



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Wadi`ah

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

PART A	OVERVIEW	1
1.	Introduction.....	1
2.	Applicability	1
3.	Legal provisions	1
4.	Effective date.....	2
5.	Interpretation	2
6.	Related legal instruments and policy documents	2
PART B	SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES	3
7.	Compliance with Part B	3
8.	Definition	3
9.	Nature.....	3
10.	Components of <i>wadi`ah</i>	3
11.	Contracting parties	3
12.	Offer (<i>ijab</i>) and acceptance (<i>qabul</i>)	4
13.	<i>Wadi`ah</i> asset	4
14.	Salient features of <i>wadi`ah</i> contract	4
15.	Arrangement of <i>wadi`ah</i> contract with charges	5
16.	<i>Wadi`ah</i> contract to be construed as <i>qard</i> contract upon utilisation of <i>wadi`ah</i> asset under custody.....	6
17.	Arrangement of <i>wadi`ah</i> contract with <i>rahn</i>	6
18.	Dissolution of <i>wadi`ah</i> contract.....	6
19.	Completion of <i>wadi`ah</i> contract.....	6
20.	Effect of dissolution or completion of <i>wadi`ah</i> contract.....	6
21.	Collection of <i>wadi`ah</i> asset after demise or dissolution of the safekeeping depositor.....	6
22.	Failure to immediately collect <i>wadi`ah</i> asset after dissolution or completion of the <i>wadi`ah</i> contract.....	7
PART C	OPERATIONAL REQUIREMENTS	8
23.	Governance and oversight	8
24.	Structuring.....	9
25.	Risk management	11
26.	Business and market conduct	11
27.	Transition arrangement	12
Appendix 1	Legitimacy of <i>wadi`ah</i> contract	13
Appendix 2	Glossary	15

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 to establish sound operational framework and infrastructure to ensure that its conduct of 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 an Islamic financial institution.
- 1.3 This policy document aims to–
 - (a) provide reference on the Shariah rulings applicable to *wadi`ah*;
 - (b) set out key operational requirements for the implementation of *wadi`ah*; and
 - (c) promote end-to-end compliance with Shariah requirements, which further promote sound Islamic banking and takaful practices and safeguard consumer interests.
- 1.4 This policy document sets out the following:
 - (a) salient features and essential conditions of *wadi`ah* in Part B; and
 - (b) regulatory and supervisory expectations for the operational requirements on governance and oversight, structuring, risk management as well as business and market conduct in Part C.

2. Applicability

- 2.1 This policy document is applicable to Islamic financial institutions as defined in paragraph 5.2.

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(1) of the Development Financial Institutions Act 2002 (DFIA).
- 3.2 The requirements in Part C of this policy document are specified pursuant to–
 - (a) sections 29(2), 57, 135(1) and 155 of IFSA; and
 - (b) sections 33E(2), 41, 42C(1) and 116 of 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 31 July 2018, except for paragraph 27 which takes effect immediately upon issuance of this policy document.

5. Interpretation

- 5.1 The terms and expressions used in this policy document must 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.

- 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 actions;

“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;

“direct costs” refers to costs that are directly related to the *wadi`ah* transaction, either based on actual or estimated amount, without any profit or mark-up element;

“Islamic financial institutions” or “IFI” means–

- (a) licensed Islamic banks;
- (b) licensed takaful operators and professional retakaful operators;
- (c) licensed banks and licensed investment banks approved under section 15(1)(a) of the FSA to carry on Islamic banking business; and
- (d) prescribed institutions approved under section 33B(1) of the DFIA to carry on Islamic financial business.

- 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 and policy documents 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 *wadi`ah* contract for its products and services must ensure that such products and services are in compliance with Part B of this policy document.

8. Definition

- S 8.1 *Wadi`ah* refers to a contract where an asset is placed with another party for safekeeping.

9. Nature

- S 9.1 The inherent nature of *wadi`ah* is trusteeship¹, referred to as *wadi`ah yad amanah* in which any of the contracting parties may terminate the contract unilaterally.

