

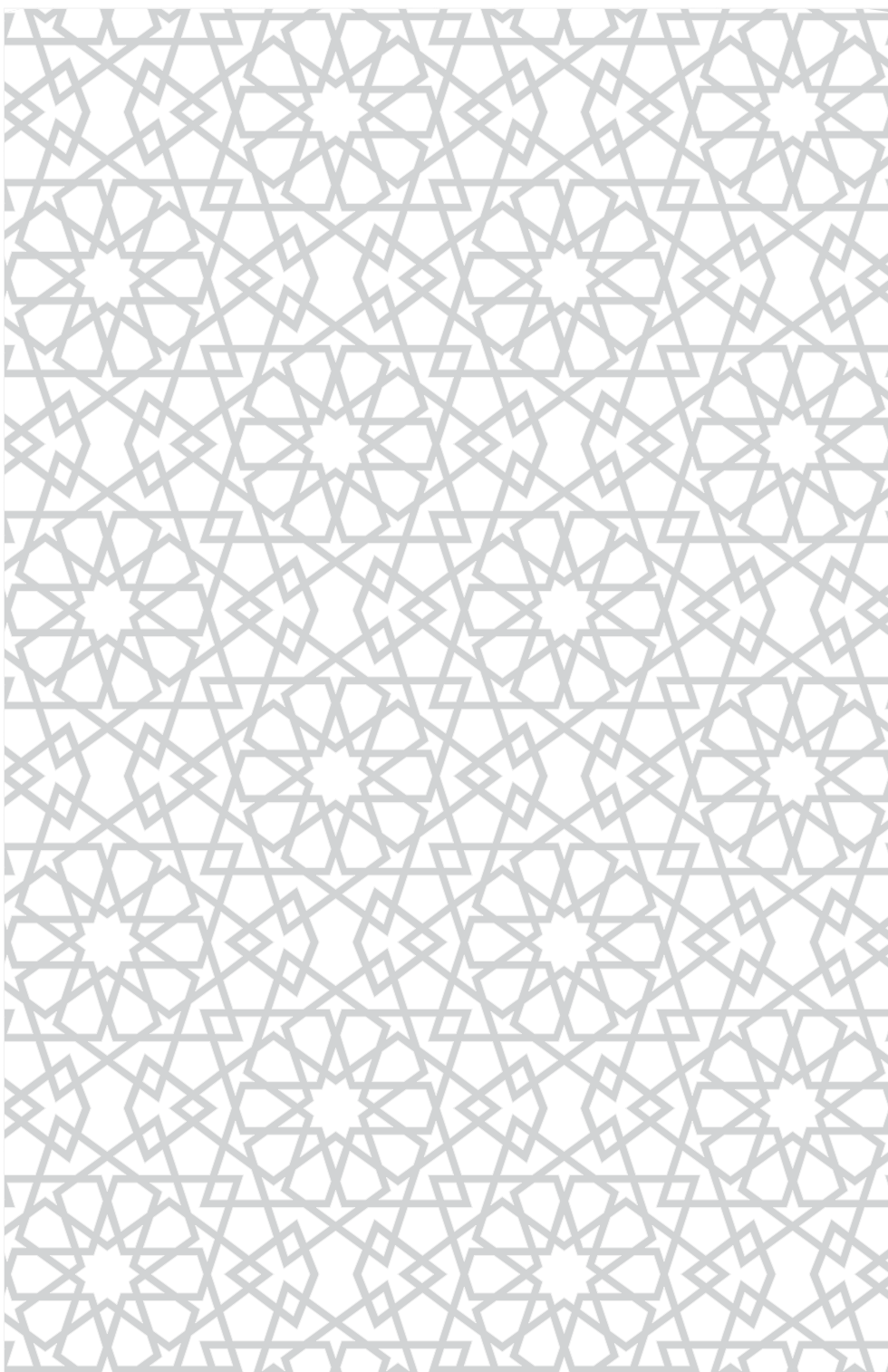
Shari'ah Standard No. (54)

**Revocation of Contracts by
Exercise of a Cooling-Off Option**



Contents

Subject	Page
Preface	1249
Statement of the Standard	1250
1. Scope of the Standard	1250
2. Definition of Cooling-Off Options to Revoke	1250
3. Form of Cooling-Off Options to Revoke	1250
4. Permissibility of Cooling-Off options to Revoke	1250
5. Causes Triggering Revocation Rights	1250
6. Conditions of Valid Revocation.....	1251
7. Impediments to Revocation.....	1251
8. Consequences of Revocation	1251
9. Waiver of Revocation Rights.....	1251
10. Payment for Waiver of Revocation Rights	1252
11. Application of Cooling-Off Options to Revoke	1252
12. Date of Issuance of the Standard.....	1253
Adoption of the Standard	1254
Appendices	
Appendix (a): Brief History of the Preparation of the Standard.....	1255
Appendix (b): The Shari'ah Basis for the Standard.....	1257



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 define contract revocation and in particular, revocation by exercise of a cooling-off option (*Khiyar al-Shart*), to distinguish it from other types of contract termination that resemble it, to explain its causes and conditions, impediments to it and its application in the activities of Islamic financial 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 the stipulation of revocation of valid and binding contracts and the causes and consequences of and impediments to such revocation. It does not cover the expiry of contracts at the end of their contractual terms or nullification owing to the absence of a condition required by the Shari'ah.

