



**BANK NEGARA MALAYSIA**  
CENTRAL BANK OF MALAYSIA

## ***Hibah***

Applicable to:

1. Licensed Islamic banks
2. Licensed takaful operators and professional retakaful operators
3. Licensed banks and licensed investment banks carrying on Islamic banking business
4. Prescribed institutions carrying on Islamic financial business

---

**TABLE OF CONTENTS**

<b>PART A</b>	<b>OVERVIEW.....</b>	<b>1</b>
1.	Introduction.....	1
2.	Applicability .....	2
3.	Legal provisions .....	2
4.	Effective date.....	2
5.	Interpretation .....	2
6.	Related legal instruments and policy documents .....	3
<b>PART B</b>	<b>SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES .....</b>	<b>4</b>
7.	Compliance with Part B .....	4
8.	Definition .....	4
9.	Nature.....	4
10.	Components of <i>hibah</i> .....	4
11.	Parties involved .....	4
12.	Offer ( <i>ijab</i> ) of <i>hibah</i> .....	5
13.	<i>Hibah</i> asset .....	5
14.	Effect of <i>hibah</i> .....	5
15.	Conditional <i>hibah</i> .....	6
16.	Arrangement of <i>hibah</i> with <i>ijarah</i> contract .....	6
17.	Arrangement of <i>hibah</i> with <i>mudarabah</i> contract.....	7
18.	Arrangement of <i>hibah</i> with <i>musyarakah</i> contract .....	7
19.	Arrangement of <i>hibah</i> with <i>wakalah</i> contract.....	7
20.	Arrangement of <i>hibah</i> with <i>qard</i> contract.....	8
21.	Completion ( <i>intiha'</i> ) of <i>hibah</i> .....	8
<b>PART C</b>	<b>OPERATIONAL REQUIREMENTS .....</b>	<b>9</b>
22.	Governance and oversight .....	9
23.	Documentation .....	11
24.	Risk management .....	11
25.	Business and market conduct .....	12
26.	Submission requirement.....	13
<b>Appendix 1</b>	<b>Legitimacy of <i>hibah</i>.....</b>	<b>14</b>
<b>Appendix 2</b>	<b>Glossary.....</b>	<b>15</b>

## PART A OVERVIEW

### 1. Introduction

- 1.1 Compliance with Shariah requirement is a prerequisite in ensuring the legitimacy and integrity of Islamic financial products and services. In meeting this expectation, it is essential for an Islamic financial institution to establish sound operational framework and infrastructure to ensure that its conduct of Islamic financial transactions is consistent with Shariah.
- 1.2 The Shariah contract-based regulatory policy is intended to promote consistency of Shariah contract application in Islamic financial products and services. This policy is envisaged to strengthen legal certainty and Shariah compliance practices by an Islamic financial institution.
- 1.3 *Hibah* is a benevolent contract for the unilateral transfer of ownership of an asset, hereinafter referred to as a *hibah* asset from a donor to a recipient without any consideration. In the context of Islamic financial transaction, *hibah* may be arranged with other Shariah contracts or concepts, namely *ijarah*, *mudarabah*, *musyarakah*, *wakalah* and *qard*, referred to as *hibah* arrangements in Part B. An Islamic financial institution may grant *hibah* to its customer at its own discretion but subject to conditions specified by Shariah requirements.
- 1.4 In the case of a family takaful certificate and a personal accident takaful certificate effected by a takaful participant upon his life providing for the payment of takaful benefits upon his death, a takaful participant may nominate an individual to receive takaful benefits upon his death under the takaful certificate as a beneficiary under a conditional *hibah*, if the takaful participant wishes to do so in accordance with the requirements in Schedule 10 of the Islamic Financial Services Act 2013 (IFSA).
- 1.5 This policy document aims to—
  - (a) provide reference on the Shariah rulings applicable to *hibah*;
  - (b) set out key operational requirements for the implementation of *hibah*; and
  - (c) promote end-to-end compliance with Shariah requirements, which further promote sound Islamic banking and takaful practices and safeguard consumer interests.
- 1.6 This policy document sets out the following:
  - (a) salient features and essential conditions of *hibah* in Part B; and
  - (b) regulatory and supervisory expectations for the operational requirements on governance and oversight, documentation, risk management, as well as business and market conduct in Part C.

