Federation of Malaysia

EDICT OF GOVERNMENT

In order to promote public education and public safety, equal justice for all, a better informed citizenry, the rule of law, world trade and world peace, this legal document is hereby made available on a noncommercial basis, as it is the right of all humans to know and speak the laws that govern them.

The Principles and Practices of Shariah in Islamic Finance

Shariah Standard on MUDARABAH
Table of Contents

PART A  Overview ........................................................................................................... 1
  1.  Objective ........................................................................................................ 1
  2.  Legal provisions ............................................................................................. 1
  3.  Applicability .................................................................................................. 2
  4.  Issuance date .................................................................................................. 2
  5.  Effective date .................................................................................................. 2
  6.  Relationship with existing policies ................................................................. 3

PART B  Definition and Nature ............................................................................... 4
  7.  Definition ......................................................................................................... 4
  8.  Nature of mudarabah .................................................................................... 4

PART C  Components of mudarabah ...................................................................... 6
  9.  Contracting parties ........................................................................................ 6
 10. Management of mudarabah ......................................................................... 7
 11. Capital ............................................................................................................. 7
 12. Profit .............................................................................................................. 10
 13. Loss ............................................................................................................... 14

PART D  Arrangement of mudarabah with other contract ................................. 15
  14. Arrangement for guarantee in mudarabah .................................................... 15
  15. Arrangement of mudarabah with wadiah, wakalah or musharakah .............. 15
  16. Arrangement of mudarabah with hibah or hadiyyah ................................. 16

PART E  Dissolution ................................................................................................. 17
  17. Dissolution of mudarabah ............................................................................ 17

Appendices ............................................................................................................... 18
  18. Appendix 1 Legitimacy of mudarabah ............................................................ 18
  19. Appendix 2 Glossary .................................................................................... 19
PART A OVERVIEW

1. Objective

1.1 The purpose of Shariah Standards is to provide standard on features of Shariah contracts applicable in Islamic financial transactions. The document facilitates the understanding of a particular Shariah contract requirement. The required and optional features specified in the Standards shall serve as standards for the Islamic financial institution to apply a particular Shariah contract in developing Islamic financial products and services. The Standards is expandable to address the dynamism of Islamic finance activities.

1.2 The provisions in the Shariah Standards is divided into:

(a) “Standards” are labelled as (S). Standards are essential features of a particular Shariah contract as provided under Shariah and shall be adhered to. Standards are issued pursuant to substantive provisions in the relevant laws administered by the Bank and are binding. In the event of non-compliance, the Bank may take enforcement actions.

(b) “Practice Guides” are labelled as (PG). Practice Guides are optional features of a particular Shariah contract as provided under Shariah and may be implemented.

2. Legal provisions

2.1 The Shariah Standards is issued pursuant to section 59 of the Central Bank of Malaysia Act 2009.
3. Applicability

3.1 The Shariah Standards is applicable to any Islamic financial institution carrying Islamic financial business and shall include:

(a) Islamic banks licensed under the Islamic Banking Act 1983 (IBA);

(b) Banks licensed under the Banking and Financial Institutions Act 1989 (BAFIA) and approved to carry on Islamic banking business under section 124 of BAFIA;

(c) Development financial institutions prescribed under the Development Financial Institutions Act 2002 (DFIA) and approved to carry on Islamic banking business under section 129 of DFIA; and

(d) All takaful operators registered under the Takaful Act 1984.

[All the above institutions are hereafter referred to as Islamic Finance Institutions (IFIs)].

4. Issuance date

4.1 The Shariah Standard on Mudarabah is issued on 22 October 2012.

5. Effective date

5.1 The effective implementation date is 1 January 2014.
6. **Relationship with existing policies**

6.1 The Shariah Standards is issued in accordance to rulings of the Shariah Advisory Council (SAC) of Bank Negara Malaysia.\(^1\)

6.2 Shariah Standards is a published ruling of the SAC.

6.3 IFIs shall refer to Shariah Standards document in applying a particular Shariah contract as part of its implementation of Shariah compliance function outlined in the “Shariah Governance Framework for Islamic Financial Institutions.”

