

Hajah and Darurah Policy Document Frequently Asked Questions and Answers (FAQs)

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Introduction

This document is intended to provide clarification to the requirements that are specified in *Hajah* and *Darurah* Policy Document (the PD), and it does not replace or supersede the requirements. Any updates to the document will be notified to Islamic financial institutions (IFIs) from time to time.

If you have any further inquiries regarding implementation of the PD, kindly direct the queries to the following email address: shariahstandard@bnm.gov.my

No.	Question	Answer
Applicability		
1.	Is the PD applicable to digital banks?	Yes, the PD is applicable to licensed digital banks that carry on Islamic digital banking business.
Definition of Hardship		
2.	<p>Context setting</p> <p>i. Why does Bank Negara Malaysia (the Bank) define “hardship” instead of <i>hajah</i> in the PD?</p>	<ul style="list-style-type: none"> • “Hardship” is the central concept for the PD. Subject to preconditions as specified in paragraph 8.3 of the PD, IFIs may apply <i>hajah</i> or <i>darurah</i> to depart from the current Shariah principle or Shariah ruling to address hardship in executing financial transactions or arrangements. • Instead of defining <i>hajah</i> and <i>darurah</i>, these concepts are reflected as the categories of the application of exceptional rules, which comprise of <i>hajah</i> type 1, <i>hajah</i> type 2 and <i>darurah</i>, and such categories are differentiated by parameters, including nature of hardship, degree of severity, etc.
3.	<p>Scope of the definition</p> <p>i. Does the definition of hardship cover the application of <i>hajah</i> and <i>darurah</i>?</p>	<ul style="list-style-type: none"> • Yes. The definition of hardship specified in the PD intends to cover application of <i>hajah</i> and <i>darurah</i> based on the relevant parameters on hardship (as specified in paragraphs 9.3, 9.5 and 9.7). • Use of words such as “unfavourable circumstances”,

		<p>“severe adversity” and “intolerable levels of distress” aim to reflect the different nature and severity level of the hardship, which are reflected in the application of <i>hajah</i> and <i>darurah</i>.</p>
	<p>ii. Does the PD only focus on hardship of the IFIs, or should the assessment also cover hardship that is experienced by other stakeholders of the IFIs?</p>	<ul style="list-style-type: none"> • As specified in paragraphs 12.6 and 12.9 of the PD, the assessment on the nature, severity and impact of the hardship may include hardship experienced by other stakeholders such as customers, counterparties related to the IFIs’ customers, service providers, suppliers, market utilities, public services, government, other financial institutions and financial markets, overall economy, environment, social and infrastructure. • In other words, <i>hajah</i> or <i>darurah</i> may be applied to alleviate hardship of other stakeholders that has an adverse impact to the safety and soundness of the IFIs. For instance, <i>hajah</i> may be applied in the event where Shariah compliant solutions are not available to fulfil societal and environmental needs.
	<p>iii. Does the coverage of the PD extend to hardship situations that are classified as potential Shariah Non-Compliance (PSNC) events?</p>	<ul style="list-style-type: none"> • The PD does not cover situations of hardship that are due to poor risk management control, bad business decision or negligence by the IFIs. • However, Shariah committee may review and assess the root cause of the PSNC event and may categorise such situation under application of <i>hajah</i> or <i>darurah</i> subject to fulfilment of the hardship definition, the preconditions, and the parameters of <i>hajah</i> or <i>darurah</i> as specified in the PD, as well as within the permissibility of existing Shariah ruling.

	iv. What is the definition of a “person” in the PD?	“Person” in the definition is similar to interpretation of a “person” in Islamic Financial Services Act 2013, which includes an individual, any corporation, statutory body, local authority, society, trade union, co-operative society, partnership and any other body, organization, association or group of persons, whether corporate or unincorporate.
Interpretation of “Shariah Principle” and “Shariah Ruling”		
4.	“Shariah Principle” Does the scope of “Shariah principle” in the PD cover ruling in classical or contemporary texts, as well as whether the ruling is based on either weak or strong Shariah opinion?	“Shariah principle” in the PD intends to cover any existing ruling from source(s) other than Shariah rulings made by the Bank’s Shariah Advisory Council (SAC), which may cover both classical and contemporary ruling and comprises of strong or consensus Shariah opinions (excluding weak Shariah opinions).
5.	“Shariah Ruling” Does the scope of “Shariah Ruling” in the PD also cover the SAC rulings that are published as policy documents, for instance Shariah Contracts PD?	“Shariah ruling” refers to all decision made by the SAC regardless of its medium of publication. The Shariah ruling may be documented as the published SAC resolutions and statements, related policy documents, dear CEO letters or any other issuance(s) by the Bank.
Preconditions for application of <i>hajah</i> and <i>darurah</i>		
6.	Precondition: Certainty i. Can <i>hajah</i> or <i>darurah</i> be applied to address new situation i.e., without precedent or without existing Shariah ruling? ii. Does “certainty” mean that a situation of hardship must be backed with historical evidence (precedent)?	Current preconditions cover possible “new situation” since it also includes situations of hardship with a high probability of occurrence (<i>ghalib al-zann</i>), which is supported with adequate quantitative and qualitative evidence.
7.	Precondition: Deviation from Shariah Principle or Shariah Ruling Whether the precondition refers to Shariah non-compliant (SNC) event?	<ul style="list-style-type: none"> The precondition does not refer to SNC event since the presence

