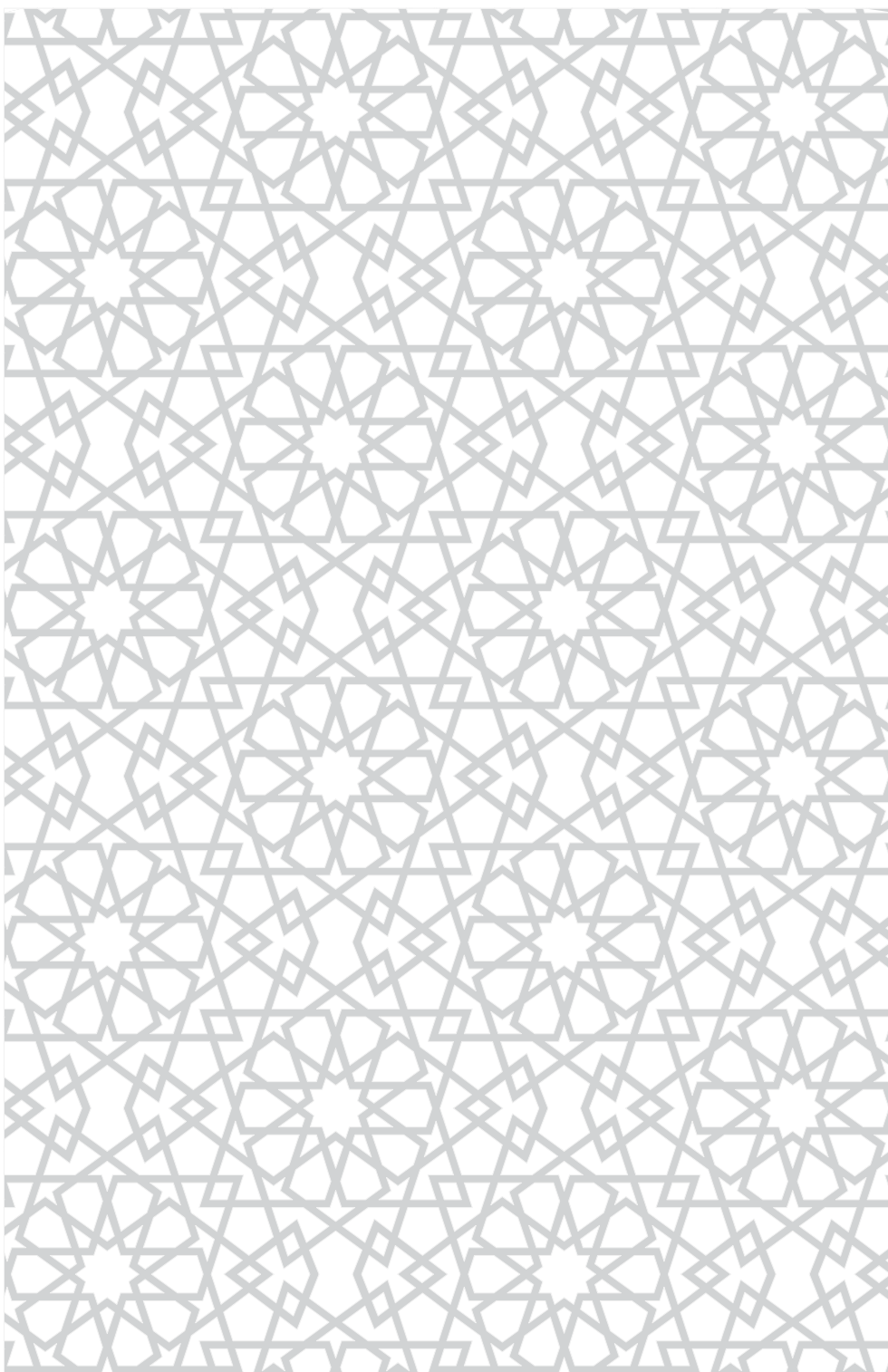


**Shari'ah Standard No. (48)**

**Options to Terminate Due to Breach  
of Trust (Trust-Based Options)**



# Contents

Subject	Page
<b>Preface</b> .....	1149
<b>Statement of the Standard</b> .....	1150
1. Scope of the Standard .....	1150
2. <i>Khiyar Al-Taghrir</i> (Option to Revoke on Grounds of Deception) .....	1150
3. <i>Khiyar Al-Tadlis</i> (Option to Revoke on Grounds of Deceptive Conduct) .....	1151
4. <i>Khiyar Al-Ghabn</i> (Option to Revoke on Grounds of Price Gouging)...	1152
5. Date of Issuance of the Standard .....	1154
<b>Adoption of the Standard</b> .....	1155
<b>Appendices</b>	
<b>Appendix (a):</b> Brief History of the Preparation of the Standard.....	1156
<b>Appendix (b):</b> The Shari'ah Basis for the Standard.....	1158



***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 covers the rules relating to options of buyers to revoke contracts where such options exist by operation of a Shari'ah rule as opposed to stipulation of the parties and which arise from the seller deceiving the buyer by statement or action or grossly overcharging him. It also covers the applications of such options to revoke in the activities of financial institutions.<sup>(1)</sup>

---

(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 rules relating to options of buyers to revoke contracts that arise immediately upon the seller deceiving the buyer by statement or conduct or grossly overcharging him in specific circumstances. It does not cover *Khiyarat al-Tarawwi* (options to reconsider) or *Khiyarat al-Salamah* (options to revoke due to incomplete performance) as they have separate Shari'ah Standards dedicated to them.

