

GOLD IN ISLAMIC FINANCE –

AAOIFI SHARIAH STANDARD ON GOLD UNDER DEVELOPMENT IN COLLABORATION WITH THE WORLD GOLD COUNCIL AND ITS EXPECTED IMPACTS*

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1.0 Introduction

I have been asked to speak and articulate on why a stand-alone Shariah standard on gold is essential. Many people would have assumed that gold does not deserve a separate Shariah standard in the AAOIFI production house. They have thought that the guiding principles of gold can be provided under, or made reference to, the existing AAOIFI Shariah Standard No (1) under the heading of Trading in Currencies as gold has been perceived by the overwhelming majority of the scholars, both classical and contemporary, as carrying the function of currency (*al-thamaniyyah*). Or at least, many would have thought that the Shariah position on gold will only need one or two pertinent Shariah rulings, namely the requirement of spot transaction and equality of the counter-values if it is exchanged for gold. They are not wrong.

This was also my first impression when we, at Amanie Advisors, were approached by the World Gold Council in 2014. I was personally carried away by my own limited Shariah mind by under-estimating some peculiar principles governing gold which are distinctive from currencies. More interestingly, I was not aware of many robust technical standards on gold in the world. When the World Gold Council expressed their desire and intention to look seriously into developing a Shariah Standard on gold, it triggered my mind to take the challenge to look into gold from a high ground position (being a very important and sensitive asset from both Shariah and world economy perspectives) as well as a stand-alone Shariah standard to arrange and provide all relevant Shariah principles and guidance in one Shariah standard.

Working closely with the World Gold Council, we (Amanie) managed to see through many important and potential issues, prospects, as well as challenges surrounding the whole value chain of gold production, distribution, investment and monetisation in the world. From the outset, it promised to be a good and worthwhile piece of research and potentially a Shariah standard for the world consumption. Backed and supported by the World Gold Council (hereinafter referred to as WGC), we have embarked on an intensive and extensive research on gold from all points to appreciate this precious yellow commodity in a novel perspective. In the journey to make this endeavour more refined,

and most importantly, to have the international credential in the eyes of global Islamic finance industry, we and the WGC have managed to get the unreserved support from AAOIFI early this year in 2016.

The involvement of AAOIFI in this effort is unprecedented. It is a welcomed approach for AAOIFI to be working with another reputable world class organisation such as the WGC to strike their niche objective that is to render as many Shariah Standards available as possible on the world stage for the benefit all stakeholders of financial community. It goes without saying that the same benefit will go to the WGC in terms of putting another standard on their shelves, namely Shariah Standard on gold in addition to many of their existing standards on gold from many various perspectives. This is a perfect match, as far as I am concerned, of a good collaboration between the WGC, an industry standard setting body and AAOIFI, the Shariah standard setting body.

2.0 Why is this Shariah Standard on Gold Timely and a Game Changer?

I believe that the timing for this Shariah Standard on gold is perfect. Apart from being supported by the WGC in terms of data and technical knowledge, and reinforced by its international credentials, the interest on gold has been on a trajectory path and welcomed by individuals, corporations and not to mention various countries. Each one is looking for many standards to suit their own plan in dealing with gold. There are many standards on gold as we speak now but one standard is lacking, which is a Shariah standard on gold that may appeal to all stakeholders who aspire to take part in gold dealings, conforming to their religious teachings.

The interest on gold from Shariah perspective can be seen coming from various quarters, ranging from individuals to corporations to central banks and even governments. While the public may be more interested to have a clear cut guidance of how to invest in gold – either direct acquisition of the physical gold or via financial instruments such as sukuk, ETF, fund, gold deposit-based products or gold based structured products – the central banks may look at gold from Basel III requirements. Governments may look into building up their reserve via gold accumulation. This is on the front-line. Those working at the back-end such as producers and miners, financiers, guarantors, insurers, not to mention transportation, distribution and vault companies, amongst others, may be equally interested to know how the Shariah would look at gold and regulate its dealing. To be certain of the limit of the Shariah parameter is a must in a business environment to avoid any breach of the Shariah requirements. Nothing can be taken for granted. The cost is too high and may be punitive.

