بسم الله الرحمن الرحيم

Effective date: 12 August 2022

GUIDELINES TO BANKS AND FINANCIAL INSTITUTIONS
GUIDELINES NO. SYAFI/G/04/2022

SYARIAH STANDARD *MUDHARABAH*

Contents

1. INTRODUCTION

1.1 These Guidelines are issued pursuant to section 32 of the Brunei Darussalam Central Bank Order, 2010 and applies to Banks and Financial Institutions.

1.2 These Guidelines are designed as a reference in providing best practice to structure any financial product based on a *Mudharabah* contract in accordance with Hukum *Syara'* and to provide customer protection.

1.3 All Banks and Financial Institutions offering Islamic products and services are advised to adhere to the principles set out in these Guidelines.

1.4 These Guidelines should be read together with other relevant notices and guidelines issued by the Authority, in particular:

1.4.1 Notice on Application Process of Islamic Product (SYAFI/N/01/2021);

1.4.2 Notice to Financial Institution on Syariah Governance Framework (IFAU/N/1/2018); and

1.4.3 Notice and Guidelines on Internal Syariah Audit Framework for Financial Institutions (IFAU/N/2/2018 and IFAU/G/3/2018).

1.5 These Guidelines are not exhaustive and subject to revision from time to time as deemed necessary by the Authority.

1.6 Banks and Financial Institutions should ensure that any aspect not covered by these Guidelines are addressed in accordance with Hukum *Syara'*.

1.7 These Guidelines are provided in both English and Malay. In the event of inconsistencies between both versions, the Malay version of these Guidelines will prevail.

1.8 These Guidelines takes effect on 14 Muharram 1444/ 12 August 2022.

2. DEFINITIONS

2.1 For the purpose of these Guidelines:

2.1.1 "Authority" means the Brunei Darussalam Central Bank established under section 3(1) of the Brunei Darussalam Central Bank Order, 2010;

2.1.2 "Bank(s)" has the same meaning assigned to it under section 2 of the Brunei Darussalam Central Bank Order, 2010;

2.1.3 "Capital" means an asset(s) provided by the *Rabbul Mal* and delivered to the *Mudharib* for the purpose of the *Mudharabah* venture;

2.1.4 “Financial Institution(s)” has the same meaning assigned to it under section 2 of the Brunei Darussalam Central Bank Order, 2010. For the avoidance of doubt, this also includes Perbadanan Tabung Amanah Islam Brunei established under the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163);

2.1.5 “*Hibah*” means the transfer of the possession of a property of the donor made voluntarily and without any consideration by the donor to the donee during the lifetime of the donor;

2.1.6 “Hukum *Syara*” has the same meaning assigned to it under section 2 of the Syariah Financial Supervisory Board Order, 2006;

2.1.7 “*Ijab*” means an offer;

2.1.8 “*Ijma*” means a unanimous agreement of the *mujtahid* of the Muslim community of any period following the demise of Prophet Muhammad *Shallalahu ‘alaihi wa sallam* on any ruling according to Hukum *Syara’*;

2.1.9 “*Kaafil*” means a guarantor;

2.1.10 “*Kafalah*” means a guarantee;

2.1.11 “Loss” means the depletion of value from the capital;

2.1.12 “*Mudharabah* asset” means an asset created under a *Mudharabah* venture;

2.1.13 “*Mudharabah* venture” means business or profit generating activities undertaken by a *Mudharib* in managing capital provided by a *Rabbul Mal*;

2.1.14 “*Mudharib*” means an entrepreneur of a *Mudharabah* venture;

2.1.15 “*Muqayyadah*” means restricted;

2.1.16 “*Musyarakah*” means a partnership contract between two or more parties, whereby all parties will share the profit and bear the loss from the partnership;

2.1.17 “*Muthlaqah*” means unrestricted;

2.1.18 “Profit” means the value created over and above the capital which is determined based on the methodology acceptable by market practices;

2.1.19 “Profit-sharing ratio” means the ratio in which the profits are shared between the *Rabbul Mal* and the *Mudharib*;

2.1.20 “*Qabul*” means acceptance;

2.1.21 “*Rabbul Mal*” means a capital provider;

2.1.22 "Sukuk" means certificates that represent a proportional undivided ownership or investment in assets which are in accordance with Hukum *Syara'*;

2.1.23 "Syariah Advisory Body" means;

(a) a body established pursuant to section 8(2)(g) of the Islamic Banking Order, 2008;

(b) a body established pursuant to section 10(1)(e) of the Takaful Order, 2008;

(c) a body appointed pursuant to section 23(2) of the Securities Markets Order, 2013;

(d) a body established under section 14 of the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163); and

(e) a body appointed pursuant to section 6(2)(g) of the Finance Companies Act (Chapter 89);

2.1.24 "Takaful" has the same meaning assigned to it under section 2(1) of the Takaful Order, 2008;

2.1.25 "*Wadi'ah*" means a contract by which an asset is placed with another party for safekeeping;

2.1.26 "*Wa'd*" means an undertaking or commitment given by one party to another to perform an act in the future;

2.1.27 "*Wakalah*" means an agency contract where a party, as *Muwakkil*, appoints another party, as *Wakeel*, to carry out a business on his behalf. The *Wakalah* contract can be subject to a fee or without a fee; and

2.1.28 "*Wakeel*" means a person who carries out a business on another party's behalf, with or without a fee.