## 2. Applicability

- 2.1 This policy document is applicable to all Islamic financial institutions as defined in paragraph 5.2.
- 2.2 For avoidance of doubt, this policy document complements and does not derogate from the requirements of Schedule 10 of the IFSA with regards to a nomination made by a takaful participant for an individual to receive takaful benefits as a beneficiary under a conditional *hibah*.

## 3. Legal provisions

- 3.1 The requirements in Part B of this policy document are specified pursuant to–
- (a) section 29(1) of the IFSA; and
  - (b) section 33E(1) of the Development Financial Institutions Act 2002 (DFIA).
- 3.2 The requirements in Part C of this policy document are specified pursuant to–
- (a) sections 29(2), 57, 135(1) and 155 of the IFSA; and
  - (b) sections 33E(2), 41, 42C(1) and 116 of the DFIA.
- 3.3 The guidance in this policy document is issued pursuant to section 277 of the IFSA and section 126 of the DFIA.

## 4. Effective date

- 4.1 This policy document comes into effect on 31 July 2018, except for paragraph 26 which takes effect immediately upon issuance of this policy document.

## 5. Interpretation

- 5.1 The terms and expressions used in this policy document must have the same meanings as assigned under the Financial Services Act 2013 (FSA), IFSA and DFIA, as the case may be, unless otherwise defined in this policy document.
- 5.2 For the purpose of this policy document–
- S** denotes a standard, an obligation, a requirement, specification, direction, condition and any interpretative, supplemental and transitional provisions that must be complied with. Non-compliance may result in enforcement actions;
- G** denotes guidance which may consist of statements or information, intended to promote common understanding and advice or recommendations that are encouraged to be adopted;
- “Islamic financial institution” or “IFI”** means–
- (a) licensed Islamic banks;
  - (b) licensed takaful operators and professional retakaful operators;
  - (c) licensed banks and licensed investment banks approved under section 15(1)(a) of the FSA to carry on Islamic banking business; and

- (d) prescribed institutions approved under section 33B(1) of the DFIA to carry on Islamic financial business.

5.3 A glossary of terms used in this policy document is set out in Appendix 2.

## **6. Related legal instruments and policy documents**

6.1 This policy document must be read together with other relevant legal instruments and policy documents that have been issued by Bank Negara Malaysia (the Bank).

## PART B SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES

### 7. Compliance with Part B

- S 7.1 An IFI which uses the *hibah* arrangement for its products and services must ensure that such products and services are in compliance with Part B of this policy document.

### 8. Definition

- S 8.1 *Hibah* refers to a transfer of ownership of an asset from a donor (*wahib*) to a recipient (*mawhub lahu*) without any consideration.

### 9. Nature

- S 9.1 *Hibah* is a form of benevolent (*tabarru`*) contract. The inherent nature of a *hibah* is the unilateral transfer of ownership of a *hibah* asset from the donor to the recipient without any consideration.
- S 9.2 A *hibah* is revocable by the donor prior to—
- (a) the recipient taking possession of the *hibah* asset; or
  - (b) fulfilment of the condition(s) stipulated in the *hibah* arrangement in the case of conditional *hibah*.
- S 9.3 Notwithstanding paragraph 9.2, a *hibah* granted by a father to his child is revocable anytime except in the following circumstances:
- (a) ownership of the *hibah* asset has been transferred to a third party; or
  - (b) the *hibah* asset is encumbered or subject to claim by a third party.

### 10. Components of *hibah*

- S 10.1 *Hibah* arrangement shall consist of the following components:
- (a) parties involved, comprising donor and recipient;
  - (b) offer (*ijab*) of *hibah*; and
  - (c) *hibah* asset.

### 11. Parties involved

- S 11.1 The parties involved in a *hibah* arrangement shall be a donor and a recipient who is a natural person or a legal entity.
- S 11.2 The donor must have the legal capacity<sup>1</sup> to perform a benevolent act (*ahl li al-tabarru`*).

