TAKAFUL BASIC EXAMINATION (TBE) TEXTBOOK

PART A – BASIC TAKAFUL AND MEDICAL & HEALTH TAKAFUL

2018
Edition

CHAPTER A1: INTRODUCTION TO *SHARĪ'AH* AND *MU'ĀMALĀT*

Learning Objectives
To communicate effectively the *Sharī'ah* principles in *Mu'āmalāt*

Learning Outcome
Able to describe effectively the principles of *Sharī'ah* in *Mu'āmalāt*

A1.1 INTRODUCTION

The Arabic word '*Islām*' simply means 'submission', and derives from the word meaning 'peace'. In a religious context it means complete submission to the will of *Allāh SWT. Islām* is not mere religion but "*ad-dīn*", meaning 'the way of life'. It touches upon the material as well as spiritual dimensions of human existence.

Allāh SWT emphasized the completeness of *Islām* in the following *Quranic* verse;

***Allāh SWT* says:**

"This day I have perfected your religion for you, complete My blessing on you and approve Islām as the way of life for you"

(al-Maidah: 3)

1.1.1 The Concept of *Islām*

Broken down to its bare elements, *Islām* comprises of *'Aqīdah* (a set of beliefs), *Sharī'ah* (a set of laws) and *Akhlāq* (a code of moralities).

The concept of the *Sharī'ah* is not only to govern man in the conduct of his life in order to realize Divine will, but covers all behavior; spiritual, mental as well as physical. Thus, the *Sharī'ah* principles are more than law, covering the total way of life that includes faith, practices, personal behavior, legal and social transaction.

As such, *Islām* encompasses the way of life as ordained by *Allāh SWT*.

Islām can be classified into the following:

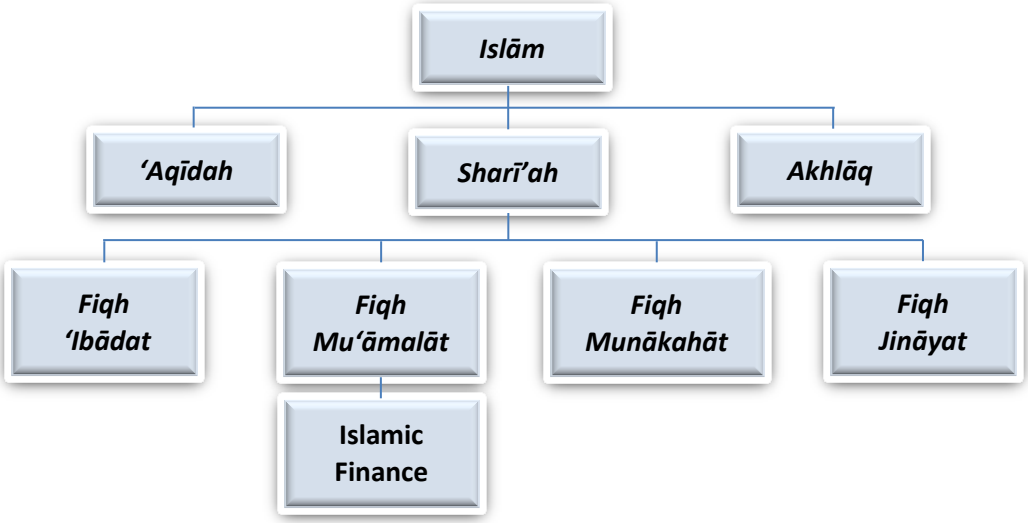


Diagram 1: Main Components of Islām

Component	Descriptions
'Aqīdah	*'Aqīdah* literally means a knot. As far as Islamic tradition is concerned, *'Aqīdah* generally refers to a firm belief in the fundamental of *Islām* which primarily centered at the pillars of *Imān*. It is a belief system that requires the highest degree of faith and accepts no doubt whatsoever. This faith (*'Aqīdah*) is founded on the belief of the Oneness of *Allāh SWT*, His Angels, His Messengers, His Books, Hereafter and His Divine decree. From this key foundation, stems the entire concepts of *Islām*, rules and regulations as expounded in the *Qur'ān* and Prophetic traditions.
Akhlāq	Practice of virtue, morality, and manners in Islamic theology and philosophy. It consists of relationship between man and *Allāh SWT*, man and man and man and other creatures.
Sharī'ah	*Sharī'ah* is the set of rules derived from both the *Qur'ān* and the authentic traditions (*sunnah*) of the Prophet *Muhammad SAW* and the scholarly opinions (*Ijtihād*) based on *Qur'ān* and Sunnah. The *Sharī'ah* contains categories and subjects of Islamic law called the branches of *fiqh* (Islamic jurisprudence).
Fiqh 'Ibādat	The rulings that govern the relationship between man and *Allāh SWT* which includes praying (*ṣalāh*), fasting (*ṣaum*), almsgiving/tithe (*zakāh*), and performing pilgrimage (*ḥajj*).
Fiqh Munākahāt	The rulings related to family law. This area deals with marriage, divorce, inheritance, guardianship and other related matters.
Fiqh Jināyat	The rulings related to criminal law. This area deals with major offences like unlawful sexual intercourse (*zina*), theft (*sarīqah*), murder (*qatl*), etc.

Fiqh Muʻāmalāt	The rulings governing commercial transactions between the parties involved in the transaction.

Table 1: Description of the Components of Islām

1.1.2 Objectives of *Sharī'ah* (*Maqāṣid al Sharī'ah*)

Maqāṣid is the Arabic word for goals or purposes. In Islamic context, it can refer to the purposes of Islamic faith.

According to Imam al-Ghazali "the objective of the *Sharī'ah* is to promote the well-being of all mankind, which is safeguarding faith (*ad-dīn*), life (*nafs*), intellect (*ʻaql*), lineage (*nasl*) and their wealth (*māl*). Whatever ensures the safeguard of these five principles serves public interest and is therefore desirable.

There are **five** *Maqāṣid* (objectives) as follows:

Preservation of	Descriptions
Faith	The preservation and protection of faith or religion *(ad-dīn)* under all circumstances. **Example:** Defending the Islamic faith particularly if it attacked by the enemies of *Islām*.
Life	The preservation and protection of life under all circumstances. **Example:** Prohibition of putting one's life in a detrimental or evil situation.
Lineage	The preservation and protection of descendants and honor under all circumstances. **Example:** *Islām* prohibits its followers in committing adultery or other immoral behaviors.
Intellect	The preservation and protection of intellect and mind under all circumstances. Protection of mind requires safeguarding it from anything that might harm the ability and functions of the brain. **Example:** The consumption of liquor or similar substances that will affect the functions of the brain.

Wealth	The preservation and protection of wealth i.e. property, non-property, cash, stock etc. under all circumstances. **Example:** The pro-active initiatives and planning in safe guarding one's property against misfortunes or disasters.