This is from a market perspective. From the internal movement of the Shariah standards, we have seen many Shariah standards being developed and propagated for more than two decades already. There are many good materials of these standards governing issues of security or collateral, many various forms of transactions of both sale and partnership, sukuk and shares, possession and agency, etc. These have collectively provided a solid

platform to be used to support any 'new financial product' in the industry leveraging on all of these great achievements that we have achieved in the past. The Shariah standard on gold or the gold industry in particular, from my view, is the first beneficiary to benefit from all these robust Shariah Standards which have been developed thus far. Thus, the current design of the Shariah standard on gold has incorporated many of these existing Shariah stands in many various Shariah Standards to this new and stand-alone Shariah standard on gold. This is also, to some extent, unprecedented.

The AAOIFI can simply make reference to these relevant clauses without incorporating the impact and implication of these clauses in the new Shariah standard on gold. The AAOIFI has opted nevertheless to incorporate as many relevant and pertinent clauses of the existing Shariah Standards in this newly born Shariah standard. What do you call this approach? As for me, I would like to call it a symbiotic approach that is using the same materials that we already have to produce more refined and valued-added product. This will create value not only to this new standard but also to all other previous standards. Apart from leveraging on the same materials, this approach helps to show how coherent (or incoherent) the AAOIFI Shariah Standards are, if we want to be analytical in our research.

The last point I would like to make in this section is that this Shariah standard on gold is really a game changer. Intuitively speaking, many would believe, of course after reading this Shariah standard that these Shariah provisions dealing with gold must have been made available many years ago. All the provisions of this standard are essentially something that are floating around in the minds of people, both the scholars and public, for many years already. But no one has ever thought and planned to compile all of these provisions in one place. This is exactly what AAOIFI – in collaboration with the World Gold Council – is doing. We at Amanie Advisors took the first step to compile what we thought to be the relevant and pertinent Shariah principles and issues in dealing with gold. The draft was later further refined by many hours of meetings amongst the AAOIFI sub-committee meetings in both Dubai and Bahrain. The end product was later further scrutinised by the Shariah Board of AAOIFI over many days of their extensive discussions (and debate).

When we produce something which is in need by the market, then we are actually producing something which is a game changer. Internet is a game changer. Nano-technology is another example. Plastic industry was a game changer. This new standard can change the ways we do or plan to do things. I will elaborate further in the subsequent sections of this paper of how the world of gold has reacted to this initiative of producing the world's first Shariah standard on gold being championed by two international bodies, namely AAOIFI and the WGC. Suffice for me to say that this collaborative effort has benefited both worlds; the Islamic financial world and gold industry world alike.

3.0 Methodological Observation on the AAOIFI Shariah Standard on Gold

What should I say about this section? AAOIFI has been issuing more than 50 Shariah Standards already. This Shariah standard on gold wouldn't be the first and the last. As such, what is so special about this standard? Allow me to share some of the insights that I am able to discover while working on this Shariah standard from day one.

First things first. It is essentially meant to be a stand-alone standard in the sense that you can find as many relevant principles of Shariah on gold as possible in one standard. It seems that the initial drafters and the AAOIFI sub-committee of the standard have the motivation to compile almost all relevant rulings dealing with gold under this standard. It will be easier for the readers then to know the overall Shariah prescriptions without referring to many other Shariah Standards of AAOIFI found elsewhere. In other Shariah Standards, many of the Shariah issues, if already covered by other Shariah Standards, will be straight-away referred to that Shariah Standard so that the reader may need to flip through relevant Shariah Standards to get what they need to know.

