

Adoption of AAOIFI Shariah Standards Nos. 34 & 54

In order to standardize and harmonize Shariah practices in Islamic Banking Institutions (IBIs), AAOIFI Shariah Standards No. 34 – Hiring of Persons and No. 54 – Revocation of Contracts by Exercise of a Cooling-Off Option have been adopted. These Shariah Standards are applicable with the following clarifications and amendments as mentioned against each clause(s) of respective Standard:

AAOIFI Shariah Standard No. 34 – Hiring of Persons

1. “The word ‘person’ may be read with ‘institution’ i.e., ‘institution/person’, throughout the text of AAOIFI Shariah Standard No. 34. Further, the term ‘pay’ also includes ‘consideration against services’.”
2. **Clause 1:** The following is added as a footnote to the clause:
This clause may be read as follows:
“Scope of the Standard
This standard covers hiring of the service/work of persons between the institution and other institutions or individuals. The standard covers the cases when the institution is the employee or the employer. However, the standard does not cover other contracts such as Mudarabah, investment agency, Musaqat, Muzara’ah, Mugharasah, and Istisna’a.”
3. **Clause 2:** The following is added as a footnote to the clause:
This clause may be read as follows:
“Definition of the Term “Hiring of Persons”
It refers to the contract through which a service/work of a natural or a legal person is obtained against a specific amount. The service thus obtained could be specific or described as an obligation, such as educational, health and consultancy services.”
4. **Clause 3:** The following is added as a footnote to the clause:
The heading may be read as “Promise to Hire a Service”
5. **Clause 3/2:** The following is added as a footnote to the clause:
This clause may be read as follows: “The institution has the right to ask the client who promises to hire its services to pay a specific amount to be retained by the institution as a guarantee for the seriousness of the client in executing his promise and honoring any commitments that may result from it. In case of back out by the client, then the deduction from this Hamish Jiddiyyah (security deposit) should not exceed the actual damage caused to the institution. The said amount can either be kept as a deposit with the institution without being disposed of, or invested on behalf of the client through Islamic Mudarabah or investment agency, or frozen in an existing current account owned by the client and guaranteed by the institution. The institution and the client may also agree at the time of signing the contract to consider the Hamish Jiddiyyah (security deposit) as a prepaid Ijarah installment. [see Shari’ah Standard No. (9) on Ijarah and Ijarah Muntahia Bittamleek, item 2/3]”
6. **Clause 4/3:** The following is added as a footnote to the clause:
This clause may be read as follows: “A private employee, who works for and under the supervision of a single employer, has no right to work, at the same time, for anyone else, except with the permission of his employer. A shared employee, who works for more than one person and who is not restricted to work for a specific person at a specific time and he has the right to work for whoever he wants.”

7. **Clause 4/4:** The following is added as a footnote to the clause:
This clause may be read as follows: "The services are ascertained in case of private employee by stipulating the hiring period and the type of work he is supposed to do in general, while in case of shared employee, services are ascertained by stipulating the work, its type, and specifications. The specific period within which the work has to be done could also be added, and in that case the employee has to do the work within that specific period. When no specific period for doing the work is referred to in the contract, resort should be to the normal practice."
8. **Clause 4/5:** The following is added as a footnote to the clause:
This clause may be read as follows: "A private employee is not responsible for damage, unless it is due to transgression, negligence, or breach of a stipulated condition on his part."
9. **Clause 4/6:** The following is added as a footnote to the clause:
This clause may be read as follows: "A shared employee is absolutely responsible for damage, unless it is caused by a factor which is so common that it is inevitable. This, however, does not hold true in the case of an investment agent who is permitted to utilize the money, as he is not responsible under the requirements of Agency, except in case of transgression or negligence. Unlike the shared employee who is responsible to take care of what he has been hired to work on."
10. **Clause 4/7:** The following is added as a footnote to the clause:
This clause may be read as follows: "The contract for hiring of persons is a binding contract, which neither of the two parties can terminate or amend without the consent of the other, except in case of breach of contract, or due to an emergent excuse, or because of inevitable circumstances."
11. **Clause 4/8:** The following is added as a footnote to the clause:
This clause may be read as follows: "For a private employee, the commencement of the hiring period should be specified. The hiring period should start at the time of signing the contract, except when the two parties agree on a specific date for its beginning. Hiring in the latter case is known as (الإجارة المضافة) i.e., hiring that has to be commenced in the future."
12. **Clause 4/9:** The following is added as a footnote to the clause:
This clause may be read as follows: "When a private employee fails to report to work on the date specified in the hiring contract he shall be entitled to no pay for the period between the specified and actual dates of work commencement, the pay for the absence period should be deducted from his total pay. The employer in this case shall have the right to terminate the contract, unless the two parties agree on a compensatory period at the end of the contract period."
13. **Clause 4/10:** The following is added as a footnote to the clause:
This clause may be read as follows: "For a shared employee, a certain period for performing the work may be specified. When the shared employee fails to do the work during that period, the employer has the right to terminate the contract, or a new period can be agreed upon with mutual consent."
14. **Clause 4/11:** The following is added as a footnote to the clause:
This clause may be read as follows: "There is no Shari'ah prohibition for any of the two types of employees (private and shared) to receive 'Arboun (Earnest Money) at the time of signing the contract. If the hiring contract is implemented, the amount of earnest money should become a prepaid part of the employee's pay, otherwise the earnest money should go to the employee. However, when the contract is not executed the employee is preferably supposed to take from such earnest money only the portion which compensates the actual damage caused to him."

