



**BANK NEGARA MALAYSIA**  
CENTRAL BANK OF MALAYSIA

# ***Wadi'ah***

## Concept Paper

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As part of the objectives to strengthen the Shariah compliance practices among Islamic financial institutions (IFI), Bank Negara Malaysia (the Bank) is developing a Shariah contract-based regulatory policy with the objective to provide comprehensive guidance to the Islamic financial industry with respect to end-to-end compliance with Shariah. This Shariah-based regulatory policy consists of two components, namely the Shariah requirements and the operational requirements. The Shariah requirements highlight the salient features and essential conditions of specific Shariah contracts to facilitate sound understanding of a particular contract by the IFIs. The operational requirements set out the expectations with respect to the oversight function, product structuring, risk management as well as business conduct and consumer protection.

This Concept Paper (CP) outlines the Shariah and operational requirements for the *wadi'ah* contract. The *wadi'ah yad amanah* contract is basically adopted in the IFI's safekeeping services of physical assets. Placement of deposits involving fungible assets or cash that apply the rulings of *qard* and will be outlined in a separate Concept Paper on *Qard*. Whilst the Shariah requirements stipulated in Part B serves as reference to facilitate the IFIs in providing feedback and comments on the operational aspects of *wadi'ah*, the Bank invites written feedback and comments only on the operational requirements of *wadi'ah* contracts under Part C, including suggestions for particular issues or areas to be clarified or elaborated further and any alternative proposals that the Bank should consider. The feedback must be supported with clear rationale, accompanying evidence or illustration, as appropriate to facilitate effective review of this CP.

#### **Additional instructions for IFIs**

In addition to providing general feedback, IFIs are required to respond to the specific questions set out throughout the CP.

Please submit your response to the Bank by 16 February 2015, addressed to:

Pengarah  
Jabatan Perbankan Islam dan Takaful  
Bank Negara Malaysia  
Jalan Dato' Onn  
50480 Kuala Lumpur

Any queries may be directed to:

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## PART A OVERVIEW

### 1. Introduction

- 1.1 Compliance with Shariah requirements is a pre-requisite in ensuring the legitimacy of Islamic financial products and services. In meeting this expectation, it is essential for IFIs to establish the necessary operational framework and infrastructure to ensure the conduct of Islamic financial transactions is consistent with Shariah, including in ensuring that the entire intermediation process is carried out with good governance, and in a prudent and transparent manner. In this regard, the Bank has embarked on the development of a Shariah contract-based regulatory policy to ensure end-to-end compliance with Shariah, primarily to preserve the integrity of Islamic financial transactions.
- 1.2 The Shariah contract-based regulatory policy consists of two components, namely Shariah requirements and operational requirements. The former highlights the salient features and essential conditions of a specific Shariah contract. The latter outlines the operational requirements consisting core principles underpinning sound financial practices, expectations for good governance, robust documentations, fair market practices and effective risk management. These operational requirements aim to complement and promote sound application of the Shariah contract.
- 1.3 One of the Shariah contracts applied by IFIs is *wadi'ah*. *Wadi'ah* is a safekeeping contract based on the fiduciary relationship between an asset owner and a custodian, in which the asset owner entrusts the custodian to safeguard the asset. The custodian has an obligation to return the asset to the asset owner upon request.

## 2. Policy Objectives

2.1 This policy document aims to:-

- (a) provide the Shariah rulings relating to the application of a *wadi'ah* contract;
- (b) specify key operational requirements governing the implementation of a *wadi'ah* contract; and
- (c) ensure sound financial and consumer protection requirements are implemented throughout the life cycle of a *wadi'ah* contract.

## 3. Scope of Policy Document

3.1 The policy document covers products and services which are based on *wadi'ah*, specifically on the liability side of IFIs which includes money market instruments.

3.2 Part B provides the Shariah requirements that must be adhered to in ensuring the validity of *wadi'ah* and its optional practices.

