

Shari'ah Standard No. (38)

Online Financial Dealings



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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 indicate the Shari’ah rulings relating to conclusion of contracts and financial dealings online, and illustrate what the Institution/Institutions⁽¹⁾ should observe in this respect.

(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 Shari'ah rulings relating to conclusion of financial contracts online, either by launching commercial websites, or by provision of online access services. The standard aims to indicate the various aspects pertaining to this subject such as the Shari'ah status of the contracts concluded in this manner, determination of the time of contract inception, permissible procedures of possession after signing the contract, and Shari'ah rulings relating to protection of online financial dealings.

2. Launching Commercial Websites for Contractual Dealings

- 2/1 It is permissible in Shari'ah to launch commercial websites, provided that such sites do not involve any impermissible act, such as promotion of impermissible goods and services, or using impermissible means to promote permissible goods and services.
- 2/2 It is permissible in Shari'ah to conclude online contracts, provided that the contracts thus concluded between the institution and its clients observe the general rules of financial transactions as prescribed by the Shari'ah, regarding for instance, opening of the accounts, performing remittances and signing commercial contracts.

3. Provision of Online Access Services

- 3/1 Shari'ah permits institutions to provide online access services to users on the basis of subscription contracts or any other similar arrangement, and against a specific fee.
- 3/2 The contract for provision of online access service by the institution is a shared-hiring contract "*Ijarah Mushtarakah*" signed between the institution and the beneficiary. Therefore, it should become subject to the conditions and rulings of the contract for hiring of persons in general, and those of the contract for hiring of a shared employee in

particular. [see Shari'ah Standard No. (34) on Hiring of Persons and Shari'ah Standard No. (9) on Ijarah and Ijarah Muntahia Bittamleek]

- 3/3 The institution which provides such service should take all necessary precautions and measures to prevent impermissible use of the internet by the beneficiaries to whom the Institution provides the access service.

4. Contract Signing Session (*Majlis al-'Aqd*) for Concluding Online Financial Contracts

- 4/1 When the contract is concluded through audio or audiovisual communication between the two parties, it should become subject to the same Shari'ah rulings on contracts signed in the presence of the two parties. Consequently it should satisfy the rulings relating to this type of contracts which include, for instance: simultaneous presence of the two parties (*Itihad al-Majlis*), non-existence of any indication of disinterest from any of the two parties, succession of offer and acceptance (as per normal practice), and all the other rulings.
- 4/1/1 The contract signing session in this case is the time of communication between the two parties if the conversation relates to the contract. If the conversation is over or disconnected, or the two parties shifted to another subject, the contract signing session is considered to have stopped (unless disconnection of the conversation is for a reasonably short while).
- 4/2 When the contract is concluded through written communication, by e-mail, or through access to site, it shall become subject to the rulings applicable to contracts signed in the absence of the two parties, because such deal is similar to message contracting.
- 4/2/1 The contract signing session in the case indicated in item 4/2 above starts from the moment of communicating the offer to the concerned party up to issuance of acceptance. The contract signing session may also be discontinued when the offering party retreats from his offer before an acceptance decision is made by the other party.

4/2/2 When the offering party specifies a certain period for validity of his offer, the time allowed for acceptance should cover the whole period. The offering party has no right to withdraw from his offer during that period.

4/3 When the contract is concluded through online bidding the highest bidder should not retreat from his bid until the bidding process is over. The highest bidder should also not retreat from his offer after finalization of the bidding process if the seller had made a condition that the offer should remain binding for a certain period, or if the normal practice necessitates validity of the offer for such period.

5. Expressing Offer and Acceptance in Online Financial Contracts

5/1 Expression of offer and acceptance in online contracts can be in any form that indicates the consent of the two parties to conclude the contract.

5/2 When the offering party sends through website or e-mail a message containing all the rights and commitments pertaining to the contract in question without retaining the right of withdrawal if the message is accepted, that message is considered as an offer.

