

PREFACE

Title

Exposure Draft - Wadi'ah (Shariah Requirements and Optional Practices)

Issuance Date

09-Dec-2013

Effective Date

09-Dec-2013

Applicability

DFIA

FSA

IFSA

Summary

This Exposure Draft (ED) outlines the Shariah requirements and optional practices relating to wadi`ah to facilitate Islamic Financial Institutions (IFIs) in developing Islamic financial services and products including the features of wadi`ah and its arrangement with other Shariah contracts or concepts.

The Bank invites written comments from your institution on this ED, including suggestions for particular issue, areas to be further clarified/elaborated and any alternative proposal that the Bank should consider. To facilitate the Bank's assessment, please support each comment with clear rationale, accompanying evidence or illustrations, as appropriate.

Written comments in the form of softcopy are preferable and may be submitted to **shariahstandard@bnm.gov.my** by **10 January 2014**.

Hardcopy of the written feedback may also be submitted to:

Pengarah
Jabatan Perbankan Islam dan Takaful
Bank Negara Malaysia
Jalan Dato' Onn
50480 Kuala Lumpur
Malaysia

Issuing Department

Islamic Banking and Takaful

Attachment

[20131209115435/Feedback Form - Wadi'ah.doc](#)



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Wadi`ah
(Shariah Requirements and Optional Practices)
Exposure Draft

Issuance date: 09 December 2013

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi`ah</i> (Shariah Requirements and Optional Practices) Exposure Draft
-----------------	--	---

Table of Contents

PART A	Overview	1
	1. Objective	1
	2. Applicability.....	1
	3. Legal provisions.....	1
	4. Effective date.....	1
	5. Interpretation	2
	6. Related legal and policy documents.....	2
PART B	Definition and nature of <i>wadi`ah</i>	4
	7. Definition	4
	8. Nature.....	4
PART C	Components of <i>wadi`ah</i>	6
	9. Contracting parties.....	6
	10. Asset	7
	11. Covenant of <i>wadi`ah</i>	7
PART D	<i>Wadi`ah yad amanah</i>	9
	12. Requirements of <i>wadi`ah yad amanah</i>	9
PART E	<i>Wadi`ah yad dhamanah</i> not involving money	11
	13. Requirements of <i>wadi`ah yad dhamanah</i> not involving money.....	11
PART F	<i>Wadi`ah yad dhamanah</i> involving money.....	13
	14. Definition of <i>qard</i>	13
	15. Requirements of <i>qard</i>	13
	16. Arrangement of <i>qard</i> with other contract	16
	a) Arrangement of <i>qard</i> with sale contract.....	16
	b) Arrangement of <i>qard</i> with <i>hiwalah</i>	16
	c) Arrangement of <i>qard</i> with <i>muqassah</i>	17
PART G	Dissolution (<i>fasakh</i>) and completion (<i>intiha`</i>) of <i>wadi`ah</i>.....	18
	17. Dissolution of <i>wadi`ah yad amanah</i>	18
	18. Completion of <i>wadi`ah yad amanah</i>	18
	19. Dissolution of <i>wadi`ah yad dhamanah</i> not involving money	19

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi`ah</i> (Shariah Requirements and Optional Practices) Exposure Draft
-----------------	--	---

20.	Completion of <i>wadi`ah yad dhamanah</i> not involving money.....	20
21.	Dissolution of <i>qard</i>	21
22.	Completion of <i>qard</i>	21

APPENDICES 22

23.	Appendix 1 Legitimacy of <i>wadi`ah yad amanah</i>	22
24.	Appendix 2 Legitimacy of <i>wadi`ah yad dhamanah</i> not involving money.....	24
25.	Appendix 3 Legitimacy of <i>qard</i>	25
26.	Appendix 4 Glossary.....	27

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi`ah</i> (Shariah Requirements and Optional Practices) Exposure Draft
-----------------	--	---

As part of the objective to strengthen the Shariah-compliance culture among Islamic financial institutions (IFIs), Bank Negara Malaysia (the Bank) is embarking on an initiative to develop a Shariah-based regulatory framework. The purpose of the framework is to ensure that the IFIs comply with Shariah. In this regard, the Bank is issuing a series of policy documents on Shariah contracts to enhance the end-to-end compliance with Shariah.

This Exposure Draft (ED) outlines on the Shariah requirements and optional practices relating to *wadi`ah* to facilitate IFIs in developing Islamic financial services and products including the features of *wadi`ah* and its arrangement with other Shariah contracts or concepts.

