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Takyīf Fiqhī and its Application to Modern Contracts: A Case Study of the Central Provident Fund Nomination in Singapore

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Abstract: The term *takyīf fiqhī* stands for one crucial concept in Islamic jurisprudence and refers to one of the important steps in the process of formulating *fatwā.* It basically revolves around the categorization of particular issues under the appropriate rules and precedents established in Islamic juristic thought. The present article attempts to examine the concept of *takyīf fiqhī* in a comprehensive manner in terms of its meaning, authority, types, importance, and governing criteria as can be gleaned from the works of *Sharī'ah* scholars. This is then followed by an exploration of its application to modern contracts, taking as a case study the Central Provident Fund Nomination in Singapore. The article concludes with the view that the Central Provident Fund Nomination, in terms of its essential characteristics and objective, resembles the Islamic will contract as discussed in books of Islamic Jurisprudence.

Keywords: *Takyīf Fiqhī*, modern contracts, Central Provident Fund, nomination, Singapore.

Abstrak: Istilah *Takyīf Fiqhī* merupakan satu konsep penting dalam Perundangan Islam dan salah satu langkah utama dalam proses penggubalan fatwa. Pada dasarnya, *takyīf fiqhī* merujuk kepada pengkategorian isu-isu tertentu di bawah hukum dan duluan yang sesuai di dalam Perundangan

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Islam. Artikel ini mengkaji konsep *takyīf fiqhī* dengan secara komprehensif dari sudut pengertian, autoriti, pembahagian, kepentingan dan kriteria, yang diambil daripada tulisan para ulama Shariah. Ini kemudian diikuti dengan usaha menerokai aplikasinya kepada akad-akad baru, mengambil Nominasi Tabung Simpanan Pekerja (CPF) sebagai kajian kes. Artikel ini menyimpulkan bahawa Nominasi CPF, dari sudut ciri-ciri asas dan objektifnya, menyerupai akad wasiat sebagaimana yang dibincangkan di dalam buku-buku Perundangan Islam.

Kata Kunci: *Takyīf Fiqhī*, kontrak moden, Tabung Simpanan Pekerja, nominasi, Singapura.

1. Introduction

The task of formulating *fatwā* is indeed a heavy responsibility. Likewise, scholars who wish to undertake this task need to fulfill certain strict conditions pertaining to knowledge of the sources and methods of Islamic law as well as of the juristic views and doctrines that have been developed within particular schools or among the different schools. It is not our purpose here to provide any detailed exposition of those epistemic and methodological requirements, which are sufficiently elaborated by scholars of Islamic legal theory (*usul al-fiqh*) (al-Ghazāli, 1997, vol. 2, pp. 379-389 & 462-470; al-Amidī, 2003, vol. 2, pp. 197-290; Bernard G. Weiss, 2010, pp. 675-719; Wael B. Hallaq, 1997, pp. 117-124). Suffice it to emphasize that failure to fulfill them simply makes venturing into issuing *fatwā* a dangerous business both ethically and socially. What we are concerned with in this article is to examine an important aspect that has to do with the intellectual and discursive process of *fatwā* formulation and issuance. This process includes four important stages, as will be expounded hereafter (The Craft of Issuing Fatwas: http://dar-alifta.org/Foreign/ViewArticle.aspx?ID=77&text=takyif).

The first is the *taswīr* stage. This refers to the correct conceptualization of the particular issue at hand as it actually occurs, that is, our view of the issue must correspond to its reality. Failure to do so will cause the *fatwā* to be dissociated from the truth of the matter.

The second is the *takyīf* stage. This refers to the categorization of the issue being considered under the appropriate category in Islamic Jurisprudence. In other words, the issue requiring a juristic evaluation

and verdict has to be subsumed to where it juristically belongs in general manner before a specific ruling is passed on it.

The third stage is the elucidation of the specific ruling conforming to the issue at hand. It requires the *muftī* to have strong mastery of the Qur'an, Prophetic Traditions, Consensus (*ijmā'*), analogical deduction (*qiyās*) and other relevant knowledge as stipulated in Islamic legal theory (*usul al-fiqh*).

The fourth stage is the issuance or pronouncement of the ruling on the issue. In final this stage, the *muftī* must ensure that the verdict passed on the issue (*fatwā*) does not contradict or violate the objectives of the *Sharī'ah*, any explicit and definitive text of the *Qur'ān* or the Prophetic traditions, the ascertained consensus of scholars, or a well-known and established Islamic legal maxim. Any violation of the above necessitates that the *fatwā* be revised.

