



**BANK NEGARA MALAYSIA**  
CENTRAL BANK OF MALAYSIA

# ***Kafalah*** Policy Document

Applicable to:

1. Licensed Islamic banks
2. Licensed takaful operators and professional retakaful operators
3. Licensed banks and licensed investment banks carrying on Islamic banking business
4. Prescribed institutions carrying on Islamic financial business

## TABLE OF CONTENTS

<b>PART A OVERVIEW .....</b>	<b>3</b>
1. Introduction.....	3
2. Applicability .....	4
3. Legal provisions .....	4
4. Effective date.....	4
5. Interpretation .....	4
6. Related legal instruments and policy documents .....	5
<b>PART B SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES .....</b>	<b>6</b>
7. Compliance with Part B .....	6
8. Definition .....	6
9. Nature.....	6
10. Components of <i>kafalah</i> .....	6
11. Contracting parties .....	6
12. Offer ( <i>ijab</i> ) of <i>kafalah</i> .....	7
13. Subject matter of <i>kafalah</i> .....	7
14. Rights and responsibilities.....	7
15. Imposition of fees or charges on <i>kafalah</i> .....	9
16. Recourse and recovery .....	9
17. Arrangement of <i>kafalah</i> with other contracts or concepts.....	9
18. Dissolution of <i>kafalah</i> .....	10
19. Completion of <i>kafalah</i> .....	10
<b>PART C GENERAL OPERATIONAL REQUIREMENTS FOR KAFALAH CONTRACT .....</b>	<b>11</b>
20. Background .....	11
21. Governance and oversight .....	11
22. Structuring .....	12
23. Risk management .....	13
24. Business and market conduct .....	14
25. Financial disclosure .....	14
<b>PART D SPECIFIC OPERATIONAL REQUIREMENTS.....</b>	<b>14</b>
26. Specific operational requirements where the IFI enters into <i>kafalah</i> in the capacity of a guarantor.....	14
27. Specific operational requirements where the IFI enters into <i>kafalah</i> in the capacity of a beneficiary.....	15

<b>PART E SUBMISSION REQUIREMENT .....</b>	<b>16</b>
28. Submission Requirement .....	16
<b>APPENDICES .....</b>	<b>17</b>
APPENDIX 1 Legitimacy of <i>kafalah</i> .....	17
APPENDIX 2 Glossary .....	18

## 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 the Islamic financial transactions is consistent with Shariah.
- 1.2 The Shariah contract-based regulatory policy is intended to promote consistency of Shariah contract application in Islamic financial products and services. This policy is envisaged to strengthen legal certainty and Shariah compliance practices by the IFI.
- 1.3 *Kafalah* refers to a contract where the guarantor conjoins the guaranteed party in assuming the latter's specified liability. In the context of Islamic financial transactions, *kafalah* is used by the IFI to provide guarantee services, such as bank guarantee, standby letter of credit and shipping guarantee. It is also being used as one of the contracts to supplement various primary Islamic financial products, predominantly for risk mitigation purposes, such as *musyarakah*, *mudarabah*, *murabahah*, *istisna'*, *ijarah* and *tawarruq*.
- 1.4 This objectives of this policy document are to:
  - (a) provide reference on the applicable Shariah rulings for *kafalah* contract;
  - (b) set out key operational requirements for the implementation of *kafalah* contract; and
  - (c) promote end-to-end compliance with Shariah requirements which further promote sound banking practices safeguard consumers' interests.
- 1.5 This policy document sets out the following:
  - (a) salient features and essential conditions of *kafalah* in Part B; and
  - (b) regulatory and supervisory expectations for the operational requirements on governance and oversight, structuring, risk management, financial reporting and business and market conduct in Parts C and D. Part C provides general operational requirements for a *kafalah* contract, whereas Part D provides specific operational requirements where the IFI is in the capacity of a guarantor or a beneficiary.
- 1.6 This policy document covers the application of *kafalah* contract in financial products and services offered by the IFI.
- 1.7 For the purpose of the policy document, the subject matter of *kafalah* is confined to financial guarantees (*kafalah bi al-mal*). Therefore, guarantee on ensuring presence of certain person (*kafalah al-nafs*) and appearance of certain person (*kafalah al-wajh*) are excluded from the application of this policy document.