3. DEFINITION AND LEGITIMACY OF A *MUDHARABAH* CONTRACT

Definition of *Mudharabah* contract

3.1 A *Mudharabah* is a partnership contract between a *Rabbul Mal* and a *Mudharib* where the *Rabbul Mal* will contribute capital to a venture that is to be managed by the *Mudharib*.

3.2 Profits generated by the venture managed by the *Mudharib* should be shared in accordance to a mutually agreed Profit-Sharing Ratio (PSR). Any losses from the venture should be borne solely by the *Rabbul Mal* unless the losses are due to the *Mudharib's* misconduct, negligence or breach of contractual terms, upon which the loss should be borne by the *Mudharib*.

3.3 An example of a *Mudharabah* contract can be found in **Appendix 1**.

Types of *Mudharabah* contract

3.4 *Mudharabah Muthlaqah*

3.4.1 *Mudharabah Muthlaqah* is a contract in which the *Rabbul Mal* permits the *Mudharib* to manage the *Mudharabah* capital without any specific restrictions so long as it does not contravene Hukum *Syara*'.

3.5 *Mudharabah Muqayyadah*

3.5.1 *Mudharabah Muqayyadah* is a contract in which the *Rabbul Mal* imposes specific restrictions on the *Mudharabah* terms. The *Rabbul Mal* may specify conditions restricting the *Mudharib* such as the determination of location, investment period, type of project and commingling of funds.

3.5.2 The contracting parties may mutually agree to change the type of *Mudharabah* contract they have entered into to another type of *Mudharabah* contract at any point in time.

Legitimacy of a *Mudharabah* contract

3.6 The legitimacy of a *Mudharabah* contract is derived from the Al-Qur'an, Hadith and *Ijma*'.

3.7 Al-Qur'an

وَءَاخَرُونَ يَضْرِبُونَ فِى ٱلْأَرْضِ يَبْتَغُونَ مِن فَضْلِ ٱللَّهِ

"…and others travelling in the earth in quest of Allah's bounty…" [Al- Muzzammil:20]

This verse provides the legitimacy of a *Mudharabah* contract taking into account the general permissibility of trading that may be done by using other's capital in exchange for part of the profits including those who travel for the purpose of trading and seeking permissible wealth which may take the form of a *Mudharabah* contract.

3.8 Hadith

أَنَّ حَكِيمَ بْنَ حِزَامٍ صَاحِبَ رَسُولِ اللَّهِ -صلى الله عليه وسلم- كَانَ يَشْتَرِطُ عَلَى الرَّجُلِ إِذَا أَعْطَاهُ مَالاً مُقَارَضَةً فَضَرَبَ لَهُ بِهِ أَنْ لاَ تَجْعَلَ مَالِى فِى كَبِدٍ رَطْبَةٍ وَلاَ تَحْمِلَهُ فِى بَحْرٍ وَلاَ تَنْزِلَ بِهِ فِى بَطْنِ مَسِيلٍ فَإِنْ فَعَلْتَ شَيْئًا مِن ذَلِكَ فَقَدْ ضَمِنْتَ مَالِى.

Hakim bin Hizam *Radhiallahu 'anhu* companion of the Prophet *Rasulullah Shallallahu 'alaihi wasallam* has stipulated several conditions on a man that if he provides to him asset for *Muqaradhah (Mudharabah)* and invested [the *Mudharabah* asset] for him. The stipulated conditions are: Do not invest into livestock, and do not bring the asset onto the sea, and do no not bring the asset to a valley. If he violates any of the conditions, he is considered to be the guarantor for the *Mudharabah* asset.

