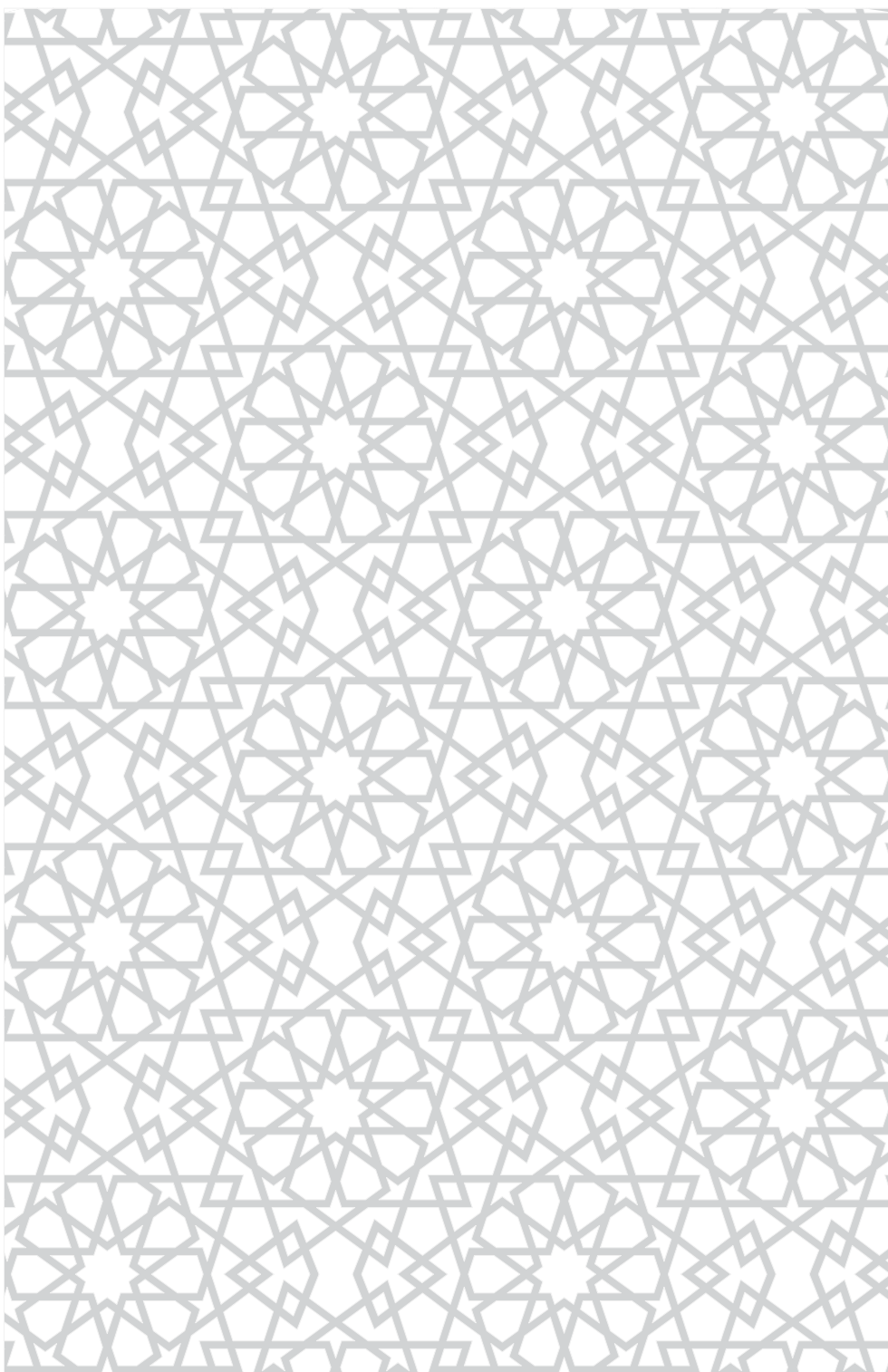


Shari'ah Standard No. (52)