## 2. Applicability

- 2.1 Subject to paragraph 2.2, this policy document is applicable to all IFIs as defined in paragraph 5.2.
- 2.2 A licensed takaful operator and professional retakaful operator is only required to comply with Part B of this policy document.

## 3. Legal provisions

- 3.1 The requirements in Part B of this policy document are specified pursuant to:
- (a) section 29(1) of the Islamic Financial Services Act 2013 (IFSA); and
  - (b) section 33E of the Development Financial Institutions Act 2002 (DFIA).
- 3.2 The requirements in Part C, D and E of this policy document are specified pursuant to:
- (a) sections 29(2), 57(1), 135(1) and 155 of the IFSA; and
  - (b) sections 33E(2), 41, 42C(1) and 116 of the DFIA.
- 3.3 The guidance in this policy document is issued pursuant to section 277 of the IFSA and section 126 of the DFIA.

## 4. Effective date

- 4.1 This policy document comes into effect on 1 January 2018 except for Part E which shall take effect immediately upon the issuance of this policy document.

## 5. Interpretation

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

“**S**” denotes a standard, an obligation, a requirement, specification, direction, condition and any interpretative, supplemental and transitional provisions that must be complied with. Non-compliance may result in enforcement action.

“**G**” denotes guidance which may consist of statements or information intended to promote common understanding and advice or recommendations that are encouraged to be adopted.

“**Islamic financial institution**” or “**IFI**” means any:

- (a) licensed Islamic bank;
- (b) licensed takaful operator and professional retakaful operator;
- (c) licensed bank and licensed investment bank and approved under section 15(1)(a) of the FSA to carry on Islamic banking business; and

- (d) prescribed institution and approved under section 33B of the DFIA to carry on Islamic financial business.

5.3 A glossary of terms used in this policy document is set out in Appendix 2.

## **6. Related legal instruments and policy documents**

- 6.1 This policy document must be read together with other relevant legal instruments, policy documents or guidelines that have been issued by the Bank.

## PART B SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES

### 7. Compliance with Part B

- S 7.1 An IFI which uses the *kafalah* contract for its products and services shall ensure that such products and services are in compliance with Part B of this policy document.

### 8. Definition

- S 8.1 *Kafalah* refers to a contract where the guarantor conjoins the guaranteed party in assuming the latter's specified liability.

### 9. Nature

- S 9.1 The specific inherent nature of *kafalah* is to provide assurance on the fulfilment of an obligation of the guaranteed party's liability.
- S 9.2 *Kafalah* is binding on the guarantor.

### 10. Components of *kafalah*

- S 10.1 The components of a *kafalah* shall consist of the following:
- (a) contracting parties, namely the guarantor (*kafil*), the beneficiary (*makful lahu*), and the guaranteed party (*makful `anhu*);
  - (b) offer (*ijab*) by guarantor; and
  - (c) subject matter of *kafalah*.

### 11. Contracting parties

- S 11.1 The contracting parties in the *kafalah* contract are the guarantor (*kafil*), the beneficiary<sup>1</sup> (*makful lahu*) and the guaranteed party<sup>2</sup> (*makful `anhu*).
- S 11.2 The guarantor shall have the legal capacity<sup>3</sup> to enter into the *kafalah* contract.
- S 11.3 The contracting parties in the *kafalah* contract shall be a natural person or a legal entity.
- G 11.4 A guaranteed party may be guaranteed by more than one guarantors.

<sup>1</sup> The beneficiary is a creditor or a party who has the right to claim the liability from the guaranteed party (*makful `anhu*) or the guarantor (*kafil*).

<sup>2</sup> The guaranteed party is a debtor or a party guaranteed by the guarantor.

<sup>3</sup> The legal capacity of a person, from Shariah perspective, is defined as capacity to assume rights and 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. In Malaysia, the legal capacity is governed under the Contracts Act 1950 and the Age of Majority Act 1971.

**12. Offer (*ijab*) of *kafalah***

- S 12.1 The *kafalah* contract shall be effected by an offer from the guarantor to provide *kafalah*.
- G 12.2 In relation to paragraph 12.1, the offer may be expressed orally, in writing or by any other methods which could be evidenced by appropriate documentation or record.

