

Title

Wakalah – Concept Paper

Issuance Date

28 July 2015

Effective Date

The policy document will be effective upon issuance of the final document.

Summary

The concept paper provides both the Shariah and operational requirements for wakalah contract. The Shariah requirements highlight the salient features and essential conditions of wakalah contract to facilitate sound understanding and application by Islamic financial institutions (IFIs). The operational requirements set out the expectations for the establishment of a sound control environment for wakalah arrangements, covering requirements for effective governance and oversight, sound risk management, proper product structuring and expectations on the IFIs' business and market conduct.

This concept paper seeks feedback only on the operational requirements of wakalah contract under Parts C and D. For the Shariah requirements under Part B, the consultation and finalisation of the section have earlier been completed and the requirements described under the section are final Standards.

Please respond to the Bank by 28 August 2015 addressed to:

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

Any queries may be directed to:

Nor Azrina Lasa	: azrina@bnm.gov.my
Kamarudin Ahmad	: din@bnm.gov.my
Hairul Azmie Abd Aziz	: hairulazmie@bnm.gov.my
Noorlianni Rosli	: lianni@bnm.gov.my
Syamhasinah Hamdan	: hasinah@bnm.gov.my

Applicability

DFIA
FSA
IFSA



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Wakalah
Concept Paper

Issued on: 28 July 2015

Table of Contents

PART A	OVERVIEW.....	3
1.	Introduction.....	3
2.	Policy objectives.....	4
3.	Scope of policy.....	4
4.	Applicability.....	5
5.	Legal provision.....	5
6.	Effective date.....	5
7.	Interpretation.....	5
8.	Related policies.....	6
PART B	SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES.....	7
9.	Definition.....	7
10.	Nature.....	7
11.	Contracting parties.....	8
12.	Offer and acceptance.....	8
13.	Subject matter of <i>wakalah</i>	9
14.	Requirements of <i>wakalah</i>	9
15.	<i>Wakalah</i> fee.....	11
16.	Application of <i>wakalah</i> with other contracts or arrangements.....	12
17.	Requirements on the arrangement of <i>wakalah</i> with <i>kafalah</i>	12
18.	Application of <i>wakalah bi al-istithmar</i>	13
19.	Dissolution of binding <i>wakalah</i>	15
20.	Completion of binding <i>wakalah</i>	16
PART C	OPERATIONAL REQUIREMENTS FOR IFI AS <i>WAKIL</i>.....	17
21.	Background.....	17
22.	Governance and oversight.....	17
23.	Structuring.....	19
24.	Risk management.....	21
25.	Financial disclosures and reporting requirements.....	22
26.	Business and market conduct.....	23

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper
------------------	--	--------------------------------

PART D	OPERATIONAL REQUIREMENTS FOR IFI AS <i>MUWAKKIL</i>	23
27.	Background	24
28.	Governance and oversight	24
29.	Risk management	25
30.	Financial disclosures and reporting requirements	29
APPENDICES		31
Appendix 1	Legitimacy of <i>wakalah</i>	31
Appendix 2	Definition and interpretation	33
Appendix 3	Related legal and policy documents	35

As part of the objective to strengthen the Shariah-compliance practices among Islamic financial institutions (IFI), Bank Negara Malaysia (the Bank) is developing a series of Shariah-based regulatory policies to serve as guidance to the Islamic financial industry with respect to end-to-end compliance with Shariah. The documents consist of two components, Shariah and operational requirements. The Shariah requirements highlight the salient features and essential conditions of specific Shariah contracts to facilitate sound understanding and application by IFIs. The operational requirements set out the expectations with respect to the oversight function, structuring, risk management, financial reporting and disclosure as well as fair business and market conduct.

This concept paper (CP) describes the Shariah and operational requirements for *wakalah* contract. The Bank invites written feedback and comments only on the operational requirements of *wakalah* contract under **Part C and Part D**. The Shariah requirements in Part B serves as reference to facilitate IFI in providing feedback and comments on the operational aspects of *wakalah*. The feedback must be supported with clear rationale, accompanying evidence or illustration as appropriate to facilitate effective review of the standard.

Additional instruction for IFI

In addition to providing general feedback, IFI are required to respond to the specific questions set out throughout this CP.

Please respond to the Bank by **28 August 2015** addressed to:

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

Any queries may be directed to:

Nor Azrina Lasa : azrina@bnm.gov.my

Kamarudin Ahmad : din@bnm.gov.my

Hairul Azmie Abd Aziz : hairulazmie@bnm.gov.my

Noorlianni Rosli : lianni@bnm.gov.my

Syamhasinah Hamdan : hasinah@bnm.gov.my

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 3/35
------------------	--	--------------------------------	-----------

PART A OVERVIEW

1. Introduction

- 1.1 Compliance with Shariah requirement is a prerequisite in ensuring the legitimacy and integrity of Islamic financial products and services. In meeting this expectation, it is essential for an Islamic financial institution (IFI) to establish the necessary operational framework and infrastructure to ensure that the conduct of Islamic financial transactions is consistent with Shariah.
- 1.2 The Shariah contract-based regulatory policy is intended to promote transparency and consistency of Shariah contract application. This would ultimately enhance the contracts' certainty and strengthen Shariah compliance by IFIs.
- 1.3 The Shariah contract-based regulatory policy consists of two components, namely the Shariah and the operational requirements. The Shariah requirements highlight the salient features and essential conditions of a specific contract. The latter outlines the core principles underpinning good governance and oversight, proper product structuring, effective risk management, sound financial disclosure and fair business and market conduct. The operational requirements aim to complement and promote sound application of the Shariah principles.
- 1.4 *Wakalah* refers to a contract in which a party, as principal (*muwakkil*), authorizes another party as his agent (*wakil*) to perform a particular task in matters that may be delegated, with or without imposition of a fee.
- 1.5 In financial application, an IFI may act as either the *wakil* or *muwakkil*, depending on the product offering. Where it acts as a *wakil*, the IFI's main risk relates to the operational aspects, which includes legal and documentation risks. Where it acts as *muwakkil* in *wakalah* investments, the primary risk relates to the risk of losing all or part of its investments arising from

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 4/35
------------------	--	--------------------------------	--------------

underperformance of an investment. As such, appropriate risk management practices must be established by the IFI for *wakalah* contracts.