---

<sup>1</sup> Legal capacity of a person, from Shariah perspective, is defined as the capacity to assume rights and responsibilities and capacity to give legal effect to his action. Among the important conditions are that the person must possess sound mind and the capacity to distinguish between what is harmful or beneficial to one's interests. Legal capacity of a legal entity is defined as eligibility of an entity to acquire rights and assume responsibilities.

- G 11.3 In the event that a recipient has no legal capacity, a parent or legal guardian of the recipient may accept and take possession of the *hibah* asset on his behalf.
- G 11.4 Any party to a *hibah* arrangement may act through an agent (*wakil*).

## 12. Offer (*ijab*) of *hibah*

- S 12.1 A *hibah* arrangement must be entered into through an offer of a *hibah* by the donor.
- G 12.2 The offer may be expressed orally, in writing or by any other methods recognised by Shariah.

## 13. *Hibah* asset

- S 13.1 An asset in a *hibah* arrangement shall be in the form of—  
(a) a tangible or intangible<sup>2</sup> asset;  
(b) a movable or immovable asset;  
(c) a share or an undivided interest in an asset<sup>3</sup>; or  
(d) any other form of assets that meet the requirements stipulated in paragraph 13.2.
- S 13.2 An asset in a *hibah* arrangement must meet the following conditions:  
(a) the asset must be recognised by Shariah, valuable, identifiable and deliverable; and  
(b) the asset must already in existence and owned by the donor.
- S 13.3 Notwithstanding paragraph 13.2(b), an asset to be received in the future by the donor is allowed to be granted as a *hibah*.
- S 13.4 An asset belonging to a minor<sup>4</sup> shall not qualify as a *hibah* asset.

## 14. Effect of *hibah*

- S 14.1 *Hibah* shall take effect upon—  
(a) the recipient, his guardian (in respect of the recipient who is a minor) or his agent (*wakil*) taking possession of the *hibah* asset; or  
(b) fulfilment of the condition(s) stipulated in the *hibah* arrangement in the case of conditional *hibah*;  
at which point ownership of a *hibah* asset must transfer from the donor to the recipient.

---

<sup>2</sup> Intangible asset may include intellectual property (e.g. patents, copyrights and trademark), goodwill and services.

<sup>3</sup> An undivided interest in a *hibah* asset may include interest in immovable or movable property such as land or shares in a corporation.

<sup>4</sup> Definition of a minor is subject to provision specified in IFSA or any provision in any other relevant laws.

- S 14.2 Possession of *hibah* asset shall take place when—
- (a) the donor releases ownership of the asset (*takhliyah*) to the recipient through any mechanism permitted by Shariah including customary business practice (*`urf tijari*); and
  - (b) the recipient has access to the asset (*tamkin*) and assumes ownership risk.
- S 14.3 Possession of the *hibah* asset must either be in the form of physical possession (*qabd haqiqi*) or constructive possession (*qabd hukmi*).
- S 14.4 A *hibah* arrangement shall not take effect and the *hibah* asset shall form part of the donor's inheritance in the event of demise of the donor or recipient prior to—
- (a) recipient takes possession of the *hibah* asset; or
  - (b) fulfilment of the condition(s) stipulated in the *hibah* arrangement in the case of conditional *hibah*.
- S 14.5 Notwithstanding paragraph 14.4(b), where the *hibah* is conditional upon the demise of the donor, the *hibah* shall take effect and the ownership of *hibah* asset must be transferred to the recipient upon the demise of the donor.
- S 14.6 The effect of a *hibah* is permanent. Any condition that limits the period of a *hibah* shall be void and must not affect the validity of the *hibah*.

## 15. Conditional *hibah*

- G 15.1 A donor may offer *hibah* contingent upon a certain condition or event in the future.
- S 15.2 In relation to paragraph 15.1, such condition or event must be Shariah compliant.
- S 15.3 A conditional *hibah* upon the demise of the donor must only be applied in *takaful*.

