



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Hajah Discussion Paper

Applicable to:

1. Licensed Islamic banks
2. Licensed takaful operators including professional retakaful operators
3. Licensed banks and licensed investment banks approved to carry on Islamic banking business
4. Prescribed development financial institutions approved to carry on Islamic financial business

This discussion paper (DP) outlines Bank Negara Malaysia's (the Bank) thoughts on proposed requirements for application of *hajah* by Islamic financial institutions (IFIs) in the conduct of their Islamic banking and takaful business. Specifically, this DP seeks feedback from IFIs on the following:

- (a) the definition of *hajah* and its scope of application;
- (b) the expectations on oversight function and responsibilities of the board, senior management, Shariah committee and the control function of the IFI in ensuring a comprehensive and robust assessment of the application of *hajah*; and
- (c) the requirements and policy guidance relating to the processes and procedures to facilitate Shariah deliberation and decision making concerning *hajah* in the IFIs.

The Bank invites written feedback on the proposals in this DP, including suggestions on areas requiring further clarification, elaboration or alternatives that the Bank should consider. The feedback must:

- (a) be prepared based on **inputs from relevant parties** within the IFIs, including from the **product, strategic management, treasury, risk management, compliance and Shariah sections** given the potential implications of the proposals to the IFIs' strategies, operations and product offerings;
- (b) include inputs and constructive views from the Shariah committee of the IFI; and
- (c) be supported with clear justifications, including accompanying evidence or illustrations where appropriate, to facilitate an effective consultation process.

The feedback must be submitted to the Bank via email to shariahstandard@bnm.gov.my by **31 January 2022**. In the course of preparing your feedback, you may direct any queries to the following officers:

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PART A OVERVIEW

1 Introduction

- 1.1 The Shariah Advisory Council (SAC) of Bank Negara Malaysia (the Bank) has, on a case-to-case basis, issued several rulings¹ in the past related to the application of *hajah*. These rulings have generally allowed temporary exception to, or disapplication of applicable Shariah rulings in specific exigent circumstances. These existing *hajah*-related rulings outline broad Shariah parameters without specifying the policy² or operational guidance to facilitate effective application of the rulings by Islamic financial institutions (IFIs).
- 1.2 Over the years, the Bank has observed varying practices and rigour in the deliberation by the Shariah committee on the application of *hajah*. The Bank also observed heavy and undue reliance on assessment and information provided by the business lines, which in some instances may have risked being misleading and/or incomplete. Clear justifications and business impact analysis to support robust deliberation and informed decision making was also not evident.
- 1.3 Increased complexity and sophistication in the operating environment, rapid developments in the financial landscape, and uncertain business environment are posing significant challenges to financial institutions. Given these developments, IFIs need a toolkit that enable them to manage existing risks, consistently innovate and keep pace with the rapidly evolving operating landscape and demographic changes. A clear interpretation of *hajah* from the context of contemporary financial practices, supported by an in-depth understanding of its impact will ensure that IFIs continue to operate within the safe boundaries of Shariah thus improving the rigour of existing *hajah* implementation by the IFIs. The implementation of *hajah* should therefore be premised on a robust and detailed governance process and assessment.

¹ The example of SAC rulings, among others are as follows:

- (a) the permissibility for a licensed takaful operator to cede out its risk to a licensed insurer or a professional reinsurer in the absence of the capacity or expertise of a licensed takaful operator or a professional retakaful operator to underwrite a takaful risk;
- (b) the application of *bai` istijrar* (supply sale) for Islamic trade finance; and
- (c) the permissibility to benchmark interest rate in the pricing component of Islamic financial products.

² For the avoidance of doubt, the policy document on Takaful Operational Framework (TOF) issued by the Bank on 26 June 2019 has outlined some operational requirements. However, the TOF does not outline a comprehensive operational guidance to operate SAC rulings on the application of *hajah* on the cessation of takaful risk to a licensed insurer or professional reinsurer.

- 1.4 This discussion paper on *Hajah* (the DP) seeks to initiate discussions and solicit feedback from IFIs on the following:
- (a) the proposed definition of *hajah* in the context of Islamic finance and its scope of application;
 - (b) the enhanced governance expectation on roles and responsibilities of key organs of IFIs in ensuring the robust assessment of application of *hajah*; and
 - (c) the proposed set of requirements and policy guidance to facilitate Shariah deliberation and decision making on the application of *hajah*.

2 Interpretation

- 2.1 The terms and expressions used in this DP shall have the same meanings assigned to them in the Financial Services Act 2013 (FSA), Islamic Financial Services Act 2013 (IFSA) or Development Financial Institutions Act 2002 (DFIA), as the case may be, unless otherwise defined in this DP.
- 2.2 For the purpose of this DP–
“Islamic financial institution” or **“IFI”** collectively refers to–
- (a) licensed Islamic banks;
 - (b) licensed takaful operators including 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.

