

# *Sharīah*-compliant deposit insurance scheme: a proposed additional modality

Madaa Mustafa and Syed Faiq Najeeb

*Islamic Financial Services Board (IFSB), Kuala Lumpur, Malaysia*

488

Received 3 April 2017  
Revised 9 August 2017  
7 February 2018  
Accepted 4 March 2018

## Abstract

**Purpose** – This paper aims to make a first attempt to highlight the *Sharīah*-compliance challenges of existing *Sharīah*-compliant deposit insurance schemes (SCDIS), particularly the issue of subrogation to contributing parties in *takāful*-based SCDIS and the issue of receiving a fee for guarantee in *kafālah*-based SCDIS. The paper also aims to propose an additional cash *waqf* SCDIS structure that mitigates these challenges.

**Design/methodology/approach** – The proposed cash *waqf* scheme is assessed for compliance against classical works of Islamic jurisprudence and the contemporary regulations and standards of best practices for deposit insurance schemes.

**Findings** – The proposed cash *waqf* SCDIS structure is able to overcome the *Sharīah* and legal challenges in the existing SCDIS modalities, including subrogation and payment of fees for guarantee. Moreover, it is designed to comply with the International Association of Deposit Insurers' Core Principles for effective deposit insurance schemes. Hence, a cash *waqf* structure is a viable alternative for jurisdictions to introduce SCDIS.

**Originality/value** – This paper introduces an additional cash *waqf* SCDIS modality and sets the foundation for future research in studying viable *Sharīah*-compliant deposit insurance modalities supporting a stable and resilient Islamic banking industry.

**Keywords** Islamic banking, Deposit insurance, Cash *waqf*, Financial safety nets

**Paper type** Research paper

## 1. Introduction

The role of financial safety nets has become critical in the global Islamic banking industry as it evolves into a multi-trillion US dollar industry[1][2]. The Islamic Financial Services Board's (IFSB) Islamic Financial Services Industry (IFSI) Stability Report 2016 notes that as of 1H 2015, the IFSI is estimated to be worth US\$ 1.88tn of which more than US\$ 1.5tn alone is concentrated in the Islamic banking sector. In addition, the Islamic banking sector is also attributed to have achieved domestic systemic importance in at least 11 jurisdictions in 2015 (Islamic Financial Services Board, 2016).

Premised on this rapid growth in Islamic banking, the need for financial safety-net arrangements in the IFSI was stressed in April 2010 by the joint report by the IFSB, the Islamic Research and Training Institute (IRTI) and the Islamic Development Bank titled *Islamic Finance and Global Financial Stability*. This report identified eight building blocks aimed at further strengthening the Islamic financial infrastructure at the national and international levels to promote a resilient and efficient Islamic financial system. The third building block relates to the strengthening of the financial safety-net mechanism comprising a *Sharīah*-compliant lender-of-last-resort facility (SLOLR) and *Sharīah*-compliant deposit insurance scheme (SCDIS)[3][4].

In this regard, some Islamic banking jurisdictions have already taken the initiative of implementing an SCDIS, namely, Sudan, Bahrain and Jordan that introduce a scheme based



on *takāful* along with Malaysia and Nigeria, which apply a scheme based on *kafālah bi al-ajr*. However, certain *Shari'ah*-compliance and legal challenges can be observed in relation to these modalities, namely, the issue of subrogation, which prevents the *takāful*-based SCDIS from having recourse to the failed Islamic bank to recover disbursed funds when a defined event is triggered, e.g. default of Islamic bank[5]. As for the *kafālah bi al-ajr* scheme, the majority of scholars are of the opinion that providing a guarantee with fee is not a *Shari'ah*-compliant mechanism. Therefore, this study aims to analyse these challenges in detail while proposing an additional modality based on the concept of cash *waqf* that has the potential to provide a more robust and *Shari'ah*-compliant modality for deposit insurance schemes. To support the practical aspect of this modality, we further provide two operational examples of the cash *waqf* SCDIS in an event, which trigger the action by the SCDIS.

Accordingly, this paper is organized as follows: Section 2 conducts a literature review on previous studies on the topic of SCDIS and identifies relevant gaps which require further research; Section 3 provides an overview of the current modalities of SCDIS and its challenges; Section 4 proposes a new modality based on cash *waqf* that addresses the challenges identified in the existing modalities; and finally Section 5 concludes the discussion.

## 2. Literature review

The area of financial safety nets in Islamic finance is an emerging area with studies only beginning to emerge at the turn of the millennium. The IRTI issued one of the first papers on SCDIS titled "Deposit Insurance Scheme for Islamic Banks" (Ahmad, 2000). The theme of this research is centred on the permissibility of providing deposit insurance to current and investment accounts in Islamic banks. In this regard, the paper reached the conclusion that current accounts are a form of *qard* and hence the protection of such accounts is the responsibility of the Islamic banks. As for investment accounts, the Islamic bank cannot be held liable for any loss that may affect such accounts except in cases of negligence, misconduct or breach of conditions. However, the paper proposed alternative mechanisms, which could be used to insure investment accounts, such as the concept of *takāful*, third-party guarantee or voluntary absorption of losses by the Islamic banks. In light of these results, the paper provided an initial proposal for a SCDIS based on *takāful* for the protection of current and investment accounts. The purpose of such a scheme is to provide protection for current account holders as these accounts are a form of *qard*, and to provide protection for investment account holders (IAHs) in cases of misconduct, negligence or breach of conditions. The Islamic banks will be required to pay an initial contribution to the *takāful* fund and subsequent annual contributions in addition to the government, which will be required to do the same as well. However, the paper remained silent on whether the scheme will consist of two portfolios or a single one for both types of accounts.

A second study titled "Insuring Deposits in Islamic Banks in Jordan" (Kahf, 2005) was divided into four parts. In the first part, the author highlighted the types of deposits in Islamic banks and the types of risks to which these deposits are exposed. The second part focused on discussing the permissibility or lack thereof of guaranteeing each type of deposits from the *Shari'ah* perspective in addition to discussing the mechanisms of financing such guarantee if it is permissible and the mechanisms of investing the contributions paid by the Islamic banks to the deposit insurer. The third part was devoted to assessing the importance of insuring the deposits of Islamic banks from the perspective of protecting public interest in addition to highlighting some of the experiences of Muslim countries in this regard. Finally, the fourth section included the suggestions and

recommendations of the paper. The paper proposed an SCDIS based on *takāful*, which will consist of two portfolios, one for the protection of current accounts and the uninvested portion of investment accounts, whereby contributions to this portfolio should come from the shareholders of the Islamic banks. The second portfolio for the protection of the invested portion of the investment accounts, whereby contributions to this portfolio will be shared equally between the shareholders of the Islamic bank and the IAHS. The paper also called for the government to contribute to the scheme. As for restricted investment accounts, they will not be part of the scheme, as the holders of such accounts are well aware of the high risks associated with these investment accounts and have taken their measures to mitigate such risks.

A discussion paper titled “Deposit Insurance from the *Shari’ah* Perspective” ([The International Association of Deposit Insurers \(IADI\), 2014](#)) discussed briefly the arguments put forward by deposit insurance practitioners as to why deposit insurance is permissible under the *Shari’ah* and the differences between Islamic and conventional deposit insurance schemes. The paper also discussed approaches in designing an Islamic deposit insurance scheme and described the approaches taken by Malaysia and Sudan in developing their SCDIS.

