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# Prize-giving to the premium savings certificate holders

## A *Shari'ah* compliance review on the Bank Simpanan Nasional (National Savings Bank) in Malaysia

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### Abstract

**Purpose** – Considering the popularity of the premium savings certificate (PSC) of the National Savings Bank of Malaysia (Bank Simpanan Nasional (BSN)) the paper aims to justify the *Shari'ah* compliancy of this product by analyzing its underlying contracts and to propose a *Shari'ah* compliant savings certificate, if the current practice is invalid in the *Shari'ah*.

**Design/methodology/approach** – Inductive methodology is first used to obtain a basic understanding of this product and the characteristics of *Shari'ah* approved contracts as well as the views of the jurists. Interviewing method is also used to acquire first-hand information when the inductive method is not sufficient. Afterwards, an analytical approach is adopted to justify the validity of this contract with the *Shari'ah* principles. Finally, an innovative methodology is used to propose a *Shari'ah* compliant savings certificate.

**Findings** – The paper argues that the underlying contract used in PSC violates the conditions of w*adi'ah* contract, as in *wadi'ah,* the bank is not allowed to spend the money for investment, but in practice, BSN uses the money for investment. Therefore, the underlying contract in PSC turns into *qard* (loan) contract. Since the scholars unanimously declare that giving any kind of benefit like prizes to the creditor is *riba*, then PSC is considered as invalid according to the *Shari'ah*. On the other hand, although PSC might seem like gambling, it is different from gambling as the prizes given to PSC are from a third party. The paper proposes implementing *mudarabah* contract in PSC where the bank is allowed to invest according to its interest and the depositors share the profit and loss but the huge fluctuation of profit and loss could be shrunk by a special fund method.

**Originality/value** – In particular, it attracts the attention of BSN management to change their product's features. In general, it discovers a non-*Shari'ah* compliant feature of savings certificates and outlines the feature of a *Shari'ah* compliant saving certificate for the practitioners of Islamic banking all over the world.

**Keywords** Premium savings certificate, *Shari'ah* compliancy, *Wadi'ah*, *Qard*, *Mudarabah*, Banking, Malaysia

**Paper type** Research paper

### 1. Introduction

Giving prizes to the premium savings certificate (PSC) holders is a crucial issue as it has become a popular product around the globe, especially in Malaysia. At the same time, it is facing controversy from the *Shari'ah* point of view. In Malaysia, the National Savings Bank named Bank Simpanan Nasional (BSN) offers to its customers a savings certificate where the bank gives prizes to the certificate holders by making monthly draws.

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A large number of customers are buying this certificate as they are motivated by the prizes which are given to them. On the other hand, the majority of the *Shari'ah* scholars declare that every loan which results from any benefit to the creditor is *riba*, which is obviously prohibited. Thus, there must be an alternative to this product, which should meet *Shari'ah* principles and is able to attract the customers at the same time.

The objective of this paper is to examine the *Shari'ah* compliancy of this product in the National Savings Bank (BSN) in Malaysia. First, the paper will give a brief introduction on BSN and the PSC product. After that, it will highlight the underlying contract used in this product from the *Shari'ah* perspective. Among the *Shari'ah* prescribed contracts, *wadi'ah* and *qard* contracts resemble the savings concept most. It will assess the exact underlying contract of PSC and the *Shari'ah* rulings resulting from that contract. Moreover, it attempts to justify the issue of gambling pertaining to this product with legality of the *Shari'ah*. Finally, it endeavors to establish a *Shari'ah* compliant model for this product. The study is limited to analyzing the underlying contracts of PSC and the issues related to it.

## 2. An introduction to BSN

BSN is a government-owned bank. It was officially launched by Tun Abdul Razak on the 5 December 1974 with the vision of becoming one of the most dynamic and efficiently operated savings banks in providing comprehensive financial services for the Malaysians. The mission of this national bank is to improve the economy and quality of life for the Malaysians by encouraging savings, investment and wise financial practice as well as provision of facilities for the aforementioned purpose (BSN, 2009).

BSN is governed under the Act of BSN 1974 and Act of Parliament 146 (Awang, 2004). It takes over all the tasks and the responsibilities of the post office savings bank. Since its beginning, it has committed itself to provide banking products and services, continuously trying to improve its products and services to attract the customers (BSN, 2008).