PART B HAJAH APPLICATION IN ISLAMIC FINANCE

3 General overview on *hajah* and *darurah*

- 3.1 Necessity (*darurah*) and need (*hajah*) have been widely discussed by classical and contemporary scholars. These discussions focus on the hardships experienced by an individual, a group or a legal person aiming to preserve the life of a natural person or legal person in severe and mild hardship situations³, during *darurah* and *hajah* situations. Discussions concerning a hardship experienced by a legal person however has been limited.
- 3.2 As we progress, the Bank is considering to provide better clarity and guidance to the industry on the interpretation of *hajah* and the scope of its application in the context of Islamic finance. It is envisaged that this would pave the way towards improving the rigour in the implementation of *hajah* by IFIs. For the purpose of this DP, the focus is only on *hajah*. After an extensive deliberation, the SAC and the Bank concluded that the nature and severity of hardships experienced by an IFI are not likely to reach the *darurah* level. This is premised on the following:
- (a) sufficient regulatory measures that are already in place to facilitate the prudent risk management of an IFI such as capital, liquidity and other requirements which contribute to the safety and soundness of an IFI. For example, a situation of *hajah* exists when an IFI is seeking to manage its risks to meet the internal capital target level⁴ and to ensure the IFI maintains adequate buffers. Arguably, even if the IFI operates at the minimum required capital level, its safety and soundness remain intact. While this risk management step can be seen as addressing specific interest (*maslahah khassah*) of the IFI, it is ultimately intended to preserve public interest (*maslahah `ammah*) i.e. the stakeholders' interest as well as to prevent instability in the financial system that may result in a wider harm, such as unemployment, to the economy; and
 - (b) the magnitude of harm at *darurah* level experienced by an IFI vis-à-vis a natural person differs - where a *darurah* experienced by the IFI(s) requires specific consideration from the authority as it deals with systemic impact to the economy. However, for a *darurah* experienced by a natural person, the magnitude of harm is limited to the natural person itself. Therefore, the harm needs to be immediately eliminated and can be decided by the natural person itself to preserve the natural person's life, religion, lineage, progeny or property, without considering a wider benefit (*maslahah*) or public interest (*maslahah `ammah*).

³ Refer Appendix 1 on Definition of *Hajah* and *Darurah*.

⁴ Paragraph 19.4 of Risk Based Capital Framework for Takaful Operators.

Consultation 1:

- (a) Please provide feedback on the exclusion of *darurah* and the basis as specified in paragraphs 3.2(a) and 3.2(b). Specifically, the feedback should cover the IFI's feedback on the level of authority in determining *darurah* i.e. it can only be made by the authority. Please provide appropriate Shariah justification on the IFI's views including specifying source of references in supporting such views.
- (b) Please provide feedback on the proposed exclusion of *darurah* for hardship experienced by an IFI. In the event where the IFI disagrees with the proposed exclusion, please provide the rationale and real case example(s) experienced by the IFI or plausible scenario(s) based on the IFI's existing stress testing result. Please include relevant data/information substantiating the severity of hardship experienced by the IFI that confirms its *darurah* application. In addition to IFI's feedback, the Shariah committee is required to deliberate and provide specific feedback on the proposed exclusion of *darurah*.

3.3 In establishing the appropriate definition and scope of *hajah*, including the category of Shariah prohibitions or areas of Shariah ruling exceptions that can be included under *hajah* as specified in paragraph 4.7, the Bank has considered the following:

- (a) the fundamental concepts of *hajah* and *darurah* which revolve around the types of situations experienced by a person and the existence of three important characteristics to allow exemption to the rules to be applied as illustrated in Diagram 1, which are—
- (i) the severity of the hardship experienced or likely to be experienced and its impact on the person;
 - (ii) the availability of an alternative that is acceptable by Shariah to deal with a *hajah* situation; and
 - (iii) the appropriate quantum of period and size for any temporary solution in *hajah* or *darurah* situation encountered by the person;