The Bank invites written comments from your institution on this ED, including suggestions for particular issues, areas to be further clarified/elaborated and any alternative proposal that the Bank should consider. To facilitate the Bank's assessment, please support each comment with clear rationale, accompanying evidence or illustrations, as appropriate.

Written comments in the form of softcopy are preferable and may be submitted to **shariahstandard@bnm.gov.my** by **10 January 2014**. Hardcopy of the written feedback may also be submitted to:

Pengarah
Jabatan Perbankan Islam dan Takaful
Bank Negara Malaysia
Jalan Dato' Onn
50480 Kuala Lumpur
Malaysia

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi`ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 1/28
-----------------	--	---	-----------

PART A Overview

1. Objective

- 1.1 This policy document outlines the Shariah requirements and optional practices relating to *wadi`ah* to be observed by the IFIs in developing Islamic financial services and products.
- 1.2 This policy document also covers arrangement of *wadi`ah* with other Shariah contracts or concepts.
- 1.3 This policy document aims to facilitate the understanding of the Shariah requirements relating to *wadi`ah* that must be adhered to by IFIs in order to ensure its validity.

2. Applicability

- 2.1 This policy document is applicable to all IFIs as defined in paragraph 5.2.

3. Legal provisions

- 3.1 The requirements in this policy document are specified pursuant to section 29(1) of the Islamic Financial Services Act 2013 (IFSA).

4. Effective date

- 4.1 This policy document comes into effect on XX XX XXXX.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 2/28
-----------------	--	---	-----------

5. Interpretation

5.1 The terms and expressions used in this policy document shall have the same meanings assigned to them in the Financial Services Act 2013 (FSA), IFSA and DFIA unless otherwise defined in this policy document.

5.2 For the purpose of this policy document:

“**S**” denotes a standard, requirement or specification that must be complied with. Failure to comply may result in one or more enforcement actions;

“**G**” denotes guidance which may consist of such information, advice or recommendation intended to promote common understanding and sound industry practices which are encouraged to be adopted.

“**Islamic financial institutions**” or “IFIs” means –

- (a) licensed Islamic banks and licensed takaful operators under the IFSA;
- (b) licensed banks and licensed investment banks under the FSA which are approved under section 15(1)(a) FSA to carry on Islamic banking business; and
- (c) prescribed institutions under the DFIA which are approved under section 129(1) DFIA to carry on Islamic banking business or Islamic financial business.

6. Related legal and policy documents

6.1 This policy document must be read together with the following legal and policy documents:

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 3/28
-----------------	--	---	-----------

- (a) any Shariah Advisory Council (SAC) rulings published by the Bank¹; and
- (b) Shariah Governance Framework for Islamic Financial Institutions.

¹ Including Shariah resolutions in Islamic Finance, standards, circulars or any directive pertaining to Shariah matter issued by the Bank.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi`ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 4/28
-----------------	--	---	-----------

PART B DEFINITION AND NATURE OF *WADI`AH*

7. Definition

- S** 7.1 *Wadi`ah* refers to a contract by which an owned asset is placed with another party on the basis of trusteeship (*amanah*) for safekeeping purposes. The contract is also referred as *wadi`ah yad amanah*.
- S** 7.2 Notwithstanding paragraph 7.1, the definition of *wadi`ah* may include *wadi`ah yad dhamanah*, which refers to a safekeeping contract whereby permission to utilise the asset placed in custody is granted by the safekeeping depositor and/or a fee is charged by the custodian for the safekeeping service. The effect of this permission is that the custodian guarantees the asset placed in custody.

8. Nature

- S** 8.1 Based on the above definition, *wadi`ah* is categorised into two types:
- (a) *Wadi`ah Yad Amanah* (*wadi`ah* based on trusteeship²); and
 - (b) *Wadi`ah Yad Dhamanah* (*wadi`ah* based on guarantee).
- S** 8.2 *Wadi`ah yad amanah* is a contract based on fiduciary relationship (*aqd al-amanah*). Any of the contracting parties may terminate the contract unilaterally.
- S** 8.3 *Wadi`ah yad dhamanah* shall have the effect of an *i`arah* contract if the asset placed in custody involves a non-fungible asset. Therefore, it is a contract based on fiduciary relationship (*aqd al-amanah*), whereby any of the contracting parties may terminate the contract unilaterally.