**13. Subject matter of *kafalah***

- S 13.1 The subject matter of the *kafalah* shall not be any obligation arising from Shariah non-compliant contracts or activities.
- G 13.2 The subject matter of the *kafalah* is categorised into:  
(a) *kafalah al-dayn* (guarantee of a debt liability); and  
(b) *kafalah al-`ayn* (guarantee to deliver a physical asset).
- G 13.3 The obligation arising from Shariah compliant contracts or activities for the purpose of *kafalah* may involve any of the following:  
(a) a financial liability or obligation of the guaranteed party that is already established or that will be established in the future;  
(b) performance of a certain act by the guaranteed party;  
(c) fulfilment of an obligation by the guaranteed party; or  
(d) a combination of any or all of the above.
- G 13.4 Subject to the beneficiary's consent, the guarantor may fulfil the guaranteed liability under the *kafalah* by compensating an agreed amount to the beneficiary.

**MANAGEMENT OF KAFALAH****14. Rights and responsibilities**

- G 14.1 The guarantor may provide *kafalah* without conditions (unrestricted *kafalah*) or with conditions (restricted *kafalah*).
- S 14.2 The guarantor's liability under an unrestricted *kafalah* shall be in accordance with the terms and conditions of the original liability between the guaranteed party and the beneficiary.
- G 14.3 The guarantor may provide a restricted *kafalah* whereby the terms and conditions of the guarantee are specified. The specified terms and conditions may include time, effective date, trigger events, amount or any additional terms and conditions of the guarantee which are acceptable by Shariah.
- S 14.4 In the case of paragraph 14.3, the terms and conditions of a restricted *kafalah* shall be consistent with the terms and conditions of the original liability between the guaranteed party and the beneficiary.

- S 14.5 The guarantor's liability under a restricted *kafalah* shall be in accordance with the specified terms and conditions and consistent with the original liability referred to in paragraphs 14.3 and 14.4.
- G 14.6 The beneficiary may claim his rights from the guaranteed party or the guarantor, either for:
- (a) the full amount of the liability from either of them; or
  - (b) a part of the liability from the guaranteed party and the other part from the guarantor or guarantors (based on the agreed sequence, if any).
- G 14.7 The guarantor may stipulate a condition that the beneficiary shall first claim from the guaranteed party and will only claim from the guarantor if the guaranteed party is unable to settle his liability.
- S 14.8 If the guaranteed liability becomes claimable before its maturity due to the demise or dissolution of the guaranteed party or any agreed trigger events, the *kafalah* contract remains enforceable unless otherwise specified.
- G 14.9 The guarantor may request the guaranteed party to place an asset as collateral at the inception of the *kafalah* contract.
- G 14.10 If the beneficiary grants the guaranteed party an extension period to settle the liability, such extension may also apply to the guarantor.
- S 14.11 The contracting parties must obtain the guarantor's consent before the period to settle the guaranteed liability referred to in paragraph 14.10 can be extended.
- S 14.12 However, if the extension period to settle the liability is granted by the beneficiary to the guarantor only, such extension shall not be applicable to the guaranteed party.
- G 14.13 In the event that the *kafalah* involves more than one guarantors, the contracting parties may agree to the specific terms of the guarantee such as priority of claims against each guarantor, the guarantee limit, and the extent of their respective liabilities, whether jointly, severally or both.
- S 14.14 In the event the guarantor's demise occurs before his obligation under the *kafalah* contract is due, the guarantor's liability ceases to exist unless otherwise specified in the *kafalah* contract that the beneficiary may claim the guaranteed amount against the guarantor's estate when it becomes due.
- S 14.15 In the event the guarantor's demise occurs after his obligation under the *kafalah* contract is due, the beneficiary must exhaust the procedures to claim the guaranteed amount from the guaranteed party first before claiming it against the guarantor's estate.

**15. Imposition of fees or charges on *kafalah***

- G 15.1 The guarantor may impose a fee for providing the *kafalah* service.
- G 15.2 Pursuant to paragraph 15.1, the fee as agreed in the *kafalah* contract may be in the form of:
- (a) an agreed fixed amount; or
  - (b) a percentage of the guaranteed amount.