A second discussion paper titled “Insurability of Islamic Deposits and Investment Accounts” ([The International Association of Deposit Insurers \(IADI\), 2014](#)) presented a comprehensive discussion on the insurability of Islamic deposits and investment accounts under commonly used *Shari’ah* contracts offered by Islamic banks in various jurisdictions. The discussion paper reached two main conclusions, namely, that for Islamic deposits, *Shari’ah* requires an Islamic bank to guarantee the deposits and allows the deposits to be guaranteed by a third party, such as a deposit insurer. As for investment accounts, the *Shari’ah* prohibits an Islamic bank from guaranteeing the accounts but allows the accounts to be guaranteed by a deposit insurer, in return for a consideration on the condition that it fulfils the criteria for independence. This is based on the opinion of a minority of contemporary scholars who permit the concept of *kafālah bi al-ajr*.

A third and final discussion paper titled “*Shari’ah* Approaches for the Implementation of Islamic Deposit Insurance Systems” ([The International Association of Deposit Insurers \(IADI\), 2014](#)) presented an overview of the *Shari’ah* approaches for the implementation of SCDIS that are being adopted currently. The paper focused on the approaches of Sudan and Malaysia as well as the model being developed in Jordan. Sudan and Jordan have adopted a *takāful*-based SCDIS that involves cooperation among the Islamic banks whereby they will contribute to the portfolio responsible for the protection of current accounts and cooperation among the IAHS whereby they will contribute to the portfolio responsible for the protection of investment accounts. In Sudan, the cooperation extends to the Ministry of Finance and the Central Bank of Sudan, whereas in Jordan, the government also takes part through the Ministry of Finance. As for Malaysia, their deposit insurance scheme is based on the concept of *kafālah bi al-ajr*, whereby the deposit insurer agrees to guarantee the insured deposits in the event an Islamic bank becomes insolvent in return for a fee paid to the deposit insurer. The paper suggested that some of the design features that policymakers need to consider include the role of the deposit insurer under the system, funding for the system especially for the guarantee of investment accounts and the mechanisms of addressing a deficiency in the deposit insurance fund.

Finally, a recent working paper issued by the IFSB titled “Strengthening the Financial Safety Net: The Role and Mechanisms of *Shari’ah*-Compliant Deposit Insurance Schemes” ([Najeeb and Mustafa, 2016](#)) discussed the importance of developing SCDISs, as they are considered an indispensable component of financial stability regimes in the post-crisis

world. Drawing upon the results of a survey conducted across 27 IFSB member regulatory and supervisory authorities (RSAs), the working paper highlights the current *Shari'ah*-compliant modalities of deposit insurance schemes that are being implemented in different jurisdictions and the operational and *Shari'ah* challenges that need to be considered in the implementation of these schemes. Overall, the working paper raises awareness of the importance of having SCDIS, highlights the existing modalities and practices of SCDIS in different jurisdictions and identifies key design challenges from both *Shari'ah* and operational perspectives for developing SCDIS.

There are some other studies that have explored *takāful* benefits protection in the *takāful* (Islamic insurance) industry. For instance, [Noor and Haron \(2011\)](#) analysed the use of *kafālah bi al-ajr* concept by the Deposit Insurance Corporation Malaysia (PIDM) in its *Takāful* Benefits Protection Scheme (TBPS). In this study titled “Charging Fee for Guarantee (*Kafālah bi al-Ajr*) and its Application by Deposit Insurance Corporation Malaysia (PIDM) for *Takāful* Benefits Protection Scheme”, the authors reached the conclusion that the existing structure of TBPS is similar to conventional insurance and suggested that the concept of *takāful* should be considered as an alternative mechanism, whereby the contributions paid to PIDM should be borne by the Participants’ Risk Fund and the Participants’ Investment Fund, respectively. Another study titled “Applications of Malaysia Deposit Insurance Corporation (MDIC) to *Takāful* Operators: An Analysis from the *Shari'ah* Advisors’ Perspective” by [Abdullah and Fares, 2012](#)) conducted personal interviews with *Shari'ah* advisors of *takāful* operators to examine the validity of the current modality based on the concept of *kafālah bi al-ajr*. Their conclusions were consistent with those of [Noor and Haron \(2011\)](#) in proposing *takāful* as an alternative mechanism with the only difference being its silence on whether contributions should also be given from the Participants’ Investment Fund. A more recent study by [Mikail et al. \(2014\)](#) stressed the need to restructure the existing model, which is based on the concept of *kafālah bi al-ajr* by adopting the concept of *takāful*. However, unlike the earlier two studies, it proposes the payment of contributions by both the *takāful* operator and *takāful* participants to the Tabarru’ Benefits Protection Fund.

In summary, based on the above literature review, there is a critical gap in academic literature studying issues and *Shari'ah* concerns in relation to deposit insurance protection schemes for Islamic banks. Aside from the IFSB Working Paper by [Najeeb and Mustafa \(2016\)](#), other studies, which analysed deposit insurance protection schemes for Islamic banks, have not highlighted the challenges faced by the current modalities, namely, the issue of subrogation in *takāful*-based SCDIS and the issue of receiving a fee in return for guaranteeing deposits in *kafālah bi al-ajr* SCDIS. While [Najeeb and Mustafa \(2016\)](#) highlighted these challenges, they did not provide any alternative mechanisms that may overcome such challenges. Therefore, this study makes a first attempt to address this gap in literature by proposing a new SCDIS based on cash *waqf* that has the potential to overcome challenges in the existing schemes.

### 3. *Shari'ah* compliant deposit insurance schemes in practice

This sub-section aims to shed light on the two most commonly used *Shari'ah*-compliant deposit insurance schemes and the *Shari'ah* basis for each one. Moreover, the *Shari'ah* arguments for and against each model will be discussed and analysed starting with the *takāful* model, which was adopted by Sudan, Bahrain and Jordan. Second, will be the analysis of the *kafālah bi al-ajr* model, which is implemented in Malaysia.

### 3.1 *Sharī'ah-compliant deposit insurance scheme based on takāful*

The *takāful* model of deposit insurance centres on the idea that the shareholders of a group of Islamic banks would agree to contribute a certain amount to a *takāful* fund provided that in case any of them becomes insolvent, the *takāful* fund will reimburse the holders of the insured deposits. This model is based on the concept of *takāful*, which was approved in resolution no. 9 (2/9) of the OIC Fiqh Academy. The resolution stated, "The alternative contract, which is in compliance with the principles of Islamic transactions, is the contract of co-operative insurance, which is based on the principles of *tabarru'* and cooperation" (International Islamic Fiqh Academy, 1985a). The principle of *tabarru'* (donation) is used to require each Islamic bank to contribute a certain amount to the *takāful* fund, whereas the principle of cooperation is applied to financially assist any member institution when it fails to fulfil its financial obligations towards its insured depositors.

3.1.1 *Sudan*. In the case of Sudan, an SCDIS was introduced in 1996 with the aim of contributing to the stability of the financial system as well as protecting depositors and IAHs. The participants of the deposit insurance scheme include in addition to the Islamic banks, the Ministry of Finance and the Central Bank of Sudan, as they also contribute to the *takāful* fund (The International Association of Deposit Insurers (IADI), 2014).

The Higher *Sharī'ah* Supervisory Board (HSSB) of the Central Bank of Sudan endorsed the implementation of the *takāful* model. In their *fatwā* no. (13/92), it resolved that the Islamic financial institutions can participate in establishing a *takāful* fund with the assistance of the state whose aim is to protect the deposits of current account holders in the event any participating Islamic bank becomes insolvent. Moreover, the depositors themselves cannot contribute to the fund as they do not bear the responsibility of protecting their funds, as this is the sole responsibility of the borrower, which is in this case the Islamic bank. Finally, the resolution prohibited the establishment of a *takāful* fund by the Islamic banks for the protection of IAHs, as the underlying contract for such accounts is that of *muḍārabah*, and as such, the Islamic bank in its capacity as *muḍārib* is not permitted to guarantee the principal and profit of the *muḍārabah* venture. However, they permitted the account holders themselves to establish such a fund and for the fund to be separated from the one allocated for current account holders (The Higher *Sharī'ah* Supervisory Board of the Central Bank of Sudan, 2006). Thus, the *takāful*-based SCDIS in Sudan consists of two portfolios, namely, one for the protection of current accounts, for which contributions are paid by the participating Islamic banks, and the second portfolio for the protection of all types of investment accounts for which contributions are paid by the account holders themselves.

