



**BANK NEGARA MALAYSIA**  
CENTRAL BANK OF MALAYSIA

## ***Qard***

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

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## PART A OVERVIEW

### 1. Introduction

- 1.1 Compliance with Shariah requirements 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 a 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 *qard*;
  - (b) set out key operational requirements for the implementation of *qard*; 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 *qard* in Part B; and
  - (b) regulatory and supervisory expectations for the operational requirements on governance and oversight, structuring, risk management, business and market conduct as well as financial disclosure in Part C.
- 1.5 This policy document also sets out the requirements for the revision of *wadi'ah yad dhamanah* involving a fungible asset to *qard*, subject to the transition period.

### 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 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 31 July 2018, except for paragraph 22, which takes effect immediately upon issuance of this policy document.
- 4.2 The Bank is committed to ensure that its policies remain relevant and continue to meet the intended objectives and outcome. Accordingly, the Bank will review this policy document within 5 years from the date of issuance or the Bank's latest review, and where necessary, amend or replace 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 *qard* transaction, either based on actual or estimated amount, without any profit or mark-up element;
  - “**contractual benefit**” refers to any form of incentives, gifts, privileges or benefits that the borrower is legally bound to give to the lender under the *qard* contract or any other contracts that relate exclusively to the *qard*;
  - “**Islamic financial institution**” (**IFI**) refers to–
    - (a) a licensed Islamic bank;
    - (b) a licensed takaful operator and professional retakaful operator;
    - (c) a licensed bank and licensed investment bank approved under section 15(1)(a) of the FSA to carry on Islamic banking business; and
    - (d) a prescribed institution 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 *qard* 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 *Qard* refers to 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.
- G 8.2 Money may include cash in any currency, gold or silver.

### **9. Nature**

- S 9.1 A *qard* contract is established when ownership of a sum of money belonging to the lender is transferred to the borrower and the borrower is obliged to repay the lender in full.
- S 9.2 The inherent nature of a *qard* contract is the obligation of the borrower to repay the money borrowed in full.

### **10. Components of *qard* contract**

- S 10.1 *Qard* contract shall consist of the following components:
- (a) contracting parties, comprising lender and borrower;
  - (b) offer (*ijab*) and acceptance (*qabul*); and
  - (c) money.

### **11. Contracting parties**

- S 11.1 The contracting parties in a *qard* contract shall be a lender and a borrower.
- S 11.2 The lender must be the owner of the money to be lent to the borrower under the *qard* contract.
- S 11.3 The contracting parties shall be a natural person or a legal entity that must have the legal capacity<sup>1</sup> to enter into the *qard* contract.
- G 11.4 Any party to the *qard* contract may enter into the contract through an agent (*wakil*).

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<sup>1</sup> 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 subject to the Contracts Act 1950 and the Age of Majority Act 1971.

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

- S 12.1 The *qard* contract must be entered 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.
- S 12.3 Terms and conditions of the *qard* contract that have been mutually agreed upon between the contracting parties and are consistent with Shariah shall be binding on the contracting parties.

## 13. Money

- S 13.1 The subject matter in a *qard* contract shall be fungible, deliverable and recognised by Shariah.
- S 13.2 The borrower has the obligation to repay the subject matter in a *qard* contract to the lender at all times and in all circumstances.
- G 13.3 In relation to paragraph 13.2, the obligation to repay the subject matter may be secured through arrangement such as third-party guarantee (*kafalah*), pledge/charge (*rahn*) and takaful.

