receivables are subject to other elements that make up the total value of the company. Therefore, there are no restrictions on the trade of cash and/or receivables in the trade of share certificates.

2.3. Since interest is fundamentally prohibited in Islam, it is not permissible to obtain share certificates through direct or indirect interest-based transactions. Obtaining share certificates through margin sales (bai'ul hamish) is also prohibited. *Margin sales* is the transaction made through the customer paying a part of the price of the share certificate purchased in cash and obtaining an interest-based loan from the intermediary firm for the remaining, part and leaving the share certificate pledged for this loan. This transaction is not permissible since the customer buys share certificates with an interest-based loan from the intermediary firm.

2.4. It is not permissible for a person to sell share certificates that they do not own (short sale). Because it means that a person sells something that is not their property, and this is not permissible by the Islamic beliefs and the principles of Islamic law. This transaction is also open to manipulation and holds elements that resemble gambling.

2.5. After the share certificate becomes the property of the person, -in Islamic law, onerous contracts pass by a direct contract-, it is not obligatory for the transfer of the property for transactions such as purchase and sale; It can be sold to someone else or other legitimate transactions can be made on these securities before the final registration process, which is regarded as the form condition.

2.6. The share certificate may be the sale price (*re'su'l-mâl*) in the contract of *salam*; however, it cannot be sold by being subject (*muslemun fih*) to the contract of *salam*. Because the subject of the contract in Salam contracts is a debt (*deyn*) and not specific goods (*ayn*). However, the share certificates belonging to the company indicate an asset that has been assigned by declaring the name of the company to be subject to *salam*. Even though share certificates are similar to fungible goods in terms of some features, it is appropriate to consider them as the product of a particular field subject to the *salam* contract in terms of being limited to a certain company. Hence, it is possible that the share certificates of a particular company will be removed from the market when the *salam* is due, and therefore the seller will not be able to deliver the promised goods, which is a risk and loss that negatively affects the contract.

2.7. Futures contracts cannot be made based on share certificates. Because the seller who makes this transaction often sells shares that they do not own with a futures contract. In addition, in this transaction, the price was not determined during the contract and left to the flow of the market. The initiation of the parties in this transaction, taking into account the possible future prices, namely the increase or decrease in prices, resembles a kind of gambling. The purpose of the futures contract is to take risks and profit from the expected loss of the opposite party, different from the legitimate contracts. This situation also affects the legality of the contract. The fundamental point that distinguishes option transactions from other derivative transactions is that in this transaction, the option buyer buys the right of option to purchase or sell a share certificate at a specified date in return for a certain price. According to Islamic law, option contracts cannot be made with share certificates. Because the right of option, which is the subject of the contract in the option contracts made in the financial markets, is not among the rights that are permissible to purchase and sell. Because there is no subject that is eligible to receive a price in this transaction. The right of option is an abstract right such as purchasing or selling that occurs after the contract and does not give the owner the real right (Ius in re) on an object as it is in pre-emption and right of custody. It is not possible to purchase or sell pre-emption and the right of custody in the abstract right group, and the option cannot also be purchased or sold. In addition, considering that this transaction includes interest, gambling, *gharar* (uncertainty), selling the property that is not owned, it is not possible to approve option transactions in terms of Islamic law. A share certificate swap is a bilateral contract in which one party pays the return of a share certificate or share certificate index to the other party and receives a specific interest payment or return on another share certificate or share certificate index. Swap contracts cannot be made on share certificates. Because in a swap transaction, the fact that both prices are forward means the sale of the receivable against another receivable. In fact, in this type of contract, the amount of debts is not clear and left to the flow of the market. The fact that the amount of debt is not determined in advance during the agreement creates uncertainty (*gharar*). The swap transaction resembles gambling as it is made with the expectation of the difference between the average profit of the future share certificates, unlike the main objectives of the sales and similar contracts. Due to such inconveniences, it is not permissible to trade via a swap on share certificates.

2.8. Even though share certificates are similar to fungible goods in some respects, they are highly likely to cause unfair gains between the parties due to the fact that they are affected by the fluctuations in the market, resulting in an excessive increase or decrease in value. On the other hand, the share certificate certifies the partnership in the company. Giving debt (credit) for partnerships is not *a valid practice* either. For these reasons, it was concluded that it is not permissible to loan share certificates.

2.9. It is permissible for share certificates to be subject to pledge agreement. Because, according to one of the basic rules in the pledge agreement, anything that is legitimate to be sold can be pledged. Since share certificates can be sold, in principle, they can also be given as a pledge. The main purpose of the pledge is to provide security to the creditor to collect their receivables. At the same time, what is important in the pledge is that the pledged asset can be converted into money when necessary and that the creditor (payee) receives their receivable by selling it. Since the pledged share certificates are in accordance with the main purpose and legal result of the pledge transaction, it is legitimate to pledge these shares.

2.10. Lease contract is the assignment of interest against a property. Since the share certificate is not included in the group of used goods in terms of its main feature, direct profit from it is not possible. Therefore, it cannot be the main subject of the lease. In addition, such a lease has the nature of an interest-bearing transaction since it would mean getting a price from something that cannot exist in an onerous contract.