Due to the fact that the second stage is a crucial one in the process of *fatwā* issuance, the present article is devoted to provide a comprehensive analysis and discussion of this stage from its different aspects.

2. *Takyīf Fiqhī*: Meaning and Definition

As a start, it is important to first explain the meaning of the term *takyīf fiqhī* both from the linguistic and technical sense.

The word *takyīf* comes from the root word *kayyafa.* The linguistic and technical meanings of this word are similar, which is to know the state of something and its characteristics (Shubair, 2014, p.12).

The word *fiqh* linguistically means understanding the intention of the speaker from his words (al-Jurjānī, n.d., p.141). The technical meaning of the word *fiqh* refers to "the science related to the deduction of practical legal rules derived from exhaustive evidences" (al-Qaradawi, 2013, p.17).

Before explaining the technical meaning of the term *takyīf fiqhī,* it is important to highlight that the usage of this term specifically amongst *Sharī'ah* scholars is of a recent provenance in modern times. It emerged in Egypt and other Middle Eastern countries from the encounter of *Sharī'ah* scholars with experts of modern legal studies whose academic formation took place in modern colleges of law. Its use gained momentum in the twentieth century especially in the context of comparative studies

between Islamic juristic doctrines (*fiqh*) and conventional law (*qānūn*) (Shubair, 2014, pp. 23-24).

In what follows some definitions and explanations are provided regarding the technical meaning of the term *takyīf fiqhī* given by contemporary prominent scholars and *fatwā* councils.

According to Yūsuf al-Qaraḍāwī, it refers to "applying the legal text to practical occurrences." (al-Qaradawi, 1988, p.72) In their *Mu'jam Lughat al-Fuqahā'* Qal'aji *et al.* define it as "determining and explaining the original case to which it belongs." (Muhammad Rawas Qal'aji, Hamid Sadiq & Qutub Mustafa Sano, 1996, p. 123)

Al-Qahṭani defines it as "complete understanding of occurrences and determining the origin to which it belongs." (Al-Qahtani, 2010, p. 354) For al-Jizani it consists of "categorizing issues according to their relevant categories from the *fiqhī* perspective." (Al-Jizani, 2008, vol.1, p. 47) In Shubair's view *takyīf fiqhī* is "to determine the true nature of new occurrences so as to categorize them under an original *fiqhi* precept (*'asl*) bearing certain characteristics in Islamic Jurisprudence, with a view to establishing those characteristics in the new occurrences by virtue of the essential similarities between the original precept and those occurrences." (Shubair, 2014, p. 30)

According to the official *fatwā* institution of Egypt, Dār al-Iftā al-Misriyyah, *takyīf fiqhī* "involves classifying the issue in question under the relevant categories and *furū'* (secondary issues) of jurisprudence. For instance, a question may be designated under transactions and not under acts of worship, contracts or under one of its types, or under a new type of transaction [not mentioned in the books of jurisprudence]." (The Craft of Issuing Fatwas: http://dar-alifta.org/Foreign/ViewArticle.aspx?ID=77&text=takyif)

As can be clearly seen from the above quotations, although the words used to express the meaning and definition of *takyīf fiqhī* might differ, the meaning that they intend to convey are almost similar, which is to categorize new occurrences under their relevant categories in Islamic Jurisprudence.

It is important to highlight that there is a close relation between *takyīf fiqhī* and *takyīf qānūnī*. *Takyīf qānūnī* means categorizing new occurrences under the relevant rules of the Law which governs them

(Didani, 2017, vol. 4, no.1, pp. 92-113). *Takyīf fiqhī* and *takyīf qānūnī* share some similarities in several aspects:

1. In terms of their objective, both are similar in the sense that their main objective is to give a ruling to the new occurrence by looking at its' essential features.
2. In terms of the process of *takyīf*, both are similar from the following aspects (Shubair, 2014, pp. 24-25):

    i. Determining the true nature of the new occurrence.
    ii. Searching for the original case (*'asl*) which is similar to the new occurrence.
    iii. Extending a ruling to the new occurrence which is similar to the ruling of the origin.

Despite these common features, there is a fundamental difference between the two in terms of their sources. The concept of *takyīf fiqhī* is based on the textual sources of the *Sharī'ah* and *ijtihād* inferences and formulations of Muslim jurists, whereas that of *takyīf qānūnī* is based on the conventional state law in a particular country (Shubair, 2014, p. 25).