[Narrated by Al-Baihaqi with strong chain] [Sunan ad-Darimi, bab al-Qiradh, hadis No. 3033]

عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ:كَانَ الْعَبَّاسُ بْنُ عَبْدِ الْمُطَّلِبِ إِذَا دَفَعَ مَالاً مُضَارَبَةً اشْتَرَطَ عَلَى صَاحِبِهِ أَنْ لاَ يَسْلُكَ بِهِ بَحْرًا، وَلاَ يَنْزِلَ بِهِ وَادِيًا، وَلاَ يَشْتَرِيَ بِهِ ذَاتَ كَبِدٍ رَطْبَةٍ، فَإِنْ فَعَلَ فَهُوَ ضَامِنٌ، فَرُفِعَ شَرْطُهُ إِلَى رَسُولِ اللَّهِ فَأَجَازَهُ

"Ibnu Abbas (may Allah be pleased with him) reported that: "When Al-'Abbas bin Abd al-Muttalib gave his property to someone for *Mudharabah*, 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 conditions have been brought to the attention of Prophet Muhammad (peace be upon him) and he approved them". [Al-Baihaqi, Al-Sunan al-Kubra, v.6, p.111]

3.9 *Ijma`*

Muslim jurists have reached *Ijma`* among themselves on the permissibility of the *Mudharabah* contract.

4. GENERAL REQUIREMENT OF A *MUDHARABAH* CONTRACT

Contracting parties

4.1 Contracting parties in a *Mudharabah* contract should comprise of a *Rabbul Mal* and a *Mudharib*.

4.2 Contracting parties should have competency according to Hukum *Syara'* and the laws of Brunei Darussalam to enter into a contract. This includes corporate entities, statutory bodies and unions.

4.3 The contracting parties in the *Mudharabah* contract may involve more than one *Rabbul Mal* or *Mudharib*.

4.4 In the case of a *Mudharabah* contract involving more than one *Rabbul Mal*, if a *Rabbul Mal* withdraws from the *Mudharabah* contract prior to the maturity date, any new *Rabbul Mal* appointed should agree to assume liability of the existing *Mudharabah* contract prior to his participation.

Ijab and *Qabul*

4.5 *Ijab* and *Qabul* may be executed verbally, in writing or any other methods that result in the execution of a contract.

Mudharabah Management

4.6 The *Mudharib* should have the right to manage the *Mudharabah* venture.

4.7 The *Mudharib* should be responsible in ensuring proper management of the *Mudharabah* venture and acts in the interest of the *Rabbul Mal*.

4.8 The *Mudharib*'s mandate should be stated in the terms and conditions of the *Mudharabah* contract.

4.9 The *Mudharib* may assign the *Mudharabah* capital under his management to another *Mudharib* in another *Mudharabah* contract or to a *Wakeel*. This should however be subject to the consent of the *Rabbul Mal*.

4.10 The *Rabbul Mal* should not be involved in managing the *Mudharabah* venture. However, the *Rabbul Mal* should have the right of access to reasonable information regarding the *Mudharabah* venture.

Capital

4.11 The capital under a *Mudharabah* contract should be:

4.11.1 Valuable, identifiable and deliverable;

4.11.2 Already in existence and owned by a *Rabbul Mal*;

4.11.3 In the form of cash or physical assets;

4.11.4 Delivered either as a lump-sum or in stages; and

4.11.5 Verified and endorsed by the Syariah Advisory Body of the Bank or Financial Institution in regards to its compliance with paragraph 4.11(a) to (d).

4.12 All forms of debts due to the *Rabbul Mal* either from the *Mudharib* or a third party should not qualify as capital.

4.13 Where the capital is in the form of a physical asset, it should be valued by a third party at the time of entering into the *Mudharabah* contract. The third party may include experts, valuers or any qualified persons as agreed by the contracting parties.

4.14 If, after receiving the consent of the *Rabbul Mal*, the *Mudharib* injects his own funds into the capital, the *Mudharabah* contract should be terminated and replaced with a new *Musyarakah* contract.

4.15 In the case of lump-sum capital, if one or more *Rabbul Mal* fails to provide the capital, the non-defaulting contracting parties should have the option to:

4.15.1 Continue the *Mudharabah* contract subject to the revision of any terms and conditions; or

4.15.2 Terminate the *Mudharabah* contract with the defaulting *Rabbul Mal*. The defaulting *Rabbul Mal* should, based on agreed terms, indemnify any incurred expenses due to the default. The indemnification should not exceed the capital contribution of the defaulting *Rabbul Mal*.

4.16 In the case of capital in stages, if one or more *Rabbul Mal* fails to provide the capital, the non-defaulting contracting party should have the option to:

4.16.1 Continue the *Mudharabah* contract subject to the revision of any terms and conditions; or

4.16.2 Continue the *Mudharabah* contract subject to the defaulting *Rabbul Mal* selling his interest to another *Rabbul Mal* or to a third party. The *Mudharib* should return the capital contributed by the defaulting *Rabbul Mal* and share the profits with the defaulting *Rabbul Mal*, if any; or

4.16.3 Terminate the *Mudharabah* contract. If the termination results in losses to the contracting parties, the defaulting *Rabbul Mal* should indemnify any incurred expenses including the *Mudharib*'s fees. The indemnification should not exceed the agreed capital in the *Mudharabah* contract.