3.3 Part C complements the Shariah requirements under Part B and provides the operational requirements and guidance to achieve the aforementioned policy objectives effectively. Four essential areas of management and operation of *wadi'ah* by IFIs are covered in this policy document:-

- (a) Oversight function: Establishment of clear roles and responsibilities of the board of directors, Shariah Committee and senior management, and establishment of comprehensive policies and procedures;
- (b) Product structuring: Establishment of a proper system and robust product structuring including documentation;
- (c) Risk management: Establishment of a sound risk management system; and
- (d) Information disclosure and business conduct: Transparent and fair dealing practices in the application of *wadi'ah*.

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#### **4. Applicability**

4.1 This policy document is applicable to all IFIs as defined in paragraph 7.2.

#### **5. Legal Provision**

5.1 The requirements in this policy document are-

- (a) specified pursuant to sections 29, 57(1) and 57(2)(d) of the Islamic Financial Services Act 2013 (IFSA); and
- (b) specified pursuant to section 41 and issued as directions pursuant to section 129(3) of the Development Financial Institutions Act 2002 (DFIA).

#### **6. Effective Date**

6.1 This policy document shall come into effect upon issuance of the final document.

#### **7. Interpretation**

7.1 The terms and expressions used in this policy document shall have the same meanings assigned to them in the IFSA and DFIA, as the case may be, unless otherwise defined in this policy document.

7.2 For the purpose of this policy document-

**“S”** denotes a standard, requirement or specification that must be complied with. Failure to comply may result in one or more enforcement actions.

**“G”** denotes guidance which may consist of such information, advice or recommendation intended to promote common understanding and sound industry practices which are encouraged to be adopted.

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**“Islamic financial institutions”** means-

- (a) licensed Islamic banks and takaful operators under IFSA;
- (b) licensed banks and licensed investment banks under FSA approved under section 15(1)(a) FSA to carry on Islamic banking business; and
- (c) prescribed institutions under DFIA approved under section 129(1) DFIA to carry on Islamic banking business or Islamic financial business.

## **8. Related Shariah Rulings and Policy Documents**

- 8.1 This policy document must be read together with but not limited to such Shariah rulings and policy documents listed in Appendix 4.

## PART B SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES OF WADI'AH

### 9. Definition

- S** 9.1 *Wadi'ah* refers to a contract by which an asset is placed with another party for safekeeping.

### 10. Nature

- S** 10.1 *Wadi'ah* is based on trusteeship<sup>1</sup> and referred to as *wadi'ah yad amanah* in which any of the contracting parties may terminate the contract unilaterally.

## COMPONENTS OF WADI'AH

### 11. Contracting Parties

- S** 11.1 In a *wadi'ah* contract, there shall be a custodian (*wadi'*); and a safekeeping depositor (*mudi'*) of the asset (collectively referred to as "contracting parties").
- S** 11.2 The safekeeping depositor shall be an owner or a person who has legal authority over the asset placed in custody.
- S** 11.3 The contracting parties shall have the legal capacity<sup>2</sup> to enter into a *wadi'ah* contract.
- G** 11.4 The contracting parties in a *wadi'ah* contract may be a natural person or a legal entity.

<sup>1</sup> The word "trust" and "trusteeship" used in this document denote the literal meaning and shall not be associated with terms relating to any law.

<sup>2</sup> The legal capacity of a person, from a Shariah perspective, is defined as the capacity to assume rights and responsibilities; and the capacity to give legal effect to his action. Among the important conditions are that the person must be of sound mind and the capacity to distinguish between what is beneficial or harmful to one's interests. The legal capacity of a legal entity is defined as eligibility of an entity to acquire rights and assume responsibilities. In Malaysia, the legal capacity is governed by the Contracts Act 1950 and the Age of Majority Act 1971.

- G** 11.5 A *wadi'ah* contract may involve more than one safekeeping depositors.
- G** 11.6 Any party to a *wadi'ah* contract may enter into the *wadi'ah* contract through an agent (*wakil*).