2. Definition of Cooling-Off Options to Revoke

Revocation by exercise of a cooling-off option refers to the termination of a valid and binding contract by virtue of a stipulation in the contract giving one of the parties the option to revoke the contract.

3. Form of Cooling-Off Options to Revoke

A cooling-off option to revoke can be stipulated in the contract in any form that indicates it, and it is not required to use any specific word with the meaning of revocation.

4. Permissibility of Cooling-Off Options to Revoke

4/1 It is permissible for both parties to stipulate an option for one or both of them to revoke the contract in specific situations agreed in the contract, without violating Shari'ah rules.

4/2 Revocation by exercise of a cooling-off option is valid if its causes exist, its conditions are satisfied and there are no impediments. It is invalid if its causes do not exist, any of its conditions is not satisfied, if there is an impediment or it is contrary to Shari'ah.

5. Causes Triggering Revocation Rights

The cause that triggers the cooling-off option is the existence of one of the situations stipulated in the contract, the occurrence of which gives one or both parties a conditional right to revoke.

6. Conditions of Valid Revocation

The following conditions must be fulfilled for revocation to be valid:

- 6/1 Existence of the cause triggering the option to revoke at the time of the revocation.
- 6/2 Absence of any impediments.
- 6/3 Notification of the revocation given by the owner of the cooling-off option to the other party according to the requirements of custom.
- 6/4 Exercise of the cooling-off option to revoke by the owner of the option.

7. Impediments to Revocation

Revocation cannot take place in the following situations:

- 7/1 Destruction of the sale item caused by a natural disaster after delivery.
- 7/2 Destruction of the sale item caused by the buyer whether before or after delivery.
- 7/3 Conduct that transfers ownership and creates rights for third parties, such as selling or gifting the sale item resulting in ownership passing to a third party.
- 7/4 Expiry of the period specified in the contract for exercise of the cooling-off option.

8. Consequences of Revocation

Revocation nullifies the contract at the moment of revocation. Any growth in the sale item that is physically attached to it is considered part of it. Any growth in the sale item that is physically separate from it and occurs between the time of contract and revocation and before the buyer takes delivery belongs to the seller. If it occurs after delivery, it belongs to the buyer.

9. Waiver of Revocation Rights

If the owner of a cooling-off option chooses not to exercise his right to revoke and there is no specific recurring harm attributable to the cause

triggering the option, the buyer is deemed to have permanently waived the option. If the harm attributable to the cause triggering the option is recurring or continuous, the option is not waived. For example, if a leased asset breaks down and the buyer chooses not to revoke the contract and repairs the asset and then the asset breaks down again, the buyer is still entitled to exercise his option to revoke.

10. Payment for Waiver of Revocation Rights

- 10/1 It is not permissible to stipulate payment for waiver of revocation rights in a sale contract. In contracts that run for specified terms, such as leases (*Ijarah*), *Istisna'a*, debt transfer (*Hawalat al-Dayn*), share cropping (*Muzara'ah*), tree planting partnership (*Mugharasah*) and agency (*Wakalah*), it is permissible for one of the parties to waive their rights to the remaining period of the contract in return for a consideration agreed at the time of waiver.
- 10/2 Unforeseen circumstances resulting in non-exercise of a right to revoke are excluded from the above rule.

11. Application of Cooling-Off Options to Revoke

- 11/1 Cooling-off options to revoke may be stipulated in credit facility agreements to be triggered by events of default relating to solvency, potential insolvency before it occurs or breach of a restrictive covenant in the contract.
- 11/2 If the lessor stipulates in a lease contract that he is entitled to add a supplementary rental amount at the beginning of each lease period to cover the costs of maintenance, insurance and taxes levied on owners, and the lessee refuses to accept that, the lessor is entitled to revoke the contract. If the lessee has given a prior promise to purchase the leased asset, the lessor can exercise his rights under the promise and demand performance from the lessee provided that the supplementary rent for that lease period is not added to the purchase price.
- 11/3 A creditor is entitled to stipulate the right, after notifying the debtor, to accelerate all installments and the right to revoke the contract or

Shari'ah Standard No. (54): Revocation of Contracts by Exercise of a Cooling-Off Option

one of them in the event that the debtor fails to pay two or more instalments despite being solvent.

11/4 If the seller stipulates that the buyer provides security or surety or any other form of guarantee and the buyer fails to provide it, the seller is entitled to revoke the contract.

11/5 For other situations of revocation that apply in options to reconsider, options to revoke for incomplete performance and options to revoke for breach of trust, see the relevant Shari'ah Standards.

12. Date of Issuance of the Standard

The Shari'ah Board issued this standard on 15 Muharram 1435 A.H., corresponding to 8 November 2014 A.D.

