



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Wa`d

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

PART A	OVERVIEW	3
1.	Introduction	3
2.	Applicability	3
3.	Legal provisions	3
4.	Effective date	4
5.	Interpretation	4
6.	Related legal instruments and policy documents	4
PART B	SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES	5
7.	Compliance with Part B	5
8.	Definition.....	5
9.	Nature	5
10.	Parties	5
11.	Subject matter	6
12.	Implication of a binding wa`d	6
13.	Arrangement of wa`d with other contracts or concepts	6
14.	Fulfilment and revocation of wa`d	8
15.	Muwa`adah.....	8
PART C	OPERATIONAL REQUIREMENTS	9
17.	Governance and oversight	9
18.	Structuring	10
19.	Risk management.....	14
20.	Business and market conduct	15
21.	Financial disclosure	16
PART D	SUBMISSION REQUIREMENTS.....	17
22.	Gap analysis and implementation plan	17
Appendix 1	Legitimacy of wa`d.....	18
Appendix 2	Glossary.....	20
Appendix 3	Illustration of wa`d application	21
Appendix 4	Illustration of fulfilment, breach and revocation of wa`d.....	24

PART A OVERVIEW

1. Introduction

- 1.1 Compliance with Shariah requirements is a prerequisite in ensuring the legitimacy and integrity of Islamic financial products and services. It is therefore, essential for an Islamic financial institution (IFI) 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. Consistency in the application of *wa`d* is important as it is used across Islamic financial products and services in combination with other Shariah contracts to mainly secure future trade transactions or as a risk mitigation arrangement. This policy is envisaged to strengthen legal certainty and Shariah compliance practices by IFIs.
- 1.3 This policy document aims to –
 - (a) provide reference on Shariah rulings applicable to *wa`d*;
 - (b) set out key operational requirements for the implementation of *wa`d*; and
 - (c) promote end-to-end compliance with Shariah requirements, which further promote sound banking and takaful practices and safeguard consumer interests.
- 1.4 This policy document sets out the following:
 - (a) salient features and essential conditions of *wa`d* in Part B;
 - (b) regulatory and supervisory expectations for the operational requirements on governance and oversight, structuring, risk management, business and market conduct as well as financial disclosure in Part C; and
 - (c) requirement for IFIs to submit gap analysis and implementation plan on *wa`d* in Part D.

2. Applicability

- 2.1 This policy document is applicable to all IFIs as defined in paragraph 5.2 offering Islamic financial products and services using the binding *wa`d* or binding bilateral *wa`d (muwa`adah)* as the case may be.

3. Legal provisions

- 3.1 The requirements in Part B of this policy document are specified pursuant to –
 - (a) section 29(1) of the Islamic Financial Services Act 2013 (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 1 January 2019.

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; and

“**Islamic financial institution**” or “**IFI**” means –

- (a) a licensed Islamic bank;
- (b) a licensed takaful operator and a professional retakaful operator;
- (c) a licensed bank and a licensed investment bank approved under section 15(1)(a) of the FSA to carry on Islamic banking business; and
- (d) a prescribed institution 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 the Bank.

PART B SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES**7. Compliance with Part B**

- S 7.1 An IFI which uses *wa`d* 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 *Wa`d* is a unilateral promise which refers to an expression of commitment given by one party to another to perform certain action(s) in the future.

9. Nature

- S 9.1 *Wa`d* is a unilateral promise and it is not a contract.
- S 9.2 A *wa`d* attached to a condition, time, price, conduct or event shall be binding on the promisor.
- S 9.3 In relation to paragraph 9.1, the *wa`d* shall be binding from the date the promisor makes the *wa`d*.

10. Parties

- S 10.1 The parties involved in *wa`d* are the promisor (*wa`id*) and the promisee (*maw`ud lahu*).
- S 10.2 The promisor shall be a natural person or a legal entity that must have the legal capacity¹ to execute the subject matter of *wa`d*.

Manner of expression

- S 10.3 The promisor shall express a commitment to perform certain actions in the future to effect *wa`d*.
- G 10.4 In relation to paragraph 10.3, the promisor's expression of commitment may be expressed orally, in writing or by any other method recognized by Shariah.

¹ 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. In Malaysia, this legal capacity is subject to the Contracts Act 1950 and the Age of Majority Act 1971.

11. Subject matter

- S 11.1 The subject matter of *wa`d* shall be a commitment to perform specific action(s) at a specified time in the future.
- S 11.2 The subject matter of *wa`d* must be Shariah compliant.
- G 11.3 At the inception of *wa`d*, the promisor and promisee may agree that the promisor may be granted an extension of time to execute *wa`d*, subject to any agreed conditions.
- S 11.4 In respect of paragraph 11.3, if both parties involved agree for the extension of time to execute *wa`d*, the promisor shall be bound to fulfil *wa`d* at the new specified time.
- S 11.5 *Wa`d* shall not be provided in exchange for a counter value such as a fee to the promisor.

12. Implication of a binding *wa`d*

- S 12.1 The promisor shall not unilaterally revoke his *wa`d*.
- S 12.2 The promisor shall fulfil his *wa`d* in accordance with the specified condition.
- S 12.3 The promisee has a right to claim compensation for any actual loss suffered due to the failure of the promisor to fulfil his *wa`d*.
- S 12.4 In relation to paragraph 12.3, the promisee's actual loss shall be determined either by:
- (a) an authoritative body; or
 - (b) a methodology accepted as customary market practice (*`urf tijari*).

13. Arrangement of *wa`d* with other contracts or concepts**Arrangement of *wa`d* with a security deposit (*hamish jiddiyah*)**

- G 13.1 A promisor may provide the promisee a security deposit to secure the performance of *wa`d*. The security deposit may be used to compensate the promisee against actual losses incurred in the event the promisor fails to fulfil his *wa`d*.
- S 13.2 Any excess of the security deposit less compensation to the promisee for actual loss shall be returned to the promisor.
- S 13.3 Any shortage of the security deposit arising from the actual loss incurred shall be paid by the promisor upon a claim by the promisee.

Wa`d in relation to transfer of ownership

- G 13.4 The promisor may enter into *wa`d* to transfer the ownership of an asset or usufruct which is yet to be owned by him through an exchange contract such as sale and purchase contract or charitable contract such as *hibah*.

Wa`d and forward currency exchange

- G 13.5 A forward currency exchange transaction may be arranged based on *wa`d*.
- S 13.6 In connection with paragraph 13.5, the arrangement of *wa`d* in a transaction involving currency exchange is permissible provided that it is structured for the purpose of hedging.