Table 2: Description of the Objectives of Sharī'ah

1.1.3 Sources of *Sharī'ah*

There are **four** sources of law agreed by the majority of scholars are as follow:

Source	Descriptions
Qur'ān	*Qur'ān* literally means 'reading' or 'recitation' derived from the root word *qara'a* with the literal meaning 'to read'. Technically, it is defined as the words of *Allāh* SWT that are revealed to Prophet Muhammad SAW in the Arabic language as His argumentation.
Sunnah	Literally *Sunnah* means habitual or customary practice, whether this practice is good or bad. In the terminology of *Uṣūl al-Fiqh* or principles of jurisprudence, Sunnah denotes a saying (*qawl*), action (*fi'l*) or tacit approval (*taqrîr*) related from the Prophet SAW or issuing from him other than the Qur'ān. It can be divided into three categories: 1. *Sunnah* by Words (*Sunnah Qawliyyah*) Refers to the words of Prophet SAW or the messages he conveyed verbally Example: "Observe fast on sighting it (the new moon) and break fast on sighting it (new moon)" (*Sahīh Muslim*, *Hadith* No. 2378) 2. *Sunnah* by Action (*Sunnah Fi'liyyah*) This type of *Sunnah* refers to the conducts of the Prophet SAW from which legal rulings are derived or have been relied upon. Example : The way Prophet SAW performs his prayer (*ṣalāh*). 3. *Sunnah* by Agreement (*Sunnah Taqrīriyyah*) It refers to the sanction of Prophet SAW (or he did not prohibit as the case may be) on the saying or actions of his companion(s). Example, after the call to prayer (*adhān*) is made for *Maghrib*, some companions used to perform additional prayer (commendable); of

	two *raka'āt* before the obligatory *Maghrib* prayer. The Prophet SAW himself was not doing the same, but has never stopped the companions from such prayer.
Ijmā'	Source of Islamic law which connotes the rulings derived from divine revelation through the process of human reasoning. *Ijma'* has a binding effect on the entire Muslim community. It is defined as the agreement of the *mujtahidūn* (jurists) from among community of Prophet Muhammad SAW after his death in a certain period of time upon a rule of Islamic law. Example : Permissibility of *Muḍārabah*, *Ijarah* etc. contracts used in Islamic finance.
Qiyās	Literally means measuring or ascertaining the length, weight, or quality of something, by using something else. Technically *Qiyās* is the extension of *Sharī'ah* rulings from an original case (*aṣl*) to a new case, because the latter has the same effective cause as the former. It may be loosely translated in English as analogy. Example : Usage of modern currency / fiat money.

Table 3: Description of the Sources of Sharī'ah

A1.2 *MU'ĀMALĀT*

1.2.1 Basic Principles of *Mu'āmalāt*

The literal meaning of the term "*mu'āmalāt* " (plural of *mu'āmalah*) is 'the transactions' while its technical idea is any form of mutual dealings held between men to solve their everyday needs, especially in matters relating to trade and commerce. *Mu'āmalāt* is a social relationship which consists of various economic and non-economic activities.

Basic principles that have a role in forming *Sharī'ah* rulings in *mu'āmalāt* are:

Basic Principles	Descriptions
Permissibility as a General Rule	The status of all matters other than rituals is permissible until evidence is given that a certain matter is prohibited.
Conclusion of Contract by Mutual Consent	Mutual consent means that the contract entered into by the parties shall be free from any elements of coercion, fraud, misrepresentation or other illegal means.
Conformity of Contract with the *Maqāṣid al Sharī'ah*	The transaction or contract entered by individuals shall be accordance with *the Maqāṣid al Sharī'ah*.

The Principle of Wide Circulation of Wealth	Wealth and property should be circulated among the general public and actively transferred from one hand to another in the form of expenditures and investment.
The Principle of Transparency in Commercial Dealing	All financial transactions must be conducted in such a manner that all the parties are clear about all the important facts including the terms and conditions of their dealings.
Justice and Fair Dealing	Justice is the general principle of *Sharī'ah* that needs to be observed in all Islamic transactions and contract.
Custom is of Force	In many *Sharī'ah* commercial contracts, many things become permissible following the customs. Example: Acceptance of delay of two business day (t+2) as spot transaction in currency exchange.
Freedom of Contract	All human beings are free to put conditions in their agreements except that prohibits something is permissible or permits something is prohibited Example : Pricing structure of Takaful products.

Table 4: Basic Principles of Mu'āmalāt

1.2.2 General Prohibition in *Mu'āmalāt*

All economic activities are legally permissible as long as these activities do not transgress any of the tenets of *Sharī'ah*. In line with this maxim, it is the unanimous opinion of all four major Islamic *Sharī'ah* School of thought (*Ḥanafī, Mālikī, Shāfi'ī* and *Ḥanbalī*) that all forms of business transactions that transgress any of the tenets of *Sharī'ah* are considered invalid.

Prohibited Elements

1. Usury (*Ribā*)

Ribā in Arabic literally means an increase, expansion or growth. In Islamic jurisprudence it refers to unjustified increase in the eye of *Sharī'ah* but not every increase. *Ribā* is not narrowly confined to premium that must be paid by the borrower to the lender, instead it refers to any benefits arise out of a loan contract or transaction that involves usurious *(ribawi)* items.

This can be summarized as follows:

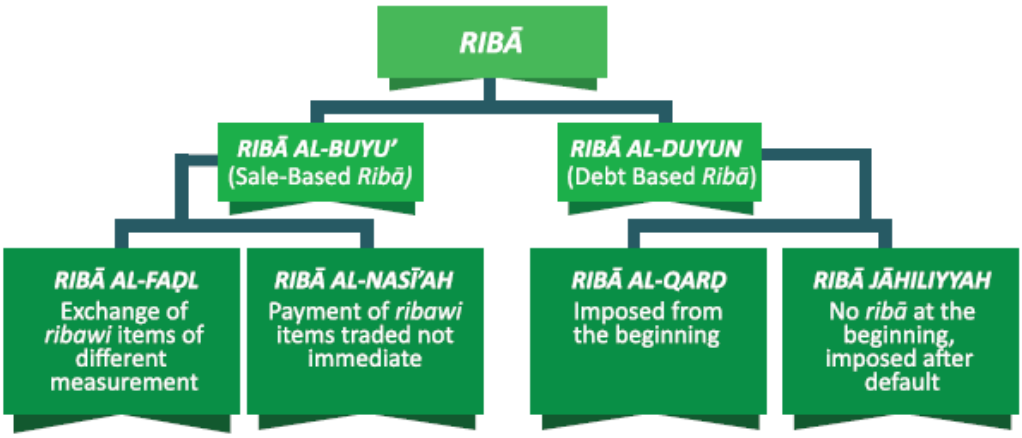


Diagram 2: Types of Ribā

a) Sale-Based *Ribā* (*Ribā Buyū'*)

Occurs in trading and exchange transactions, in which unequal exchange of *Ribāwi* items of same kind and same basis.

Type	Description
Ribā Fadhl	Due to unequal amount/quantity
Ribā Nasī'ah	Due to deferment in time of counter values (ribawi item) that belong to: 1. The same basis/genus *(jins)* and same kind *(nau')* **Example**: gold and gold; or 2. The same basis/genus *(jins)* and different kind *(nau')* **Example**: gold and silver

Table 5: Description of Ribā Buyū'

b) Debt-Based *Ribā (Ribā Duyūn)*

Unjustified increment in money lent whether in kind or cash over and above the principal amount.

Type	Description
Ribā Qard	Refers to any benefit imposed upfront by virtue of lending money regardless whether the borrower will default in the future or not.
Ribā Jāhiliyyah	An additional benefit imposed on the borrower attributed to borrower default in repaying the sum borrowed with the stipulated time.

Table 6: Description of Ribā Duyūn

Prophet *Muhammad SAW* said:

'Gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, and salt by salt - like for like, equal for equal, payment being made on the spot. If the species differ, sell as you wish provided that payment is made on the spot'.

*(Sahih Muslim :*3853*)*

From the above *ḥadīth*, gold and silver represent money while wheat, barley, dates and salts represent fungible item or food stuff. These items are known as *Ribāwi* item.