### 2. *Khiyar Al-Taghrir* (Option to Revoke on Grounds of Deception)

#### 2/1 Definition of *Khiyar al-Taghrir*

The option to revoke on grounds of verbal deception is the right of a buyer to revoke a contract due to deception by the seller or a colluding party, inaccurately describing the sale item so that the buyer purchases it at a price higher than the market price.

#### 2/2 Examples of verbal deception (*Taghrir*)

- a) Deliberate misinformation regarding the original cost price or expense incurred in a Murabahah (markup), *Tawliyah* (sale at cost) or *Hatitah* (sale below cost) sale. [see Shari'ah Standard No. (8) on Murabahah]
- b) Increasing the bid in an auction sale phantom bidding which is known as Munajashah or Najsh.
- c) Inaccurate statements to mislead the buyer into thinking that the sale item meets his requirements, or falsely claiming that it is no longer available elsewhere in the market.
- d) Deceptively inaccurate announcements about a company's performance in order to entice the public to buy its shares.

### **2/3 Causes**

2/3/1 The buyer has the option to revoke the contract in the event of being verbally deceived.

2/3/2 The buyer may return the item within a period customarily acceptable for revocation.

### **2/4 Lapse of the option**

2/4/1 The option to revoke on grounds of verbal deception lapses if the item is destroyed or consumed by the buyer before the deception is discovered, or if an impediment arises preventing return, or if the buyer fails to return it despite being able to do so.

2/4/2 If this option lapses, the sell is entitled to the full price of the item and the buyer is not entitled to any refund.

2/4/3 The seller is liable for expenses relating to the return of the item to the place of sale.

### **2/5 Transfer of the option**

*Khiyar al-Taghrir* does not transfer to the heirs of its holder upon death of the owner.

## **3. *Khiyar Al-Tadlis* (Option to Revoke on Grounds of Deceptive Conduct)**

### **3/1 Definition**

*Khiyar al-Tadlis* is the option of a buyer to revoke a contract on grounds of deceptive conduct by the seller or a colluding party. Such conduct would be to portray the sale item different than its actual condition, inducing the buyer to think that it is in a better condition.

### **3/2 Prerequisites**

3/2/1 The deception must result from the seller's conduct or instructions. If caused by something that is beyond the seller's control or by unforeseen circumstances, the option is invalid.

3/2/2 The buyer must be unaware of the deception.

3/2/3 The deception must be continuing. If the seller engages in a deceptive conduct but the sale item's condition eventually improves (to a condition not less than the original specification) before the contract is revoked, the buyer has no right of revocation.

### **3/3 Examples of deceptive conduct**

3/3/1 False branding of products using counterfeit labels to promote sales.

3/3/2 Painting an old car to hide its age and give the impression that it is new.

3/3/3 Adding lubricants or other substances so that the product appears in a better condition.

### **3/4 Causes of *Khiyar al-Tadlis***

3/4/1 A buyer who is enticed by deceptive conduct may return the sale item or retain it.

3/4/2 The buyer may return the item within a period customarily acceptable for return.

3/4/3 The buyer is not entitled to compensation if he decides to retain the sale item.

### **3/5 Lapse of the option**

The option to revoke on grounds of deceptive conduct lapses if the item is destroyed or consumed by the buyer after the deception is discovered, or if the buyer fails to return it despite being able to do so.

### **3/6 Transfer of the option**

*Khiyar al-Tadlis* does not transfer upon death to the heirs of its owner.

## **4. *Khiyar Al-Ghabn* (Option to Revoke on Grounds of Price Gouging)**

### **4/1 Definition**

*Khiyar al-Ghabn* is a buyer's right to revoke a contract or accept it if it is discovered that the price paid exceeds the highest estimate given by experts in the market. The price gouging that triggers this



option is that which, according to the opinion of certified valuers, is deemed excessive in commercial custom.

#### **4/2 Prerequisite**

The buyer must be unaware of price gouging at the inception of the contract.

#### **4/3 Examples of price gouging**

- 4/3/1 Sale to a *Mustarsil*; i.e., a purchaser who does not negotiate the price because he trusts the seller not to overcharge him.
- 4/3/2 Collusion between brokers and sellers that leads to price spikes or increases of prices above fair market levels.
- 4/3/3 Exploiting the ignorance of exporters using deceptive statements in order to purchase items from them at a price lower than the prevalent price in the importer's country.
- 4/3/4 Acting as an intermediary between sellers and other market participants in order to sell items in the market for more than the prevalent price.