Products and services in BSN are divided into conventional banking scheme and Islamic banking scheme. BSN's main conventional products include current accounts, savings accounts, investment accounts, PSCs, debit cards, credit cards, personal loans and home loans, among others. On the other hand, the Islamic banking scheme offers products which are in accordance with the *Shari'ah*, which includes Islamic savings accounts, *al-mudarabah* accounts, Islamic debit cards, Islamic credit cards, personal financing and home financing. BSN has more than 5,100 employees and 382 branches. It has more than seven million customers around the country and its deposits have exceeded RM 8 billion (BSN, 2009).

## 3. An overview of PSC

The PSC was launched on 1 June 1978 with the objective of attracting people to save money. This scheme is characterized by savings in the form of certificates which may or may not be given interest on. Intended as an incentive to attract the public to save, the bank gives rewards to the certificate holders in a random selection (Awang, 2004).

The PSC is a numbered savings certificate which is redeemable, either on demand or otherwise, issued by the bank for a deposit account on which dividends may or may not be payable, and which may or may not participate in periodical draws held by the bank for the award of bonus payments, by way of cash or otherwise to the holders thereof. This scheme is implemented under section 33, Akta BSN 1974[1]. Every certificate may be redeemed according to the value of the certificate without any reduction in its value.

This certificate can be purchased from BSN through various methods, such as SMS, BSN ATM machine network, BSN branches and BSN promotion counters all over the country. For the purchase of PSC at BSN branches, the certificate shall be issued with immediate effect. Individuals aged 12 years and above are eligible to purchase the PSC. The minimum purchase is one unit worth RM 10.00. There is no maximum purchase limit. Every unit is registered under the name of the holder and is not transferable. Organizations and corporate bodies also may purchase the certificate as bonus payments, excellent service awards and incentives for the staffs (Awang, 2004).

Dividends are paid to the certificate holders which is determined by the bank. For example, on 26 January 2008, BSN announced a dividend payment to PSC scheme depositors in the year 2007 who kept their PSC saving amounting RM 2,000 and above starting 30 June 2007 till 31 December 2007 without redeeming. A dividend of 0.5 percent was given for the period of 30 June until 31 December 2007. It is estimated that a total of RM 3 million was used by BSN to make dividend payments starting March 2008 (Abdullah, 2008).

The certificate holders are participants of draws which are made periodically to select the winners of prizes. A number of attractive prizes are given to the holders to promote a saving culture via the PSC scheme. In 2008, this scheme offered 1,616 prizes[2].

The PSC has become a popular product among the Malaysians, receiving an encouraging response from the Muslims. This is proven when the overall total depositors under the BSN PSC scheme reached more than 1.3 million with overall savings worth almost RM 900 million and total savings exceeding 84 million units as of July 2007 (Abdullah, 2008).

## 4. Acceptance of PSC in the legal framework of the *Shari'ah*

Determining the *Shari'ah* appraisal of PSC requires analyzing the underlying contract of this product, whether it is in accordance with the parameters of the *Shari'ah* or otherwise.

### *4.1 The contracts used in PSC*

As PSC is a savings certificate, the concept of savings is used in its transaction. The *Shari'ah* term which describes a savings contract is *wadi'ah*. There is no doubt that *wadi'ah* is a permissible contract in the *Shari'ah* as several texts of the *Shari'ah* approve this contract. However, the concept of savings in conventional banking differs from the concept of *wadi'ah*. There are some conditions of *wadi'ah* contract which should be fulfilled to be accepted in the *Shari'ah*. Therefore, it could be questioned that the savings contract practiced in BSN might not be in line with the *Shari'ah* approved savings contract or *wadi'ah*. This paper will elaborate on the features of *wadi'ah* in the *Shari'ah* and examine whether PSC includes *wadi'ah* contract or otherwise. Furthermore, it will examine the *Shari'ah* rulings arising from the result, if PSC does not involve *wadi'ah* contract.