In the case of this Shariah Standard, special care is given to mention clearly what are the relevant rulings for example for salam, istisna', 'urbun (earnest money), rahn (collateral and pledge), muqasah (set-off), hamish jiddiyah (security deposit), wad (undertaking), etc., in dealing with gold in one way or another. In short, the relevant provisions or perhaps new provisions under these different contracts and principles have been reproduced or created just to support the whole master design of this standard. This standard thus, can be deemed to be a synthesis of the various Shariah contracts in respect to gold contained in one comprehensive stand-alone standard. This is very unique.

Also, having the benefit of working with the WGC, the Shariah standard on gold has the credential of incorporating technical inputs, market conventions and legal provisions related to gold, into the standard. This is obvious when the Shariah standard does not even define gold in its technical sense as many would have expected it to be. Instead, the AAOIFI has provided a general definition of gold saying that "gold is the known precious natural metal". This is a definition that everyone seems to have in their minds. Different karats of gold have been put under the definition section of the Shariah standard and this has been taken almost entirely from the WGC standard definition. However, in dealing with many different karats of gold under the Shariah principles and rulings, this has been provided further under section of 3/3/2 of the Shariah standard covering gold which is mixed with other substances. This is the most important but complicated section to develop in the whole standard as far as I am concerned.

What is the substance of this provision? Allow me to elaborate this section in detail to give both high level and practical thinking of AAOIFI.

Basically, gold can be mixed with many other substances and the mixing activity can be intended or not intended. For the first case where the mixing is intended, it could take two scenarios, namely it is mixed with silver and with other elements other than silver. The Shariah standard prescribes that when it is mixed with silver with the full intention of making it mixed and infused, this mixed gold can be sold for another pure gold or pure silver provided the sale is on spot and the pure gold counter value is heavier than the gold weight in the gold mixed with silver. When the same mixed gold with silver is exchanged (or sold) for silver or money, it must be on spot without having the requirements of having the weight of the pure gold more than the silver. The reason is because, in this case, the gold component in the mixed gold with silver is being exchanged for another element of different type that is silver or money. The requirements of having equality of the weight is no longer a case in this case which is similar to the sale of USD for AED.

In the second scenario when gold is mixed with elements other than silver (provided that the gold component is more than 50% of the mixture), it can be sold for another pure gold on spot on a condition that the pure gold component is heavier than the gold component in the mixed gold. The same mixed gold can be exchanged for pure silver or mixed gold with other elements other than silver on spot basis without having the requirement of being equal. If this mixed gold is exchanged or sold for other than silver and monies, spot transaction is not required.

The next sub-section of this clause of the Shariah standard is very interesting indeed. It prescribes with a certainty that if pure gold is less than 50% of the total mixture, it will not be deemed as gold unless when it is exchanged or sold for gold or silver or monies in which case only the spot sale is a requirement.

The other possibility is when the gold is mixed with something that is not intended for itself. The purpose is only to change the karat or colour of the gold. In this case, this mixed gold may be sold for another pure gold provided it is a spot transaction and of equal amount of the two components of pure gold in both counter values. The last possibility is the mixture of little gold in some other items which is not intended for itself like pens, watches and the like. The ruling of gold does not apply to all these items.

As you can see, the articulation of these rulings and their various scenarios are important to provide clarity for all the stakeholders as gold items in the modern times (as well as in old times) may take different forms. The Shariah standard has taken the reality of different karats in the industry to be dealt with in this standard though it is painstaking. The Shariah discussion must engage all the issues and prescribe the views that are in line with both the Shariah juristic algorithm of rulings and the industry standard.