Wa`d and *musyarakah*, *mudarabah* and *ijarah*

- G 13.7 Contracting parties in *musyarakah*, *mudarabah* or *ijarah* arrangement may enter into *wa`d*, to purchase the underlying asset of the respective arrangement upon maturity, dissolution or in the event of a default.

Wa`d and *rahn*

- G 13.8 In a *rahn* contract, a pledgor may give *wa`d* to use an existing asset as collateral (*marhun*) for any future debt obligation.
- G 13.9 A promisor may give *wa`d* to use any future asset as collateral for any debt obligation.

Wa`d and *hibah*

- G 13.10 Subject to paragraph 13.11, a promisor may provide *wa`d* to give *hibah* to another party.
- S 13.11 A borrower in a *qard* contract shall not provide *wa`d* to give *hibah* to the lender.

Wa`d and *kafalah*

- G 13.12 A promisor may give *wa`d* to enter into a *kafalah* contract on a future date.
- G 13.13 A third party may provide a guarantee on the performance of *wa`d* by the promisor.

FULFILMENT AND REVOCATION OF WA`D

14. *Fulfilment and revocation of wa`d*

- S 14.1 *Wa`d* shall be fulfilled when the promisor or his guarantor has performed the *wa`d* obligation(s) in accordance with the agreed conditions.
- S 14.2 *Wa`d* to perform a specific contract shall not be fulfilled unless such contract is executed as promised.
- S 14.3 *Wa`d* shall be revoked under any of the following circumstances:
(a) the promisee agrees to the promisor's revocation of the binding *wa`d*; or
(b) the promisee does not invoke *wa`d*.
- S 14.4 Upon fulfilment or revocation of *wa`d*, the promisor shall be free from any obligations under *wa`d*.

MUWA`ADAH (BILATERAL WA`D)

15. *Muwa`adah*

Definition

- S 15.1 *Muwa`adah* is a bilateral promise which refers to an expression of commitment given by two parties to each other to perform certain action(s) in the future based on the same subject matter and condition(s).

Nature

- S 15.2 *Muwa`adah*² shall be binding and enforceable on the promisor.

Applicability

- S 15.3 All requirements specified under this policy document on *wa`d* shall be applicable to *muwa`adah*.

Arrangement of *muwa`adah* with other contract or concept

- G 15.4 *Muwa`adah* may be arranged to structure transaction involving currency exchange.
- S 15.5 In connection with paragraph 15.4, arrangement of *muwa`adah* in transaction involving currency exchange shall only be structured for the purpose of hedging.

² The *muwa`adah* is not a contract.

PART C OPERATIONAL REQUIREMENTS

- S 16.1 Unless stated otherwise, the operational requirements in this policy document shall apply to an IFI regardless of whether the IFI is a promisor or a promisee under the *wa`d* arrangement.

17. Governance and oversight

- S 17.1 The requirements under this part complement the broad governance and oversight expectations specified under the relevant policy documents on governance issued by the Bank. While broad governance and oversight principles are applicable, an IFI must observe specific requirements on governance and oversight as outlined in this policy document to manage risks and unique nature of *wa`d*.
- S 17.2 An IFI must have sufficient understanding of *wa`d* risk profile and ensure the availability of personnel with the appropriate knowledge and skills to offer *wa`d*.

Board of directors

- S 17.3 The board of directors of an IFI (the Board) must establish a sound governance structure to facilitate an effective oversight on the management and application of *wa`d*. The adequacy of the governance structure shall commensurate with the nature, complexity and risk profile of *wa`d*.
- S 17.4 The Board has overall responsibility for corporate governance, Shariah governance and Shariah compliance of the IFI. As such, the Board must –
- (a) approve the business and risk strategies of the IFI with regard to the application of *wa`d*;
 - (b) approve and oversee the implementation of policies and procedures governing the application of *wa`d*, which must include, at minimum, the following aspects:
 - (i) risk management;
 - (ii) information disclosure;
 - (iii) *wa`d* documentations;
 - (c) ensure that appropriate internal controls, systems and infrastructure are in place to implement *wa`d* in accordance with Shariah requirements;
 - (d) ensure that sufficient resources are in place, and that the IFI has adequate and qualified personnel with sufficient knowledge and competency on the concept, application and risks associated with *wa`d*; and
 - (e) ensure that independent reviews are conducted regularly to assess compliance with the policy documents issued by the Bank and internal policies established by the IFI.

Shariah Committee

- S 17.5 The Shariah Committee has the responsibility to advise the IFI in ensuring its business, affairs and activities involving *wa`d* comply with Shariah. As such, the Shariah Committee must –

- (a) endorse the application of Shariah requirements in the relevant policies and procedures governing *wa`d*;
- (b) review the terms and conditions stipulated in legal documentations and other documents³, 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 *wa`d* complies with Shariah requirements.

Senior management

- S 17.6 The senior management has the responsibility to ensure that the business and operations of an IFI complies with Shariah requirements. As such, the senior management must –
- (a) develop and implement internal control and risk management policies and procedures in line with the business and risk strategies approved by the Board;
 - (b) establish policies, procedures and processes with regard to proper management of *wa`d*;
 - (c) implement relevant internal systems, infrastructure and mechanisms to identify, measure, control and monitor risks associated with *wa`d*;
 - (d) identify, assign and train key personnel with the appropriate skill and ensure that the roles and responsibilities are properly delegated to the relevant functions to undertake the different activities under *wa`d*;
 - (e) undertake regular review and monitor compliance with the approved internal policies; and
 - (f) ensure timely disclosure of relevant information with regard to *wa`d* to the Board and the Shariah Committee.

18. Structuring

Shariah compliance

- S 18.1 An IFI must ensure that -
- (a) the overall operations of *wa`d* are in compliance with Shariah requirements as provided in Part B of this policy document;
 - (b) the overall operations of *wa`d* are in compliance with any specific requirements on *wa`d* as provided in the policy documents on Shariah contracts issued by the Bank;
 - (c) product structure, legal documents, internal policies and procedures involving *wa`d* are endorsed by the Shariah Committee;
 - (d) any issues pertaining to Shariah matters must be discussed and deliberated at the Shariah Committee; and
 - (e) the opinion of the Shariah Advisory Council of the Bank (SAC) is sought if there are any unresolved Shariah issues involving *wa`d*.

³ Such as information published on promotional materials, product manuals or other publications.

Binding wa`d

- S 18.2 In the event where an IFI is the promisor, the IFI must ensure that the expression of wa`d is in writing or can be evidenced by documentations as soon as practicable.
- S 18.3 An IFI⁴ must ensure that the conditions⁵, of which occurrence would cause action(s) to be taken by the promisor to fulfill wa`d are –
- (a) clearly stipulated in wa`d documentation; and
 - (b) identifiable by both the promisor and promisee.