Adoption of the Standard

The Shari'ah Board adopted the standard on Revocation of Contracts by Exercise of a Cooling-Off Option in its meeting No. (39) held in the Kingdom of Bahrain on 13-15 Muharram 1435 A.H., corresponding to 6-8 November 2014 A.D,

Appendix (A)

Brief History of the Preparation of the Standard

On 1 Sha'ban 1431 A.H., corresponding to 13 July 2010 A.D., the Secretariat of AAOIFI decided to commission a Shari'ah consultant to prepare a juristic study on Revocation of Contracts by Exercise of a Cooling-Off Option.

In its meeting held on 9 May 2012 A.D., the Shari'ah Standards Committee discussed the study and the exposure draft of the standard and introduced the changes it deemed suitable in the light of the comments and observations of the members.

In its meeting No. (34) held in the Kingdom of Bahrain on 20-21 Safar 1434 A.H., corresponding to 3-4 January 2013 A.D., the Shari'ah Board discussed the exposure draft of the standard, and introduced the changes it deemed suitable.

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

In its meeting No. (37) held in the Kingdom of Bahrain on 19-21 Jumada I, 1435 A.H., corresponding to 20-22 March 2013 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 Standards Committee responded to a number of observations raised by the participants.

Shari'ah Standard No. (54): Revocation of Contracts by Exercise of a Cooling-Off Option

In its meeting No. (38) held in the Kingdom of Bahrain on 28 Sha'ban - 1 Ramadan 1435 A.H., corresponding to 26-28 June 2014 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.

In its meeting No. (39) held in the Kingdom of Bahrain on 13-15 Muharram 1435 A.H., corresponding to 6-8 November 2014 A.D., the Shari'ah Board discussed the exposure draft of the standard and introduced the changes it deemed suitable, and adopted the standard.

Appendix (B)

The Shari'ah Basis for the Standard

- Stipulation of cooling-off options apply only to binding contracts because nonbinding contracts are by their nature revocable by one or both parties.
- The validity of revocation by any form of language, that indicates it, is based on the general Shari'ah maxim: "Contracts are interpreted according to intent and inherent meaning of the parties and not by the words or forms used" (Maxims of Al-Majallah Al-'Adliyyah) and the statement of some jurists that the use of the technical word "Revocation" is designated by jurists and what is important is its meaning.⁽²⁾
- The existence of the cause triggering the option to revoke is required because revocation is contrary to the norm and rule that contracts are generally binding and that in principle consequences must flow necessarily from their causes, and that the cause must exist at the time of revocation.⁽³⁾
- The requirement that the other party be notified of revocation is based on the opinion of Abu Hanifah and Muhammad Ibn Al-Hasan, contrary to the opinion of the majority of jurists, because notification averts harm from the other party who, unaware of the revocation, may conduct themselves to their detriment.
- The four impediments to the exercise of cooling-off options are based variously on the following rationale: (I) Revocation would contradict the basic elements of the contract which have been validly established; or (II) revocation would contradict consent implied by conduct (implied terms have the same legal effect as express ones); or (III) revocation is impossible because the term of the contract has expired; or (IV) the subject matter of the option to revoke is deemed by law to have ceased to exist.

(2) "Sharh Al-Minhaj Wa Hashiyat Al-Qalyubi" [2: 195]

(3) "Al-Furuq" by Al-Qarafi [3: 269]; and "Al-Qalyubi" [2: 189]

- The basis for the ruling on the effect of revocation and that revocation nullifies the contract immediately, is the prevailing viewpoint of the Shafi'i and Hanbali schools. Revocation invalidates ownership in sale contracts. This ruling holds true for the asset sold (subject-matter of the contract), whereas increments in the asset sold (separate growth) from time of contracting until revocation and before delivery to buyer, belong to the seller who becomes the owner at or just prior to time of revocation.⁽⁴⁾ When the buyer takes possession of the asset sold, any separate growth belongs to him.
- The basis for the rulings stated in item 9 regarding waiver of revocation right is the viewpoint which Al-Zarkashi has indicated in his book titled "*Al-Manthur Fi Al-Qawa'id*".⁽⁵⁾
- The basis for impermissibility of stipulating compensation in the contract as a condition for waiver of revocation right, is based on analogy to Iqalah, which is considered as one form of contract revocation and has to be performed without any increase or decrease in considerations. Similarly, Shari'ah prohibits waiver of some rights (such as pre-emption and demarcation rights) against compensation.
- The basis for permissibility of stipulating, in the contract, compensation for waiver of the remaining periods of revocation right, in case of continuous contracts such as leasing, is the fact that the party who waives his right owns a benefit that makes him entitled to remuneration.
- The basis for applications of conditional revocation is the rulings indicated in the Shari'ah standard that relates to each application, because rulings on these applications are derived from these preceding standards.



(4) "*Ibn Abidin*" [4: 108] and "*Nihayat Al-Muhtaj*" [3: 434]

(5) "*Al-Manthur Fi Al-Qawa'id*" [2: 151]