## ARRANGEMENT OF *HIBAH* WITH OTHER CONTRACTS OR CONCEPTS

### 16. Arrangement of *hibah* with *ijarah* contract

- G 16.1 A *hibah* may be arranged alongside an *ijarah* contract, whereby the lessor (donor) may transfer ownership of the leased asset to the lessee (recipient) upon settlement of all obligations under the *ijarah* contract in accordance with the following methods:
- (a) to grant the *ijarah* asset as *hibah* based on a binding promise (*wa`d mulzim*); or
  - (b) a conditional *hibah* which is contingent upon full settlement of all obligations under the *ijarah* contract.

- S 16.2 Where the transfer of ownership under an *ijarah* contract is by way of a binding promise as stipulated in paragraph 16.1(a), there must be a *hibah* to effect the transfer of ownership in accordance with the arrangement.
- S 16.3 Where the transfer of ownership under an *ijarah* contract is by way of a conditional *hibah* as stipulated in paragraph 16.1(b), the ownership of the leased asset must be transferred to the lessee once the conditions are fulfilled.
- S 16.4 A *hibah* arrangement under paragraph 16.1 must be entered into separately from the *ijarah* contract.
- G 16.5 A lessor may grant *hibah* to a lessee who fulfils certain agreed terms and conditions such as payment of the rental on schedule.

### **17. Arrangement of *hibah* with *mudarabah* contract**

- G 17.1 A *hibah* may be arranged alongside with a *mudarabah* contract where a *mudarib* (donor) grants *hibah* to a *rabbul mal* (recipient).
- S 17.2 A *hibah* arrangement referred to in paragraph 17.1 must satisfy the following conditions:
- (a) the *hibah* must not be sourced from the *mudarabah* capital or the *rabbul mal*'s portion of the profit; and
  - (b) the *hibah* must not have the effect of a guarantee of *mudarabah* capital or profit by the *mudarib*.

### **18. Arrangement of *hibah* with *musyarakah* contract**

- G 18.1 A *hibah* may be arranged alongside with a *musyarakah* contract where a partner (donor) grants *hibah* to partner(s) (recipient).
- S 18.2 In relation to paragraph 18.1, the *hibah* must not have the effect of a guarantee of *musyarakah* capital or *musyarakah* profit by the partner who is the donor.

### **19. Arrangement of *hibah* with *wakalah* contract**

- G 19.1 A *hibah* may be arranged alongside with a *wakalah* contract.
- G 19.2 Under an arrangement of *wakalah bi al-istithmar*, the *wakil* (donor) may grant *hibah* to the *muwakkil* (recipient).
- S 19.3 A *hibah* arrangement referred to in paragraph 19.2 must be subject to the following conditions:
- (a) the source of *hibah* must not be from the *wakalah* capital or the *wakalah* profit payable to the *muwakkil*; and
  - (b) the *hibah* must not have the effect of a guarantee of the *wakalah* capital or the *wakalah* profit payable to the *muwakkil*.

- G 19.4 A donor may appoint a *wakil* to manage the *hibah* asset prior to the recipient taking possession of the *hibah* asset.

## **20. Arrangement of *hibah* with *qard* contract**

- G 20.1 A donor may be a borrower and a recipient may be a lender under a *qard* contract.
- S 20.2 The borrower under a *qard* contract must not grant *hibah* that is conditional to the *qard* contract to the lender, in the form of cash, in kind or benefit.
- S 20.3 The granting of *hibah* that is solely based on the borrower's discretion to the lender is allowed.
- S 20.4 The borrower must not disclose, promote or market the indicative rate or prospective granting of *hibah*.
- S 20.5 The borrower shall have the discretion to disclose historical information on the *hibah* granted provided that such information shall not–
- (a) be construed as an indicative *hibah*; or
  - (b) give rise to any obligation on the part of the borrower to provide such *hibah* to the lender.

## **21. Completion (*intiha'*) of *hibah***

- S 21.1 A *hibah* completes upon the recipient, his guardian (in respect of a recipient who is a minor) or his agent (*wakil*), as the case may be, taking possession of the *hibah* asset.