2. Policy objectives

2.1 This policy document aims to:

- (a) provide reference on the Shariah rulings associated with *wakalah* contract;
- (b) set out key operational requirements with regards to the implementation of *wakalah* contract; and
- (c) promote end-to-end compliance with Shariah requirements through adoption of sound banking practices and implementation of business and market conduct measures that safeguards consumers' interests.

3. Scope of policy

3.1 This concept paper covers financial products and services structured using the *wakalah* contract, in which the IFI may be a *wakil* or *muwakkil*, but excludes securities instruments¹.

3.2 Part B provides the mandatory Shariah requirements for IFIs for ensuring the validity of *wakalah* contracts. Part B also outlines other optional practices that IFIs may choose to adopt. Parts C and D describe the regulatory and supervisory expectations for sound practices in the oversight and management of arrangements involving *wakalah* from the perspective of the IFI as *wakil*, and the IFI as *muwakkil*, respectively. Part C and D apply to *wakalah* contracts that are used in the structuring of financial products and services and do not extend to *wakalah* contracts used in other operations such as outsourcing or insourcing arrangements².

¹ Such instruments are under the purview of the Securities Commission Malaysia.

² IFIs shall refer to the Bank's *Guidelines on Outsourcing of Islamic Banking Operations* or *Guidelines on Outsourcing for Development Financial Institutions*, whichever applicable.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 5/35
------------------	--	--------------------------------	-----------

4. Applicability

4.1 This policy document is applicable to all IFIs as defined in paragraph 7.2.

5. Legal provision

5.1 The requirements in this policy document are:

- (a) specified pursuant to sections 29(1) and (2), 57(1) and 135(1) of the Islamic Financial Services Act 2013 (IFSA); and
- (b) specified pursuant to sections 41(1) and 126 and issued as a direction pursuant to section 129(3) of the Development Financial Institutions Act 2002 (DFIA).

6. Effective date

6.1 This policy document comes into effect upon issuance of the final document.

7. Interpretation

7.1 The terms and expressions used in this policy document shall have the same meanings as assigned under the Financial Services Act 2013 (FSA), IFSA and DFIA, as the case may be, unless otherwise defined in this policy document.

7.2 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;

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	Wakalah - Concept Paper	Page 6/35
------------------	--	-------------------------	-----------

“Islamic financial institution” or “IFI” means:

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

7.3 Further interpretation and definition is given in Appendix 2.

8. Related policies

8.1 This policy document must be read together with but not limited to the Shariah rulings and policy documents listed in Appendix 3.

Remainder of this page is intentionally left blank

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 7/35
------------------	--	--------------------------------	-----------

PART B SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES

9. Definition

- S 9.1 *Wakalah* refers to a contract in which a party, as principal (*muwakkil*) authorizes another party as his agent (*wakil*) to perform a particular task in matters that may be delegated, with or without imposition of a fee.

10. Nature

- S 10.1 The inherent nature of *wakalah* is based on delegation or authorization of the *wakil* by the *muwakkil* resulting in the *wakil* having fiduciary duties (*amanah*) towards the *muwakkil* within what has been authorized to him.
- S 10.2 A *wakalah* contract shall be binding in any of the following situations:
- (a) the *wakalah* contract involves the rights of another party;
 - (b) the *wakalah* contract involves a fee (*wakalah bil ujah*) ;
 - (c) the *wakil* has commenced the work authorized to him and discontinuity of the work would cause damage to the contracting parties; or
 - (d) the contracting parties have agreed not to terminate the *wakalah* contract within a specified time.
- G 10.3 The *wakalah* contract may take the following forms:
- (a) unrestricted agency (*wakalah mutlaqah*): It is an agency contract in which the *muwakkil* appoints a person as *wakil* to perform a particular task without any specific restriction or condition; or
 - (b) restricted agency (*wakalah muqayyadah*): It is an agency contract in which the *muwakkil* appoints a person as *wakil* to perform a particular task with specific restrictions or conditions.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 8/35
------------------	--	--------------------------------	-----------

11. Contracting parties

- S 11.1 The contracting parties in a *wakalah* contract are the principal (*muwakkil*) and the agent (*wakil*).
- S 11.2 The contracting parties shall have legal capacity³ to enter into the *wakalah* contract.
- G 11.3 The contracting parties in a *wakalah* contract may be a natural person or a legal entity.
- S 11.4 The *muwakkil* shall authorize a specific *wakil* and notify him of his appointment.

12. Offer and acceptance

- S 12.1 The *wakalah* contract shall be entered into through an offer and acceptance between the contracting parties.
- G 12.2 The offer and acceptance may be expressed verbally, in writing or any other methods which could be evidenced by appropriate documentation or record.
- S 12.3 The legal consequences of the offer and acceptance of the *wakalah* contract will take effect immediately after entering into the *wakalah* contract or upon occurrence of the specified condition.
- S 12.4 Pursuant to paragraph 12.3, any terms or conditions that are mutually agreed upon and consistent with Shariah principles shall be binding on the contracting parties.