#### **4/4 Causes of *Khiyar al-Ghabn***

- 4/4/1 The party deceived by price gouging has the right to revoke the contract; he may also accept it without recourse to refund.
- 4/4/2 If the party deceived by price gouging accepts the contract, then he is not entitled to seek any compensation. It is permissible for the two parties (the party deceived by price gouging and the seller) to mutually agree upon an indemnification amount instead of revocation.

#### **4/5 *Khiyar al-Ghabn* lapses in the following situations**

- a) Destruction or consumption of the sale item or the occurrence of any change or defect in it. The attachment of a third-party right over the sale item has the same legal effect as its consumption.
- b) Inaction of the buyer during the period enabling him to revoke, and after discovering price gouging in the sale item.

Shari'ah Standard No (48): Options to Terminate Due to Breach of Trust Trust-Based Options

- c) Any disposal of the sale item, by the buyer, after discovering price gouging.

**4/6 Transfer of the option**

*Khiyar al-Ghabn* does not transfer upon death to the heirs of its owner.

**5. Date of Issuance of the Standard**

This Standard was issued on 26 Jumada II, 1432 A.H., corresponding to 29 May 2011 A.D.

## **Adoption of the Standard**

The Shari'ah Board adopted the Standard on Trust-Based Options in its meeting No. (30) held in the Kingdom of Bahrain during the period of 24-26 Jumada II, 1432 A.H., corresponding to 27-29 May 2011 A.D.

## **Appendix (A)**

### **Brief History of the Preparation of the Standard**

On 18 Jumada II, 1431 A.H., corresponding to 2 April 2010 A.D., the General Secretariat decided to commission a Shari'ah consultant to prepare a juristic study on Trust-Based Options.

In its meeting held in Dubai, on 24 Ramadan 1431 A.H., corresponding to 3 September 2010 A.D., the Shari'ah Standards Committee discussed the draft of a Shari'ah Standard on Trust-Based Options and made necessary amendments.

The revised draft of the Shari'ah Standard was presented to the Shari'ah Board in its meeting No. (29) held in the Makkah Al-Mukarramah, during the period of 28-30 Rabi' I, 1432 A.H., corresponding to 3-5 March 2010 A.D. The amendments that were deemed appropriate were included.

The General Secretariat held a public hearing in the Kingdom of Bahrain on 25 Jumada II, 1432 A.H., corresponding to 28 May 2011 A.D. The public hearing was attended by a number of representatives from central banks, institutions, accounting firms, Shari'ah scholars, academics and others interested in this field. All the comments made in the public hearing were listened to, and; the members of the Shari'ah Standards Committee then answered or commented on them and decided to accept some of them.

In its meeting No. (3) held in the Kingdom of Bahrain, during the period of 24-26 Jumada II, 1432 A.H., corresponding to 27-29 May 2011 A.D., the Shari'ah Board discussed the draft of the Standard, incorporated the necessary amendments that it deemed appropriate, and adopted the Standard.

Shari'ah Standard No (48): Options to Terminate Due to Breach of Trust Trust-Based Options

In its meeting held in the United Arab Emirates, on 7 Sha'ban 1436 A.H., corresponding to 25 May 2015 A.D., the Shari'ah Standards Review Committee reviewed this Standard. After deliberation, the committee approved necessary amendments, and the Standard was adopted in its current amended version.

## Appendix (B)

### The Shari'ah Basis for the Standard

- Options to revoke sales on grounds of breach of trust are either permissible in Shari'ah by default or by stipulation in the contract.
- The basis for permissibility is that sale contracts should by default be free from defect.
- If then it is discovered that this was not the case and there was deception, verbally or by conduct or there was price gouging, the buyer has the right to revoke the contract.
- The basis for the permissibility for the option to revoke on the grounds of verbal deception because it contradicts the basic pillar of valid contracts in Shari'ah, which is mutual consent. That is because, without the verbal deception, the buyer would not have proceeded with the purchase. The same basis applies for deceptive conduct being a ground for revocation.
- The basis for the permissibility of revoking contracts on the grounds of price gouging with a trusting buyer is the Hadith stating: "*Overcharging a trusting buyer (Mustarsil) is forbidden*".<sup>(2)</sup> A variant narration states: "*Overcharging a trusting buyer is Riba (usury)*".<sup>(3)</sup>
- The basis for the lapsing of the option to revoke due to the disposal of the sale item by the buyer after having discovered the deception, verbally or by conduct, is that this disposal is equivalent to an explicit consent to waive this option.



---

(2) Related by Al-Tabarani (H: 3410)

(3) Related by Al-Bayhaqi (H: 10924 and 10925)