## PART C OPERATIONAL REQUIREMENTS

### 22. Governance and oversight

- G 22.1 The requirements under this part complement the broad governance and oversight expectations specified under the relevant policy documents on governance issued by the Bank.
- S 22.2 While the broad governance and oversight principles are applicable to *hibah*, an IFI must observe specific requirements on governance arrangements as outlined in this policy document to address distinct risks associated with *hibah*.
- S 22.3 An IFI must have sufficient understanding of its risk profile and ensure the availability of personnel with the appropriate knowledge and skills to implement *hibah* arrangements.

#### Board of Directors

- S 22.4 The Board of Directors of an IFI (the Board) has overall responsibility for Shariah governance and Shariah compliance of the IFI. As such, the Board must—
- (a) approve the business and risk strategies of an IFI with regard to the arrangement of *hibah*;
  - (b) approve and oversee the implementation of policies and procedures governing *hibah* arrangements, which must include the following aspects:
    - (i) applicability of *hibah* in Islamic financial products and services;
    - (ii) types of eligible assets or sources of *hibah*;
    - (iii) process to determine, allocate and distribute *hibah*; and
    - (iv) risk management;
  - (c) ensure that all Shariah related matters are endorsed by the Shariah Committee;
  - (d) ensure that appropriate internal controls, systems and infrastructure are in place to implement *hibah* in accordance with Shariah requirements;
  - (e) ensure that sufficient resources are in place, and that the IFI has adequate and senior management with sufficient knowledge and competency on the concept, application and risks associated with the *hibah* arrangement; and
  - (f) ensure that independent review is conducted regularly to assess compliance with the policy documents issued by the Bank and internal policies established by the IFI.

#### Shariah Committee

- S 22.5 The Shariah Committee has the responsibility to advise an IFI in ensuring its business, affairs and activities involving *hibah* arrangement comply with Shariah. As such, the Shariah Committee must—

- (a) endorse the application of Shariah requirements in the relevant policies and procedures governing the *hibah* arrangement;
- (b) review the terms and conditions stipulated in the legal documentation and other documents such as information published on promotional materials, product manuals or other publications, and endorse that the terms and conditions are in compliance with Shariah;
- (c) advise and provide clarification on relevant Shariah rulings, decisions or policy documents on Shariah matters issued by the Bank, and if relevant, any other authorities; and
- (d) assess the work carried out by Shariah review and Shariah audit, and endorse any rectification measures to ensure that the *hibah* arrangement complies with Shariah requirements.

### Senior management

- S 22.6 The senior management has the responsibility to ensure the business and operations of the IFI comply with Shariah requirements. As such, the senior management must—
- (a) develop and implement internal policies and procedures relating to *hibah* arrangements. At minimum, the internal policies must—
    - (i) identify the relevant procedures and legal documentation in a *hibah* arrangement, wherever applicable;
    - (ii) identify the assets that are eligible for *hibah*;
    - (iii) identify the persons who are eligible recipients of *hibah*;
    - (iv) establish operational parameters for the allocation and distribution of *hibah*, which include computation methodology, settlement mechanism and information disclosure;
    - (v) assign the accountabilities for the approval, compliance, monitoring and review function;
    - (vi) outline risk management processes for the identification, measurement, monitoring and mitigation of risks inherent in *hibah* arrangements;
    - (vii) provide reference to applicable Shariah rulings<sup>5</sup>; and
    - (viii) provide reference to relevant policies, such as policies on risk management and corporate governance;
  - (b) ensure adequate system and infrastructure to support *hibah* implementation, Shariah audit and Shariah compliance;
  - (c) clearly communicate the approved internal policies and procedures to the internal stakeholders to facilitate effective implementation;
  - (d) undertake regular review and monitor compliance with the approved internal policies; and
  - (e) ensure timely disclosure of relevant information to the Board and the Shariah Committee.

---

<sup>5</sup> Refers to rulings issued by the Shariah Advisory Council (SAC) of the Bank and Shariah Committee of an IFI.