3.1.2 *Jordan*. As for the case of Jordan, the Council of *fatwā*, research and Islamic studies in its eighth session resolved that it is permissible for a group of Islamic banks to establish a fund based on the concept of *takāful* with the aim of protecting the deposits of current and savings account holders of the participating Islamic banks. As for the IAHs, they are not eligible to be covered in this scheme. Instead, they are allowed to establish a separate *takāful* fund to protect their accounts against any risks (The Council of *Fatwā* research and Islamic studies, 2012). In line with this *fatwā*, the SCDIS of Jordan adopted the *takāful* concept by proposing the establishment of a fund consisting of two portfolios, the first one for the protection of Islamic deposits and the uninvested portion of the unrestricted investment accounts, whereas the second one for the protection of the invested portion of the unrestricted investment accounts. The first portfolio will receive contributions in the form of donation (*tabarru'*) from the Islamic banks, whereas the Ministry of Finance contributes to the capital on a pro rata basis, by analogy with the conventional system. As for the second portfolio, the contributions are received from the account holders themselves.



3.1.3 *Bahrain*. Finally, the Bahrain modality is also based on *takāful*, whereby a separate fund was established for the protection of the Islamic deposits. The *Sharī'ah* Supervisory Board (SSB) of the Central Bank of Bahrain approved the new regulation for the protection of deposits and unrestricted investment accounts. In approving the new regulation, the SSB stated the following:

The SSB of the CBB is of the opinion that the essence of the issue and the parameters included within the scheme to ensure its independence is in compliance with *Sharī'ah* rules and principles. The basis of approval stems from considering the scheme a form of *takāful* built on providing donated contributions that are allocated for the coverage of risks, which the holders of unrestricted investment accounts and current accounts in retail Islamic banks may be exposed to.

3.1.4 *Analysis of current takāful-based Sharī'ah-compliant deposit insurance schemes*. From the above, we can notice that the modality adopted by both Sudan and Jordan are similar in terms of having two separate portfolios: one for the saving and current accounts, whose contributions are paid by the Islamic banks themselves and another portfolio for the IAHS whose contributions are paid by the account holders themselves. However, one main difference does exist between the two modalities, which is the fact that under the Sudan modality, all types of IAHS can participate in the protection scheme, whereas under the Jordan modality, only the unrestricted IAHS can participate in the protection scheme.

In contrast to the *takāful*-based SCDIS in both Sudan and Jordan, the Bahraini model has one portfolio for the protection of both Islamic deposits and unrestricted investment accounts, whereby the contributions are paid by the Islamic banks only and the IAHS are not required to contribute any amount. This arrangement could be justified on the basis that such protection is not stipulated in the contract signed between the IIFS and the investor. In other words, the IIFS is extending protection coverage to placements by the IAHS on a voluntary basis by agreeing to provide contributions to a *takāful*-based SCDIS. On the other hand, consistent with Jordan and unlike with Sudan, the Bahraini SCDIS does not accord protection to restricted IAHS, as the investors are more sophisticated and are assumed to evaluate the risks of the projects in which they choose to invest.

The main issue that could be raised regarding models that rely on the concept of *takāful* is related to the issue of subrogation. The concept of subrogation is applied in the event a deposit insurance scheme reimburses the insured deposits, which would result in making the *takāful* fund subrogated to the extent of the amount of the payment made to all the rights of the insured deposits. This mechanism is used to enable the *takāful* fund to recover the losses incurred and restore its depleted funds.

This process of subrogation is implemented under the assumption that the beneficiaries of the *takāful* fund are the insured depositors. However, from *Sharī'ah* perspective, the beneficiaries are in fact the insolvent Islamic banks participating in the *takāful*-based deposit insurance scheme and not the depositors. The basis for such a claim lies in the fact that there is no contractual relationship between the *takāful* fund and the depositors. Rather, the contractual relationship is between the *takāful* fund and the participating Islamic bank. As a result, as the Islamic banks and not the depositors are the beneficiaries under this model, the *takāful* fund will not be able to take the position of the insured depositors in requiring the insolvent Islamic bank to pay back the amount it received from the fund. This is because the concept of *takāful*, which is based on cooperation and providing protection to participants, does not require the beneficiary Islamic bank to pay back the assistance received if the failure of the Islamic bank was not caused by the negligence or misconduct of the management. Thus, it becomes obvious that the concept of subrogation will not be

applicable under such a *takāful* model because the beneficiary and the party that caused the claim are the same.

### 3.2 *Sharī'ah compliant deposit insurance scheme based on kafālah bi al-ajr*

Under this model, a deposit insurer would agree to provide a guarantee commitment to an Islamic bank, whereby if the institution becomes insolvent all of its insured deposits will be reimbursed up to the prescribed limit. In return for this guarantee, the Islamic bank pays a fee to the deposit insurer. In case, the deposit insurer does not have enough funds to carry out reimbursements, then the deposit insurer must seek funding from the government or other *Sharī'ah* compliant sources ([The International Association of Deposit Insurers \(IADI\), 2014](#)). This mechanism was approved by the *Sharī'ah* Advisory Council of Bank Negara Malaysia, which resolved that the application of *kafālah bi al-ajr* (guarantee with fee) as the underlying *Sharī'ah* concept for the operation of Malaysia Deposit Insurance Scheme in managing Islamic deposit insurance fund is permissible. On the basis of the concept of *kafālah bi al-ajr*, the premium paid by the member institutions of PIDM is considered as an *ujrah* or fee for PIDM and thus, belongs to PIDM. As the premium is considered a fee, PIDM may structure it in the form of absolute or proportionate value ([Sharī'ah Advisory Council of Bank Negara Malaysia, 2010](#)).

The *Sharī'ah* Advisory Council of Bank Negara Malaysia based their ruling on the fact that *ujrah* charged on *kafālah* can be permitted on the basis of necessity and public interest, as it is impractical to obtain free-of-charge guarantee in the current context ([Al-Zuhailī, n.d.](#)). Moreover, a contemporary scholar had expressed his view that *ujrah* charged on *damān* (guarantee) is permissible even though the original contract of *damān* is a type of *tabarru'*. He further explained that *damān* contract is not considered as *qard* as it is a form of obligation undertaken by the guarantor and as such receiving a fee for such an obligation is permissible and will not come under the prohibition of receiving an additional benefit out of a loan ([Abdullah, 1985](#)).

However, the main issue concerning this model is the fact that the majority of scholars prohibit taking of fees for a guarantee contract ([Al-Kāsānī, 1986](#); [Al-Ḥaṭṭāb, 1992](#); [Al-Mawardi, 1999](#); [Ibn Qudāmah, 1968](#)). This is because taking a fee will transform the contract into an exchange contract and will be similar to the design of a conventional deposit insurance system, whereby a bank pays a premium to the deposit insurer and if the bank is wound up, the deposit insurer will reimburse the insured depositors. Hence, the Islamic Fiqh Academy in its resolution no. 12 (2/12) resolved that it is prohibited to charge a fee for a guarantee and that the guarantor can only charge the guaranteed the actual expenses that are directly linked with the issuance of the guarantee ([International Islamic Fiqh Academy, 1985b](#)).