³ The legal capacity of a person is defined as the capacity to have rights and responsibilities; and capacity to have 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 the eligibility of an entity to acquire rights and assume responsibilities.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 9/35
------------------	--	--------------------------------	-----------

13. Subject matter of *wakalah*

- S 13.1 The subject matter of the *wakalah* contract must be determined upfront by the *muwakkil* and made known to the *wakil*.
- S 13.2 Pursuant to paragraph 13.1, under *wakalah mutlaqah*, while no restrictions have been imposed on the subject matter of *wakalah*, the *wakil* shall observe the interest of the *muwakkil* and the customary practices in the performance of the task.
- S 13.3 The subject matter of the *wakalah* contract must be Shariah compliant and can be represented or delegated.⁴

14. Requirements of *wakalah*

- S 14.1 The intended effect of the transaction (*hukm al-`aqd*) entered into by the *wakil* pursuant to the authorization shall be binding on the *muwakkil*.
- S 14.2 In the event that the *wakil* discloses the *muwakkil's* name in the transaction with a third party, the rights and responsibilities of the transaction (*huquq al-`aqd*) shall lie with the *muwakkil*.
- S 14.3 In the event that the *wakil* does not disclose the *muwakkil's* name in the transaction with a third party pursuant to the authorization, the rights and responsibilities of the transaction, shall lie with the *wakil*.
- S 14.4 A person shall not act as a *wakil* for both parties to a transaction or on behalf of the principal to transact with himself unless the following requirements are complied with:

⁴ From Shariah perspective, there are actions that cannot be represented or delegated such as certain acts of worship e.g. prayer and fasting. A *muwakkil* also cannot delegate a task to a *wakil* which the *muwakkil* has no rights on the subject matter.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	Wakalah - Concept Paper	Page 10/35
------------------	--	-------------------------	------------

- (a) essential criteria or specification of the authorized task shall be agreed such as price, tenure, asset specification;
- (b) the transaction shall be supported by proper evidence; and
- (c) the *wakalah* appointment shall be disclosed to all principals.

- S 14.5 The *wakil* shall not be held liable in the event of loss or damage to the interest of the *muwakkil* except if the loss or damage occurs due to misconduct (*ta`addi*), negligence (*taqsir*), or breach of specified terms (*mukhalafah al-shurut*).
- S 14.6 Pursuant to paragraph 14.5, the *wakil* shall compensate the *muwakkil* for any actual loss resulting from his misconduct (*ta`addi*), negligence (*taqsir*), or breach of specified terms (*mukhalafah al-shurut*).
- S 14.7 Notwithstanding paragraph 14.5, in the event that the breach of specified terms is in favour of the *muwakkil's* interest, such as selling at a higher or buying at a lower than the mandated price, the matter shall be disclosed to the *muwakkil*.
- S 14.8 The *wakil* shall not appoint another person as a second *wakil* except with the consent of the *muwakkil*.
- G 14.9 Pursuant to paragraph 14.8, the *muwakkil* may give consent for:
- (a) the *wakil* to appoint another *wakil* on the *muwakkil's* behalf; or
 - (b) the *wakil* to appoint another *wakil* (sub-*wakil*) for himself (first *wakil*).
- G 14.10 Pursuant to paragraph 14.9, the *muwakkil* and first *wakil* may agree on the party that should bear the *wakalah* fee for the second *wakil*.
- S 14.11 In the event that the *muwakkil* appoints several *wakil* together to perform a particular task, the appointed *wakil* shall not act individually except with the consent of the *muwakkil*.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	Wakalah - Concept Paper	Page 11/35
------------------	--	-------------------------	------------

15. Wakalah fee

- G 15.1 A *wakalah* may be arranged for a fee (*wakalah bi al-ujrah*).
- S 15.2 Pursuant to paragraph 15.1, the fee shall be determined and agreed at the time of entering into the *wakalah* contract.
- G 15.3 Pursuant to paragraph 15.2, the *wakalah* fee may be in the form of absolute amount or a certain ratio of a certain amount or an amount that is linked to a benchmark.
- G 15.4 Pursuant to paragraph 15.3, the contracting parties may agree on incentive fee that is beyond the initially agreed fee. The incentive fee may be in the form of excess of a certain threshold set for the authorized task.
- S 15.5 Pursuant to paragraph 15.2, in the event that the *wakalah* fee is not determined and the task has been fully or partially performed by the *wakil*, he is entitled to a fee based on market rate for a similar task done (*ujrah al-mithl*) or any rate mutually agreed between the contracting parties.
- S 15.6 The *wakil* shall be entitled to an agreed fee for undertaking the authorized task.
- G 15.7 The *wakalah* fee may be paid in a manner that is mutually agreed by the contracting parties such as in lump sum or in stages.
- G 15.8 The *wakil* may waive his right to the fee.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 12/35
------------------	--	--------------------------------	------------

APPLICATION OF *WAKALAH* WITH OTHER CONTRACTS

16. Application of *wakalah* with other contracts or arrangements

- G 16.1 The *wakalah* contract may be arranged for the purpose of entering into contracts or performance of certain task under certain arrangement including the following⁵:
- (a) exchange-based contracts such as *murabahah*, *istisna`*, and *ijarah*;
 - (b) partnership contracts such as *musharakah* and *mudarabah*;
 - (c) assurance contracts such as *kafalah*;
 - (d) *murabahah* to purchase orderer;
 - (e) *ijarah muntahia bi tamlik*; or
 - (f) *tawarruq*.

17. Requirements on the arrangement of *wakalah* with *kafalah*

- S 17.1 The *wakalah* and *kafalah* contracts may be combined in one contract provided that:
- (a) the validity of one contract is not made contingent to the other; and
 - (b) such combination shall not result in guaranteeing the investment capital by the *wakil*.
- S 17.2 The *wakalah* contract shall not stipulate a condition that the *wakil* must guarantee the outcome of the authorized task.
- G 17.3 A *wakil* may enter into a separate *kafalah* contract to guarantee on his capacity as a *kafil*, the performance of a third party's obligation against the *muwakkil*.