Though it is of modern provenance, the concept of *takyīf fiqhī* has some affinity with already established terms in Islamic jurisprudence. Three such terms require command our attention here, namely *al-ashbāh wa al-naẓā'ir, takhrīj,* and *taḥqīq al-manāṭ.*

(i) Al-Ashbāh wa al-Naẓā'ir

The plural form of the singular *shabah* the word *ashbāh* connotes similarity. Technically, it refers to "juristic issues that resemble one another in their essential features and share the same ruling." (Mohamad Akram Laldin, Said Bouheraoua, Riaz Ansary, Mohamed Fairooz Abdul Khir, Mohammad Mahbubi Ali & Madaa Munjid Mustafa, 2013, pp. xii-xiii) On the other hand, the word *naẓā'ir* is the plural version of *naẓīr* which means 'comparable'. This refers to "*fiqh* issues that resemble one another in their features but have different rulings." (Mohamad Akram Laldin, Said Bouheraoua, Riaz Ansary, Mohamed Fairooz Abdul Khir, Mohammad Mahbubi Ali & Madaa Munjid Mustafa, 2013, pp. xii-xiii) There is, in fact, a close relationship between *al-ashbāh wa al-naẓā'ir* and *al-takyīf fiqhī as* both aim at contrasting the essential features of

various juristic issues in order to determine similarities and differences amongst them before bringing them under a specific rule.

(ii) Takhrīj

The usage of the term *Takhrīj* amongst scholars of *Fiqh* and *Usūl al-Fiqh* can be divided into three categories, mainly, *Takhrīj al-Usūl min al-Furū', Takhrīj al-Furū' 'alā al-Usūl,* and *Takhrīj al-Furū' min al-Furū'*.

Takhrīj al-Usūl min al-Furū' refers to the branch of knowledge which aims at discovering the method (*usūl*) and legal precepts (*qawā'id*) of the imāms by analyzing their opinions on secondary issues of *Fiqh* and their causation (*ta'līlāt*) of legal rulings.

Takhrīj al-Furū' 'alā al-Usūl refers to the branch of knowledge which aims at searching for the effective cause (*'illah*) and method of legal rulings to be used as a point of reference for secondary issues of fiqh (*furū'*) in order to explain the reasons for differences of opinion or explaining the ruling in a situation where there is no explicit text from an *imām* regarding that particular issue.

Takhrīj al-Furū' min al-Furū' means transferring the ruling of a particular issue to another issue which resembles it and equating between them.

There are some similarities between *Takhrīj Fiqhī* and *Takyīf Fiqhī* which include ascertaining the presence of the effective cause (*'illah*) in the new case (*far'*), and giving the same ruling of the original case (*'asl*) to the new case. Despite these similarities, there is a difference between the two. In *Takhrīj Fiqhī,* the original case must be a text from an *imām* whereas in *Takyīf Fiqhī*, the original case could be a text from the *Qur'ān* or *Sunnah* (Shubair, 2014, p. 21).

(iii) Taḥqīq al-Manāṭ

Ijtihād related to the identification of the *'illah* can be divided into three categories. They are *Takhrīj al-Manāṭ, Tanqīḥ al-Manāṭ,* and *Taḥqīq al-Manāṭ*.

Takhrīj al-manāṭ is the first step that a jurist needs to go through in order to identify the *'illah.Takhrīj al-manāṭ* literally means extracting the *'illah*. From the linguistic sense, *takhrīj* means 'extracting' while *manāṭ* is synonym to the word *'illah.* In this stage, the jurist extracts the effective

cause through the process of *ijtihād* and he might identify more than one cause for a particular ruling (Kamali, 2009, p. 214).

The second step in the process of identifying the *'illah* is *Tanqīḥ al-Manāṭ* which literally means isolating the *'illah*. Linguistically, *tanqīḥ* means 'purifying'. Technically, *Tanqīḥ al-Manāṭ* means "connecting the new case to the original case by eliminating the discrepancy between them" (Kamali, 2009, p. 214). In *Tanqīḥ al-Manāṭ,* there might be more than one cause for a particular ruling and it is the duty of the jurist to identify the one that is proper (*munāsib*) (Kamali, 2009, pp. 213-214).

The final step is *Taḥqīq al-Manāṭ* which literally means ascertaining the *'illah*. In the literal sense, *taḥqīq* means 'ascertaining'. In this stage, the presence of an *'illah* is ascertained in the individual cases (Kamali, 2009, p. 214). According to Al-Shāṭibī, this category of *ijtihād* will not stop until the arrival of the Hour (Al-Shāṭibī, 2009, vol. 5, p. 11).