### *4.2 Definition of Wadi'ah contract and its permissibility in the* Shari'ah

Literally, *wadi'ah* means something that is left by someone to be guarded (Ibn Abidin, 2000, p. 515) or something that is placed under custody of someone other than the owner for the purpose of safeguarding it (Al-Zuhayli, 2006, p. 4016). The majority of scholars defined *wadi'ah* as "representing others to safeguard an asset that one owns in a specific way" (Al-Sharbini, 2006, p. 79). According to the *Hanafi* school of jurisprudence, "*wadi'ah* is giving permission to someone for the safekeeping of one's asset, either clearly stated or unstated" (Al-Jariri, 1986, p. 250).

Basically, in *wadi'ah* contract, a person gives an asset to another person for safekeeping. The person who is entrusted to keep the asset is not allowed to invest it or spend it. He will just take care of the asset according to the normal custom of the society, and he is not responsible for compensation if the asset is damaged except it is caused by the negligence of the trustee. The entrusted person should always be ready to give back the asset to the owner when he requests for it. In fact, the entrusted person cannot get any benefit from the asset. Therefore, it is a type of voluntary contract where the safekeeper merely gives the service of safekeeping to the owner of the asset. So, *wadi'ah* is different from *qard* (loan) contract where the debtor can invest the asset or spend it but he is responsible for giving back the asset or its values to the creditor. Moreover, in *qard* the ownership of the item is transferred to the borrower but in *wadi'ah* the ownership is not transferred to the trustee.

*Wadi'ah* contract is praiseworthy in Islam. The Quranic verse which legislated the permissibility of *wadi'ah* contract is:

> Allah doth command you to render back your Trusts to those to whom They are due; and when ye judge between man and man, that ye judge with justice: Verily How excellent is the teaching which He giveth you! for Allah is He who heareth and seeth all things (*Al-Quran*, 4: 58).

In relation to this, Prophet Mohammad (*pbuh*) used to keep trusts and he ordered the Muslims in the following *Hadith*: "Fulfill the trust to the one who gave you the trust, and do not betray to the one who betrayed you" (Abu Dawud, 1999).

### *4.3* Shari'ah *principles and conditions of* wadi'ah *contract*

The principles of *wadi'ah* according to *Hanafi* school of jurisprudence are *Ijab* (offer) and *Kabul* (acceptance) (Al-Kasani, 2000, p. 270).

On the other hand, the majority of the scholars say that *wadi'ah* consists of three principles which are:

(1) The two persons engaged in the contracts, the owner and the receiver of *wadi'ah*.

(2) The item or the commodity which is given for safekeeping.

(3) *Ijab* (offer) and *Qabul* (acceptance).

According to the *Hanafi* scholars, the first and the second principles of *wadi'ah* contract described by the majority of the scholars are considered as the conditions of the contract (Al-Sharbini, 2006, p. 80).

### *4.4* Shari'ah *ruling related to the maintenance of* wadi'ah

The *Shari'ah* prescribes the following rulings to the entrusted person to maintain *wadi'ah* contract (Al-Khafif, 1996, p. 433):

- The person who is entrusted to safeguard the item must care and maintain the item according to the custom and normal practices. The trustee must surrender the trusted item to its rightful owner or his representative.

- If the rightful owner or trustee dies while the item is still in the possession of the trustee or his heir, then the item must be surrendered when the rightful owner or his heir demands it.
- The trustee must return the trusted items when demanded by the owner and the trustee shall not delay the matter. If the item is not surrendered with immediate effect and the item is subjected to sudden damage, the trustee shall bear the responsibility of compensation.
- The item which is entrusted for safekeeping is a matter of trust. Thus, if damaged, no compensation shall be imposed on the trustee unless the damage is caused due to the trustee's negligence.

### *4.5 The circumstances where* wadi'ah *is changed into guarantee (*Damanah*) contract*

From the viewpoint of Islamic jurisprudence, a *wadi'ah* contract will be changed into a guarantee contract in certain circumstances. This is a very important issue, as in this case, the entrusted person is responsible for compensation of the item if it is damaged. In the following cases, the *wadi'ah* contract will change into a guarantee contract (Al-Zuhayli, 2006, pp. 4024-33):

- The trustee neglects his job to safeguard the item, which results in the item being damaged. In this case, the trustee is liable to compensate for the damaged item.
- The trustee transfers the item to someone, who is not his subordinate, to take care of the item.
- The *wadi'ah* holder uses the item and gets benefits. He must pay compensation if it is damaged.
- The holder travels with the *wadi'ah* item.
- The owner of the commodity demands the item but the trustee does not surrender the item to the owner without any valid excuse.
- Merging the *wadi'ah* item with another person's *wadi'ah* item will hold the trustee liable to compensate both the items if damaged.
- The trustee breaches the conditions imposed by the owner in taking care of the *wadi'ah* item.