In the following section, this paper proposes an alternate *waqf*-based SCDIS model that provides an additional modality for jurisdictions to implement the scheme in a manner that may overcome the design challenges in existing models.

#### 4. A cash *waqf Sharī'ah-compliant deposit insurance scheme*

An additional modality, RSAs may consider introducing is a cash *waqf* SCDIS. The proposed *waqf* scheme is based on the concept of cash *waqf*, which is permitted by the Malikīs according to one of their opinions and permitted by al-Shaybānī and Zufar among the Ḥanafīs ([Al-Ḥaṭṭāb, 1992](#); [Al-Ddamīrī, 2008](#); [Ibn 'Abdīm, 1992](#)). The Malikī jurists permitted cash *waqf* because permanency is not a condition for the validity of *waqf*, whereas jurists from other schools of jurisprudence who approved it despite the fact that perpetuity is a condition for the *waqf* were of the opinion that endowing cash does not contradict with

such condition because the endowed cash can be given to the beneficiaries in the form of a loan which has to be paid back to the *waqf* or the endowed cash can be invested and the returns are spent on the beneficiaries. In both cases, the endowed cash will remain intact, which means that the condition of perpetuity is not violated (Al-Thamālī, n.d.). This opinion of permitting cash *waqf* was also adopted by the International Islamic Fiqh Academy in its 15th session held in Muscat in which it was resolved that cash *waqf* is permissible in the *Sharī'ah* because the *Sharī'ah* objective of endowments is to make the corpus inalienable and to spend the benefit arising from it, and this objective is realized in a cash *waqf*. That is because money is fungible; thus it is not specified by specification; any note of comparable value can substitute for any other note (International Islamic Fiqh Academy, 2004).

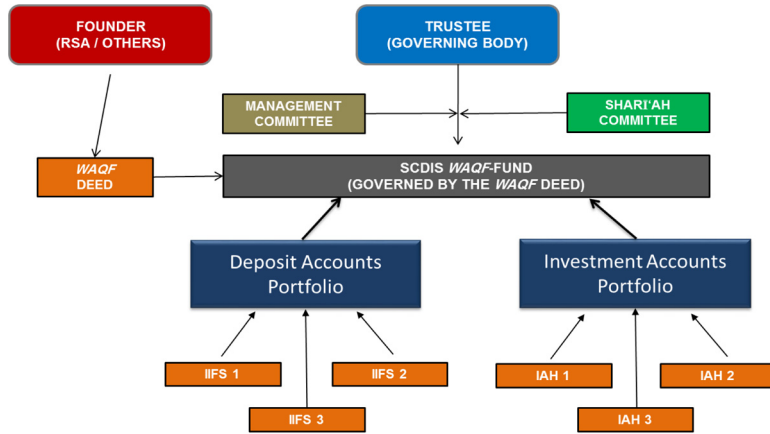
From the *Sharī'ah* perspective, the act of endowing a portion of one's wealth is a voluntary act of benevolence. Thus, *waqf* is discussed in the classical work of jurists alongside concepts, such as *ṣadaqah* and *hibah* (Al-Sarkhsī, 1993; Al-Qarāfī, 1994; Al-Māwardī, 1999; Ibn Qudāmah, 1968). However, in the proposed *waqf*-based model for deposit insurance, it is made compulsory for every Islamic bank to participate in the scheme based on two arguments. The first is the fact that with the growing systematic importance of the Islamic finance services industry, the resilience and soundness of the Islamic banks have taken greater importance and become a matter of public interest. This in turn can be used as a basis for the concerned authorities to intervene by requiring all the Islamic banks to participate in the proposed cash *waqf*, as their participation will be in line with the overall objective of wealth protection and in the interest of the public at large. The right of the concerned authority to intervene in such matters is based on the Islamic legal maxim that requires acts of the ruler that affect the public to be based on their interest (Al-Suyūṭī, 1990; Ibn Nujaym, 1999). This argument is also applicable to the IAHs who will be required to contribute funds to a separate portfolio in the *waqf* scheme.

Second, it is important to note that even though the participating Islamic banks are being required to donate a portion of their shareholders' funds into the *waqf* scheme, they are regarded among its beneficiaries. Thus, when an Islamic bank contributes, its contribution will be for its benefit as well as the benefit of other participating Islamic banks. This is in line with the juristic opinion that permits the party endowing a portion of his/her wealth to stipulate in the *waqf* deed that he/she will be allowed to be among the beneficiaries of the *waqf* (Al-Kāsānī, 1986; Al-Bahūtī, 1993). Again, this also applies to the IAHs as well who will be contributing to the investment accounts portfolio in the cash *waqf* scheme and be among its beneficiaries (Figure 1).

The following are the key features of the cash *waqf* scheme, which are designed to comply with the International Association of Deposit Insurers' Core Principles for effective deposit insurance schemes (The International Association of Deposit Insurers (IADI), 2014):

- **Founder:** The founder of the *waqf* SCDIS will be the Central Bank, Ministry of Finance or any other relevant authority in a jurisdiction. The founder will specify the operational guidelines and policy objectives of the SCDIS. The founder is entitled to adjust these operational guidelines and policy objectives from time to time, depending on the prevailing macroeconomic need and public interest.
- **Policy objective:** The policy objective of this SCDIS, as will be specified in the *waqf* deed, is to provide liquid funds to a member Islamic bank for the specific purpose of repaying its depositors and IAHs from two separate portfolios in the event of a trigger that make the Islamic bank eligible to receive support from the SCDIS.
- **Treatment of current and saving accounts:** In the case of current and saving accounts, the Islamic banks can be held liable for any loss affecting such accounts





**Figure 1.**  
Structure of the cash  
waqfSCDIS

Source: Authors' own

and hence it is permissible to require the shareholders of the Islamic banks to contribute to the *waqf* scheme in a separate portfolio designated for the protection of such accounts.

- *Treatment of investment accounts:* In the case of IAHs, the Islamic bank can be held liable for any losses affecting such accounts in cases of misconduct, negligence or breach of conditions. Thus, in normal circumstances the Islamic banks are not held liable for any losses. Hence, requiring them by law to contribute to the *waqf* scheme for the sake of protecting the IAHs would go against the nature of the contractual relationship between them and the IAHs. Nevertheless, the IAHs of the participating Islamic banks can be required to contribute on their own to a separate portfolio in the *waqf* scheme based on the same arguments that made such contributions by the shareholders of the Islamic banks compulsory[6].
- *Mandate and powers:* This SCDIS will be a separate legal entity operating as a trust with no ownership of funds by any particular party. The SCDIS will continue to operate in perpetuity with the purpose of fulfilling the policy objective of its establishment and as specified in the *waqf* deed. The local legislation must recognize the independence and authority of the SCDIS in terms of its roles and responsibilities.
- *Governance:* The SCDIS should have an independent oversight body, the board of trustee, who is liable to ensure the SCDIS is well governed, transparent and accountable. The board of trustee should comprise competent individuals who may include private sector individuals, including from SCDIS-participating Islamic banks and civil servants including from founder institutions. The board of trustee will oversee two functions: the management team tasked with day-to-day operations of the SCDIS and the *Sharī'ah* committee that is tasked to ensure that the operations and activities of the scheme are *Sharī'ah*-compliant. The board of trustee is the final governing body of the SCDIS who can be called to courts of law in an event of any negligence, wrongdoing or misconduct at the SCDIS. The board of trustee may communicate regularly with the Central Bank of their jurisdiction and other concerned authorities on the financial health of

member Islamic banks and exchange relevant and necessary information. However, the trustee's independence must be ensured and in no way be pressured by the RSA or other authorities to act in a certain manner, which may be detrimental to the well-being of the scheme.