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\(^1\) The Shariah Standard on *Mudarabah* was finalized and endorsed in the 127\(^{th}\) SAC meeting.
PART B   DEFINITION AND NATURE

7. Definition

S 7.1 Mudarabah\(^2\) is a contract between a capital provider (rabbul mal) and an entrepreneur (mudarib) under which the rabbul mal provides capital to be managed by the mudarib and any profit generated from the capital is shared between the rabbul mal and mudarib according to mutually agreed profit sharing ratio (PSR) whilst financial losses are borne by the rabbul mal provided that such losses are not due to the mudarib’s misconduct (ta`addi), negligence (taqsir) or breach of specified terms (mukhalafah al-shurut).

8. Nature of mudarabah

S 8.1 Mudarabah is a contract based on fiduciary relationship (aqd al-amanah). Under this principle, mudarib manages the mudarabah asset in trust and is not liable for the impairment of the asset except for impairment which is a result of the mudarib’s misconduct (ta`addi), negligence (taqsir) or breach of specified terms (mukhalafah al-shurut).

S 8.2 Any of the contracting parties has the right to terminate the contract unilaterally except in the following conditions:

(a) The mudarib has commenced the work relating to the management of the capital of the rabbul mal; or

(b) Contracting parties have agreed to enter into a mudarabah for a specified time or have agreed not to terminate the contract within a specified time.

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\(^2\) The terms muqaradah and qirad are synonymous to mudarabah.
8.3 *Mudarabah* is categorized into two types:

(a) Unrestricted *Mudarabah (Mudarabah Mutlaqah)* is a contract in which the *rabbul mal* permits the *mudarib* to manage the *mudarabah* capital without any specific restriction.

(b) Restricted *Mudarabah (Mudarabah Muqayyadah)*

(i) A restricted *mudarabah* is a contract in which the *rabbul mal* imposes specific restriction on the *mudarabah* terms.

(ii) The *rabbul mal* may specify conditions restricting the *mudarib* such as the determination of location, period for investment, type of project and commingling of funds.

8.4 The contracting parties may mutually agree to change the type of *mudarabah* they have entered into to another type of *mudarabah* at any point of time.
PART C COMPONENTS OF MUDARABAH

9. Contracting parties

S 9.1 The contracting parties in mudarabah consist of rabbul mal and mudarib.

S 9.2 Rabbul mal and mudarib shall have legal capacity\(^3\) to execute contract including the capacity to perform agency (wakalah) contract either as a principal or as an agent.

PG 9.3 The contracting parties in mudarabah may be a natural person or a legal person.

PG 9.4 The contracting parties in a mudarabah contract may involve more than one mudarib or rabbul mal.

PG 9.5 In the case of mudarabah involving more than one rabbul mal, an agreement among the rabbul mal may be established whereby:

(a) An existing rabbul mal agrees to relinquish his right over certain portion of profit if he withdraws from the mudarabah prior to its maturity date; and

(b) A new rabbul mal agrees to assume liability in respect of the mudarabah which is already in operation prior to his participation.

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\(^3\) The legal capacity of a person is defined as capacity to have rights and responsibilities; and capacity to have legal effect to his action. Among the important conditions are that the person must possess sound mind and the capacity to distinguish between what is harmful or beneficial to one’s interests.

Legal capacity of a legal entity is defined as eligibility of an entity to acquire rights and assume responsibilities.
10. Management of mudarabah

S 10.1 Mudarib shall have the right to manage mudarabah venture.

S 10.2 Mudarib is responsible to ensure proper management of the mudarabah venture and acts in the interest of the rabbul mal.

S 10.3 Mandate of the mudarib shall be provided under the terms and conditions of the contract.

PG 10.4 Mudarib may assign mudarabah capital under his management to another mudarib in another mudarabah (mudarib yudarib) or to another manager (wakil) subject to the condition that the consent of rabbul mal is obtained.

S 10.5 Rabbul mal shall not involve in managing mudarabah venture but shall have a right of access to reasonable information regarding the mudarabah venture.

11. Capital

S 11.1 Capital is an asset provided by rabbul mal to the mudarib for the purpose of mudarabah.