## 12. Offer and Acceptance

- S** 12.1 A *wadi'ah* contract shall be entered into through an offer and acceptance between the contracting parties.
- G** 12.2 An offer and acceptance may be expressed verbally, in writing or through any other methods which could be evidenced by appropriate documentation or record.

## 13. Asset

- S** 13.1 An asset to be placed in custody under a *wadi'ah* contract shall be an asset that is deliverable and consistent with the principles of Shariah.
- G** 13.2 An asset placed in custody may be pledged by the safekeeping depositor to the custodian or to any other party.
- S** 13.3 Pursuant to paragraph 13.2, the pledged asset shall observe the Shariah requirements pertaining to *rahn* (pledge).

**REQUIREMENTS OF WADI'AH****14. Salient Features of Wadi'ah**

- S** 14.1 An asset placed in custody is a trust given to the custodian for safekeeping. The custodian shall return the asset placed in custody to the safekeeping depositor upon the request of the safekeeping depositor or according to the agreed terms of the *wadi'ah* contract.
- G** 14.2 The contracting parties may agree to specify the period of the *wadi'ah* contract.
- S** 14.3 The custodian shall ensure the safety of the asset placed in custody and shall act in the interest of the safekeeping depositor.
- G** 14.4 Methods of safekeeping may be determined by the contracting parties or may be based on customary business practices (*'urf tijari*) and the nature of the asset placed in custody.
- S** 14.5 In the case of any loss or damage to the asset placed in custody, the custodian shall not be held liable for such loss or damage except for the loss or damage arising from custodian's misconduct (*ta`addi*), negligence (*taqsir*) or breach of specified terms (*mukhalafah al-shurut*).
- S** 14.6 A custodian shall not entrust the asset placed in his custody to a third party without the permission of the safekeeping depositor. Otherwise, the custodian shall be fully responsible for the asset should the asset be lost or damaged.
- G** 14.7 The permission to entrust the asset placed in custody to a third party may be expressed by appropriate documentation or by any other methods which do not contravene Shariah principles.

- S** 14.8 All costs related to the asset placed in custody shall be borne by the safekeeping depositor.
- G** 14.9 Notwithstanding paragraph 14.8, it is allowed for the contracting parties to agree that the custodian bears the costs either wholly or partially.

## ARRANGEMENT OF *WADI'AH* WITH OTHER CONTRACTS OR CONCEPTS

### 15. Arrangement of *Wadi'ah* with Charges

- G** 15.1 The contracting parties may agree to a payment of charges in consideration for the safekeeping service provided by the custodian.
- S** 15.2 Pursuant to paragraph 15.1, the relationship between the contracting parties shall be governed by the principles of *ijarah*. Under this principle, the custodian shall be fully responsible for the loss or damage of the asset placed in custody unless the custodian proves that the loss or damage has not been caused by his negligence, misconduct or breach of specified terms.

### 16. Utilisation of the Money by the Custodian

- S** 16.1 In the event that a *wadi'ah* asset is a fungible asset (*mal mithli*) such as money, whereby the custodian is allowed to utilise the asset, the *wadi'ah* contract shall be construed as a *qard* contract and shall be governed by the Shariah requirements pertaining to *qard*<sup>3</sup>.

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<sup>3</sup> Separate guidelines will be issued to outline the Shariah requirements and operational requirements pertaining to the *qard* contract.

**DISSOLUTION (*FASAKH*) AND COMPLETION (*INTIHA'*) OF *WADI'AH*****17. Dissolution of *Wadi'ah* contract**

- S** 17.1 A *wadi'ah* contract is dissolved under the following circumstances:
- (a) any of the contracting parties unilaterally terminates the contract;
  - (b) both contracting parties mutually agree to terminate the contract;
  - (c) any of the contracting parties unilaterally terminates the contract due to misconduct (*ta`addi*), negligence (*taqsir*) or breach of specified terms (*mukhalafah al-shurut*) of the contract by the other;
  - (d) demise or dissolution of either the custodian or the safekeeping depositor;
  - (e) loss of legal capacity by any of the contracting parties; or
  - (f) the safekeeping depositor transfers the ownership of the asset placed in custody to a third party.

