



Islamic Preference Shares from Shariah Perspective: Case Study of Irredeemable Convertible Preference Shares (ICPS-i) Issued by TH Heavy Engineering Berhad (THHE)

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Abstract

This study investigates the Shariah compliance of Islamic Preference Shares (IPS), with particular focus on the Irredeemable Convertible Islamic Preference Shares (ICPS-i) issued by TH Heavy Engineering (THHE) Berhad. The research aims to evaluate how IPS can be adapted within the *mushārah* framework, examine divergent Shariah rulings, and assess their operationalisation and financial outcomes. The research adopts a qualitative design, combining doctrinal analysis of classical fiqh, contemporary resolutions of the IIFA-OIC, AAOIFI, and the SAC Malaysia, and statutory provisions under the Companies Act 2016. A comparative analysis highlights differing Shariah positions, while a case study of THHE's ICPS-i explores practical implementation, drawing on prospectuses, SAC resolutions, and financial statements. The findings confirm that IPS can be framed as *mushārah* instruments provided profits remain contingent on actual performance and no capital guarantees are embedded. While IIFA-OIC and AAOIFI categorically reject preference shares, SAC Malaysia adopts a more accommodative approach through mechanisms such as *tanāzul* (waiver of rights), *conditional hibah*, and recognition of the Board as *wakīl*. The THHE ICPS-i complied with SAC resolutions by ensuring profit-contingent dividends, market-based conversion, and liquidation priority via post-entitlement waiver. Financially, the instrument reduced gearing and stabilised the balance sheet but offered limited immediate returns as no dividends were declared during its tenure, underscoring the equity-like risks of IPS. This research contributes by bridging doctrinal Shariah debates and practical market application. It offers a comparative perspective on global and Malaysian rulings and provides empirical insights from the THHE ICPS-i, highlighting IPS as a hybrid financing tool that balances Shariah integrity with corporate needs.

Keywords: Islamic Preference Shares, Irredeemable Convertible Preference Shares (ICPS-i), *Mushārah*, *Tanāzul*, *Hibah*, Case study.

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1. Introduction

The Islamic Capital Market (ICM) has emerged as a cornerstone of Islamic finance, accounting for nearly one-third of global Islamic financial assets. Malaysia in particular has positioned itself as a leader, with the ICM representing 63.81% of its total capital market ([Securities Commission Malaysia, 2022](#)). The ICM provides investors with instruments that comply with Shariah principles, thereby promoting risk-sharing, transparency, and the avoidance of *riba* (interest), *gharar* (excessive uncertainty), and *maysir* (gambling).

Despite this growth, the innovation of equity-like products remains challenging. One of the most debated instruments is the Islamic Preference Share (IPS), a Shariah-compliant alternative to the conventional

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preference share. Conventionally, preference shares are hybrid instruments combining elements of debt and equity: they grant priority in dividend distribution and capital repayment but limit participation and voting rights. While they offer corporate issuers flexible financing, they are viewed with suspicion in Islamic jurisprudence because of their potential to violate Mushārakah principles, particularly the requirements of proportional profit-sharing and shared risk of loss.

Shariah authorities are divided on their legitimacy. The International Islamic Fiqh Academy (IIFA-OIC) and AAOIFI categorically prohibit preference shares, ruling that they undermine the essence of Mushārakah by introducing guaranteed returns and preferential rights. By contrast, the Securities Commission Malaysia's Shariah Advisory Council (SAC) has permitted preference shares under certain conditions. Through its resolutions (1999, 2022), SAC allows IPS structured through *tanāzul* (voluntary waiver of rights) and *hibah* (conditional gifting), provided that profits are distributed only when realized and no capital guarantee exists.

Against this backdrop, the issuance of Irredeemable Convertible Preference Shares (ICPS-i) by TH Heavy Engineering Berhad (THHE) provides a critical case study to evaluate the Shariah compliance and practical impact of IPS. The ICPS-i was structured in accordance with SAC guidelines and intended to serve as a Shariah-compliant financing instrument. Yet, the financial outcomes and investor experiences raise important questions about the effectiveness and desirability of such instruments.

This study therefore aims to examine the Shariah foundations, regulatory justifications, and practical implementation of Islamic Preference Shares through a detailed case study of the THHE ICPS-i. Specifically, it seeks to:

1. Analyze the fiqh adaptation (*takyif fiqhi*) of preference shares as Mushārakah instruments.
2. Compare divergent Shariah rulings on preference shares (IIFA-OIC, AAOIFI, and SAC Malaysia).
3. Evaluate the operationalization and financial impact of ICPS-i in practice with Shariah Compliant Preference Shares parameter issued by SAC.

By integrating doctrinal analysis with an empirical case study, this research contributes to the ongoing discourse on the permissibility, structure, and role of Islamic Preference Shares within the Islamic Capital Market. It also addresses the gap between theoretical Shariah positions and real-world market practices, offering insights for scholars, regulators, and market participants on the future trajectory of preference shares in Islamic finance.

2. Literature Review

The literature on preference shares—both conventional and Islamic—reveals a longstanding debate on their legal status, economic function, and Shariah compliance. This section synthesizes key studies to provide a comprehensive understanding of preference shares and their contested role in Islamic finance.

2.1. Definition of Preference Shares

Preference shares are traditionally defined as a class of shares that confer on their holders preferential rights over ordinary shareholders, typically in relation to dividend distribution and return of capital upon liquidation, while generally restricting their voting rights (Lee, 1992; Subrahmanyam, 1977).

Under the Companies Act 2016 (Malaysia), Section 72, preference shares are legally recognised as share capital but differentiated from ordinary shares by the special rights attached to them. These may include priority in dividends, repayment of capital, or other contractual benefits, but the Act also ensures that dividends may only be paid from realised profits and subject to solvency (Section 131).

From a financial perspective, preference shares are hybrid instruments combining elements of equity and debt. They are equity because they form part of a company's permanent capital and do not carry a repayment obligation (except in the case of redeemable preference shares), but debt-like in that they often carry fixed dividend entitlements resembling interest coupons (Laurent, 2000; Manché, 2023).

2.2. Features of Preference Shares

Preference shares occupy a distinct position between ordinary shares and debt instruments. Their unique features have been well documented in corporate law, accounting, and finance literature (Subrahmanyam, 1977; Lee, 1992; Bratton & Wachter, 2013; Manché, 2023).