The following rules of exchange apply in deciding whether the said transactions fall under *Ribā Fadhl* or *Ribā Nasī'ah*.

Rule 1:

Exchange between *Ribāwi* items of the same kind (and of the same basis) must be with equal weight, measurement or number and payment delivery must be made at the same time.

1. If payment and delivery are made at the same time but the weights, measurements or numbers of the materials exchanged are not equal, then *Ribā Fadhl* occurs.

2. If payment and delivery are not made at the same time but the weights, measurements or numbers of the materials exchanged are equal, then *Ribā Nasī'ah* occurs.

Rule 2:

Payment and delivery between *Ribāwi* materials of different kinds and of the same basis must be made at the same time, though they may be made at different prices. Equal weights, measurements or numbers of the materials exchanged are not required to be observed here.

1. If payment and delivery are not made at the same time (on spot), then *Ribā Nasī'ah* occurs

***Ribā* Elements in Insurance**

1. *Ribā Fadhl*

    1. Exchange of two *ribāwi* items (monetary compensation and insurance premium) at different values.

2. *Ribā Nasī'ah*

    1. Exchange of the insurance premium and monetary compensation at a different time.

3. *Ribā Duyūn*

    1. Interest charged on late payment of premium;

    2. Interest charged on policy loans;

    3. The insurance company invests the premium in interest bearing investments;

    4. The insurance company pays interest on their life insurance product; and

    5. The insurance company considers future interest when calculating the premium.

2. *Gharār* (Uncertainty)

Gharār or uncertainty makes a transaction unIslamic as it will result in an unjust or unfair outcome for the parties involved. It is where the quantity and the quality involve in the transaction is not predetermined and known which may makes the contract void or voidable.

A contract is presumed to suffer from *gharār* when:

1. The parties are unaware whether such an event will take place or not.
2. The subject matter is not within the knowledge of the parties.
3. There is no certainty over the existence of the subject matter.
4. Its acquisition is in doubt.
5. Its quantum is unknown.

Examples of *gharār* are a sale of fish in the sea, birds in the sky, sale of an unborn calf in its mother's womb, sale of un-ripened fruits and sale of a runaway animal.

Gharār can be classified into **two** types as shown below.

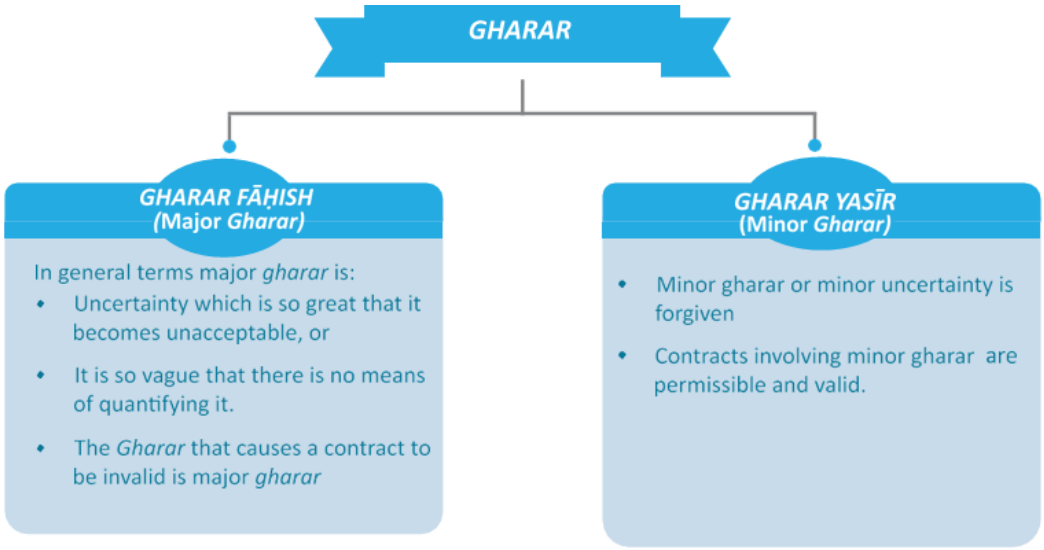


Diagram 3: Types of Gharār

***Gharār* Element in Insurance**

1. Both parties to the insurance contract do not know exactly what their obligations and responsibilities are to each other; neither the insurer nor the insured knows the outcome of the contract.
2. In the case of general insurance, the insured does not know the amount of compensation he is likely to get in case of an accident or a peril.
3. The insurer does not know when the peril will occur.

4. There is no equity in insurance in that the insured has got to pay the premium, but if the peril insured against does not happen, the insured is not paid anything at all.

5. Insurance is an obligation on the part of the insurance company to pay compensation which is sometimes fulfilled and sometimes not. Uncertainty in the results of the exchange as at the point the contract is made, the result of the exchange is still uncertain.

3. *Maysir* (Gambling)

Gambling (*maysir*) is betting or charging something that will be forfeited if one fails to obtain the greater gain that one hopes for. All kinds of games of chance in which you win or lose money like dice, card games, lottery, football pools, lotto, betting and sweepstakes are regarded as gambling.

***Maysir* Elements in Insurance**

1. The insured could receive huge amount of money, without equivalent input.

2. There is the possibility of paying premium without getting any amount in return.

3. The insurer loses if there are too many claimants.

4. When the premium collected exceeds the claims, the insurers could make huge profits.

1.2.3 Concept of Contract in *Mu'āmalāt*

The literal meaning of "*'aqad*" is "join" or "tie". It can be translated as "contract". Islamic scholar, Barbati defined "*'aqad*" in his book "*Inayah 'ala Fath al-Qadri*" as:

"Legal relationship created by the conjunction of two declarations, from which flow legal consequences with regard to the subject matter".

The essential elements of an *'aqad*:

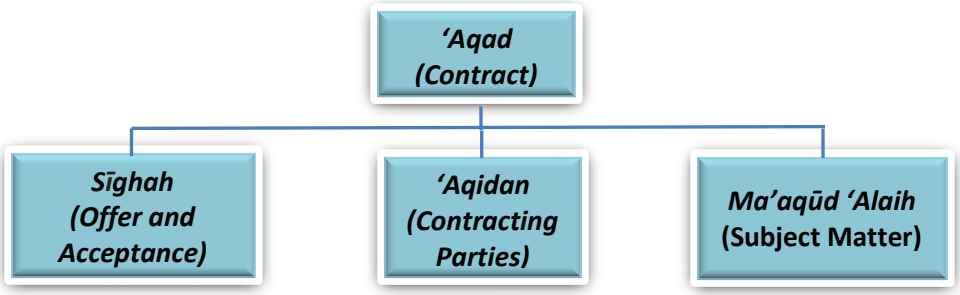


Diagram 4: Essential elements of 'Aqad

Essential Elements	Description
Sīghah (Statement of Contract)	1. *Ijāb* (offer) *Ijab* refers to statement from someone (the first party) to offer something. 2. *Qabūl* (acceptance) *Qabul* refers to statement from someone (the second party) to receive offer from the first party
'Aqidan (Contracting Parties)	It is a condition of a valid contract that the parties possess capacity. Capacity is a quality which makes a person qualified for acquiring rights and undertaking duties and responsibilities.
Ma'aqūd 'Alaih (Subject Matter)	Subject matter refers to the goods/ services and price/ consideration in a contract.