10. Components of *wadi`ah*

- S 10.1 *Wadi`ah* contract shall consist of the following components:
- (a) contracting parties, comprising a custodian (*wadi`*) and a safekeeping depositor (*mudi`*);
 - (b) offer (*ijab*) and acceptance (*qabul*); and
 - (c) *wadi`ah* asset.

11. Contracting parties

- S 11.1 The contracting parties in a *wadi`ah* contract shall be a custodian (*wadi`*) and a safekeeping depositor (*mudi`*) of a *wadi`ah* asset.
- S 11.2 The contracting parties in a *wadi`ah* contract shall be a natural person or a legal entity that must have the legal capacity² to enter into a *wadi`ah* contract.
- S 11.3 A safekeeping depositor must be the owner or a person who has full legal authority over the ownership of the asset placed in custody. If there is more than one owner of the *wadi`ah* asset, consent from all owners must be obtained by the safekeeping depositor for the *wadi`ah* contract.
- G 11.4 In relation to paragraph 11.3, such consent may be given–
- (a) collectively as all owners are the safekeeping depositors;
 - (b) through appointing one of the owners to act on their respective behalf as

¹ The word “trust” and “trusteeship” used in this policy document denote the literal meaning and must not be associated with terms relating to any law.

² Legal capacity of a person, from Shariah perspective, is defined as the 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, this legal capacity is also subject to the Contracts Act 1950 and the Age of Majority Act 1971.

- (c) the safekeeping depositor; or
- (c) through a third party agent appointed by all owners to act on their respective behalf as the safekeeping depositor.

G 11.5 Any party to a *wadi`ah* contract may enter into the *wadi`ah* contract through an agent (*wakil*).

12. Offer (*ijab*) and acceptance (*qabul*)

S 12.1 The *wadi`ah* contract must be entered into through an offer and acceptance between the contracting parties.

G 12.2 The offer and acceptance may be expressed orally, in writing or by any other methods recognised by Shariah.

13. *Wadi`ah* asset

S 13.1 A *wadi`ah* asset under a *wadi`ah* contract shall be an asset that is–
(a) deliverable;
(b) identifiable; and
(c) consistent with the principles of Shariah.

14. Salient features of *wadi`ah* contract

Wadi`ah asset held on *amanah*

S 14.1 A *wadi`ah* asset is held on trust by the custodian for safekeeping. The custodian must return the *wadi`ah* asset placed in custody to the safekeeping depositor according to the agreed terms of the *wadi`ah* contract or in the event that there is no such contractual term, it must be at the request of the safekeeping depositor.

Wadi`ah period

G 14.2 The contracting parties may agree to specify the period of the *wadi`ah* contract.

Safekeeping of the *wadi`ah* asset

S 14.3 The custodian must ensure the safety of the *wadi`ah* asset placed in custody and must act in the interest of the safekeeping depositor.

G 14.4 The method of safekeeping may be determined between the contracting parties or may be based on customary business practice (*`urf tijari*) and depending on the nature of the *wadi`ah* asset placed in custody.

Liability for loss or damage to wadi`ah asset

- S 14.5 The custodian must not be liable for any loss or damages to the *wadi`ah* asset under the *wadi`ah* contract except for those arising from his own misconduct (*ta`addi*), negligence (*taqsir*) or breach of specified terms (*mukhalafah al-shurut*) or that of his agents or representatives’.

Appointment of third party custodian

- S 14.6 A custodian must not entrust the *wadi`ah* asset placed in his custody to a third party without prior permission of the safekeeping depositor.
- G 14.7 In relation to paragraph 14.6, such permission to entrust the *wadi`ah* asset in the custody of a third party may be expressed in writing or by any other methods which could be evidenced by appropriate documentation or record.
- S 14.8 If the custodian fails to obtain such permission and places the *wadi`ah* asset in the custody of a third party, the custodian must be fully responsible for any loss or damages of the *wadi`ah* asset.

Direct costs

- S 14.9 All direct costs related to the safekeeping of the *wadi`ah* asset must be borne by the safekeeping depositor if the *wadi`ah* asset is placed with—
(a) the custodian; or
(b) a third party with the prior permission of the safekeeping depositor.
- G 14.10 Notwithstanding paragraph 14.9, the contracting parties to the *wadi`ah* contract may agree for the custodian to bear such direct costs either wholly, partially or proportionately.