The last point that is worth pointing out is the stand taken by the AAOIFI Shariah Board to prescribe two different views in the same section of the Shariah standard. This is relating to jewellery. As this topic has recorded two strong different streams of juristic thought amongst the contemporary scholars, as well as the various Shariah boards of many Islamic financial institutions from Indonesia to America, the Shariah standard tend to allow both views to be adopted by respective Shariah board of the financial institutions or funds or any other vehicles as the case may be. This is quite a rare phenomenon in the whole history and DNA of the other Shariah standards of AAOIFI but it is arguably suitable and fit for the Shariah standard on gold. Having said that, the Shariah standard has added a new qualification which is quite interesting that is the workmanship for the jewellery must be really intended and of certain considered value to avoid any bad intention to make the gold bar part of the exceptional ruling of jewellery by having just a very minimalist workmanship. This is not a good law on making gold bar jewellery.

4.0 What can we expect from this Shariah Standard on Gold?

This is a valid question. There is no point of developing a standard, any standard for that matter, if it is of no use for the humanity or special community living on this planet. The same is true with a Shariah standard. Any standard which is to be developed must have a clear set of deliverables in terms of its relevance and impact. What are these deliverables? The following points are based on my own intuitive understanding or perhaps, to some extent, expectation and aspiration.

The most important aspect that this standard aspires to achieve is to dispel the prevailing understanding in the community that gold is a usurious or ribawi item, and nothing much can be done with this precious metal in financial dealings. Therefore, there is no need to work and devote on this kind of standard as most of the dealings with gold will be restricted if not prohibited. Not only the public is having this kind of misaligned thought, even some scholars would have the same line of thinking. Everything to do with financial dealings in gold is straightforward declared as unlawful. Period. This is a wrong approach in everything we do in life. First, we need to ascertain our own raw hypothesis against the sources and evidence of the Shariah and later with the data of life. Second, we need to free our emotions from pre-conceived ideas or conservatism as everything in the Shariah is deemed to be permissible unless proven otherwise. Even if gold has many Shariah complications in some of its transactions and dealings, it is worthwhile to have a Shariah standard for itself to guide the stakeholders what is permissible and what is not. In the same vein, there is no harm to provide a Shariah standard on riba (translated here as interest for the sake of simplicity of understanding as riba includes more than interest) or gharar (lack of knowledge which could be detrimental to one of the parties). This kind of standard will definitely help us to be guided of the very essence of both riba and gharar and not to be confused. There is a benefit of this kind of standard. Surely, a Shariah standard on gold would have many practical and far-reaching benefits and impact compared to both riba and gharar as we shall see later.

Next is value-added academic benefit. Our Shariah and practical knowledge of gold has been scattered and sometimes unsubstantiated, to say the least. We know some aspects about gold in our past reading and research but it has been haphazard and not-in-one-place. The compilation and indexation of all relevant and pertinent Shariah principles and issues dealing with gold is a contribution by itself. It may not be complete and perfect but it can give the real flavour of how to deal with this precious metal – of course from the Shariah perspective – moving forward. Instead of working from ground zero, the stakeholders at all levels of the community can at least be guided on the basic parameters of Islamic teachings. For those who are analytical and inquisitive enough, they can use the standard to expand the horizons of dealing with gold and their permutation. Nothing can stop them because this is the work of any standard by providing broad and flashing principles for the industry to learn and expand further. Even if you were to ask any Shariah scholar, it will take him some time to put all relevant Shariah principles in his note and articulation. But now, the standard has covered that ground and the scholars will only need to further their research on any other issues which might be overlooked or may need different interpretations based on the data and technology and perhaps the convention of the practice.

The biggest beneficiary of this standard is the financial sector who has been keen to make gold as a Shariah compliant asset for their customers across the board. Obviously, the investors and the customers will also benefit from this offering but the Shariah standard on gold, being the first in the modern history of the gold industry, will motivate all financial houses and firms to align their current products offering if they are keen to have the wider market for their product, by being inclusionary. From the early days of the announcement of the work on the Shariah standard on gold by AAOIFI in collaboration with the World Gold Council, the industry in many parts of the world has responded well to this initiative. Stakeholders ranging from financial institutions to fund management to credit card providers to gold-based- platforms have embraced this movement. Why shouldn't they? The standard will take of their worries of the issue of Shariah non-compliance as well as the international standard. What else can be better if a product or a service is both Shariah compliant and internationally compatible? The AAOIFI Shariah standard on gold, when officially issued, will play this function well in the eyes of so many stakeholders, not to mention customers and investors and public at large.