² The word trust and trusteeship used in this document connote the literal meaning and shall not be associated to terms relating to any law.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 5/28
-----------------	--	---	-----------

- S** 8.4 Notwithstanding paragraph 8.3, if the asset in *wadi'ah yad dhamanah* involves a fungible asset, the contract shall take the effect of *qard*. Therefore, it is an irrevocable contract whereby the contract shall not be terminated unilaterally by any of the contracting parties.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi`ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 6/28
-----------------	--	---	-----------

PART C COMPONENTS OF *WADI`AH*

9. Contracting parties

- S** 9.1 The contracting parties in a *wadi`ah* contract are the custodian (*wadi`*) and the safekeeping depositor (*mudi`*) of the asset.
- G** 9.2 The safekeeping depositor may not be the asset owner.
- S** 9.3 The safekeeping depositor who is not the asset owner shall have the permission to act on behalf of the asset owner or have legal authority over the asset placed in custody.
- G** 9.4 Pursuant to paragraph 9.3, the permission may be expressed by appropriate documentation or by any other methods accepted by customary business practice (*`urf tijari*) which do not contravene the Shariah principles.
- S** 9.5 The contracting parties shall have the legal capacity³ to enter into the *wadi`ah* contract.
- G** 9.6 The contracting parties in a *wadi`ah* contract may be a natural person or a legal person.
- G** 9.7 The contracting parties in a *wadi`ah* contract may involve more than one safekeeping depositor or custodian.

³ The legal capacity of a person is defined as capacity to assume rights and assume 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.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi`ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 7/28
-----------------	--	---	-----------

- G** 9.8 A party to the *wadi`ah* contract may enter into the contract through an agent.
- S** 9.9 The *wadi`ah* contract shall be entered into through an offer and acceptance between the contracting parties.
- G** 9.10 The offer and acceptance may be expressed by appropriate documentation or by any other methods accepted by customary business practice (*`urf tijari*) which do not contravene the Shariah principles.
- S** 9.11 Any term or condition mutually agreed upon which does not contravene the Shariah shall be binding on the contracting parties.

10. Asset

- S** 10.1 Asset to be placed in custody in a *wadi`ah* contract shall meet the following conditions:
- (a) the asset is recognized by the Shariah and deliverable; and
 - (b) the asset is an owned asset.
- G** 10.2 The *wadi`ah* asset may be a tangible or an intangible asset.

11. Covenant of *wadi`ah*

- G** 11.1 A custodian may accept an asset placed in his custody without ascertaining whether the asset placed in custody has been acquired or generated by permissible means or otherwise. Nevertheless, there is no restriction preventing the custodian from ascertaining the lawful status of the asset placed in custody.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 8/28
-----------------	--	---	-----------

- S** 11.2 The custodian shall not accept any asset to be placed in custody if such asset is not recognized by the Shariah.
- G** 11.3 Notwithstanding paragraph 11.2, the custodian may accept money generated from a voidable contract as a *wadi'ah* asset.
- G** 11.4 The asset placed in custody may be pledged by the safekeeping depositor to the custodian or to any other party subject to the conditions that the asset placed in custody is owned by the safekeeping depositor and that the pledged asset shall take the rule of *rahn*.
- G** 11.5 The contracting parties may agree to the payment of a fee for the service of safekeeping the asset placed in custody to the custodian.
- S** 11.6 Pursuant to paragraph 11.5, the effect is that the asset placed in custody is guaranteed by the custodian. The contracting parties are required to adhere to the terms and conditions agreed.
- S** 11.7 Notwithstanding paragraph 11.5, the custodian shall obtain permission to utilise the asset placed in custody by the safekeeping depositor.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	Wadi'ah (Shariah Requirements and Optional Practices) Exposure Draft	Page 9/28
-----------------	--	--	-----------

PART D WADI'AH YAD AMANAH

12. Requirements of wadi'ah yad amanah

- S** 12.1 The asset placed in custody is a trust given to the custodian for safekeeping. The custodian shall return the asset placed in custody to the safekeeping depositor upon the request of the safekeeping depositor or according to the agreed terms of the contract.
- S** 12.2 The custodian shall ensure proper management and protection of the asset placed in custody and shall act in the interest of the safekeeping depositor of the asset.
- G** 12.3 Methods of safekeeping may be determined by the contracting parties or may be based on customary business practice (*'urf tijari*) and the nature of the asset placed in custody.
- S** 12.4 The custodian shall not be entitled to any revenue or any income from the asset placed in custody. Any benefits accrued from the asset placed in custody belong to the asset owner.
- S** 12.5 In the case of loss or damage to the asset placed in custody, the custodian shall not be held liable except for the loss or damage which is a result of custodian's misconduct (*ta'addi*), negligence (*taqsir*), or breach of specified terms (*mukhalafah al-shurut*).
- S** 12.6 The custodian shall not entrust the asset placed in his custody to a third party without the permission of the safekeeping depositor. Without the permission, the custodian shall be held liable for the asset placed in custody.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi`ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 10/28
-----------------	--	---	------------