**18. Completion of *Wadi'ah* contract**

- S** 18.1 A *wadi'ah* contract ends upon the maturity date as agreed by the contracting parties.

**19. Effects of Dissolution or Completion of *Wadi'ah* contract**

- S** 19.1 Upon the dissolution or completion of the contract, the safekeeping depositor shall be responsible for collecting the asset placed in custody.
- S** 19.2 For purposes of paragraph 17.1(d), in the event of the demise of a safekeeping depositor, the legal heir(s) of the safekeeping depositor is responsible to collect the asset placed in custody.
- S** 19.3 Pursuant to paragraph 19.2, the custodian shall not be responsible for ensuring whether the legal heir has distributed the asset according to any substantive law or law of distribution (*fara'id*).

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- G** 19.4 In the event that the safekeeping depositor or the legal heir(s) fails to collect the asset placed in custody, the custodian may:
- (a) charge a fee for the safekeeping service, provided that the fee is mutually agreed by the safekeeping depositor and the custodian;
  - (b) charge the actual cost for the safekeeping service; or
  - (c) surrender the asset placed in custody to the relevant authorities.

## PART C OPERATIONAL REQUIREMENTS

The regulatory expectations set out in Part C emphasize on instituting effective policies and procedures to facilitate governance and oversight, structuring, risk management as well as business conduct and disclosure for a *wadi'ah* contract. The policy intent of these operational requirements is to provide adequate safeguards to stakeholders' interest, promote orderly implementation of business and risk management strategies and drive the development of necessary systems, processes and control measures while observing Shariah requirements.

### 20. Governance and Oversight

**Principle 1: The IFI shall establish proper oversight arrangement, supported by comprehensive internal policies and procedures to ensure *wadi'ah* transactions are conducted using sound practices and comply with Shariah**

#### Board of Directors

- S** 20.1 The board of directors (the Board) of the IFI shall ensure effective oversight function by establishing a good governance structure to facilitate the management and implementation of transactions under a *wadi'ah* contract. The adequacy of governance shall be commensurate with the nature and risk profile associated with the *wadi'ah* contract.
- S** 20.2 The Board shall ensure that-
- (a) the IFI establishes its business strategies which include its risk management capabilities, that is aligned with the application of *wadi'ah*;
  - (b) adequate infrastructure are in place to implement the requirements of the *wadi'ah* contract;
  - (c) relevant internal policies and procedures governing *wadi'ah* transactions are established, approved and implemented at all times by the IFI. Policies relating to Shariah matters must be approved by the IFI's Shariah committee. At a minimum, these internal policies shall cover the following aspects:

- (i) asset descriptions;
  - (ii) fees and charges;
  - (iii) risk management; and
  - (iv) information disclosures.
- (d) the internal policies and procedures are reviewed regularly by the IFI in order to remain relevant, current and effective in managing the overall operational conduct and risk profile of *wadi'ah* transactions; and
- (e) an independent review is conducted regularly by the IFI to assess its compliance with policy documents specified by the Bank from time to time and internal policies established by IFI.

### Shariah Committee

- S** 20.3 The Shariah committee of the IFI shall:
- (a) validate and endorse that the terms and conditions stipulated in the legal documentations and other relevant documents to ensure that product manuals, marketing advertisements and brochures relating to *wadi'ah* transactions are in compliance with Shariah;
  - (b) endorse internal policies and procedures governing the application of *wadi'ah* and ensure that such policies and processes do not contain elements which are inconsistent with Shariah; and
  - (c) perform the oversight role from the Shariah compliance aspect of *wadi'ah* transactions through the Shariah review and Shariah audit functions.