15. **Clause 5/1/1:** The following is added as a footnote to the clause:
This clause may be read as follows: "The service/work of the employee which constitutes subject matter of the contract should be well known, accomplishable and permissible in Shari'ah."
16. **Clause 5/1/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "It is permissible to determine service in terms of a specific work to be done or a specific period of service, or in terms of both. If the employee is able to do all the work within the specified period, he becomes entitled to the whole pay. If he is able to do only part of it during the period, his entitlement to the pay will depend on two probable outcomes. If the part of the work he has accomplished during the period is in fact useless and cannot be beneficial, the employee shall not become entitled to any pay. If the accomplished part of the work is useful and can be benefited from, and the employer is unwilling to extend the period, the employee shall become entitled to the amount normally paid for similar work (Ajr al-Mithl)."
17. **Clause 5/1/3:** The following is added as a footnote to the clause:
This clause may be read as follows: "When a person is hired for doing a specific service/work, the employer has no right to hire out the service/work of such person to a sub-employer, unless the contract permits subhiring, or this has been agreed upon by the two parties. If the hired service/work is described as an obligation, the employer in this case has the right to hire someone else an identical service/work (Parallel hiring). [see Shari'ah Standard No. (17) on Investment Sukuk, item 5/2/10]."
18. **Clause 5/1/4:** The following is added as a footnote to the clause:
This clause may be read as follows: "The employer should restrict to appropriate utilization of the subject matter as per the permissible conditions that have been agreed upon."
19. **Clause 5/1/5:** The following is added as a footnote to the clause:
This clause may be read as follows: "When the hiring contract relates to a specific service, the employee (the institution) should own the service and have the ability to deliver it in actual or constructive manner. Hence, it is impermissible for the institution to sign a contract with the client before it possesses the services and is in a position to deliver the same."
20. **Clause 5/1/6:** The following is added as a footnote to the clause:
This clause may be read as follows: "Hiring can be for performing a service that is well described as an obligation to the extent which leaves no room for an ambiguity leading to a dispute. In that case the employee does not have to own the required service. Consequently, an agreement may be reached for performing the described service at a specific time in the future, with due consideration to the ability of the employee to own the service and become able to deliver it on time, by himself or through someone else. In this case, the pay for the service should not necessarily be made in advance, unless the contract is executed by the word of a Salam or Salaf. If the employee happens to deliver a service that does not conform to what has been agreed upon, the employer has the right to reject it and insist on having a service conforming to agreed upon specifications."
21. **Clause 5/2/3:** The following is added as a footnote to the clause:
This clause may be read as follows: "The pay becomes obligatory when the two parties sign the contract, and payable on delivery of the service/work or making it available when the employee puts himself at the disposal of the employer even if the employer has not yet assigned a task to him. After signing the contract, there is no Shari'ah prohibition against advancing the pay as a lump sum amount, or in installments as per agreement."