2.2.1. Dividend Priority

One of the most defining features of preference shares is their priority in dividend distribution compared to ordinary shares. This right means that dividends must be paid to preference shareholders before any distribution is made to ordinary shareholders (Subrahmanyam, 1977; Lee, 1992).

a) Legal and Corporate Finance Perspective

Under company law (e.g., Companies Act 2016, Section 72 in Malaysia; UK Companies Act 2006, s. 629), preference shareholders are entitled to a dividend as specified in the share terms, typically expressed as a fixed percentage of the share's nominal or issue value. However, the declaration of dividends remains subject to the discretion of the board of directors and is conditional upon the existence of distributable profits. This distinguishes dividends on preference shares from interest on debt, which constitutes a contractual obligation regardless of profitability (Bratton & Wachter, 2013).

b) Fixed vs. Variable Rates

In practice, most preference shares are issued with a fixed dividend rate. This provides investors with more predictable income compared to ordinary shares, where dividends fluctuate with profits. Some preference shares, however, may include variable or participating dividend features, linking payments to company performance (Laurent, 2000).

c) Cumulative vs. Non-Cumulative

Dividend priority may be further structured as:

- Cumulative preference shares: if dividends are not declared in one financial year, they accumulate and must be paid in subsequent years before ordinary shareholders receive any dividends.
- Non-cumulative preference shares: dividends lapse if not declared in a given year. The cumulative form is generally considered more protective of investor interests and is more common in markets such as India and the UK (Subrahmanyam, 1977; Manché, 2023).

d) Implications in Accounting and Finance

From an accounting perspective, the nature of the dividend entitlement is a key determinant in classification.

- If dividends are obligatory (e.g., fixed and cumulative, with redemption terms), the preference shares may be classified as liabilities under IFRS/MFRS.
- If dividends are discretionary (e.g., non-cumulative, contingent on profits), the shares are more likely to be treated as equity (IFRS IAS 32; MFRS 132).

In corporate finance, dividend priority makes preference shares attractive to investors seeking security and predictable income. However, because dividends are not tax-deductible (unlike interest on debt), they represent a higher after-tax cost of capital for the issuing company (Laurent, 2000). This has limited the widespread use of preference shares in many jurisdictions, where debt is often preferred for financing.

2.2.2. Capital Priority on Liquidation

Another defining feature of preference shares is their priority in the distribution of capital upon liquidation or winding up of a company. This right distinguishes preference shareholders from ordinary shareholders, though they still rank subordinate to creditors.

a) Legal Perspective

In company law, preference shareholders are entitled to repayment of their capital before ordinary shareholders receive any residual assets, but only after secured and unsecured creditors have been satisfied. This principle is recognized across common law jurisdictions and is codified in statutes such as the Companies Act 2016 (Malaysia), Section 72, which defines preference shares as shares that carry preferential rights in respect of

dividends or capital repayment compared with ordinary shares. Similarly, under the UK Companies Act 2006 (s.629), preference shareholders are expressly distinguished by their entitlement to priority distributions. This priority is a contractual right attached to the class of shares and must be clearly stated in the company's constitution or terms of issuance. In practice, preference shareholders often have the right to receive the par value or issue price of their shares before ordinary shareholders participate in the residual assets.

b) Accounting Perspective

From an accounting standpoint, capital priority may affect the classification of preference shares under international and local financial reporting standards. According to IAS 32 / MFRS 132, the classification of preference shares depends on their substance rather than legal form. Where redemption or repayment obligations exist, preference shares are treated as financial liabilities, since the issuer has a contractual obligation to deliver cash or another financial asset. In contrast, irredeemable preference shares without repayment obligations are typically classified as equity instruments ([International Accounting Standards Board, 2003](#)).

Scholars such as [Bratton and Wachter \(2013\)](#) and [Manché \(2023\)](#) further highlight that this hybrid treatment reflects the ambiguous nature of preference shares: legally they remain part of share capital, but in financial reporting they may be booked as debt when fixed repayment or redemption rights are embedded.

c) Corporate Finance Perspective

In financial terms, the liquidation preference enhances the security of preference shareholders relative to ordinary shareholders, making the instrument more attractive to conservative investors. However, because preference shareholders remain subordinated to creditors, the feature does not eliminate investment risk. In fact, empirical studies ([Subrahmanyam, 1977](#); [Laurent, 2000](#); [Manché, 2023](#)) note that preference shareholders often recover little in insolvency cases, particularly when companies have significant outstanding debt obligations.

The capital priority feature, therefore, gives preference shares an intermediate position: they offer investors a stronger claim than ordinary equity, but weaker protection compared to debt instruments such as bonds.

2.2.3. Voting Rights

Another distinctive feature of preference shares is their generally restricted voting rights compared to ordinary shares. While ordinary shareholders typically exercise full voting rights on matters such as board appointments, business strategy, and major corporate decisions, preference shareholders are usually limited to specific circumstances.

a) Legal Perspective

Under company law, preference shareholders may be excluded from ordinary voting but are entitled to vote on matters that directly affect their class rights. For instance, the Companies Act 2016 (Malaysia, Section 90) provides that any variation of class rights must be approved by a special resolution of the affected class of shareholders. Similarly, the UK Companies Act 2006 (s.630–633) requires class consent when rights are altered. In addition, preference shareholders may obtain voting rights if dividends remain unpaid for a specified number of periods, often two or more consecutive years.

b) Corporate Governance Perspective

The restriction of voting rights reflects the traditional understanding of preference shareholders as investors primarily interested in priority income and capital protection, rather than corporate control. [Bratton and Wachter \(2013\)](#) observe that this separation of economic interest from governance rights has historically created tensions in corporate governance, especially in cases where preference shares are widely held. In venture capital contexts, [Korsmo \(2013\)](#) notes that preference shares may be structured with enhanced

protective provisions, including veto rights on major decisions, to safeguard investors without granting them general voting parity with ordinary shareholders.

c) Finance Perspective

From a corporate finance standpoint, limiting the voting rights of preference shareholders allows companies to raise capital without significantly diluting control of existing ordinary shareholders. This makes preference shares attractive to founders and controlling shareholders, particularly in family businesses or closely-held companies (Manché, 2023). However, it also makes preference shares less attractive to investors who seek both economic return and influence in governance, explaining their limited popularity in many capital markets.

2.2.4. Redeemability

A further characteristic of preference shares is their potential to be redeemable. This means the issuing company may buy back the shares after a specified period, at a fixed price, or at its discretion. Redeemability gives companies flexibility in structuring capital, while distinguishing preference shares from ordinary shares, which are generally irredeemable.

a) Legal Perspective

In Malaysia, the Companies Act 2016 (Section 72(5)) permits the issuance of redeemable preference shares, provided the redemption does not compromise the company's solvency. Redemption may be funded from distributable profits or the proceeds of a fresh issue of shares. Similar provisions exist in the UK Companies Act 2006 (Sections 684–689), where redemption must not prejudice creditor protection. The law thereby balances corporate financing flexibility with safeguards against excessive capital erosion.

b) Accounting Perspective

The redeemability feature has direct implications for financial reporting. Under IFRS IAS 32 / MFRS 132, redeemable preference shares with a contractual obligation to repay capital at maturity are classified as financial liabilities, since the issuer cannot avoid delivering cash or another financial asset. In contrast, irredeemable preference shares, which have no repayment obligation, are treated as equity. This dual classification underscores the hybrid character of preference shares (IASB, 2003; Bratton & Wachter, 2013).

c) Finance Perspective

From a corporate finance standpoint, redeemable preference shares offer issuers a way to raise equity-like funds temporarily, with the option to restructure capital later. They may be used to finance specific projects, bridge capital requirements, or provide flexibility in capital restructuring. However, because dividends on redeemable preference shares are not tax-deductible, they are more expensive than debt financing. Empirical studies (Laurent, 2000; Manché, 2023) show that companies tend to issue redeemable preference shares during periods of financial distress or when retaining control is a priority, making them a relatively niche instrument.