5/3 When the offering party sends the electronic message through website or e-mail without indicating all the rights and commitments relating to the contract in question, or when he stipulates a condition that he should have the right of withdrawal even if the message is accepted, the message is considered to be an announcement or an invitation for contracting rather than an offer. In this case a process of offer and acceptance has to be done.

5/4 When the contract is concluded through website, clicking on the acceptance icon is considered as acceptance in the strict Shari'ah sense if the system in the website does not require confirmation of acceptance. If the system in the website requires confirmation of acceptance in any way, acceptance does not take place without making such confirmation.

5/4/1 The Institution which provides its services on website should include in the system a step for acceptance confirmation as a precautionary measure against dealers' mistakes.

6. Time of Commencement of an Online Contract

Irrespective of the method of contracting, an online contract is considered to be valid since the time when the other party accepts the offer and whether the offering party has come to know that or not.

7. Possession (Qabd) in Online Financial Contracts

7/1 Regarding online contracts, possession in the strict Shari'ah sense takes place through all accepted methods of actual and constructive possession. [see Shari'ah Standard No. (18) on Possession (Qabd), items 3 and 5]

7/2 If the sold commodity is computer software or the like, possession in the strict Shari'ah sense takes place when the purchaser, after signing the contract, downloads the software or the data or any good of this type from the website to his personal computer.

7/3 When the sold commodity is a currency, gold, silver or any other commodity in which instant exchange (Taqabud) is required, instant exchange of the two objects of the contract should be ascertained during the contract's signing session.

8. Protection of Online Financial Dealings

8/1 Protection of commercial sites and dealers data against being trespassed

8/1/1 Commercial websites are considered as private properties of their owners, and therefore their trespassing could necessitate compensation.

8/1/2 The institution should use all possible measures of website protection, so as to safeguard its own rights as well as the rights of its clients.

8/1/3 Trespassing of dealers' online data is impermissible. It is strictly prohibited to sell such data or transmit it to others without the permission of its owners.

8/1/4 Verification of trespassing of commercial sites and data stealing should be done by referring to the prevailing traditions and regulating rules which do not encounter the rules and principles of Shari'ah.

8/1/5 The compensation due in case of trespassing should comprise direct financial loss as well as actual loss of earnings. Expert advice for assessment of compensation can also be sought when need arises.

8/1/6 Compensation shall become due only when it is claimed, whereas claiming compensation does not have a specific time limit after the incident of trespassing is known. In this regard relevant rules and regulations should be observed provided that they do not contradict with the rules and principles of Shari'ah.

8/1/7 In case of stealing money or confidential data from a protected website the responsibility should rest with the person who committed the theft directly. If it is not possible, for a permissible reason, to charge the person who committed the act of theft directly, the responsibility should rest with the one who facilitated the act. The owner of the site is by no means chargeable for such act, if he has taken all possible measures to protect his site, and unless he has pledged to shoulder such responsibility under all circumstances.

8/2 Verification of dealers' identities

8/2/1 In order to safeguard its own interests, the Institution should take all possible precautions and measures to verify the identities of its website dealers, and make sure that they are legally competent for concluding valid contracts.

8/2/2 It is acceptable in Shari'ah to adopt the electronic signature as a means of verifying the identities of dealers, provided that such means is adoptable by virtue of the prevailing rules and regulations.

8/2/3 When forgery or an error is committed with regard to the personality or characteristics of one of the two parties, the other party has the right to terminate the contract.

8/2/4 For verification of forgery or error recourse should be to the general rules of evidence.

8/3 Protection of dealers from adhesion contracts ('*Uqud al-Iz'an*)

8/3/1 It can be noticed that in a big part of the online contracts the offer is addressed to the public in general and the contract has uniform details. In such contracts also the offering party alone has the right of stipulating the terms and conditions of the contract, while the other party does not have the right to change such terms and conditions. A contract of this type is considered as an "adhesion contract" when it relates to a commodity or usufruct that nobody can do without, and the offering party assumes actual and legal monopoly or face only meager degree of competition in its supplying.

8/3/2 According to Shari'ah, online adhesion contracts should be subject to state control so as to protect dealers by endorsement of what is equitable and elimination of what is inequitable in these contracts, before launching them to dealers.