### Senior Management

- S** 20.4 The senior management of the IFI shall:
- (a) establish and implement internal policies and procedures governing *wadi'ah* transactions which at minimum, must:
    - (i) outline the applicable legal documentations;
    - (ii) establish the accountabilities to perform the approval, communication, compliance monitoring and review functions;

- (iii) outline the eligibility criteria of assets that qualify for *wadi'ah* transactions;
  - (iv) establish risk management policies that are able to identify, measure and mitigate risks inherent in *wadi'ah* transactions;
  - (v) outline procedures between the IFI's arrangements with third parties in managing the *wadi'ah* assets;
  - (vi) outline parameters to determine expenditures that form part of the *wadi'ah* safekeeping cost; and
  - (vii) provide reference to applicable Shariah rulings.
- (b) clearly communicate the approved internal policies and procedures within the IFI, including Shariah decisions, to relevant stakeholders;
  - (c) review and monitor regulatory and Shariah compliance on the approved internal policies and procedures; and
  - (d) establish and maintain an adequate mechanism that is able to identify, measure, mitigate and monitor risks inherent in *wadi'ah* transactions.

## 21. Structuring

**Principle 2: The IFI shall ensure that the structuring and implementation of *wadi'ah* is supported by policies, processes and procedures, and the legal documentation accurately reflect *wadi'ah* in accordance with Shariah**

- S** 21.1 The IFI shall ensure that the type of *wadi'ah* concept and its Shariah rulings are appropriately applied in the IFI's products or services.

### Contracting Parties

- G** 21.2 The IFI may enter into a *wadi'ah* arrangement with an asset owner or prospective customer. The arrangement shall come into effect upon the owner's or customer's depositing of the asset with the IFI.
- S** 21.3 Where a third party is appointed by the IFI to safe keep the *wadi'ah* asset, the IFI is required to obtain prior written consent from the customer. In this instance, the obligation to safeguard the deposited asset continues to remain with the IFI. For example, an IFI shall assess the third party's capacity and capability to properly safe keep the asset.
- S** 21.4 The IFI shall be held liable for any loss or damage of the asset where the safekeeping service is charged. In this respect, the IFI shall have proper risk controls, such as having takaful coverage on the asset.
- S** 21.5 In cases where the owner of the asset is a minor, the IFI shall obtain written permission of the asset owner's guardian before entering into a *wadi'ah* contract with the minor. The IFI shall ensure that the guardian has the right to act on behalf of the minor in operationalizing the *wadi'ah* contract.

### *Wadi'ah* Asset

- S** 21.6 In structuring a *wadi'ah* contract, the IFI shall determine upfront the underlying asset to be used and the IFI shall ensure that such asset meets the criteria of a *wadi'ah* asset as set out in **Part B (Shariah Requirements**

and Optional Practices)<sup>4</sup>.

- S** 21.7 For the purpose of paragraph 21.6, the Shariah Committee shall ascertain whether the asset to be deposited by prospective customers is Shariah compliant. In addition, such parameters ascertained by the IFI's Shariah Committee shall be reflected in the IFI's internal policies. The IFI shall refer to its Shariah Committee if there is a departure from the internal policies.
- S** 21.8 The IFI must ensure that the asset in its custody meets the purpose of the *wadi'ah* transaction and is an asset which is non-perishable or non-consumable in nature.
- S** 21.9 All *wadi'ah* assets must be clearly described and specified in the *wadi'ah* legal documentation. At a minimum, the IFI must specify the following:
- (a) nature or type of an asset; and
  - (b) conditions and specifications<sup>5</sup> of the asset.
- G** 21.10 In the event where the details of an asset are uncertain, the IFI may refuse to accept the asset without providing reasons.<sup>6</sup>
- S** 21.11 The IFI shall ensure that the safekeeping method adopted by the IFI or by a party referred to in paragraph 21.3 takes into account the nature of the asset, for example, its size and fragility, and such safekeeping method shall be pre-agreed upon between the customer and the IFI prior to the execution of a *wadi'ah* contract.