2.2.5. Convertibility

Another common feature of preference shares is their convertibility into ordinary shares. Convertible preference shares (CPS) give holders the option, or in some cases impose an obligation, to exchange their preference shares for ordinary equity after a specified period or upon meeting certain conditions. This feature adds flexibility for both investors and issuers, linking the fixed-income style benefits of preference shares with the growth potential of common stock.

a) Legal Perspective

Most company law frameworks, including the Companies Act 2016 (Malaysia, Section 72), allow the issuance of convertible preference shares, subject to terms set out in the company's constitution or prospectus. Conversion terms typically specify the conversion ratio, timeframe, and whether conversion is mandatory or

optional. The UK Companies Act 2006 similarly recognises convertible preference shares as part of permissible share capital, provided shareholder approval is obtained and class rights are respected.

b) Accounting Perspective

The convertibility feature complicates the classification of preference shares in financial reporting. Under IFRS IAS 32 / MFRS 132, a compound financial instrument (such as convertible preference shares) must be split into its liability and equity components at initial recognition. The liability component reflects the issuer's obligation to pay dividends or redeem, while the equity component reflects the embedded option to convert into ordinary shares (IASB, 2003). This dual recognition underscores the hybrid nature of convertible preference shares and affects how they are reported in balance sheets.

c) Finance Perspective

From a financial standpoint, convertible preference shares appeal to investors by offering downside protection through preferential rights and upside potential through conversion into ordinary equity. For issuers, convertibility provides a mechanism to raise funds without immediate dilution of control, while retaining the option of future equity participation by investors. Studies in corporate finance (Laurent, 2000; Bratton & Wachter, 2013) note that firms often prefer convertible instruments when facing uncertainty in future cash flows, since convertibility can reduce financing costs relative to straight preference shares.

Table 1: Summary of key features of Preference Shares

Feature	Summary
Dividend Priority	Preference shareholders receive dividends before ordinary shareholders, usually at fixed or indicative rates, subject to distributable profits and board declaration.
Capital Priority on Liquidation	Entitled to repayment of capital before ordinary shareholders but after creditors.
Voting Rights	Generally, no voting rights, except on matters affecting class rights, winding up, or prolonged dividend arrears.
Cumulative / Non-Cumulative	Cumulative: unpaid dividends accrue to future years. Non-cumulative: lapse if not declared.
Redeemability	May be redeemed (bought back) by the company after a set period or at its discretion; irredeemable shares form permanent capital.
Convertibility	Can be converted into ordinary shares at a predetermined ratio and time.
Hybrid Character	Legally equity, but accounting treatment may classify them as equity or liability depending on terms.

2.3. Shariah Resolutions on Preference Shares

The legitimacy of preference shares in Islamic finance has been the subject of significant debate, with divergent positions among global and local Shariah authorities.

2.3.1. Fatwas on the impermissibility of preference shares:

- i. The IIFA-OIC 1992 resolved that: "It is not permissible to issue preference shares, which have financial features that lead to a guarantee of capital and fixed return, priority [over other shareholders] in the event of liquidation or at profit distribution."
- ii. The IIFA-OIC 2003 further resolved that: "... it is not permissible for a company to issue preferred shares or preference shares or debentures. Fourthly, in occasions when the company suffers losses, it is compulsory for every shareholder to bear his share of the loss, in proportion to his capital contribution."
- iii. AAOIFI in Shariah Standard No. 12 (Item 4/1/2/14) states that: "It is not permitted to issue preference shares, i.e. shares that have special financial characteristics that give them a priority at the date of liquidation of the company or at the date of distribution of profit. However, it is permissible to grant

certain shares, in addition to being entitled to rights attached to common shares, certain procedural and administrative privileges, such as the right of vote.”

2.3.2. Resolution on the permissibility of preference shares:

By contrast, the Shariah Advisory Council (SAC) of the Securities Commission Malaysia has adopted a more accommodative approach:

- i. 1999 Resolution: SAC permitted non-cumulative preference shares based on the concept of tanāzul (voluntary waiver of rights). Ordinary shareholders may waive their entitlement to profits in favor of preference shareholders after profit realization. However, cumulative preference shares were rejected for resembling guaranteed entitlements.
- ii. 2022 Resolution: SAC expanded its framework by allowing modified cumulative features, subject to availability of profit. The SAC ruled that:

Preference shareholders are partners (mushāriks) under the Mushārah contract.

- a) They may receive dividends up to the declared profit, with expected dividend rates considered indicative only.
- b) Tanāzul (waiver of rights) and wa‘d bi al-hibah (promise to gift) may be applied, provided waivers occur after rights are established.
- c) Features such as voting rights, participation, convertibility, and redeemability are permissible if structured without capital/profit guarantees.
- d) Dividends must comply with Companies Act 2016, Section 131, which requires distribution only from realized profits and prohibits payments that render the company insolvent.

It is noted that there are contradictory views on the issue of the permissibility of preference shares. The contradictions stem from different understanding of the nature of preference shares. (Nasr & Hasan, 2021). Thus, it is pertinent to provide a comparative analysis of the opposing approaches on preference shares. It is worth noting that the permissibility of preference shares provided by SAC SC is based on the mechanism of tanazul and hibah, which require further analysis aside from the main Mushārah concept.

2.3.3. Comparative Analysis

i. Substance of Priority versus Timing of Priority

The most fundamental divergence concerns whether financial priority itself is permissible in mushārah. The International Islamic Fiqh Academy (IIFA) and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) prohibit preference shares that grant priority in dividends or liquidation, arguing that such privileges undermine the pari passu principle of mushārah. By contrast, the Shariah Advisory Council (SAC) of the Securities Commission Malaysia reconceptualises priority as an outcome that is executed only after rights arise, such as upon the declaration of profit or at liquidation. This is operationalised through mechanisms like tanāzul (waiver of rights) or conditional hibah, thereby maintaining the requirement of shared risk ex ante (Mohamad et al, 2017; AlSuhailani, 2014).

ii. Mechanism Design: Tanāzul and Conditional Hibah

Early Malaysian practice relied heavily on tanāzul. However, scholars have highlighted issues with upfront waivers, which may constitute isqāt mā lam yajib (waiving a right before it accrues) and potentially introduce gharar into contracts (Ahmad & Bakar, 2017; Mohd Noor et.al, 2015). To address this concern, the SAC and contemporary researchers have advocated the use of conditional hibah (hibah mu‘allaqah). Conditional hibah takes effect only once profits have been realised, thus avoiding the doctrinal objection of premature waiver and ensuring conformity with fiqh principles of conditional transactions (Ahmad et al., 2020; Mohamad et.al 2017).

