

Response to feedback received

Hibah

Introduction

The finalised policy document on *Hibah* for Islamic financial institutions (IFIs) incorporates the policy requirements stipulated in the concept paper that was issued on 21 January 2016 and takes into account the feedback received during the consultation period.

Bank Negara Malaysia (the Bank) received written responses from 39 respondents, including financial institutions, industry associations and a regulatory authority during the consultation period. A series of engagement sessions with industry representatives were held to allow for a more focused and in-depth discussions on the proposed requirements.

The Bank appreciates the feedback and suggestions received during the consultation process. Key comments received and the Bank's responses are provided in the following sections. Other comments and suggestions for clarification have been incorporated in the final policy document where appropriate.

Bank Negara Malaysia
3 August 2016

1. Establishment of specific internal policies on *hibah* arrangement

- 1.1 In view that *hibah* is applied mainly as a supporting arrangement to the main Shariah contract, industry sought clarification whether the internal policy on *hibah* must be established independently as a specific policy or the *hibah* provisions can be embedded as part of main Shariah contract's internal policies.
- 1.2 The Bank do not have any objection for IFIs to incorporate the related *hibah* requirements as clauses in the main Shariah contract's internal policies or specific internal policies associated with *hibah* arrangement.

2. Arrangement of *hibah* with *qard* contract

- 2.1 Industry enquired on the permissibility of granting *hibah* continuously to *qard* lenders. In this regard, the Shariah Advisory Council of Bank Negara Malaysia (SAC) at its 161st meeting dated 25 August 2015, has resolved that granting of *hibah* in *qard* by the borrower to the lender is not allowed unless it is solely based on the borrower's discretion. Therefore, the practice of continuous granting of *hibah* is permissible provided that the *hibah* is granted based on the borrower's discretion.
- 2.2 Industry also provided suggestion to differentiate *hibah* from *hadiyyah*, which is permissible in *qard*. The Bank maintains the proposed paragraph in the policy document and wishes to inform that the terminology use in granting benefits either as *hibah* or *hadiyyah* will have the same effect. Notwithstanding, IFIs are encouraged to use *hibah* as the terminology for granting benefits for market consistency purpose.

3. Revocation of *hibah* given by a father to his child

- 3.1 In relation to the requirement in paragraph 9.3 of the policy document, industry sought clarification whether this requirement applies to *hibah* given by a parent company to its subsidiary and if such *hibah* is revocable.
- 3.2 From Shariah perspective, this requirement applies only in the context of a biological relationship between a father and his child. This requirement excludes relationship between a parent company and its subsidiary.

4. *Hibah* arrangement with other contracts or concepts

- 4.1 Industry sought clarification on the requirements in relation to *hibah* arrangement with the following contracts or concepts:
- i. *Wakalah* – whether the *muwakkil* (principal) may stipulate a conditional *hibah* as a performance fee to the *wakil* (agent) for performance that exceeds a specified target, in addition to the pre-determined *wakalah* fee; and
 - ii. *Takaful* – whether the distribution of surplus to *takaful* participants from the Participants' Risk Fund (PRF) is treated as *hibah*.

- 4.2 In relation to *wakalah*, the requirement is in line with SAC resolution at its 147th meeting dated 27 May 2014, where it was resolved that the performance fee derived from *wakalah* arrangement must not be considered as *hibah*. The same applies on rebate for early settlement (*ibra*).
- 4.3 In takaful operation, surplus arising from PRF which will be distributed back to the participants must not be considered as *hibah* from takaful operator to the participants since PRF including the surplus belongs to the participants. For surplus management requirement, please refer to Guidelines on Takaful Operational Framework.