Fulfillment, revocation and breach of wa`d

- S 18.4 An IFI shall clearly outline the requirements on fulfillment, breach and revocation of wa`d in the wa`d documentation, which shall reflect the following:
- (a) wa`d is fulfilled when the promisor executes the action(s), regardless of whether the promisee invokes wa`d;
 - (b) wa`d is breached by the promisor when the promisor does not execute the action(s) despite wa`d being invoked by the promisee; and
 - (c) wa`d is revoked when –
 - (i) the promisee agrees to the promisor's revocation of wa`d; or
 - (ii) the promisor does not execute the action(s) and the promisee does not invoke wa`d.
- S 18.5 For the purpose of paragraph 18.4, the IFI shall clearly specify the time period following the occurrence of the conditions, in which –
- (a) the promisor shall conduct the action(s); and
 - (b) the promisee has the right to invoke wa`d.
- G 18.6 An IFI may refer to Appendix 4 for the illustration on fulfillment, revocation and breach of wa`d.

Counter value on wa`d

- S 18.7 An IFI shall not impose or pay any consideration specifically for the provision of wa`d including fees or charges.
- G 18.8 For the avoidance of doubt, the IFI may impose or pay counter values such as fees or charges⁶ on other Shariah contracts or arrangements used together with wa`d or incurred for expenses incidental⁷ to the use of wa`d.

⁴ If the IFI is the promisee that prepares wa`d documentation or the IFI is the promisor.

⁵ For the purpose of wa`d, conditions include (i) time period such as date or time; (ii) price such as purchase or sale price of assets, profit rates, currency exchange rates; (iii) conduct such as purchase of asset; and (iv) events such as changes in relevant regulations. As an example, if market disruption is identified as a condition, the IFI may wish to give more clarity in terms of the relevant indicators and the quantification of such indicators that would signify market disruption. This definition applies throughout this document where there are conditions of which occurrence would cause promisor to fulfill wa`d, such as in paragraphs 18.13 (c), (e) and (f).

⁶ In line with the policy requirements under Guidelines on the Imposition of Fees and Charges on

Actual loss

- S 18.9 For the purpose of paragraph 12.4(a), the IFI shall ensure that the actual loss consists of the following:
- (a) at minimum –
 - (i) the amount of shortfall between the outstanding principal amount and recoverable value of the asset;
 - (ii) where applicable, the amount of shortfall between the cost of asset acquisition and the disposal value of the asset;
 - (iii) direct costs or loss, based on actual or estimated amount; and
 - (b) any additional components with regard to *wa`d* as specified in the policy documents issued by the Bank including on Shariah contracts⁸.
- S 18.10 For the purpose of paragraph 12.4(b) –
- (a) actual loss consists of actual or estimated⁹ direct costs or loss. Any estimation done shall be based on approaches or methodologies established in the market and information obtained from reliable sources¹⁰; and
 - (b) the IFI shall establish policies and procedures¹¹ in determining actual loss, which are endorsed by the Shariah Committee.
- S 18.11 Actual loss based on customary market practice under paragraph 12.4(b) is only applicable if no specifications are provided in the policy documents issued by the Bank or when actual loss is established based on customary market practice for the particular products or services.

Documentation¹²

- S 18.12 An IFI shall develop a comprehensive documentation for *wa`d* which are in compliance with Shariah requirements as well as the applicable laws.
- S 18.13 An IFI shall ensure that the terms and conditions of *wa`d* arrangement includes the following:
- (a) time or date that *wa`d* is binding;
 - (b) specifications on the subject matter, including action(s) to be taken by the promisor, assets or any other items or arrangements involved;
 - (c) conditions attached to *wa`d*;

Financial Products and Services that was issued by the Bank. For example, brokerage fees on commodity *murabahah* transactions.

⁷ Such as costs for legal documentations.

⁸ Such as actual loss as specified in paragraph 25.26 of policy document on *Tawarruq*.

⁹ For example, when a promisor breach the *wa`d* causing a default in derivative obligations, actual loss to the promisee may consist of costs/loss in relation to promisee's risk mitigation arrangements whether conducted on actual basis (i.e. specific back-to-back arrangement with a third party) or on estimated basis (i.e. risk mitigation on portfolio basis).

¹⁰ Such as calculation agents, financial institutions providing market quotations, providers of market data and indicators (e.g. Bloomberg, Reuters).

¹¹ For IFI as a promisee, this shall also include the course of action should the amount claimed exceed actual loss suffered.

¹² Paragraphs 18.12 to 18.16 are applicable to the IFI as a promisee that prepares the *wa`d* documentation or the IFI as a promisor.

- (d) rights, duties, liabilities and obligations of the parties involved:
 - (i) the promisor and the promisee;
 - (ii) the guarantor(s) of the promisor, if any;
- (e) time period¹³ for the promisor to execute the action(s) following the occurrence of conditions;
- (f) terms of invocation of *wa`d* by the promisee, which includes:
 - (i) time period¹⁴ for invoking *wa`d* following the occurrence of conditions;
 - (ii) implications if *wa`d* is not invoked within the stipulated time period;
- (g) provision on the breach of terms and conditions of *wa`d*, including:
 - (i) implications on the promisor;
 - (ii) rights of the promisee to claim for compensation based on actual loss;
- (h) parameters¹⁵ in determining actual loss; and
- (i) terms on revocation of *wa`d*.

- S 18.14 An IFI shall ensure that terminologies used in the documentation reflect the definition and concept of *wa`d*, in line with the requirements in this policy document. Appropriate translation or explanation of any Arabic terminologies used in the documents must be included to facilitate the understanding of the promisor and promisee.
- G 18.15 Unless required otherwise¹⁶, an IFI may document the provision on the *wa`d* used with other Shariah contracts in a master agreement or specific agreements.
- S 18.16 Where an IFI uses *wa`d* in conjunction with other Shariah contracts, the IFI shall ensure that the sequence of executing Shariah contracts as specified in the terms and conditions of the financial products or services is observed¹⁷.
- S 18.17 In the event where an IFI is the promisor, the IFI has the duty to inform or notify the promisee on the *wa`d* arrangement. The IFI shall have measures in place to prove that the promisee has received the *wa`d* documentation¹⁸.

Application of *wa`d* in currency exchange transactions

- S 18.18 An IFI shall ensure that the application of *wa`d* in currency exchange transactions¹⁹, including derivatives, is used to mitigate pre-existing risk exposures of at least one of the transacting parties²⁰.