4.17 The *Mudharib* should not guarantee any capital.

Profit

4.18 The Profit should be distributed according to an agreed Profit-Sharing Ratio (PSR) upon the maturity date of the *Mudharabah* contract or at an agreed period before the maturity date.

4.19 The Profit should not be a pre-determined fixed amount or a certain percentage of the capital.

4.20 The PSR should be determined at the time of entering the *Mudharabah* contract.

4.21 The PSR may be revised during the tenure of the *Mudharabah* contract subject to the consent of the contracting parties.

4.22 With reference to paragraph 4.14 above, profit from the terminated *Mudharabah* contract should be shared according to the agreed PSR.

4.23 For a single *Mudharabah* contract which involves more than one *Mudharib*, a common PSR should be agreed between the *Rabbul Mal* and all the *Mudharib*. All *Mudharib* should share the *Mudharib*'s profit in accordance to the agreed terms.

4.24 In a multi-tiered *Mudharabah* contract, the PSR should be clearly determined at every tier.

4.25 The PSR may be varied to correspond with different periods of investment, amount of capital or pre-mature withdrawal of the capital, provided that the conditions for the variation are agreed upon by the contracting parties at the time of entering into the *Mudharabah* contract.

4.26 The *Mudharib* should not guarantee any profit.

4.27 The contracting parties may agree to a condition whereby a *Rabbul Mal* is made subject to lower or no profit payment in the event of pre-mature capital withdrawal.

4.28 The contracting parties may agree to set aside part of the profit as a reserve.

4.29 The contracting parties may agree that at any time or at a certain period during the tenure of the *Mudharabah* contract, a final consolidation and adjustment shall be undertaken to determine the actual profit.

Loss

4.30 Loss should be borne by the *Rabbul Mal* up to the capital contributed.

4.31 The *Mudharib* should not be liable for any impairment of the asset unless such loss is due to the *Mudharib*'s misconduct, negligence or breach of specified terms.

4.32 In the case of any loss, the *Mudharib* should furnish the reason(s) for the occurrence of the loss.

4.33 In the case of multiple *Rabbul Mal* under a single *Mudharabah* contract, the loss should be borne by every *Rabbul Mal* proportionate to his capital contribution.

5. ARRANGEMENT OF A *MUDHARABAH* CONTRACT WITH OTHER SYARIAH CONTRACTS

Arrangement of a *Mudharabah* contract with a *Wadi`ah, Wakalah* or *Musyarakah*

5.1 A *Mudharabah* contract may be arranged with a *Wadi'ah, Wakalah* or *Musyarakah* whereby the contracting parties agree to assign a certain amount of the funds as *Mudharabah* capital and the remaining balance is assigned as *Wadi'ah*, *Wakalah* or *Musyarakah*. Such arrangement should fulfil the requirements of the respective Syariah contracts being used.

5.2 An example of the above arrangement can be found in **Appendix 2**.

Arrangement of a *Mudharabah* contract with *Kafalah*

5.3 A *Mudharabah* contract may be arranged with a *Kafalah* whereby a *Rabbul Mal* and a *Mudharib* appoints a third party as *Kaafil*.

5.4 The *Rabbul Mal* may place a condition on the *Mudharib* to arrange for a *Kafalah* from a third party subject to the following conditions:

5.4.1 The *Kafalah* should be executed in a separate contract;

5.4.2 The *Kafalah* should be utilised to cover any loss or depletion of the capital; and

5.4.3 The *Kaafil* should be independent from the *Mudharib* and should not be related where:

(a) The *Mudharib* do not have majority ownership; or

(b) Has control over the *Kaafil and vice versa*.

5.5 An example of the above arrangement can be found in **Appendix 3**.

Arrangement of a *Mudharabah* contract with a *Hibah*

5.6 The *Mudharabah* contract being arranged with a *Hibah* should fulfil the following:

5.6.1 A *Hibah* should not be sourced from the capital provided by the *Rabbul Mal* or from the *Rabbul Mal*'s profit portion; and

5.6.2 Provision of a *Hibah* should not amount to a guarantee of the capital and/or profit by the *Mudharib*.

Arrangement of a *Mudharabah* contract with a *Wa'd*

5.7 A *Mudharabah* contract may be arranged with a *Wa'd* where:

5.7.1 A *Mudharib* provides a *Wa'd* to buy the *Mudharabah* asset upon the occurrence of a specified event (which does not contravene with Hukum *Syara*') as stipulated in the *Mudharabah* contract; or

5.7.2 A *Wakeel* appointed by a *Mudharib* provides the *Wa'd* to purchase the *Mudharabah* asset upon occurrence of a specified event (which does not contravene with Hukum *Syara*') as stipulated in the *Mudharabah* contract.