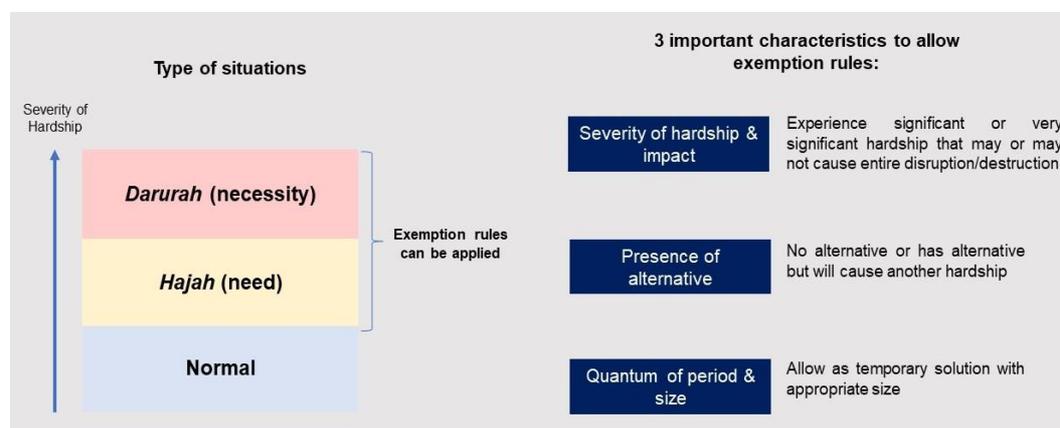


Diagram 1

- (b) the interchangeable use of *hajah* and *darurah* terminologies, in practice, due to the absence of a clear demarcation between the two;
- (c) the different nature of hardship experienced by natural person and legal person; and
- (d) examples provided by classical and contemporary scholars as well as modern applications of *hajah*.

4 Hajah Definition

4.1 Based on the above, the DP proposes to define *hajah* as follows:

Definition :

Hajah is a situation of exigent circumstance that will cause or likely to cause a detrimental impact to the safety and soundness of the IFI thus necessitating a temporary exception of a Shariah ruling.

Consultation 2:

Please provide your feedback on the proposed definition. In addition to IFI's feedback, the Shariah committee is required to deliberate and provide specific feedback on the proposed definition.

Scope of the application of *hajah*

- 4.2 For purposes of the proposed definition of *hajah* in paragraph 4.1, the DP proposes to classify a situation as an exigent circumstance, only if it satisfies the following conditions:
- (a) there is Shariah compliant alternative, however complying with a Shariah ruling under such a situation will result or will likely result in significant hardship or operational complexities that may cause detrimental impact to the IFI's funding, operations⁵ and the performance of critical functions, or economic activities⁶; and/or
 - (b) there is an absence of appropriate alternatives⁷ which are in compliance with Shariah to address such a situation.

⁵ Including customer and environmental perspectives as specified in paragraph 6.2.

⁶ Such as the ceding out takaful risks to a professional reinsurer, if strictly prohibited, may cause significant hardship in diversifying and managing takaful risk that may impact an IFI's financial soundness and/or group's financial strength given the absence of retakaful arrangement of a specific risk or subscription to conventional insurance for high risk vehicle financed by a licensed Islamic bank or the use of conventional nostro account for low volume foreign currency.

⁷ Such as absence of an enabling law to perform a Shariah compliant transaction or restricted by law stipulated by host country of an Islamic window with foreign parent bank e.g. inability to perform Shariah compliant trade finance transaction using existing products due to restriction imposed by parent bank on the profit calculation methodology or due to operational nature of trade finance which does not satisfy the normal Shariah contract's principle.

- 4.3 In outlining the proposed requirements in paragraph 4.2 above, the Bank is of the view that hardship should be tackled and prevented early on before it poses a bigger risk to the IFI, with possible consequences to the broader financial system and economy in accordance with in the following legal maxims:
- (a) harm must be removed (*al-darar yuzal*)⁸;
 - (b) hardship begets ease (*al-mashaqqah tajlib al-taysir*)⁹; and
 - (c) necessity lifts prohibitions or makes the unlawful lawful (*al-darurah tubih al-mahzurah*)¹⁰.
- 4.4 For the avoidance of doubt, the DP proposes for the significant hardship, as outlined in paragraph 4.2(a), to exclude cases where:
- (a) the financial loss experienced by an IFI is a result of normal business or operating challenges, and the IFI can still operate on a going concern basis¹¹;
 - (b) the hardship is a result of poor risk management, control, business decision or negligence by the IFI¹²; or
 - (c) there is insufficient effort¹³ by the IFI to find alternatives or arrangements which are in compliance with Shariah.

Consultation 3:

Please provide your feedback on the proposed scope of the application of *hajah* as stipulated in paragraphs 4.2 and 4.4, including additional area(s) to be included or excluded from the scope of application. In addition to IFI's feedback, the Shariah committee is required to deliberate and provide specific feedback on the proposed scope.

