Statement of the Shariah Advisory Council of Bank Negara Malaysia (SAC) and Standards under Section 29(1) of the Islamic Financial Services Act 2013 (IFSA) and Section 33E(1) of the Development Financial Institutions Act 2002 (DFIA) on Implementation of New Features of Sell and Buy Back Agreement (SBBA)

Part I: SAC Statement pursuant to section 52(1)(a) of Central Bank of Malaysia Act 2009

The SAC at its 239th SAC Meeting dated 30 April 2024, ascertained that the proposed new features as follows for SBBA instrument is permissible:

1. Margining –

As and when there is a price movement of the underlying securities based on mark-to-market valuation, the promise to provide securities deposit (*wa`d bi hamish jiddiyyah*) will be triggered and the promisor (buyer or seller, as the case may be) is required to transfer a certain amount of cash to the counterparty as security deposit to secure the promisor's commitment to perform the second leg transaction at maturity;

2. Profit disbursement –

(i) Mechanism 1 – Profit reinvestment:
The profit received by the SBBA buyer will be deducted from the price of the second leg transaction at maturity date. The price of the second leg transaction will be mutually agreed at the inception of the SBBA contract; and

(ii) Mechanism 2 – Profit transfer:
The profit paid by the issuer of securities to the SBBA buyer will be immediately transferred to the SBBA seller based on the SBBA buyer's promise to give *hibah* (*wa`d bil hibah*) to the seller on the profit payment date.

3. Substitution of asset –

Upon occurrence of the triggering event for substitution of asset, the SBBA contracting parties agree to accelerate the execution of the second leg transaction of the SBBA before the maturity date. The contracting parties will subsequently enter into a new SBBA contract based on the original maturity date to replace the existing SBBA contract.

This SAC statement on the implementation of the new features of SBBA instrument is only applicable to the structure and Shariah contract stated in this SAC Statement. Any proposal by an Islamic financial institution (IFI) to implement new features of SBBA using structure and Shariah contracts other than those stated in this SAC Statement must be referred to the SAC for ascertainment of Islamic law.

Part II: Legal Provision and Applicability

2.1. Part I of this SAC Statement is made pursuant to section 52(1)(a) of the Central Bank of Malaysia Act 2009 (CBA) and section 55(2)(a) of the CBA.

2.2. Bank Negara Malaysia specifies Part 1 of this SAC statement as standards under section 29(1) of the IFSA and section 33E(1) of the DFIA, effective on 17 October 2025, and applicable to the following IFIs:

(i) licensed Islamic banks under the IFSA;

(ii) licensed banks and licensed investment banks approved under section 15(1) of the Financial Services Act 2013 (FSA) to carry on Islamic banking business; and

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

Part III: Background

3.1. Sell and Buy Back Agreement (SBBA) is an Islamic financial market instrument involving several transactions based on the following sequence:

(i) an outright sale of SBBA securities by an SBBA seller to an SBBA buyer based on the Shariah principle of sell and buy (*bai`*) at original price;

(ii) a promise which may be in any of the following forms:

(a) a unilateral promise (*wa`d*) by the SBBA seller to buy back the same or equivalent SBBA securities from the SBBA buyer on a future date at a sale price;

(b) a *wa`d* by the SBBA buyer to sell the same or equivalent SBBA securities to the SBBA seller on a future date at a sale price; or

(c) a bilateral promise (*muwa`adah*) by the SBBA buyer to sell the SBBA securities and promise by the SBBA seller to buy back the same or equivalent SBBA securities on a future date at a sale price; and

(iii) an outright purchase of the same or equivalent SBBA securities by the SBBA seller from the SBBA buyer based on the Shariah principle of *bai`*.

3.2. At present, the SBBA transactions are still underdeveloped as compared to the conventional repo which results in SBBA transactions being less active in the interbank repo market.

3.3. The main challenge that hinders the wide adoption of SBBA among interbank market participants is non-alignment of SBBA structure with the globally accepted Global Master Repurchase Agreement (GMRA) standards.

3.4. Efforts to harmonize SBBA with GMRA standards are important to increase acceptance and application of SBBA at the global level. This can enable risk management features such as margining and other features to be introduced in the SBBA instrument to deal with the risk

of default and market risk faced by both parties in the SBBA without neglecting the Shariah compliance aspect.