Table 7: Essential elements and Necessary Conditions of '*Aqad*

CHAPTER A2: CONCEPT OF RISK

Learning Objectives
To understand risk management from Islamic perspective

Learning Outcome
Able to explain effectively the concept of risk management in Takaful

A2.1 INTRODUCTION

Risk is a state of uncertainty of which its consequences may result in possibilities of loss or other undesirable outcomes.

According to ISO 31000 (2009) / ISO Guide 73:2002 risk is defined as the 'effect of uncertainty on objectives'.

Uncertainty may be referred to as "the lack of complete certainty due to the existence of more than one possibility where the "true" outcome/state/result/value is not known". Generally, uncertainty may refer to the following:

1. Predictions of some future events;

2. Margin of error in physical measurements made; or

3. Some unknowns due to limited or lack of knowledge on some obtainable facts.

In Takaful, the word "risk" refers to the likelihood of an event happening and the severity of the negative consequences, which entail the possibility of a financial loss. Financial loss may be defined as a decline in or disappearance of value due to a contingency.

A2.2 CONCEPT OF RISKS

Since our purpose is to relate risk to Takaful, focus will be on a risk which entails the possibility of a financial loss. Financial loss may be defined as a decline in or disappearance of value due to a contingency.

In evaluating a risk, there are two (2) factors to be taken into considerations:

1. The probability of the risk occurring (loss frequency); and
2. The consequences of the occurrence (loss severity).

Generally, there is a high frequency of low severity incidents and a low frequency of high severity incidents.

Example:

Car Accident	Aviation Accident
Low severity	High Severity
High Frequency	Low Frequency

2.2.1 Classifications of Risk

Risk can be classified into several distinct categories. The most important categories are the following:

1. Pure versus Speculative Risk

Risk	Description	Example
Pure	Risks with the possibilities that can result in only a loss (e.g. house destroyed due to fire) or no loss (e.g. no house destroyed in a fire occurred in that year).	Fire, lightning, flood, storm, premature death, accident, theft, etc.
Speculative	Risks with the possibilities that can result in loss, no loss or profit (gain). Speculative risks generally cannot be covered.	Investments in the stock market and foreign currency fluctuations.

Table 8: Pure vs Speculative Risk

2. Fundamental versus Particular Risk

Risk	Description	Example
Fundamental	Risk that will affect the whole society or a large number of people within the community. It is not within the control of individuals.	Damage to property due to earthquake, war, etc.
Particular	Risk that will affect only individuals and is within the control of individuals.	Damage to property due to accidents, thefts and robbery.

Table 9: Fundamental vs Particular Risk

Types of Pure Risk

Pure risks are generally insurable and the topic of Insurance and Takaful will emphasize primarily on these risks.

Pure risk can be categorized into **three** (3) types that create financial insecurity, namely:

1. Personal Risks

   Personal risk is defined as risk that directly affects individuals.

   It can be further divided into the following **four** (4) types:

No	Type of Risk	Description
1	Premature Death	The death of the head of the household or bread winner can cause financial hardships to the dependents.
2	Insufficient Income Post Retirement Income	Possibilities of retirees not having sufficient financial assets or other sources of retirement income.
3	Poor Health	Possibilities of having to pay excessive medical bills and loss of income.
4	Unemployment	Major threat to financial security resulting from business cycle down swings, technological and economic changes etc.

Table 10: Types of Personal Risks

2. Property Risks

   Property risks refer to the possibility of loss due to damage to property from various causes or perils such as fire, flood, earthquakes and other natural disasters.

   There are **two** (2) types of risk related to property:

No	Type of Risk	Description	Example
1	Direct Loss	Financial loss that results from the physical damage, destruction or theft of the property.	A factory damaged by fire (the physical damage to the factory is a direct loss).

2	Indirect or Consequential Loss	Financial loss that results indirectly from the occurrence of a direct physical damage or theft loss of the property.	In addition to the physical damage to the factory, the owner would lose his income (consequential loss) due to reduction in production whilst the factory is being repaired.

Table 11: Types of Property Risks

3. Liability Risks

Liability risk refers to damages to a property or bodily injury of a third party bodily injury or property damage. In this case the court may order the person who created the accident to pay substantial damages to the person injured.

Example:

Business firms can be held legally liable for defective products that could cause bodily injury or property damage to consumers who use these products. In this case, the court may order the firm to pay substantial damages to the injured person.

2.2.3 Characteristics of Risks that can be covered by Takaful

No	Characteristic	Description
1	Pecuniary Value	The risk must involve a potential loss that can be financially measured (e.g. fire damage to homes, stolen motorcar).
2	Homogeneous Exposure	There must be a large number of similar types of risk to enable reasonable spread of risk (e.g. road accident).
3	Pure Risks	The possibilities that can result only in a loss (e.g. house destroyed due to fire) or no loss (e.g. no house destroyed in a fire occurred in that year).
4	Particular Risk	The risk that will affect only individuals and is within the control of individuals (e.g. car accident).
5	Fortuitous	The frequency and severity of any risks must be completely beyond the control of person covered or is unforeseen (e.g. accidents).

Table 12: Characteristics of Risk that can be covered by Takaful

2.2.4 Sources of Risk

Apart from risk, it is also important to understand about the factors that can cause or contribute towards the occurrence of loss i.e. **"Perils"** and **"Hazards".**

1. Peril

Peril is defined as the immediate cause of loss. It will cause the deviation in events from those that we expect. It can be categorized as follows:

a) Natural Perils

This category includes perils caused by natural elements such as rain, ice, snow, typhoon, hurricane, volcano, wave action, wind, earthquake, or flood.

b) Man-Made Perils

Man-made perils would include causes of loss that lie within the individuals' control, including suicide, terrorism, war, theft, defective products, environmental contamination, destruction of complex infrastructure and electronic security breaches.

c) Economic Perils

The third category of perils is economic in nature, such as recession, inflation, local fluctuations and the instability of industrial firms.

2. Hazards

While perils are the direct causes of loss, hazards are the underlying factors, which increase the probability of occurrence of loss. There are conditions that are more hazardous than others.

Example, working as an electrician is a more hazardous occupation than that of a banker, as it is more susceptible to accidents.

No	Type of Hazard	Description
1	Physical Hazard	Physical condition of the subject matter that increases the chance of loss. Example: Defective wiring in a building that increases the chance of fire.

2	Moral Hazard	The attitude of an individual that increases the chance of loss. Example: A person who is careless about stubbing out cigarettes and just throws them around, not in the least bothered that his action may cause fire.
3	Morale Hazard	A lack of concern about the outcome of his actions due to the existence of Takaful. Example: A person driving recklessly in view of being fully covered by Motor Takaful.

Table 13: Types of Hazard

A2.3 RISK MANAGEMENT

According to the Chartered Insurance Institute of UK, risk management can be defined as "the identification, analysis and economic control of all those risks that threaten the assets and earning capacity of an enterprise".

Meanwhile, Malaysian Insurance Institute (MII) defined risk management as "a systematic approach in dealing with risks that threaten assets and earning of a business or enterprise".

2.3.1 Risk Management Process

Diagram 5: Risk Management Process

1. Risk Identification

   Risk identification refers to the process of identifying, analyzing, reviewing and anticipating possible risks. The objectives of risk identification are to identify and categorize risks that could affect the project and to document these risks. The outcome of risk identification is a list of risks.

2. Risk Evaluation

   Risk evaluation is the process of determining the risk's impact or potential losses so that appropriate action can be taken in consideration of the resources available. In order to evaluate or determine the impact of the risk, the following have to be considered:

   a. Risk Frequency

      Risk frequency refers to the number of times a loss producing event will occur during a given time period (probability of its occurrence).

   b. Risk Severity

      Risk severity refers to the cost or amount of losses, in monetary terms, arising from a loss-producing event.