**23. Documentation**

- S 23.1 An IFI must develop a complete set of legal documentation for *hibah* arrangement that complies with Shariah.
- S 23.2 For *hibah* arrangement with contracts other than a *qard* contract, the legal documentation must include, at minimum:
- (a) the terms and conditions of *hibah*;
  - (b) the rights, duties and obligations of the parties involved in *hibah*;
  - (c) the description of *hibah* asset in the *hibah* arrangement; and
  - (d) the method, condition and timing for effecting the *hibah*.
- S 23.3 For *hibah* arrangement with *qard* contract, the legal documentation shall clearly stipulate that the borrower–
- (a) may grant *hibah* at its own discretion; and
  - (b) is not legally bound to grant *hibah* to the lender.
- S 23.4 For *hibah* arrangement with *ijarah* contract, an IFI must ensure that–
- (a) the legal documentation clearly stipulate the obligation of the lessor (donor) to transfer the ownership of the *ijarah* assets to the lessee (recipient) upon full settlement of the outstanding rental obligation; and
  - (b) the documentation evidencing the transfer of ownership must be prepared separately from an *ijarah* contract.
- S 23.5 For *hibah* arrangement in a takaful product and services, the takaful operator must record the settlement of *hibah* once the *hibah* is effected.

**24. Risk management**

- S 24.1 An IFI must institute and implement sound integrated risk management system to effectively manage risks associated with *hibah* arrangements.
- S 24.2 An IFI must establish risk management policies and procedures to identify, measure, monitor and control risks associated with *hibah* to support the IFI in discharging its responsibilities effectively.
- S 24.3 The risk management policies of an IFI must include, at minimum–
- (a) processes and procedures for the identification, assessment, measurement, monitoring, reporting and control of all risk exposures associated with *hibah* arrangements;
  - (b) appropriate control and risk mitigation measures, including Shariah screening to minimise risks exposures arising from *hibah* arrangements;
  - (c) reporting requirements, including the type, nature and frequency of reporting to the Board, senior management and Shariah Committee; and
  - (d) periodic review of requirements on risk management policies to update any new potential risk and the appropriate risk management mechanism arising from new approaches or best practices in *hibah* implementation.

- S 24.4 An IFI must conduct regular assessment and monitoring to ensure the implementation of *hibah* is consistent with Shariah requirements and internal policies, especially in ensuring that–
- (a) the assets are sufficient and in acceptable condition for the execution of *hibah*;
  - (b) the methodology adopted to determine and distribute *hibah* to *qard* depositors is relevant; and
  - (c) the information technology or system adopted for *hibah* is reliable.

## 25. Business and market conduct

- S 25.1 An IFI must conduct its business in a transparent, responsible and professional manner in line with Shariah requirements.
- S 25.2 With the exception of *hibah* arrangement with *qard* contract, an IFI must provide clear, accurate and timely information pertaining to *hibah* arrangements in promotional or marketing materials or product disclosure sheet to customers or prospective customers. At minimum, the information must clarify the following:
- (a) concept and application of *hibah* in Islamic financial products and services;
  - (b) rights and obligations of parties involved in *hibah* arrangements;
  - (c) where applicable, the rights of an IFI to exercise its discretion to grant *hibah* to its customer;
  - (d) mechanism adopted to transfer the assets or terms of settlement under *hibah* arrangements; and
  - (e) where applicable, specific conditions that must be satisfied prior to the execution of *hibah*.
- S 25.3 In the event an IFI discloses any historical information on *hibah* granted under a *qard* contract, the IFI must–
- (a) ensure that the historical *hibah* information is based on the actual *hibah* rate; and
  - (b) provide a clear disclaimer that at minimum, contains–
    - (i) a customer may or may not receive any *hibah* for *qard* deposits; and
    - (ii) the historical *hibah* information is not to be construed as an indicative or prospective rate of return, a guarantee or a legally-binding promise that *hibah* will be granted on placement of *qard* deposits.
- S 25.4 An IFI must adequately clarify the use of Arabic terminology, if any, in its documentation to enhance the customer's understanding on the Shariah contract.

**26. Submission requirement**

- S 26.1 An IFI that applies *hibah* arrangement in its products and services must assess the consistency of existing application with this policy document and other relevant policy documents and develop necessary implementation plan to comply with the policy requirements. The implementation plan must be submitted to Jabatan Perbankan Islam dan Takaful (JPIT) latest by 30 December 2016.
- G 26.2 For *hibah* arrangement with *qard* contract, an IFI may submit a combined implementation plan as required in the policy document on *qard*.
- S 26.3 An IFI must immediately notify JPIT if the IFI identifies any cause that will affect full compliance with this policy document.