## 14. Salient features of *qard* contract

### No contractual benefit to the lender

- S 14.1 The *qard* contract must not contain any contractual benefit to the lender. This includes—
- (a) pre-agreed periodic rebate (*ibra'*) to the purchaser on the instalment of a deferred selling price which is linked to the *qard* contract from the purchaser to the seller;
  - (b) any form of incentives based on a binding promise (*wa`d mulzim*) to a lender to enter into a *qard* contract; or
  - (c) *hibah* granted by the borrower to the lender in the form of cash, in kind or benefit that is conditional to the *qard* contract.
- S 14.2 Contractual benefit that is generic in nature, not dependent on the *qard* contract, and not exclusive to the lender is allowed.
- S 14.3 Any *ibra'* upon settlement of the full selling price of the sale contract that is independent from the *qard* contract shall not be construed as a contractual benefit to the lender.
- S 14.4 Identified services, facilities or privileges provided by the borrower which are not exclusive to the lender shall not be construed as contractual benefit to the lender and are permissible.

**Granting of *hibah* in *qard***

- S 14.5 The borrower under a *qard* contract must not grant *hibah* to the lender that is conditional to the *qard* contract, in the form of cash, in kind or benefit.
- S 14.6 The granting of *hibah* to the lender that is solely based on the borrower's discretion is allowed.
- S 14.7 The borrower must not disclose, promote or market the indicative rate or prospective granting of *hibah*.
- S 14.8 The borrower shall have the discretion to disclose historical information on the *hibah* granted provided that such information shall not–
- (a) be construed as an indicative *hibah*; or
  - (b) give rise to any obligation on the part of the borrower to provide such *hibah* to the lender.

**Benefit or revenue to the borrower**

- S 14.9 The borrower shall be entitled to any benefit or revenue gained from the money borrowed.

**Repayment of *qard***

- S 14.10 The money borrowed under the *qard* contract must be repaid according to the agreed term of the *qard* contract or, in the event that there is no such term, at the request of the lender.
- S 14.11 In the event the contracting parties agree that the money borrowed under the *qard* contract is to be repaid in a different currency, such repayment must be based on the prevailing exchange rate on the payment date or any rate agreed by the parties on the payment date.
- G 14.12 In the event that the borrower fails to repay the money, the borrower may be subject to late payment charges as determined by the relevant authorities.

**ARRANGEMENT OF *QARD* WITH OTHER CONTRACTS OR CONCEPTS****15. Arrangement of *qard* with fee (*ujrah*)**

- G 15.1 A lender in a *qard* contract may impose an *ujrah* in exchange of providing identified services, benefits, facilities or privileges which are in accordance with paragraph 14.4.
- S 15.2 In relation to paragraph 15.1, the identified services, benefits, facilities or privileges must be Shariah compliant and must not in any way be related to the *qard* contract.
- S 15.3 The lender must not charge *ujrah* for providing the identified services, benefits, facilities or privileges that relate to the *qard* contract.



- G 15.4 Notwithstanding paragraph 15.3, the lender may impose charges to cover the direct costs of providing the identified services, benefits, facilities or privileges that relate to the *qard* contract.
- S 15.5 The imposition of *ujrah* must be fixed and mutually agreed by the contracting parties.
- G 15.6 The amount of *ujrah* may vary according to the value of different types of the identified services, benefits, facilities or privileges.
- S 15.7 The *ujrah* must not be imposed on loan extension, delay in loan repayment or exchange of cash with cash at a different value (cash back services).

### 15A. Arrangement of *qard* with exchange based contracts

- G 15A.1 The *qard* contract may be arranged with an exchange contract (*bai wa salaf*)<sup>2</sup>, subject to paragraph 15A.2.
- S 15A.2 *Bai` wa salaf* is prohibited where such arrangement results in–
- (a) inter-conditionality and contingency between the exchange contract and *qard* contract; and
  - (b) the borrower provides contractual benefit exclusively to the lender.

## COMPLETION (*INTIHA'*) OF *QARD* CONTRACT

### 16. Completion of *qard* contract

- S 16.1 A *qard* contract is completed upon fulfilment of all obligations of the contracting parties under the *qard* contract, which include settlement of the *qard* amount either by way of–
- (a) full settlement of the *qard* amount at maturity;
  - (b) early settlement through mutual agreement of the contracting parties;
  - (c) full transfer of the obligation of the borrower to pay the *qard* amount to a third party;
  - (d) full waiver by the lender of his right to receive the *qard* amount; or
  - (e) full set-off (*muqassah*) of the *qard* amount between the contracting parties.
- S 16.2 Upon completion of the *qard* contract, the contracting parties are free from any contractual obligations under such *qard* contract.