¹³ Such as specific date or number of days after the occurrence of the conditions.

¹⁴ Such as specific date or number of days after the occurrence of the conditions.

¹⁵ For example, a specified formula, items involved or components of actual loss.

¹⁶ If such requirements are prescribed in the policy documents issued by the Bank such as policy documents on Shariah contracts.

¹⁷ For example, while the master agreement for an *ijarah muntahia bi al-tamlik* (IMB) is intended to result in the underlying assets to be transferred to the customer, such transfer would only take place if the requirements under *wa`d* is fulfilled.

¹⁸ Such as acknowledgement/initials by the promisee on *wa`d* documentations. However, actual reply from promisee is not necessary as long as the means of delivery of *wa`d* documentation is reasonably reliable for example registered mail, electronic correspondence.

- S 18.19 For the purpose of paragraph 18.18, the IFI shall –
- (a) obtain or maintain the documentary evidence²¹ that *wa`d* is used only in transactions for risk mitigation purposes; and
 - (b) assess the features²² of the product used in the currency exchange transactions to determine whether it is used for risk mitigation purposes.

19. Risk management

- S 19.1 An IFI shall establish sound risk management policies to mitigate potential risk arising from the application of *wa`d* in accordance with the IFI's role either as a promisor or promisee.
- S 19.2 An IFI shall establish risk management policies, which include the following:
- (a) processes, procedures and infrastructure required for the identification, monitoring and control of risk exposures associated with *wa`d*; and
 - (b) periodic review and updating of the risk management policies and procedures on *wa`d* to ensure consistency with the IFI's risk appetite.
- S 19.3 Where an IFI is a promisee, the IFI shall –
- (a) assess the risks arising from breach of *wa`d* by the promisor;
 - (b) identify measures, to facilitate the recovery process in the event where the promisor breaches *wa`d* terms and conditions, which include –
 - (i) identification of the amount of claims on actual loss;
 - (ii) proper maintenance of records and documentary evidence to support the claims²³; and
 - (iii) identification of the procedures to make the claims and mechanisms to handle disputes on claims, if any;
 - (c) have in place measures to ensure that *wa`d* is fulfilled by the promisor including –
 - (i) monitoring the occurrence or fulfilment of conditions²⁴ attached to *wa`d*;
 - (ii) invocation of *wa`d* within the specified time period; and
 - (iii) communication on invocation of *wa`d* to the promisor is done in writing or through other legally admissible evidence of such actions.

¹⁹ Refers to currency exchange not on spot basis, for example *wa`d* to enter into *Bai al-sarf* contract in the future.

²⁰ At least one of the transacting parties (i.e. either the customer or the IFI) has a pre-existing exposure that needed to be hedged prior to entering into *wa`d* arrangement.

²¹ Such as documentation on customer's actual exposures or customer's declaration on use of derivatives for risk mitigation purposes.

²² For example, the party writing an option signifies the use of currency transaction as yield enhancement and not for risk mitigation.

²³ For example, receipts, documentations on costs incurred.

²⁴ For example, in option derivatives, the promisee should monitor whether strike price has been reached in order to exercise the option, upon which the promisor shall fulfill the *wa`d*.

- G 19.4 As *wa`d* is binding when the promisor expresses the *wa`d* orally, *i.e.* prior to any documentation or record of *wa`d* is made, the IFI as the promisee may adopt additional measures to protect the IFI's interests which includes:
- (a) ensuring that the key terms are mutually agreed prior to finalisation of *wa`d* documentation;
 - (b) ensuring that the IFI prepares *wa`d* documentation on behalf of the promisor;
 - (c) assess that the promisor or his guarantor have the ability and capacity to honour *wa`d* before inception of transactions; and
 - (d) assess that the documentation on the promisor's guarantor, if any, is in line with the applicable requirements, including Shariah and legal requirements.
- S 19.5 Where an IFI acts as a promisor, the IFI shall ensure the following:
- (a) monitor the occurrence or fulfilment of conditions attached to *wa`d*;
 - (b) action(s) to fulfil *wa`d* are executed within the stipulated time period; and
 - (c) mitigate possible issues that may restrict the IFI from executing the action(s) or for guarantor to guarantee the promisor in accordance with *wa`d*.
- S 19.6 As *wa`d* is not binding on the promisee, there is no obligation for the promisee to conduct a transaction in acceptance of the promisor's execution of the action(s) in fulfilling *wa`d*. The IFI as a promisor shall assess the risks involved in such circumstances and identify the appropriate risk mitigation measures²⁵.

20. **Business and market conduct**

General principle

- S 20.1 An IFI must take into consideration the customer's interests in developing policies, processes and procedures to ensure that *wa`d* is conducted in a fair, transparent, responsible and professional manner.

Fair dealings

- S 20.2 An IFI must ensure that its policies and procedures on business and market conduct for *wa`d* reflect fair dealings, including –
- (a) information provided must be accurate and clear; and
 - (b) reasonable care must be taken prior to providing suitable advice and recommendations, if any.

²⁵ For example, if a promisor executes *wa`d* to sell an asset upon trigger event, the promisee is not obliged to purchase the asset from the promisor. To mitigate risk, the use of *muwa`adah* to create two unilateral binding *wa`d* may be used to ensure that the promisee is obliged to purchase the asset when the promisor sells the asset.

- G 20.3 In order to reflect fair dealings, an IFI may consider for the terms in *wa`d* to be in line with market practices and the circumstances specific²⁶ to the customers.

Information disclosure

- S 20.4 An IFI shall provide adequate and relevant information to the customers, including those provided prior to the expression of *wa`d*.
- S 20.5 Disclosure prior to the expression of *wa`d* shall include the overview of *wa`d*, in particular its arrangement with other Shariah contracts, purpose, key terms and conditions, and key risks of using *wa`d*.
- S 20.6 Disclosure of the potential key risks under paragraph 20.5 includes but not limited to the following:
- (a) promisor has no recourse to the promisee; and
 - (b) implications arising from breach of *wa`d* by the promisor.

21. **Financial disclosure**

- S 21.1 An IFI must ensure that all internal records on *wa`d* are updated regularly and are available for inspection by the Bank or external auditors as and when required.
- G 21.2 An IFI may provide clarity in notes to the accounts on the impact²⁷ of applying *wa`d* together with Shariah contracts on a particular product or service.

²⁶ For example, ensuring that a reasonable time frame is given to the customer as promisor to execute the action(s) under *wa`d*, depending on the circumstances such as complexity of the transactions involved to conduct the action(s).

²⁷ For example, while co-ownership of asset in *musyarakah mutanaqisah* between the IFI and obligor may signify equity risk, the application of *wa`d* to transfer asset ownership to the obligor creates credit risk profile for the product.