iii. Dividend Doctrine: Profit-Contingent Principle

Despite differing stances on permissibility, Shariah bodies converge on the principle that dividends must remain contingent on realised profits. Guaranteed or fixed returns are unanimously rejected as incompatible with Shariah (AlSuhailani & Naifar, 2014; Mohamad et.al, 2017). The SAC resolution of 2022 underscores this by clarifying that any “expected dividend rate” should be treated as indicative only, while dividend distributions

must comply with statutory safeguards such as Section 131 of the Companies Act 2016, which restricts payments to available profits and requires solvency (Nasr & Hassan, 2024).

iv. Operational Governance: Board as Wakīl

A further innovation by the SAC (2022) is the recognition that the Board of Directors may act as wakīl (agent) on behalf of ordinary shareholders in executing tanāzul. This development solves the practical difficulty of obtaining shareholder-wide consent for every distribution and ensures that the waiver occurs only after rights have materialised (Mohamad et.al, 2017; Ahmad et al., 2021).

i. Scope and Instrument Design

Finally, there is divergence in the scope of permissible features. AAOIFI permits only procedural or administrative distinctions (e.g., voting arrangements) and prohibits financial privileges such as dividend or liquidation preference (AAOIFI, 2010). Conversely, the SAC (2022) adopts a broader approach by allowing features such as participation, convertibility, and redeemability, so long as they do not create capital or profit guarantees and are exercised only after entitlements arise (Zarka & Shubaini, 2012; Nasr & Hassan, 2024).

Table 2: Comparative Table between Shariah resolutions

Dimension	IIFA-OIC	AAOIFI (Shariah Std. No.12)	SAC Malaysia (1999)	SAC Malaysia (2022)
Overall stance	Non-permissive: Pref. shares not allowed due to guaranteed/privileged financial rights (fixed returns, priority at profit/liquidation).	Non-permissive for financial priority; only procedural/administrative distinctions allowed (e.g., voting).	Conditional permissibility of non-cumulative preference shares via tanāzul (waiver by ordinary shareholders).	Expanded conditional permissibility: mushārahah basis; post-realisation priority via tanāzul or conditional hibah; profit-contingent and no guarantees.
Underlying contract (takyīf)	Pref. shares conflict with mushārahah's loss-sharing and pari passu profit.	Similar rationale; priority in profit/liquidation contradicts mushārahah substance.	Treatable within mushārahah if priority is achieved through voluntary waivers (tanāzul).	Explicit mushārahah framing with detailed mechanics (tanāzul/hibah) and governance guardrails.
Dividend treatment	Fixed/guaranteed returns unacceptable.	Financial priority at profit distribution not permitted.	Non-cumulative only; dividends remain discretionary and profit-based.	Expected dividend rate indicative only; must follow Companies Act s.131 (profit availability & solvency).
Liquidation priority	Priority at liquidation contributes to impermissibility.	Same: financial priority at liquidation not permitted.	Permitted only if effected by tanāzul (ordinary shareholders waive after entitlement arises).	Reaffirms priority only post-entitlement, executed by Board as wakīl for ordinary shareholders.

Capital guarantee	Not allowed; contradicts mushārahah loss-bearing.	Not allowed; partner cannot guarantee another's capital.	Not allowed.	Not allowed (and aligned with company law).
Cumulative dividends	—	—	Not permitted (resembles guarantee).	Modified cumulative features may be acceptable subject to realised profit (no guarantee).
Mechanism	—	—	Tanāzul (shareholders' waiver).	Tanāzul (via Board-as-wakīl) and conditional hibah (post-condition gift).
Timing requirement	—	—	Waiver implied, but timing less elaborated.	Critical: waiver/hibah only after profit/liquidation rights arise (no upfront waiver).
Other features (voting, convertibility, redeemability)	—	Only procedural distinctions are acceptable.	Limited discussion; non-cumulative focus.	Permissible if they do not create guarantees; convertibility/redeemability possible within mushārahah-compliant terms.

2.4. Shariah Discussion in Preference Shares

The evaluation of preference shares in Islamic finance must begin with the basic principles of mushārahah, where partners contribute capital, share profits according to an agreed ratio, and bear losses in proportion to their capital contributions. These parameters serve as the benchmark for assessing the features of preference shares.

This discussion is divided into two parts. The first outlines the parameters of mushārahah and maps them against the main features of preference shares, such as dividend priority, capital rights, voting restrictions, redeemability, and convertibility. The second part highlights the main Shariah issues arising from these features, including guaranteed dividends, capital protection, and liquidation priority, and then considers proposed solutions such as tanāzul and conditional hibah.

The aim is to show how preference shares may be aligned or conflicted with Shariah principles, and to review the mechanisms developed in contemporary practice to address these concerns.

2.4.1. Overview of Mushārahah Contract

This section will provide a general overview and relevant fiqh issues and discussions surrounding the Mushārahah (partnership) contract.

Mushārahah is a partnership between two or more parties to finance a business venture, where all parties contribute capital in the form of cash or in-kind. The term "Mushārahah" is derived from the word "Shaaraka," which means to share. It is widely used in the context of equity-based Islamic financing and connotes a limited understanding compared to the term "Shirkah" (sharing or partnership) used in Islamic jurisprudence literature. Mushārahah can be divided into two categories: Shirkah Al-Milk, which refers to joint ownership of a particular property, and Shirkah Al-Aqd, which is a contractual partnership for commercial goals. (Hisyam, 2019).

The followings are basic characteristic of Mushārahah:

1. The distribution of profit in the context of mushārahah is based on the actual profit accrued to the business, rather than a predetermined or fixed amount. The agreement between partners should specify an agreed percentage of the actual profit, which will be distributed accordingly at the end of the term. It is emphasized that any predetermined lump sum or a certain percentage of the investment as a basis for profit distribution would render the contract invalid (Usmani, 1999).

2. The distribution of loss is a fundamental aspect governed by Islamic jurisprudence. All partners must bear the loss exactly according to the ratio of their investment. This means that if a partner has invested 40% of the capital, they must bear 40% of the loss, and any condition to the contrary would render the contract invalid according to Shariah. This principle is unanimous among Muslim jurists. (T. B. Hisyam, 2019; Usmani, 1999).
3. The dissolution of Mushārahah, a partnership in Islamic finance, can occur through mutual agreement among the partners. It may be dissolved when it reaches its maturity, as predetermined in the contract, or by the agreement of all partners. (AAOIFI, Shariah Standards). Additionally, a partner may serve a withdrawal notice to quit the partnership. Upon dissolution, the assets of the Mushārahah are distributed between the partners on a pro rata basis, provided that the capitals are in the form of cash. If the capitals are in another form, the partners must mutually agree on whether to resort to liquidation or partition of the assets. In the event that the Mushārahah is to continue without a partner, the remaining partners may choose to purchase the leaving partner's share. If there is a dispute over the share price, the leaving partner may compel the other partners to liquidate or distribute the assets among themselves. This process ensures fairness and mutual agreement in the dissolution of the Mushārahah partnership.