<sup>2</sup> For purposes of this Policy Document, the exchange based contracts referred to in paragraph 15A shall be limited to a sale, lease or hire service contract.

## PART C OPERATIONAL REQUIREMENTS

### 17. Governance and oversight

- G 17.1 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 17.2 While the broad governance and oversight principles are applicable to *qard*, an IFI must observe specific requirements on governance arrangements as outlined in this policy document to address distinct risks associated with *qard*.
- S 17.3 An IFI must have sufficient understanding of its risk profile and ensure the availability of personnel with the appropriate knowledge and skills to offer *qard*.

#### Board of Directors

- S 17.4 The Board of Directors of an IFI (the board) must establish a sound governance structure to facilitate effective oversight on the management and implementation of *qard*. The adequacy of the governance structure shall be commensurate with the nature, complexity and risk profile of *qard*.
- S 17.5 The board has overall responsibility for Shariah governance and Shariah compliance of an IFI. As such, the board must—
- (a) approve the business and risk strategies of an IFI with regard to the application of *qard*;
  - (b) approve and oversee the implementation of policies and procedures governing the application of *qard*, which must include, at minimum, the following aspects:
    - (i) acceptance of funds for deposit or other liabilities;
    - (ii) risk management;
    - (iii) reserve management, if applicable;
    - (iv) information disclosures;
    - (v) marketing strategies; and
    - (vi) fees and charges;
  - (c) ensure that appropriate internal controls, systems and infrastructure are in place to implement *qard* in accordance with Shariah requirements;
  - (d) ensure that sufficient resources are in place, and that the IFI has adequate and qualified personnel with sufficient knowledge and competency on the concept, application and risks associated with the *qard* arrangement; and
  - (e) 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.

## Shariah committee

- S 17.6 The Shariah committee has the responsibility to advise an IFI in ensuring its business, affairs and activities involving *qard* transaction comply with Shariah. As such, the Shariah committee must–
- (a) endorse the application of Shariah requirements in the relevant policies and procedures governing the *qard*;
  - (b) review the terms and conditions stipulated in the legal documentation 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 on fees and charges imposed on a *qard* transaction or on identified services, benefits, facilities and privileges that relate to the *qard* to ensure that such fees or charges do not contain any profit or mark-up element;
  - (d) endorse policies relating to acceptance of funds for deposits or other liabilities to ensure that the IFI is not exposed to reputational risk arising from any Shariah non-compliant activities associated with the source of the funds;
  - (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 are needed to ensure that the *qard* complies with Shariah requirements.

## Senior management

- S 17.7 The senior management has the responsibility to ensure that the business and operations of an IFI comply with Shariah requirements. As such, 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 policies, procedures and processes with regard to proper management of the *qard*, including those relating to fees and charges and acceptance of funds for deposits or other liabilities;
  - (c) implement relevant internal systems and infrastructure and adequate mechanisms to ensure that the identification, measure, control and monitoring of risk associated with *qard* are effectively managed;
  - (d) identify, assign and train key personnel with the appropriate skills and ensure that the roles and responsibilities are properly delegated to the relevant functions to undertake the different activities under the *qard*;
  - (e) undertake regular review and monitor compliance with the approved internal policies; and
  - (f) ensure timely disclosure of relevant information to the board and the Shariah committee.