PART D SUBMISSION REQUIREMENTS

22. *Gap analysis and implementation plan*

- S 22.1 IFIs that currently offer a product or service that is structured based on *wa`d* must assess the consistency of such product or service with the requirements of this policy document and identify any potential gaps.
- S 22.2 IFIs must develop an implementation plan which will incorporate potential measure(s) to address the gaps which have been identified, to ensure full compliance with this policy document by 1 January 2019. The implementation plan shall be endorsed by the Shariah Committee and approved by the Board.
- S 22.3 Submission²⁸ of the gap analysis and implementation plan shall be made²⁹ to Pengarah, Jabatan Perbankan Islam dan Takaful no later than 30 April 2017.

²⁸ IFIs should inform the Bank if the submission of gap analysis or implementation plan is irrelevant should such products or services are not offered currently.

²⁹ IFIs may provide submission via email to scos@bnm.gov.my.

APPENDICES

Appendix 1 Legitimacy of wa`d

The legitimacy of a wa`d is derived from the Quran and founded on the Sunnah of Prophet Muhammad (peace be upon him).

The Quran

The following verse of the Quran implies the general permissibility of wa`d and the obligation to fulfil it:

.1 وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

*“And be true to every promise - for, verily, (on Judgment Day) you will be called to account for every promise which you have made”.*³⁰

.2 وَالَّذِينَ هُمْ لِأَمْتِنَتِهِمْ وَعَهْدِهِمْ رَاعُونَ

*“Those who are true to their trusts and pledges”.*³¹

.3 يَا أَيُّهَا الَّذِينَ ءَامَنُوا لِمَ تَقُولُونَ مَا لَا تَفْعَلُونَ كَبُرَ مَقْتًا عِنْدَ اللَّهِ

أَنْ تَقُولُوا مَا لَا تَفْعَلُونَ

*“O you who believe! why do you say that which you do not? It is most hateful in the sight of Allah that you say that which you do not”.*³²

.4 وَادْكُرْ فِي الْكِتَابِ إِسْمَاعِيلَ إِنَّهُ كَانَ صَادِقَ الْوَعْدِ وَكَانَ رَسُولًا نَبِيًّا

*“Also mention in the Book (the story of) Ismail: He was (strictly) true to what he promised, and he was an apostle (and) a prophet.”*³³

³⁰ Surah al-Isra', verse 34.

³¹ Surah al-Mu'minun, verse 8.

³² Surah al-Saf, verse 2-3.

³³ Surah Maryam, verse 54.

The Sunnah of Prophet Muhammad (peace be upon him)

The following hadith implies the general permissibility of a *wa`d* and the obligation to fulfil it.

عن ابي هريرة ، عن النبي صلى الله عليه وسلم أنه قال : آية المنافق ثلاث إذا حدث كذب وإذا وعد أخلف وإذا ائتمن خان.

Abu Hurairah reported that Prophet Muhammad (peace be upon him) said: There are three signs of a hypocrite; when he speaks, he tells lies; when he makes a promise, he breaks it; and when he is entrusted, he betrays his trust.³⁴

³⁴ Muslim, *Al-Jami` Al-Sahih*, Hadith no. 220.

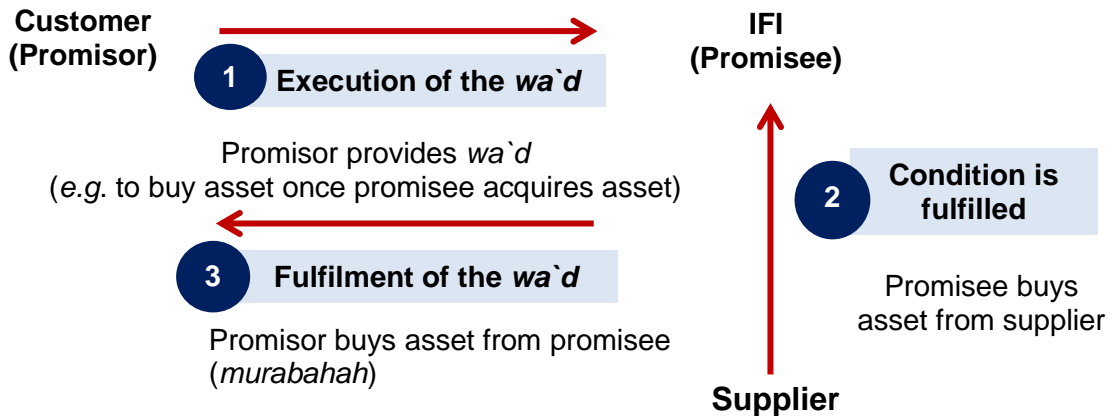
Appendix 2 Glossary

Terms	Explanation
<i>Bai` al-sarf</i>	A contract of exchange of money for money of the same or different type.
<i>Hamish jiddiyah</i>	A security deposit placed to secure an undertaking to purchase an asset before execution of the sale and purchase agreement contract.
<i>Hibah</i>	A transfer of ownership of an asset from a donor (<i>wahib</i>) to a recipient (<i>mawhub lahu</i>) without any consideration.
<i>Ijarah</i>	Lease
<i>Kafalah</i>	A contract where the guarantor conjoins the guaranteed party in assuming the latter's specified liability.
<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 a 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 (<i>ta`addi</i>), negligence (<i>taqsir</i>) or breach of specified terms (<i>mukhalafah al-shurut</i>).
<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>Muwa`adah</i>	Two parties give two <i>wa`d</i> with same conditions on the same subject matter.
<i>Rahn</i>	Pledge or charge.
<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.
<i>`Urf tijari</i>	Customary business practice which is acceptable by the community and does not contradict the Shariah principles.