Table 3: Mapping Mushārahah Parameter with Preference Shares

Mushārahah Parameter	Key Requirement	Relevant Features of Preference Shares	Alignment / Potential Conflict
Profit Distribution (Usmani, 1999)	Profit must be distributed from <i>actual realised profits</i> ; ratios must be pre-agreed; fixed amounts or predetermined percentages of capital are invalid.	Dividend Priority (fixed or indicative dividends); Cumulative/Non-Cumulative Dividends; Participating/Non-Participating rights.	Conventional preference shares often stipulate fixed dividends, which may conflict with the mushārahah requirement of profit-contingent distribution. Non-cumulative and participating preference shares are closer to mushārahah principles, but fixed dividend entitlement remains problematic.
Loss Sharing (Usmani, 1999; Hisyam, 2019)	Losses must be borne strictly in proportion to capital contributions; conditions shifting losses away from one partner are invalid.	Capital Priority on Liquidation; Capital Guarantee (implicit or explicit).	Preference shares typically grant priority in capital repayment during liquidation. This creates asymmetry in risk-sharing, as preference shareholders are shielded relative to ordinary shareholders. Such protection conflicts with mushārahah's unanimous requirement of <i>pari passu</i> loss sharing.
Dissolution of Mushārahah (AAOIFI Shariah Standards)	Dissolution may occur by mutual agreement, maturity, or withdrawal. Upon dissolution, assets are distributed <i>pro rata</i> . If in non-cash form, partners must agree on liquidation or partition.	Redeemability (company repurchases shares); Convertibility (conversion into ordinary shares); Hybrid Character.	Preference shares with redeemable features may align partially with voluntary dissolution, but redemption guarantees contradict mushārahah principles. Conversion into ordinary shares provides flexibility and may reflect equitable continuation, but liquidation priority remains inconsistent with the <i>pro rata</i> principle.

2.5. Shariah issues of preference shares

As highlighted in previous section, the structuring of preference shares raises a number of significant Shariah concerns that have been widely debated in both scholarly literature and among standard-setting bodies. These

issues primarily relate to the alignment of preference share features with the principles of *mushārah* and the prohibition of *riba*, *gharar*, and unjustified guarantees. This section will focus on the issues that have been discussed and the proposed solution.

2.5.1. *Guaranteed or Fixed Dividends*

A key objection to conventional preference shares is the entitlement to fixed or guaranteed dividends. Such arrangements closely resemble interest payments on debt instruments, as they provide a predetermined return regardless of profit realisation (AlSuhailani & Naifar, 2014). Shariah requires that profits be contingent upon actual business performance, and therefore guaranteed dividends are considered inconsistent with the principle of *al-kharāj bi al-damān* (entitlement to return is justified only by assuming risk) (IIFA, 2003; AAOIFI, 2010).

Nevertheless, SAC is of the view that from Shariah perspective, it is permissible for preference shareholders to receive dividend up to the declared profit by the company based on the concept of *taradhi* (mutual consent). Consent is an essential element of contract validity from *fiqh* perspective, as highlighted in Surah Al-Nisa “O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent” (4:29). The entitlement of profit to preference shareholders is understandable since it is their right as *Musharik*.

SAC also is of the view that “in the context of Shariah-compliant preference shares, there is no capital and/ or profit guarantee by the company to the preference shareholders. This is because the dividend rate determined in the terms and conditions of the preference shares (whether cumulative or non-cumulative) is only indicative. The dividend rate is also not considered as debt by the company to the preference shareholders because the dividend declaration to be distributed to the preference shareholders is subject to the availability of profit of the company, in line with Section 131 of the Companies Act 2016”.

Based on the above, the SAC view that the imposition of expected dividend rate is only indicative due to the distribution of dividend payout must be subjected to the availability of profit as required by Section 131 of the companies act. The indicative rate is acceptable from shariah perspective and in line with requirement highlighted in Musyarakah Policy Document of BNM which states that the expected return in the form of a percentage which is attributed to the capital amount is only permissible in the form of indicative profit rate.

Further examination on Section 131 of the companies act noted that the distribution is guided by two (2) principles; first, the dividend is to be paid out of the company's profits; and the second principle is the dividend should not be paid if the payment will cause the company to be insolvent:

131. (1) Subject to section 132, a company may only make a distribution to the shareholders out of profits of the company available if the company is solvent.

It can be concluded that the profit guarantee is not allowed and acceptable by law, thus eliminating it from the features of preference shares. The elimination of the profit guarantee element results in the compliance of preference shares with *Mushārah* concept.

2.5.2. *Capital Guarantee and Loss Sharing*

Another concern is the guarantee of capital repayment or disproportionate protection of preference shareholders during losses. In a *mushārah* framework, all partners must share losses in proportion to their capital contributions. By granting preference shareholders superior rights to recover their capital, conventional structures undermine this fundamental principle (Mohamad et al, 2017; Ahmad et.al, 2017). Both IIFA and AAOIFI have therefore rejected preference shares that provide any form of capital protection.

On the other hand, the SAC emphasised that redemption and conversion features in preference shares do not constitute a capital guarantee. Redemption is only permissible if executed through purchase or sale undertakings that are tied to the market value of the shares at the redemption date or the performance of the company. Similarly, conversion into ordinary shares must reflect the prevailing market price at the time of conversion. These conditions ensure that preference shareholders remain exposed to business risk and cannot demand their full capital back in all circumstances.

2.5.3. Priority in Liquidation

Preference shareholders often enjoy priority rights over ordinary shareholders during liquidation. While this feature is common in corporate law, it presents a Shariah issue since it alters the *pari passu* principle of partnership distribution. Some scholars argue that such priority privileges recharacterise preference shares into quasi-debt instruments (Ahmad & Bakar, 2017). Others, however, have suggested that priority may be tolerated if implemented through *tanāzul* by ordinary shareholders after entitlement arises (Mohd Noor et al., 2014).

The later view is in line with SAC position in which the committee makes a clear distinction between a guarantee of priority—which is impermissible—and a voluntary waiver mechanism that achieves a similar effect without violating Shariah principles. In its 261st resolution, the SAC clarified that priority for preference shareholders during liquidation may be realised through post-entitlement *tanāzul*, in which ordinary shareholders voluntarily relinquish their residual rights in favour of preference shareholders. To facilitate this mechanism in practice, the SAC further permitted the Board of Directors to act as *wakīl* (agent) on behalf of ordinary shareholders, executing the waiver only once liquidation entitlements have crystallised. This arrangement ensures compliance with Shariah by avoiding *isqāṭ mā lam yajib* (the invalid waiver of a right before it arises) and prevents the element of *gharar* (uncertainty) (SAC, 2022).