- 4.5 In relation to paragraph 4.4(c), the relevant key organs such as the Shariah committee have the responsibility to provide an objective view on the sufficiency of efforts taken by the IFI. This can be performed either by the Shariah committee or a third party appointed by the Shariah committee as specified in paragraph 5.4 (b), based on information provided in 6.1(a) and 6.1(b). In addition, the control function has the responsibility to highlight the gap to the Shariah committee and the board based on the *hajah* implementation review¹⁴.

⁸ Al-Suyuti, *Al-Ashbah wa Al-Naza'ir, Dar Al-Kutub Al-'Ilmiyyah*, 1983, p. 83.

⁹ Ibid, p. 76.

¹⁰ Ibnu Nujaim, *Al-Ashbah wa Al-Naza'ir, Dar Al-Kutub Al-'Ilmiyyah*, 1999, p. 73.

¹¹ For example, the need to forgo profits arising from Shariah non-compliant event or commission arising from exclusive business arrangement with licensed insurers for non-large and non-specialised risk or non-availability of auto renewal features offered by licensed takaful operators for motor financing portfolio.

¹² For example, financial losses arising from underwriting credit or takaful risk beyond risk appetite and capacity.

¹³ May be confirmed by external parties who performed independent review or may be detected by the Shariah committee based on choice of options available at the *hajah* assessment stage.

¹⁴ For example, convenient arrangement with a conventional counterparty from long-standing relationship despite the existence of an alternative Islamic counterparty which might incur additional cost or effort.

- 4.6 The period and quantum of the temporary exception allowed under paragraph 4.1 should also be commensurate with the complexity, size and risk management capability of an IFI¹⁵. This is consistent with the legal maxim for exceptional situations where it requires leniency to be commensurate with the actual need (*al-darurah tuqaddar biqadariha*)¹⁶.

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¹⁵ For example, on ceding out arrangement of takaful risk to a licensed reinsurer, a licensed takaful operator may be allowed to transfer 50% of its takaful risk via an intra-group retrocession for two years. This is considering limited capacity of professional retakaful operator to underwrite large and specialised risk and taking into account adverse impact to capital (through stress testing) where it is only sufficient to retain 50% of the retakaful risk.

¹⁶ Ibnu Nujaim, *Al-Ashbah wa Al-Naza'ir, Dar Al-Kutub Al-`Ilmiyyah*, 1999, p. 73.

- 4.7 In assessing the application of *hajah* and the extent of temporary exception that may be allowed for a particular arrangement or transaction, the DP proposes the following examples of categories of Shariah prohibitions or area of Shariah ruling exceptions for which *hajah* may be applicable.

Category	Description	Example
(a) Contravention of original Shariah rulings (<i>hukm al-Shariah</i>) or <i>maqasid</i>	Exigent circumstances that trigger contravention of non-inherent forbidden (<i>haram li-ghayrih</i>) matters.	<ul style="list-style-type: none"> • Ceding takaful risk to a professional reinsurer. • Funding provided to conventional parent during a liquidity crisis in the financial system, using a Shariah compliant contract.
(b) Non-fulfilment of pillars and / or conditions of specific contracts required under Shariah	Exigent circumstances that require modification, variation or flexibility of the original contracts which breach/ contravene the original pillars and/or conditions.	Transacting with <i>ribawi</i> items beyond spot rules i.e. allowability of period of T+2 for <i>bai' al-sarf</i> implementation in foreign exchange transaction in accordance with market practices.
(c) Changes to the original objective or purpose of a contract (<i>muqtada aqad</i>)	Exigent circumstances that require modification to the original objective or purpose of a contract due to the need to mitigate risk.	Changing original intention of <i>wa'd</i> (promise) to serve as risk mitigation for Islamic financial product.
(d) Production of contracts that lead to <i>hiyal</i> (stratagems) / <i>makharij</i> (way out)	Exigent circumstances that require a combination of a few contracts or concepts in a product for the <i>makharij</i> purpose.	Usage of <i>tawarruq</i> ¹⁷ as a temporary solution to satisfy customers' financial needs.

¹⁷ For the avoidance of doubt, this example is based on the majority views of Shariah scholars on the validity of *tawarruq* from the Shariah perspective.

Consultation 4:

- (a) Please provide your feedback on the proposed category of Shariah prohibitions for which *hajah* may be applicable including other potential proposed category of Shariah prohibition for the Bank's consideration. What challenges do you foresee from Shariah and operational perspectives in assessing *hajah*?
- (b) Please provide additional example(s) for category of Shariah prohibition experienced by the DFIs in performing their mandated roles, that the Bank can consider in developing allowable scenarios for the application of *hajah*.

- 4.8 In the event that a *darurah* situation exists¹⁸, the Bank is of the view that the matter must be brought to the SAC's attention for further deliberation.