There is a close connection between *Takyīf Fiqhī* and *Taḥqīq al-Manāṭ.* One of the guidelines for the correct usage of *Takyīf Fiqhī* is that the essential characteristics between the original case and the new case must be the same (Shubair, 2014, pp. 92-93; Hmitu, 2013, p. 113). This is similar to *Taḥqīq al-Manāṭ* where a jurist needs to ascertain the presence of the effective cause of the original case in the new case.

3. Authoritativeness of *Takyīf Fiqhī*

The authoritativeness of *takyīf fiqhī* has its roots in the Qur'ān, Sunnah as well as the words of prominent companions of the Prophet. Some of these evidences directly point to the legality of *takyīf fiqhī* while others are indirect. Although some scholars have quoted some Qur'anic verses to support the legality of *takyīf fiqhī*, it is our view in this article that those verses are general verses which support the legality of *ijtihād* and do not directly point to the legality of *takyīf fiqhī.* As such, we would like to quote two pieces of evidence that clearly indicate and lay ground to the authoritativeness of *takyīf fiqhī*. It was narrated from Ibn 'Abbās [may Allah be pleased with them] that a woman came to the Messenger of Allāh and said: "My mother has died, and she owed one month of fasting." He said: "Don't you think that if she owed a debt, you would pay it off?" She said: "Yes." He said: "The debt owed to Allāh is more deserving of being paid off." (Muslim, vol. 3, pp. 215-216)

In the *ḥadīth* cited above, the Prophet made a comparison between debt owed to Allāh and debt owed to humans. The fast which was not performed by the deceased was seen as a debt owed to Allāh and was compared to debts owed to humans. If it is obligatory to settle debts owed to humans, debts owed to Allāh is obligatory too and more deserving to be settled. This is an example of the application of *takyīf fiqhī.*

The authoritativeness of *takyīf fiqhī* can also be supported by ‘Umar bin al-Khaṭṭāb’s instruction to Abū Mūsā al-Ash‘arī: “Know likes and cognates; then draw analogies between matters. Hold on to the one which is most acceptable to God and closer to the truth in your understanding.” (al-Suyūṭī, n.d., p. 7)

The famous Shāfi‘ī scholar Jalāl al-Dīn al-Suyūṭī relied on the words of ‘Umar above to support the authoritativeness of the separate study of *al-ashbāh wa al-naẓā’ir* to which he devoted a well-known and well-received work. The subject matter and issues discussed under this rubric are closely related to *takyīf fiqhī.*

Emphasizing the importance of *al-ashbāh wa al-naẓā’ir,* al-Suyūṭī says:

> “Know that the discipline of *al-ashbāh wa al-naẓā’ir* is a great discipline by which one can discern the realities of Islamic jurisprudence, its deep meanings, its sources and secrets. By means of it one can become proficient in understanding rulings and have them at one’s fingertips. By it one develops the ability to extend rulings (to similar cases), analyze issues for their essential features and arrive at rulings for issues that have not been previously discussed and for new matters that continue to arise – and will keep arising – as time continues to unfold.” (Mohamad Akram Laldin, Said Bouheraoua, Riaz Ansary, Mohamed Fairooz Abdul Khir, Mohammad Mahbubi Ali & Madaa Munjid Mustafa, 2013, pp. viii)

4. Types and Importance of *Takyīf Fiqhī*

Takyīf fiqhī can be divided into two main types: *al-takyīf al-basīṭ* and *al-takyīf al-murakkab*.

i. *Takyīf Basīṭ* encompasses issues whose original case (*‘asl*) can be easily identified.

ii. *Takyīf Murakkab* encompasses issues which are complex because the issue at hand resembles more than one established original rule (Al-Jizani, 2008, p. 49). *Bay' al-wafā'* is a good example of an issue which resembles more than one such established rule. This issue consists of "a sale with a right of the seller, having the effect of a condition, to repurchase (redeem) the property by refunding the purchase price" (Lahsasna, 2010, p. 152).

> Here is an illustration of *bay' al-wafā'*: A purchases an asset from B with the condition that if B pays back the cost of the asset to A, the asset needs to be returned to B. This sale is called *wafā'* because this contract contains an obligation that needs to be fulfilled. The obligation is the buyer needs to return the goods to the seller if he pays back the amount to reclaim the goods (Lahsasna, 2010, p. 153).

There are at least six opinions amongst Muslim scholars regarding the status of this contract (Barudi, 2012, pp. 137-229):

1. It is a valid sale contract.
2. It is considered as a valid sale contract if the condition regarding the repurchase of the goods is mentioned before or after the contract.
3. It is not a valid due to the existence of *ribā.*
4. It is not valid because it contradicts the legal text.
5. It is considered as a form of mortgage.
6. It is a combination of several contracts.