**Options to Reconsider
(Cooling-Off Options, Either-Or
Options, and Options to Revoke
Due to Non-Payment)**



Contents

Subject	Page
Preface	1217
Statement of the Standard.....	1218
1. Scope of the Standard	1218
2. Cooling-Off Options.....	1218
3. Option to Revoke Due to Non-Payment	1222
4. Either-Or Options	1222
5. General Rules Relating to Option to Reconsider	1224
6. Date of Issuance of the Standard	1224
Adoption of the Standard.....	1225
Appendices	
Appendix (a): Brief History of the Preparation of the Standard.....	1226
Appendix (b): The Shari'ah Basis for the Standard.....	1228



IN THE NAME OF ALLAH, THE ALL-MERCIFUL, THE MOST MERCIFUL

All praise be to Allah, the Lord of all the worlds, and blessings and peace be upon our master, Muhammad, and his household and all his companions

Preface

This Standard aims to explain the Shari'ah rules relating to options to reconsider which contracting parties stipulate in their contracts (cooling-off options, either-or options, and options to revoke due to non-payment) and the application of such options in the activities of Institutions.⁽¹⁾

(1) The word (Institution/Institutions) is used here to refer, in short, to Islamic financial institutions including Islamic Banks.

Statement of the Standard

1. Scope of the Standard

This Standard covers options to reconsider (cooling-off options, either-or options, and options to revoke due to non-payment) that are stipulated by the parties to grant them time to reconsider the transaction. It does not cover options to revoke contracts due to incomplete performance (defect, deal fragmentation and breach of condition or description) or options to revoke contracts due to breach of trust (dishonest inducement, deception and overcharging) as they have separate Shari'ah Standards dedicated to them.

2. Cooling-Off Options

2/1 Definition of cooling-off options

Cooling-off options give one or both of the parties or a third party the right either to continue with the contract or to revoke it within a stipulated period of time. It is effected by any phrase indicating that it is non-binding and revocable during the period of the option.

2/2 Conditions of validity

Cooling-off options are subject to the following conditions:

2/2/1 The option must be stipulated in the contract unless it is implied by a pre-existing custom or the parties agree to subsequently include it in the contract.

2/2/2 The option must have a stipulated time limit. The option is not valid if a time limit is not stipulated or if it is unspecified, such as a stipulation to refer to an expert without stating a time limit, or if the time limit is indeterminate, such as stipulating that the option will end when a certain index reaches a particular value. There is no minimum or maximum time limit except if

it is contrary to what is customarily acceptable in relation to the subject matter of the contract.

2/2/3 The stipulated cooling-off period must coincide with the beginning of the contract period.

2/2/4 If the contract relates to several items, it must specify those items to which the option relates, as provided in item 2/8/3.

2/2/5 The subject matter must remain in the condition it was initially in when it was sold, in accordance with item 2/6.

2/3 Scope

Cooling-off options apply to binding financial contracts, such as sale, lease, transfer of debt, guarantee, division of wealth and Waqf. They do not apply to non-binding contracts such as unpaid agency or contracts which require payment in advance, such as Salam or which require spot payment of both countervalues such as currency exchange.

2/4 Consequences of cooling-off options

2/4/1 The owner of the option has the right to confirm the contract or revoke it during the stipulated period. If he does not revoke it during this period, the option lapses and the contract become binding.

2/4/2 The owner of the option may test the sold item and does not thereby lose his right to revoke the contract except if he does so repetitively without need or conducts himself as the owner of the sold item in a manner that is contrary to the terms of the contract and/or custom.

2/4/3 Where there is a cooling-off option, the parties are not required to make payment or delivery (the sold item to the buyer and the price to the seller) unless they agree otherwise. One or both parties may voluntarily make payment or delivery and the option does not lapse as a result, except if the conduct of the parties towards the countervalues indicates the intention to give or take ownership. If one party makes payment or

delivery, the other is entitled to hold back, in which case the first party is entitled to demand return of what they have paid/delivered.

2/4/4 The owner of the option may offer the item to which the option relates for sale to third parties, and the option does not lapse until the sale is completed.