5.8 A *Mudharabah* contract can be applied in takaful and the structure can be found in **Appendix 4**.

5.9 A *Mudharabah* contract can be applied in Sukuk and the structure of Sukuk *Mudharabah* can be found in **Appendix 5.**

6 TERMINATION OF A *MUDHARABAH* CONTRACT

6.1 A *Mudharabah* contract may be terminated under the following circumstances:

6.1.1 Termination by any contracting parties prior to commencement of the *Mudharib*'s work;

6.1.2 Contracting parties agree to terminate the *Mudharabah* contract due to the death or loss of competency of the *Mudharib* according to Syara' or the laws of Brunei Darussalam

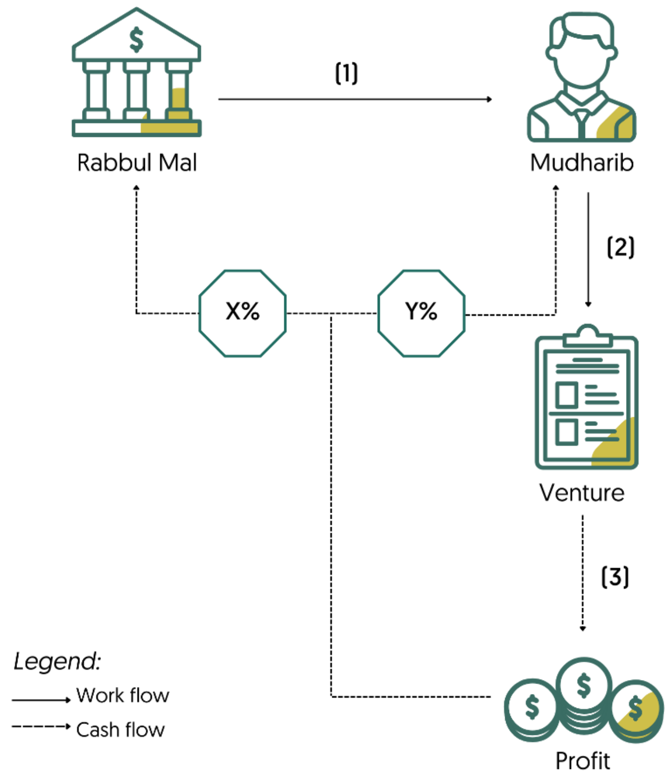
7 COMPLETION OF A *MUDHARABAH* CONTRACT

7.1 The *Mudharabah* contract is completed on the maturity date as agreed by the contracting parties.

MANAGING DIRECTOR
BRUNEI DARUSSALAM CENTRAL BANK

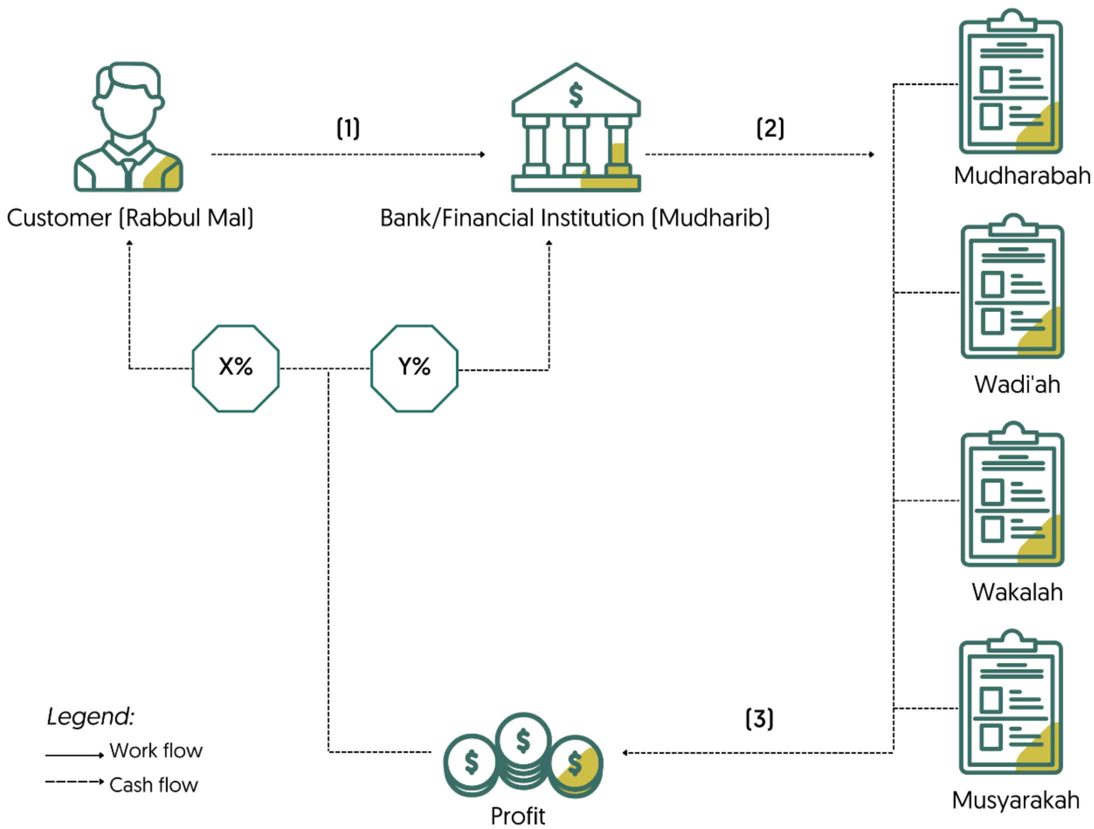
Issue Date: 14 Muharram 1444/ 12 August 2022