Bay' al-wafā' is an example of a contract whose *takyīf fiqhī* is not simple and straightforward. From the six opinions mentioned above, we can see how widely scholars have differed on determining its nature and how much this variation affects subsuming under one or the other of the established rules. Likewise, some view it as a form of sale and purchase contract, while others see it as a form of mortgage. Others, still, consider it a combination of several contracts.

As for the importance of *takyīf fiqhī,* it can be seen from the following angles:

i. *Takyīf fiqhī* is necessary in order to explain the ruling of contemporary issues (Shubair, 2014, pp. 41-42). When

performing *takyīf fiqhī*, the relationship between the contracting parties will be explained. It is impossible to issue the correct ruling of a particular contract without knowing the relationship between the different parties involved in the contract (Abu Sulayman, 2015, p. 273).

ii. *Takyīf fiqhī* is a form of exercising *ijtihad*. Performing *ijtihad* to explain the rulings of contemporary issues is needed especially after the death of Prophet Muhammad. Quranic verses and prophetic traditions are limited whereas new issues and occurrences will continue to appear (Shubair, 2014, p. 42). *Takyīf fiqhī* is needed to explain the rulings of these new issues and occurrences.

iii. *Takyīf fiqhī* is considered as one of the reasons for the differences of opinion amongst scholars. There are many factors which lead to disagreement in the issuance of rulings amongst scholars. Apart from differences in *qirā'āt*, authentication of *ḥadīth*, as well as understanding of Qur'anic verses and texts of *ḥadīth*, differences in *takyīf fiqhī* is also an important factor which results in the differences of opinion amongst scholars (Shubair, 2014, p. 43).

5. *Takyīf Fiqhī:* Approaches and Guidelines

There are three main approaches regarding the usage of *takyīf fiqhī* in dealing with modern contracts.

The first exaggerates the usage of *takyīf fiqhī*. This approach does not see the permissibility of new contracts if they do not resemble any of the nominate contracts (*'uqūd al-musammāh*) as discussed in the books of Islamic Jurisprudence (Al-Qaradawi, 2010, pp. 22-23).

As opposed to the first, the second totally neglects the usage of *takyīf fiqhī* when dealing with modern contracts and considers them as totally new contracts which were not discussed in books of Islamic Jurisprudence (Al-Qurashi, 2013, p. 67).

The third analyzes critically the true nature of new contracts. If they resemble the nominate contracts in terms of their pillars, objective of the contract, and the intention of the contracting parties, then these contracts will be given the same ruling as the nominate contracts. On the contrary, if they are fundamental differences between the essential characteristics of the two contracts, then these new contracts will be considered as new independent contracts. These contracts are considered as valid as long as

there are no elements which contradict the principles of *Sharī'ah* (Shubair, 2007, p. 208). This approach, in the lens of this researcher, is the most just and closest to the truth.

In order to avoid any misapplication of *takyīf fiqhī***,** scholars have laid down several guidelines for its usage. As *takyīf fiqhī* is a form of analogical deduction (*qiyās*), the guidelines laid down by scholars are mostly similar to the guidelines related to analogical deduction. These guidelines cover the following aspects; the new case, the original case, the original ruling and the effective cause.

1. Guidelines related to the new case include the following (Shubair, 2014, pp. 67-71; al-Qahtani, 2010, pp. 366-367, Hmitu, 2013, p. 113):
    i. There should not be any clear text from the *Qur'ān* or *Sunnah,* or *Ijmā'* which explain the ruling of the new case.
    ii. All information pertaining to the new case, which include the pillars, conditions, objective of the contract, and intention of the contracting parties must be clearly understood.
2. Guidelines related to the original case (*'asl*) include the following (Shubair, 2014, pp. 79-80):
    i. The original case should be from the *Qur'ān, Sunnah, Ijmā'*, general principle or *ijtihād* of the *Fiqh* scholars.
    ii. The original case should be clearly understood.
    iii. The original case should not contradict the *Qur'ān or Sunnah* especially if it comes in the form of general principle of *ijtihād* of the *Fiqh* scholars.
3. Guidelines related to the original ruling (*ḥukm 'asl*) include the following (Shubair, 2014, pp. 83-85):
    i. The ruling should not be abrogated.
    ii. The ruling could be comprehended by the mind.
    iii. The objective of the ruling could be discovered.
4. (4) Guidelines related to the effective cause (*'illah*) include the following (Shubair, 2014, pp. 90-91):
    i. The effective cause should be clear and not hidden.

ii. The effective cause should be a constant attribute (*munḍabiṭ*).
iii. The effective cause should be a proper attribute (*al-wasf al-munāsib)*.
iv. The effective cause could be extended to other cases (*muta'addī*).