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<sup>4</sup> In addition, the IFI may make further references to the list of Shariah non-compliant goods in the Guidelines on Accepted Bills-i and Jabatan Kemajuan Islam Malaysia's Halal Directory.

<sup>5</sup> Specification or identification of asset for non-monetary assets may be done by way of a Declaration Form at the point of contract e.g. quantity, weight, material.

<sup>6</sup> For example, where a customer had given incomplete information on an asset.

### **Offer and Acceptance**

- S** 21.12 In establishing a *wadi'ah* contract, the IFI shall ensure that the offer and its acceptance have to be expressed in writing<sup>7</sup> and be clearly concluded between the IFI and a customer.
- S** 21.13 The IFI shall also ensure that the nature of an offer and acceptance for the purpose of a *wadi'ah* contract satisfies the criteria set out in **Part B** (Shariah Requirements and Optional Practices).

### **Costs and Expenses**

- S** 21.14 Where the IFI provides safekeeping services to customers, the IFI shall establish internal policies and procedures to determine the cost allocation of the safekeeping service.
- S** 21.15 The costs and expenses related to the safekeeping of assets shall be borne by the customers in the form of safekeeping charges. The safekeeping charges shall be pre-agreed upon between the customer and the IFI prior to the execution of a *wadi'ah* contract.
- S** 21.16 In relation to paragraph 14.9, the IFI may structure a *wadi'ah* arrangement that transfers the cost fully or partially to the IFI and the IFI shall make the costs transparent to the customer.

### **Documentation**

- S** 21.17 The IFI shall develop a complete set of legal documentation<sup>8</sup> for *wadi'ah* contracts that complies with Shariah as well as "*Know-Your-Customer*" requirements.
- S** 21.18 The IFI shall clearly clarify the rights and obligations of parties to the *wadi'ah* contract. This would include details on the IFI's liability for any loss or

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<sup>7</sup> This is to avoid legal risk as well as to safeguard the interests of the customer.

<sup>8</sup> Refer to Appendix 3 for the general guidance on documentation to the customer.

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damage to the deposited asset and the submission of the customer's declaration to the IFI that the deposited assets are Shariah compliant.

- S** 21.19 The IFI shall sufficiently clarify any Arabic terminology related to *wadi'ah* to enable prospective customers to understand the Shariah concept relating to *wadi'ah*.

## 22. Risk Management

### **Principle 3: The IFI shall institute and implement a sound and comprehensive risk management system to effectively manage risks throughout a *wadi'ah* contract**

- S** 22.1 The IFI shall establish appropriate internal policies and procedures, at minimum, on the following:
- (a) process and procedures for identification, assessment, measurement, monitoring, mitigation, control and reporting of risk exposures associated with *wadi'ah* contracts;
  - (b) procedures for acceptance of assets;
  - (c) proper marketing strategy and consumer and market conduct;
  - (d) clear processes and procedures for the exit mechanism; and
  - (e) policies and procedures which are in line with regulatory policies stipulated in relevant policy documents on risk management specified by the Bank.
- S** 22.2 For purposes of establishing policies and procedures under paragraph 22.1(a), the IFI shall establish systems and internal controls that address risks consistent with its risk appetite throughout a *wadi'ah* contract which include the following:
- (a) identification and assessment – identify, measure and assess all relevant risks inherent in *wadi'ah* transactions;
  - (b) risk mitigation – undertake an appropriate risk mitigation technique<sup>9</sup> to minimise losses;
  - (c) monitoring – establish safekeeping systems and procedures to monitor and properly maintain assets to ensure the IFI's obligation to return the asset can be fulfilled at any time as required by the customer; and
  - (d) reporting – establish an appropriate and timely reporting mechanism.

<sup>9</sup> For instance, the IFI may provide *takaful* coverage for safe deposit box services rendered to a customer under a *wadi'ah* contract to mitigate the IFI from potential losses arising from any damage to the customer's *wadi'ah* asset held by the IFI.