3.5. In an effort to align the SBBA with the GMRA standards, IFI proposes to introduce three (3) new features of SBBA namely margining, profit disbursement and substitution of asset. The details of the features are described as follows:

Feature 1: Margining

3.6. Margining is a mechanism that involves the transfer of an amount of cash between the SBBA seller and the SBBA buyer as a cash margin where the amount of cash margin to be transferred is determined based on mark-to-market valuation of the underlying security on the valuation date. The party that needs to transfer the cash margin is determined based on the price movement of the underlying asset on the mark-to-market valuation date.

3.7. The Shariah concept proposed for the margining feature is promise to provide security deposit *(wa`d bi hamish jiddiyyah).* As and when there is a price movement of the underlying securities based on mark-to-market valuation, *wa`d bi hamish jiddiyyah* will be triggered and the promisor (buyer or seller, as the case may be) is required to transfer a certain amount of cash to the counterparty as security deposit to secure their commitment to perform the second leg transaction at maturity date.

Table 1: Scenario of price movement of the underlying security and the need to transfer the security deposit

i. The price of the underlying securities remain at the original price on the valuation date	SBBA seller and buyer will not perform any security deposit transfer
ii. The price of the underlying securities fall below the original price on the valuation date	The SBBA seller has to transfer the security deposit to the SBBA buyer
iii. The price of the underlying securities rise above the original price on the valuation date	The SBBA buyer has to transfer the security deposit to the SBBA seller

Feature 2: Profit disbursement

3.8. In certain circumstances, the issuer of the underlying security will pay a profit on the security, in which case, the profit will be paid to the buyer as the owner of the underlying security during the duration of the SBBA transaction. The buyer is free to perform any transaction on the profit including transferring it to any party including the SBBA seller.

3.9. In the context where the SBBA buyer chooses to transfer the profit to the SBBA seller, there are two (2) mechanisms that can be used by the SBBA buyer in transferring the profit. The chosen mechanism plays a role in determining the price of the second leg transaction.

Mechanism 1 – Profit reinvestment:

3.10. Profit reinvestment refers to the reinvestment of profit received by SBBA buyer during the payment of profits by the issuer of securities. The profit will usually be reinvested in the money market.

3.11. Based on mechanism 1, the profit earned will remain in the ownership of the SBBA buyer. However, the value of the profit along with the expected return on reinvestment will be taken into account in determining the sale price of the second leg transaction, where it will be deducted from the price of the second leg transaction at the maturity date as mutually agreed upon at the inception of SBBA contract.

Mechanism 2 – Profit transfer:

3.12. Based on mechanism 2, the profit paid by the issuer of securities to the SBBA buyer will be immediately transferred to the SBBA seller based on the promise to provide gift (*wa`d bil hibah*) by SBBA buyer to the SBBA seller on the profit payment date.

Table 2: Illustration of profit transfer mechanism in SBBA

Par value of security A	RM100,000,000.00	
Haircut	0%	
Price of first leg transaction (Principal)	RM98,511,557.38	
Duration of SBBA	91 days	
Profit rate of second leg transaction	3.44%	
Expected coupon	RM2,007,221.42	
Price of second leg transaction at maturity date	**Mechanism 1:** Profit reinvestment	**Mechanism 2:** Profit transfer
	RM99,356,435.68	RM97,349,214.26