		<p>of hardship has necessitated the deviation from Shariah principle or Shariah ruling, which is not similar to SNC event that is due to other root causes and not due to hardship as defined in the PD e.g., human error or operational lapse.</p> <ul style="list-style-type: none"> All preconditions must be fulfilled for an application of <i>hajah</i> or <i>darurah</i> to be deemed permissible.
8.	<p>Precondition: Impact Seeking further guidance regarding application of <i>fiqh muwazannah</i> in impact assessment of the identified hardship, considering that the assessment will also be conducted by non-Shariah team e.g., the business team.</p>	<ul style="list-style-type: none"> The Bank provides discretion to Shariah committee to apply <i>fiqh al-muwazannah</i> in assessing impact of applying <i>hajah</i> or <i>darurah</i> and whether such impact creates greater or equal harm to relevant stakeholders. Relevant stakeholders (including the non-Shariah team) may be further guided by the internal policy and procedure relating to decision-making process on application of <i>hajah</i> type 2 and <i>darurah</i> endorsed by the Shariah committee. For instance, development of internal impact assessment framework that is based on <i>fiqh al-muwazannah</i> as well as internal parameter or indicator for situation of high possibility (<i>ghalib al-zann</i>).
Parameter of <i>hajah</i> type 1, <i>hajah</i> type 2 & <i>darurah</i>		
9.	<p>Parameters i. Does a situation need to meet all parameters to be classified under certain category i.e., <i>hajah</i> type 1, <i>hajah</i> type 2 or <i>darurah</i>?</p>	<ul style="list-style-type: none"> Yes, it is necessary for a situation to fulfill all the parameters to be classified under certain category. On the availability of the Shariah ruling, and particularly for situation(s) that has yet to be covered by the existing Shariah ruling, paragraph 9.2 of the PD specifies that the IFIs shall refer to the SAC to obtain Shariah ruling, based on guidance provided by <i>Manual Rujukan Institusi</i>

		<i>Kewangan Islam kepada Majlis Penasihat Shariah.</i>
	ii. What is the key difference between <i>hajah</i> type 2 and <i>darurah</i> ?	The key differentiating parameter between <i>hajah</i> type 2 and <i>darurah</i> relates to the triggering of recovery or resolution actions (i.e., paragraph 9.7(b))
10.	How should the Development Financial Institutions (DFIs) determine whether the hardship situation has triggered recovery or resolution actions, considering that the <i>Recovery Planning Policy Document</i> does not apply to them?	Paragraph 12.8 of the PD provides guidance on how to assess the certainty of the occurrence and severity level of the hardship situation, where the IFIs may leverage on its existing overall risk appetite framework, stress severity analysis or recovery planning components. In the absence of these internal framework and analysis, the DFIs can use any relevant data that could provide a comprehensive perspective on the hardship situation. For instance, the DFIs may use data from capital adequacy framework, liquidity management, business continuity management etc.
11.	<p>Hardship arising from fulfilling mandate by the government</p> <p>i. In view that it is common for all DFIs to fulfil the government's instruction that may involve financing of Shariah non-compliant activities, is it possible to categorise such hardship under <i>hajah</i> type 1?</p>	<ul style="list-style-type: none"> • Hardship arising from fulfilling mandate from the government, particularly involvement in Shariah non-compliant activities such as financing of Shariah non-compliant industry falls under the category of <i>hajah</i> type 2. • Such situation of hardship is unique for each DFIs, based on the following observations: <ul style="list-style-type: none"> ○ different DFIs have different mandated roles i.e., serving different business segments; and ○ different structure (i.e., full-fledged Islamic or Islamic window) has different way to address such hardship e.g., DFIs with Islamic window operation can fulfil their