S 11.2 Mudarabah capital shall be provided by rabbul mal and managed by the mudarib.

S 11.3 Mudarabah capital shall be identifiable, readily available and accessible for mudarib to commence business activities.

PG 11.4 Mudarabah capital may be in the form of cash or in-kind which may include intangible assets.

S 11.5 Capital in-kind shall be valued based on the valuation determined by a
third party which may include experts, valuers or as agreed upon by
the contracting parties at the inception of the contract.

S 11.6 Mudarabah capital denominated in different currencies shall be valued
based on a specific currency agreed by the contracting parties at the
inception of the contract.

S 11.7 Mudarabah capital shall not be in the form of a debt due to rabbul mal
either from mudarib or a third party.

S 11.8 All remaining capital shall be returned to the rabbul mal, if any, upon
dissolution or termination of the mudarabah contract.

S 11.9 Any amount of capital due to rabbul mal under paragraph 11.8 and
profit, if any, shall be deemed as liability due to the rabbul mal.

S 11.10 The mudarib shall not guarantee the mudarabah capital except in the
case of his misconduct (ta`addî), negligence (taqsîr) or breach of
specified terms (mukhalafah al-shurut).

PG 11.11 Rabbul mal and mudarib may agree for a gradual withdrawal of
mudarabah capital by the rabbul mal.

PG 11.12 Mudarib may with the consent of rabbul mal commingle the mudarabah
capital with other investment fund.

S 11.13 Pursuant to paragraph 11.12, mudarib shall observe the agreed terms
and conditions of the respective contract.

PG 11.14 Mudarib may inject his own fund into the mudarabah capital subject to
the consent of rabbul mal and hence a musharakah contract is formed
between the mudarib (as partner under musharakah) and the
mudarabah venture.

PG 11.15 Mudarabah expenditure may be charged to mudarabah capital.
11.16 The *mudarabah* expenditure shall be direct expenses that are identifiable and measurable with regard to a specific investment activity\(^4\).

11.17 The capital may be fully or partially disbursed as per the terms of the contract.

11.18 The effect of a failure of *rabbul mal* to provide capital under a *mudarabah* contract (defaulting *rabbul mal*) in the following situations shall be as follows:

(a) **No capital has been paid.**

In this situation, the contracting parties may unilaterally terminate the contract. If the *mudarib* has commenced work, the *rabbul mal* has to reimburse the *mudarib* for any *mudarabah* expenditure incurred and pay the *mudarib* fair and reasonable wages or fees.

(b) **Mudarabah contract involving one *mudarib* and one *rabbul mal* with staggered capital payment.**

In this situation the contracting parties may, subject to the terms and conditions of the contract:

(i) revise the *mudarabah* contract based on the actual capital provided;

or,

(ii) terminate the contract and consequently:

(a) *Mudarib* shall return the capital contributed to the *rabbul mal* if any and share the profits with the *rabbul mal*, if any; and

b) *Rabbul mal* shall bear the *mudarabah* expenditure incurred by *mudarib*. If the justified *mudarabah* expenditure\(^5\) incurred exceeds the actual capital contribution, such

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\(^4\) Investment activity in the context of this paragraph refers to Shariah compliant profit generating activities which may include Shariah compliant provision of finance provided by *mudarib* using *mudarabah* fund.

\(^5\) Explanation on *mudarabah* expenditure is provided under paragraph 11.16
liability shall be borne by the *rabbul mal* up to the limit of the total capital amount committed under the contract.

PG (c) *Mudarabah* contract involving one *mudarib* and multiple *rabbul mal* with single capital payment by each *rabbul mal* where one or more *rabbul mal* failed to pay.

In this situation, the mudarib may agree to terminate the mudarabah contract with *rabbul mal* who failed to pay and may based on agreed terms impose on him to indemnify the *mudarabah* venture for any expenses incurred due to his default.

PG (d) *Mudarabah* contract involving one *mudarib* and multiple *rabbul mal* with staggered capital payment by each or some of the *rabbul mal* where one or more *rabbul mal* failed to pay the subsequent capital.