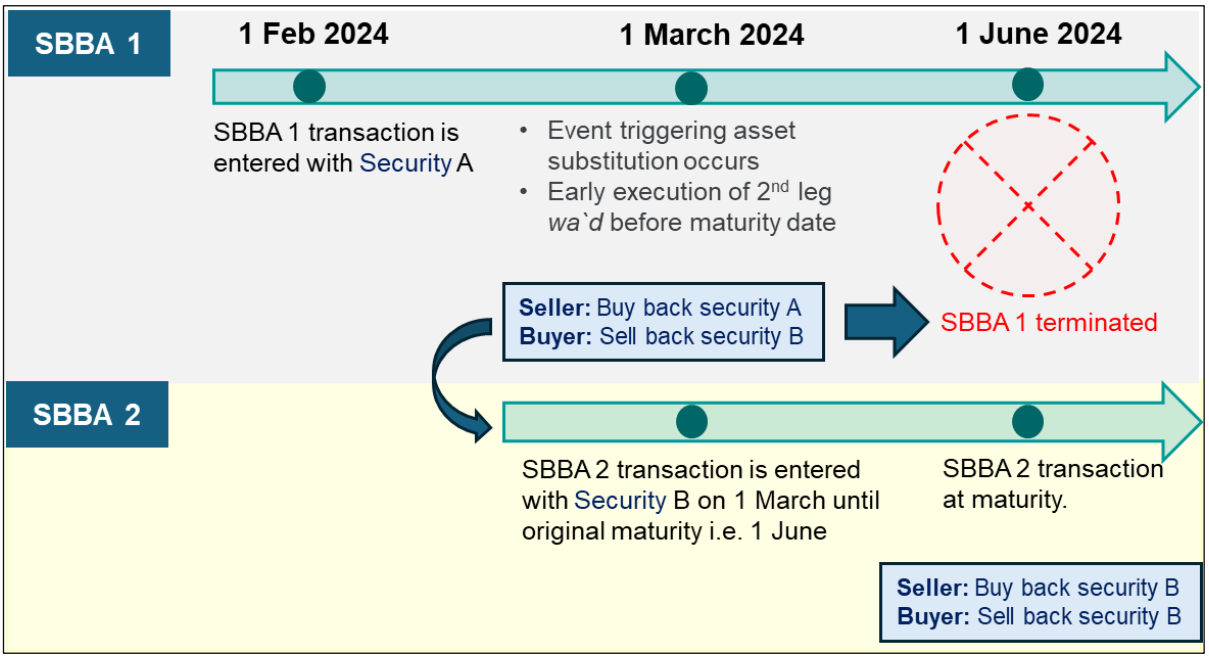
Feature 3: Substitution of asset

3.13. The substitution of asset feature is triggered upon the occurrence of a triggering event such as a downgrade of the underlying asset's credit rating or in the event of default of the underlying asset. This feature will ensure that SBBA transactions can continue and the interests of the contracting parties remain protected. The value of the substituted security is usually equal to or close to the repurchase price of the security in the second leg transaction.

3.14. The substitution of asset feature in SBBA contract is executed through mutual agreement of the contracting parties to execute the second leg transaction earlier than the maturity date (*accelerated wa`d*), where the seller will repurchase the underlying security from the buyer. This will terminate the previous SBBA transaction earlier than the agreed date.

3.15. The contracting parties will then enter into a new SBBA transaction with a new underlying security based on the original maturity date to replace the previous SBBA transaction.

Diagram 1: Illustration of the execution of the substitution of asset feature



Shariah issues

Feature 1: Margining

3.16. Is the concept of a promise from the buyer and seller to transfer security deposits (*wa`d bi hamish jiddiyyah*) to each other based on the price movement of the underlying security suitable to be used for margining feature?

Feature 2: Profit disbursement

3.17. Is the promise from the SBBA buyer (as the owner of the underlying security during SBBA tenure) to transfer the profit obtained from the security issuer as *hibah* (*wa`d bil hibah*) to the SBBA seller in line with Shariah principles?

Feature 3: Substitution of asset

3.18. Is the execution of *wa`d* before the maturity date suitable for the purpose of substitution of asset feature in the SBBA contract?

Part IV: Key Discussion

The suitability to apply the concept of wa`d by the SBBA buyer and seller to provide a security deposit (hamish jiddiyyah) for margining feature

4.1. The margining feature in SBBA is applied for the purpose of protecting the interests of both contracting parties from the risk of default due to price movement of the underlying security. For example, when the price of the underlying security rises above the price of the second leg transaction, in this situation, the SBBA seller will be exposed to the risk of default by the SBBA buyer (owner of the security) to execute the second leg transaction. This is because the SBBA buyer now owns a more valuable security and has the opportunity to obtain a profit exceeding the profit of the second leg transaction if the securities were to be sold to the market instead. Therefore, the buyer needs to transfer a cash margin to the seller as a security deposit based on the price difference between the market price and the price of the second leg transaction.

4.2. *Hamish jiddiyyah* is a form of security deposit where an amount of money is paid to the counterparty to secure a commitment to enter into a transaction or fulfil a promise in the future. Therefore, the application of the *wa`d bi hamish jiddiyyah* concept is suitable for the margining feature in SBBA as its purpose is to secure the commitment of the seller and buyer to fulfil their promise to enter into the second leg transaction when there is a price movement of the security. The transferred cash margin will be returned to its original owner when the promise to enter the second leg transaction is fulfilled at maturity date.

The suitability to apply the concept of wa`d bil hibah by the SBBA buyer for the purpose of transferring the profit obtained from the issuer of the underlying securities to the SBBA seller

4.3. Before entering into the SBBA transaction, the SBBA buyer will execute a promise to transfer the profit received from the security issuer to the SBBA seller as *hibah* on a certain date or situation as agreed by the contracting parties. The *wa`d bil hibah* is executed separately from the SBBA transaction and becomes an obligation on the buyer to fulfil the *wa`d*.