8/3/3 If the price in the online adhesion contract is fair, and the terms and conditions of the contract do not entail any injustice for the adhering party, the contract is considered to be permissible and binding to its two parties.

8/3/4 If the price in the online adhesion contract is unfair (comprises excessive injustice), or the contract includes an unjust condition for the adhering party, the latter has the right to resort to law for nullification of the contract or amending its conditions for the sake of relieving him from the consequent injustice.

8/4 If the online contract is concluded on the basis of describing the sold object, or depending on the fact that the buyer has previously seen the object, or on presentation of a model resembling the object,

whereas at the time of delivery the sold object is found to be different, the buyer should have the choice between concluding the contract, terminating it, or negotiating with the seller appropriate means of settlement.

9. Date of Issuance of the Standard

This Standard was issued 17 Rabi' I, 1430 A.H., corresponding to 15 March 2009 A.D.

Adoption of the Standard

The Shari'ah Board adopted the Standard on Online Financial Dealings in its meeting No. (23) held in the Kingdom of Bahrain, on Thursday – Saturday 15–17 Rabi' I, 1430 A.H., corresponding to 12-15 March 2009 A.D.

Appendix (A)

Brief History of the Preparation of the Standard

In its meeting No. (16) held in Al-Madinah Al-Munawwarah, on 7-12 Jumada I, 1427 A.H., corresponding to 3-8 June 2006 A.D., the Shari'ah Board decided to issue a Shari'ah standard on Online Financial Dealings.

On 12 Rajab 1427 A.H., corresponding to 6 August 2005 A.D., the Secretariat General decided to commission a Shari'ah consultant to prepare a study on Online Financial Dealings.

A joint committee composed from Shari'ah Committees (1) and (2) held a meeting in the Kingdom of Bahrain, on 18 Safar 1428 A.H., corresponding to 8 March 2006 A.D. The joint committee discussed the study, and asked the consultant to introduce necessary changes in the light of the discussions and observations of the meeting.

In a further meeting of the joint committee, held in the Kingdom of Bahrain on 24 Rabi' II, 1428 A.H., corresponding to 11 May 2007 A.D., the draft of the standard was discussed and the consultant was requested to introduce necessary amendments in the light of the discussions and observations of the meeting.

In its meeting No. (19) held in Makkah Al-Mukarramah, on 26-30 Sha'ban 1428 A.H., corresponding to 8-12 September 2007 A.D., the Shari'ah Board discussed the amendments made by the joint committee meeting and introduced the changes which it deemed necessary.

In its meeting No. (20) held in the Kingdom of Bahrain, on 4-8 Safar 1429 A.H., corresponding to 11-15 February 2008 A.D., the Shari'ah Board discussed once again the draft standard and introduced further changes.

The Secretarial General of AAOIFI held a public hearing in the Kingdom of Bahrain on 24 Safar 1430 A.H., corresponding to 19 February 2009 A.D. More than 30 participants attended the session as representatives of central banks, institutions, and accounting firms. The session was also attended by Shari'ah scholars, university teachers and other interested parties. Several observations were made in the session, and duly responded to by the members of the Shari'ah Standards Committees (1) and (2).

In its meeting No. (23) held in the Kingdom of Bahrain, on Thursday – Saturday 15–17 Rabi' I, 1430 A.H., corresponding to 12-15 March 2009 A.D., the Shari'ah Board discussed the amendments suggested by the public hearing, introduced the changes that it deemed necessary and adopted the standard.