3. Development of Risk Management Plan

Once the risks have been evaluated completely, it is time to develop the risk management plan by selecting the appropriate risk control measure. Selection of the control measure must also include consideration for cost and effectiveness.

Following are the risk control measure:

Method	Description
Risk Avoidance	A technique that seeks to eliminate or prevent the risk through discontinuation of activities or businesses that presents such a risk. Example: A smoker stops smoking to avoid the risk of lung cancer.
Risk Control	A technique to improve the risk to achieve an acceptable and fair standard. It involves methods that reduce the severity of the loss or the likelihood of the loss from occurring. Example: Installation of water sprinklers to put out a fire to reduce the severity of the loss.
Risk Retention	This involves accepting the risk if the current level of the risk is already at an acceptable level. Risk retention is a viable strategy for small risks where the cost of covering against the risk would be greater over time than the total losses sustained. Example: Accepting the risk of getting a punctured tyre is anticipated.
Risk Transfer	A process of transferring risks to an organisation or individual. When a risk is transferred, losses will be paid by the organization or individual to whom the risk is transferred. Example: A house owner can transfer the risk of loss incurred when his house is destroyed by fire by entering into a fire Takaful contract.

Risk Sharing	A process of sharing risks with others who have similar nature of risk. This practice is called Takaful or mutual protection. Example: A motor vehicle owner can share the risk of loss incurred when his motor vehicle is involved in accident by entering into a Motor Takaful contract.

Table 14: Risk Control Measures

4. Implementation of Risk Management Plan

   Once the selection of a suitable method is made, the plan is ready for implementation. In performing this step, the risk should be prioritized and matched with the actions to be taken. One of the action of course is to cover the risk.

5. Reviewing and Monitoring of Risk Management Plan

   These activities involve periodical reviews, monitoring the implementation process as well as progressive revision on the plan in light of any changes in the business and economic environment.

   Periodical reviews can help to identify any deficiencies or adjustments and also ensure the objectives of the plan are met. Reviews should be done at least once a year.

A2.4 CONCEPT OF RISKS IN *ISLĀM*

Islām recognizes that *Allāh SWT* holds the keys and knowledge of the physical and metaphysical, the seen and unseen in the universe. Risks and uncertainty are in the realms of the unknown, which only *Allāh SWT* has the knowledge as explained in the following verse:

> ***Allāh SWT* says:**
>
> *"With Him are the keys of the unseen, the insurers that none knoweth whatever there is on the earth and in the sea. Not a leaf does fall but with His knowledge: There is not a grain in the darkness (or depths) of the earth, nor anything fresh or dry (green or withered). But is (inscribed) in a record clear (to those who can read)"*
>
> *(An-An'aam :*59*)*

Humans face risk in every aspect of life. Humans will be continuously tested with misfortune and catastrophes such as premature death, disabilities, accidents and others.

This is line with the following *Quranic* verse.

> ***Allāh SWT* says:**
>
> *"And certainty, We shall test you with something of fear, hunger, loss of wealth, lives and frutis, but give glad tidings to As-Sabirin (the patient)"*
>
> *(Al-Baqarah :* 155*)*

A2.5 TAKAFUL AS A RISK MANAGEMENT TOOL

Risk management is important in *Islām*, and Takaful provides a way to manage risks in business according to *Sharīʿah* principles. It assists in reducing worry and fear, indemnifying loss and damage, and providing protection to the participant, his descendants and his property or wealth according to the injunctions of *Sharīʿah* .

The central idea of a Takaful contract is that it is a financial transaction of a mutual co-operation between participants for mutual protection from unexpected future material risk. In a Takaful transaction, participants of the Takaful scheme mutually agree to assist each other financially in case of certain defined needs (as defined in the Takaful contract) by contributing to a common Takaful fund.

In tandem with the *Sharīʿah* discipline on Takaful (which means shared responsibility and shared guarantee), the participants mutually agree to provide compensation in the event of a misfortune.

The participants of the Takaful scheme also agreed to be mutually responsible or shared responsibility**.**

Thus, Takaful can be a very effective risk management method to plan ahead for any unwanted events such as illness, permanent disability or diseases.

CHAPTER A3: INTRODUCTION TO TAKAFUL

Learning Objectives

To understand the key features of Takaful concept, practices and benefits

Learning Outcome

Able to describe effectively the fundamental concept of Takaful

A3.1 INTRODUCTION

The Malaysian Takaful industry has seen a rapid growth since its inception in 1984. The industry has grown from an industry comprising of a single Takaful Operator to become a viable industry. Today, Takaful is an important industry within the Islamic financial system.

3.1.1 Definition

The word "Takaful" is derived from the Arabic verb *"Kafālah"* which simply means to jointly guarantee. Therefore, the pact between at least two parties agreeing to jointly guarantee one another in the event of a loss, as a consequent of being afflicted by a calamity defines the term "*Takaful"*.

According to Islamic Financial Services Act 2013, Takaful means:

"An arrangement based on mutual assistance under which Takaful participants agree to contribute to a common fund providing for mutual financial benefits payable to the Takaful participants or their beneficiaries on the occurrence of pre-agreed events".

A3.2 DEVELOPMENT OF TAKAFUL

1. Practice of *Al-Aqilah*

This was a practice of the ancient Arab tribal custom, which was introduced to replace the barbaric "blood for blood" system. Under this system, if any member of a tribe was killed by a member of another tribe, the close relatives of the killer known as '*Aqilah'* or '*Ma'aqil'* in Arabic terminology are required to pay an amount of "blood money" as compensation to the heir of the victim. They will collect and contribute on behalf of the killer. The payment of

the "blood money" seemed to be a kind of financial protection for the heir of the deceased against the unexpected death of the victim.

2. Practice of Prophet Muhammad SAW

The practice was endorsed by Prophet Muhammad SAW and was expressed in the first Constitution of Madinah (*Mithaq al-Madina*). The constitution of Madinah that was declared shortly after the migration to Madinah in 622 A.D is the greatest example of how the Prophet Muhammad SAW had legislated the insurance concept. The constitution that was enacted for the people of Madinah was the first Takaful scheme announced by the first ever Muslim state.

a. *Diyat* (Blood Money)

The Constitution of Madinah stated that:

"The immigrants among Quraish shall be responsible for their word and shall pay their blood money in mutual collaboration".

This was in line with the doctrine of '*Aqilah'*.

b. *Fidyah* (Ransom)

The obligation to pay *fidyah* for the release of prisoners was imposed on the immigrants of Quraish. This is to inculcate mutual collaboration among the believers in accordance with the principles of goodness and justice. Likewise, all other tribes were obliged to follow this rule.

c. Alms and Charity

Prophet Muhammad SAW declared that the society would be responsible to establish a *Bayt al-Mal* (House of Wealth) with a mutual understanding towards providing necessary aid to the needy, sick and poor.

3. Practice of the Companions

The *Aqilah* system was further developed during the time of the second Caliph of *Islām*, Saidina Umar al-Khattab r.a. He established a *Diwan* of *Mujahidin* in various districts for the purpose of extending mutual cooperation to contribute the *diyat* money for the murder of their own tribesman committed by another of the same tribe.