2/5 Effect of options to cool-off on ownership

2/5/1 If the option to cool-off is owned by both parties or just the seller, there is no transfer of ownership in either countervalue and legal rights related to the subject matter remain solely with the seller to the exclusion of the buyer.

2/5/2 If the option is owned by just the buyer, ownership of the sold item transfers from the seller to the buyer and the buyer's conduct as the owner of the sold item serves as confirmation of the contract.

2/5/3 If an item sold under option is destroyed while in the possession of the seller, it is the seller's loss. If it is destroyed in the possession of the buyer while the buyer owns the option, he is liable to pay its price. If it is destroyed in the possession of the buyer owing to his negligence or violation while the seller owns the option and decides to revoke the contract, the buyer is liable to pay its cost. If it is destroyed in the possession of the buyer without there being any negligence or violation on his part, he has no liability.

2/6 Rules relating to increase in the sold item during the option period

2/6/1 Anything that is physically connected and grows out of the original, such as agricultural produce (crops) or animal produce (livestock) belongs to the buyer if the buyer owns the option and confirms the contract. And it belongs to the seller if the seller owns the option, whether he confirms the contract or revokes it.

2/6/2 Anything that is physically separate and does not grow out of the original, such as compensation for damage to the sold item caused by a third party during the option period, belongs to the buyer if he chooses to conclude the contract. If he chooses to revoke the contract, it belongs to the seller.

2/6/3 Anything that is separate but grows out of the original, such as dividends on shares and rent from leased assets belongs to the seller.

2/7 Cessation and lapsing of cooling-off options

2/7/1 When the option period expires, the contract becomes binding.

2/7/2 When the owner of the option exercises his option to revoke the contract, then the contract terminates. It is required for the other party to know of the revocation for the revocation to be valid. If the owner of the option concludes the contract, whether expressly or implicitly, the contract becomes binding.

2/7/3 If the sold item is destroyed before physical or constructive delivery, the contract terminates.

2/8 Some applications of cooling-off options

2/8/1 The institution, whether as a seller or buyer, stipulates an option to reconsider whether or not it is worth selling or buying an item.

2/8/2 The institution stipulates an option to reconsider when purchasing items from suppliers in order to offer them to its clients without obtaining a binding promise from them to purchase the items. If the clients do not wish to purchase the items, the institution returns the items to the seller.

2/8/3 The institution stipulates an option to reconsider in relation to the whole or a part of a single deal. If the various items being sold are different from each other, the items to which the option relates must be specified. If they are fungible, such as wheat or rice, the percentage to which the option relates must be specified.

2/8/4 It is not permissible to use cooling-off options as a ruse to synthesise the effect of a benefit enjoyed by the lender in exchange for a giving a loan, which can occur if the buyer pays for an item purchased under option, uses the item during the option period and then returns it before the option period expires to receive his money back.

2/8/5 It is not permissible to use cooling-off options to avoid price fluctuations during the option period.

3. Option to Revoke Due to Non-Payment

3/1 Definition of option to revoke for non-payment

Options to revoke due to non-payment are options stipulated by sellers or buyers to enable them to revoke contracts if the other party fails to make payment of price or rent on the due date. Such options are not valid unless they are expressly stipulated.

3/2 Scope of option to revoke for non-payment

Options to revoke for non-payment are permissible in contracts that do not require spot payment at time of contract. They are not permissible in Salam and currency exchange contracts.

3/3 Prerequisites

The seller is entitled to revoke the contract if the buyer does not pay the price within the specified period.

3/4 Transfer

Options to revoke due to non-payment lapse upon the death of the owner of the option (whether it is the seller or the buyer).

4. Either-Or Options

4/1 Definition

4/1/1 Either-or options entitle the buyer to conclude the contract to purchase one or more item out of several items specified by the contract during a stipulated period of time. Such options are created by stipulation of the parties.

4/1/2 It is not required for the items being sold to be fungible or for their prices to be equal. If their prices are different, the price of each item must be specified.

4/1/3 The agreed option period must be specified and there is no minimum or maximum time limit.

