

Response to feedback received

Wadi`ah

Introduction

Bank Negara Malaysia (“the Bank”) issued a concept paper on *Wadi`ah* in January 2015 to seek feedback on the operational requirements of *wadi`ah* contract. The operational requirements sets out in the concept paper aimed to ensure the establishment of key processes and policies governing the implementation of *wadi`ah* contract in line with the Shariah requirements. Therefore, providing the assurance for compliance with Shariah requirements, strengthen operational conduct and safeguard customer’s interest are undertaken in a sound and systematic manner.

The Bank appreciates the constructive feedback and suggestions received from the Islamic financial institutions during the consultation period, whereby the respondents were broadly supportive of the proposals set out in the concept paper. The feedbacks have been duly considered and substantive suggestions have been incorporated in the final policy document where appropriate. Key comments received and the Bank’s responses are set out in this policy document.

Bank Negara Malaysia
3 August 2016

1. Clarity on the applicability of *wadi`ah* and *ijarah*

- (a) *Wadi`ah* with charges will be subject to *ijarah* requirement
 - 1.1 The policy document highlighted that the contractual terms of *wadi`ah* will transform to adopt the terms of *ijarah* in the event that the contracting parties agreed to impose fees on safekeeping services. While the safekeeping depositor is obligated to bear the direct costs under *wadi`ah*, any charges imposed over and above the said cost shall alter the original role and obligation of the safekeeping depositor and custodian to a lessor and lessee respectively. In this regard, both parties shall observe the requirements stipulated under the policy document on *Ijarah*.
- (b) *Wadi`ah* assets placed in custody
 - 1.2 In line with the Shariah requirements that the asset under custody must be permissible under Shariah, thus at minimum, the Islamic financial institution as a custodian must solicit the declaration from the safekeeping depositor that the assets comply with Shariah.

2. Clarity on the applicability of *wadi`ah* and *qard*

- 2.1 The contractual terms of the *wadi`ah* shall apply the *qard* in the case where the safekeeping depositors permits the custodian to utilise fungible assets, such as money placed under the latter's custody. Islamic financial institutions that adopt such arrangement are required to observe the requirements stipulated under the policy document on *qard* contract.

3. Fees and charges

- 3.1 The Bank wishes to clarify that the determination of direct costs to be borne by the safekeeping depositor under *wadi`ah* shall be clearly outlined in the *wadi`ah* legal documentation, which shall be in lined with the internal policies of the custodian. The Islamic financial institution as a custodian are required to disclose the direct costs to the safekeeping depositors prior entering into *wadi`ah* as to facilitate informed decision making by the latter.
- 3.2 The Bank also wishes to clarify that contracting parties may agree for the safekeeping costs to be either fully borne by safekeeping depositor or shared between both contracting parties. In this regard, Islamic financial institutions that enter into *wadi`ah* shall clearly specify the agreed arrangement in the legal documentation.