APPENDIX 1: *MUDHARABAH* CONTRACT STRUCTURE



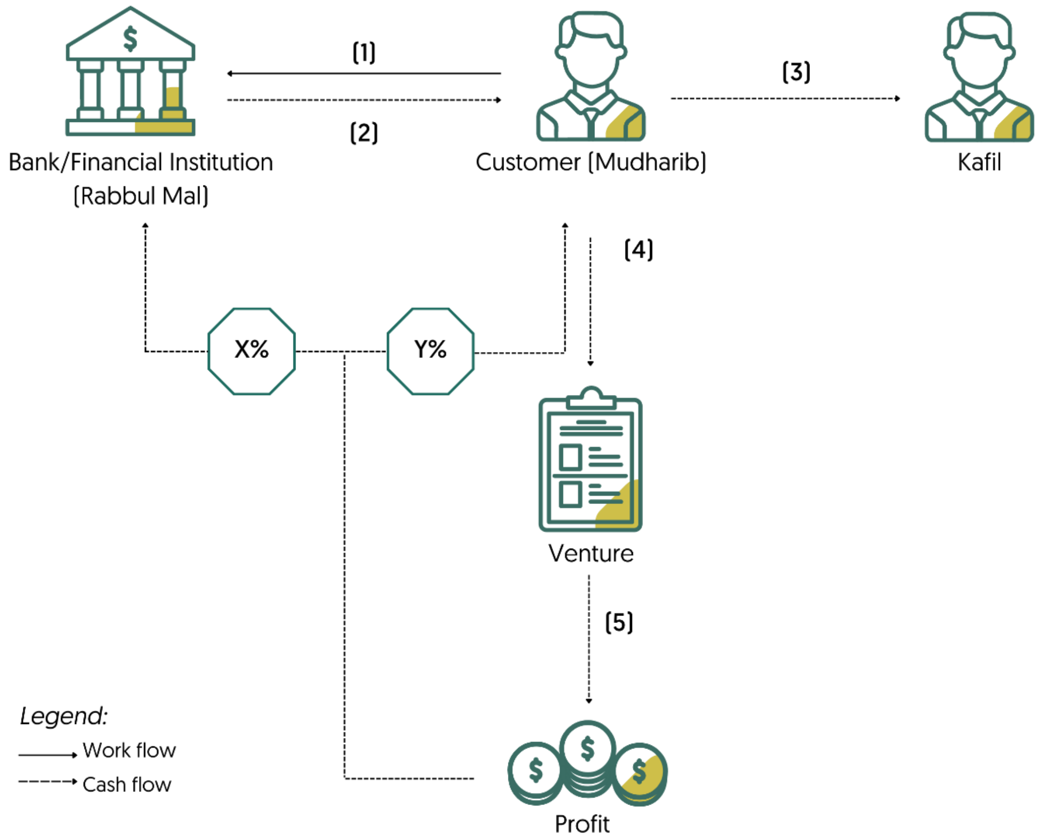
No.	Description
1	The *Rabbul Mal* provides capital to the *Mudharib*.
2	The *Mudharib* as the entrepreneur will manage the capital in a *Mudharabah* venture.
3	Profits generated by the venture are shared in accordance with the specified Profit Sharing Ratio (PSR) in the contract (in above illustration stated as X and Y). Meanwhile, any losses are to be borne solely by the *Rabbul Mal* unless the losses are due to the *Mudharib*'s misconduct, negligence or breach of contractual terms, then the loss will be borne by the *Mudharib*.

APPENDIX 2: *MUDHARABAH* DEPOSIT ACCOUNT



No.	Description
1	The customer (*Rabbul Mal*) deposits a sum of money into a Bank or Financial institution (*Mudharib*) by applying for a *Mudharabah* contract.
2	A Bank or Financial institution will invest the capital into a Syariah compliant venture by applying for a Syariah contract such as *Wadi`ah*, *Wakalah* or *Musyarakah*. The contracting parties should comply with the requirements in the *Mudharabah* and other Syariah contracts being used in terms of fund utilization.
3	Profits generated by that venture are shared in accordance with the specified Profit Sharing Ratio (PSR) in the contract (in above illustration stated as X and Y). Meanwhile, any losses are to be borne solely by the *Rabbul Mal* unless the losses are due to the *Mudharib*'s misconduct, negligence or breach of contractual terms, then the loss will be borne by the *Mudharib*.

