



Majority and Subordination in Financial Transactions: Cases, Criteria, and Conditions for their Achievement

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In the Name of Allāh,

the Entirely Merciful, the Especially Merciful

Praise is due to Allāh, Lord of the worlds, may the blessings and peace be upon our master Muḥammad, the last of prophets, on his family, and all his companions.

Resolution No. 226 (10/23)

Majority and Subordination in Financial Transactions: Cases, Criteria, and Conditions for their Achievement

The Council of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation, holding its 23rd session in al-Madinah al-Munawwarah, Kingdom of Saudi Arabia, on 19-23 Şafar 1440h (28 October - 1 November 2018),

Having reviewed the finalization of the recommendations of the scientific symposium on Majority and Subordination in Financial Transactions: Cases, Criteria, and Conditions for their Achievement, held by the International Islamic Fiqh Academy and the Islamic Development Bank in Jeddah on 25-26 Şafar 1436 (17-18 December 2014),

Having finalized the symposium recommendations based on the Academy resolution no. 214 (10/22) on *Majority and Subordination in Financial Transactions: Cases, Criteria, and Conditions for their Achievement*, issued at the 22nd session of the Academy in the State of Kuwait on 2-5 Jumādā al-Akhirah 1436 (22-25 March 2015),

Having listened to the in-depth discussions on the subject,

Having recalled the resolutions of the Academy concerning *Majority and Subordination*, namely resolutions no. 30, no. 188 and no. 196, and in particular no. 30,

Resolves

First: confirmation of paragraphs (A) and (B) in article 3 of resolution no. 30, mentioned above, on funds collected upon subscription and before the start of the company's activity, that trading securities (shares, Şukūk, or units) are considered in this case an exchange of cash for cash; therefore rulings on Şarf contract apply on it. Also, if assets were transformed into debts, rulings on debts transfer must apply to them.

Second: the principle of subordination (subordination of the subordinate to the subordinated) is well established in Shariah, and it dictates that the subordinate is treated as subordinate so whatever is subordinated to something takes

its same ruling. Therefore, it is permissible to apply this principle in trading financial securities, provided the existence of the subordinated is assured.



The criteria of verifying the existence of the subordinated is the presence of activity, work, and the responsible entity (institution or company) in transforming money. It is then permissible to trade securities without worrying about the percentage of money and debts in its assets because, in this case, these are subordinated to the subordinated entity and are not independent. It should be noted that the subordinated asset/entity should remain in existence throughout all trading stages.

Third: if the financial securities do not represent a trading activity where the money/properties are traded, but they represent only common ownership of some funding submitted by the financial institution, the Academy confirms paragraph (C) in article 3 of resolution no. 30 stating that if the security's assets were mingled and consist of money, debts, physical properties, usufructs/benefits; and also of money and debts arising from transactions of these assets, then it is permissible to trade them for an agreed (negotiated) price, provided that majority would consist of physical properties and usufruct/benefits.

The criteria for this is that physical properties and usufruct/benefits should exceed one half (>50%).

Fourth: it is not permissible to make the legal permission of trading securities based on the principle of subordination - as an excuse or a trick to turn debts into *ṣukūk* and to trade them such as the components of security are debts and money to them added some physical properties and usufruct/benefits, as a majority which enable their securitization.

Applications of the two Principles of Majority and Subordination on Securities Trading

First: Ṣukūk and Investment Units

1. In the context of implementing the Two Principles of Majority and Subordination in *ṣukūk* trading, the components and conditions of the contract used to issue *Ṣukūk* should be based on Shariah, and should not include a condition contrary to its own nature's implications and its fundamental rulings.
2. Confirmation of the Academy resolution no. 196 on the *Pursuit of Research in Islamic Ṣukūk*, especially in articles 2, 3, and



3. It is permissible to trade *Şukūk* if the majority of its assets are physical properties, usufruct/benefits or services, after subscription closure and activity commencement. However, before activity commencement, Shariah criteria should be complied with; the Sarf contract if the assets are in the form of money, but if they are in the form of debts, Shariah rulings on debt transfer should be observed.
4. It is permissible to trade *Şukūk* of usufruct ownership of existing designated leased physical properties before they are re-leased again, the *Şukūk* would represent the rent which is then a debt on the second lessee. Trading should then comply with Shariah rulings and criteria on debt disposition.
5. It is not permissible to trade usufruct's ownership *Şukūk* of properties described in the Dhimmah (clearance) before determining the property's existence and delivery, which generates the usufruct as these *Şukūk* are then subject to criteria of disposition of However, if those usufruct generating properties become in existence and determined, *Şukūk* trading will be permissible.
6. It is permissible to trade services' ownership *Şukūk*, which emanate from a particular party before the resale of those services. If the services are resold (released), the *Şukūk* would represent rent (service price) and will, therefore, turn into debt on the second lessee. Trading shall hence become subject to Shariah rulings on debt disposition.
7. It is not permissible to trade services' ownership *Şukūk*, which emanates from a party described in the Dhimmah before designating the party who will deliver the service, except by observing Shariah rulings on debt If the party is designated, trading *Şukūk* becomes permissible.
8. It is permissible to trade *Istişnā'* *Şukūk* if they are issued by the manufacturer or if the money (*Şukūk* proceeds) transformed into physical items owned by *Şukūk* holders during the manufacturing

However, if *Şukūk* proceeds are paid for the cost of a parallel *Istişnā'*, or if the manufactured item has been delivered to the customer, this means that the manufacturing money turned into debt on his responsibility, then its trading will be subject to Shariah rules on debt transfer.

9. It is not permissible to trade Salam *Şukūk* because this is selling debts. Any transaction on Salam *Şukūk* is subject to Shariah rules of debts



10. It is not permissible to trade *Murābahah ṣukūk* after selling and delivering *Murābahah* items to the purchaser because it is selling
11. It is permissible to trade *mushārahah, muḍārahah, and wakālah bil is-tithmār ṣukūk* (*ṣukūk investment through agency*) after subscription closure and after fulfilling criteria of the subordinated asset, as mentioned above

in article 3.

12. It is permissible to trade operational lease *ṣukūk* and lease ending with ownership *Ṣukūk* after the lessor takes over ownership of the item to be

Second: Shares

With the observation of the content of resolutions mentioned above, the Academy resolution no. 63 on *Financial Markets*, and particularly sections (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
2. It is not permissible to trade companies shares if their assets consist of money only, whether in the subscription stage or afterwards, and before a portion of its financial capital, 10%, turns into fixed
3. If shares' assets were composed of physical items, benefits, money, and debts; and if the majority of physical items and benefits over debts and money was not fulfilled or they were equal; or if money and debts were the majority; or if it has not been possible to know it; therefore, the principle of subordination may be The criteria of this principle are the existence of the subordinate, which is the activity, work, the entity in charge (administrative organization) instead of transforming money. In this case, it is permissible to trade *ṣukūk* without consideration of the percentage of money and debts in its assets as it is considered a subordinate - in this case - to the subordinated principal, and it is not independent; provided that the underlying subordinated principal must remain in all stages of trading.

Indeed, Allāh is All-Knowing.