In this situation, the non-defaulting contracting parties shall have the following remedies including:

(i) requiring the defaulting *rabbul mal* to sell his interest to the other *rabbul mal* or a third party;

(ii) the non-defaulting contracting parties may agree to revise the *mudarabah* contract based on actual capital paid; or

(iii) the non-defaulting contracting parties may agree to terminate the *mudarabah* contract with the defaulting *rabbul mal* and may, based on agreed terms, require him to indemnify the *mudarabah* venture for any expenses incurred due to his default.

### 12. Profit

S 12.1 Profit sharing is the primary motive of the *mudarabah* contract and therefore it is a fundamental component of the contract.

S 12.2 Profit is the value created over and above the *mudarabah* capital which
is determined based on profit determination method acceptable by market standard or practices.

S 12.3 The mudarib shall not guarantee any profit.

S 12.4 Rabbul mal and mudarib shall share profit based on a ratio mutually agreed between them.

S 12.5 PSR shall be determined at the inception of the contract. Nonetheless, PSR may be revised during the tenure of the mudarabah subject to mutual agreement.

S 12.6 Mudarabah contract shall not stipulate a pre-determined fixed amount of profit to one contracting party which deprives the profit share of the other contracting party.

S 12.7 The profit in the form of certain percentage shall not be linked to the mudarabah capital amount.

PG 12.8 Notwithstanding paragraph 12.7, the ex-post performance profit amount (based on the PSR which had been mutually agreed upon between the rabbul mal and the mudarib) may be translated into a fixed percentage yield of the mudarabah capital amount.

PG 12.9 In a multi-tiered mudarabah, two or more profit sharing arrangements may be agreed upon. In the first tier, rabbul mal and mudarib may agree on a certain PSR. Whilst in the second tier the rabbul mal (mudarib in the first tier mudarabah) and the other mudarib may agree for another PSR. Such arrangement may apply to the following tier respectively. The profit generated in each tier shall be shared according to the respective PSR.

S 12.10 In the case where mudarib commingled or injected his own fund to the mudarabah, the mudarib is entitled to the profit based on his capital contribution in the commingled fund and the remaining profit shall then
be distributed based on PSR in the *mudarabah*.

**PG 12.11** *Rabbul mal* and *mudarib* may agree on a PSR for a certain threshold of profit. If the actual profit exceeds the threshold, the excess amount may be distributed based on a different PSR agreed by the parties or be paid to any of the contracting parties as per agreement.

**PG 12.12** *Rabbul mal* and *mudarib* may agree on a threshold of profit whereby in the case of profit generated exceeds the threshold, an amount of profit equivalent to threshold is paid to one of the contracting parties and the remaining is shared according to PSR. In the case of profit generated is below the threshold, the profit is shared based on PSR.

**PG 12.13** The agreed PSR may vary to correspond with different periods of investment, different amount of capital or due to pre-mature withdrawal of capital provided that such conditions are agreed upon at the inception of the *mudarabah* contract.

**S 12.14** In a single *mudarabah* contract involving more than one *mudarib*, a common profit sharing ratio is agreed between *rabbul mal* and all the *mudarib*. All *mudarib* shall share the *mudarib*'s profit portion as per agreed terms.

**S 12.15** Profit shall be recognized based on the following methodology:

(a) Realized basis by actual liquidation of assets of *mudarabah* partnership (*al-tandid al-haqiqi*); or

(b) Constructive basis according to acceptable profit recognition method which may include valuation according to acceptable market methodology, independent valuation or valuation based on estimated figures (*al-tandid al-hukmî*).
12.16 In the case of profit recognised based on constructive basis:

- a profit reserve may be created; and

- a final consolidation and adjustment shall be undertaken at the end of a certain period or at the times of actual realization of profit to arrive at the actual amount of profit.

12.17 Profit shall be distributed upon the maturity of the mudarabah or at an agreed period.

12.18 Unrealized gains recognized during the mudarabah tenure shall be recognized as profit and be included in the profit and loss calculation for the mudarabah.

12.19 A mudarib is only entitled to profit for works which are integral to the mudarabah venture and shall not earn any additional fee for such works.