		<p>mandate via the conventional side.</p> <ul style="list-style-type: none"> Given the specificity of such hardship, it is important to assess it on a case-by-case basis.
	<p>ii. What are the examples of hardship situation faced by the DFIs that may be triggered while fulfilling the government's mandate?</p>	<ul style="list-style-type: none"> The examples include financing of e-sport or movie production that consists of any Shariah non-compliant element. Financing of such activities with Shariah non-compliant element may be permitted based on <i>hajah</i> type 2 since Shariah acknowledges that fulfilling the mandated role by the government can be justified under the concept of <i>siyasaḥ syar'iyah</i> (public policy) in serving multi-religion community.
12.	<p>Permissibility with specific condition or limitation In accordance with Illustration 3, if a situation exceeds the established threshold or limit determined by the Shariah committee of IFIs or the SAC, would it still fall under the classification of <i>hajah</i> type 2?</p>	<ul style="list-style-type: none"> A situation of hardship must meet the conditions or the parameters specified in relevant Shariah ruling to be categorised under <i>hajah</i> type 2. Any deviation from the existing Shariah ruling would require different deliberation and, in some cases, new rulings, depending on the significance of the deviation. IFIs are encouraged to consult the SAC's secretariat on such matters. In the event where the IFIs exceed the Shariah committee's internal thresholds or limit, such situation may be categorised under <i>hajah</i> type 2 if it is still within the parameter of the Shariah ruling.
13.	<p><i>Hajah</i> type 2 or <i>Darurah</i> i. Is the SAC's decision regarding <i>darurah</i> application subject to recommendations or suggestions from the industry?</p>	<ul style="list-style-type: none"> In general, Shariah rulings consider feedback and input provided by the IFIs. Also, the SAC may deliberate and make decision on issues arising

		from the Bank's surveillance on the IFIs' safety and soundness.
	ii. Who determines the appropriate duration and quantum of temporary and proportionate application of Shariah rulings categorised as <i>hajah</i> type 2 and <i>darurah</i> ?	With advice from the Bank or a resolution authority, the SAC will advise the IFI on the appropriate ruling as well as the duration and the proportionality of application of <i>hajah</i> type 2 and <i>darurah</i> , considering the IFIs' data and justification
14.	Recategorisation i. Is it possible to recategorise <i>hajah</i> type 1, <i>hajah</i> type 2, or <i>darurah</i> based on data gathering and the Shariah committee's decision?	Yes, paragraph 9.9 of the PD acknowledges the possibility for categorisation of <i>hajah</i> and <i>darurah</i> to change due to either change(s) in the situation of hardship, the IFIs' internal factors or other external factors. It is possible to recategorise <i>hajah</i> type 1, <i>hajah</i> type 2, or <i>darurah</i> based on Shariah committee's decision supported with relevant data and the change is still within the existing Shariah ruling.
	ii. What is the regulatory expectation for a situation of recategorisation?	Recategorisation of <i>hajah</i> type 1, <i>hajah</i> type 2 or <i>darurah</i> is subject to similar Shariah and operational requirements specified in the PD. These include expectation for the IFIs to report/notify the Bank on the change in category and monitor its implementation. For recategorisation that falls beyond/ outside the permissibility of existing Shariah ruling, the IFIs are required to request for a ruling.
Governance and Oversight		
15.	Board i. What is the rationale of imposing the heightened oversight expectation to the board?	<ul style="list-style-type: none"> • Application of <i>hajah</i> and <i>darurah</i> involves deviation from compliance to Shariah principle or Shariah ruling, which is considered as Shariah non-compliance under normal circumstance. Therefore, the Bank expects the board to pay closer attention to such proposed application. • Such heightened oversight expectation to the board has been similarly imposed to situation