Appendix (B)

The Shari'ah Basis for the Standard

- The basis for permissibility of launching commercial websites if such sites are free from impermissible practices is the fact that in principle, transactions in any form are allowed, unless they lead to commitment of an impermissible act. Moreover, launching of such sites serves the interests of a large number of people in this era, and thus, conforms to the underlying mission of Shari'ah.
- Permissibility of concluding online financial contracts is due to the fact that such contracts do not involve any impermissible aspect. They carry no difference from traditional contracts except in that the means used for their conclusion is different. If, in principle, contracts as such are allowed as long as they observe the rules of transactions in Shari'ah, it is only natural that the means whereby these contracts are concluded become allowed as long as they conform to permissible rules of contracting.
- Concluding online contracts through audio or audiovisual communication between the two parties is classified under the category of contracts concluded in the presence of the two parties, because in such online contracts both parties are in fact present at the same time, although not in the same place. Therefore, simultaneous presence of the two parties in terms of time, which constitutes the prerequisite meant by coincidence of presence,⁽²⁾ is fulfilled at the time of exchanging offer and acceptance. In this connection the International Islamic Fiqh Academy issued a resolution about the Shari'ah ruling on concluding contracts through the modern means of communication. The text of the resolution is as follows: "If any two parties enter into a contract at the same time while they are in different places – this includes contracting through

(2) See: "Fath Al-Qadir" [3: 190–192]; "Hashiyat Al-Dusuqi 'Ala Al-Sharh Al-Kabir" [3: 5]; "Mughni Al-Muhtaj" [2: 5]; "Al-Mughni" [3: 481]; and see "Al-Madkhal Al-Fiqhi Al-'Am" [1: 348].

telephone and wireless devices – contracting between these two parties is considered as contracting between two present parties”.⁽³⁾ Needless to say, there is no difference between contracting through a telephone call, and contracting through online voice communication.

- When the contract is concluded through written communication, by e-mail, or through access to site, it shall be classified as a contract signed in the absence of the two parties. This ruling is based on the fact that exchange of offer and acceptance in this case takes place without simultaneous presence of the two parties. In this regard the Al Baraka Seminar on Islamic Economics issued a resolution stating that “According to Shari’ah, when an online contract is signed between two parties who are not in the same place, it is considered as a contract between two absent parties if neither of the two parties can hear the voice of the other. Consequently such contract should become subject to the Shari’ah rulings on message contracting”.⁽⁴⁾
- The ruling that the offering party does not have the right to retreat from his offer within the period specified by the seller for validity of the offer is based on the viewpoint of some Maliki scholars who believe that if an offer is announced to be valid for a specific period it should remain valid throughout that period. This viewpoint has been emphasized by Al-Hattab quoting Abu Bakar Al-Arabi.⁽⁵⁾ In this regard also The International Islamic Fiqh Academy issued a resolution emphasizing the following: “When the offering party issues a term-offer through these devices, he is committed to keep his offer during the specified period. He does not have the right to retreat from it.”⁽⁶⁾
- When the offering party sends the electronic message through website or e-mail without indicating all the rights and commitments relating to the contract in question, or when he stipulates a condition that he should have the right of withdrawal even if the message is accepted, the

(3) Resolution No. 52 (3/6).

(4) The 19th Al Baraka Seminar on Islamic Economics, held in Makkah Al-Mukarramah, on 6–7 Ramadan 1420 A.H., corresponding to 2–3 December 2000 A.D.

(5) See: “*Mawahib Al-Jalil*” by Al-Hattab [4: 241]. This viewpoint has been adopted by a number of civil laws, and is known as “Term Offer”. See article (98) of the Jordanian Civil Law and article (93) of the Syrian Civil Law.

(6) Resolution No. 52 (3/6).

message is not considered as an offer, because from a Shari'ah point of view an offer should be categorically obvious and cannot bear any other meaning.⁽⁷⁾