**16. Recourse and recovery**

- S 16.1 The guarantor shall have the right of recourse against the guaranteed party even though the *kafalah* is given on a voluntary basis.
- S 16.2 The guarantor is only entitled to recourse up to the amount he has paid to the beneficiary as a result of providing the *kafalah*.
- G 16.3 Notwithstanding paragraph 16.2, the guarantor may recover from the guaranteed party the total cost associated with payment of the *kafalah* amount to the beneficiary.
- G 16.4 In the event that the guarantor has a debt obligation against the guaranteed party, the amount of recourse may be set-off against the debt obligation.
- S 16.5 The right of recourse arises subsequent to the payment to the beneficiary or at such times as agreed between the guarantor and the guaranteed party.
- G 16.6 If the guaranteed party fails to settle the amount claimed by the guarantor within the agreed time frame pursuant to exercising the guarantor's right of recourse, the guaranteed party is subjected to the late payment charges as determined by the relevant authorities.<sup>4</sup>
- S 16.7 In the event that the guarantor fails to fulfil his commitment towards the beneficiary's claim as stipulated in the *kafalah* contract, he shall be subjected to the same actions as may be taken against the guaranteed party.

**17. Arrangement of *kafalah* with other contracts or concepts**

- G 17.1 *Kafalah* may be arranged with other Shariah contracts or concepts including exchange-based contract, agency contract, partnership contract, benevolent (*tabarru`at*) contract and *wa`d* provided that requirements for the arrangement of *kafalah* with such contracts/concepts are observed<sup>5</sup>.

---

<sup>4</sup> Refer to paragraph 26.1.

<sup>5</sup> Refer to the relevant policy documents relating to such Shariah contracts or concepts.

## DISSOLUTION (*FSAKH*) AND COMPLETION (*INTIHA'*) OF KAFALAH CONTRACT

### 18. Dissolution of *kafalah*

- S 18.1 Subject to paragraph 18.2, a *kafalah* contract is dissolved when the beneficiary discharges the guarantor from the guaranteed liability, whether or not at the guarantor's request. The discharge of the guarantor's liability shall not affect the responsibility of the guaranteed party to fulfil his obligations to the beneficiary.
- S 18.2 If a fee is paid by the guaranteed party for the *kafalah*, the *kafalah* contract shall not be dissolved without the consent of the guaranteed party.

### 19. Completion of *kafalah*

- S 19.1 The *kafalah* completes upon the occurrence of any of the following circumstances:
- (a) full settlement of the guaranteed liability by the guaranteed party, his agent (*wakil*), or the guarantor;
  - (b) set-off (*muqassah*) of full debt obligations between the beneficiary and the guaranteed party;
  - (c) the beneficiary waives his right to claim the whole of the guaranteed liability from the guaranteed party; or
  - (d) expiry of the guarantee period or period to claim the guaranteed liability by the beneficiary.
- S 19.2 Upon completion of the *kafalah*, the guarantor shall be discharged from the specified liability under the *kafalah* contract.

## PART C GENERAL OPERATIONAL REQUIREMENTS FOR KAFALAH CONTRACT

### 20. Background

- G 20.1 An IFI may enter into a *kafalah* in the capacity of a guarantor or beneficiary and, below are some of the common applications of the *kafalah*:
- (a) in the capacity of a guarantor, the IFI provides a guarantee to a third party in favour of its customers through various *kafalah*-based financial products such as bank guarantee, standby letter of credit and shipping guarantee; and
  - (b) in the capacity of a beneficiary, the IFI accepts the guarantee provided by a third party in favour of its customers for the financing facilities extended, as a risk mitigation tool for the IFI or a credit enhancing tool for the customer.