- G** 12.7 The custodian may entrust the asset placed in his custody to a third party with the permission of the safekeeping depositor and, consequently, the third party is the new custodian of the *wadi`ah* asset.
- G** 12.8 The permission to entrust the asset placed in custody to a third party may be expressed by appropriate documentation or by any other methods accepted by customary business practice (*`urf tijari*) which do not contravene the Shariah principles.
- S** 12.9 All costs related to the asset placed in custody shall be borne by the asset owner.
- G** 12.10 Pursuant to paragraph 12.9, the safekeeping depositor may bear the costs subject to the agreement of the asset owner.
- G** 12.11 The contracting parties may agree to specify the period of the *wadi`ah* contract.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 11/28
-----------------	--	---	------------

PART E *WADI'AH YAD DHAMANAH* NOT INVOLVING MONEY

13. Requirements of *wadi'ah yad dhamanah* not involving money

- S** 13.1 Notwithstanding paragraph 9.2, the safekeeping depositor shall be either the owner of the asset or of the usufruct of the asset placed in custody.
- S** 13.2 Under *wadi'ah yad dhamanah*, permission to utilise the asset placed in custody is granted by the safekeeping depositor. As a consequence of the permission, the custodian is held liable to guarantee the asset placed in custody.
- S** 13.3 Pursuant to paragraph 13.2, the custodian shall return the asset placed in custody to the safekeeping depositor upon the request of the safekeeping depositor or according to the agreed terms of the contract.
- S** 13.4 The custodian shall be held liable for losses and damages affecting the asset placed in custody irrespective of the cause of the loss or damage.
- S** 13.5 The custodian is entitled to any profit generated from utilising the asset placed in custody.
- S** 13.6 Any growth or appreciation in value of the asset placed in custody shall belong to the asset owner.
- S** 13.7 All maintenance cost related to the asset placed in custody shall be borne by the asset owner.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 12/28
-----------------	--	---	------------

- G** 13.8 Pursuant to paragraph 13.7, the safekeeping depositor may bear the cost subject to the agreement of the asset owner.
- S** 13.9 Periodic operational maintenance cost related to the safekeeping of the asset placed in custody shall be borne by the custodian.
- G** 13.10 Pursuant to paragraph 13.9, the contracting parties may agree that the cost is to be borne by the safekeeping depositor.
- G** 13.11 The custodian may entrust the asset placed in custody to a third party with the permission of the safekeeping depositor and, consequently, the third party is the new custodian of the asset placed in custody.
- G** 13.12 The permission to utilise and/or to entrust the asset placed in custody to a third party may be expressed by appropriate documentation or by any other methods accepted by customary business practice (*`urf tijari*) which do not contravene the Shariah principles.
- G** 13.13 The contracting parties may agree to specify the period of the *wadi'ah* contract.
- G** 13.14 Notwithstanding paragraph 13.13, any of the contracting parties may terminate the contract unilaterally within the specified period.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 13/28
-----------------	--	---	------------

PART F *WADI'AH YAD DHAMANAH* INVOLVING MONEY

- S** 13.15 Under *wadi'ah yad dhamanah* involving money, the asset placed in custody is in monetary form and the custodian is allowed to utilise the money subject to the permission of the asset owner. Money is regarded as a form of fungible asset. Therefore, it is construed as a *qard* contract and shall adhere to the rules related to *qard*.
- S** 13.16 Notwithstanding paragraph 13.15, *wadi'ah yad dhamanah* involving a non-monetary fungible asset shall also have the effect of a *qard* contract.

14. Definition of *qard*

- S** 14.1 *Qard* refers to a contract of lending a fungible asset to a party who will benefit from it and who will subsequently return an equivalent replacement.