⁵ Please refer to the Shariah requirements and optional practices in the relevant policy documents.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	Wakalah - Concept Paper	Page 13/35
------------------	--	-------------------------	------------

18. Application of wakalah bi al-istithmar

- G 18.1 A *wakalah* contract may be entered into for the purpose of investment (*wakalah bi al-istithmar*).
- S 18.2 The *wakil* shall not guarantee the profit of the investment.
- S 18.3 The *wakil* shall not guarantee the capital except if the loss of capital is due to his misconduct (*ta`addi*), negligence (*taqsir*), or breach of specified terms (*mukhalafah al-shurut*).
- G 18.4 Notwithstanding paragraph 18.3, it is allowable for the contracting parties to implement the following measures;
- (a) the *muwakkil* may take collateral from the *wakil* which can only be liquidated in the event of misconduct (*ta`addi*), negligence (*taqsir*), or breach of specified terms (*mukhalafah al-shurut*) by the *wakil*; or
 - (b) the *muwakkil* may require the *wakil* to arrange for an independent third party guarantee subject to observing the following requirements:
 - (i) the guarantee shall be executed as a separate contract and be utilised to cover for any loss or depletion of capital.
 - (ii) the third party guarantor shall be independent from the *wakil* such that it must not be a related party where the *wakil* has majority ownership and/or having control in the entity nor shall it be an entity that owns or having control over the *wakil*.
- S 18.5 Where the *wakalah* contract stipulates a condition that the fund shall be invested in an instrument that generates a certain expected profit rate and the *wakil* breaches the condition by investing in an instrument that has no potential to generate the expected profit, the *wakil* shall pay the investment capital plus the actual realised profit of the mandated instrument (if any) up to the event of the breach.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 14/35
------------------	--	--------------------------------	---------------

- S 18.6 Where the *wakalah* contract stipulates a condition that the fund shall be invested only in a specific instrument or portfolio and the *wakil* breaches the condition by investing in another instrument or portfolio;
- (a) in the case where there are losses in the principal amount, the *wakil* shall guarantee the capital of the investment.
 - (b) in the case where the investment generates profit:
 - (i) if the profit is less than the profit of the specified instrument/portfolio (should the investment were to be invested in that approved portfolio), the *wakil* shall only pay the *muwakkil* the actual realised profit.
 - (ii) if the profit is higher than the profit of the specified instrument/portfolio (should the investment were to be invested in that approved portfolio), the treatment of profit shall be in accordance to the agreed terms and conditions at the inception of the contract. Where the terms and conditions on the treatment of profit including performance fee are not stipulated, the whole profit shall be paid to the *muwakkil*.
- G 18.7 The *muwakkil* may agree that, in the event where the investment return is higher than the expected return, the *wakil* is allowed to retain part or all of the excess as an incentive fee.
- G 18.8 In the event that the actual return is lower than the expected investment return, the *wakil* may give *hibah* to the *muwakkil* to compensate for the difference provided that it is not made an upfront obligation on the *wakil*.
- G 18.9 The *wakil* may initiate the investment by advancing his money with the consent of the *muwakkil* provided it is not made conditional to the *wakalah* contract.
- G 18.10 The *wakil* may set aside a portion of the investment profit for the purpose of reserve for the *muwakkil* provided that the consent of the *muwakkil* has been obtained.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 15/35
------------------	--	--------------------------------	------------

- S 18.11 Pursuant to paragraph 18.10, upon final valuation of the investment, all the reserved profit belongs to the *muwakkil*.
- G 18.12 The capital provided under an agency for investment may be invested together with other pool of funds with similar mandate.

DISSOLUTION (*FASAKH*) AND COMPLETION (*INTIHA'*) OF *WAKALAH*

19. Dissolution of binding *wakalah*

- S 19.1 A binding *wakalah* contract is dissolved under any of the following circumstances:
- (a) demise, dissolution or loss of legal capacity of the *muwakkil*;
 - (b) demise, dissolution or loss of legal capacity of the *wakil* in the event that the *wakalah* contract stipulates that the task shall be personally performed by the *wakil*;
 - (c) the *muwakkil* loses his right to the subject matter of the *wakalah*;
 - (d) both contracting parties mutually agree to terminate the *wakalah* contract;
 - (e) the *muwakkil* exercises the option to terminate the *wakalah* contract due to misconduct (*ta`addi*), negligence (*taqsir*) or breach of specified terms (*mukhalafah al-shurut*) of the contract by the *wakil*; or
 - (f) the *wakil* withdraws from the *wakalah* contract due to breach of specified terms of the contract by the *muwakkil*.
- S 19.2 Upon dissolution of the *wakalah* contract, the asset or rights entrusted to the *wakil* (if any) shall be returned to the *muwakkil*, and the *wakil* shall be entitled to a *wakalah* fee based on the market rate for a similar task, or a fair portion of the agreed fee that commensurate with the task performed, or any rate mutually agreed between the contracting parties.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 16/35
------------------	--	--------------------------------	------------

20. Completion of binding *wakalah*

- S 20.1 The *wakalah* contract ends upon fulfilment by the *wakil* of the authorized task and settlement of the *wakalah* fee in the case of *wakalah* with a fee.
- G 20.2 The settlement of the *wakalah* fee can be made through any of the following methods:
- (a) full payment of the *wakalah* fee;
 - (b) waiving of right to receive the outstanding *wakalah* fee by the *wakil*;
 - (c) set-off (*muqassah*) of obligations between the contracting parties; or
 - (d) transfer of the obligation to pay the fee to a third party through transfer of debt (*hiwalah al-dayn*).
- S 20.3 Upon completion of the *wakalah* contract, the contracting parties are free from any *wakalah* obligations.

Remainder of this page is intentionally left blank

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 17/35
------------------	--	--------------------------------	------------

PART C OPERATIONAL REQUIREMENTS FOR IFI AS WAKIL

21. Background

- S 21.1 Part C outlines the expectations for the establishment of a sound control environment for *wakalah* arrangements in the case where the IFI acts as a *wakil*. It covers requirements to enable effective governance and oversight, sound risk management, proper product structuring and appropriate financial disclosure and reporting of *wakalah* transactions. It also highlights the expectations on the IFI's business and market conduct. The policy intent of these operational requirements is to provide adequate safeguards for stakeholders' interests, promote effective implementation of business and risk management strategies and drive the development and establishment of the necessary systems, processes and control measures.

22. Governance and oversight

Principle 1: An IFI must put in place effective internal governance structures and control mechanisms that would enable *wakalah* arrangements to be conducted in a Shariah-compliant manner and with proper oversight.

- G 22.1 The requirements under this part complement the broad governance and oversight expectations described under the relevant policy documents on corporate governance issued by the Bank⁶. It also describes the additional governance arrangements to be put in place to address the distinct risks that could arise from the performance of *wakil* role by an IFI in *wakalah* arrangements.