5 Governance Requirements

- 5.1 The existing policy documents on *Corporate Governance* (CGPD) and *Shariah Governance* (SGPD) issued by the Bank on 3rd August 2016 and 20th September 2019 respectively outline the requirements imposed on all key organs of an IFI in ensuring effective governance arrangement and sound Shariah compliance culture. Given the specific nature of the application of *hajah*, the Bank is of the view that additional oversight expectations are required to ensure rigour in the assessment and monitoring of the application of *hajah* and hence accountability of each key organ.

The Board of Directors

- 5.2 For the board, there is an expectation that they need to consider *hajah* in performing its oversight function. In doing so, the board is expected to–
- (a) oversee the implementation of the Shariah committee decisions and ensuring that appropriate internal controls on the application of *hajah* are established for an end-to-end Shariah compliance;
 - (b) approve internal policy and operational guidance relating to the decision making process on *hajah* and giving due consideration on the review and exit strategy for *hajah*;
 - (c) provide sound and substantiated views to the Shariah committee of the IFI on the necessity of *hajah*, such as validating the existence of hardship and its circumstances that warrant the application of *hajah* when the board is aware that full information is not being tabled to the Shariah committee or when the board has a strong belief that the Shariah committee has wrongly understood the information provided by the management; and
 - (d) effectively challenging the IFI's proposal to pursue with the application of *hajah*, including providing inputs on the adequacy of plausible scenarios,

¹⁸ i.e. an IFI or IFIs experiencing unprecedented situation which could not be solved within the proposed requirement in this DP.

stress testing results, key assumptions used in justifying the application of *hajah* and its period.

Shariah Committee

- 5.3 In ensuring a sound decision or advice to allow a *hajah* application, the Shariah committee is expected to ensure proper justification and rigour in deliberating *hajah* cases whilst ensuring all possible efforts have been demonstrated by the IFI prior to applying *hajah*, in line with established *hajah* internal policies.
- 5.4 In view of paragraph 5.3, the Bank is exploring to heighten the governance expectation on the Shariah committee in terms of meeting composition, deliberation and documentation as outlined below:
- (a) deliberations of decision relating to the application of *hajah* are to be made by the entire Shariah committee;
 - (b) in the event where the Shariah committee is unable to finalise its decision or has reasonable doubt on the robustness of *hajah* assessment performed by the IFI, the Shariah committee may seek independent views from third party experts¹⁹ to enable them to make an informed decision; and
 - (c) in addition to the requirement of paragraph 11.4 of SGPD, the respective Shariah committee members who agree with the application of *hajah* are expected to document, by themselves, the justifications on the decision or advice including the key considerations and rationale for allowing the application of *hajah*, and any significant concern.

Consultation 5:

- (a) Please outline specific challenges in complying with the proposal to require deliberation by the entire Shariah committee for application of *hajah*. In addition to the IFI's feedback, the Shariah committee is required to deliberate and provide specific feedback on the proposed Shariah committee's roles and responsibilities as specified in paragraph 5.4.
- (b) In operationalising paragraph 5.4(a), please suggest appropriate governance for a scenario where an IFI is allowed by the Bank to operate below required composition²⁰.

¹⁹ Refers to any party which is not related to the IFI and not necessarily an external Shariah advisor. The external party must have sufficient competency to provide independent view on the IFI's *hajah* proposal based on the processes to be specified by the Bank.

²⁰ In the event where the Bank rejects any application or there is a decease of a person which resulted in an IFI to operate below the required composition as specified in the SGPD i.e. five or three members depending on nature of institution specified in the SGPD.

Senior Management

- 5.5 For the senior management, there is an expectation that they need to consider the policy and application of *hajah* as part of their scope, in discharging their primary responsibility over the day-to-day management of the IFI. In doing so, the senior management is expected to–
- (a) ensure effective and efficient implementation of *hajah* internal policy;
 - (b) provide balanced information and opinion to the Shariah committee supported with the relevant information during the identification and assessment stage as proposed in paragraphs 6.1(a) and 6.1(b);
 - (c) ensure adequate allocation of resources for continuous development of skills and competencies of all key organs in the application of *hajah* including ensuring adequate budget for development plans of all key organs and putting in place adequate number of officers with appropriate competencies and experience;
 - (d) ensure appropriate internal control systems are in place for the assessment and application of *hajah*, and monitoring the implementation of *hajah* by the IFI; and
 - (e) ensure a proper, robust and continuous communication plan of the *hajah* policies and procedures to all business organs is in place to ensure all relevant business organs are aware of their roles in the application of *hajah*.