15. Requirements of *qard*

- S** 15.1 The contracting parties in a *qard* contract are the safekeeping depositor (lender) and the custodian (borrower).
- S** 15.2 The lender shall be owner of the money borrowed under the *qard* contract.
- S** 15.3 The principal feature of a *qard* contract is the obligation to return the money borrowed in full, either secured or unsecured, to the lender based on the mutually agreed terms and conditions.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 14/28
-----------------	--	---	------------

- S** 15.5 Any pre-determined additional in the form of cash, kind or benefit over and above the principal *qard* amount, either imposed by the lender or promised by the borrower, is deemed *riba*.
- G** 15.6 Any additional amount paid over and above the principal *qard* amount is allowed provided that it is not pre-determined and agreed upfront.
- S** 15.7 Any additional amount over and above the principal *qard* amount owed by the borrower in the form of cash, kind or benefit, whether stipulated at the time of entering into the contract by either the lender or the borrower, or stipulated during the contract period by the lender, shall be deemed *riba*.
- S** 15.8 Incentives promised to a lender to enter into a *qard* contract with a borrower may result in implicit benefit to the lender, which is tantamount to *riba*.
- G** 15.9 Any common incentives and/or facilities which are not specifically linked to engagement in the *qard* contract are allowed.
- S** 15.10 Common services provided by the borrower which are not a consequence of the *qard* contract are not construed as *riba*.
- G** 15.11 The borrower may give *hibah*, either in monetary or non-monetary form, to the lender at its own discretion provided that it is not pre-conditional at the time of entering into the *qard* contract and that such practice does not become a customary practice (*`urf*).
- S** 15.12 Pursuant to paragraph 15.11, the practice of giving *hibah* is considered as customary if the *hibah* is given to majority of borrower's lenders.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 15/28
-----------------	--	---	------------

- S** 15.13 The borrower is entitled to any benefits or revenue gained from the money borrowed.
- S** 15.14 Maintenance cost related to management of the money under the *qard* contract shall be borne by the borrower.
- G** 15.15 Notwithstanding paragraph 15.14, the lender may bear the maintenance cost subject to the agreement of the contracting parties.
- G** 15.16 The borrower may impose any fees or charges related to additional facilities or services.
- G** 15.17 The contracting parties may agree to return the money borrowed under a *qard* contract in a different currency provided that it is conducted on a spot basis according to the agreed prevailing exchange rate of the day.
- G** 15.18 The contracting parties may agree to specify the period of the *qard* contract.
- S** 15.19 Notwithstanding paragraph 15.18, the contracting parties are bound to the terms and conditions agreed at the time of entering into the contract.
- G** 15.20 In the event that the borrower fails to fulfil any agreed terms and conditions in settling the *qard* amount, the lender may request the borrower to pay the total amount of the *qard*.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	Wadi'ah (Shariah Requirements and Optional Practices) Exposure Draft	Page 16/28
-----------------	--	--	------------

16. Arrangement of *qard* with other contract

- S** 16.1 *Qard* contract may be arranged together with other contracts, provided that such arrangement does not result in disparity, contradiction, or nullification of the underlying Shariah rulings and the inherent nature of the respective contracts. The ultimate results of such arrangement shall not lead to contravention of the Shariah.

a) Arrangement of *qard* with sale contract

- S** 16.2 The contracting parties in a sale contract shall not stipulate entry into the *qard* contract as a condition for execution of the sale and purchase contract or vice versa.
- S** 16.3 An arrangement of the *qard* contract which results in an implicit benefit to the lender in any form, such as a pre-agreed rebate in settling the selling price of the sale contract, is not allowed.
- G** 16.4 Notwithstanding paragraph 16.3, any rebate in settling the selling price of the sale contract is allowed provided that the rebate is independent from the *qard* contract and that it is based on the discretion of the seller.

b) Arrangement of *qard* with *hiwalah*

- G** 16.5 Transfer of *qard* amount in the *qard* contract may be arranged with a third party whereby the *qard* amount owed by the borrower is transferred to the third party subject to mutual agreement of the contracting parties. Consequently, the *qard* amount is due to the third party.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 17/28
-----------------	--	---	------------

c) Arrangement of *qard* with *muqassah*

- G** 16.6 Set-off (*muqassah*) in the *qard* contract may be arranged between the contracting parties whereby the *qard* owed by the borrower is set-off with the *qard* due to the lender. Consequently, the set-off amount is no longer due to either of the respective parties.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	Wadi`ah (Shariah Requirements and Optional Practices) Exposure Draft	Page 18/28
-----------------	--	--	------------