⁶ This refers to the expectations concerning the role and responsibilities of the Board, Senior Management, Shariah Committee and Investment Committee as described under the Bank's *Guidelines on Corporate Governance for Licensed Islamic Bank*, *Guidelines on Corporate Governance for Development Financial Institution*, *Shariah Governance Framework* and policy document on *Investment Account*.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 18/35
------------------	--	--------------------------------	------------

Board of directors

- S 22.2 The Board must ensure that all relevant risks from assuming the role of *wakil* in *wakalah* arrangements have been considered in the development of the IFI's business and risk strategies, including its risk appetite. The Board must also ensure that the policies and procedures for ensuring effective oversight over the management and execution of *wakalah* contracts are in place.

Shariah committee

- S 22.3 To support the Board in providing oversight over *wakalah* contracts, the Shariah Committee is responsible to ascertain that:
- (a) the end-to-end internal policies and procedures developed for operationalizing the *wakalah* arrangement are conducted in a Shariah-compliant manner; and
 - (b) the terms and conditions stipulated in any legal documentation relating to the *wakalah* contract conform to the Shariah.

Management

- S 22.4 The management of the IFI is responsible for developing and implementing the policies, procedures and processes to:
- (a) clarify the role and responsibilities of the IFI as *wakil* in a manner that would enable it to discharge its fiduciary duties effectively;
 - (b) guide product development, offering and execution of *wakalah* contracts to ensure that the structure is developed and operationalised in accordance with the Shariah;
 - (c) manage the inherent risks associated with *wakalah*;
 - (d) ensure that any financial products offered involving *wakalah* are within the IFI's risk appetite;
 - (e) ensure proper and timely fulfillment of the authorized tasks of the *wakalah* in accordance with *muwakkil's* specifications; and
 - (f) ensure regular review of *wakalah* operations and prompt reporting of Shariah non-compliance incidences or breaches of policies and procedures.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 19/35
------------------	--	--------------------------------	------------

- S 22.5 Where an IFI acts as a *wakil* for both parties in the *wakalah* arrangement (i.e. dual agent), senior management must ensure that relevant policies and procedures are in place to manage the potential conflict of interest which should preserve fairness and transparency for all contracting parties in the *wakalah* arrangement (refer to paragraphs 23.4 and 23.5).

23. Structuring

Principle 2: An IFI shall have in place sound policies and procedures to guide structuring, implementation and legal documentation of *wakalah* arrangements to ensure that it is developed and operationalised in accordance with the Shariah.

Contracting parties

- S 23.1 Prior to agreeing to act as *wakil*, an IFI must:
- (a) obtain sufficient knowledge about the *muwakkil* and nature of transaction in order to ensure that the IFI's obligation as *wakil* is permissible under the Shariah and not in contravention of any regulatory requirements; and
 - (b) ascertain that it has the capacity and capability to perform the task to be delegated by the *muwakkil* and manage the risks associated with it.
- S 23.2 Where the services of sub-*wakil* are used in performing tasks delegated under the *wakalah* contract, the IFI must ensure that the consent of the *muwakkil* is obtained prior to the commencement of the *wakalah*. The IFI shall also ensure that there is proper assessment of the sub-*wakil*'s capabilities, including his skills and experience, to effectively execute the authorized task.
- G 23.3 In relation to paragraph 23.2, the IFI may apply the appropriate method for obtaining the consent from the *muwakkil*, for example, one-off consent obtained at the signing of the *wakalah* contract or individual consent for each appointment of sub-*wakils*.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 20/35
------------------	--	--------------------------------	---------------

- S 23.4 Where the *wakalah* arrangement involves the IFI acting as *wakil* for both parties to the transaction or acting on behalf of the *muwakkil* to transact with himself, the IFI shall put in place appropriate measures to mitigate the potential conflict of interest that could arise from such arrangement.
- G 23.5 Pursuant to paragraph 23.4, the measures put in place may include informing all *muwakkils* on the structure of the arrangement, ensuring different personnel are involved at each leg of the transaction and maintaining proper evidence that the sale and purchase transaction were executed independently of one another.

Legal documentation

- S 23.6 An IFI shall ensure that legal documentations developed for *wakalah* contracts clearly stipulate the terms and conditions of the arrangement and are in compliance with Shariah and regulatory requirements.
- S 23.7 At a minimum, the legal documentations must specify the following:
- (a) description of the subject matter or task to be delegated by the *muwakkil* to the IFI;
 - (b) the agreed *wakalah* fee or if the fee is to be determined in the future, the agreed methodology or benchmark for determining the fee;
 - (c) duration or tenure of service to be provided under the *wakalah* contract;
 - (d) circumstances for dissolution or rights to termination of the *wakalah* contract for both contracting parties;
 - (e) the *muwakkil's* consent for the appointment of sub-*wakil*⁷ (if relevant); and
 - (f) other relevant conditions to protect the interests of the contracting parties.

⁷ With regards to the appointment of sub-*wakil*, any legal documentation between the *wakil* and sub *wakil* shall follow the requirement as stated under paragraph 23.7.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 21/35
------------------	--	--------------------------------	------------

- S 23.8 Proper translation or explanation to any Arabic terminologies used in the documents must be included to facilitate clear understanding between contracting parties.

24. Risk management

Principle 3: An IFI shall institute and implement sound and integrated risk management system to effectively manage risks arising from its role as *wakil* in *wakalah* arrangements.