## 23. Business Conduct and Disclosure

**Principle 4: The IFI shall be honest and fair in all its statements, treat its customers fairly, ensure that its operations are governed by an effective system of Shariah governance, and carries its business in a transparent, responsible and professional manner**

### General Principles

- S** 23.1 The IFI shall establish internal policies and procedures on proper business conduct when dealing with customers with respect to *wadi'ah* transactions to ensure that it is being fair and transparent, and conduct its business in a professional manner and in compliance with Shariah.
- S** 23.2 The internal policies and procedures on the business conduct of the IFI for *wadi'ah* transactions shall include the requirements on disclosure of information to its customers. Such disclosures of information shall be made prior to, and at the point of, entering into a *wadi'ah* contract and shall be clear, timely and accurate.

### Fair Dealings

- S** 23.3 The IFI shall conduct in a fair and transparent manner when it undertakes the marketing and offering of *wadi'ah* contracts.
- S** 23.4 The IFI shall exercise due care and diligence throughout the tenure of a *wadi'ah* product.

### Information Disclosure

- S** 23.5 The IFI shall provide adequate and accurate information to prospective customers with regard to its *wadi'ah* product. At a minimum, information to be disclosed shall include the following:
- (a) comprehensive description of the *wadi'ah* product, namely the contractual relationship between the asset owner and custodian;
  - (b) overview of the *wadi'ah* transaction structure;

- (c) roles, responsibilities, rights and obligations of contracting parties;
- (d) key terms and conditions of the *wadi'ah* contract;
- (e) features of the *wadi'ah* product; and
- (f) applicable fees and charges.

**S** 23.6 The IFI shall also ensure that sufficient effort has been given in ensuring the prospective customers clearly understand the concept, terms and conditions of a *wadi'ah* contract.

### Financial Disclosure

**S** 23.7 The IFI shall maintain all records relating to its *wadi'ah* products including the safekeeping and transaction records. These internal records must be updated regularly and should be available for inspection by the Bank and/or external auditors as and when required from time to time.

#### Question 1

Please list your IFI's products and/or services that apply the contracts of *wadi'ah yad amanah* and *wadi'ah yad amanah* with charges.

#### Question 2

For *takaful* operators, what would be the specific *takaful* requirements on the implementation of the *wadi'ah* contract?

#### Question 3

With reference to paragraph 16, products and services involving utilisation of money that previously adopts *wadi'ah yad dhamanah* shall be required to adopt the *qard* contract. What would be the implementation issues that your IFI may face and the appropriate time required to make necessary changes (if any).

## APPENDICES

### 24. Appendix 1 Legitimacy of *Wadi'ah*

24.1 The legitimacy of *wadi'ah* is derived from the Quran and founded on the *Sunnah* of Prophet Muhammad (peace be upon him) and the consensus of Muslim jurists (*ijma'*).

#### The Quran

24.2 Although the concept of *wadi'ah* is not specifically mentioned in the Quran, the concept of trustworthiness, which is an important feature of *wadi'ah*, is expressed in several places in the Quran. The word “trust” or “*amanah*” is used in the Quran to indicate the importance of fulfilling all types of trust including that of safekeeping (*wadi'ah*) and returning the *amanah* when it is due.

24.3 The following Quran verses imply the general permissibility of *wadi'ah*.

i. وَالَّذِينَ هُمْ لِأَمَانَاتِهِمْ وَعَهْدِهِمْ رَاعُونَ.

“Those who are true to their trusts and pledges” (*Surah al-Mu'minun*, verse 8).

ii. إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا.

“Truly, Allah commands you to hand back your trusts to the (rightful) owners” (*Surah al-Nisaa'*, verse 58).

iii. فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ.

“But if any of you entrusts another with a pledge (without a document of contract, witnesses or things produced as pledges of security), let the trustee deliver up that which is entrusted to him to its owner” (*Surah al-Baqarah*, verse 283).