- *Management and Shari'ah committee:* The SCDIS management may comprise full-time competent individuals selected on merit to run the day-to-day operations and undertake investment decisions. To that extent, the SCDIS will be run professionally, undertaking prudent investment decisions and sound risk management policies as appropriate. For the *Shari'ah* committee, the SCDIS may leverage on the *Shari'ah* committee of the RSA or other national bodies (if available) or establish an own and independent function within the SCDIS organizational structure.
- *Membership:* The membership in the SCDIS will be available to all Islamic deposit-taking institutions in the jurisdiction it is established in. Branches of foreign Islamic banks licensed locally are also eligible to participate in the SCDIS. The RSA will require all eligible Islamic banks along with their IAHS to agree to participate in the SCDIS as part of their licensing arrangements.
- *Coverage:* The SCDIS will provide funds to an eligible Islamic bank to cover payments to its current and saving account holders and IAHS from the two designated portfolios up to a certain limit, which is credible and covers the large majority of deposits but leaves a substantial amount of deposits exposed to market discipline. The SCDIS provides funds directly to the Islamic banks for the specific purpose of deposit repayments for its current and savings account holders while providing funds directly to the IAHS for the same purpose. The *waqf*-deed shall specify the coverage limits on the funds per depositor to be given to the Islamic bank and the IAHS.
- *Sources of funds:* The SCDIS is a pre-funded arrangement. The seed funds that form the perpetual portion of the *waqf* scheme can be sourced from the founder and then by way of annual contributions by the founder and the participating member Islamic banks along with the IAHS of each participating Islamic bank. Another alternative is for the perpetual portion of the *waqf* scheme to be sourced from the founder and the annual contributions from the member Islamic banks and the IAHS of each participating Islamic bank for a certain number of years (e.g. 10 years). Thereafter, the annual contributions by the member Islamic banks and IAHS will not be considered part of the perpetual portion of the *waqf* scheme, rather they can be regarded as a form of donation given to the *waqf* scheme. A third alternative is to rely only on the initial funds contributed by the founder in forming the perpetual portion of the *waqf* scheme, which would mean that all subsequent annual contributions by the founder and the member Islamic banks along with the annual contributions of the IAHS are a form of donation that is not a part of the perpetual portion of the *waqf* scheme. Regardless of which of the above-mentioned approaches will be used in sourcing the funds, the founder and the member Islamic banks will be required to make annual contributions into the first portfolio designated for the protection of current and saving accounts, whereas the founder and the IAHS will be required to make annual contributions into the second portfolio designated for the protection of investment accounts. The SCDIS must have a specified schedule that allows for differential contributions system based on the risk profiles of member Islamic

banks. An Islamic bank will contribute to the *waqf* scheme proportionate to the total amount of deposits on which coverage is provided. In addition, the contribution amounts will vary depending upon the risk exposure of an Islamic bank. A similar approach will be used when determining the annual contributions of the IAHS of each participating Islamic bank.

- *Uses of funds:* The SCDIS management shall invest the funds of the two portfolios of the *waqf*-based scheme in high-quality low-risk *Sharī'ah*-compliant investments that aim to ensure preservation of fund capital and maintenance of liquidity. The management should also ensure that investments are not made via instruments that are directly or indirectly tied to the solvency of a member Islamic bank. When sufficient *Sharī'ah*-compliant opportunities are not available in the domestic market, the SCDIS may resolve to invest in international *ṣukūk* issued by sovereigns, multilaterals and high-quality investment grade corporate *ṣukūk*. At all times, the management must ensure that adequate risk management policies and procedures, internal controls and disclosure and reporting systems are in place.
- *Mode of provision of funds to Islamic bank:* The *waqf* SCDIS shall disburse liquid funds to an eligible Islamic bank and its IAHS by way of an interest-free loan (*qard*), using the funds accumulated in the SCDIS and equal to the eligibility of the Islamic bank and its IAHS[7]. Bearing in mind the three alternative approaches mentioned earlier when discussing the sources of funds, the disbursed loan could consist of two portions, namely, a non-perpetual portion that is sourced from the returns generated by the *waqf* scheme and the annual contributions if the latter are not given as *waqf* and a perpetual portion that is sourced from the seed or annual contributions if the latter are given as *waqf*. In such scenario, the governing body of the *waqf* scheme must ensure that the value of the assets under the IFI's ownership and the value of the assets financed by the IAHS funds are more than the portion of the loan that is sourced from the perpetual element of the *waqf* scheme. This is to ensure that the portion of the loan sourced from the perpetual element of the *waqf* scheme can be paid in full by the IFI and its IAHS. Therefore, in the case of funds disbursed to the eligible Islamic bank for the payment of current and saving accounts, the Islamic bank must repay the borrowed amount to the SCDIS over an agreed repayment schedule that may be drawn with coordination between the eligible Islamic bank, the SCDIS and the Central Bank. If the Islamic bank is legally de-registered by the RSA and no viable resolution takes place that enables it to perform its banking functions (for instance, under a newly merged entity with another bank), it will cease to be a member and beneficiary of the SCDIS. Under such circumstances, the SCDIS will then waive any remaining debt provided that the waived portion is the one that has been sourced from the non-perpetual element in the *waqf* scheme. Similarly, the SCDIS has to recover as much as possible of the funds disbursed to the IAHS from the assets financed by such accounts before waiving any remaining debt provided that the waived portion is the one that has been sourced from the non-perpetual element in the *waqf* scheme as well. Another scenario is for the disbursed loan to be completely sourced from the non-perpetual element in the *waqf* scheme, which would mean that the SCDIS has to recover as much as possible of the

disbursed funds from the assets of the failed bank and the assets financed by IAHS before waiving any remaining portion of the debt.

- *Reimbursing depositors and IAHS:* Following an event trigger that renders an Islamic bank eligible, the SCDIS shall provide the required liquid funds to the Islamic bank on condition, and subject to oversight by the regulatory authority that disbursements using these funds are to be promptly made to eligible current and savings accounts holders in an organized and procedural manner. As for the IAHS, the SCDIS can provide the required liquid funds directly to them. From the *Sharī'ah* perspective, all eligible depositors and IAHS in each of the two portfolios are to be ranked *pari passu* in terms of priority of payments.
- *Recoveries:* On the basis of the above mode of support through *qard*, the Islamic bank and the IAHS are obliged to repay this money to the SCDIS. In the latter case by using the contract of *Hawālah*, whereby the IAHS transfer the obligation to pay the debt to the Islamic bank, which would then liquidate the assets financed by their funds and use the proceeds to pay the debt owed by them to the SCDIS. Hence, a recovery by SCDIS of disbursed funds is permissible from both legal and *Sharī'ah* perspectives. This method addresses the issue of subrogation that was raised, for instance, in the *takāful*-based SCDIS.
- *Funds shortfall:* In an event of shortfall in either of the two portfolios of the *waqf* scheme, the founder or other government functionaries can inject the required funds as temporary cash *waqf* into the SCDIS. The mechanism of temporarily endowing wealth is based on an opinion proposed by Malikī jurists, who are of the opinion that permanency is not a condition for the validity of *waqf* ('Alīsh, 1989). Moreover, another opinion attributed to Abū Ḥanīfah indicates that *waqf* can be temporary, as *waqf* does not entail the transfer of ownership of the endowed asset from the endower and as a result, the endowed asset will in effect remain under the ownership of the endower while its usufruct will benefit the intended beneficiaries. Therefore, it is permissible with disapproval to revoke the *waqf* and in such a case the endowed asset will be part of the endower's estate again (Ibn 'Abdīn, 1992). Once the *waqf* fund has replenished its reserves, the government or other contributing parties can withdraw the temporarily endowed amount. In addition, the temporarily contributing parties can specify that any revenues generated by their temporary cash *waqf* are to be given either as donation to the non-perpetual portion of the *waqf* scheme or endowed as part of its perpetual portion. In case a jurisdiction does not subscribe to the concept of temporary cash-*waqf*, it will be required to either endow funds permanently into the perpetual portion of the *waqf* scheme or donate funds to its non-perpetual portion to cover the shortfall.