### *4.6 Assessing the compatibility of PSC with* wadi'ah *contract*

Based on the previous discussion, it is pertinent to evaluate whether the PSC goes under *wadi'ah* contract or otherwise. The BSN management does admit that they use the depositors' money for investment. Arif (2008) mentioned that in the context of PSC, BSN has used the PSC depositors' money for the purpose of investment and merged the PSC depositors' money with other depositors'. Therefore, the PSC is under the two circumstances where the *wadi'ah* contract is changed into a guarantee contract, using the trust item and merging the trust item with the other item. Thus, the depositors' money in PSC is justified as *wadi'ah yad damanah* (savings with guarantee) and it is not *wadi'ah*.

Consequently, the money deposited to the bank is a loan to the bank from the *Fiqhi* point of view. According to the Islamic jurists, *wadi'ah yad damanah* (savings with guarantee) is in fact, giving loan to the bank from the depositor. Al-Qardawi (1998, p. 47) indicated that when the concept of *wadi'ah yad damanah* (savings with guarantee) is being used as a banking product, the bank's relationship with the owner or depositor in *wadi'ah* account should be debtor and creditor.

In addition, regarding this issue, the international *Fiqh* Academy of the Organization of Islamic Conference (OIC) (1998) in their ninth session decided that:

> Savings money in an account that may be withdrawn at any time, whether in Islamic banks or conventional banks, are considered as loans in the view of *Fiqh* ruling. The bank, as a receiver of the deposit, is responsible for the deposit and must return when demanded by the depositor. The bank keeps the savings with a guarantee responsibility.

Likewise, Al-Salus (2003) stated that the *wadi'ah* contract practiced in the bank is not named based on its real practice; it is not *wadi'ah*, because the bank does not take the money for safekeeping but spends it, and is obliged to return the equal amount.

Finally, Al-Zuhayli (2006, p. 3797) mentioned that money placed in safe deposit and investment certificates are considered as *qard* (debt) because of non-*wadi'ah* relationship (between depositor and their deposit) as assumed by some jurists. This is because if it is treated as savings, then the bank cannot use the money as capital, as in the *wadi'ah* contract (savings) the deposit holder only acts as a keeper and not as an asset manager.

Based on the above discussion and the arguments of the scholars, it is clear that when the bank uses the money deposited by the depositors, it changes the *wadi'ah* contract into a *wadi'ah yad damanah* contract. The jurists are unanimous on the opinion that when the concept of *wadi'ah yad damanah* is used in banking products, then it shall be assumed as *qard* (loan) from the depositor to the bank.

Therefore, there is a need to elaborate the definition of a *qard* (loan) contract and its permissibility in the *Shari'ah*. In the case of PSC, the bank gives a guarantee to the depositors and promises prizes to the depositors. Therefore, it raises a question: is it permissible in the *Shari'ah* to give prizes to the creditors in a *qard* contract? The scholars' opinions will be discussed on this issue in this paper.

### *4.7 Definition of* qard *(loan) contract and its permissibility in the* Shari'ah

According to the *Hanafi* scholars, *qard* is the act of giving a valuable asset by a person to another person with the understanding of paying back. In other words, a specific contract related to the submission of a valuable asset to a person, so that the same person shall return the asset in the same proportion (Al-Zuhayli, 2006, p. 3789).

According to the *Shari'ah*, a loan is a valid contract. *Al-Quran* mentioned about the permissibility of loan contract:

> O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing, let a scribe write down faithfully as between the parties (*Al-Quran*, 2: 282).

Moreover, the jurists are unanimous on the opinion that the *qard* contract is a valid contract in the *Shari'ah*, praiseworthy for the creditor and permissible for the debtor (Al-Shaukani, 2003, vol. 5, p. 229).