### The *Sunnah* of Prophet Muhammad (peace be upon him)

24.4 The following *hadiths* imply the general permissibility of *wadi'ah*.

i. عن عائشة في هجرة النبي - صلى الله عليه وسلم - قالت : وأمر تعني رسول الله -

صلى الله عليه وسلم - عليا رضي الله عنه أن يتخلف عنه بمكة حتى يؤدي عن

رسول الله - صلى الله عليه وسلم - الودائع التي كانت عنده للناس.

`Aishah reported that on the occasion of the Prophet's migration to Medina, "The Messenger of Allah (peace be upon him) asked `Ali (may Allah be pleased with him) to take his place in Makkah in order to deliver the deposited things to their owners" (*al-Sunan al-Kubra* 6/289, *Hadith No.* 12696).

ii. عن أبي هريرة عن النبي صلى الله عليه وسلم قال: أد الأمانة إلى من ائتمنك ولا

تخن من خانك.

Abu-Hurairah reported that Prophet Muhammad (peace be upon him) said: "Return the trust to those who entrusted you, and do not betray those who betrayed you" (*Sunan Abu Dawud*, 3/290, *Hadith no.* 3535).

### The Consensus of Muslim Jurists (*ijma`*)

24.5 Muslim jurists have reached *ijma`* (consensus) on the permissibility of *wadi'ah*.

**25. Appendix 2 Glossary**

<b>Terms</b>	<b>Definition</b>
<i>Amanah</i>	Trusteeship.
<i>Fara'id</i>	The knowledge or rules on estate distribution according to the Islamic principles.
<i>Ijma`</i>	Consensus of Muslim jurists.
<i>Mal Mithli</i>	Fungible asset refers to a comparable or interchangeable assets that are valued or treated as the same class of assets.
<i>Mudi`</i>	Safekeeping depositor.
<i>Mukhalafah al-shurut</i>	Breach of specified terms.
<i>Qard</i>	Contract of lending a fungible asset to a borrower who is bound to return an equivalent replacement.
<i>Rahn</i>	Pledge/Charge.
<i>Ta`addi</i>	Misconduct.
<i>Taqsir</i>	Negligence.
<i>`Urf tijari</i>	Customary business practices which are acceptable by the community and does not contradict Shariah rulings.
<i>Wadi`</i>	Custodian.
<i>Wadi`ah yad amanah</i>	Safekeeping based on trusteeship.

**26. Appendix 3 General Guidance on Documentation to Customer**

- 26.1 At a minimum, the documentation shall clearly stipulate the following:
- (a) nature of *wadi'ah* contract;
  - (b) rights and obligations of contracting parties to a *wadi'ah* contract;
  - (c) applicable fees and charges;
  - (d) any prohibitions on assets deposited (i.e. a restriction on liquid forms of assets or explosive contents);
  - (e) arrangements in the event of customer's death or bankruptcy;
  - (f) arrangements in the event of dissolution or completion of the *wadi'ah* contract; and
  - (g) any *takaful* arrangements in protecting the deposited asset.

**27. Appendix 4 Related Legal and Policy Documents**

- 27.1 This policy document shall be read together with the following legal instrument and policy documents, where applicable:
- (a) Shariah Advisory Council (SAC) rulings published by the Bank<sup>10</sup>;
  - (b) Shariah Governance Framework for Islamic Financial Institutions;
  - (c) Guidelines on Corporate Governance for Licensed Islamic Banks;
  - (d) Guidelines on Corporate Governance for Development Financial Institutions;
  - (e) Risk Governance;
  - (f) Guidelines on Product Transparency and Disclosure;
  - (g) Guidelines on Financial Reporting for Islamic Banking Institutions;
  - (h) Guidelines on Financial Reporting for Development Financial Institutions;
  - (i) Guidelines on Financial Reporting for Takaful Operators;
  - (j) Guidelines on Imposition of Fees and Charges on Financial Products and Services; and
  - (k) Guidelines on Outsourcing.

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<sup>10</sup> Including Shariah resolutions in Islamic Finance, standards, circulars and/or any directive pertaining to Shariah matters issued by the Bank.