4/2 Prerequisites

4/2/1 Either-or options make ownership attached to one or more of several items to which the option relates but not to any item or items in particular. If the buyer takes delivery of all of them, he is liable to pay for one of them and holds the remaining items on trust. If one of them is destroyed or damaged in his possession, he must purchase it for its price. If all items are destroyed and their prices are different, the buyer is liable to pay the average price of the items for the number of items purchased. For example, if there are three items and he purchased one of them with an option to choose which one, he is liable to pay one third of the price of each item.

4/2/2 If the items to which the either-or option relates are destroyed by an act of the seller after the buyer has taken delivery, the buyer is not liable.

4/2/3 If the option period expires without the buyer choosing which item or items he wishes to confirm, he is legally obligated to do so unless the seller chooses to revoke the contract.

4/2/4 If the buyer treats one of the items in which he has an option as though he owns them, his conduct is deemed to be confirmation of the contract for those items.

4/3 Transfer

Either-or options transfer to the heirs of the owner of the option upon his death who in which case enjoy all the rights of the original owner of the option.

5. General Rules Relating to Option to Reconsider

5/1 It is not permissible to sell or transfer options to reconsider.

5/2 It is permissible to have two or more options to reconsider in one contract.

6. Date of Issuance of the Standard

The Shari'ah Board issued this standard on 23 Shawwal 1434 A.H., corresponding to 30 December 2013 A.D.

Adoption of the Standard

The Shari'ah Board adopted the standard on "Options to Reconsider" in its meeting No. (35) held in Al-Madinah Al-Munawwarah, Kingdom of Saudi Arabia, on 22-23 Shawwal 1434 A.H., corresponding to 29-30 September 2013 A.D.

Appendix (A)

Brief History of the Preparation of the Standard

On 14 Rabi' II, 1429 A.H., corresponding to 20 April 2008 A.D., the Secretariat of AAOIFI decided to commission a Shari'ah consultant to prepare a juristic study on Options to Reconsider.

In its meeting held on 14 Safar 1430 A.H., corresponding to 9 February 2009 A.D., the Shari'ah Standards Committee, discussed the study, approved it, and assigned to the Shari'ah researcher the preparation of the exposure draft of the standard.

In its meeting held in Dubai, United Arab Emirates, on 24 Ramadan 1431 A.H., corresponding to 3 September 2010 A.D., the Shari'ah Standards Committee discussed the exposure draft of the standard and made some changes in the light of the comments and observations of the members.

In its 30th meeting held in the Kingdom of Bahrain, on 24-26 Jumada II, 1432 A.H., corresponding to 27-29 May 2011, the Shari'ah Board discussed the exposure draft of the standard and introduced the changes it deemed suitable.

In its meeting No. (31) held in the Kingdom of Bahrain, on 22-24 Dhul-Qadah 1432 A.H., corresponding to 20-22 October 2011 A.D., the Shari'ah Board continued its discussions on the exposure draft of the standard, and introduced the changes it deemed suitable.

The Secretariat of AAOIFI held a public hearing in the Kingdom of Bahrain on 6 Jumada II, 1434 A.H., corresponding to 16 April 2013 A.D. The public hearing was attended by representatives of central banks, institutions, auditing firms, Shari'ah scholars, academics and others interested in this field. The members of the Shari'ah Board and the Shari'ah

Shari'ah Standard No. (52): Options to Reconsider (Cooling-Off Options, Either-Or Options, and Options to Revoke Due to Non-Payment)

Standards Committee responded to a number of observations raised by the participants.

In its meeting No. (35) held in Al-Madinah Al-Munawwarah on 22-23 Shawwal 1434 A.H., corresponding to 29-30 November 2013 A.D., the Shari'ah Board discussed the changes proposed at the public hearing and introduced the changes it deemed suitable to the exposure draft of the standard, and adopted the standard.