ARRANGEMENT OF WADI`AH WITH OTHER CONTRACTS OR CONCEPTS**15. Arrangement of wadi`ah contract with charges**

- G 15.1 The contracting parties may agree to a payment of charges by the safekeeping depositor in consideration for the safekeeping service provided by the custodian.
- S 15.2 Upon the agreement described in paragraph 15.1, the relationship between the contracting parties must transform into an *ijarah* contract and be governed by the principles of *ijarah* whereby the custodian must be the lessor and the safekeeping depositor must be the lessee.
- S 15.3 As a lessor, the custodian must be fully responsible for the loss or damages of the asset placed in custody unless he can prove that such loss or damages was not due to his own misconduct (*ta`addi*), negligence (*taqsir*) or breach of specified terms (*mukhalafah al-shurut*) or that of his agents or representatives’.

16. Wadi`ah contract to be construed as *qard* contract upon utilisation of wadi`ah asset under custody

- S 16.1 A *wadi`ah* contract shall be construed as a *qard* contract and shall be governed by the principles of *qard* if–
- (a) the *wadi`ah* asset is a fungible asset (*mal mithli*) such as money; and
 - (b) the custodian is allowed to utilise the asset.

17. Arrangement of wadi`ah contract with *rahn*

- G 17.1 A *wadi`ah* asset may be pledged by the safekeeping depositor to the custodian or to another party.
- S 17.2 If the *wadi`ah* asset is pledged, then the contracting parties of the pledge arrangement must ensure that it complies with the Shariah principles of *rahn*.

DISSOLUTION (FASAKH) AND COMPLETION (INTIHA') OF WADI`AH CONTRACT**18. Dissolution of wadi`ah contract**

- S 18.1 A *wadi`ah* contract is dissolved upon the occurrence of the following:
- (a) unilateral termination of the *wadi`ah* contract by either one of the contracting parties;
 - (b) termination of the *wadi`ah* contract by mutual agreement of both contracting parties;
 - (c) demise (in the case of individual), dissolution (in the case of legal entity) or loss of legal capacity of either contracting party; or
 - (d) change of ownership of the *wadi`ah* asset.

19. Completion of wadi`ah contract

- S 19.1 A *wadi`ah* contract completes upon the maturity date as agreed by the contracting parties.

20. Effect of dissolution or completion of wadi`ah contract

- S 20.1 Upon the dissolution or completion of the *wadi`ah* contract, the safekeeping depositor must be responsible for collecting the *wadi`ah* asset and the custodian must return the *wadi`ah* asset to the safekeeping depositor.

21. Collection of wadi`ah asset after demise or dissolution of the safekeeping depositor

- S 21.1 Upon the dissolution of a *wadi`ah* contract due to the demise (in the case of individual) or dissolution (in the case of legal entity) of a safekeeping depositor, the legal representatives or heirs of the demised safekeeping depositor is responsible for collecting the *wadi`ah* asset from the custodian.

- S 21.2 The custodian must not be held responsible in ensuring that the *wadi`ah* asset of the deceased safekeeping depositor is administered according to the applicable laws for distribution of a deceased person's assets or Shariah law of distribution (*fara'id*).

22. Failure to immediately collect *wadi`ah* asset after dissolution or completion of the *wadi`ah* contract

- G 22.1 In the event of a failure by a safekeeping depositor, his legal representatives, heirs or agents to immediately collect the *wadi`ah* asset, a custodian may–
- (a) charge a fee for the safekeeping service arising from the late collection;
 - (b) charge the direct costs for the safekeeping service; or
 - (c) surrender or transfer the *wadi`ah* asset placed in custody to the relevant authorities in accordance with the relevant applicable laws.
- S 22.2 In relation to paragraph 22.1(a) in the event that the custodian charge a fee for the safekeeping service, such fee must be mutually agreed by the safekeeping depositor and the custodian.