Control Function

- 5.6 In line with paragraphs 16.1 to 16.7 of the SGPD, the Bank expects the control function²¹ to provide the assurance on the application of *hajah* and its implementation based on the Shariah committee's decision that is carried out by the business lines. Specifically, the Bank expects the control function to review and monitor the application of *hajah* and the implementation by the business organs, including assessment on areas for improvements that can prevent an IFI from applying *hajah* or continuously using *hajah* for its business continuity as well as decision making process for the application of *hajah*.

Consultation 6:

Do you agree with the expanded roles/responsibilities set out for the board, Shariah committee and senior management as well as the control function? Please explain any specific concerns along with constructive suggestions for the Bank to consider other than those identified in paragraphs 5.2 to 5.6.

²¹ Such as Shariah risk, compliance or audit functions.

6 Hajah Decision Making Process

6.1 The Bank is considering introducing a set of requirements and guidance that outlines the process involved in assessing and deciding on the application of *hajah*. It aims to facilitate a more structured approach to the decision making by the Shariah committee which involves four main steps:

Main Steps	Details
a. Identification	<ul style="list-style-type: none"> ▪ Establish the <i>hajah</i> narrative to be presented to the IFI's Shariah committee. <ul style="list-style-type: none"> • Ensure the scope of issues is as specified in this DP as per paragraphs 4.2 to 4.7. • Provide a comprehensive narrative of the exigent circumstance experienced by the IFI by providing information on the efforts done prior to proposing the application of <i>hajah</i>, the size of the exposure, the affected parties, the demographic and the current key financial ratio, as stipulated in paragraph 6.2(a). ▪ Establish a proper strategy to obtain sufficient and appropriate information.
b. Assessment	<ul style="list-style-type: none"> ▪ Demonstrate severity of the exigent event(s) based on the IFI's internal parameters taking into consideration the requirements and guidance set out by the Bank and support the severity analysis with qualitative and quantitative data. This may include the impact on both financial position as well as the business operations as specified in paragraph 6.2(b). ▪ Develop proposed solutions for the Shariah committee's consideration consisting of options available in dealing with exigent circumstances, supported with rationale, Shariah justifications, impact assessment and assumption, unintended consequences and mitigation measures for each proposed option²². ▪ The Shariah committee may seek views from independent parties in the event where they have reasonable doubt on the presented information and assessment, or the Shariah committee is unable to form any decision related to <i>hajah</i>.
c. Finalisation	<ul style="list-style-type: none"> ▪ Decide on the best solution(s) for the exigent circumstance experienced by the IFI and determine the appropriate period to apply <i>hajah</i> as well as determine an exit strategy. ▪ Ensure completeness of: <ul style="list-style-type: none"> • information provided in the identification and assessment steps; and • the Shariah committee and the board's deliberation on the appropriateness of management actions to address the risks and vulnerabilities identified in the <i>hajah</i> assessment.
d. Monitoring and Reporting	<ul style="list-style-type: none"> ▪ Perform periodic implementation review and reporting to the Shariah committee and/or the board on the progress of the application of <i>hajah</i> and its exit strategy. <ul style="list-style-type: none"> • In the event where an extended period is needed, a comprehensive justification that considers the size, nature and complexities of the IFI,

²² For example, an IFI is expected to identify the profit/loss (such as profit commission on risk ceded to the reinsurers) which may arise in a situation where *hajah* is adopted and establish a proper treatment/plan to manage such profit/loss, for instance purifying the impermissible profit via charity.

supported by a robust Shariah deliberation and proper exit plan for the application of *hajah* need to be tabled to the Shariah committee and the board.

- Provide yearly report on any application of *hajah* to the Bank including the following information:
 - detailed narrative and assessment provided in steps 6.1(a) and 6.1(b);
 - result of *hajah* assessment as specified in step 6.1(c);
 - minutes of the Shariah committee meeting(s) as well as written justification as required in paragraph 5.5(c); and
 - minutes of the board related to the application of *hajah*.

Consultation 7:

- (a) Please provide your views on the proposed guidance on decision making process, key challenges in adopting the proposed process and reporting requirements.
- (b) Please provide any other inputs or steps that need to be considered in assessing *hajah* including specific concerns along with constructive suggestions on the *hajah* decision making process for the Bank to consider other than those identified in paragraphs 6.1.
- (c) In respect of the yearly report requirement, please indicate the appropriate duration needed for such submission, including rationale for the proposed duration.