## 18. Structuring

### Shariah compliance

- S 18.1 An IFI must ensure that–
- (a) the overall operations of *qard* are in compliance with Shariah requirements as provided in Part B of this policy document;
  - (b) product structure, legal documents, internal policies and procedures involving *qard* are endorsed by the Shariah committee;
  - (c) any issues pertaining to Shariah matters are discussed and deliberated by the Shariah committee; and
  - (d) the opinion of the Shariah Advisory Council of the Bank (SAC) is sought if there are any unresolved Shariah issues involving *qard*.
- S 18.2 In structuring a *qard* product, an IFI must ensure that the product developed does not contravene the following basic features of *qard*:
- (a) ownership of money from the lender is transferred to the borrower;
  - (b) an IFI as borrower is obliged to repay the principal amount to a lender in accordance with the agreed terms and conditions;
  - (c) no contractual benefits are offered by a borrower to a lender unless it is based on the borrower's discretion and not made conditional to the *qard*; and
  - (d) fees and charges are based on the direct costs of the identified services, benefits, facilities or privileges that relate to the *qard*.

### Purpose

- S 18.3 In the event that an IFI acts as a lender under the *qard* contract, the IFI must take reasonable steps to ensure that the purpose of lending is only for Shariah-compliant activities.

### Contracting parties

- S 18.4 An IFI must ensure that the contracting parties' roles and responsibilities are stipulated clearly in the legal documentation.
- S 18.5 In cases where the customer is a minor, the IFI must ensure that consent from his or her guardian is obtained for the purpose of entering into a *qard* contract. The guardian must have the right to act on behalf of the minor in the *qard* arrangement.
- S 18.6 Where an agent acts on behalf of an IFI in executing a *qard* transaction, the IFI must–
- (a) ensure that the agent has the requisite capacity and capability to perform its duties and obligations in the *qard* transaction;
  - (b) ensure that the agent complies with the requirements of this policy document; and
  - (c) remain accountable for its agent's conduct in relation to the *qard* transaction.

### Gold or silver

- S 18.7 For a *qard* transaction involving gold or silver, an IFI must, at minimum, clearly prescribe the following details in the legal documentations:
- (a) nature or type of gold or silver;
  - (b) quantity of gold or silver; and
  - (c) market value of gold or silver.

### Offer and acceptance

- S 18.8 In entering into a *qard* contract, an IFI must ensure that an offer and acceptance is clearly evidenced by appropriate documentation or record.<sup>3</sup>

### Fees and charges

- S 18.9 An IFI must ensure that fees and charges are based on the direct costs of completing the *qard* transactions.

### Documentation

- S 18.10 An IFI must develop a complete set of legal documentation for the *qard* contract that complies with Shariah.
- S 18.11 For the purpose of paragraph 14.1, an IFI must ensure that legal documents do not stipulate any contractual benefits to the lender.
- S 18.12 An IFI must ensure that legal documents specify the agreed terms and conditions for the *qard* transactions. The legal documentation must include, at minimum, the following terms:
- (a) purpose of the *qard*;
  - (b) contractual relationship between the contracting parties;
  - (c) rights and obligations of the contracting parties to the *qard*;
  - (d) arrangement with other Shariah contracts or concepts such as *ujrah*, where applicable;
  - (e) arrangement in the event of customer's death or termination of *qard* contract;
  - (f) arrangement upon completion of the *qard* contract; and
  - (g) fees and charges.
- S 18.13 Where there is an arrangement of *qard* with other Shariah contracts or concepts in one transaction, an IFI must ensure that the *qard* documentation is independent from other Shariah contracts or concepts.

## 19. Risk management

- G 19.1 The distinct risk profile of *qard* may expose an IFI to various types of risks, such as Shariah non-compliance risk, legal risk, liquidity risk, credit risk, operational risk and reputational risk. The adoption of a sound risk

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<sup>3</sup> This is to avoid legal risk as well as to safeguard the interest of the customer.

management framework is critical to ensure that the inherent risks associated with *qard* are effectively managed.