### *4.8 Provision of getting benefit in consequence of a* qard *contract*

It is prohibited in Islam for any kind of benefit to be given to the creditor in consequence of the loan contract. This is because it is similar to *riba* (interest). The classical Islamic jurists agreed on the matter that, if the debtor promised to the creditor that gifts or benefits will be given to the creditor because of this loan, it would be prohibited as it would be *riba*.

There are several narrations from the companions of the Prophet (pbuh) and some *Hadiths* which are clear on the prohibition of getting benefits in consequence of a loan contract. One of the *Hadiths* is: "Every loan which has benefit is riba" (Al-Shaukani, 2003).

The following are the views of the scholars related to giving benefits in a debt contract:

- *Hanafi*, *Maliki*, *Shafi'e* and *Hanbali* scholars agree on the matter that every debt which brings benefit for the creditor is unlawful if it is set as a condition. If the benefit is not set as a condition then it is permissible (Al-Zuhayli, 2006, pp. 3793-6).
- Ibn Munjur stated:

  > They (scholars) have unanimously agreed that if the creditor imposed a condition upon the debtor of any increment or gift and he gave a loan on this commitment, truly, the taking of such excess (increment) would be *riba* (Faculty of Shari'ah and Law, Al-Azhar University, 2003, p. 19).

- Al-Qardawi (1998, p. 46) in his commentary to the *Hadith* "Every loan which has benefit is riba" mentioned that *riba* is a gift or benefit which was imposed as condition earlier in an agreement.
- The National *Shari'ah* Advisory Council, Bank *Negara* Malaysia (2008, p. 11) in the MPSK decision compilation stated that "*Hibah* (gift or present) cannot be imposed as a condition or promise in *qard* and *wadi'ah* contracts because it may lead to the element of *riba*".

Based on the above discussion, it can be concluded that PSC is not a *wadi'ah* contract which is permissible in the *Shari'ah*, but rather a loan to the bank. The bank gives prizes to the customers, as the bank promises to give prizes at the beginning of the contract. It has been stated that giving prizes to the creditors with predetermined condition is prohibited in the *Shari'ah* as it involves *riba*. Therefore, the current practice of PSC should be considered as invalid in the *Shari'ah*.

### *4.9 The issue of gambling*

It might be argued that PSC is associated with gambling as it gives prizes to a certain number of certificate holders by monthly lucky draws. Moreover, the lucky certificate holders get these rewards without making any effort. It might be questioned that this is somehow similar to gambling which is prohibited according to the unanimity of the scholars. Therefore, the issue should be justified from the *Shari'ah* perspective.

In the primary sources of Islamic jurisprudence, gambling is depicted as *maysir*. *Maysir* is defined as a game with the condition that the winner between the contestants gets something from the loser. The basic characteristics of gambling is that the winner gets something from the loser, the loser is obliged to pay, one party gets money easily without spending any effort, the achievement of money is based on luck or probability, and there is a contest among the two parties (Jurjani, 1990, p. 187).

Based on the above discussion, we could say that the characteristics of PSC are different from gambling most of the time. We could see that in gambling the winner gets something from the loser and the loser is bound to pay to the winner but in PSC the winner gets money from the third party which is the bank and the loser participant does not need to pay anything. So, to get prize from the third party is allowed according to the *Maliki* school of jurisprudence and most of the contemporary scholars (Al-Maghribi, 1992, vol. 3, p. 393).

Furthermore, in gambling, there is a great risk of loss and a very high level of competitiveness among the participants but in the PSC, there is no risk of loss of the deposit money for all participants and the contest among the participants is absent. So, PSC should be different from gambling in this sense.

Even though it is found that both in gambling and PSC the winner gets something valuable easily without making any effort, but merely depending on luck; it does not invalidate PSC in the *Shari'ah* as the winner gets something as a reward or gift; and giving gifts is permissible in the *Shari'ah*.

Moreover, if we look into the verse which prohibits gambling then we can see that gambling is prohibited because it leads to hostility, hatred among the people and turn them away from the remembrance of Allah and from prayer. Allah says:

> O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination of Satan's handwork: eschew such (abomination), that ye may prosper. Satan's plan is (but) to excite enmity and hatred between you, with Intoxicants and gambling, and hinder you from the remembrance of Allah, and from prayer: will ye not then abstain? (*Al-Quran*, 5: 90-1).