In addition to the above design features, and as with any SCDIS, the trigger for intervention must be clearly specified, as must responsibility for determining when the trigger has been met, as must responsibility for resolution actions. Regardless of the resolution authority, the governing body and management of the SCDIS must be part of an effective framework within the financial safety net that provides for the early detection of, and timely intervention in, Islamic banks in financial difficulty before the Islamic bank becomes non-viable (Table I).

SCDIS	<i>Kafalah bi al-ajr</i> -based model	<i>Takāful</i> -based model	Cash <i>waqf</i> -based model
Underlying principle	<i>Kafalah bi al-ajr</i>	<i>Takāful</i>	Cash <i>waqf</i>
Types of accounts protected	Deposits only ( <i>Malaysia</i> )	Deposits and IAHS ( <i>Sudan</i> ) Deposits and UPSIA ( <i>Bahrain and Jordan</i> )	Deposits and IAHS
Protection mechanism (deposits)	IIFS pays annual fee to the deposit insurer	IIFS pays annual contribution to a separate portfolio in the <i>takāful</i> fund ( <i>Sudan &amp; Jordan</i> )	IIFS endows annual amount to a separate portfolio in the <i>waqf</i> fund
Protection mechanism (IAHS)	Not applicable	IIFS pays annual contribution to the <i>takāful</i> fund ( <i>Bahrain</i> ) IAHS pay annual contribution to a separate portfolio in the <i>takāful</i> fund ( <i>Sudan and Jordan</i> )	IAHS endow annual amount to a separate portfolio in the <i>waqf</i> fund
Mode of provision	The deposit insurer provides disbursement from its own funds to cover eligible deposits	The deposit insurer provides disbursement from the respective portfolio of the <i>takāful</i> fund to cover eligible types of accounts	The deposit insurer provides <i>qard</i> from the respective portfolio of the <i>waqf</i> fund to cover eligible types of accounts
Recoveries	The deposit insurer shall become subrogated to all rights of the depositors against the failed IIFS in recovering the disbursed amount	The respective portfolio of the <i>takāful</i> fund shall become subrogated to all rights of the depositors and IAHS against the failed IIFS in recovering the disbursed amount	The <i>waqf</i> fund shall recover the amount of <i>qard</i> disbursed to the IIFS from the assets of the failed institution. While, the amount of <i>qard</i> disbursed to the IAHS will be recovered from the assets financed by those accounts via the use of <i>hawalah</i> contract
Strengths	Simplicity of the arrangement and the ability to apply the concept of subrogation	The <i>Sharī'ah</i> acceptance of the concept of <i>takāful</i>	The <i>Sharī'ah</i> acceptance of the concept of cash <i>waqf</i> and the ability of the <i>waqf</i> fund to recover the disbursed amounts via the use of the <i>qard</i> mechanism
Weaknesses	The <i>Sharī'ah</i> prohibition on taking a fee for a guarantee by the majority of scholars	The lack of <i>Sharī'ah</i> basis for applying the concept of subrogation, which would prevent the <i>takāful</i> fund from recovering the disbursed amounts	The difficulty in applying such model in jurisdictions where the trust structures are not recognized

**Table I.**  
Highlighting the salient features of the three SCDIS

The following sub-section provides some operational examples of the cash *waqf* SCDIS.

#### 4.1 Operational examples

*Example 1:* A jurisdiction will establish a cash *waqf* scheme with two portfolios. One for the protection of current and saving accounts and the other one for the protection of investment accounts (Figure 2):



- All deposit-taking Islamic banks will be members of the SCDIS and make annual cash *waqf* contributions into the first portfolio, whereas IAHS will make annual cash *waqf* contributions into the second portfolio along with the founders of the scheme who will provide equal contributions to the two portfolios.
- Islamic Bank 1 experienced a number of defaults by major clients that caused its capital adequacy ratio to deplete well below the minimum regulatory requirements.
- The current and savings accounts are eligible to receive repayments from the first portfolio, whereas the investment accounts are eligible to receive payments from the second portfolio.
- The resolution authority undertakes that Islamic Bank 1 is insolvent and that protection by the SCDIS for the specific purpose of repayments to depositors is applicable.
- The SCDIS provides an interest-free loan to the Islamic bank from the two portfolios equivalent to an amount that reflects the number of eligible customers and their deposits, subject to the prescribed limit.
- The resolution authority oversees and ensures that funds transferred from the *waqf* scheme to the Islamic bank are channelled to all eligible current and saving account holders who are repaid their eligible sums, whereas the *waqf* scheme can transfer funds directly to all eligible IAHS without the need to go through the Islamic bank.
- The eligible depositors receiving protection from the same portfolio rank *pari passu* in terms of priority of receiving reimbursements.
- The SCDIS has a claim on the Islamic bank and the IAHS for the funds given as *qard*.
- The SCDIS will recover as much as possible of the *qard* given to the Islamic bank from the assets of the failed Islamic bank before waiving any remaining portion of the debt. The waived portion of the debt must not be part of the perpetual portion of the *waqf* scheme.
- The SCDIS will recover as much as possible of the *qard* given to the IAHS from the assets financed by their funds in the failed Islamic bank using the contract of *hawālah*. In other words, the IAHS would transfer the obligation to pay their debt to the failed Islamic bank, which will then be required to liquidate the assets of the investment pool and use the proceeds to pay the debt of the IAHS. In case, the generated proceeds are less than the debt amount, the SCDIS would waive the remaining portion of the debt provided

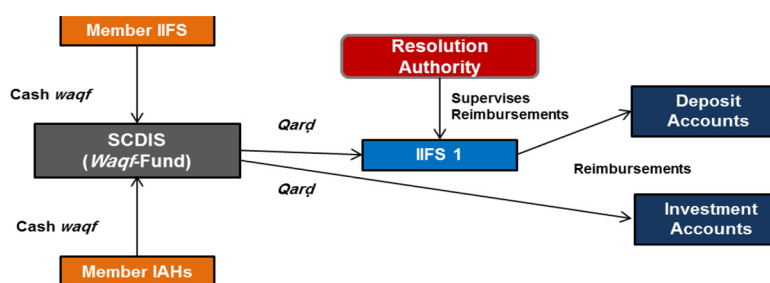


Figure 2. Illustration depicting the first operational example

that the waived portion of the debt must not be part of the perpetual portion of the *waqf* scheme.

*Example 2:* A jurisdiction will establish a *waqf* scheme with a single portfolio for the protection of current and saving accounts. There is a fund shortfall in the SCDIS (Figure 3):

- All deposit-taking Islamic banks are members of the SCDIS and make annual cash *waqf* contributions into the scheme along with its founders.
- Islamic Bank 1 experienced a number of defaults by major clients that caused its capital adequacy ratio to deplete well below the minimum regulatory requirements.
- The current and savings accounts are eligible to receive repayments from the *waqf*-based scheme, whereas the IAHS are not eligible to receive any payments.
- The resolution authority undertakes that Islamic Bank 1 is insolvent and the protection from the SCDIS for the specific purpose of repayments to depositors is applicable.
- There is a funds shortfall in the SCDIS and the government injects funds as temporary cash *waqf* that may be withdrawn once the reserves in the SCDIS are replenished.
- The SCDIS provides an interest free loan to the Islamic bank equivalent to an amount that reflects the number of eligible customers and their deposits, subject to the prescribed limit.
- The resolution authority oversees and ensures that funds are channelled to all eligible depositors who are repaid their eligible sums.
- The eligible depositors rank *pari passu* in terms of their priority of receiving reimbursements.
- The SCDIS has a claim on the Islamic bank for the funds given as *qard*.
- The SCDIS will recover as much as possible of the *qard* from the assets of the failed Islamic bank before waiving any remaining portion of the debt. In such a case, the waived portion of the debt must not be part of the perpetual portion of the *waqf* scheme.