As for me, personally speaking, it is a good move towards mainstreaming Islamic finance in the 21st century. For many of us, mainstreaming Islamic finance means making Islamic finance products and services assessable and affordable for everyone in the community at both retail and corporate levels, as well as the government agencies to the effect that the market share of Islamic finance, cumulatively speaking, would be much more overwhelming compared to the conventional one. This is not wrong. This is still high on the agenda in many Islamic financial markets. Nevertheless, I have another theory of mainstreaming which is more impactful than the 'classical one'. We can't achieve the fullest sense of mainstreaming of Islamic finance unless we can bring the world best standards and practices to be embedded within our own Shariah architecture and design

or vice-versa. The infusion of the World Gold Council standard in the AAOIFI Shariah Standard or vice-versa is a classic example of how the Shariah principles and standards are now compatible to some international standards by working together. This leads me to the next section of the paper.

5.0 Shariah and Technical and Prudential Standards of the World

I am not sure whether the Islamic finance community has actually overlooked or has not given much credence and importance to other international technical standards of the world. In any case, the Shariah is a global word and it is meant for global community and humanity in many dimensions of life. Financial is one of these dimensions but the financial world has close correlation to many other issues such as environment, anti-money laundering act, corporate governance, corruption-free, social finance towards caring society, growth and sustainability, financial stability, etc. The great minds of the world community have put many robust and prudential standards to govern the conduct of human to achieve a better, safer and more sustained life on this planet for EVERYONE to enjoy. We need to work and collaborate together for this noble objective. We can't work in isolation, can we?

Working together can bring down the cost collectively such as the case of fighting against global warming and deadly virus spread. It can also provide a more effective and speedy implementation of anything which is cross-border in character. I am neither suggesting nor implying here that the Shariah community and fraternity must accept all of these standards without having the proper discussion and Shariah due diligence. All what I am trying to articulate and impress is the need to engage more actively with all the relevant standard setting bodies and agencies in all dimensions of life; finance, environment, trade, mining, resources, sustainability, governance, social finance and even media and image consultant providers.

In the beginning of the engagement, it will be difficult to have a common script and narrative between the Shariah and these various industries and their care takers. Engagement is much harder than disengagement in all what we do. We just need to persevere. However, in the due process, a new frequency of communication could be discovered as we have seen in the case of a collaboration between AAOIFI and WGC. If people in the past – before they discovered the language - can survive in their communication using body language that is the universal language, surely we can be better than them. The Shariah language is quite universal as well. The language of karat and other technical worlds in the gold industry are not new to the Shariah. These have been discussed in the books of the classical Islamic law literature using the same language and nomenclature but having the same essence of the intended meaning. Surely, the language of international trade financing or mining or even governance can be found between the lines of rich Islamic law literature. It just needs to be made trendy and fashionable so that people in 21st century would understand without looking at any technical dictionaries.

In short, the AAOIFI and other relevant agencies in Islamic financial space must also go out and engage with other international agencies and bodies in addition to producing the Shariah standards from within typical Islamic practices and issues in the Muslim community. This will bring the Shariah articulation and algorithm to another level altogether. Perhaps to bring the Shariah principles of life from middle ground to high ground to become the overarching template for all international standards and conventions in all business, trade and finance matters. It may be too late now to re-write these standards and conventions but we have all the time and liberty to infuse the good articles and practices of these standards and conventions to our Shariah standards and conventions. I call this infusion as the synthetic infusion which is good enough to create the linkage between the Shariah and the world at large.

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