



## Resolution No. 226 (10/23) on Predominance and Dependency in Financial Transactions: Cases, Regulations, and Conditions of their Implementation

11 November, 2018

### In the Name of Allah, the Entirely Merciful, the Especially Merciful

All praise is due to Allah, Lord of the worlds, may the blessings and peace of Allah be upon our master Muhammad, the seal of prophets, on his family, and all his companions.

Resolution No. 226 (10/23)

on



## Predominance and Dependency in Financial Transactions: Cases, Regulations, and Conditions of their Implementation

The Council of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation, held in its twenty-third Session in al-Madinah al-Munawarah on 19-23 Safar 1440, corresponding to 28 October-01 November 2018.

Having reviewed the finalization of the recommendation of the scientific symposium: *Predominance and Dependency in Financial Transactions : Cases, Rules, and Conditions of their Implementation*, held by the International Islamic Fiqh Academy and the Islamic Development Bank in Jeddah on 25-26 Safar 1436, corresponding to 17-18 December 2014 on Predominance and Subordination in Financial Transactions: Cases, Rules, and Conditions for their Achievement, issued in the Academy twenty-second session held in the State of Kuwait on 2-5 Jumada al-Akhira 1436, corresponding to 22-25 March 2015.

Having listened to the discussions on the subject,

### **Resolves the following**

Based on the resolutions of the International Islamic Fiqh Academy on *Predominance and Dependency* (no. 30, 188, 197); in particular, resolution no. 30, the Academy resolves the following:

**First**, confirmation of paragraph (A) and (B) in article IIV of resolution no. 30, mentioned above, on pooled funds after subscription and before the start of the activity.

Trading securities (shares, *Sukuk*, or units) is considered in this case an exchange of cash with cash; and therefore rulings on disbursement apply on it. If assets were transformed into debts, rulings on debts management would also apply on trading.

**Second**, the principle of dependency (subordination of the subordinate to the subordinator) has been approved by Shariah, and it dictates that the subordinate is a dependant, and whatever is subordinated to something takes the same ruling. Therefore, the dependency is permissible in trading if the subordinator is existent.



The regulation for the existence of the subordinator is the availability of the activity, work, and the responsible entity (institution or company) when trading money. Hence, it is permissible hereafter to trade securities without taking into consideration of money percentage and debts within its assets because it is considered in this case subordinated to the original **subordinator**, and is not independent. It should be considered that the subordinated asset should remain in all trading stages.

**Third**, if securities do not represent a trading activity where the money is traded but represent only common ownership of some funding submitted by the financial institution, the Academy confirms paragraph (C) in article III of resolution no. 30 stating that if securities assets were mingled with money, debts, items, benefits; and also with money and debts created out of it, then it is permissible to trade them based on the agreed rate, providing that predominance would be in favor of items and benefits.

The criteria for this regulation is that items and benefits should constitute more than a half (of the securities) (>50%).

**Fourth**, it is not permissible to approve the so-called ruling on the permissibility of trading securities based on the principle of dependency- as an excuse or a trick to turn debts into *sukuk*(bonds) and to trade them as if components of securities were debts and money added with items and benefits, to make them predominant and thus enable its *tawriq* (securitization).

## **Applications of the Principles of Predominance and Dependency on Securities Trading**

### **First: Sukuk (Islamic Bonds) and Investment Units**

1) In the framework of implementing the principles of predominance and dependency in *sukuk* trading, the components and conditions of the contract used to issue bonds should be based on Shariah, and should not include a condition contrary to its own nature and to Shariah regulations.

2) Confirmation of the Academy resolution no. 196 in completion of the subject of Islamic bonds in articles II, III, and IV.



3) It is permissible to trade *sukuk* if its predominant assets are items, benefits, or services, after subscription closure and activity commencement. Before activity commencement, Shariah regulations should be complied in the disbursement agreement if the assets are in the form of money, but if they are in the form of debts, Shariah regulations on debt management should be observed.

4) It is permissible to trade ownership bonds of items fixed before releasing them. If the items were re-leased again, the bond would be equivalent to leasing, it then becomes then a debt on the second lessee. Trading should then comply with the Shariah rulings and regulations on debt management.

5) It is not permissible to trade ownership bonds of items with benefits described in the clearance before fixing an item bringing benefits and before their delivery, except when there is compliance with the Shariah rulings on debt management. Hence, if those items were fixed, trading *sukuk* shall be permissible.

6) It is permissible to trade services ownership bonds which emanate from a particular party before the releasing those services. If the leasing is re-issued, the bond would constitute a lease, and will, therefore, turn into debt for the second lessee. Trading shall hence become a subject to Shariah rulings on debt management.

7) It is not permissible to trade services ownership bonds which emanates from a party described in the clearance before designating the party who will deliver the service, except when observing Shariah rulings on debt management. If the party is designated, trading *sukuk* becomes permissible.

8. It is permissible to trade *istisna'a* bonds (i.e. manufacturing bonds) if they are issued by the manufacturer or if the money transformed into items owned by bonds holders during the manufacturing period.

But if *sukuk* revenues are paid for the cost of parallel manufacturing, or if the manufactured item has been delivered to the customer, this means that the manufacturing cost turned into debt on his responsibility, then its trading will be subject to Shariah rulings on debt management.



9. It is not permissible to trade *sukuk assalam* (asset at future days) because of their similarity with selling debts; therefore, it undergoes Shariah rulings on debts management.
10. It is not permissible to trade *sukuk al-murabaha* after selling and delivering *Murabaha* items to the purchaser because of their similarity with selling debts.
11. It is permissible to trade *sukuk al-mucharaka* (*joint partnership bonds*), and *sukuk al-mudaraba* (*passive partnership bonds*) by investing after subscription closure, and after fulfilling regulations on the subordinated asset, as mentioned above in article III.
12. It is permissible to trade employment lease bonds as well as ownership-ending lease after the lessee receives ownership of the item wanted to be leased.

## Second: Shares

With the observation of the content of resolutions mentioned above, the Academy resolution no. (63) on financial markets, and particularly resolutions (4),(5),(7),(8), and (13), the following regulations should be taken into consideration regarding shares issuance:

- 1) It is not permissible to trade companies shares if their assets constitute only debts, except when conforming to Shariah rulings on debts management.
- 2) It is not permissible to trade companies shares if their assets constitute only money whether in the period of subscription or afterwards, and before a portion of the financial capital turns into fixed assets at a rate of 10 %.
- 3) If shares assets were composed of items, benefits, money, and debts; and if the predominance of items and benefits over debts and money was not fulfilled while they were equal; or if money and debts were predominant; or if it has not been possible to know it; therefore, the principle of dependency shall be proceeded. The criteria of this principle are the existence of the subordinate, which is the activity, work, the entity in charge (administrative organ) of trading money.

In this case, it is permissible to trade *sukuk* without consideration of the percentage of money and debts in its assets as it is considered a subordinate -in this case- to the original

subordinator, and it is not independent; and taking into consideration that the underlying asset shall remain in all stages of trading.

**Allah Knows Best.**