12.20 Rabbul mal may commission mudarib for a fee to perform works apart from the works integral to mudarabah venture.

12.21 A party may waive his right to the profits, if any, to the other contracting party on the basis of waiver (tanazul) on the date of distribution of the profit.

12.22 The parties to the contract may agree to set aside the profit as a reserve (e.g. profit equalization reserve) or for any other purpose.

12.23 In relation to paragraph 12.22, the reserve shall only be created from the profit of the mudarabah.

12.24 In case where profit reserved is utilised to cover depletion of mudarabah capital, only the profit portion of the rabbul mal in the reserve shall be utilised.

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6 This requirement is specified to prevent implication of capital guarantee by mudarib.
12.25 Contracting parties may agree to a condition whereby *rabbul mal* may be subject to lower or no profit payment if capital is withdrawn before the maturity of the investment period.

### 13. Loss

**S 13.1** A loss is depletion from the value of capital.

**S 13.2** Loss shall be borne by the *rabbul mal* up to the capital value.

**S 13.3** The *mudarib* shall not be liable for any impairment of asset unless such loss is due to the *mudarib*’s misconduct (*ta’addi*), negligence (*taqsiir*) or breach of specified terms (*mukhalafah al-shurut*) of the contract.

**S 13.4** Notwithstanding paragraph 13.3, in the case of loss the *mudarib* shall furnish the reason for the occurrence of loss.

**S 13.5** In the case of multiple *rabbul mal* in a single *mudarabah*, the loss shall be borne by each *rabbul mal* proportionate to his capital contribution.

**S 13.6** In the case where *mudarib* commingled or injected his own fund to the *mudarabah*, the loss shall be borne based on the proportion of the *mudarib*’s capital contribution in the commingled fund.

**PG 13.7** The *mudarib* may voluntarily absorb the loss upon the maturity or dissolution of *mudarabah*. 
PART D  ARRANGEMENT OF MUDARABAH WITH OTHER CONTRACT

14. Arrangement for guarantee in mudarabah

S 14.1 Mudarib shall not guarantee the capital and/or profit.

14.2 Notwithstanding paragraph 14.1, the following measures may be exercised:

PG (a) The rabbul mal may take collateral from the mudarib, provided that the collateral could only be liquidated in the event of misconduct (ta`addi) or negligence (taqsir) or breach of terms (mukhalafah al-shurut) of contract by the mudarib; or

PG (b) The rabbul mal may require the mudarib to arrange for an independent third party guarantee by observing the following requirements:

S (a) The guarantee shall be executed as a separate contract and be utilised to cover for any loss or depletion of capital.

S (b) The third party guarantor shall be independent from the mudarib such that it shall not be a related party where the mudarib has majority ownership and/or having control in the entity nor shall it be an entity that owns or having controls over the mudarib.

PG (c) The third party guarantee may be in the form of performance guarantee of the mudarabah transactions or guarantee on mudarabah capital.

15. Arrangement of mudarabah with wadiah, wakalah or musharakah

PG 15.1 Contracting parties may agree to an arrangement whereby a certain amount of fund is assigned as mudarabah capital and another portion of the fund is assigned under wadiah, wakalah or musharakah contracts.
15.2 Pursuant to paragraph 15.1, the contracting parties shall observe requirement of *mudarabah* on the part of fund assigned under *mudarabah* and shall observe requirement of *wadiah*, *wakalah* or *musharakah* on the part of fund assigned under the respective contract.

### 16. Arrangement of *mudarabah* with *hibah* or *hadiyyah*

16.1 *Mudarib* may provide *hibah* or *hadiyyah* to *rabbul mal* subject to the following conditions:

(a) *Hibah* or *hadiyyah* shall not be sourced from *mudarabah* capital or *rabbul mal*’s portion of profit.