However, in PSC there is nothing that either leads people to hostility and hatred among themselves or keeps the people away from the remembrance of Allah and prayer. Therefore, we could conclude that PSC is not associated with gambling and there is a big difference between PSC and gambling.

## 5. Towards an Islamic PSC

Even though the PSC is resolved as prohibited in the *Shari'ah* because of *riba*, the option to convert this contract into a *Shari'ah* compliant product is still viable. A *mudarabah* contract can be used as an alternative to *wadi'ah* contract. It is commonly known that *mudarabah* is a recognized valid contract in the *Shari'ah*. This paper will discuss the characteristics of *mudarabah* contract and the structure of *mudarabah*-based PSC.

### *5.1* Mudarabah *contract and its validity in the* Shari'ah

A *mudarabah* contract is based on the principles of sharing profit and loss where one party provides capital and another party provides labor for business or investment. The profit is distributed between them based on a predetermined ratio. In the case of a loss, the capital provider bears the loss and the promoter loses his labor. The capital owner is called *darib* or *'amil* and the manager or promoter is named as *mudarib* (Al-Nawawi, 2004, p. 117). For example, in an investment project, A provides the capital of RM 60,000 and B takes this money and invests it utilizing his manpower and trading skills. When the duration of the investment project comes to the end, A gets 60 percent of the profit and B obtains 40 percent. Sharing the risk is the key condition of this contract. If the profit of the capital provider is guaranteed at the beginning of the contract then it is not *mudarabah* any more.

However, the International Fiqh Academy of OIC (1998) decided that a guarantee towards this capital may be made by a third party who has no relationship with the *mudarib* if it is done by *tabarru'* (voluntarily) and not be entered as a condition in the actual *mudarabah* contract. Moreover, current Islamic jurisdiction also permits the channeling of a portion of *mudarabah* profits into a special fund as a guarantee to face possible future loss. This can be done with the consent of the investor (International Fiqh Academy of OIC, 1998).

From the *Fiqhi* point of view, the companions of the Prophet (pbuh) agreed on its permissibility which is called *ijma'*. It is reported that several companions of the Prophet (pbuh) like Umar, Zayd Ibn Khalidah, Uthman, Ali, Aisha, Ibn Umar and Ibn Mas'ud practiced this contract. In fact, it was a popular contract in the age of the Prophet (pbuh) and none of them questioned its permissibility (International Fiqh Academy of OIC, 1998).

### *5.2 Types of* Mudarabah *contracts*

There are two types of *mudarabah* contracts:

(1) *Mudarabah Mutlaqah* (general *mudarabah*). The capital provider gives the capital to the promoter without specifying the type of business or investment. Similarly, the capital provider does not specify the place and time of investment. The promoter is free to do business in accordance with the custom of the traders.

(2) *Mudarabah Muqayyadah* (restricted *mudarabah*). The capital is given to the promoter, imposing certain conditions and specifications of period of investment (Haji Yaacob, 1992, p. 458).

### *5.3 Proposed structure of* Mudarabah-*based PSC*

Based on the above discussion, *mudarabah muqayyadah* (restricted *mudarabah*) contract should be used in PSC. The certificate can be named as *mudarabah* savings certificate. The structure of implementation will be as follows:

- The public (investors) will provide the capital and be given investment certificates according to the provided capital value and BSN (*mudarib*) will operate based on *mudarabah* contract.
- The management (BSN) may determine the total capital needed by every investor.
- The profit of *mudarabah* certificate may be distributed according to the total capital held by the investors.
- There will be a *mudarabah* agreement between BSN and the investors related to the use of investment, places of investment and the method used or invested.
- All profit will be distributed once or twice a year (or following whatever is jointly decided). When there is loss in investment, every investor shall be notified about the loss rate and its amount shall be adjusted by way of reducing the total capital equity.
- If any of the investors die, his capital shall be surrendered to his lawful inheritors and the investment management will not be affected.
- To prevent losses and fluctuations in profit rate, BSN can provide a special "reserved *mudarabah* fund" (RMF) for the benefit of *mudarabah* holders. This can be done by keeping a portion (or some percentage) of the yearly profit from the *mudarabah* investment into the RMF. If there is unexpected loss in any year, the loss may be recovered from RMF without causing any burden to the investors. The special fund method is advantageous compared to the third-party guarantee based on *tabarru'*, because it only involves the bank (promoter)