- S 19.2 An IFI must institute and implement a sound risk management framework and internal controls to manage risks associated with *qard* in line with its risk appetite, which shall include, at minimum, the following:
- (a) processes and procedures for the identification, measurement, monitoring and control of risks associated with *qard*;
  - (b) appropriate risk management policies, including policies relating to asset liability management and liquidity management;
  - (c) measures to mitigate potential reputational risk on acceptance of funds for deposits or other liabilities; and
  - (d) reporting requirements to the board, Shariah committee and senior management.
- S 19.3 For the purpose of paragraph 19.2(b), the liquidity management policy must enable an IFI to maintain sufficient liquidity to meet an IFI's obligations at all times, particularly for repayment of *qard* deposits. At minimum, an IFI must observe the regulatory requirements on liquidity risk management as prescribed by the Bank.
- S 19.4 In lending activities, an IFI must adhere to the requirements with regard to risk management practices outlined by the Bank, which include, at minimum—
- (a) approach in identifying customer and vulnerable segment that heightens the level of credit risk;
  - (b) mechanism to monitor the lending portfolio, for example, delinquencies;
  - (c) method to measure potential credit losses; and
  - (d) controls to ensure credit risk is mitigated, including the recovery process in managing any customers in default as well as collateral management.
- S 19.5 An IFI must establish a systematic process to regularly review and update its policies and procedures, processes and internal limits to ensure consistency with its risk appetite, taking into account significant changes that would increase its risk exposures.

## **20. Business and market conduct**

### **General principle**

- S 20.1 An IFI must take into consideration the customer's interests in developing policies, processes and procedures to ensure that a *qard* transaction is conducted in a fair, transparent, responsible and professional manner.

## Fair dealings

- S 20.2 An IFI must ensure that its internal policies and procedures on business and market conduct for the *qard* transaction must reflect fair dealings, including–
- (a) information provided must be accurate and clear;
  - (b) fees and charges must be disclosed, if any; and
  - (c) reasonable care must be taken prior to providing suitable advice and recommendations, if any.

## Disclosure of information

- S 20.3 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 the pre-contractual stage, on the following:
- (a) features and purpose of the *qard*;
  - (b) overview of product structure, including roles and responsibilities of the contracting parties;
  - (c) terms and conditions of the contract, including arrangement with other Shariah contracts or concepts such as *ujrah*; and
  - (d) fees and charges.
- S 20.4 An IFI must ensure that all promotional and marketing activities comply with *qard* requirements. This includes promoting and marketing identified services, benefits, facilities or privileges through–
- (a) debit card, credit card, charge card, online banking, system and services;
  - (b) facilitating the customer in this contract or other financial products; or
  - (c) other marketing channels or promotional activities which are approved by the Shariah committee.
- S 20.5 In the event an IFI discloses any historical information on *hibah* granted under a *qard* contract, the IFI must–
- (a) ensure that the historical *hibah* information is based on the actual *hibah* rate; and
  - (b) provide a clear disclaimer that, at minimum, contains–
    - (i) a customer may or may not receive any *hibah* for *qard* deposits; and
    - (ii) the historical *hibah* information is not to be construed as an indicative or prospective rate of return, a guarantee or a legally-binding promise that *hibah* will be granted on placement of *qard* deposits.
- S 20.6 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.

**21. Financial disclosure**

- S 21.1 An IFI must maintain proper accounting and other records for the reporting of financial performance in a timely manner to ensure that financial statements are prepared in a true and fair manner.

**22. Transition period and revision of terms and conditions**

- S 22.1 The requirements under this paragraph are applicable to existing products and services using *wadi`ah yad dhamanah*<sup>4</sup> as the underlying contract.
- S 22.2 An IFI is given until 31 July 2018 to revise all products based on *wadi`ah yad dhamanah* to *qard* and fully comply with the requirements in this policy document.
- S 22.3 An IFI must notify the customer of any changes in terms and conditions arising from the transition from *wadi`ah yad dhamanah* to *qard*.
- S 22.4 Pursuant to paragraph 22.3, an IFI must allow its customer to terminate the contract at no cost if the customer does not wish to accept the changes in the terms and conditions.