PART G DISSOLUTION (*FASAKH*) AND COMPLETION (*INTIHA'*) OF *WADI'AH*

17. Dissolution of *wadi`ah yad amanah*

- G** 17.1 A *wadi`ah yad amanah* contract is dissolved under the following circumstances:
- (a) any of the contracting parties unilaterally terminate the contract;
 - (b) both contracting parties mutually agree to terminate the contract; or
 - (c) any of the contracting parties unilaterally terminate the contract due to misconduct (*ta`addi*), negligence (*taqsir*) or breach of specified terms (*mukhalafah al-shurut*) of the contract by the other.

18. Completion of *wadi`ah yad amanah*

- G** 18.1 A *wadi`ah yad amanah* contract ends under the following circumstances:
- (a) upon the maturity date agreed by the contracting parties;
 - (b) demise or dissolution of either the custodian or the safekeeping depositor;
 - (c) loss of legal capacity by any of the contracting parties;
 - (d) the owner of the asset placed in custody transfers ownership of the asset to a third party; or
 - (e) the custodian entrusts the asset placed in custody to a third party with the permission of the safekeeping depositor.
- S** 18.2 Upon dissolution or completion of the contract, the asset placed in custody shall be returned either to the safekeeping depositor or to the asset owner.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi`ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 19/28
-----------------	--	---	------------

- S** 18.3 Upon maturity of the period specified for *wadi`ah yad amanah*, the custodian is not liable for the asset placed in custody nor for delivering the asset placed in custody back to the safekeeping depositor.
- S** 18.4 During the period of the *wadi`ah* contract, the custodian is responsible to discharge the safekeeping task accordingly.
- S** 18.5 In the event that the safekeeping depositor does not claim the asset placed in custody after the maturity period, the asset shall be treated as a *wadi`ah yad amanah*.
- G** 18.6 Pursuant to paragraph 18.1 (b), in the case of the safekeeping depositor's death, the custodian may return the asset in custody to the legal heir(s) who have obtained legal authority to collect the asset or to the nominee (*wasi*) prescribed by the owner.
- S** 18.7 Pursuant to paragraph 18.6, the custodian is not responsible to ensure whether the legal heir or the nominee has distributed the asset according to any substantive law or law of distribution (*fara'id*).

19. Dissolution of *wadi`ah yad dhamanah* not involving money

- G** 19.1 A *wadi`ah yad dhamanah* not involving money contract is dissolved under the following circumstances:
- (a) any of the contracting parties unilaterally terminate the contract;
 - (b) both contracting parties mutually agree to terminate the contract; or
 - (c) any of the contracting parties unilaterally terminate the contract due to misconduct (*ta`addi*), negligence (*taqsir*) or breach of specified terms (*mukhalafah al-shurut*) of the contract by the other.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 20/28
-----------------	--	---	------------

20. Completion of *wadi'ah yad dhamanah* not involving money

- G** 20.1 *A wadi'ah yad dhamanah* not involving money contract ends under the following circumstances:
- (a) upon the maturity date agreed by the contracting parties;
 - (b) demise or dissolution of either the custodian or the safekeeping depositor;
 - (c) loss of legal capacity by any of the contracting parties; or
 - (d) the owner of the asset placed in custody transfers ownership of the asset to a third party.
- S** 20.2 Upon dissolution or completion of the contract, the asset placed in custody shall be returned either to the safekeeping depositor or to the asset owner.
- S** 20.3 Upon maturity of the period specified for *wadi'ah yad dhamanah*, the custodian is not liable for the asset placed in custody.
- S** 20.4 Notwithstanding paragraph 20.3, the custodian is responsible for delivering the asset placed in custody back to the safekeeping depositor.
- G** 20.5 Pursuant to paragraph to 20.1 (b), in the case of the safekeeping depositor's death, the custodian may return the asset in custody to the legal heir(s) who have obtained legal authority to collect the asset or to the nominee (*was'i*) prescribed by the owner.
- S** 20.6 Pursuant to paragraph 20.5, the custodian is not responsible to ensure whether the legal heir or the nominee has distributed the asset according to any substantive law or law of distribution (*fara'id*).

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 21/28
-----------------	--	---	------------

21. Dissolution of *qard*

- G** 21.1 A *qard* contract is dissolved through mutual termination by the contracting parties provided that the money borrowed is not utilised.
- S** 21.2 Upon dissolution of the *qard* contract, the *qard* amount shall be returned to the lender.