and the certificate holder (investor), which is more flexible. However, it is suggested that BSN should implement first the third-party guarantee based on *tabarru'* method, as there may not be any profit at the beginning of the investment. In Malaysian context, the Malaysia deposit insurance corporation, a goverment organization provides the guarantee of deposits to the clients in the event of loss, which is based on *tabarru'* (Malaysia Deposit Insurance Corporation, 2010). BSN should estimate a profit rate at the beginning of the investment, and when more than the estimated profit rate is gained in any year then it can be put in RMF. In this way, BSN can gradually be free from the third-party guarantee based on *tabarru'* method, and can merely use RMF to manage the profit rate.

- Based on the implemented *mudarabah* concept, if BSN wishes to give prizes to the certificate holders in this investment scheme then the bank may allocate a portion of its profit for that purpose. It is noteworthy to mention that the bank is allowed to give prizes to the certificate holders from its portion of profits only, but not from the total profit of the investment. Therefore, under this concept, the *mudarabah* certificate holders can get returns on their investment and opportunities to receive prizes via draws conducted according to the discretion of BSN. These prizes would be regarded as gift (*hibah*) from the bank to the certificate holders.

*5.4 Management and control by BSN*

The rights of management and the limits of control by BSN are proposed as follows:

- BSN should manage the capital based on the terms and agreements that are achieved between the investor and BSN based on *mudarabah muqayyadah*.
- BSN may purchase or invest in any security, shares, bond, etc. agreed upon based on the agreement and may give returns as allowed by the *Shari'ah*.
- BSN is not allowed to give loans to other people from this capital. Loan is not related with business; only is a practice in business. Thus, it is not included in the scope of *mudarabah*.
- BSN is subject to the specific limits and should implement the trust given and must not divert from its task. This should ensure that its investments are on the right track and within the allowed scope. The *Shari'ah* advisory board must ensure that BSN's investment is according to the agreement made with the investors, and fully *Shari'ah* compliant. Moreover, BSN should inform the investors about the investment of the capital from time to time.
- BSN is not responsible for losses. In the context of managing trust funds today, this condition may not be accepted by the investors, but the investors must have been informed that profit is not guaranteed and if there is any, it will be distributed among the investors. The proposed RMF and the third-party guarantee based on *tabarru'* are the useful methods to minimize the risks of losses, and it does not give absulute guarantee of profit, and does not make BSN responsible for loss.

**6. Conclusion**

It can be concluded that the underlying contract of PSC is a loan contract. It has been resolved that giving prizes to creditors in a loan contract is *riba*, which is prohibited by *Shar'iah*. Therefore, to get rid of *riba*, this paper suggests the *mudarabah* certificate as an alternative. In fact, *mudarabah* is very useful in the re-structuring of the PSC. On the other hand, PSC has diferent characteristics from gambling as the prizes are from the third party as a gift (*hibah*), even though it is seemed that it somehow resembles gambling. However, it is noteworthy to mention that this study is limited to analyzing the *Shari'ah* issues pertaining to the undeling contract of PSC. Further research is needed on the investment field of this product, which is a necessary criterion for a product to be *Shari'ah* compliant.

**Notes**

1. Government of Malaysia, BSN Act 1977.
2. For example, in the month of January, this scheme offered a new BMW 320i car as first prize, a Perdana V6 2.0 car as second prize, a Naza Citra 2.0 car as third prize, a Persona car as fourth prize, two *Umrah* or holiday package as fifth prize, two units of 42″ plasma TVs as sixth prize, two units of KRISS 120 MA120F(E) motorcycles as seventh prize, five units of LCD 32″ TVs as eighth prize, eight units of refrigerators as ninth prize, ten units of ASTRO decoders as tenth prize, ten units of digital cameras as 11th prize, 20 units of DVD players as the 12th prize, and 1,550 PSCs worth RM 100 as 13th prize.

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