Appendix (B)

The Shari'ah Basis for the Standard

Cooling-Off Option

- The basis for cooling-off option is the Hadith narrated by Habban Bin Munqidh, attributed to the Prophet (peace be upon him), saying: *"If you are concluding a deal say: 'There shall be no Khalabah (misleading marketing or showcasing of products), then you shall have a 3-day option'"*.⁽²⁾
- The basis for consideration of all expressions that imply the cooling-off option is the opinion of the Four Schools of Fiqh (Madhahib).⁽³⁾ Imam Al-Nawawi said: "This expression (as mentioned in the Hadith related by Ibn Hibban: *"There shall be no Khalabah..."*) is neither considered to be a kind of literal worship, nor a Shari'ah ruling that a religiously accountable person shall be aware of it".⁽⁴⁾
- The basis for the stipulation of timing for cooling-off conditions is that an untimed option results in Jahalah (obscurity or ambiguity) which may lead to dispute. This is the opinion of the majority of Fuqaha.
- The basis for the stipulation of attaching the option to the contract is that detachment contradicts the prerequisites of the contract, which entails that it takes effect immediately.⁽⁵⁾
- The basis for the stipulation of attaching the option to a binding contract is that its usability comes into existence only when attached to such a contract. The basis for invalidity of the stipulation of such an option in contracts that entail taking possession (Qabd) is that it contravenes Qabd stipulated in Sarf and in Salam.

(2) It has been related by Ibn Hibban. It is a Hadith with acceptable authenticity.

(3) *"Al-Fatawa Al-Hindiyyah"* [3: 39]; *"Al-Mughni"* [3: 529]; and others.

(4) *"Al-Majmu'"* [9: 210].

(5) *"Al-Mughni"* [3: 502]; *"Bada'i' Al-Sana'i'"* [5: 300]; and *"Al-Majmu'"* by Al-Nawawi, [9: 191].

- The basis for permissibility (but not the obligability) of delivery of the two countervalues is that delivery serves both selection and reconsideration, which are literally the purpose of the option.
- The basis for the situation where the option does not abate upon offering it for sale is that such a practice is meant to probe the fairness of the price. However, it does abate in case of actual sale because this serves as a testimony to acceptance, as the disposal of the object underlying the option is considered to be as the disposal by owners.
- The basis for effecting ownership upon sale is that the price does not change if the two parties opted for continuity of ownership, and this conforms to the Hanafi School, as opposed to Hanbalis.

If the option is rested with one party, then the position of this standard is based on a variety of perspectives. [see applications in the Shari'ah Standard No. (8) on Murabahah]

Option to Revoke Due to Non-Payment

- The basis for permissibility is Qiyas (analogical deduction) to the cooling-off option and reports dating back to the time of the companions. It was taken up by Hanafis, Malikis and Hanbalis. The wisdom behind its permissibility is the need for the buyer to reconsider/re-evaluate his knowledge about prices and for the seller to ensure that the proper price is quoted in order to avoid procrastination by the buyer.
- The basis for impermissibility in contracts in which taking possession (Qabd) is a stipulation –such as Sarf and Salam- is that it is inconsistent with the stipulations of their validity.
- The basis for abating of the option upon the death of its owner is that it constitutes a readiness and willingness to act, and therefore is not transferable to heirs.

Either-Or Option

- The basis for permissibility of the either-or option is Qiyas (analogical deduction) to the cooling-off option; since it conforms to Shari'ah injunctions- i.e., the cooling-off option- so it was permissible based on it, and due to the need of the buyer to employ it in case of hesitancy as to selection of the most needful from amongst a number of objects. The majority of Fuqaha adopted it though with different views on definition and scope.

- The basis for all issues pertaining to ownership is the application of the rules relating to Daman (liability) and destruction (of objects of sales) and to treat both parties according to rules of equity in relation to the price that needs to be paid if the subject-matter of the option is destroyed.
- The basis for the transferability of the option to heirs is that a testator has an established ownership in the objects subject matter of the option, and as such heirs shall need to identify their selection.
- The basis for impermissibility of sale and tradability of either-or options is that such options are construed to be mere readiness and willingness (to contract), which cannot be transferred or traded.
- The basis for combination of two options or more is that such combination does not contradict their prerequisites -i.e., the effectuating of sale on an immediate basis.