Appendix 3 Illustration of wa`d application

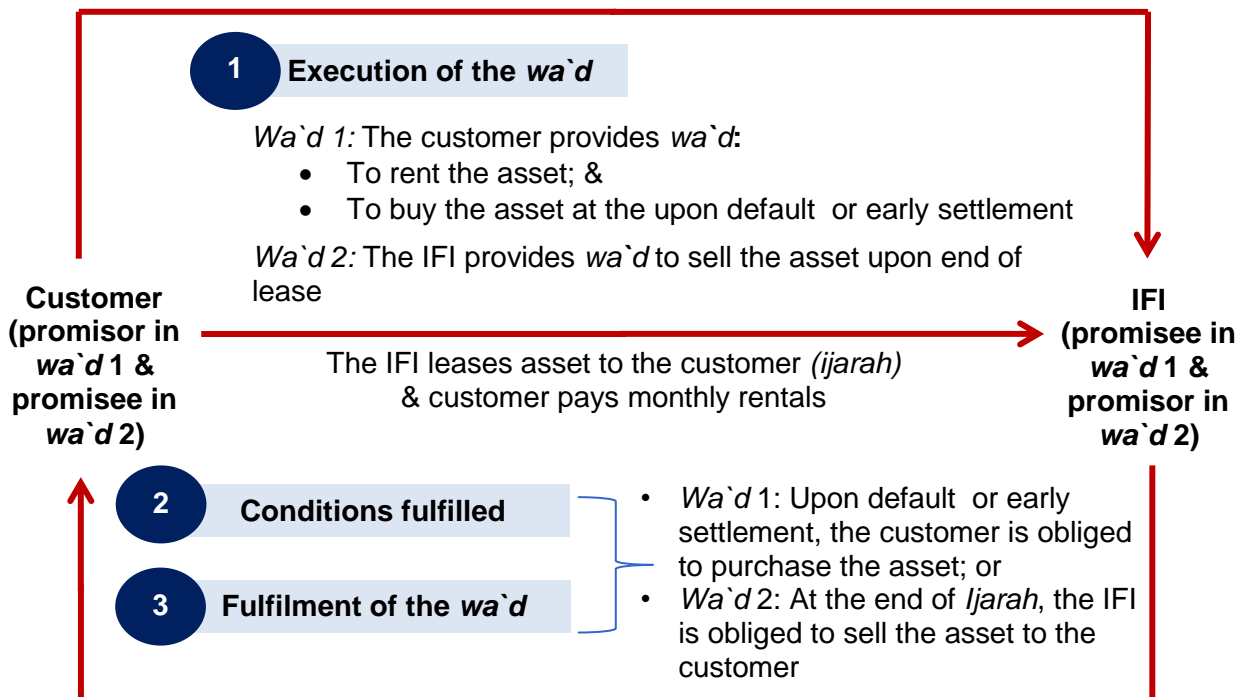
Example 1: Wa`d in Murabahah for Purchase Orderer (MPO)

A customer requires an asset financing (e.g. machinery) via a murabahah. Wa`d is used to ensure the transfer of the asset to the customer.



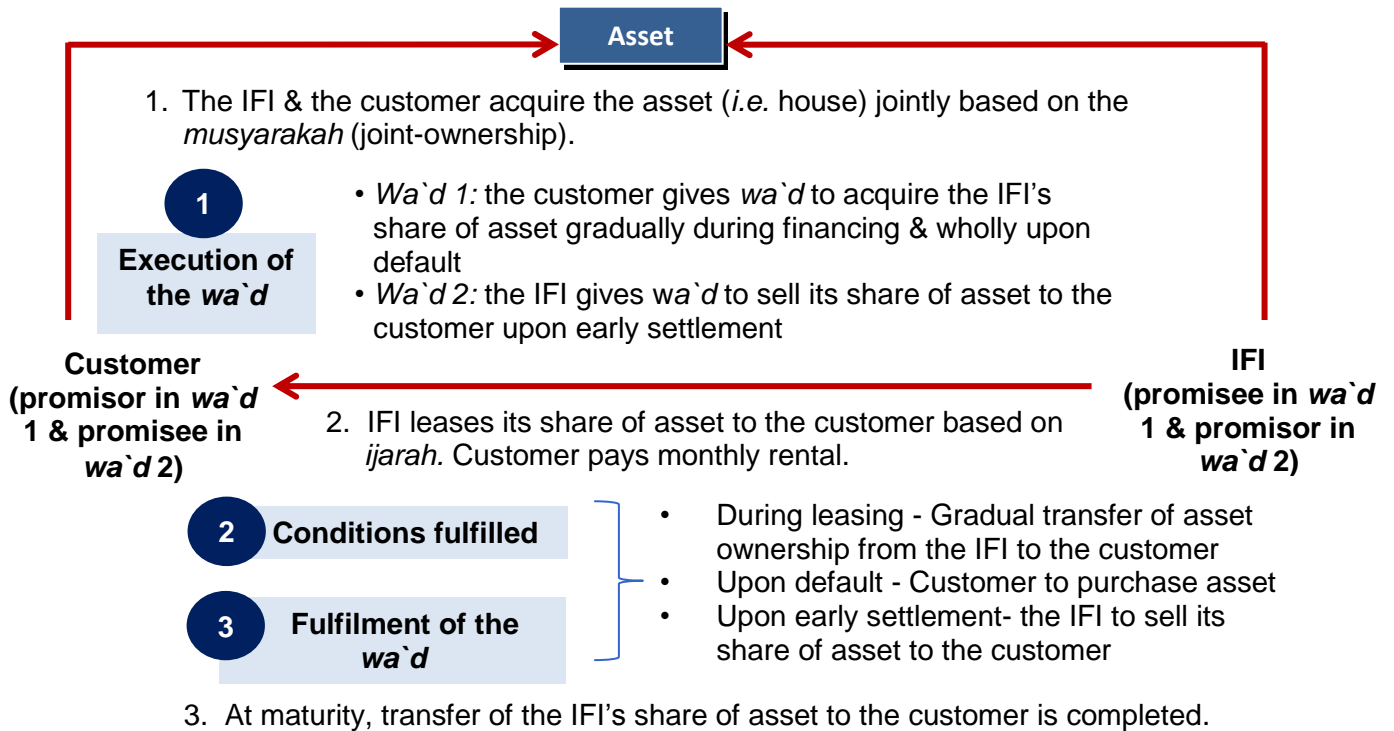
Example 2: Wa`d in Ijarah Muntahiyah Bi Tamlik (IMB)

A customer requires an asset financing (e.g. car) under the IMB. Wa`d is used to ensure the transfer of the asset to the customer. In this illustration, the transfer will be effected using a sale contract.