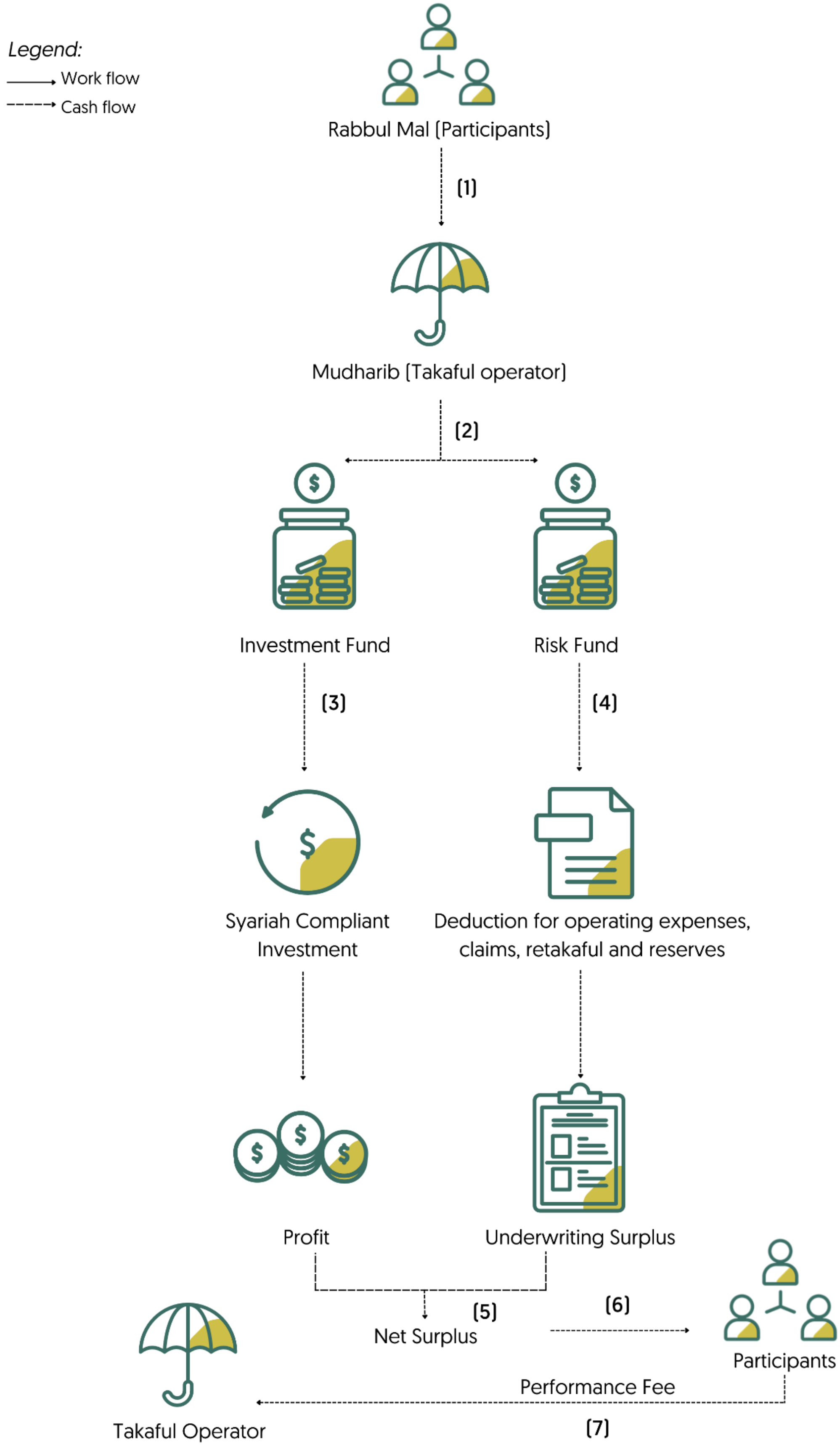
APPENDIX 3: *MUDHARABAH* FINANCING



No.	Description
1	The customer (*Mudharib*) will meet a Bank or Financial Institution (*Rabbul Mal*) to request for financing for the purpose of venture using *Mudharabah* contract.
2	Upon appropriate assessment, a Bank or Financial Institution will provide capital financing (investment) to the venture.
3	A Bank or Financial Institution will request the customer (*Mudharib*) to provide a *Kaafil* from a third party.
4	The customer will utilize the capital for the purpose of agreed venture.
5	Profits generated by the venture are shared in accordance with the specified Profit Sharing Ratio (PSR) in the contract (in above illustration stated as X and Y). Meanwhile, any losses are to be borne solely by the Bank or Financial Institution unless the losses are due to the customer's