5. With regards to the guideline related to both the original case and new case, the essential characteristics between the original case and the new case must be similar (Shubair, 2014, pp. 92-93; Hmitu, 2013, p. 113).

6. Application of *Takyīf Fiqhī* to Central Provident Fund Nomination in Singapore

1. Background to/of CPF Nomination

The Central Provident Fund (CPF) is a comprehensive social security system created for working Singaporeans whose main objective is to assist them to save up for retirement and tackle issues related to healthcare, family protection, home ownership and asset enhancement (CPF Overview: https://www.cpf.gov.sg/Members/AboutUs/about-us-info/cpf-overview).

CPF members are allowed to choose the beneficiaries of their CPF savings by utilizing CPF nomination. For those members who choose not to utilize the CPF Nomination, their CPF savings will be handled by the Public Trustee's Office (PTO) who will distribute them under the Intestate Succession Act for non-Muslims or Inheritance Certificate for Muslims (CPF Nomination Scheme: https://www.cpf.gov.sg/Members/Schemes/schemes/other-matters/cpf-nomination-scheme).

Currently, there are three main ways of utilizing the CPF nomination.

The first is known as Cash Nomination. When a CPF member chooses to utilize this option, his CPF savings will be distributed to his nominee(s) after his death in cash (CPF Nomination Scheme: https://www.cpf.gov.sg/Members/Schemes/schemes/other-matters/cpf-nomination-scheme).

The second is called Enhanced Nomination Scheme Nomination. By utilizing this option, CPF savings of a CPF member will be channeled to the nominees' CPF accounts after his death.

The third is referred to as Special Needs Savings Scheme Nomination. CPF members who have children with special needs can utilize this option so that their children could receive monthly disbursements after their death (CPF Nomination Scheme: https://www.cpf.gov.sg/Members/Schemes/schemes/other-matters/cpf-nomination-scheme).

2. Applying Takyīf Fiqhī to CPF Nomination

In applying *Takyīf Fiqhī* to CPF Nomination, the following steps shall be taken.

The first step is to have a correct and holistic understanding of CPF Nomination. This is done by identifying the relevant parties/components related to CPF nomination, as well as explaining their roles, and conditions related to them.

Table 1.1: *A detailed explanation of the relevant parties/components related to CPF Nomination (CPF Nomination Scheme: https://www.cpf.gov.sg/Members/Schemes/schemes/other-matters/cpf-nomination-scheme).*

Parties/Components related to CPF Nomination	Explanation of their roles and/or intentions	Conditions related to the relevant parties/components
Nominator	The nominator is the CPF account holder who chooses the person(s) who will benefit from his CPF monies after his death.	1. The CPF account holder must be at least 16 years of age in order to make a nomination. 2. The CPF account holder can change his nomination during his lifetime.
Nominee	The nominee is the person who is chosen by the CPF account holder to benefit from the CPF monies after his death.	1. A person under the age of 18 can be selected as a nominee. 2. A person who is residing outside of Singapore can be a nominee. 3. Legal entities can be specified as nominees. 4. A Trust Company can be named as a nominee.

Nominated CPF monies	The nominated CPF monies is owned by the CPF account holder which is intended to be given to the nominee(s) after his death.	1. Only savings in the Ordinary, Special, Medisave and Retirement Accounts, as well as Discounted SingTel shares can be given to the nominee(s). 2. The nominated CPF monies can only be distributed to the nominee(s) after the nominator's death.
CPF Board	CPF Board is the body which is assigned by the CPF account holder to disburse his CPF savings to his nominee(s) after his death.	
CPF Nomination form	In the CPF Nomination form, the nominator makes a declaration to distribute his CPF moneys to his nominee(s) which is payable on his death.	1. The CPF nomination form must be signed in the presence of two witnesses who are at least 21 years of age. 2. The share of the nominee(s) must add up to 100%.

The second step is to search for a contract with the same essential characteristics as CPF Nomination in the vast literature of Islamic Jurisprudence.

It is the view of this researcher that the essential characteristics of CPF Nomination tally with the essential characteristics of the Islamic will contract. The Islamic Will that is meant here encompasses both *wasiyyah* (bequest) and *wisāyah* (entrustment).