2.5.4. The Issue of Upfront Tanāzul

The use of *tanāzul* (waiver of rights) in Malaysian practice initially offered a mechanism to legitimise preference share structures. However, significant criticism has emerged around upfront *tanāzul*, where ordinary shareholders waive rights before they have accrued. This is considered problematic since Shariah prohibits *isqāṭ mā lam yajib* (waiving what has not yet become due) and may introduce elements of *gharar* (uncertainty) (Mohamad et al 2017; Ahmad & Bakar, 2017).

2.5.5. Conditional Hibah as part of Solution

Recent scholarship has proposed conditional hibah (*hibah mu'allaqah*) as a stronger alternative to *tanāzul*. Under this mechanism, ordinary shareholders issue a gift promise that becomes effective only after profits are realised, thereby avoiding premature waiver of rights and ensuring compliance with fiqh rules governing conditional contracts (Ahmad et al., 2020; Mohamad et al., 2017). The SAC Malaysia (2022) has also endorsed this mechanism, recognising conditional hibah as a practical and Shariah-compliant method of granting preference rights while safeguarding the *mushārahah* foundation.

Table 4: Summary of Shariah issues in Preference Shares and Proposed Solutions

Issue	Shariah Concern	Scholarly / Institutional Position	Proposed Solution
Capital Guarantee and Loss Sharing	Guarantee of capital repayment or disproportionate protection of preference shareholders undermines <i>mushārahah</i> rule that losses must be borne in proportion to capital.	IIFA and AAOIFI reject any form of capital protection (Mohamad et al., 2017; Ahmad et al., 2017).	SAC clarifies that redemption must be linked to market value/performance, and conversion must reflect prevailing market price, ensuring shareholders remain exposed to risk.
Priority in Liquidation	Priority rights in liquidation alter the <i>pari passu</i> principle of partnership and resemble debt-like instruments.	Some scholars reject liquidation priority (Ahmad & Bakar, 2017), while others allow it via <i>tanāzul</i> after entitlement (Mohd Noor et al., 2014). SAC (2022) permits post-entitlement <i>tanāzul</i> , executed by the Board as <i>wakīl</i> , avoiding <i>isqāṭ mā lam yajib</i> .	Priority implemented through post-entitlement <i>tanāzul</i> , not guarantee. Board acts as agent to execute waiver only after entitlements crystallise.

Upfront Tanāzul	Waiver of rights before they accrue constitutes <i>isqāt mā lam yajib</i> and introduces <i>gharar</i> (uncertainty).	Criticised by scholars as impermissible (Mohamad et al., 2017; Ahmad & Bakar, 2017).	Replace upfront waivers with conditional mechanisms that activate only after profit realisation.
Conditional Hibah	Need for mechanism to provide preference without violating Shariah principles.	Supported by contemporary scholars and endorsed by SAC Malaysia (2022) (Ahmad et al., 2020; Mohamad et al., 2017).	Conditional hibah (hibah mu'allaqah) ensures that rights are transferred only after profit realisation, avoiding premature waivers and safeguarding <i>mushārah</i> principles.

2.6. Gap Analysis

It is observed that the following areas may require further study:

- a. Harmonization between the two Shariah approaches (Middle East vs Malaysia) on the permissibility of Islamic preference shares including critical analysis on recently issued SAC resolution on preference shares. The related studies focus on Shariah issues but did not provide a preference (tarjih) or harmonization attempt between the opposing approaches.
- b. The need to examine the implementation of preference shares in the Market. Based on Bursa Malaysia website, there are a few public listed companies that issued a variety of preference shares (redeemable, irredeemable, convertible, etc) such as SP Setia Berhad, Sapura Energy, Sunway and TH Heavy Engineering. The study on the actual case can provide a better understanding of the operationalization and impact of preference shares and also ascertain its conformity to the SAC resolution.

3. Research Methodology

This study adopts a qualitative research design in order to examine the Shariah compliance of Islamic Preference Shares, with specific reference to the Irredeemable Convertible Preference Shares (ICPS-i) issued by TH Heavy Engineering Berhad (THHE). The qualitative approach is appropriate given the exploratory nature of the study and its focus on textual analysis of Shariah resolutions, legal provisions, and corporate documents. The methodology combines document analysis, literature review, and case study to ensure a comprehensive triangulation of findings.

3.1. Research Design

3.1.1. Document Analysis

This method will focus on the rulings of the International Islamic Fiqh Academy (IIFA), the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), and the Shariah Advisory Council (SAC) of the Securities Commission Malaysia. Statutory provisions such as the Companies Act 2016, and international accounting standards (IAS 32 / MFRS 132) are also reviewed to establish the legal and regulatory context for preference shares. This method provides the normative framework against which practical instruments can be evaluated.

3.1.2. Literature Review

This method entails an in-depth literature review involving scholarly articles, reports, and other pertinent publications related to Islamic Preference Shares. The objective is to acquire a comprehensive understanding of the subject and to identify any existing gaps in the current body of research. This thorough exploration will contribute to the development of a well-informed framework for analyzing Islamic Preference Shares.

3.1.3. Case Study

The third component is an exploratory case study of the THHE ICPS-i issuance, selected as it represents one of the earliest applications of Shariah-compliant preference shares in the Malaysian capital market. Company filings, prospectuses, and official announcements are examined to identify the contractual features embedded in the instrument, such as dividend structure, priority rights, and conversion or redemption mechanisms. These features are then mapped against Shariah parameters of Islamic preference shares to assess compliance and identify areas of innovation or tension.

3.2. Data Analysis

The analysis proceeds in three stages:

1. Shariah and Fiqh Analysis – Textual analysis of classical juristic views on Mushārah, profit-sharing, capital guarantees, and waiver of rights. This establishes a normative framework against which preference share structures are evaluated.
2. Comparative Resolution Analysis – Systematic comparison of rulings by IIFA-OIC, AAOIFI, and SAC Malaysia. Special attention is given to the 2022 SAC resolution, which introduces innovative mechanisms such as tanāzul and wa‘d bi al-hibah. The analysis seeks to explain how these mechanisms reconcile Shariah principles with market realities.
3. Case Study Analysis – The THHE ICPS-i case is examined to assess whether its features and implementation align with the SAC’s 2022 resolution and Mushārah principles. Financial performance data (2015–2020) is used to evaluate whether dividends were paid, how conversion occurred, and whether elements of profit guarantee or capital protection were present.

4. Case Study: Irredeemable Convertible Islamic Preference Shares (ICPS-i Issued by THHE Berhad).

This case study is organised into four parts. The first explains the structure of the ICPS-i, followed by a discussion of its key features such as dividend rights, conversion, and voting. The third part reviews the financial impact of the issuance on THHE’s capital position, while the final part examines its compliance with SAC resolutions on preference shares. Together, these perspectives provide a practical view of how preference shares are applied in an Islamic framework.