22. **Clause 5/2/4:** The following is added as a footnote to the clause:
This clause may be read as follows: "The pay can be variable, yet the amount of pay for the first period should be known. Following the first period, it is permissible to use an accurate benchmark for predetermination of the pay for the successive periods. However, such benchmark should be known to both parties and mutually agreed upon, for avoidance of dispute. This benchmark will be used for the determination of pay for the period, and it should have an upper and a lower limit."
23. **Clause 5/2/8:** The following is added as a footnote to the clause:
This clause may be read as follows: "It is impermissible to make a condition which leads to any increment in the pay that has become liability (payable debt) of the employer, in case of default by the employer. Nevertheless, the contract may include a promise by the employer to donate, in case of default, a certain amount, or a percentage of the pay, for charitable purposes. Such donation should entirely go to charitable purposes, under the supervision of the Shari'ah Board of the institution."
24. **Clause 5/2/9:** The following is added as a footnote to the clause:
This clause may be read as follows: "It is permissible to agree upon more than one rate of pay; if the work is done within a certain period the pay will be this much, and if it is done in another (longer) period the pay will decrease to that much. Similarly, two different rates of pay can also be linked to two different places, types, or specializations, of the work to be done."
25. **Clause 6/1:** The following is added as a footnote to the clause:
This clause may be read as follows: "The employee has the right to obtain the permissible guarantees in different forms so as to ensure that he receives the pay. Likewise, the employer has also the right to obtain such guarantees for receiving indemnity in case of any transgression or negligence or breach of the contract in the part of the employee, such as collateralization (Rahn), suretyship (Kafalah) transfer of right (Hawalat al-Haqq) and set-off (Maqassah). [see Shari'ah Standard No. (5) on Guarantees, item 2/3]"
26. **Clause 6/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "It is permissible to state in the contract that the pay has to be made in advance, deferred, or in installments. In case of premature termination of a contract in which the pay has already been made in advance, the two parties should resort to settlement. When the employee accepts any period of delay for a pay that has to be settled in advance, such acceptance should be considered as a respite which the employee has willingly granted to the employer, and hence it can by no means be considered as a right of the employer. Due attention shall be given here to item 5/2/2."
27. **Clause 7/1/1:** The following is added as a footnote to the clause:
This clause may be read as follows: "The private employee has to render his services to the employer and observe the period of hiring during which he should not be absent, except with the permission of the employer, or to perform identified need. The shared employee has to perform the work as agreed upon, and within the stipulated period, if any."
28. **Clause 7/1/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "In principle, the employee is supposed to do the work by himself since he has been hired to perform a specific work required from him, unless the contract stipulates otherwise. This, however, does not hold true in case of hiring someone to do a service/ work that has been described as an obligation. In this latter case, what needs to be catered for is observation of all the specifications mentioned in the contract."

29. **Clause 7/1/3:** The following is added as a footnote to the clause:
This clause may be read as follows: "In hiring of persons, it is permissible to stipulate a penalty code indicating a specific amount which the employee should pay to the employer in case of delay in performing the work/service within the specified period. The amount to be thus paid has to be determined keeping in view normal practice as well as justice."
30. **Clause 7/2/1(a):** The following is added as a footnote to the clause:
This clause may be read as follows: "Payment of the pay in advance, on deferred payment basis, or in installments as agreed upon. In the absence of agreement on a specific form of payment, the due pay should be paid after rendering the complete service and enabling the employer to utilize the work/services done, or on expiry of the hiring period in case of private employment. When a due pay is delayed by the employer in spite of notification the employee has the right to stop work or prevent the employer from utilizing the service that has already been done."
31. **Clause 7/2/1(b):** The following is added as a footnote to the clause:
This clause may be read as follows: "Provision of facilities/requirements to the employee, if the work to be done so requires, or when provision of such facilities/requirements are conditional on the employee. In this case, employee is responsible to fulfill conditions stipulated in the contract."
32. **Clause 8/1/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "When the employee refrains from delivery of the service as required, and fails to present the suitable alternative as agreed upon, the employer has the right to terminate the contract and demand indemnification for the actual damages caused to him due to this inability."
33. **Clause 8/2/1:** The following is added as a footnote to the clause:
This clause may be read as follows: "If specific service/work becomes completely useless, the contract becomes null and void; whereas when it is partially useless the employer has the right to terminate the contract. If, instead, the service/work that has become useless pertains to hiring described as an obligation, the contract shall remain valid, and the employee, in this case, has to deliver a similar service."
34. **Clause 8/2/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "The hiring contract can be terminated with the consent of the two parties, yet none of them has the independent right to terminate the same, except for a contingent excuse or force majeure situation. The employer has the right to terminate the contract on the existence of such a defect, which brings hindrance in taking benefit from the service. The contract can also be terminated on the basis of a Cooling-Off Option (Khiyar al-Shart), by the party who has stipulated such option, and within its specified period."
35. **Clause 8/2/4:** The following is added as a footnote to the clause:
This clause may be read as follows: "With the consent of the two parties, the hiring contract can be terminated before its effectiveness."
36. **Clause 8/2/6:** The following is added as a footnote to the clause:
This clause may be read as follows: "The hiring contract can be renewed for another period, whether renewal is to be declared before expiry of the original contract, or to take place spontaneously. For spontaneous renewal, a condition is to be stated in the contract indicating that the contract shall automatically be renewed on the commencement of a new period, if none of the two parties notifies the other about his disinterest in renewal."