22. Completion of *qard*

- G** 22.1 A *qard* contract ends upon fulfilment of the contracting parties' obligations which include the following :
- (a) full settlement of the *qard* amount;
 - (b) transfer of obligation to pay the *qard* to a third party (*hiwalah*);
 - (c) waiving the right by the lender to receive the *qard* amount through rebate (*ibra'*); or
 - (d) set-off (*muqassah*) of debt obligations between the contracting parties.
- S** 22.2 Upon completion of the *qard* contract, the contracting parties are free from any contractual obligations.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	Wadi`ah (Shariah Requirements and Optional Practices) Exposure Draft	Page 22/28
-----------------	--	--	------------

APPENDICES

23. Appendix 1 Legitimacy of *wadi`ah yad amanah*

23.1 The legitimacy of *wadi`ah yad amanah* is derived from the Quran and founded on the Sunnah of Prophet Muhammad (peace be upon him) and the consensus of Muslim jurists (*ijma`*).

The Quran

23.2 Although the concept of *wadi`ah yad amanah* is not specifically mentioned in the Quran, the concept of trustworthiness, which is an important feature of *wadi`ah*, is expressed in several places in the Quran. The word “trust” or “*amanah*” is used in the Quran to indicate the importance of fulfilling all types of trust including that of safekeeping (*wadi`ah*) and returning the *amanah* when it is due.

23.3 The following Quran verses imply the general permissibility of *wadi`ah yad amanah*.

i. وَالَّذِينَ هُمْ لِأَمَانَاتِهِمْ وَعَهْدِهِمْ رَاعُونَ.

“Those who are true to their trusts and pledges” (*Surah al-Mu`minun*, verse 8).

ii. إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا.

“Truly, Allah commands you to hand back your trusts to their (rightful) owners” (*Surah al-Nisaa`*, verse 58).

iii. فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِنَ أَمَانَتَهُ.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	Wadi'ah (Shariah Requirements and Optional Practices) Exposure Draft	Page 23/28
-----------------	--	--	------------

“But if any of you entrusts another with a pledge (without a document of contract, witnesses or things produced as pledges of security), let the trustee deliver up that which is entrusted to him to its owner” (*Surah al-Baqarah, verse 283*).

The Sunnah of Prophet Muhammad (peace be upon him)

23.4 The following *hadiths* imply the general permissibility of *wadi'ah*.

- i. عن عائشة في هجرة النبي -صلى الله عليه وسلم- قالت : وأمر تعني رسول الله -صلى الله عليه وسلم- عليا رضي الله عنه أن يتخلف عنه بمكة حتى يؤدي عن رسول الله -صلى الله عليه وسلم- الودائع التي كانت عنده للناس.

`Aishah reported that on the occasion of the Prophet's migration to Medina, “The Messenger of Allah (peace be upon him) asked `Ali (may Allah be pleased with him) to take his place in Makkah in order to deliver the deposited things to their owners” (*al-Sunan al-Kubra 6/289, Hadith No. 12696*).

- ii. عن أبي هريرة عن النبي صلى الله عليه وسلم قال: أد الأمانة إلى من ائتمنك ولا تخن من خانك.

Abu-Hurairah reported that Prophet Muhammad (peace be upon him) said: “Return the trust to those who entrusted you, and do not betray those who betrayed you” (*Sunan Abu Dawud, 3/290, Hadith no. 3535*).

The Consensus of Muslim Jurists (*ijma`*)

23.5 Muslim jurists have reached *ijma`* (consensus) on the permissibility of *wadi'ah*.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	Wadi`ah (Shariah Requirements and Optional Practices) Exposure Draft	Page 24/28
-----------------	--	--	------------

24. Appendix 2 Legitimacy of *wadi`ah yad dhamanah* not involving money

24.1 The legitimacy of *wadi`ah yad dhamanah* not involving money is founded on the Sunnah of Prophet Muhammad (peace be upon him) and the consensus of Muslim jurists (*ijma`*)

The Sunnah of Prophet Muhammad (peace be upon him)

24.2 The following *hadiths* imply the general permissibility of *wadi`ah yad dhamanah* not involving money (*i`arah*).

i. عن أمية بن صفوان بن أمية عن أبيه أن رسول الله -صلى الله عليه وسلم-

استعار منه أدرعا يوم حنين، فقال أغضب يا محمد؟ فقال: لا، بل عارية

مضمونة.