PART C OPERATIONAL REQUIREMENTS**23. Governance and oversight**

- G 23.1 The requirements under this part complement the broad governance and oversight expectations specified under the relevant policy documents on governance issued by the Bank.
- S 23.2 While the broad governance and oversight principles are applicable to *wadi`ah*, an IFI must observe specific requirements on governance arrangements as outlined in this policy document to address distinct risks associated with *wadi`ah*.
- S 23.3 An IFI must have sufficient understanding of its risk profile and ensure the availability of personnel with the appropriate knowledge and skills to offer *wadi`ah*.

Board of Directors

- S 23.4 The Board of Directors of an IFI (the Board) must establish sound governance structure to facilitate an effective oversight on the management and implementation of *wadi`ah*.
- S 23.5 The Board has overall responsibility for Shariah governance and Shariah compliance of the IFI. As such, the Board must–
- (a) approve the business and risk strategies of the IFI with regard to the application of *wadi`ah*;
 - (b) approve and oversee the implementation of policies and procedures governing the application of *wadi`ah*, which must include, at minimum, the following aspects:
 - (i) eligibility criteria of *wadi`ah* assets or non-permissible list of *wadi`ah* assets³;
 - (ii) risk management;
 - (iii) information disclosures;
 - (iv) fees and charges; and
 - (v) arrangement with the third party in managing the *wadi`ah* asset, where applicable;
 - (c) ensure that appropriate internal controls, systems and infrastructure are in place to implement *wadi`ah* in accordance with Shariah requirements; and
 - (d) ensure that independent reviews are conducted regularly to assess compliance with the policy documents issued by the Bank and internal policies established by the IFI.

³ Example of Shariah non-compliant goods outlined by Jabatan Kemajuan Islam Malaysia under Halal Directory or listed goods under Accepted Bills-i transactions in the Guidelines on Accepted Bills-i issued by the Bank.

Shariah Committee

- S 23.6 The Shariah Committee of an IFI must perform the following to ensure that implementation of *wadi`ah* are conducted in accordance with Shariah requirements:
- (a) endorse the application of Shariah requirements in the relevant policies and procedures governing the *wadi`ah*;
 - (b) review the terms and conditions stipulated in the legal documentation⁴ and other documents such as information published on promotional materials, product manuals or other publications, and endorse that the terms and conditions are in compliance with Shariah;
 - (c) endorse policies relating to eligibility criteria of *wadi`ah* assets or non-permissible list of *wadi`ah* assets;
 - (d) endorse policies on fees and charges imposed on a *wadi`ah* contract;
 - (e) advise and provide clarification on relevant Shariah rulings, decisions or policy documents on Shariah matters issued by the Bank, and if relevant, any other authorities; and
 - (f) assess the work carried out by Shariah review and Shariah audit and endorse any rectification measures that needed to ensure that the *wadi`ah* complies with Shariah requirements.

Senior management

- S 23.7 The senior management has the responsibility to ensure that the business and operations of an IFI complies with Shariah requirements. As such, at a minimum, the senior management must–
- (a) develop and implement internal control and risk management policies and procedures in line with the business and risk strategies approved by the Board;
 - (b) establish and implement internal policies, procedures and processes governing *wadi`ah* including those relating to eligibility criteria of *wadi`ah* assets or non-permissible list of *wadi`ah* assets, fees and charges and arrangement with third party in managing the *wadi`ah* assets, where applicable;
 - (c) establish and implement adequate mechanism for managing risk inherent in the *wadi`ah* contract;
 - (d) undertake regular review and monitor compliance with the approved internal policies; and
 - (e) clearly communicate the approved internal policies and procedures, including Shariah decisions to the relevant stakeholders.

24. Structuring

- S 24.1 An IFI shall ensure that Shariah rulings on *wadi`ah* is appropriately applied in the IFI's products and services.

⁴ Example of legal documentation such as the agreement signed between the contracting parties which is legally enforceable.