- S 24.1 As *wakil*, an IFI has a fiduciary duty to ensure that the authorized tasks are executed promptly and to the best interest of the *muwakkil*. In this regard, the IFI is required to ensure that it has the appropriate capability and capacity to execute the authorised tasks (including systems and personnel) and policies and procedures to enable timely execution of the tasks. The systems in place must be able to accurately record the details of the authorised/delegated task and track the IFI's performance of the various tasks.
- S 24.2 In the case of *wakalah* for investment (*wakalah bi-al istithmar*), an IFI has a fiduciary responsibility to manage investments to the best interest of the *muwakkil* and in line with Shariah.
- S 24.3 An IFI shall ensure that the authorised tasks are handled by personnel with the appropriate skills and competency for the tasks. Where the IFI acts as an investment agent, the IFI shall ensure that personnel involved in managing the investment fund has the appropriate competency and qualification.
- S 24.4 Where funds from other *muwakkil* are pooled together for investment as described under paragraph 18.12, the IFI shall ensure proper pooling and tagging of assets (either actual or proportionate) at all times using appropriate mechanism such as separate record keeping.
- S 24.5 Where an IFI is engaged in providing agency services for the payment and

collection of trade bills, the IFI must ensure that the legal documentation conforms to the relevant international rules and practices. The IFI shall also have in place robust internal processes to examine the accuracy and completeness of the trade documentation (e.g. details of goods/quantity and confirmation of delivery of goods to the right party). This is to ensure that the trade documents will be accepted and honoured by the counterparty and prevent discrepancies or wrong payment of goods.

- S 24.6 An IFI must be aware of and assess attendant risks that could arise from operationalizing *wakalah* contract (e.g. market risk arising from managing investment portfolio under *wakalah bi-al istithmar* and counterparty risk in dealing with sub-*wakils*).
- S 24.7 An IFI shall also continuously adhere to the risk management expectations for the management of investments as described under the policy document on *Investment Account* issued by the Bank.

Question 1: Do these risk management expectations sufficiently cover the range of inherent risks that IFIs faced when performing the role of a *wakil*? Is there any other key risks relating to the role of *wakil* that should be addressed under this document?

25. Financial disclosures and reporting requirements

Principle 4: An IFI shall preserve transparency to its stakeholders and disclose pertinent information relating to its financial risks in undertaking the role of *wakil* in *wakalah* arrangements.

- S 25.1 An IFI shall maintain proper accounting and other records in a timely manner and ensure the preparation of a true and fair financial statement for the reporting of financial performance.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	Wakalah - Concept Paper	Page 23/35
------------------	--	-------------------------	------------

- S 25.2 An IFI shall observe the requirements described in the *Guidelines on Financial Reporting for Islamic Banking Institutions*, *Guidelines on Financial Reporting for Development Financial Institutions* or *Capital Adequacy Framework for Islamic Banks – Disclosure Requirements (Pillar 3)* issued by the Bank, whichever applicable, and all relevant MFRS.

26. Business and market conduct

Principle 5: An IFI shall conduct its business in a fair, transparent and responsible manner and give due regard to the interests of its customers.

Fair dealings

- S 26.1 As a *wakil*, an IFI shall not disclose any material information to any third party without authorisation from the *muwakkil* or any other contracting parties.
- G 26.2 It is encouraged for the IFI to inform the *muwakkil* on the completion of the *wakalah* contract.
- S 26.3 An IFI must ensure that the terms and condition of the *wakalah* contract consider the rights and interest of the *muwakkil* such that the *muwakkil* are not unfairly disadvantaged at any point. This consideration should also extend to any amendments made during renegotiation or extension of contract.

Information disclosure

- S 26.4 At pre-contractual stage, an IFI shall provide adequate and relevant information to potential contracting parties to facilitate informed decision-making. At a minimum, the information to be disclosed shall be consistent with the requirements outlined in paragraph 23.7.
- S 26.5 As *wakil*, an IFI shall observe the specific disclosure requirements as described under the Bank's *Guidelines on Product Transparency and Disclosure and Investment Account*.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 24/35
------------------	--	--------------------------------	------------

PART D OPERATIONAL REQUIREMENTS FOR IFI AS *MUWAKKIL*

27. Background

27.1 Part D sets out the expectations for establishing policies and procedures to facilitate effective governance and oversight, risk management, and proper financial disclosures and reporting of *wakalah* arrangements in the case where the IFI acts as *muwakkil*.

28. Governance and oversight

Principle 6: An IFI must put in place effective internal governance structures and control mechanisms for enabling *wakalah* arrangements to be conducted in a Shariah-compliant manner and with proper oversight.

- G 28.1 In general, an IFI may be acting as *muwakkil* in *wakalah* contract under various settings, including:
- (a) in *wakalah* for investment (*wakalah bi al-istithmar*) arrangements, which can be generally distinguished into 3 main categories:
 - (i) where the fund is placed with an investment manager⁸ to undertake trading activities in equities, commodities, or others (including commodity murabahah transactions);
 - (ii) where the fund is placed with commercial entity to undertake business activities (refer to paragraph 29.6); and
 - (iii) where the fund is placed in the interbank market.
 - (b) for asset acquisition purposes where the intention is to subsequently provide financing on the asset (refer to paragraph 29.7).

Question 2: Apart from the above, is there any other type of services or products in which the IFI can act as *muwakkil*?

⁸ E.g. fund managers, other Islamic financial institutions etc.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 25/35
------------------	--	--------------------------------	------------

- S 28.2 The Board shall ensure that policy framework on investments that involves *wakalah* arrangement should contain at a minimum the following:
- (a) policies, procedures and evaluation criteria for investment and wakil selection;
 - (b) appropriate board/management levels for approving investments; and
 - (c) appropriate mechanisms for monitoring and periodic reporting to the Board on the performance of the investment.
- S 28.3 The management of IFIs are responsible for developing and implementing the policies and procedures approved by the Board.

29. Risk management

Principle 7: An IFI shall institute and implement sound and integrated risk management system to effectively manage risks arising from its role as *muwakkil* in *wakalah* arrangements.