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6.2 In respect of the identification and assessment of the application of *hajah* as specified in paragraphs 6.1(a) and 6.1(b), the Bank is of the view that the following qualitative and quantitative²³ information may be considered by an IFI in preparing its narrative and assessment to the Shariah committee:

Areas	Proposed details
(a) Coverage of narrative of exigent circumstances	<ul style="list-style-type: none"> ▪ Institutional perspectives e.g. operational challenges such as takaful operator not having the risk capacity or absence of risk expertise to accept takaful risk or operational challenges arising from specific roles assigned by the Government to a DFI that may not be undertaken by other financial institutions; ▪ Regulatory and legal perspectives e.g. legal impediments to offer Shariah compliant solutions by local authority(s) or host country(s); ▪ Macro perspectives e.g. unemployment, reduction in GDP growth; ▪ Customer perspectives e.g. customers experience deterioration of their financial position or demographic limitation that constrain their ability to comply with Shariah or customer's preference to use a conventional product due to different religious belief; or ▪ External event perspectives e.g. environmental or health crisis that translates into loss of income, unemployment, high inflation.
(b) Impact (including unintended consequences)	<ul style="list-style-type: none"> ▪ Impact on customers and relevant stakeholders (e.g. counterparties related to main customers, service providers, suppliers, market utilities, public services, government) caused by Shariah limitation or restriction, taking into account – <ul style="list-style-type: none"> • the impact and speed of disruption to financial health, customer business, and short-term liquidity needs of customers and relevant stakeholders. • the capacity or speed of reaction to the disruption by counterparties, customers and the public. ▪ Impact on other financial institutions and financial markets taking into account – <ul style="list-style-type: none"> • the magnitude and speed at which disruption of the function would materially affect market participants or market functioning (e.g. liquidity, operations and structure of other financial institutions, financial markets concerned). ▪ Impact on economy, taking into account – <ul style="list-style-type: none"> • the lack of financial resources for an IFI to continue its operations as its customers or other stakeholders become negatively affected, both directly and indirectly i.e. defaults which may cause emotional distress and further financial repercussions. ▪ Impact on environment and infrastructure, taking into account– <ul style="list-style-type: none"> • the non-availability of Shariah compliant options to fulfil societal and environmental needs.

²³ Refer to Appendix 2 for indicator that can be used or considered for quantitative assessment.

Consultation 8:

(d) Please provide your views on the proposed qualitative and quantitative information specified in paragraph 6.2 including additional information that should be considered by the Bank. Specifically for the DFIs, please provide examples(s) or scenario(s) on areas that need to be considered under the narrative and impact assessment.

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APPENDICES

Appendix 1 Definition for *hajah* and *darurah*

Hajah and *darurah* from the Quran and Sunnah

The following verse of the Quran implies the general use of word *hajah* that means want or a need:

وَالَّذِينَ تَبَوَّءُوا الدَّارَ وَالْإِيمَانَ مِنْ قَبْلِهِمْ يُحِبُّونَ مَنْ هَاجَرَ إِلَيْهِمْ وَلَا يَجِدُونَ فِي صُدُورِهِمْ
حَاجَةً مِمَّا أُوتُوا وَيُؤْثِرُونَ عَلَىٰ أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ

And [also for] those who were settled in al-Madinah and [adopted] the faith before them. They love those who emigrated to them and find not any want in their breasts of what the emigrants were given but give [them] preference over themselves, even though they are in privation. (Surah Al-Hasyr, 59:9)

The following verse of the Quran implies the general use of *darurah* that means necessity:

فَمَنْ أَضْطَرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful. (Surah Al-Baqarah, 2:173)

The following *hadith* implies the general meaning of *hajah*:

عن ابن عمر رضي الله تعالى عنهما عن النبي ﷺ أنه قال : (من كان في حاجة أخيه كان الله في حاجته) رواه البخاري ومسلم

Ibn `Umar (May Allah be pleased with them) reported: The Messenger of Allah (peace and blessings of Allah be upon him) said: "If anyone fulfills his brother's needs, Allah will fulfill his needs..."

The following *hadith* implies the general meaning of *darurah*:

عن أبي سعيد الخدري رضي الله عنه : أن رسول الله صلى الله عليه وسلم، قال: (لا ضرر ولا ضرار) رواه ابن ماجه

Abu Sa`eed al-Khudree (may Allah be pleased with him), that the Messenger of Allah (peace and blessings of Allah be upon him) said: "There should be neither harming (dharar) nor reciprocating harm (dhirar)."