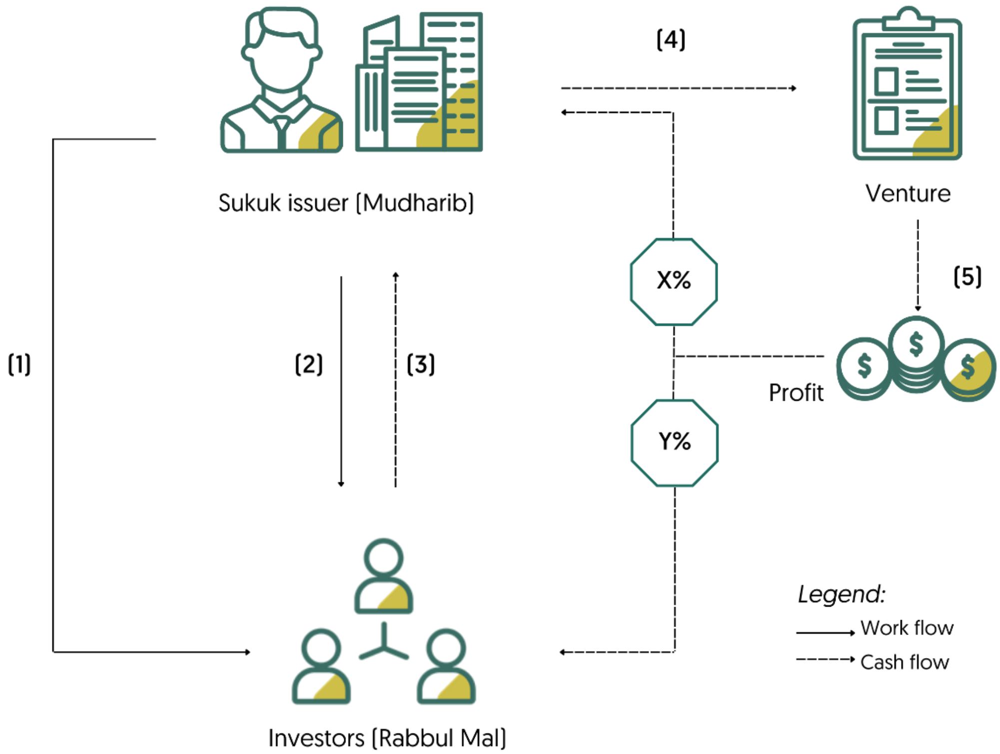
	(*Mudharib*'s) misconduct, negligence or breach of contractual terms, then the loss will be borne by the customer (*Mudharib*).

APPENDIX 4: *TAKAFUL* BASED ON A *MUDHARABAH*



No.	Description
1	The takaful operator will receive takaful contributions from the participants.
2	The contributions will be divided into two (2) funds namely the Risk Fund (Tabarru' fund) and the investment fund.
3	The takaful operator will act as a *Mudharib* to the investment fund and will invest it into Syariah compliant investments.
4	The takaful operator will utilise the risk fund for operating expenses, claims, re-takaful and reserves.
5	The surplus from the takaful fund is the underwriting surplus. Net surplus comprises of underwriting surplus and investment profit.
6	The net surplus will be distributed to the participants.
7	A performance fee may be given to the takaful operator subject to the takaful operator Syariah Advisory Body approval.

APPENDIX 5: SUKUK *MUDHARABAH*



No.	Description
1	The Sukuk issuer (*Mudharib*) invites investors to enter into a *Mudharabah* venture.
2	The Sukuk issuer issues a Sukuk *Mudharabah* which represents an undivided ownership in the *Mudharabah* venture evidencing the proportionate capital contribution. The Investor may undertake to sell beneficial ownership of the Sukuk portfolio to the Sukuk issuer if a certain event is triggered as specified in the *Mudharabah* contract. The investor requests the Sukuk issuer to provide a *Kafalah* from a third party.
3	The investor will subscribe for the Sukuk *Mudharabah* and pay the proceeds to Sukuk issuer.
4	Sukuk issuer will invest the *Mudharabah* capital (Sukuk proceed) into the agreed venture.
5	Profits generated by that venture are shared in accordance with the specified Profit Sharing Ratio (PSR) in the contract (in above illustration stated as X and Y). Meanwhile, any losses are to be

	borne solely by the investors unless the losses are due to the Sukuk issuer's misconduct, negligence or breach of contractual terms, then the loss will be borne by the Sukuk issuer.