The execution of substitution of asset feature through accelerated wa`d before maturity date

4.4. In principle, a promise that has been agreed between the contracting parties must be fulfilled and any breach of the promise may lead to losses to the promisee. In such circumstances, the promisor must bear any costs or losses resulting from his failure to fulfil the promise.

4.5. However, in the context of substitution of asset feature, when a triggering event occurs, the contracting parties may agree to accelerate the execution of *wa`d* earlier than the maturity date based on mutual agreement.

Part V: Basis of the SAC Statement

The suitability of applying the concept of *wa`d bi hamish jiddiyyah* for margining feature

5.1. In general, *hamish jiddiyyah* (security deposit) is a concept recognised by Shariah to secure a commitment by the contracting parties to enter into a transaction or fulfil a promise in the future. The permissibility of *hamish jiddiyyah* is based on the general permissibility of *rahn* (collateral) as mentioned in the al-Quran as follows:

وَإِن كُنتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ[1]

"*And if you are on a journey and cannot find a scribe, then a security deposit (should be) taken.*"

5.2. Besides, in the context of SBBA, the granting of security deposit as a form of guarantee can safeguard the interests and prevent harm to both contracting parties from the risk of default due to the price movement of the underlying securities. This is in line with the Islamic legal maxim that says:

لا ضرر ولا ضرار[2]

"*Neither harming nor reciprocating harm (in Islam).*"

5.3. The determination of the amount of security deposit based on the price movement of the underlying securities is also permissible and subject to the mutual agreement by both contracting parties. This is in line with the hadith that says:

المسلمون على شروطهم إلا شرطا أحل حراما أو حرم حلالا[3]

"*The Muslims are bound by their (agreed) conditions except the condition that permits what is forbidden or forbids what is permissible.*"

The suitability of *wa`d bil hibah* concept for profit transfer feature

5.4. In principle, both buyers and sellers are entitled and free to carry out any transactions based on certain methods and conditions that do not violate Shariah principles and are mutually agreed upon. This is according to the following Islamic legal maxim:

الأصل في العقود رضا المتعاقدين، وموجبها هو ما أوجباه على أنفسهما بالتعاقد[4]

"*The original ruling for a contract is the consent of the contracting parties and its effect is based on what have become the rights and duties as agreed in the contract.*"

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[1] Surah al-Baqarah, verse 283

[2] Imam Malik bin Anas, *Al-Muwatta'*, *Mu'assasah Zayed bin Sultan Ali Nahyan li al-A`mal al-Khairiyyah wa al-Insaniyyah*, Abu Dhabi, 2004, v. 4, p. 1078, hadith no. 2758.

[3] Abu Daud, Sunan Abi Daud, Bait al-Afkar al-Dawliyyah, 1999, p. 398, hadith no. 3594.

[4] Muhammad Mustafa Al-Zuhayli, *Al-Qawa`id al-Fiqhiyyah wa Tatbiqatuha fi al-Mazahib al-`Arba`ah*,Dar al-Fikr, Damsyik, 2006, v. 2, p. 818.

5.5. Based on the above Islamic legal maxim, the buyer in the SBBA contract as the owner of the underlying securities has the freedom to transact with the securities he owns according to his wishes as long as they are Shariah compliant. This includes promising to transfer the profit obtained from the securities to the SBBA seller as a *hibah*. This is in line with the following Quranic verse:

فَإِن طِبْنَ لَكُمْ عَن شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيئًا[5]

"*…But if they give up willingly to you anything of it, then take it in satisfaction and ease.*"

The execution of substitution of asset feature by terminating the existing sales contract and entering into a new sales contract before the maturity date of the SBBA

5.6. When the triggering event for the substitution of asset occurs, the SBBA seller and buyer may agree to accelerate the execution of the *wa`d* to enter into a second leg transaction before the maturity date which will terminate the previous SBBA transaction. Subsequently, the seller and buyer will enter into a new SBBA transaction for the remaining period. This is in line with the hadith and the Islamic legal maxim as mentioned in paragraphs 5.3 and 5.4 above.

Part VI: Implication of the SAC Statement

6.1. This SAC Statement provides clarity regarding the implementation of the new SBBA features as proposed by IFI.

6.2. The implementation of the new features will standardise the SBBA instrument with global standards and is expected to increase the acceptance of SBBA and be more competitive in the local and global markets.

6.3. This SAC Statement must be read together with the existing SAC Statement pertaining to SBBA structures.

In the event there are any inconsistencies between the English and Bahasa Melayu versions, the Bahasa Melayu version shall prevail.

[5] Surah al-Nisa', verse 4.