- S 29.1 An IFI acting as *muwakkil* must ensure that the objectives and risk profiles of any *wakalah* investments/financing arrangements are consistent with its overall business objectives and risk appetite/tolerance.
- S 29.2 The skills and expertise of agent are critical in ensuring the successful management of an investment or performance of a service. Hence, an IFI is required to put in place appropriate policies and procedures to enable thorough assessments of *wakil*. This should include an assessment of the *wakil's* expertise, experience and track record.
- S 29.3 An IFI shall also ensure that its risk management framework is able to :
- (a) assess and address the specific inherent risks associated with the investments, in particular, market risk for *wakalah* investments described under paragraph 28.1(a)(i), credit risk for *wakalah* investments described under paragraph 28.1(a)(ii) and counterparty risk for *wakalah* investments described under paragraph 28.1(a)(iii);

- (b) manage any concentration risk arising from *wakalah* investments and ensure adherence to prudential limits and requirements as specified under the relevant policies⁹ issued by the Bank; and
- (c) continuously monitor and effectively assess that the investments conducted are consistent with the institution's broader business strategies and investment objectives, and within the boundaries of its risk management framework. This includes ensuring that the *wakil* provides adequate reports to the IFI:
 - (i) on the performance of the investment on a periodic basis;
 - (ii) on whether the investment continues to be Shariah-compliant; and
 - (iii) whenever there are any material changes to the way the investment is being managed, which could necessitate the need to reassess the suitability of the investment for the IFI.

S 29.4 An IFI must obtain sufficient and relevant information concerning the proposed *wakalah* investment to facilitate objective assessment of the investment. This should be supplemented by the IFI's own assessments of the market conditions or any other factors that may affect the performance of the investment.

S 29.5 Given that the involvement of sub-*wakil* could impose additional risk to an IFI's investments, mitigation measures should be put in place. At a minimum, this should include:

- (a) ensuring *wakil* discloses information about the appointed sub-*wakil* (e.g. performance history, financial strength and company reputation);
- (b) stipulating conditions to the *wakil* in the *wakalah* agreement to ensure proper selection, management and monitoring of the sub-*wakil* on the authorized task; and
- (c) requiring any appointment of sub-*wakil* to only be made with prior

⁹ Including the Bank's policies on *Single Counterparty Exposure Limit for Islamic Banking Institutions and Guidelines on Investment in Shares, Interest in Shares and Collective Investment Schemes for Islamic Banks*.

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 27/35
------------------	--	--------------------------------	---------------

approval of the IFI.

Additional requirements for *wakalah* investments/financing where the fund is placed with commercial entities

- S 29.6 An IFI shall put in place appropriate measures to mitigate the risk of capital impairment. In addition to the measures described in paragraphs 29.1 to 29.5, the IFI shall also:
- (a) at the pre-contractual stage, ensure thorough assessment of the *wakil's* skills and expertise, and business activity where the funds will be placed in, including the business' risks and nature. The investment should also be approved by the appropriate level of management as determined by the Board. In addition, where the *wakalah* contract is structured as a financing arrangement, the IFI shall conduct proper credit assessment on the *wakil*;
 - (b) establish the appropriate internal limits for investments that is consistent with the IFI's risk appetite and tolerance or other strategies for exiting or limiting losses on the investment. Other mitigation measures that could also be considered include obtaining *takaful* coverage to minimize risk of investment losses; and
 - (c) where the *wakalah* contract is structured as a financing arrangement and presents credit risk, ensure that appropriate credit risk mitigation measures are in place.

Additional requirements where the IFI acts as *muwakkil* for asset acquisition purposes

- G 29.7 *Wakalah* contracts can be used to facilitate sale or lease transactions for the purpose of acquiring assets (e.g. using *murabahah*, *tawarruq* or *ijarah* structures). An IFI may appoint a *wakil* to undertake the asset acquisition and subsequently sell or lease the asset to the *wakil*, with financing provided by the IFI. In this instance, there is a risk that the sequence of contracts or other Shariah requirements is not properly observed, thus nullifying the contracts

under Shariah.

- S 29.8 In relation to paragraph 29.7, an IFI shall put in place measures to preserve the validity of contracts at all stages of the transaction, including, ensuring that:
- (a) the legal document for appointing the *wakil* (i.e. customer) is executed prior to the asset being acquired;
 - (b) the *wakalah* contract is executed independently from the sale or lease contract (e.g. *murabahah*, *tawarruq*, *ijarah*); and
 - (c) there is proper evidence of beneficiary ownership of the IFI over the asset before financing is provided.

Question 3: Do the risk management expectations described in paragraph 29.1 to 29.8 sufficiently cover the range of inherent risks that IFIs faced when performing the role of a *muwakkil*? Are there any other material risks involving the *muwakkil* that should be addressed?

Guarantee and collateral

- G 29.9 As provided under paragraph 18.4, in relation to *wakalah* investments, an IFI is allowed to require the *wakil* to provide collateral or arrange for an independent third party guarantee to cover against loss of capital that is due to the *wakil's* misconduct, negligence or breach of specified terms.
- S 29.10 Proper risk assessment must be conducted prior to the acceptance of the proposed collateral or guarantee, which should cover:
- (a) for collateral:
 - (i) the acceptability and sufficiency of the value of collateral; and
 - (ii) whether there would be any legal impediments to liquidating the collateral in the event that the circumstances described under paragraph 18.4(a) occur (e.g. encumbered assets);
 - (b) for guarantee:
 - (i) the eligibility of guarantors, which includes:

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 29/35
------------------	--	--------------------------------	------------

- financial strength of guarantors; and
- independence of the guarantor from the *wakil*.

S 29.11 With regards to paragraph 29.10(b)(i), guarantees for the *wakalah* investment must not be provided by the following parties:

- (a) for corporate guarantors:
 - (i) entities with control over the *wakil* or controlled by the *wakil* as defined by the applicable MFRS¹⁰ such as parent or subsidiary.
- (b) for individual guarantors:
 - (i) employee (and his close relatives) of *wakil*; or
 - (ii) controlling shareholders (and his close relatives) of *wakil*.

S 29.12 An IFI shall ensure the completeness and enforceability of legal documentation involving collaterals and guarantees.

Termination and withdrawal

S 29.13 An IFI shall assess the appropriateness of the termination or redemption clauses of *wakalah* agreements, having regards to whether any requirement for a minimum lock-in period for investment, penalties or compensation for early termination or withdrawal or any other restrictions limiting the ease of contract termination or withdrawal of investment would affect the IFI's liquidity or have a financial impact on the IFI.

30. Financial disclosures and reporting requirements

Principle 8: An IFI shall preserve transparency to its stakeholders and disclose relevant financial information relating to its financial risks in undertaking the role of *muwakkil*.