A3.3 TAKAFUL PHILOSOPHY AND CONCEPT

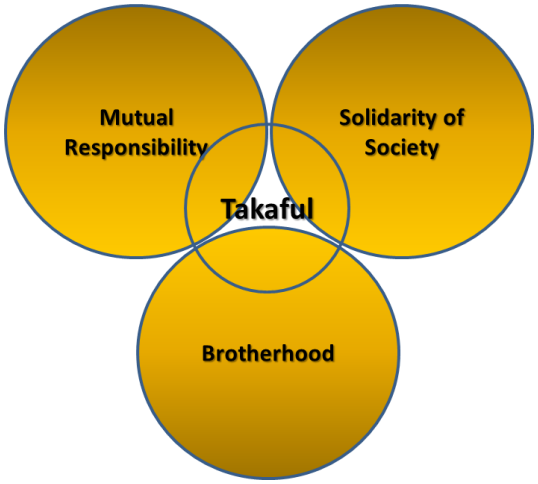


Diagram 6 : Takaful Philosophy and Concept

Takaful is a protection scheme whereby a group of participants mutually agree among themselves by contributing as *tabarru'* or donation in the Takaful funds to guarantee each other against a defined loss or damage that may befall upon any of them. It emphasises unity and co-operation among participants.

The concept of *tabarru'* eliminates the element of uncertainty in the Takaful contract.

A3.4 BENEFITS OF TAKAFUL

Takaful offers both the monetary profits through this protection scheme and the "profit" in the spiritual sense.

Some of the benefits are as follow:

1. It allows the participant to fulfill his social obligation towards community and family.

2. Takaful also enables financial assistance for the unfortunate and needy through the concept of *tabarru'* where a portion of the contribution will be apportioned to the risk fund. *Tabarru'* also allow participants to achieve self-purification and peace of mind.

3. Promotes moral values and ethical dealings in all its business activities and operations as it is free from prohibited elements such as *Ribā, Gharār* and *Maysir* and other similar prohibited elements within financial dealings.

4. It provides protection and security for the family and the group against any misfortune.

5. *Zakāh* (tithe) as well as corporate tax paid by Takaful operators can be used for the purpose of community development and nation building.

A3.5 TAKAFUL NOMINATION

3.5.1 Definition of Nomination

Nomination in Takaful is the act of naming a person to receive certificate proceeds payable in the event of the death of the certificate owner.

3.5.2 Types of Nomination

The nominee shall receive the Takaful benefits payable under the Takaful certificate either as an executor (*wasi)* or as a beneficiary under a conditional *hibah*, as the case may be, as stated in the nomination form by the Takaful participant.

If a nominee is named as a beneficiary under a conditional *hibah*, the nominee shall receive the claims proceeds as the beneficiary and shall be entitled to the benefits fully according to the share/percentage stated in the nomination form.

If a nominee is named as an executor, the nominee shall act as an administrator to receive the certificate proceeds and shall be responsible to distribute the proceeds to the rightful heirs of the deceased in accordance with the law applicable to the administration, distribution and disposition of his estate. For Muslims, the distribution of the deceased's estate must be in accordance with *Faraid* law while for a non-Muslim participant, the distribution shall be in accordance with the Distribution Act.

Section 142 of Islamic Financial Services Act (IFSA) 2013 stipulates:

> Schedule 10 sets out provisions for the payment of Takaful benefits upon death of a Takaful participant under a Family Takaful certificate, and a Personal Accident Takaful certificate, issued in respect of a contract of Takaful entered into by the Takaful participant upon his life.

As such, reference must be made to Schedule 10 of IFSA 2013, which discusses the process and effect of nomination.

CHAPTER A4: COMPARISON BETWEEN TAKAFUL AND INSURANCE

Learning Objectives

To understand basic structure of the insurance and Takaful concept

Learning Outcome

Able to explain the differentiation between insurance and Takaful

A4.1 INTRODUCTION

Insurance has existed for many centuries. Some historians trace the origin of insurance to 215 CE, when the roman government was required by military supplies to accept all risks arising from enemy attacks, storms, and other natural disaster for supplies carried on their ships. (Omar Fisher, 2009). The earliest evidence of insurance contracts dates back to the period around 2,800 B.C. where the Babylonian legal code showed regulations on insurance. Basically, the concept of insurance was developed to deal with perils faced by merchants and traders at sea. This varied from protection of the cargo and goods carried by ships to the protection against the loss of lives of sailors and officers.

In other words, there is a need for human to prepare for the loss. And modern insurance can be traced its beginning to the 1600's, when British merchants and ship owners began to meet a coffeehouse near Lombard Street in London. The coffeehouse was called Lloyd's, there they made an agreement to mutually share in the profits and losses of sea voyages (Omar Fisher, 2009).

There is evidence showing that such practices were also prevalent among the Chinese, Greeks and Europeans. The first case of life insurance dates back to 1583 in England where a term contract was issued on the life of a certain William Gybbon.

A significant development in the life insurance industry was the development of the mortality table by Edmund Halley in 1693. However, it was about a century later that any degree of accuracy was achieved in predicting mortality rates.

The introduction of insurance in Malaysia dates back to the 18th and 19th centuries where trading firms and agency houses acted as agents for insurance companies from the United Kingdom.

Upon the achievement of independence, there was an effort to establish domestic insurance companies. The early 1960's saw the growth of many life and general insurance companies. Some of these companies operated on an unsound basis with improper underwriting guidelines.

The Government subsequently intervened and the Insurance Act, 1963 was introduced. Under the Act, the general conduct and supervision of the insurance industry was vested in the Director-General of Insurance under the Ministry of Finance. Recently, the Government has introduced Financial Services Act 2013 to replace the old act.

4.1.1 Definition of Insurance

Insurance can be defined as a contract whereby one person called the insurer, undertakes in return for an agreed consideration, called the premium to pay to another person, called the insured, a sum of money, on the happening of a specific event during a specific period.

Thus, in very simple words, a contract of insurance is a contract between two parties, the Insurer and the Insured, the former promises to compensate the latter on the happening of a definite event in return for his contribution.

4.1.2 Basis of Insurance

Insurance is a process through which losses suffered by a few is spread to and borne by many. In modern practice, insurance is a medium through which the financial burden of a misfortune is transferred from the Insured to Insurer. The concept behind insurance is that a group of people exposed to similar risk come together and make contributions towards formation of a pool of funds. In case a person actually suffers a loss on account of such risk, he is compensated out of the same pool of funds. Contribution to the pool is made by a group of people sharing common risks and collected by the insurance companies in the form of premiums.

A contract of insurance is a contract of indemnity (excluding Life and Personal Accident Insurance) and this principle is to put the Insured in the same financial position as he was in before the misfortune occurs. The sum insured must be fixed at a level, which will provide an adequate compensation at the time of loss. For insurance in real property, depreciation must always be taken into account. The cost of insurance would depend on the scope of cover as additional cover requires additional premium.

Generally speaking, only unforeseen and fortuitous losses are insurable. Therefore, foreseeable misfortune or losses are generally not insurable (except in Life Insurance).

4.1.3 Types of Insurance

Financial Services Act 2013 provides that:

1. For the purposes of this Act, insurance business shall be divided into two classes:

1. Life business, which in addition to all insurance business concerned with life policies shall include any type of insurance business carried on as incidental only to the life insurer's business; and

2. General business, which means all insurance business which is not life business.

2. For the purposes of this Act, reinsurance of liabilities under a policy is treated as insurance business of the class and description to which the policy would have belonged if it had been issued by the reinsurer.