Sofwan ibn Umayyah narrated that Prophet Muhammad (peace be upon him) borrowed coats of mail from him on the day of (the battle of) Hunayn. He asked, "Are you taking them by force, O Muhammad?" He replied, "No, it is a loan with a guarantee of their return" (*Sunan Abu Dawud, 3/321, Hadith no. 3564*).

ii. عن سمرة رضي الله عنه، عن النبي صلى الله عليه وسلم قال: على اليد ما

أخذت حتى تؤدي.

Samurah narrated that Prophet Muhammad (peace be upon him) said: "The hand which takes is responsible till it pays" (*Sunan Abu Dawud, Hadith no. 3091*).

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	Wadi'ah (Shariah Requirements and Optional Practices) Exposure Draft	Page 25/28
-----------------	--	--	------------

The Consensus of Muslim Jurists (*ijma`*)

24.3 Muslim jurists have reached *ijma`* (consensus) on the permissibility of *i`arah*.

25. Appendix 3 Legitimacy of *qard*

25.1 The legitimacy of *qard* is founded on the Sunnah of Prophet Muhammad (peace be upon him) and the consensus of Muslim jurists (*ijma`*).

The Sunnah of Prophet Muhammad (peace be upon him)

25.2 The following *hadiths* imply the general permissibility of *qard*:

i. عن ابن مسعود رضي الله عنه، أن النبي صلى الله عليه وسلم قال: ما من مسلم

يقرض مسلماً قرضاً مرتين إلا كان كصدقته مرة.

Ibn Mas`ud narrated that the Prophet (peace be upon him) said: "Every two loans extended by one Muslim to another count as one charitable payment" (*Ibn Majah* 7/275).

ii. عن أبي هريرة رضي الله عنه، عن النبي صلى الله عليه وسلم قال: من أخذ أموال

الناس يريد أداءها أدى الله عنه، ومن أخذ يريد إتلافها أتلفه الله.

Abu Hurairah narrated that the Prophet (peace be upon him) said, "Whoever takes people's wealth with the intention of repaying it, Allah will repay it on his behalf; and whoever takes it in order to use it up, Allah will destroy him" (*Sahih al-Bukhari*, 8/215, *Hadith no.* 2212).

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 26/28
-----------------	--	---	------------

The Consensus of Muslim Jurists (*ijma`*)

25.3 Muslim jurists have reached *ijma`* on the permissibility of *qard*.

26. Appendix 4 Glossary

Terms	Definition
<i>Amanah</i>	Trusteeship.
<i>Aqd al-amanah</i>	Contract based on a fiduciary relationship.
<i>Dhamanah</i>	Guarantee.
<i>Fara'id</i>	The rules of estate distribution according to the Shariah.
<i>Hibah</i>	Contract of transfer of ownership of an asset during the lifetime of the donor without any consideration or reward.
<i>Hiwalah</i>	Contract of assignment of debt from the liability of the original debtor to the liability of a third person so that the original debtor becomes free of liability.
<i>I'arah</i>	Contract of transfer of usufruct of a non-fungible asset to someone with the requirement to return the asset without any counter-value.
<i>Ibra'</i>	Rebate.
<i>Ijma`</i>	Consensus of Muslim jurists.
<i>Mudi`</i>	Safekeeping depositor.
<i>Mukhalafah al-shurut</i>	Breach of terms and conditions.
<i>Muqassah</i>	Offsetting.
<i>Qard</i>	Contract of lending a fungible asset to a party who will benefit from it and who will subsequently return an equivalent replacement.
<i>Rahn</i>	Pledge/Charge.
<i>Riba</i>	Any excess compensation without any corresponding counter-value recognised by Shariah.
<i>Ta`addi</i>	Misconduct.
<i>Taqsir</i>	Negligence.

BNM/RH/CP 028-7	Islamic Banking and Takaful Department	<i>Wadi'ah</i> (Shariah Requirements and Optional Practices) Exposure Draft	Page 28/28
-----------------	--	---	------------

<i>`Urf tijari</i>	Common business practice which is acceptable by the community and does not contradict Shariah rulings.
<i>Wadi`</i>	Custodian.
<i>Wadi`ah yad amanah</i>	Safekeeping based on trusteeship.
<i>Wadi`ah yad dhamanah</i>	Safekeeping based on guarantee.
<i>Wasi</i>	Nominee.