Examples of *hajah* and *darurah* from classical and contemporary scholars' perspectives

Definitions of *hajah* and *darurah*

Classical scholars	
<i>Hajah</i>	Complementary interests; people need them in terms of expansion and also to remove the hurdle often leading to severity and hardship which cause the loss of objective. If these interests are not observed, people will face severity and hardship, though, which will not reach at the level of total disruption of the public interest. ²⁴
<i>Darurah</i>	a situation where one needs to consume forbidden items to prevent from dying or severe harms. ²⁵
Contemporary scholars	
<i>Hajah</i>	a situation where a need of a person or a community to be met by lifting the distress situation temporarily or permanently. If it is not addressed, may reach <i>darurah</i> (necessity) situation. ²⁶
<i>Darurah</i>	an absolute necessity that permits the forbidden except for what is excluded. However, if a necessity below than that, it is expressed as a need, but sometimes it also included in necessity as a broad use. ²⁷

Categorisation of *hajah*

The scholars further categorised <i>hajah</i> into–	
<i>Hajah`ammah</i> (general need)	Need of all human being without any time or period limitation; ²⁸
<i>Hajah khasah</i> (specific need)	Need of certain parties for example in certain cities, for certain professionals or limited to relevant individuals in certain period or time. ²⁹

²⁴ Al-Syatibi, *Al-Muwafaqat, Dar Al-Kutub Al-`Ilmiyah, 2004.*

الحاجيات ومعناها أنها مفقود إليها من حيث التوسعة ورفع الضيق المؤدي في الغالب إلى الحرج والمشقة اللاحقة لفوت المطلوب فإذا لم تراخ دخل على المكلفين - على الجملة - الحرج والمشقة ولكنه لا يبلغ مبلغ الفساد المتوقع في المصالح العامة.

²⁵ Al-Suyuti, *Al-Ashbah wa Al-Nazair, Dar Al-Kutub Al-`Ilmiyah, 1983.*

فالضرورة: بلوغه حداً إن لم يتناول الممنوع هلك أو قارب، وهذا يبيح تناول الحرام

²⁶ Ahmad Kafi, *Al-Hajah Al-Syar'iyyah Hududuha wa Qawaiduha, Dar Al-Kotob Al-Ilmiyah, 2004.*

الحاجة هي ما يحتاجه الأفراد أو تحتاجه الأمة للتوسعة ورفع الضيق إما على جهة التأقيت أو التأييد، فإذا لم تراخ دخل على المكلفين - على الجملة - الحرج والمشقة وقد تبلغ مبلغ الفساد المتوقع في الضرورة.

²⁷ Abdullah bin Bayyah, *Sina`ah Al-Fatwa wa Feqh Al-Aqalliyat, Al-Muwatta Center, 2018.*

ضرورة قصوى تبيح المحرم سوى ما استثنى. والثانية: ضرورة دون ذلك، وهي المعبر عنها بالحاجة، إلا أنهم يطلقون عليها الضرورة في الاستعمال توسعاً

²⁸ Modified from Mustafa Ahmad Zarqa, *Al-Madkhal Al-Feqhi Al-Am, Dar Al-Qalam, 2004, v.2 p.1005 and Abdullah bin Bayyah, Sina`ah Al-Fatwa wa Feqh Al-Aqalliyat, Al-Muwatta Center, 2018, p.313-314.*

²⁹ Ibid.

Appendix 2 List of potential indicators that can be used to assess severity of *hajah* case

Categories	Indicators
Capital	<ul style="list-style-type: none"> • Common equity tier 1 capital ratio • Tier 1 capital ratio • Total capital ratio • Leverage ratio • Capital adequacy ratio • Net asset of Shareholders' fund • Impairment of <i>Qard</i>/ non-recovery of <i>Qard</i> ratio • Internal target capital level
Liquidity	<ul style="list-style-type: none"> • Liquidity coverage ratio • Net stable funding ratio • Cost of funds • Cost of wholesale funding • Concentration of funding (e.g. from top 20 counterparties)
Profitability	<ul style="list-style-type: none"> • Return on assets • Return on equity • Net profit margin • Cost-to-income ratio • Operational risk loss • Operating profit
Asset quality	<ul style="list-style-type: none"> • Gross impaired financing ratio • Growth rate of gross impaired financing • Net impaired financing ratio • Financing loss coverage ratio
Operational risk	<ul style="list-style-type: none"> • Unscheduled downtime for mission critical systems • Cyber-attack incidences on mission critical systems • Critical staff turnover rate • Number of compliance breaches • Shariah non-compliance cost-correction • System errors
Takaful risk	<ul style="list-style-type: none"> • Claims ratio • Underwriting ratio • Net contributions • Net claims incurred • Underwriting profit • Retention ratio • Surplus arising ratio
Market	<ul style="list-style-type: none"> • Price-to-book ratio • Share price volatility • Credit rating • Credit default swap spread
Macroeconomic	<ul style="list-style-type: none"> • GDP growth • Sectoral GDP growth (e.g. construction, manufacturing, exports, etc.) • Sovereign's credit rating • Sovereign's credit default swap spread