Wasiyyah refers to "a gift of legacy which takes effect after the death of the Testator" (Amir Bahari, 2014, p. 123) whereas *wisāyah* refers to "making a request or entrusting someone to do or implement something after the giver of the trust (*amānah*) passes away or in his absence." (Amir Bahari, 2014, p. 124)

Below is a comparison between CPF Nomination and the Islamic Will Contract.

Table 1.2: *Comparison between CPF Nomination and Islamic Will.*

Parties related to CPF Nomination	CPF Nomination	Islamic Will
Nominator	The nominator is the CPF account holder who chooses the person(s) who will benefit from his CPF monies after his death.	The role of the nominator in CPF nomination is similar to the testator (*al-Mūsī*) in an Islamic Will contract. The testator is the person who intends to give his wealth to others after his death.
Nominee	The nominee is the person who is chosen by the CPF account holder to benefit from the CPF monies after his death.	The role of the nominee in CPF nomination is similar to the beneficiary (*al-Mūsā lahu*) in an Islamic Will contract. The beneficiary receives the wealth of the testator after his death.
Nominated CPF monies	The nominated CPF monies is owned by the CPF account holder which is intended to be given to the nominee(s) after his death.	The nominated CPF monies in CPF nomination is similar to the subject matter (*al-Mūsā bihi*) in an Islamic Will contract. The subject matter is the wealth which is intended to be given to the beneficiary after the death of testator.
CPF Board	CPF Board is the body which is assigned by the CPF account holder to disburse his CPF savings to his nominee(s) after his death.	The role of CPF Board in CPF nomination is similar to the role of the executor (*al-Mūsā ilayhi*) in an Islamic Will contract. The executor is the person who needs to execute the will of the testator.

CPF Nomination form	In the CPF Nomination form, the nominator makes a declaration to distribute his CPF monies to his nominee(s) which is payable on his death.	The CPF nomination form is similar to the offer (*sīghah*) in an Islamic Will contract. The offer can be made orally or in writing. In the case of CPF nomination, the offer is expressed in written form.

The third step is to pass the ruling on CPF Nomination. This ruling must be similar to the ruling passed on the original contract which shares the same essential characteristics as CPF Nomination. Based on the comparison made between CPF Nomination and the Islamic Will contract in the table above, it is clear that the essential characteristics of CPF Nomination tally with the essential characteristics of the Islamic Will contract. As such, CPF Nomination takes the same ruling as the Islamic Will contract.

As mentioned previously, the Islamic Will which is meant here encompasses both *wasiyyah* (bequest) and *wisāyah* (entrustment).

There are several rulings pertaining to *wasiyyah* (bequest).

(i) The bequest should not exceed one-third of the total estate of the deceased. If the bequest exceeds the one-third limit, it will only be considered valid if the other legal heirs consent to it (Nasrul Hisyam, 2012, pp. 62-65).

(ii) A bequest for legal heirs will only be valid if the other legal heirs give their consent after the death of the testator (Nasrul Hisyam, 2012, p. 33).

There are several rulings pertaining to *wisāyah* (entrustment) (Nasrul Hisyam, 2012, pp. 98-99).

(i) Entrustment which is related to debts is not limited to one-third of the deceased's total estate.

(ii) Entrustment which is related to *farā'iḍ* is not limited to one-third of the deceased's total estate.

It is the view of this researcher that there are several methods of utilizing CPF nomination in a manner which conforms to the rulings of the Islamic Will contract.

First, the nominator can distribute his CPF monies solely according to the Islamic Inheritance Laws. The nominator can list down the names of his legal heirs as nominees in the CPF nomination form and allocate their respective shares based on the Islamic Inheritance Laws. By doing this, it is as though the nominator is entrusting the Central Provident Fund Board to distribute his CPF monies according to the Islamic Inheritance Laws. This can be considered as a form of *wisāyah.*

Second, the nominator can distribute his CPF monies in accordance with the laws of *wasiyyah*. This can be done in a situation where the total amount of the CPF monies at the point of death does not exceed one-third of the CPF account holder's total estate and he intends to nominate his CPF monies to non-legal heirs.

Third, the nominator can combine between *wasiyyah* and *farā'iḍ*. This can be done by nominating one-third of the CPF monies to non-legal heirs, and nominating the rest of the CPF monies to legal heirs according to their respective shares in *farā'iḍ*. By doing this, the nominator is actually utilizing both the *wasiyyah* (bequest) and *wisāyah* (entrustment).