4.2 Limitations

The proposed cash *waqf* scheme presents an alternative to RSAs for implementing a SCDIS that has the potential to overcome certain *Shari'ah* and operational challenges found in the existing SCDIS modalities in practice. However, the authors duly acknowledge limitations in the modality proposed above.

Prominently, a cash *waqf* scheme is only implementable in jurisdictions that recognise trust structures. This concept is known in many common law jurisdictions, but not in some

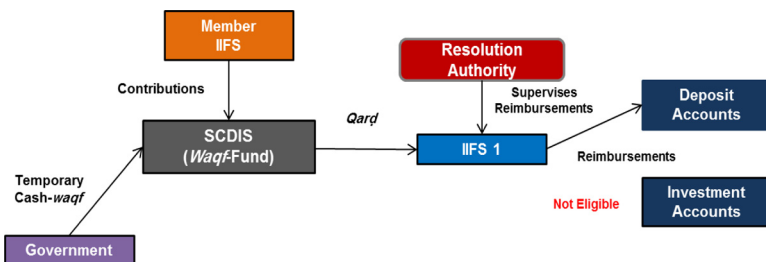


Figure 3. Illustration depicting the second operational example

civil law jurisdictions. As a result, the modality may not be implementable in all jurisdictions. An alternative to using trust structures could be to make use of special purpose vehicles as is commonly done for issuances of *shukūk* instruments. However, that would require ownership of the SCDIS funds by the contributing parties, which is not the case in a trust where the fund operates in perpetuity for the specific purpose of benefiting the beneficiaries.

Furthermore, the above modality proposes that the funds from the SCDIS be disbursed to the current and saving account holders through the Islamic bank, which may raise certain qualms in RSAs. The resolution authority needs to ensure that the insolvent Islamic bank has operational capability to receive these funds and then accordingly disburse them to the eligible current and saving account holders following necessary rules and regulations and without any leakage of these funds to uninsured depositors.

Besides, the modality presented herein has undertaken a simplistic theoretical approach towards defining its operations. The model does not define alternative powers of the SCDIS to support the resolution process, for instance by supporting mergers of the failed Islamic banks with other sound Islamic banks. In addition, the model leverages and relies on the resolution authority for recognising event triggers and overseeing depositor repayments, but does not address detailed guidelines on the same.

Finally, some *Sharī'ah* opinions used in this model to support its permissibility may not be acceptable in all jurisdictions. Overall, the model has attempted to provide some thought provoking alternative ideas for the various stakeholders to consider in the implementation of the SCDIS. To address these challenges identified, collaborative efforts need to be undertaken by the relevant RSAs and other appropriate authorities.

## 5. Conclusion

The role of SCDIS is gaining importance as Islamic banking is expanding and achieving sizable market share in diverse jurisdictions. SCDIS is an integral component in the overall integrated stability framework of a financial sector. Yet, the current implementation of SCDIS remains nascent – as at time of writing – only five jurisdictions are known to introduce an SCDIS. Among these five, three are based on *takāful*, whereas two others on *kafālah bi al-ajr*.

In this paper, we make a first attempt to critically highlight the *Sharī'ah*-compliance and operational challenges of the existing SCDIS structures based on both *takāful* and *kafālah bi al-ajr*. In particular, the inability of the *takāful* fund to have recourse to the insolvent Islamic bank to get back the financial assistance it provided; and the issue of taking fees in the *kafālah bi al-ajr* model, as the majority of scholars do not allow the practice of taking a fee in exchange for a guarantee.

As a second important contribution, we propose an additional SCDIS modality based on cash *waqf* that has the potential to overcome the challenges in existing SCDIS structures while complying with the rules set in Islamic jurisprudence and with contemporary regulations and standards of best practices for deposit insurance schemes. To support the practical aspect of this modality, we further provide two operational examples of the *waqf* SCDIS in an event, which triggers action by the SCDIS.

Finally, we set the foundation for further research in the area that should explore viable and *Sharī'ah*-compliant alternatives, not only for SCDIS but also for other components of financial safety nets, including lender-of-last-resort and resolution and recovery frameworks for Islamic finance.

## Notes

1. The authors are grateful to Professor Kabir Hassan (the editor), anonymous reviewers of the this journal, and also the various participants at the 11th International Conference on Islamic Economics and Finance (ICIEF), 11-13 October 2016, Kuala Lumpur, Malaysia for their valuable comments, which improved the quality of the article greatly. The views expressed in this paper are those of the authors and do not necessarily reflect those of the IFSB.
2. Financial safety-nets are always in the interest of financial sector stakeholders – having SCDIS protection for Islamic banks deposit accounts is likely to strengthen the financial stability of the Islamic finance industry and this in turn will have a positive impact on the society, particularly those where Islamic banking is a sizeable section.
3. *Sharī'ah*-compliant lender-of-last-resort facility (SLOLR) refers to the discretionary provision of liquidity via tools and instruments that are consistent with *Sharī'ah* rules and principles to an Islamic bank by the central bank during times of liquidity stress. For more details, see [Chatta and Wan Abdul Halim's study \(2014\)](#).
4. *Sharī'ah*-compliant deposit insurance scheme (SCDIS) is a scheme that aims at promoting financial stability and protecting depositors of a failing Islamic bank from loss by virtue of providing protection or guarantee to deposits in a manner that is consistent with *Sharī'ah* rules and principles. For more details, see [Najeeb and Mustafa's study \(2016\)](#).
5. Subrogation refers to the ability of *takāful* operators to claim from a third party on behalf of the participants ([Hussain, 2009](#)).
6. Another possible alternative for the protection of the investment accounts would be for the RSA to encourage the Islamic banks to contribute to a second portfolio designated for the protection of such accounts. The RSA can provide a number of incentives to encourage the Islamic banks to contribute on a voluntary basis to the second portfolio whose aim is the protection of investment account holders. To avoid the voluntary basis of such contributions from becoming an established custom, which will lead to it becoming a condition in line with the legal maxim “a matter recognized by custom is like a [contractual] stipulation”, it is proposed that the level of protection accorded to such accounts must remain unknown. In other words, it will be left up to the discretion of the governing body to decide on the protection limit accorded to the investment accounts at the time a participating Islamic bank becomes eligible to receive financial assistance from the *Waqf* scheme.
7. Classical jurists of the Hanfī and Malīkī schools allowed cash *waqf* to provide loans to the beneficiaries as the perpetuity of the *waqf* can be maintained by requiring the loans to be paid in full to the *waqf*. See ([Al-Dardīr, n.d.](#); [Ibn 'Abdīm, 1992](#)). Moreover, the International Islamic Fiqh Academy has adopted this opinion by permitting the endowment of cash for the purpose of giving it to the beneficiaries in the form of benevolent loan ([International Islamic Fiqh Academy, 2004](#)).

## References

- Abdullah, A. (1985), “Jawāz Akhd al-Ajr aw al-‘Umūlah fī Muqābil Khitāb al-Ḍamān”, *Proceedings of the Second Session of the International Islamic FIQH Academy of the OIC*, Jeddah, Vol. 2, pp. 1146-1147.
- Abdullah, N. and Fares, D. (2012), “Applications of Malaysia deposit insurance corporation (MDIC) to Takāful operators: an analysis from the Sharī'ah advisors' perspective”, *Information Management & Business Review*, Vol. 4 No. 12, pp. 615-624.
- Ahmad, O.B. (2000), “Nizām Hīmāyat al-Wadāi' Ladā al-Maṣārīf al-Islāmiyyah”, Research paper [54], The Islamic Research and Training Institute, pp. 1-122.