4.1. Structure and Transaction Flow

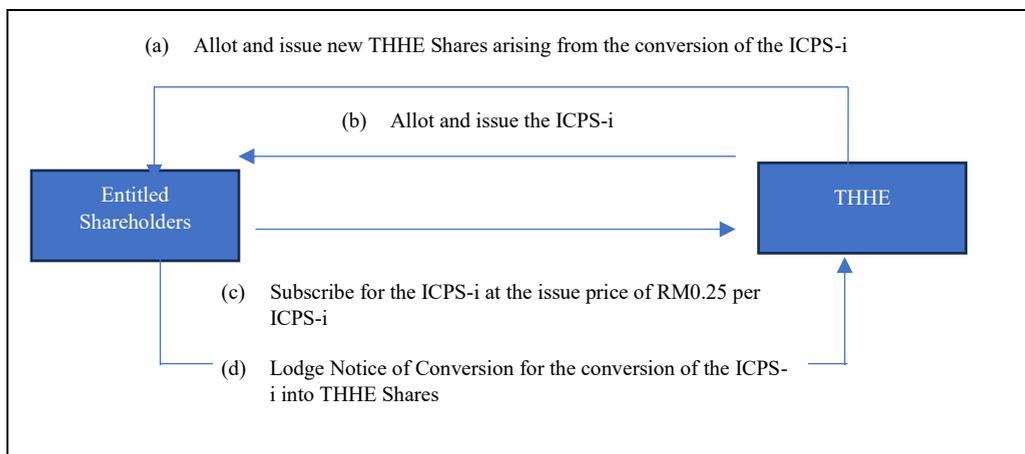


Figure 1: ICPS-i Structure of THHE

Source: Abridged Prospectus dated 14 August 2015

This diagram outlines the process of subscribing for the ICPS-i, converting the ICPS-i into THHE Shares, and the issuance of new THHE Shares resulting from the conversion. It also includes the involvement of renounees/transferees/underwriters who subscribe for the ICPS-i.

4.2. Features of ICPS-i

The Islamic Irredeemable Convertible Preference Shares (ICPS-i) proposed by TH Heavy Engineering Berhad (THHE) have several key features:

1. **Transferability:** The ICPS-i can be transferred to other parties through mechanisms recognized by Shariah, such as sale contracts or hibah. This is in line with SAC resolution.
2. **Mandatory Conversion:** The ICPS-i is convertible, at the option of the holder, at any time during the conversion period without the payment of additional consideration. The conversion period is from the date of issue up to the maturity date, and the conversion rate is one new THHE Share for one ICPS-i held. The conversion rate is mutually agreed which is in line with taradhi concept highlighted by SAC.
3. **Rights and Responsibilities of ICPS-i Holders:** ICPS-i holders have the right to receive dividends in proportion to their shareholdings, with a targeted aggregate dividend rate of 20% over the tenure of the ICPS-i. They also have the right to exit from the agreement at any time by selling their ICPS-i on the open market of Bursa Securities. Additionally, they agree to waive their right to vote at general meetings of THHE, except in specific circumstances. The targeted aggregate rate is indicative and subject to the availability of the profit which means that the ICPS-i does not guarantee on the profit return in line with Mushārah concept.
4. **Shariah-Compliant Status:** THHE aims to maintain its Shariah-compliant status, but there is no guarantee. If THHE becomes Shariah non-compliant, ICPS-i holders have the right to sell the ICPS-i on the market. The company involved in offshore fabricator and shipbuilder is deemed Shariah-compliant based on the assessment methodology of Securities Commissions Malaysia
5. **Dividend Preference:** ICPS-i holders are entitled to a targeted aggregate dividend rate of 20% throughout the 5-year tenure, subject to the availability of distributable profits. The distribution of dividends is subject to ratification by the Board. The waiver of dividends is happening after realisation of profit in line with the majority of the scholars view on the validity of the waiver; whether via tanazul, ibrah' or hibah; to be executed after the materialization of the rights to the waiver.
6. **Winding up or Liquidation Preference:** ICPS-i holders will rank in priority to THHE Shares in any distribution of assets in the event of liquidation, dissolution, or winding-up, subject to ratification by the Board. The waiver of capital recoup is happening during the dissolution which is in line with the majority of the scholars view on the validity of the waiver; whether via tanazul, ibrah' or hibah; to be executed after the materialization of the rights to the waiver.

The above features are in accordance to the SAC resolution on the Shariah-compliant of preference shares.

4.3. Financial Impact of ICPS-i

This section will conduct a comprehensive examination of ICPS-i's financial impact and performance through an in-depth analysis of THHE Berhad's financial statements. The analysis will center on several key aspects, including the quantity of ordinary and preference shares, the company's profitability, the distribution of dividends, and the exercise of converting preference shares.

The following table summarises the financial performance of THHE Berhad from 2015 -to 2020. The period was selected as is the tenure of maturity of ICPS-i for 5 years period beginning in 2015.

	RM	RM	RM	RM	RM	RM
Year	2015	2016	2017	2018	2019	2020
Ordinary Shares	280,269,297	280,269,297	280,309,472	280,318,147	375,353,434	650,297,957
ICPS-i	275,000,000	275,000,000	274,959,825	274,951,150	274,944,523	-
(Loss) /Profit	(54,323,864)	(439,640,514)	(119,918,149)	(139,903,770)	9,911,622	(60,354,114)
Dividend	Nil	Nil	Nil	Nil	Nil	Nil
Conversion	Nil	Nil	40,175	8675	6627	274,944,523

Table 5: Summary of Financial Performances of THHE Berhad 2015-2020

It is noted that no dividend was paid either to ordinary or preference shareholders. The dividend payment was not recommended by the Board of Directors due to the weak financial performance of the company during the period despite THHE managing to make some profit in 2019. This signifies that there is no profit guarantee to preference shareholders, and it is related directly to the performance of the company. There is the element of investment as per the features of the Musharakah contract.

4.4. Examination of ICPS-i THHE vis-à-vis Shariah Advisory Council of Securities Commission Malaysia Resolution on Shariah Compliant Preference Shares

The case of THHE's ICPS-i demonstrates how the structural design of Islamic preference shares can be aligned with the Shariah Advisory Council (SAC) resolutions while also achieving tangible financing objectives.

First, in relation to profit distribution, the ICPS-i tied dividends to realised profits and required declaration by the Board. This structure met SAC's requirement that dividends must be profit-contingent rather than guaranteed. From a performance perspective, however, THHE's weak profitability meant that dividend distributions were limited, illustrating that while the structure avoided the impermissibility of fixed returns, the equity-like risk exposure also translated into low immediate returns for investors.