Contracting parties

- G 24.2 An IFI may enter into a *wadi`ah* contract with a safekeeping depositor.
- S 24.3 The *wadi`ah* contract shall come into effect upon the asset placement and completion of legal documentations between the customer and the IFI.
- S 24.4 An IFI shall obtain prior written consent from the customer if a third party is appointed by the IFI to safe keep the *wadi`ah* asset. In this regard, the obligation to safe keep the deposited asset continues to remain with the IFI.
- S 24.5 Pursuant to paragraph 24.4, an IFI shall ensure that the adequacy of the safekeeping arrangement by the third party is mutually agreed with the customer. Therefore, the IFI must assess the third party's capacity and capability to properly safe keep the asset.
- S 24.6 In cases where the customer is a minor, an IFI shall obtain written consent from the guardian of the minor before entering into a *wadi`ah* contract with a minor.

Wadi`ah asset

- S 24.7 In structuring a *wadi`ah* product, an IFI shall ensure that the *wadi`ah* asset⁵ meets the eligibility criteria or not in the non-permissible list of *wadi`ah* assets as set out in the approved internal policies referred in paragraph 23.5(b)(i).
- S 24.8 For the purpose of paragraph 24.7, an IFI must ascertain⁶ the nature or type of the *wadi`ah* asset prior to entering the *wadi`ah* contract with the customer.
- S 24.9 Pursuant to paragraph 24.8, an IFI shall require the customer to declare that the *wadi`ah* asset complies with Shariah requirements.
- G 24.10 In the event where the details of the *wadi`ah* asset are incomplete or uncertain, an IFI may refuse to accept such asset without having to provide its reasons.

Offer and acceptance

- S 24.11 In establishing the *wadi`ah* contract, an IFI shall ensure that the offer of the placement and the acceptance of a *wadi`ah* assets for safekeeping must be evidenced by appropriate documentations or record.

Fees and charges

- S 24.12 An IFI must ensure that fees and charges are based on the direct costs relating to safekeeping of *wadi`ah* assets.

⁵ Refers to an asset which is non-perishable or non-consumable and comply with the principles of Shariah and may include fungible asset.

⁶ Ascertainment can be done through declaration by customer (including asset deposited is Shariah-compliant, nature or types of the asset).

25. Risk management

- S 25.1 An IFI shall establish internal policies and procedures on risk management, which include the following:
- (a) process and procedures for identification, assessment, measurement, monitoring, mitigation and reporting of risk exposures associated with *wadi`ah* contracts;
 - (b) procedures for the acceptance and management of *wadi`ah* assets to ensure that such assets comply with Shariah requirements and mitigate the possibility of the *wadi`ah* assets being used or utilised by the IFI;
 - (c) assessment on the adequacy of the security and maintenance of *wadi`ah* assets that commensurate with the nature and value of such assets to mitigate the potential risk of loss and damages;
 - (d) clear processes and procedures for the dissolution or completion of *wadi`ah*; and
 - (e) regulatory requirements stipulated in relevant policy documents on risk management issued by the Bank.
- S 25.2 For purposes of establishing policies and procedures under paragraph 25.1(a), an IFI shall establish systems and internal controls that address the risks associated with *wadi`ah* contracts which include the following:
- (a) processes for identification and assessment risks inherent in *wadi`ah* transactions;
 - (b) ascertain risk mitigation technique⁷ to minimise potential loss;
 - (c) procedures for proper inspection and maintenance of *wadi`ah* assets to ensure that the IFI is able to satisfy the obligation to return the *wadi`ah* assets to the customer; and
 - (d) reporting requirements to the Board, Shariah Committee and senior management.
- S 25.3 An IFI must maintain all records relating to *wadi`ah* transactions including the safekeeping and transaction records. These internal records must be updated regularly and should be available for inspection by the Bank or external auditors as and when required.

26. Business and market conduct**General principle**

- S 26.1 An IFI must take into consideration the customer's interests in developing policies, processes and procedures to ensure that a *wadi`ah* transaction is conducted in a fair, transparent, responsible and professional manner.

Fair dealings

- S 26.2 An IFI must ensure that the offering and marketing of the *wadi`ah* products to the customer are done in a fair and transparent manner.

⁷ For instance, the IFI provide takaful coverage for safe deposit box services rendered to a customer under a *wadi`ah* contract to mitigate the IFI from potential losses arising from any damages to the customer's *wadi`ah* asset held by the IFI.