2.11. A gratuitous loan is leaving the right to use a good (benefit) to the other party free of charge. One of the conditions of the gratuitous loan is that the goods given are not consumed and still can be benefited even though the original remains. Therefore, money cannot be given as a gratuitous loan because the original is consumed. At the same time, it is obligatory that the goods that are given as a gratuitous loan be determined and the same good must be returned. Since the share certificate is a certain entity representing the specific good, it can be given as a loan for use. In this case, the share certificate is given as a gratuitous loan, a pledge. This is also a kind of loan for use. Although the share certificate is more similar to a consumed good, it has the characteristics of used goods in this case and can be given as a gratuitous loan. Since there is no price in return for the benefit used here and no interest in the gratuitous loan transaction, which is considered to be granted in this respect, it is permissible to give a gratuitous loan.

3. Sharia Bases for the Provision of Making Transactions on the Share Certificates of Companies Whose Activity Areas Are Permissible but with Occasionally Objectionable Activities

3.1. Muslims should act in accordance with the principles of Islam at every stage of their lives and avoid behaviours that are contrary to these principles. However, there are some exceptional provisions that can give permission to certain specific conditions. As a matter of fact, this issue has been determined with the general rules that are expressed as "Difficulty begets facility" (art. 17), " Latitude should be afforded in the case of difficulty" (art. 18), " Necessity renders prohibited things permissible" (art. 21), "Necessities are appreciated by their own amounts" (art. 22), "The necessity is reduced to the range of necessity, be it general or specific" (art. 32), in Mecelle. On the other hand, naturally, the continuation of exceptional provisions recognized due to an excuse will depend on the continuation of that excuse. This issue has been stated in Mecelle as "A thing which is permissible by reason of the existence of some excuse thereof, ceases to be permissible with the disappearance of that excuse" (art. 23), "Once the ineligibility is eliminated, the prohibited status returns" (art. 24). In some cases, companies may have to benefit from some opportunities that are contrary to the interest-free principle offered by central banks or conventional banks in order to continue their assets. Considering such cases, it is agreed that some exceptional provisions will be necessary when creating a separate index for joint stock companies whose share certificates are traded in stock exchanges, which act in accordance with the principles and standards of participation banking and finance. In principle, it has been decided to keep to a minimum such transactions that fall under these exceptional provisions and to determine the tolerable rates for transactions made that violate said principles and standards, in particular, taking into account the rule of "Necessities are appreciated by their own amounts" (art. 22). In determining these maximum rates, the aim is to find contact with some of the rates established in Islamic law and the requirements of economic-commercial life. Under these justifications, it is accepted that;

a) Interest-bearing loans shall not exceed 33% of the larger one of the total assets and market value of the company,

b) Assets and rights kept in interest-bearing deposit accounts shall not exceed 33% of the larger one of the total assets and market value of the company,

c) Income amount of unlawful areas shall not exceed 5% of the total income of the company.

Strongly opposed by Islam, interest is a great exploitation tool but included in many regulations on trade life and economic activities and is sometimes a difficult tool to avoid for companies. And sometimes, even when not required by the regulations, companies may feel obliged to use this tool for a short time in order to survive in the serious fluctuations in the market. Due to such situations and the need for Muslims to stay in the world trade life, it is thought that the above rates can be tolerated. The need for such regulation arose in order to prevent companies from being excluded from the index immediately and receiving damage as a result of small-scale and compensable fluctuations in interest-based loan extension, etc. rates and also to ensure the stability of the index. This way, companies will be given time and the chance to adapt the relevant rates to the limits specified in the standard. This practice will also prevent investors and funds that hold the share certificates of companies from making a loss by having to dispose of the relevant shares in a very short time. For example, if the rate of 33% in the interest-based loan extension is exceeded by 10%, that is up to 36.3% of the whole, there will be a three-month waiting period. However, if the interest-based loan extension is 36.4% or above, the share certificate is immediately excluded from the index. Again, for example, when the 5% rate related to the amount of earnings belonging to the non-permissible areas is exceeded by 10% of this rate, i.e. 5.5% in total, the three-month waiting period will be commissioned. If this rate is also exceeded, the share certificate is removed.

3.2. It is not possible for the exceptional provisions that are given here to turn haram into halal, nor are they permanent and final provisions. Because, in principle, it is not permissible for Muslim individuals and the companies of which they are founders or partners to earn income in ways and transactions that Islam regards as haram. Therefore, in the above-mentioned framework, it is necessary to dispose of the earnings obtained through unlawful means; thus, making the remaining part of the total income clean and halal. Islamic scholars use the term "*habîs*" (filthy) for gains and properties obtained through illegitimate means and state that properties of unknown owners obtained in this way and whose owner is not known must be granted to charity (Serahsî, el-Mebsût, XII, 172, Beirut, 1989). Gazzâlî states that such goods will be used for services such as roads and bridges to be used by the general population of Muslims (Gazzâlî, İhyâu ulûmi'd-dîn, II, 130, Beirut, n.d.) From this point of view, it has been adopted to use earnings obtained through unlawful means for charity services.

4. Sharia Bases forMaking Transactions on the Share Certificates of Companies, the Majority of Whose Assets Consist of Cash and/or Receivables

4.1. A joint-stock company is a legal entity formed by the combination of assets, shareholders, employees, name, and all rights and whose value is determined by their sum. Share certificates, on the other hand, show the shareholding in a company that owns these assets and rights rather than just showing a right on the company's assets. In this respect, the shares of companies whose assets consist of receivables and cash in particular show the share of the company that owns them, rather than direct ownership of these cash and receivables. Hence, such shares are not completely in the form of receivables or cash. Therefore, they are not subject to the provisions for the purchase and sale of receivables and cash. Thus, the amount and rate of receivables or cash held by companies, whose main activity area is legitimate, does not require special conditions for transactions on the share certificates of these companies.

Allah, knows the best.