AAOIFI Shariah Standard No. 54 – Revocation of Contracts by Exercise of a Cooling-Off Option

1. **Title:** The following is added as a footnote to the clause:
The title may be read as “AAOIFI Shariah Standard No. 54 – Revocation of Contracts Due to Stipulated Conditions”
2. **Clause 2:** The following is added as a footnote to the clause:
This clause may be read as follows:
“Definition of Revocation Due to Stipulation
Revocation due to stipulation refers to the termination of a valid and binding contract by virtue of a stipulation in the contract giving either of the parties the option to revoke the contract.”
3. **Clause 3:** The following is added as a footnote to the clause:
This clause may be read as follows:
“Form of Revocation Due to Stipulation
Stipulation of revocation is valid in any form that indicates it, and it is not required to use the word revocation.”
4. **Clause 4:** The following is added as a footnote to the clause:
The heading may be read as “Shariah Rulings for the Stipulation of Revocation”
5. **Clause 4/2:** The following is added as a footnote to the clause:
This clause may be read as follows: “Revocation 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.”
6. **Clause 5:** The following is added as a footnote to the clause:
This clause may be read as follows:
“Cause of Revocation
The cause of revocation is the occurrence of one of the situations stipulated in the contract.”
7. **Clause 6/3:** The following is added as a footnote to the clause:
This clause may be read as follows: “Revocation notice to the other party from the one who has the right of revocation according to the custom.”
8. **Clause 6/4:** The following is added as a footnote to the clause:
This clause may be read as follows: “Exercise of the right of revocation by the owner of the option.”
9. **Clause 7/1:** The following is added as a footnote to the clause:
This clause may be read as follows: “Destruction of the subject matter caused by a natural disaster after delivery.”
10. **Clause 7/2:** The following is added as a footnote to the clause:
This clause may be read as follows: “Destruction of the subject matter caused by the buyer whether before or after delivery.”
11. **Clause 7/3:** The following is added as a footnote to the clause:
This clause may be read as follows: “Conduct that transfers ownership and creates rights for third parties, such as selling or gifting the subject matter resulting in ownership passing to a third party.”

12. **Clause 7/4:** The following is added as a footnote to the clause:
This clause may be read as follows: "Expiry of the period specified in the contract for exercise of the right of revocation."
13. **Clause 8:** The following is added as a footnote to the clause:
This clause may be read as follows:
"Consequences of Revocation"
Revocation nullifies the contract right from the moment of revocation. However, any growth in the subject matter that is physically attached to it is considered part of it. Any growth in the subject matter 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."
14. **Clause 9:** The following is added as a footnote to the clause:
This clause may be read as follows:
"Waiver of Right of Revocation After it is Established"
If the owner of the option chooses to waive his right to revoke and the cause is the one where harm does not recur then the right of revocation lapses, however, if the cause of the revocation is such where its harm is recurring or continuous then the right of the termination does not lapse. For example, if a leased asset breaks down and the lessee chooses to waive his right to revoke the contract and repairs the asset and in case the asset breaks down again, the lessee is still entitled to exercise his option to revoke."
15. **Clause 10:** The following is added as a footnote to the clause:
The heading may be read as "Consideration for Waiver of Revocation Rights"
16. **Clause 10/1:** The following is added as a footnote to the clause:
This clause may be read as follows: "It is not permissible to stipulate consideration against revocation rights in a sale contract. As far as those contracts are concerned that continue for agreed period of time, such as lease (Ijarah), Istisna', assignment of debt (Hawalat al-Dayn), share cropping (Muzara'ah), tree planting partnership (Mugharasah) and agency (Wakalah), it is permissible for one of the parties to forego their rights for the remaining period against the consideration agreed upon at the time of waiver."
17. **Clause 10/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "Unforeseen circumstances are excluded from the above rule."
18. **Clause 11:** The following is added as a footnote to the clause:
The heading may be read as "Some Applications of Revocation Due to Stipulation"
19. **Clause 11/1:** The following is added as a footnote to the clause:
This clause may be read as follows: "Right of revocation 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."
20. **Clause 11/2:** The following is added as a footnote to the clause:
This clause may be read as follows: "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 expenses related to the previous period in respect of costs of maintenance, insurance (takaful) 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 to demand fulfilment of the promise provided that the supplementary rent for that lease period is not added to the purchase price.”

21. **Clause 11/4:** The following is added as a footnote to the clause:

This clause may be read as follows: “If the seller stipulates the buyer to provide security or surety or any other form of guarantee and the buyer fails to provide it, the seller is entitled to revoke the contract.”

22. **Clause 11/5:** The following is added as a footnote to the clause:

*This clause may be read as follows: “For other applicable situations of revocation that are discussed in “**option to reconsider**”, “**option to revoke due to incomplete performance**” and “**option to revoke due to breach of trust**”, see the relevant Shari’ah Standards.”*