- S 26.3 An IFI must exercise due care in safekeeping the *wadi`ah* assets throughout the tenure of a *wadi`ah* contract.

Disclosure of information

- S 26.4 An IFI must develop and implement appropriate disclosure and promotional and marketing materials to ensure that the customer receives clear and adequate information, including at pre-contractual stage, on the following:
- (a) features and purpose of the *wadi`ah*;
 - (b) contractual relationship between the contracting parties;
 - (c) rights and obligations of the contracting parties to the *wadi`ah* including accountability for any loss or damages to the *wadi`ah* asset;
 - (d) terms and conditions of the *wadi`ah* contract;
 - (e) arrangement with other Shariah contracts or concepts such as *takaful*, where applicable;
 - (f) arrangement with the third party, where applicable;
 - (g) arrangement upon the dissolution or completion of the *wadi`ah* contract, including in the event of the demise of the customer; and
 - (h) fees and charges, where applicable.
- S 26.5 An IFI must ascertain that the customer understand the concept, terms and conditions of a *wadi`ah* contract prior to entering such contract.
- S 26.6 An IFI must adequately clarify the use of Arabic terminology, if any, in its documentation to enhance the customer's understanding on the Shariah contract.

27. Transition arrangement

- S 27.1 An IFI must refer to the policy document on *Qard* for transition arrangement of existing products and services using *wadi`ah* contract as prescribed under paragraph 16 of this policy document.
- S 27.2 Upon the completion of this transition arrangement, activities such as placement of money with permission to utilise must be referred to as *qard*.

APPENDICES

Appendix 1 Legitimacy of *wadi`ah* contract

1. The legitimacy of *wadi`ah* 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. Although the concept of *wadi`ah* 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.
3. The following *Quran* verses imply the general permissibility of *wadi`ah*.

(a) وَالَّذِينَ هُمْ لِأَمَانَاتِهِمْ وَعَهْدِهِمْ رَاعُونَ.

“Those who are true to their trusts and pledges.”⁸

(b) إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا.

“Truly, Allah commands you to hand back your trusts to the (rightful) owners.”⁹

(c) فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ.

“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.”¹⁰

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

4. The following *hadiths* imply the general permissibility of *wadi`ah*.

(a) 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 narrated 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.”¹¹

⁸ *Surah al-Mu'minun*, verse 8.

⁹ *Surah al-Nisaa'*, verse 58.

¹⁰ *Surah al-Baqarah*, verse 283.

¹¹ Al-Baihaqi, *Sunan Al-Kubra*, hadith no. 12696.

(b) عن أبي هريرة عن النبي صلى الله عليه وسلم قال: أَدِ الْأَمَانَةَ إِلَى مَنِ اتَّمَنَّاكَ وَلَا تَخْنِ مِنْ خَانَكَ.

Abu-Hurairah narrated that Prophet Muhammad (peace be upon him) said: "Return the trust to those who entrusted you, and do not betray those who betrayed you."¹²

The consensus of muslim jurists (*ijma`*)

5. Muslim jurists have reached *ijma`* on the permissibility of *wadi`ah*.

¹² Abu Daud, *Sunan Abi Daud*, hadith no. 3535.

Appendix 2 Glossary

Terms	Definition
<i>Amanah</i>	Trusteeship
<i>Fara'id</i>	The knowledge or rules on estate distribution according to Islamic principles
<i>Ijma`</i>	Consensus of the muslim jurists
<i>Mal Mithli</i>	Fungible asset refers to comparable or interchangeable assets that are valued or treated as the same class of assets
<i>Mudi`</i>	Safekeeping depositor
<i>Mukhalafah al-shurut</i>	Breach of specified terms
<i>Qard</i>	A contract of lending money by a lender to a borrower where the latter is bound to repay an equivalent replacement amount to the lender. Money may include cash in any currency, gold or silver
<i>Rahn</i>	A contract between a pledgor and a pledgee whereby an asset is pledged as collateral that will be used to fulfill the liability or obligation against the pledgee in the event of default
<i>Ta`addi</i>	Misconduct
<i>Taqsir</i>	Negligence
<i>`Urf tijari</i>	Customary 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>Wakil</i>	Agent