**Product name**

- S 22.5 An IFI must not use the words “*wadi`ah*”, “*wadi`ah yad dhamanah*”, “*safekeeping*” or any other derivatives of such words for any new deposit products that are structured based on *qard*.

**Implementation plan**

- S 22.6 An IFI must conduct a comprehensive impact assessment on the revision of existing *wadi`ah yad dhamanah* products to *qard* in compliance with the requirements in this policy document. An IFI must–
- submit the implementation plan to Jabatan Perbankan Islam dan Takaful (JPIT) at the latest by 30 December 2016;
  - revise any relevant documentations to be consistent with the requirements in this policy document;
  - configure any relevant systems to comply with this policy document;
  - conduct necessary processes and procedures for product variation or approval;
  - revise marketing materials, campaign, strategy and any other related materials to be consistent with the requirements in this policy document;

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<sup>4</sup> IFI shall refer to paragraph 16 of *Wadi`ah* policy document issued by the Bank which outlined that a *wadi`ah* contract shall be construed as a *qard* contract and shall be governed by the principles of *qard* if–

- the *wadi`ah* asset is a fungible asset (*mal mithli*) such as money; and
- the custodian is allowed to utilise the asset.



- (f) communicate and provide training to the business lines and relevant functions of an IFI; and
- (g) undertake operational adjustments to comply with this policy document, if any.

S 22.7 An IFI must conduct independent Shariah review on the operational adjustments made under this transition to ensure compliance with this policy document.

## APPENDICES

### Appendix 1 Legitimacy of *qard* contract

1. The legitimacy of the *qard* 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 the *qard* contract:

مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ أَضْعَافًا كَثِيرَةً. وَاللَّهُ يَقْبِضُ وَيَبْسُطُ وَإِلَيْهِ تُرْجَعُونَ.

“Who is that will grant Allah a goodly (sincere) loan so that He will repay him many times over? And (remember) it is Allah who decreases and increases (sustenance) and to Him you shall return.”<sup>5</sup>

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

3. The following *hadiths* imply the permissibility of *qard* contract:

(a) عن ابن مسعود رضي الله عنه، أن النبي صلى الله عليه وسلم قال: ما من مسلم يقرض مسلماً قرضاً مرتين إلا كان كصدقتها مرة.

Ibn Mas`ud narrated that the Prophet (peace be upon him) said: “Every two loans extended by One Muslim to another count as one charitable payment.”<sup>6</sup>

(b) عن أبي هريرة رضي الله عنه، عن النبي صلى الله عليه وسلم قال: من أخذ أموال الناس يريد أداءها أدى الله عنه، ومن أخذ يريد إتلافها أتلفه الله.

Abu Hurairah narrated that the Prophet (peace be upon him) said: “Whoever takes people’s wealth with the intention of repaying it, Allah will repay it on his behalf; and whoever takes it in order to use it up, Allah will destroy him.”<sup>7</sup>

#### Consensus of the Muslim jurists (*ijma`*)

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

<sup>5</sup> *Surah al-Baqarah*, verse 245.

<sup>6</sup> Ibn Majah, *Sunan ibn Majah*, hadith no. 2421.

<sup>7</sup> Al-Bukhari, *Sahih al-Bukhari*, hadith no. 2212.

## Appendix 2 Glossary

<b>Terms</b>	<b>Definition</b>
<i>Bai` wa salaf</i>	A combination of an exchange contract that is limited to a sale, lease and hire service contracts with a <i>qard</i> contract
<i>Hibah</i>	A transfer of ownership of an asset from a donor to a recipient without any consideration
<i>Ibra`</i>	Rebate
<i>Ijma`</i>	Consensus of all Muslim jurists
<i>Kafalah</i>	A contract where the guarantor conjoins the guaranteed party in assuming the latter's specified liability
<i>Muqassah</i>	Offsetting
<i>Rahn</i>	Pledge/charge
<i>Ujrah</i>	Fee
<i>Wakil</i>	Agent
<i>Wa`d mulzim</i>	A binding promise