### 21. Governance and oversight

- S 21.1 The IFI must establish a sound governance structure to facilitate effective oversight on the management and implementation of *kafalah*.
- S 21.2 The board of director (the Board) shall be responsible for Shariah governance and Shariah compliance of the IFI. As such the Board must:
- (a) approve the IFI's business and risk strategies with regard to the application of the *kafalah*;
  - (b) approve and oversee the implementation of the IFI's relevant internal policies and procedures governing *kafalah*;
  - (c) ensure the internal policies are reviewed regularly in order to remain current, relevant and adequate to ensure the operational conduct and risk profile of *kafalah* are managed appropriately. Any material changes to the internal policies must be approved by the Board;
  - (d) ensure that all Shariah-related matters are endorsed by the Shariah Committee (SC); and
  - (e) ensure that independent reviews are conducted regularly to assess compliance to the standards issued by the Bank and internal policies established by the IFI.
- S 21.3 The SC shall be responsible to advise the IFI in ensuring its business, affairs and activities comply with Shariah, which includes activities relating to the *kafalah*. As such, the SC must:
- (a) endorse relevant internal policies and procedures governing the application of a *kafalah* contract from Shariah perspective;
  - (b) review and endorse the terms and conditions provided in documentations including fees and charges, contracts, product manual, marketing advertisement, sales illustrations and brochures;
  - (c) assess the work carried out by Shariah review and Shariah audit, identify issues and propose appropriate corrective measures; and
  - (d) advise and provide clarification on relevant Shariah rulings, decisions or guidelines on Shariah matters issued by the Bank, and if relevant, any other authorities.

- S 21.4 The senior management shall be responsible to ensure that the business and operations of the IFI comply with Shariah. As such, the senior management must:
- (a) develop and implement internal policies and procedures governing *kafalah* transactions. At minimum, the internal policies must include:
    - (i) the structuring policies;
    - (ii) risk management policies; and
    - (iii) business and market conduct policies.
  - (b) ensure adequate system and infrastructure to support *kafalah* implementation, Shariah audit and Shariah compliance;
  - (c) clearly communicate the approved internal policies to internal stakeholders to facilitate effective implementation;
  - (d) undertake regular review and compliance monitoring on the established policies and seek the Board's approval on enhancement to the policies; and
  - (e) ensure timely disclosure of relevant information to the Board and the SC.

## 22. Structuring

- S 22.1 The IFI must ensure structuring of *kafalah* is consistent with Shariah requirements and is supported by comprehensive policies and procedures, as well as robust documentations.

### Structuring policies

- S 22.2 The IFI must ensure that policies and procedures governing the structuring of *kafalah* (structuring policies) are in place. At minimum, the structuring policies must include:
- (a) methodologies in ascertaining fees and charges;
  - (b) criteria and conditions to determine the acceptable collateral/ security for *kafalah*;
  - (c) procedures with regard to claims, recourse and recovery, which include the recourse period, claims limit, forms of notification and payment method(s); and
  - (d) procedures in ensuring subject matter of the *kafalah* is not from Shariah non-compliant contract or activities.

### Documentation

- S 22.3 The IFI must ensure legally enforceable documents<sup>6</sup> are adopted to reflect *kafalah*.
- S 22.4 The IFI must ensure that terms and conditions that are prohibited by Shariah are excluded from the documentations.

---

<sup>6</sup> Include contracts, agreements and other generally acceptable documents in financial transactions.

- S 22.5 Pursuant to paragraph 17.1, when *kafalah* is applied with a *wakalah*, the contracts shall be entered into independently and separately where the effect of one contract shall not be interrelated to the other.
- S 22.6 If Arabic terminologies are used in the documentations, the IFI must provide clarification and explanation on such terminologies to the customer.
- S 22.7 The IFI, at minimum, must include the terms and conditions of the *kafalah* in relevant documentation, covering the following aspects:
- (a) roles and responsibilities of the contracting parties;
  - (b) fees and charges, where applicable;
  - (c) purpose of guarantee;
  - (d) tenure of guarantee, where applicable;
  - (e) guaranteed amount, where applicable;
  - (f) expiry date and claim period, where applicable;
  - (g) claims procedure and priority of claims, where applicable;
  - (h) recourse and recovery terms including the recourse period, forms of notification and payment method;
  - (i) fee refund procedure, if applicable, in the event of early termination or deferred commencement of the *kafalah*;
  - (j) collateral including the types of collaterals, tenure and criteria to release the collateral or security;
  - (k) termination and completion events of the *kafalah*; and
  - (l) requirements for all contracting parties to ensure continuous compliance with Shariah.

## **23. Risk management**

- S 23.1 The IFI must institute and implement a sound risk management framework to effectively manage risks associated with a *kafalah*.