A4.2 *SHARĪ'AH* RESOLUTION ON INSURANCE

The concept of insurance has not achieved full agreement from scholars whether it is permissible (*ḥalāl*) or prohibited (*harām*). Since insurance as it is being practiced now did not exist during the Prophet *Muhammad SAW* time, '*Ijtihād*' is used to determine whether it is permissible or otherwise.

4.2.1 Fatwas on Prohibition of Insurance

1. The National Fatwa Committee

   The Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia, during its meeting on 15 June 1972 discussed and deliberated on the issue of Life Insurance.

   Resolved:

   That Life Insurance provided by present-day insurance companies is a business transaction which is voidable because it contradicts the Islamic business principles in view that the contract contains the elements of *gharār, maysir* and *ribā*. As such from the *Sharī'ah* point of view, insurance is *harām*".

2. The Islamic *Fiqh* Academy of OIC

   The Islamic *Fiqh* Academy, emanating from the Organization of Islamic Conference, met for its Second Session in Jeddah, Kingdom of Saudi Arabia, from 10 to 16 *Rabiulawal*, 1406 H (corresponding to 22 - 28 December 1985).
   And after reviewing the presentations made by the participating scholars during the Session on the subject of `Insurance and re-insurance', and after discussing the same, and after closely examining all types and forms of insurance and deeply examining the basic principles upon which they are founded and their goal and objectives, and having looked into what has been issued by the *Fiqh* Academies and other edifying institutions in this regard;

Resolved:

The Commercial Insurance Contract, with a fixed periodical premium, which is commonly used by commercial insurance companies, is a contract which contains major element of risks, which voids the contract and therefore, is prohibited (*harām*) according to the *Sharī'ah.*

The alternative contract which conforms to the principles of Islamic dealings is the contract of co-operative insurance, which is founded on the basis of charity and co-operation.

The Academy invites the Muslims countries to work on establishing co-operative insurance institutions and co-operative entities for the re-insurance, in order to liberate the Islamic economy from the exploitation and violation of the system which *Allāh SWT* has chosen for this *ummah*.

A4.3 COMPARISON BETWEEN TAKAFUL AND INSURANCE

No	Pertinent Issues	Takaful	Insurance
1	Essence of Intention	Intention is to create both spiritual and legal relationships	Intention is to create legal relation only
2	Subject Matter	Subject matter must be *Sharī'ah* justified	Subject matter must be Common Law justified.
3	Guarantee	The Takaful Operator is only the Fund Manager. The Participant mutually guarantees each other	The company provides the guarantee
4	Fund	The fund belongs to the participants and managed by the Takaful Operator for a legitimate consideration for the services rendered	The fund belongs to the Company through separation of assets and is maintained between the Shareholders and the policy holders
5	Payment of contribution/ premium	Paid contribution is treated as a donation (*tabarru'*)	Paid premium creates an obligation against the insurer on a sale and purchase contract
6	Forbidden Elements	Islamic model is based on Islamic principles and free from any of the forbidden elements	Insurance policy revolves around the element of *Gharār, Ribā and Maysir*
7	Profits	The profit and/or surplus is shared among the participants	In insurance the profit is at the discretion of the Company

		and the Operator, depending on the Takaful model	
8	Contract	A contract of *tabarru'* (donation) and agency (*Wakālah*) or profit sharing (*Muḍārabah*)	An exchange contract (sale and purchase) between insurer and insured
9	Risks Treatment	Risks sharing concept among participants	Concept of risks transferred from insured to insurance company
10	Benefits	Paid from the defined funds under joint indemnity borne by the participants	Paid from the fund legally owned by the company
11	Profits /Bonus	Specifies from the outset how the profits are to be shared among the participants and the operator	May offer bonus or profit in general terms only especially with profit participating policies
12	Investment of Fund	Assets of the Takaful funds are invested in *Sharī'ah*-compliant instruments	There is no restriction apart from those imposed for prudential reasons

Table 16: Comparison between Takaful and Insurance

CHAPTER A5: PRINCIPLES AND BUSINESS MODELS OF TAKAFUL

Learning Objectives

To understand the various permissible Takaful business models

Learning Outcome

Able to describe the basic structure and functioning elements of Takaful transaction and contracts

A5.1 INTRODUCTION

Takaful contracts are not only subject to the general principles of the law of contract but also certain special legal principles that are embodied in Takaful contracts. Based on the established legal maxims of the *fiqh* concept of all things are permissible unless prescribed otherwise (*al-asl fi al-ashya' al-ibahah*), Takaful contract assimilates with the normal insurance principles in its practices that embody the concept of fairness in dealings as expounded by *Sharī'ah*.

A5.2 BASIC PRINCIPLES OF TAKAFUL

5.2.1 Permissible Takaful Interest (PTI)

The term "Permissible Takaful Interest" refers to the benefit (or interest) a person has in an insured object or person. This benefit can refer to a financial benefit, among others. A person has permissible interest in a thing when he or she would experience some kind of loss (financial or otherwise) if the thing were to be damaged or lost.

Permissible Takaful Interest exists when there is a relationship between participants and the subject matter, normally arising from several situations as follows:

Relationship	Description
Ownership of Property	Property owners will lose financially if their properties are damaged or destroyed thus PTI can be established.

Potential Legal Liability	PTI can also exist when there is a potential financial loss arising from legal liability.
Contractual Right	PTI can be established if there is a provision in the contract that one party is financially responsible for any loss or damage to the property and third-party liability.

Table 17: Types of Situation where Permissible Takaful Interest Exists

PTI refers to a Family Takaful Certificate issued by a Takaful Operator to a participant covering someone else (person covered). The participant and person covered shall have a PTI at the point of inception and benefits payable.

In the event that the participant does not have any PTI with the person covered at inception, the contract shall be void.

In the event that the participant does not have any PTI with the person covered at benefits payable, the contract does not void but subjects the Takaful Operator to the following conditions:

1. Takaful Operator shall pay to the participant an amount specified by BNM; and
2. Upon payment of such amount, the contract is deemed by Takaful Operator to be terminated.

A person shall be deemed to have PTI in the person covered if the other person is:

1. His spouse or child;
2. His ward under the age of majority at the time the person entered into the contract of Takaful;
3. His employee; or
4. A person on whom he is wholly or partly dependent for maintenance or education at the time entered into the contract.

The participant shall obtain prior written consent from the person covered unless he is a minor. The person covered has the right to revoke his consent by informing the Takaful Operator in writing. Subsequently, PTI is automatically void. PTI shall not be void due to dissolution of marriage between the person and his spouse.

A group Takaful certificate shall not be void if the group Takaful participant does not have PTI, at the time when the contract was entered into and at the time the Takaful benefits are payable. The Takaful Operator shall obtain a written declaration from the participant that he has PTI in the person covered. The Takaful Operator shall be liable to a person covered who has paid his contribution under a group Takaful certificate if the group Takaful participant has no PTI in the person covered even though the Takaful Operator is yet to receive the contribution.

5.2.2 Duty of Utmost Good Faith

The duty of utmost good faith refers to the positive duty to voluntarily, accurately and fully disclose all facts material to the risks being proposed, whether requested or not. Failure to do so may give the aggrieved party the right to regard the contract as void. Both parties, i.e. the participants and the Takaful Operator must disclose all the material facts fully and truthfully.

Therefore, there should be no concealment, misrepresentation or fraudulent intention about the material facts. This duty shall continue throughout the period of Takaful where the participant is required to inform and disclose to the Takaful Operator of any changes which might materially increase the risk.

Example, a change in the occupation of a building from a sundry shop into a fireworks storage.