- Al-Bahūtī, M. (1993), *Sharḥ Muntahā Al-Īrādāt*, ʿĀlam al-Kutub, Beirut.
- Al-Ddamīrī, B. (2008), *Al-Shāmīl Fī Fiqh Al-Āmām Mālik*, Markaz Najībawāih lil Makhtūṭāt wa Khidmat al-Turāth, Cairo.
- Al-Ḥaṭṭāb, S. (1992), *Mawāhib Al-Jalīl Fī Sharḥ Mukhtaṣar Khalīl*, Dār al-Fikr, Beirut.
- ʿAlīsh, M. (1989), *Mīnah Al-Jalīl Sharḥ Mukhtaṣar Khalīl*, Dār al-Fikr, Beirut.
- Al-Kāsānī, A. (1986), *Badāʾiʿ Al-Ṣanāʾiʿ Fī Tartīb Al-Sharāʾiʿ*, Dār al-Kutub al-ʿilmiyyah, Beirut.
- Al-Māwardī, A. (1999), *Al-Ḥawāʾi Al-Kabīr*, Dār al-Kutub al-ʿal-b tub, Beirut.
- Al-Qarāfī, S. (1994), *Al-Dakhīrah*, Dār al-Gharb al-Islāmī, Beirut.
- Al-Sarkhsī, M. (1993), *Al-Mabsūṭ*, Dār al-Maʿrifah, Beirut.
- Al-Suyūtī, J. (1990), *Al-Ashbāh Wa Al-Nazāʾir*, Dār al-Kutub al-ʿIlmiyyah, Beirut.
- Al-Thamālī, A. (n.d.), “Waqf al-Nuqūd”, available at: <http://waqef.com.sa/upload/ANCTxibGj5VS.pdf> (accessed 2 July 2017).
- Al-Zuhailī, W. (n.d.), *Al-Fiqh Al-Islāmī Wa Adīlatuhū*, Dār al-Fikr, Damsqus.
- Chatta, J.A. and Wan Abdul Halim, W.N. (2014), “Strengthening the financial safety net: the role of Sharīʿah-Compliant Lender-of-Last-Resort (SLOLR) facilities as an emergency financing mechanism”, working paper no. 1, IFSB Working Paper Series, Kuala Lumpur.
- Hussain, M. (2009), “Legal issues in Takāful”, in Archer, S., Abdel Karim, R.F. and Nienhaus, V. (Eds), *Takāful Islamic Insurance Concepts and Regulatory Issues*, John Wiley & Sons (Asia) Pte. Ltd.
- Ibn ʿAbdīn, M. (1992), *Rad Al-Muḥtār ʿAlā Al-Dur Al-Mukhtār*, Dār al-Fikr, Beirut.
- Ibn Nujaym, Z. (1999), *Al-Ashbāh Wa Al-Nazāʾir*, Dār al-Kutub al-ʿIlmiyyah, Beirut.
- Ibn Qudāmah, M. (1968), *Al-Mughnī*, Maktabat al-Qāhīrah, Cairo.
- International Islamic Fiqh Academy (1985a), “Resolution no. 9 (2/9)”, *Second Session of the International Islamic Fiqh Academy of the OIC*.
- International Islamic Fiqh Academy (1985b), “Resolution no. 12 (2/12)”, *Second Session of the International Islamic Fiqh Academy of the OIC*.
- International Islamic Fiqh Academy (2004), “Resolution no. 140 (6/15)”, *Fifteen Session of the International Islamic Fiqh Academy of the OIC*.
- Islamic Financial Services Board (2016), “Islamic financial services industry stability report”, available at: [http://ifsb.org/docs/IFSI%20Stability%20Report%202016%20\(final\).pdf](http://ifsb.org/docs/IFSI%20Stability%20Report%202016%20(final).pdf) (accessed 12 September 2016).
- Kahf, M. (2005), “Ḍamān al-Wadāʾiʿ fī al-Mṣārīf al-Islāmiyyah fī al-Urdun”, Paper submitted to Jordan Deposit Insurance Corporation.
- Mikail, S., Bouheraoua, S., Ahmad, A.J., Razak, S.H. and Abdullah, N.I. (2014), “Protecting Takāful against the risk of failure: a critical appraisal of the Takāful Benefits Protection System (TBPS) in Malaysia”, ISRA Research Paper No. 66, pp. 1-35.
- Najeeb, S.F. and Mustafa, M.M. (2016), “Strengthening the financial safety net: the role and mechanisms of Sharīʿah-Compliant Deposit Insurance Schemes (SCDIS)”, working paper no. 6, IFSB Working Paper Series, Kuala Lumpur.
- Noor, A. and Haron, M. (2011), “Charging fee for guarantee (Kafālah bi al-Ajr) and its application by Deposit Insurance Corporation Malaysia (PIDM) for Takāful Benefits Protection Scheme”, Proceedings of the 8th International Conference on Islamic Economics and Finance, *Doha*, 19-21 December 2011.
- Sharīʿah Advisory Council of Bank Negara Malaysia (2010), *Sharīʿah Resolutions in Islamic Finance*, Bank Negara Malaysia, Kuala Lumpur.
- The Council of Fatwā, research and Islamic studies (2012), “Resolution no. 181 (13/2012)”, available at: [www.aliftaa.jo/DecisionPrint.aspx?DecisionId=185](http://www.aliftaa.jo/DecisionPrint.aspx?DecisionId=185) (accessed 12 September 2016).



The International Association of Deposit Insurers (IADI) (2014), *Core Principles for Effective Deposit Insurance Systems*, International Association of Deposit Insurers, Basel.

The Higher Shari'ah Supervisory Board of the Central Bank of Sudan (2006), "Resolution no. (13/92)", available at: [www.cbos.gov.sd/sites/default/files/fatawa\\_book\\_01.pdf](http://www.cbos.gov.sd/sites/default/files/fatawa_book_01.pdf) (accessed 28 June 2017).

#### Further reading

Laldin, M.A., Bouheraoua, S., Ahmad, A.J., Razak, S.H. and Abdullah, N.I. (2013), *Islamic Legal Maxims and Their Application in Islamic Finance*, International Shari'ah Research Academy for Islamic Finance (ISRA), Kuala Lumpur.

The Islamic Deposit Insurance Group of the International Association of Deposit Insurers (2010), *Deposit Insurance from the Shari'ah Perspective*, The International Association of Deposit Insurers, Basel.

The Islamic Deposit Insurance Group of the International Association of Deposit Insurers (2014a), *Insurability of Islamic Deposits and Investment Accounts*, The International Association of Deposit Insurers, Basel.

The Islamic Deposit Insurance Group of the International Association of Deposit Insurers (2014b), *Shari'ah Approaches for the Implementation of Islamic Deposit Insurance Systems*, The International Association of Deposit Insurers, Basel.

#### Corresponding author

Madaa Mustafa can be contacted at: [madaa.m@gmail.com](mailto:madaa.m@gmail.com)

For instructions on how to order reprints of this article, please visit our website:

[www.emeraldgroupublishing.com/licensing/reprints.htm](http://www.emeraldgroupublishing.com/licensing/reprints.htm)

Or contact us for further details: [permissions@emeraldinsight.com](mailto:permissions@emeraldinsight.com)

Reproduced with permission of copyright owner. Further reproduction prohibited without permission.