### **Risk Management Policies**

- S 23.2 The IFI must establish risk management policies associated with *kafalah*.
- S 23.3 At minimum, the IFI's risk management policies must include the following:
- (a) processes and procedures for the identification, measurement, monitoring, reporting and control of all risk exposures associated with *kafalah*;
  - (b) internal limits on risk exposures in line with the risk appetite and capacity of the IFI;
  - (c) appropriate risk mitigation measures, including Shariah screening, valuation of the collateral and credit assessment of the customer; and
  - (d) reporting requirements to the Board, the SC and the senior management.
- S 23.4 The IFI must establish processes to periodically review and update the risk management policies, procedures and internal limits to ensure consistency with the risk appetite of the IFI.

**24. Business and market conduct**

- S 24.1 *Kafalah* must be undertaken in a fair and transparent manner in line with Shariah to protect interest of contracting parties.
- S 24.2 The IFI must give due regard to the interests of all contracting parties in its policies and procedures to ensure that the *kafalah* is conducted in a fair, transparent, responsible and professional manner, in line with Shariah requirements.

**Business and market conduct policies**

- S 24.3 The internal policies and procedures of the IFI on business and market conduct for the *kafalah* must reflect fair dealing practices to the contracting parties, including:
- (a) information provided to the customer is accurate, clear and not misleading; and
  - (b) fees and charges, where applicable, are disclosed to the customer.

**Disclosure of information**

- S 24.4 The IFI must facilitate the contracting parties to understand the concept of *kafalah*.

**25. Financial disclosure**

- S 25.1 The IFI shall provide adequate financial disclosure to facilitate the stakeholders in the understanding and assessment of *kafalah*.
- S 25.2 The IFI must maintain accounting records and other records in a timely manner that will sufficiently enable the preparation and reporting of true and fair financial statements.

**PART D SPECIFIC OPERATIONAL REQUIREMENTS****26. Specific operational requirements where the IFI enters into *kafalah* in the capacity of a guarantor****Structuring**

- S 26.1 Pursuant to paragraph 16.6, in the event where the IFI impose late payment charges, the treatment must be in accordance with the *Guidelines on Late Payment Charges for Islamic Financial Institutions*.

**Risk Management**

- S 26.2 The IFI must perform credit appraisal on the guaranteed party based on relevant internal policy prior to the provision of *kafalah* products and services.
- G 26.3 In executing *kafalah*, the IFI may require the guaranteed party to provide collateral or security to safeguard itself against events of default.

- S 26.4 For purposes of paragraph 26.3, if the collateral is in the form of other than cash, the IFI must ensure periodic valuation of the collateral, in accordance with the internal policies and procedures.
- S 26.5 Pursuant to subparagraph 22.2(b), the IFI must take into account funding liquidity risk of the collateral or security accepted in setting out the exposure limit for the *kafalah*.
- S 26.6 In relation to paragraph 14.13, for *kafalah* that involves more than one guarantors, the IFI must ensure that the terms of the *kafalah*, such as priority of claims and guarantee limit by guarantors, are clearly stipulated in the legal documentation.

### **Business and market conduct**

- S 26.7 To ensure that the potential customer is able to make an informed decision, the IFI must disclose and provide adequate information to the potential customer in the marketing or promotional materials, product disclosure sheet and any other relevant materials with regard to the *kafalah* during the pre-contractual stage and at time of entering into the contract. The information must include:
- (a) key features of the *kafalah*;
  - (b) salient terms and conditions of *kafalah*, such as:
    - (i) tenure and purpose;
    - (ii) rights and obligations of the contracting parties;
    - (iii) significant risks associated with the *kafalah*;
    - (iv) fees and charges that will or may be payable by the contracting parties and the time at which those amount will or may be payable; and
    - (v) the requirements for collateral, if any.
- S 26.8 During the term of the *kafalah*, the IFI must communicate to the customer<sup>7</sup> any changes to the contract, including the terms and conditions, features of financial products, and rights and obligations of the customer.
- S 26.9 The IFI must honour the claim by the beneficiary subject to the terms and conditions set out in the *kafalah* contract, provided that the *kafalah* has not been dissolved or terminated.

## **27. Specific operational requirements where the IFI enters into *kafalah* in the capacity of a beneficiary**

### **Risk Management**

- S 27.1 The IFI must ensure the effectiveness of *kafalah* as a risk mitigation tool. At minimum, the IFI must:
- (a) assess capability of the guarantor in fulfilling the obligation under the *kafalah*; and

---

<sup>7</sup> Subject to Guidelines on Product Transparency and Disclosure

- (b) ensure that the *kafalah* contract is enforceable.