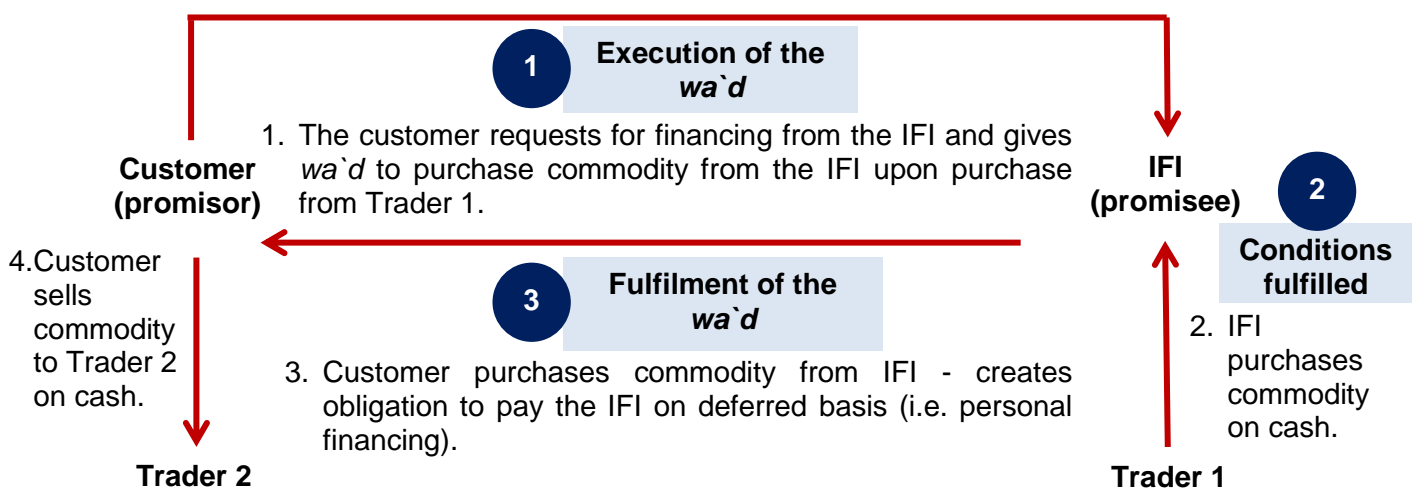
Example 3: Wa`d in Musyarakah Mutanaqisah (MM)

A customer requires an asset financing (e.g. house) under the MM. Wa`d is used to ensure the transfer of the IFI's share of asset to the customer.



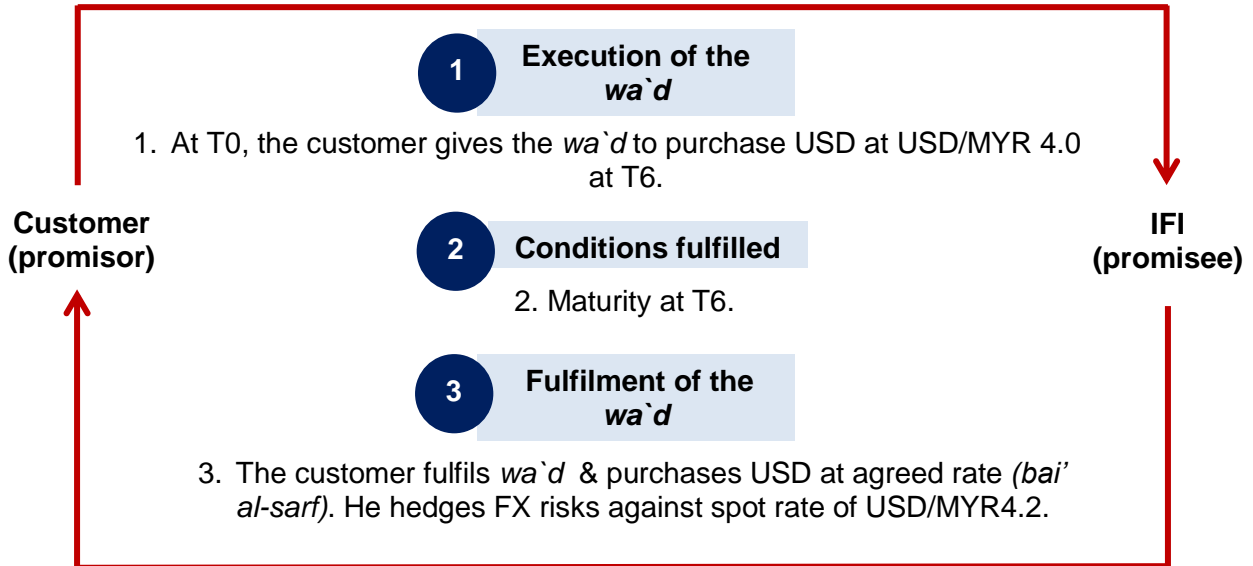
Example 4: Wa`d in Tawarruq

A customer requires a personal financing using the *tawarruq*. Wa`d is used to mitigate commodity acquisition risk for IFI.



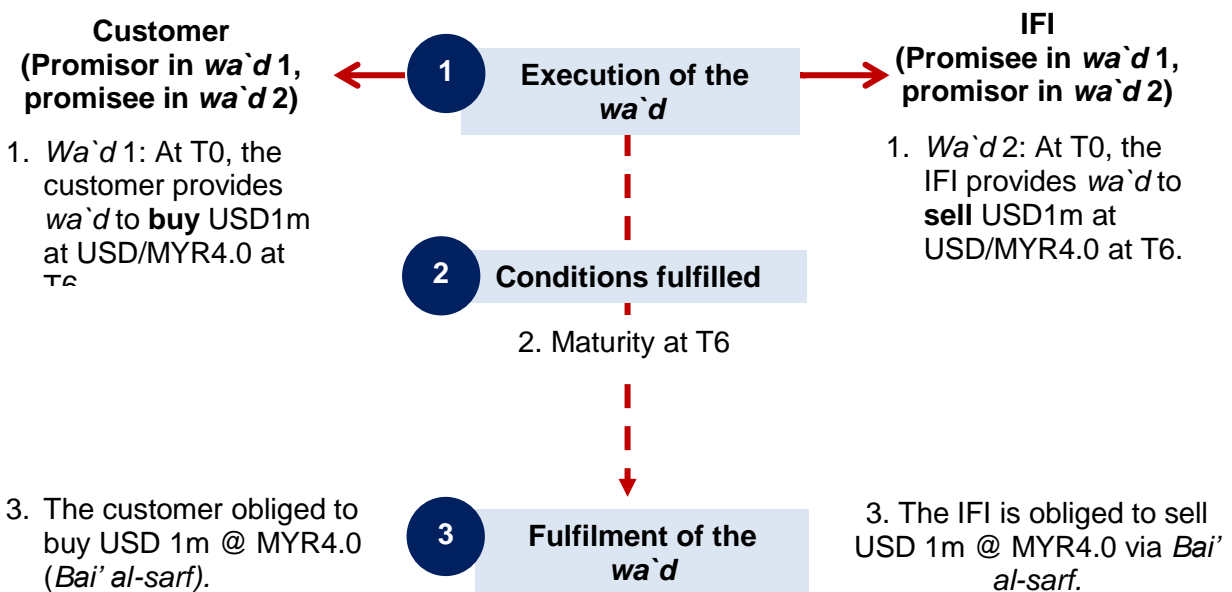
Example 5: Wa`d in foreign currency forward (Bai' al-sarf)

A customer has to pay USD1m for his imports in 6 months-time (at T6). He enters into foreign exchange (FX) forward with the IFI to hedge risk of increase in USD against MYR.