- The ruling that irrespective of the method of contracting an online contract is considered to be valid since the time when the other party accepts the offer and whether the offering party has come to know that or not, is based on the fact that Shari'ah scholars define contract as "the concordance of two wills". Therefore as soon as the accepting party declares his consent concordance between the two wills takes place and the contract becomes valid.⁽⁸⁾ A resolution issued in this regard by the International Islamic Fiqh Academy states: "When a contract is to be signed, through a written message or a messenger, between two absent parties who are not in the same place and neither of them can see or hear the other - a case which includes contracting through telex, fax and PC screens - the validity of such contract starts as soon as the concerned party receives and accepts the offer".⁽⁹⁾
- The ruling that possession in the strict Shari'ah sense takes place when the purchaser, after signing the contract, downloads the computer software or the data or any other good of this type from the website to his pc, is based on the fact that possession takes place actually and constructively when the sold object is released and disposition is facilitated for the buyer. Possession of objects differs according to the type of the object in question and how its possession is normally perceived. In this respect a resolution has been issued by the International Islamic Fiqh Academy regarding possession and its forms, especially the recent ones.⁽¹⁰⁾
- Prohibition of trespassing commercial websites and data theft is derived from prohibition of all forms of encroaching upon rights of others because Allah, the Almighty, says: ***{ "...but transgress not the limits. Truly, Allah likes not the transgressors." }***.⁽¹¹⁾ Moreover, websites have financial worth, and are considered as private rights of their owners. Trespassing of such

(7) See: "Fath Al-Qadir" [3: 190-92]; "Hashiyat Al-Dusuqi 'Ala Al-Sharh Al-Kabir" [3: 5]; "Mughni Al-Muhtaj" [2: 5]; and "Al-Mughni" [3: 481].

(8) See: "Bada'i' Al-Sana'i" [6: 2994] and "Hashiyat Ibn 'Abidin" [7: 26].

(9) Resolution No. 52 (3/6).

(10) Resolution No. 53 (4/6).

(11) [Al-Baqarah (The Cow):190].

sites may result in financial harm for their owners. In this regard the International Islamic Fiqh Academy issued a resolution emphasizing prohibition of transgression against trade name, trade address, trademark and all other similar rights.⁽¹²⁾

- Acceptability of adopting the electronic signature as a means of verifying the identities of dealers if such means is recognizable by the prevailing rules and regulations is based on the need to avoid the harm that could arise from online forgery in the dealers' identities. In addition to that, adopting electronic signature does not constitute an impermissible practice. In fact Shari'ah encourages the use of technological means to preserve peoples' wealth, because preservation of wealth constitutes one of the main five aims (*Maqasid*) of Shari'ah.
- The ruling that when forgery or an error is committed with regard to the personality or characteristics of one of the two parties, the other party has the right to terminate the contract is based on the fact that such an incident can influence the consent of the deceived party. According to Shari'ah the consent of the two parties is the fundamental prerequisite of contracting. This fact has been emphasized by the majority of Shari'ah scholars.⁽¹³⁾
- The ruling that the state has to assume control upon online adhesion contracts - which are characterized with launching of public offers, uniform details, imposed terms and conditions, provision of indispensable commodities or usufructs and monopoly of supply - is based on the general texts of Shari'ah which instruct people to avoid harm and achieve justice.
- If a contract is concluded on the basis of describing the object sold, or depending on the fact that the buyer has previously seen the object, or on presentation of a model resembling the object; whereas at the time of delivery the sold object is found to be different, the buyer should have the option of terminating the contract for false description. This ruling is based on the need for preservation of the rights of the two parties of the contract, as has been emphasized by the majority of Fiqh scholars.

(12) Resolution No. (5), 5th Session 1408 A.H. – 1988 A.D.

(13) See: "*Al-Mawsu'ah Al-Fiqhiyyah*", the term *Rida*, Vol. (22).

Appendix (C)

Definitions

Internet

A cross-border device of communication between computer networks.

Website

Information stored in the form of pages, while each page contains a set of certain type of information formed up by a page designer by using special symbols. For browsing of the pages, software of internet browser is requested, so as to resolve the symbols and issue orders for page display.

Internet Service Provider

The service provider is the party (institution) which provides lines of internet access to beneficiaries on the basis of subscription contracts or any other arrangement, against a specific fee.

Electronic Signature

The electronic signature is data in the form of letters, figures, symbols, signs or any other form, embodied in or attached to or linked with an information message through electronic, digital, phonic or any other format. The electronic signature has a style which allows specification of the distinct identity of the signatory, so that the signature can be verified and the content of the message is approved.

Electronic Message

The data and information published or exchanged through electronic devices such as internet, telex, fax and other similar means.