### **Business and market conduct**

- S 27.2 The IFI must explain the terms and conditions of the *kafalah* contract to the guarantor.
- G 27.3 In relation to paragraph 22.7(g) and in pursuing rights under its *kafalah* contract, the IFI should not commence any action against the guarantor, unless the IFI has first claimed the guaranteed liability against the guaranteed party and the guaranteed party is unable to settle his liability.

### **PART E SUBMISSION REQUIREMENT**

#### **28. Submission Requirement**

- S 28.1 The Board and the SC must respectively approve and endorse the IFI's implementation plan to ensure compliance with the policy document by 1 January 2018.
- S 28.2 The IFI that offers any product or service that is structured based on *kafalah*, must submit the implementation plan to Jabatan Perbankan Islam dan Takaful (JPIT) by 31 October 2016.

## APPENDICES

### APPENDIX 1 Legitimacy of *kafalah*

1. The legitimacy of the *kafalah* contract is derived from the *Quran* and founded on the *Sunnah* of Prophet Muhammad (peace be upon him) and the consensus of the muslim jurists (*ijma`*).

#### The Quran

2. The following verse of the Quran implies the permissibility of the *kafalah* contract:

قَالُوا نَفَقْدُ صُوعَ الْمَلِكِ وَلَمَن جَاءَ بِهِ حَمْلٌ بَعِيرٌ وَأَنَا بِهِ زَعِيمٌ ﴿٧٢﴾

[The officials] said, "We are missing the king's goblet." [And their chief added], "He who brings it shall have a camel-load of provisions; I personally guarantee it."<sup>8</sup>

#### The Sunnah of Prophet Muhammad (peace be upon him)

3. The following hadith implies the permissibility of *kafalah*.

عن جابر، قال: كان رسول الله صلى الله عليه وسلم لا يصلي على رجل مات وعليه دين، فأتي بميت، فقال: أعليه دين؟ قالوا: نعم، ديناران، قال: صلوا على صاحبكم. فقال أبو قتادة الأنصاري: هما علي يا رسول الله. قال: فصلي عليه رسول الله صلى الله عليه وسلم.

*Jabir narrated: The Messenger of Allah (peace be upon him) would not perform funeral prayer over a person who died while a debt was due from him. The body of a Muslim was brought to him, and he asked: "Is there any debt due from him?" [The companions] said: "Yes, two dinars." He said: "Pray over your companion [as he has unpaid debt]." Then Abu Qatadah al-Ansari said: "I shall pay them, Messenger of Allah." The Messenger of Allah (peace be upon him) then prayed over him.*<sup>9</sup>

#### Consensus of the Muslim jurists (Ijma')

4. The Muslim jurists have reached *ijma`* on the permissibility of *kafalah* in general, as cited by Ibn Qudamah<sup>10</sup>.

<sup>8</sup> Surah Yusuf, verse 72.

<sup>9</sup> Abu Daud, Sunan Abi Daud, hadith no. 3343.

<sup>10</sup> Ibn Qudamah, Al-Mughni, 4:400.

## APPENDIX 2 Glossary

For the purpose of this policy, the following terms shall have the following definitions:

<b>Terms</b>	<b>Definition</b>
<i>Dayn lazim</i>	A legally binding debt
<i>Ibra'</i>	Rebate
<i>Ijma'</i>	Consensus of Muslim jurists
<i>Kafalah al-`ayn</i>	Guarantee of a physical asset
<i>Kafalah al-dayn</i>	Guarantee of a debt liability
<i>Kafalah bi al-mal</i>	Financial guarantee
<i>Kafil</i>	Guarantor
<i>Makful `anhu</i>	The guaranteed party who is a debtor or a party guaranteed by the guarantor
<i>Makful lahu</i>	The beneficiary who is a creditor or a party who has the right to claim the liability (debt) from the guaranteed party ( <i>makful `anhu</i> ) or the guarantor ( <i>kafil</i> )
<i>Ma ya`ul ila luzum</i>	A debt that will become legally binding in the future
<i>Muqassah</i>	Offsetting
<i>Tabarru`at</i>	Benevolent
<i>`Urf</i>	Common business practice which is acceptable by the community and does not contradict the Shariah rulings
<i>Wa`d</i>	Promise or undertaking