¹⁰ Namely, MFRS 127 Separate Financial Statements

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 30/35
------------------	--	--------------------------------	------------

- S 30.1 The requirements described under paragraphs 25.1 and 25.2 shall be applicable to an IFI undertaking the role of *muwakkil*. In addition, an IFI shall ensure that the measurement and classification of its *wakalah* investments are in accordance with the requirements under the applicable MFRS.

Question 4: Overall, is there any other structures involving the use of *wakalah* contract which gives rise to unique inherent risks that are not already addressed under this policy or other any policy issued by the Bank on Islamic financial products (e.g. *musharakah*, *mudarabah*, *murabaha*, *istisna`*, *ijarah* and *tawarruq*)?

Remainder of this page is intentionally left blank

APPENDICES

Appendix 1 Legitimacy of *wakalah*

1. The legitimacy of the *wakalah* contract 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

2. The following verse of the Quran implies the general permissibility of *wakalah*:

"...فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ فَلْيَنْظُرْ أَيُّهَا أَزْكَى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِّنْهُ..."

"...So send one of you with this silver coin of yours to the city and let him look to which is the best of food and bring you provision from it..." (Surah al-Kahf, verse 19)

The Sunnah of Prophet Muhammad (peace be upon him)

3. The following *hadith* implies the general permissibility of *wakalah*:

i. عن عروة أن النبي صلى الله عليه وسلم أعطاه دينارا يشتري له به شاة، فاشترى له به شاتين، فباع إحداهما بدينار، وجاءه بدينار وشاة، فدعا له بالبركة في بيعه، وكان لو اشترى التراب لربح فيه.

"Urwah reported that the Prophet (peace be upon him) gave him a dinar to buy a sheep. He bought two sheep, sold one of them for a dinar, and brought him a sheep and a dinar. So the Prophet (peace be upon him) invoked a blessing on him in his business dealing, and he was such that if he bought dust he would make a profit from it..." (Sahih Bukhari, Hadith no. 3370)."

ii. عن جابر بن عبد الله قال: أردت الخروج إلى خيبر فأتيت رسول الله صلى الله

عليه وسلم فسلمت عليه وقلت له: إني أردت الخروج إلى خيبر، فقال: إذا أتيت
وكيلي فخذ منه خمسة عشر وسقا، فإن ابتغى منك آية فضع يدك على ترقوته.

Jabir ibn 'Abdullah narrated, "I wanted to go out to Khaybar so I came to the Messenger of Allah (peace be upon him), greeted him and said: 'I want to go out to Khaybar.' He said: When you come to my agent, take fifteen *wasq* of dates from him. If he asks for proof that you are my agent, place your hand on his collarbone..." (*Sunan Abi Dawud, Hadith no. 3148*).

The consensus of Muslim jurists (*ijma`*)

4. Muslim jurists have reached *ijma`* on the permissibility of *wakalah*.

Appendix 2 Definition and interpretation

For the purpose of this policy, the following definitions shall have the following meanings.

Terms	Definition
<i>Amin</i>	Trustee
<i>Hibah</i>	Gift contract
<i>Ijarah</i>	Lease or service contract
<i>Ijma`</i>	Consensus of Muslim jurists
<i>Kafalah</i>	Guarantee
<i>Kafil</i>	Guarantor
<i>Mudarabah</i>	Profit-sharing contract
<i>Mukhalafah al-shurut</i>	Breach of terms and conditions
<i>Muqassah</i>	Offsetting
<i>Musharakah</i>	Profit-and-loss-sharing contract
<i>Muwakkil</i>	Principal
<i>Qard</i>	Loan contract
<i>Sub-wakil</i>	Sub-agent who continues or undertakes to perform <i>wakil's</i> role for a particular task which has been delegated by the <i>muwakkil</i>
<i>Ta`addi</i>	Misconduct
<i>Takaful</i>	Islamic insurance
<i>Taqsir</i>	Negligence
<i>Tawarruq</i>	Purchasing an asset with a deferred price, either on the

	basis of <i>musawamah</i> or <i>murabahah</i> , and subsequently selling it to a third party to obtain cash.
The Bank	Bank Negara Malaysia, a body corporate which continues to exist under the Central Bank of Malaysia Act 2009.
<i>`Urf tijari</i>	Common business practice which is acceptable by the community and does not contradict the Shariah rulings
<i>Wakalah</i>	Agency contract
<i>Wakalah bi al-istithmar</i>	Agency contract for investment
<i>Wakalah bi ujarah</i>	Fee based agency
<i>Wakalah muqayyadah</i>	Restricted agency
<i>Wakalah mutlaqah</i>	Unrestricted agency
<i>Wakil</i>	Agent

BNM/RH/CP 028-16	Islamic Banking and Takaful Department	<i>Wakalah</i> - Concept Paper	Page 35/35
------------------	--	--------------------------------	------------

Appendix 3 Related legal and policy documents

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

- (a) Shariah Advisory Council (SAC) rulings published by the Bank;
- (b) Shariah Governance Framework for Islamic Financial Institutions;
- (c) Guidelines on Corporate Governance for Licensed Islamic Bank;
- (d) Guidelines on Corporate Governance for Development Financial Institutions;
- (e) Risk Governance;
- (f) Guidelines on Property Development and Property Investment Activities by Islamic Banks;
- (g) Investment Account;
- (h) Rate of Return;
- (i) Guidelines on Product Transparency and Disclosure;
- (j) Guidelines on Imposition of Fees and Charges on Financial Products and Services;
- (k) Guidelines on Financial Reporting for Islamic Banking Institutions;
- (l) Guidelines on Financial Reporting for Development Financial Institutions;
- (m) Guidelines on Responsible Financing;
- (n) Single Counterparty Exposure Limit for Islamic Banking Institutions;
- (o) Guidelines on Investment in Shares, Interest in Shares and Collective Investment Schemes for Islamic Banks;
- (p) Capital Adequacy Framework for Islamic Banks (Capital Components);
and
- (q) Capital Adequacy Framework (Capital Components).