		where a financial institution goes beyond the approved risk appetite as well as on matters related to the safety and soundness of the financial institution e.g., <i>Recovery Planning</i> Policy Document.
	ii. Should IFIs establish internal <i>hajah</i> and <i>darurah</i> parameter that reflect their risk appetite?	Paragraph 12.8 of the PD guides that an IFI may assess the certainty of the occurrence and severity level of the hardship situation based on its existing risk appetite framework, stress severity analysis and recovery planning components or any relevant data that could provide comprehensive perspective on the hardship situation.
16.	Shariah Committee i. Should the written opinion of Shariah committee member(s) who did not attend the meeting deliberating the proposed application of <i>hajah</i> or <i>darurah</i> be considered in determining a simple majority decision?	<ul style="list-style-type: none"> • Yes, the written opinion received from the absent Shariah committee member(s) must be considered in determining the simple majority. • Although the absent Shariah committee member(s) did not have access to Shariah deliberation during the meeting, their views will be formed based on the information and other meeting materials provided by the secretariat.
	ii. Should the Shariah committee members be allowed to request for information or advice from third parties to obtain clarity and to make an informed decision?	As specified in paragraph 11.11 of <i>Shariah Governance</i> Policy Document and paragraph 11.9 of the PD, Shariah committee members should have access to relevant information or advice from third party experts to enable the Shariah committee to make informed decision, particularly where the Shariah committee is unable to finalise its decision or has reasonable doubt on the robustness of <i>hajah</i> type 2 and <i>darurah</i> assessment performed by the IFI.
	iii. Does the Shariah committee have the authority to make immediate implementation decisions regarding <i>hajah</i> or <i>darurah</i>	As specified in paragraphs 12.19, 12.20 and 12.21 of the PD, in an urgent situation of hardship with no prior Shariah ruling, an IFI may

	issues, prior to issuance of Shariah ruling by the Bank?	proceed to apply <i>hajah</i> or <i>darurah</i> , subject to the Shariah committee's decision and the board's approval. However, the IFI shall realign the relevant application with the new Shariah ruling, and such realignment may include complying with additional conditions or limitations as well as reversing current application that is prohibited by the SAC.
17.	Control Functions Who should be assigned with the functions and activities required under the decision-making process?	In view that each IFI has different organisational structure, it is practical to leave such matter to the IFIs' discretion – subject to the roles and responsibilities of respective control functions (as specified by <i>Shariah Governance Policy Document</i>).
Decision Making Process		
18.	Effective date of Shariah ruling In the event where an IFI chooses to apply <i>hajah</i> or <i>darurah</i> to address urgent and critical situation of hardship prior to obtaining the Shariah ruling, and later the SAC rules that such application is impermissible, when will the effective date of the new Shariah rulings be? Will it be retrospective? and therefore should the IFI report to the Bank of its previous decision and application as an SNC event?	<ul style="list-style-type: none"> • Effective date of the Shariah ruling is not retrospective and therefore, the IFI will be given sufficient time to realign its application of <i>hajah</i> or <i>darurah</i> to be consistent with the newly published Shariah ruling. • Such situation will not be immediately considered as an SNC event due to the PD provides flexibility to an IFI to apply the exceptional rules to address urgent situation of hardship prior to obtaining the Shariah ruling, subject to the Shariah committee's decision and the board's approval (as specified in paragraph 12.20 of the PD).
19.	Assessment Notwithstanding paragraph 12.6, please provide an example of cases where there is difficulty in assessing the quantitative aspect of the severity of the hardship.	<p>Examples of difficulty in assessing the quantitative aspect of the severity of the hardship include the following (but not limited to):</p> <ul style="list-style-type: none"> • the availability of or accessibility to data or information • limited resources that are required to obtain the data or information

		(e.g., time, capital, labour) given the urgency of the hardship situation
20.	<p>Reporting</p> <p>Please confirm that the IFIs are required to notify the Bank within 14 working days after obtaining approval from the Shariah committee as well as the board on the proposed application of <i>hajah</i> type 2 and <i>darurah</i>.</p>	<ul style="list-style-type: none"> • Yes, paragraph 12.13 of the PD specifies that the IFIs are required to submit to the Bank the required information specified in the PD within 14 working days after obtaining both Shariah committee's decision and board's approval. • For application of <i>hajah</i> and <i>darurah</i> that has yet to be deliberated and decided by the SAC, paragraphs 9.2 and 12.14 of the PD specify that the IFIs are expected to submit a referral to the SAC's secretariat to request for a ruling within 14 working days after obtaining both Shariah committee's decision and board's approval.
21.	<p>Public Disclosure</p> <p>Does the PD require IFIs to publicly disclose the application of <i>hajah</i> and <i>darurah</i>?</p>	<ul style="list-style-type: none"> • The PD does not specify any disclosure requirement in view that information relating to specific application of <i>hajah</i> and <i>darurah</i> might be market sensitive, and therefore can affect public confidence in the integrity of the Islamic financial system. • However, any application of <i>hajah</i> and <i>darurah</i> resulting in material financial impact may still need to comply with applicable reporting standards and listing requirements.