Example 6: Muwa`adah

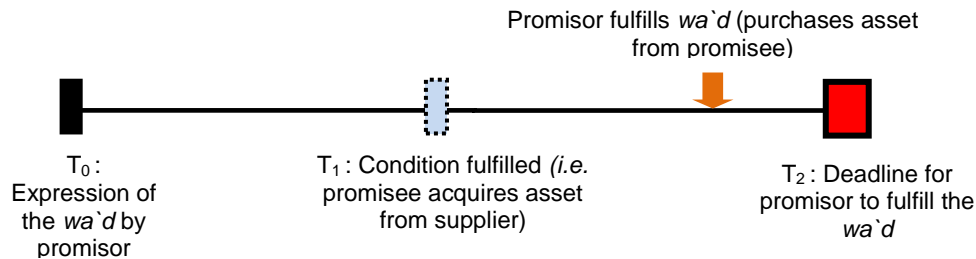
A customer enters into a forward transaction (using Bai al-sarf & wa`d) to purchase USD and hedge against potential appreciation of USD against MYR. In order to ensure that the IFI will also be obligated to sell the USD, a muwa`adah is used as this create an obligation on both parties to fulfil the wa`d.



Appendix 4 Illustration of fulfilment, breach and revocation of wa`d

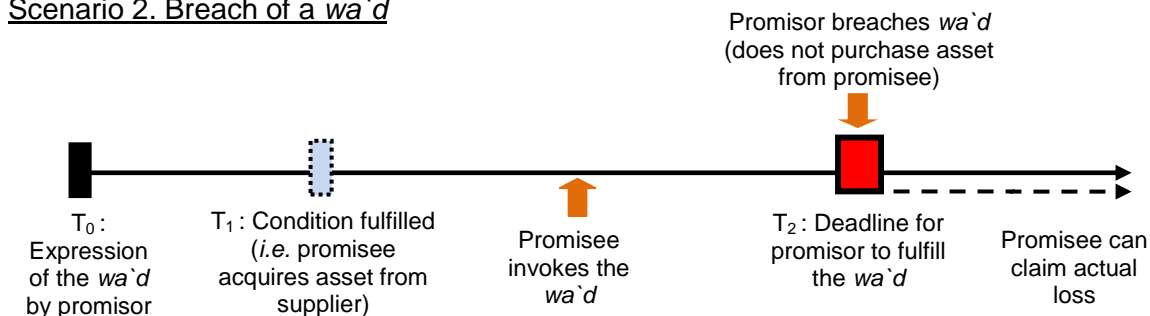
1. At T_0 , promisor provides a wa`d to purchase an asset from promisee upon acquisition of the asset from the supplier by the promisee. The time period for promisor to fulfil his wa`d upon the occurrence of condition is T_2 .
2. At T_1 , the wa`d condition is fulfilled when the promisee acquires the asset from the supplier. As such, the promisor is obligated to purchase the asset from the promisee.

Scenario 1. Fulfilment of the wa`d



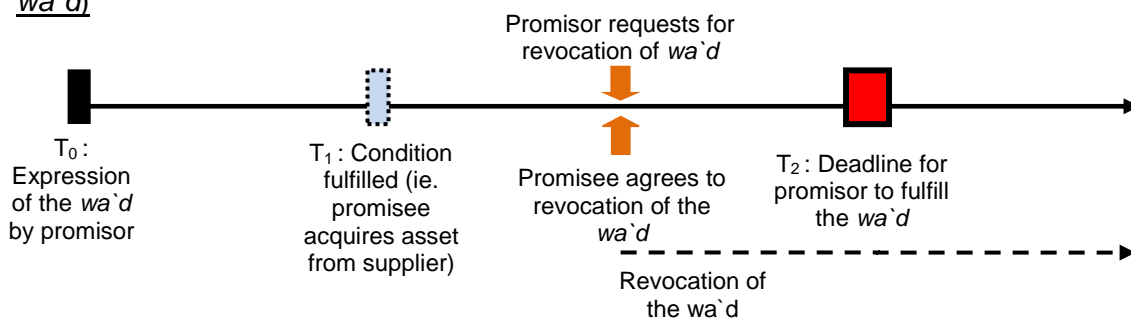
Wa`d is fulfilled when the promisor purchases the asset from promisee by T_2 , regardless of whether the promisee invokes the wa`d.

Scenario 2. Breach of a wa`d

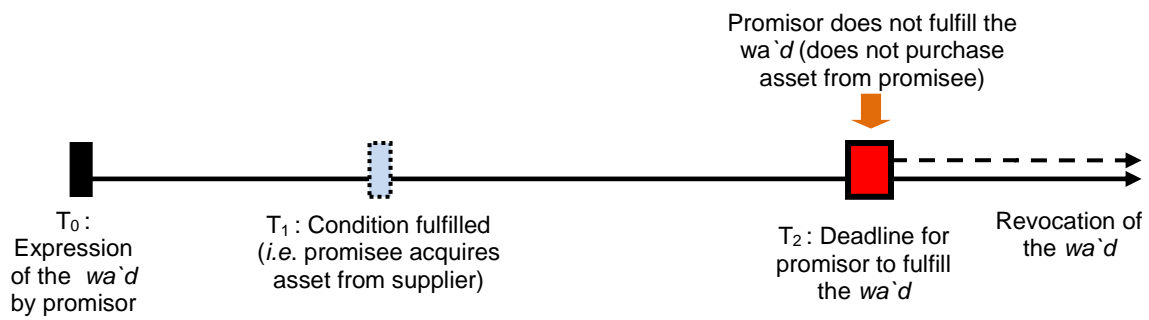


Before T_2 , the promisee invokes the wa`d since he wants to ensure that the promisor fulfills the wa`d. As the promisor fails to fulfil his wa`d by T_2 , the promisee has the right to claim for actual loss.

Scenario 3. Revocation of a wa`d (when the promisee agrees to promisor's revocation of the wa`d)



Before T_2 , the promisor obtains promisee's agreement to revoke the wa`d. Hence, the wa`d is revoked and no longer valid upon the agreement to revoke.

Scenario 4. Revocation of a wa`d (when the promisee does not invoke the wa`d)

By T₂, the promisor does not fulfill the wa`d and the promisee does not invoke the wa`d. Hence, wa`d is revoked and no longer valid after T₂.