Second, on the issue of capital guarantee, SAC prohibits mechanisms that protect investors from loss. The ICPS-i complied by making conversion into ordinary shares dependent on prevailing market value, leaving investors exposed to price fluctuations. This aligned with Shariah principles but also meant that investors shared in the company's financial volatility. In practice, the conversion feature helped reduce THHE's gearing by converting liabilities into equity, thereby improving balance sheet strength, though it diluted existing shareholders' positions.

Third, regarding priority in liquidation, the SAC (2022) distinguished between impermissible guarantees and permissible post-entitlement *tanāzul*. The ICPS-i adopted this mechanism, allowing the Board to act as *wakīl* on behalf of ordinary shareholders to execute waivers after entitlements crystallised. While this satisfied Shariah requirements, its financial impact was largely contingent on the company's solvency. In THHE's distressed condition, the liquidation priority offered little practical value, as asset recovery remained uncertain.

Finally, the overall financing performance of the ICPS-i indicates that the instrument provided THHE with critical capital to ease cash flow pressures and restructure debt, while maintaining Shariah compliance. However, the alignment with SAC principles—particularly profit-contingency and absence of guarantees—meant that investors bore significant risks in line with musharakah rules. This dual outcome underscores both the strength of the ICPS-i as a Shariah-compliant equity tool and the challenge of attracting investors when issuers face financial distress.

Table 6: summary of Examination

SAC Resolution Requirement	ICPS-i Feature (THHE)	Observed Financial Outcome
Profit distribution must be contingent on realised profits; no guaranteed dividends.	Dividends only payable from realised profits, subject to Board declaration; “expected rate” treated as indicative.	Limited or no dividends declared due to weak profitability; investors exposed to equity-like risk.
No capital guarantee; redemption/conversion must reflect market value or company performance.	Conversion into ordinary shares based on prevailing market price; no guaranteed capital repayment.	Helped reduce gearing by converting liabilities into equity, strengthening balance sheet; diluted existing shareholders; investors bore market risk.
Priority in liquidation only permissible through post-entitlement <i>tanāzul</i> ; no ex-ante guarantees.	Board empowered as <i>wakīl</i> to execute <i>tanāzul</i> on behalf of ordinary shareholders once entitlements crystallised.	Priority rights compliant in form, but provided little practical benefit under THHE’s distressed condition with limited recoverable assets.
Flexibility in features (redeemability, convertibility, participation) allowed if no guarantees embedded.	Convertible and irredeemable structure embedded within ICPS-i; no capital/profit guarantees.	Ensured Shariah compliance while allowing financial restructuring flexibility; however, investor appeal remained constrained by issuer’s poor financial performance.

5. Research Findings

5.1. *Fiqh Adaptation (Takyīf Fiqhī) of Preference Shares as Mushārah Instruments*

The research finds that the most viable *takyīf fiqhī* (legal adaptation) for Islamic Preference Shares (IPS) is through the contract of *mushārah*. Under this framing, preference shareholders are treated as partners who contribute capital and share profits based on realised outcomes rather than fixed entitlements. Profit distribution must comply with the principle of *al-ghunm bi al-ghurm* (gain is accompanied by liability) and *al-kharāj bi al-damān* (returns are justified only by assuming risk). Consequently, the SAC clarified that any “expected dividend rate” attached to preference shares is merely indicative and not binding. Dividends are declared only upon profit realisation and subject to the solvency requirements of Section 131 of the Companies Act 2016. This position removes any element of capital or profit guarantee, aligning preference shares with *mushārah* principles while preserving their commercial utility.

5.2. *Divergent Shariah Rulings on Preference Shares*

The study also reveals divergence among Shariah authorities. The IIFA-OIC and AAOIFI categorically prohibit preference shares, arguing that financial privileges such as fixed dividends, capital protection, or liquidation priority undermine the *pari passu* principles of *mushārah* and resemble debt-like obligations. By contrast, the SAC Malaysia has adopted a more accommodative approach. Its 1999 resolution permitted non-cumulative preference shares through *tanāzul* (waiver of rights), and its 2022 resolution expanded this framework by introducing conditional *hibah* (*hibah mu’allaqah*) and recognising the Board of Directors as *wakīl* to execute post-entitlement waivers on behalf of ordinary shareholders. The comparative analysis demonstrates that while Middle Eastern juristic bodies prioritise a strict substance-over-form approach, Malaysia’s SAC emphasises contractual structuring to reconcile Shariah principles with market realities.

5.3. *Operationalisation and Financial Impact of ICPS-i*

The case study of THHE’s ICPS-i issuance highlights the practical application of Shariah-compliant preference shares. Structurally, the ICPS-i complied with SAC requirements: dividends were profit-contingent and subject to Board declaration, conversion into ordinary shares occurred at prevailing market value, and liquidation priority was achieved through post-entitlement *tanāzul*. These features demonstrate adherence to *mushārah* parameters and SAC resolutions.

From a financial performance perspective, however, the ICPS-i illustrated the inherent equity-like risks of such instruments. No dividends were declared during the five-year tenure (2015–2020), even in 2019 when THHE recorded modest profits, as the Board opted not to distribute dividends. This outcome underscores that there was no capital or profit guarantee for preference shareholders. At the same time, the conversion of ICPS-i into ordinary shares significantly reduced the company’s gearing and improved balance sheet stability, though

it diluted existing shareholder equity. Thus, while the ICPS-i succeeded in easing THHE's financial distress and preserving Shariah compliance, it offered limited immediate returns to investors.

6. Conclusion

Based on the research findings, it is evident that preference shares cannot provide assurances of capital and profit guarantees due to the Companies Act (2016) prohibiting such guarantees. The matter of granting preferential treatment during dividend payouts and the dissolution of the company can be achieved through the waiver of rights, utilizing the concepts of "Tanazul" and "Hibah" as recommended by the Shariah Advisory Council (SAC). This mechanism is considered permissible, aligning with the prevailing consensus among the majority of scholars, who endorse the waiver of rights once the intended entitlements to be waived materialize.

The comparative review of Shariah resolutions reveals clear divergence. IIFA-OIC and AAOIFI reject preference shares outright on grounds that financial priority undermines the essence of partnership. In contrast, the SAC Malaysia adopts a more facilitative position, permitting preference shares under strict conditions. The SAC's resolutions in 1999 and 2022 have provided innovative mechanisms—particularly *post-entitlement tanāzul*, conditional hibah, and the Board's role as *wakīl*—to ensure compliance without compromising the commercial viability of preference shares.

Furthermore, a thorough examination of the ICPS-i case study issued by THHE Berhad reveals the practical dynamics of IPS. Structurally, the instrument adhered to SAC resolutions by ensuring profit-contingent dividends, market-based conversion, and liquidation priority via waiver rather than guarantee. Financially, however, the ICPS-i reflected the inherent risks of equity: no dividends were distributed during its tenure, and investor returns depended on company performance. While the conversion feature helped reduce gearing and stabilise THHE's capital structure, it also diluted existing shareholders.

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