(b) Provision of *hibah* or *hadiyyah* shall not amount to a guarantee of capital and/or profit by *mudarib*. 
PART E  DISSOLUTION

17. Dissolution of *mudarabah*

17.1 The *mudarabah* contract may be dissolved under the following circumstances:

- **(a)** Unilateral termination by any of the parties in the absence of any prohibitive circumstances as per paragraph 8.2;
- **(b)** Unilateral termination by any of the parties due to misconduct (*ta’ addi*), negligence (*taqṣīr*) or breach of specified terms (*mukhalaḥah al-shurūt*) of contract by the other;
- **(c)** Mutual agreement to terminate between the parties;
- **(d)** Contract expires upon the maturity date agreed by the parties;
- **(e)** Demise or dissolution of either *mudarib* or *rabbul mal* or loss of legal capacity;
- **(f)** Invalidity of *mudarabah*. 
APPENDICES

18. Appendix 1 Legitimacy of mudarabah

18.1 The legitimacy of the mudarabah contract is derived from the Quran, and founded on the Sunnah of the Prophet Muhammad (peace be upon him), and the consensus of Muslim jurists (Ijma).

The Quran

18.2 The following verse of the Quran implies the general permissibility of commercial ventures including mudarabah.

(а)

وَآخَرُونَ يَضُرِّبُونَ فِي الأَرْضِ يَتَعَوَّنُونَ مِنْ فَضْلِ اللَّهِ

“...and others travelling in the earth in quest of Allah’s bounty...”

The word (يضرِّبُون) in the verse implies permissibility to travel in managing wealth to seek the bounty of Allah SWT which may take the form of mudarabah.

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

18.3 عن ابن عباس قال: كان العباس بن عبد المطلب إذا دفع مالاً مضاربة اشترط على صاحبه أن لا يسلك به بحراً ولا ينزل به وادياً، ولا يشتري به ذات كبد رطبة، فإن فعل فهو ضامن، فرفع شرطه إلى رسول الله صلى الله عليه وسلم فأجازه.

“Ibnu Abbas (may Allah be pleased with him) reported that: “When Abbas Ibn Abd al-Muttalib gave his property to someone for mudarabah, he stipulated conditions for his partner not to bring the capital onto the sea; and not to bring with him the capital crossing a valley; and not to buy livestock with the capital; and if his partner violates the conditions, he should guarantee the loss occurred. These

7 Surah al-Muzzammil, verse 20.
conditions have been brought to the attention of Prophet Muhammad (peace be upon him) and he approved them.\(^8\)

\[18.4\]

\[\text{Suhayb (may Allah be pleased with him) reported that the Prophet Muhammad (peace be upon him) said: Three matters that have the blessing (of Allah): A deferred sale, } \textit{muqaradah} \text{ (mudarabah), mixing wheat with barley for domestic use and not for sale.} \text{\(^9\)}\]

**Consensus of The Muslim Jurists (**\textit{Ijma'}**\)**

18.5 The Muslim jurists have reached \textit{Ijma'} among them on the permissibility of the \textit{mudarabah} contract.

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19. **Appendix 2** **Glossary**

<table>
<thead>
<tr>
<th>Terms</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>\textit{Mudarabah} asset</td>
<td>Asset created under a \textit{mudarabah} venture.</td>
</tr>
<tr>
<td>\textit{Mudarabah} venture</td>
<td>Business or profit generating activities undertaken by \textit{mudarib} in managing capital provided by \textit{rabbul mal}.</td>
</tr>
<tr>
<td>\textit{Mudarib}</td>
<td>Entrepreneur of a \textit{mudarabah} venture.</td>
</tr>
<tr>
<td>\textit{Mudarib yudarib}</td>
<td>\textit{Mudarabah} contract where \textit{rabbul mal} invests his capital with a \textit{mudarib} who subsequently invests the fund with another \textit{mudarib}.</td>
</tr>
<tr>
<td>Profit sharing ratio</td>
<td>The ratio in which the profits are shared between \textit{rabbul mal} and \textit{mudarib}.</td>
</tr>
<tr>
<td>\textit{Rabbul mal}</td>
<td>Capital provider.</td>
</tr>
<tr>
<td>Tanazul</td>
<td>Waiving of the entitlement to claim.</td>
</tr>
</tbody>
</table>

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\(^8\) Al-Bayhaqi, \textit{Al-Sunan al-Kubra}, v. 6, p. 111.