Conclusion

Takyīf Fiqhī refers to the categorization of a particular issue under the appropriate classification in Islamic Jurisprudence. This is a very crucial stage before elucidating and issuing rulings to contemporary issues. The usage of this term specifically amongst *Sharī'ah* scholars emerged from the encounter of *Sharī'ah* scholars with experts of modern legal studies and gained momentum in the twentieth century especially in the context of comparative studies between Islamic juristic doctrines (*fiqh*) and conventional law (*qānūn*). Though it is of modern provenance, the concept of *takyīf fiqhī* has some affinity with already established terms in Islamic jurisprudence such as *al-ashbāh wa al-naẓā'ir, takhrīj,* and *taḥqīq al-manāṭ.*

The correct application of *takyīf fiqhī* to modern contracts requires a critical analysis of the true nature of those contracts. If there is a true resemblance between these modern contracts and the nominate contracts in terms of their pillars, objective of the contract, and the intention of the contracting parties, then these contracts will be given the same ruling as the nominate contracts. On the contrary, if there are fundamental differences between the essential characteristics of the two contracts, then these

modern contracts will be considered as new independent contracts. These contracts are considered as valid as long as there are no elements which contradict the principles of *Sharī'ah*.

The Central Provident Fund (CPF) is a comprehensive social security system created for working Singaporeans. CPF members are allowed to choose the beneficiaries of their CPF savings by utilizing CPF nomination. Although the term 'CPF Nomination' was not used in classical books of Islamic Jurisprudence, this type of nomination, in terms of its essential characteristics and objective, truly resembles the Islamic Will contract as discussed in books of Islamic Jurisprudence. Therefore, utilizing CPF Nomination is permissible if it conforms to the rulings of the Islamic Will contract.

Three methods have been identified in order to utilize CPF nomination in a manner which conforms to the rulings of the Islamic Will contract. First, the nominator can distribute his CPF monies solely according to the Islamic Inheritance Laws. This can be done by listing down the names of the nominator's legal heirs as nominees in the CPF nomination form and allocating their respective shares based on the Islamic Inheritance Laws. Second, the nominator can distribute his CPF monies in accordance with the laws of *wasiyyah*. This can be done in a situation where the total amount of the CPF monies at the point of death does not exceed one-third of the CPF account holder's total estate and the nominees chosen are the non-legal heirs. Third, the nominator can combine between *wasiyyah* and *farā'iḍ*. This can be done by nominating one-third of the CPF monies to non-legal heirs, and nominating the rest of the CPF monies to legal heirs according to their respective shares in *farā'iḍ*.

Endnotes

[1.] Formulating *fatwā* means "elucidating the ruling of the *Sharī'ah* in response to a question concerning an occurrence issued by a qualified person called Mufti". (The Craft of Issuing Fatwas: <http://dar-alifta.org/Foreign/ViewArticle.aspx?ID=77&text=takyif)

[2.] Of the Qur'anic evidence for the legality of *takyīf fiqhī* some scholars adduce verse 4:83 in sūrat al-Nisā', which reads: (And if any [secret] matter pertaining to peace or war comes within their ken, they spread it abroad - whereas, if they would but refer it unto the Apostle and unto those from among the believers who have been entrusted with authority, such of them as are engaged in obtaining

intelligence would indeed know [what to do with] it. And but for God's bounty towards you, and His grace, all but a few of you would certainly have followed Satan). According to Shubayr, "the believers who have been entrusted with authority" in this verse refers to the people of knowledge and scholars of *Fiqh* who are capable of performing *ijtihād*. (Shubair, 2014, p. 38)

[3.] *Ijtihād* means "exerting effort to understand legal ruling from its' detailed evidences". (Ḥukm al-Ijtihād fi al-Islām wa Shurūṭ al-Mujtahid: https://islamqa.info/ar/111926)

[4.] Bay' al-Wafā' came to be known in the fifth century of the Hijrah in Bukhārā and was addressed of the Hanafī jurists of the time as valid (Muhammad Bayram II, 1992, vol. 3, no. 7, pp. 187-306; *The Mejelle*, n. d., pp. 58–59; al-Zarqa, 1999, pp. 155–165).

[5.] According to Mustafa al-Zarqa, nominate contracts refer to "contracts which the legislation has approved both the name that denotes their particular subject and original rulings that result from initiating them" (Al-Zarqa, 2014, p. 514).

[6.] "Persons with special needs are persons whose prospects of securing, retaining places and advancing in education, training institutions, employment and recreation as equal members of the community are substantially reduced as a result of physical, sensory, intellectual and/or developmental impairments. This may also include persons with mental disabilities." (Trust Services: https://www.sntc.org.sg/Pages/trust_faq.aspx?MainMenu=Trust Services)

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