

Background

Islamic banking industry normally applies *hibah* concept to reward *wadiah* depositors and *qardh*. In certain cases, there are instances of giving *hibah* to customers who make timely payment as scheduled. In takaful industry, *hibah* concept is used in several family takaful products in which participants could give *hibah* in the form of assigning the takaful benefit to the nominee or *hibah* recipient.

Issues

1. *Hibah* in *Al-Ijarah Thumma Al-Ba'i* Contract

There are customers of Islamic financial institution who make their monthly payment according to the prescribed schedule. To encourage the good conduct in managing their financing, Islamic financial institutions would take initiatives to credit certain amount as *hibah* to customers of *al-ijarah thumma al-ba'i* financing. The issue is whether this kind of incentive is permissible under Shariah.

Resolution

The Council in its 13th meeting held on 10th April 2000 / 5th *Muharram* 1421 resolved that *hibah* concept used in *al-ijarah thumma al-ba'i* contract as an incentive to the customers who pay on schedule is permissible.

2. *Hibah* in Takaful Industry

Generally, any asset in its tangible form or in the form of its benefit (usufruct) can be given as *hibah* to other party. The issues that arise are:

- i. Whether takaful benefit qualifies as an asset for *hibah*?
- ii. Whether the status of *hibah* changes to will (*wasiah*) if the participant dies since the transfer of the asset's ownership would take place after the death of the donor?

³⁵ *Hibah* means transfer of ownership of a property or its benefit to another without any counter value during the life of the donor.

- iii. Whether a participant can revoke the *hibah* before the maturity of the takaful certificate?
- iv. What is the implication should the recipient of the *hibah* die before the maturity of the takaful certificate?

Resolution

The Council in its 34th meeting held on 21st April 2003 / 19 Safar 1424 resolved that

- i. Takaful benefit can be used for *hibah* since it is the right of the participants. Therefore, the participants should be allowed to exercise their rights according to their choice as long as it does not contradict with Shariah;
- ii. The status of *hibah* in takaful plan does not change into a will (*wasiah*) since this type of *hibah* is a conditional *hibah*, in which the *hibah* is an offer to the recipient of *hibah* for only a specified period. In the context of takaful, the takaful benefit is both associated with the death of the participant as well as maturity of the certificate. If the participant remains alive on maturity, the takaful benefit is owned by the participant but if he dies within such period, then *hibah* shall be executed;
- iii. A participant has the right to revoke the *hibah* before the maturity date because conditional *hibah* is only deemed to be completed after delivery is made (*qabdh*);
- iv. Participant has the right to revoke the *hibah* to one party and transfer it to other parties or terminate the takaful participation if the recipient of *hibah* dies before maturity; and
- v. The takaful nomination form has to be standardized and must stipulate clearly the status of the nominee either as a beneficiary or an executor (*wasi*) or a trustee. Any matter concerning distribution of takaful benefit must be based on the contract. Participants should be clearly explained on the implication of every contract being executed.

3. *Hibah* in Loan (*Qardh*) Contract

Qardh is one of the contracts being applied to manage liquidity in Islamic finance. The contract obliges a borrower to return the loan amount to the lender without contracting to pay any additional return. However, in normal practice a borrower sometimes give *hibah* at his own discretion when paying off the debt. The issue is whether the practice of giving *hibah* complies with Shariah.

Resolution

The Council in its 55th meeting held on 29th December 2005 / 27th Zulkaedah 1426 resolved that the practice of giving unconditional *hibah* in a loan contract is permissible. Nevertheless, the Council advised that such practice should be implemented wisely so as to avoid it becoming a norm (*urf*) which can make it a condition attached to the loan contract.

4. *Hibah* in Inter-bank *Mudharabah* Investment Contract

Inter-bank *Mudharabah* Investment is one of the transactions used by participants in the Islamic Inter-bank Money Market. Banks that are in need of funds normally offer competitive returns to attract investors. However, there are banks that can only manage to offer returns lower than the market rate of return. To attract more investors, there is a proposal to introduce *hibah* in the Inter-bank *Mudharabah* Investment contract. Based on this concept, it is suggested that the receiving banks that have lower rate of returns offer *hibah* as a gesture of consolation gift to the investing banks that are willing to invest with the former. The issue here is whether the approach of giving *hibah* in the *mudharabah* contract is permissible in Shariah.

Resolution

The Council in its 8th meeting held on 12th December 1998 / 23rd Shaaban 1419 resolved that the practice of offering *hibah* in *mudharabah* contract by the receiving banks to the investing banks in Islamic Inter-bank Money Market is not permissible. This is because *mudharabah* contract is based on profit sharing. If the practice of offering *hibah* is allowed, it can affect the nature of the *mudharabah* contract.

[Please refer to the basis of the Shariah rulings on page 69]