## APPENDICES

### Appendix 1 Legitimacy of *hibah*

1. The legitimacy of *hibah* is derived from the *Quran* and founded on *Sunnah* of the Prophet Muhammad (peace be upon him), and consensus of the muslim jurists (*ijma`*).

#### The *Quran*

2. The following verse of the *Quran* implies the general permissibility of the *hibah*:

فَإِنْ طِبَّتْ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيئًا.

“...but if they choose of their own accord to make over to you a part of it, then you may enjoy it with pleasure and good cheer.”<sup>6</sup>

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

3. The following *hadith* implies the permissibility of *hibah*:

عن أبي هريرة عن النبي صلى الله عليه و سلم قال : تهادوا تحابوا.

Abu Hurairah narrated that Allah’s Messenger (peace be upon him) said: “Exchange gifts (among yourselves); you will love one another.”<sup>7</sup>

#### Consensus of the muslim jurists (*ijma`*)

4. Muslim jurists have reached *ijma`* on the permissibility of *hibah*.

<sup>6</sup> *Surah al-Nisa*, verse 4.

<sup>7</sup> Al-Baihaqi, *Sunan al-Baihaqi*, hadith no. 11726.

## Appendix 2 Glossary

Terms	Definition
<i>Ahl li al-tabarru`</i>	Legal capacity to perform a benevolent act
<i>Ijarah</i>	An <i>ijarah</i> refers to a lease contract that transfers the ownership of a usufruct attached to an asset for a specified period in exchange for a specified consideration; or a contract for hiring of services of a person for a specified period in exchange for a specified consideration
<i>Ijma`</i>	Consensus of the muslim jurists
<i>Mawhub lahu</i>	Recipient
<i>Mudarabah</i>	A contract between a capital provider ( <i>rabbul mal</i> ) and an entrepreneur ( <i>mudarib</i> ) under which the <i>rabbul mal</i> provides capital to be managed by the <i>mudarib</i> and any profit generated from the capital is shared between the <i>rabbul mal</i> and the <i>mudarib</i> according to mutually agreed profit sharing ratio (PSR) whilst financial losses are borne by the <i>rabbul mal</i> provided that such losses are not due to the <i>mudarib</i> 's misconduct, negligence or breach of specified terms
<i>Mudarib</i>	Entrepreneur of a <i>mudarabah</i> venture
<i>Musyarakah</i>	A partnership between two or more parties, whereby all parties will share the profit and bear the loss from the partnership
<i>Muwakkil</i>	Principal
<i>Qabd haqiqi</i>	Physical possession. It refers to a state where a person has actual possession and the rights to control an asset
<i>Qabd hukmi</i>	Constructive possession. It does not refer to actual possession, but it is based on presumptive possession based on the right of the owner towards an asset
<i>Qard</i>	A contract of lending money by a lender to a borrower where the latter is bound to repay an equivalent replacement amount to the lender. Money may include cash in any currency, gold or silver
<i>Rabbul mal</i>	Capital provider
Takaful	An arrangement based on mutual assistance under which takaful participants agree to contribute to a common fund providing for mutual financial benefits payable to the takaful participants or their beneficiaries on the occurrence of pre-agreed events
<i>Takhliyah</i>	Relinquishing the possession of an asset and enabling others to take possession
<i>Tamkin</i>	Enabling the person who has the ownership of an asset transferred to him to make full use and assume liability of the asset
<i>`Urf tijari</i>	Common business practice which is acceptable by the community and does not contradict the Shariah rulings
<i>Wa`d mulzim</i>	A binding promise

---

<b>Terms</b>	<b>Definition</b>
<i>Wahib</i>	Donor
<i>Wakalah</i>	A contract in which a party, as principal authorises another party as his agent to perform a particular task on matters that may be delegated, with or without imposition of a fee
<i>Wakalah bi al-istithmar</i>	An agency contract for the purpose of investment
<i>Wakil</i>	Agent