In a Takaful contract, for the enforcement of the certificate, the parties involved in it should have good faith. Therefore, non-disclosure of material facts, involvement of a fraudulent act, misrepresentations or false statements is all elements that could invalidate a Takaful certificate.

Utmost good faith is breached when a proposer who knows or is reasonably expected to know a material fact:

1. Fails to disclose the material fact; or
2. Misrepresents the material fact.

If the participant misrepresents a material fact, the breach may be termed as an innocent misrepresentation or fraudulent misrepresentation.

Example, a participant of Family Takaful has a pre-existing illness, but failed to inform the Takaful Operator.

<u>Material Fact</u>

Material fact is defined as any fact that would reasonably influence a Takaful Operator's underwriting decision on a certificate, i.e. after identifying and evaluating the hazards associated with the risk, underwriter will decide on whether to accept, accept with condition, decline or defer the proposal.

In a case of breach of utmost good faith, the Takaful contract becomes void irrespective of whether the breach has been committed innocently or fraudulently.

According to Section 141 (4) of IFSA 2013, before a contract of Takaful other than a consumer Takaful contract is entered into, varied or renewed, a proposer shall disclose to the licensed Takaful Operator a matter that;

1. he knows to be relevant to the decision of the licensed Takaful Operator on whether to accept the risk or not and the rates and terms to be applied; or
2. a reasonable person in the circumstances could be expected to know to be relevant.

Nevertheless, according to Part 2 Schedule 9 Para 4 of the Act, the duty of disclosure shall not require the disclosure of a matter that:

1. diminishes the risk to the licensed Takaful Operator;
2. is of common knowledge;
3. the licensed Takaful Operator knows or in the ordinary course of his business ought to know; and
4. in respect of which the licensed Takaful Operator has waived any requirement for disclosure.

5.2.3 Principle of Indemnity

Indemnity can be defined as a mechanism used by the Takaful Operator to provide compensation in an attempt to place the participant in the same pecuniary position after the loss as enjoyed immediately before the loss.

Example :

Participant A covered his car for RM80,000 on market value and few months later, his car was stolen and at that time of loss, the car's market value is only RM60,000. Takaful Operator will compensate Participant A with RM60,000 as he can then get a similar vehicle at RM60,000.

5.2.4 Principle of Subrogation

Subrogation means, in a legal sense, one party has the right to "step into the shoes" of another party for the purpose of bringing a claim for damages. It is a corollary to the Principle of Indemnity to ensure that the participant does not profit from his actual loss. It may be applied before payment to the participant. In cases where the participant had been partly indemnified by a third party, Takaful Operator will only pay the balance, up to the amount of payment made to the participant.

If the Takaful Operator recovers from the third party more than what it has paid to the participant, such excess must be given to the participant. It is not applicable to Family Takaful and Personal Accident Takaful as they are not contracts of indemnity.

Example:

Participant A's house was destroyed by fire due to the explosion of a factory close by. A claim was submitted by Participant A to his Takaful Operator for RM500,000. Upon payment of the claim, the Takaful Operator is accorded to the subrogation right to claim the amount settled

with participant A from the factory owner who is ultimately responsible for the loss. If the factory has a Takaful coverage, the Takaful Operator will handle the compensation.

5.2.5 Principle of Contribution

The principle holding that two or more Takaful Operators each liable for a covered loss should participate in the payment of that loss. Having paid its share of a loss, a Takaful Operator may be entitled to equitable contribution - a legal right to recover part of the payment from another Takaful Operator whose certificate was also applicable.

Example :

Mr. A covered his property worth RM100,000 with two Takaful Operators : Takaful Operator A for RM90,000 and Takaful Operator B for RM60,000. Mr A's actual property destroyed is worth RM60,000, then Mr. A can claim the full loss of RM60,000 either from Takaful Operator A or Takaful Operator B, or he can claim RM36,000 from Takaful Operator A and RM24,000 from Takaful Operator B.

5.2.6 Principle of Proximate Cause

Proximate cause is defined as the active efficient cause that sets in motion a train of events which brings about a result, without intervention of any force, initiated and working actively from a new and independent source.

A loss may be attributed to more than a single event. There may be concurrent causes or a chain of causes which may occur in sequence or in broken chain. Thus, the cause of a loss must be established because only risks specifically covered (not excluded risks as mentioned in the Takaful certificate) can be compensated.

Example:

Takaful Operator has rejected a participant claim on the damage of his laptop. The laptop was stolen and found by the police, but the thief has crushed it. Although the participant has an all risk coverage for the laptop but it does not include theft coverage. The Takaful Operator has rejected the claim on the ground that theft is the proximate cause of the loss and an excluded peril.

A5.3 COMMERCIAL CONTRACTS USED IN TAKAFUL

The principles of guarantee, derived from the word "*Kafala*", is the basis of Takaful. Under Takaful, the majority guarantees the loss of the minority by sharing the burden of the unfortunate minority via the pooling of funds.

Takaful combines several *Shari'ah* compliant contracts such as *tabarru'* (donation), *wakālah* (agency) and *muḍārabah* (profit-sharing). The combinations may differ according to the different business models adopted by Takaful Operators.

5.3.1 Tabarru' (Donation)

Tabarru' is the primary contract in any Takaful model. *Tabarru*' is an Arabic word that means donations or gifts, where the Participant shall agree to relinquish as donation all or certain portions of his contribution thus enabling him to fulfil his obligation of mutual help and joint guarantee.

The *tabarru'* concept is applied in Takaful contract to eliminate the element of *gharār* (uncertainty). The *tabarru'* portion will be credited into the Participant Risk Fund to enable the participant to fulfil his obligation of mutual help and joint guarantee in the event any of the fellow participants suffers a defined loss.

5.3.2 *Muḍārabah*

Muḍārabah is a contract between a capital provider (*rabbul māl*) and an entrepreneur (*muḍārib*), under which the capital provider provides capital to be managed by the entrepreneur.

Under Takaful system, the Takaful participants enter into a *muḍārabah* contract with the Takaful Operators where the operator, as the entrepreneur, is entrusted with managing the Takaful business and the participant(s), as the capital provider, is obliged to pay the Takaful contribution. The contract will define the profit of the Takaful business and the ratio to be shared between the two parties.

5.3.3 Wakālah

Wakālah refers to a contract of agency, which means doing any work or providing any service on behalf of any other person.

An action performed by an agent on behalf of the principal will be deemed as action by the principal. In return for his services, an agent may obtain a certain wage within the incentive structure of the principal.

Under the Takaful arrangement, the Takaful Operator will act as the agent or "*wakil*" to the participant as the principal to manage the participation of the latter in a variety of Takaful products provided by the operator. In return, the Takaful Operator is allowed to charge a fee for the services rendered.

A5.4 TYPES OF TAKAFUL OPERATIONAL MODELS AND ITS APPLICATION

There are two main models for Takaful Operators i.e. *muḍārabah* (profit sharing) and *wakālah* (agency). During the intial years, pure *muḍārabah* model was used in Malaysia by Syarikat Takaful Malaysia.

The pure *muḍārabah* model only allows sharing of investment return. This model was later modified to allow sharing in investment return on the contribution pool and also in any underwriting surplus. In the later years, the majority of Takaful Operators used either *wakālah* or modified *wakālah* model. This model becomes the most popular operating model globally.

5.4.1 *Wakālah* Model

Under the Takaful system, the model describes an agency agreement between the operators, acting as the agent or *"wakil"* and the participant as the principal. As a *wakil*, Takaful Operator will perform the following:

1. Manage the participation of the participants in a variety of Takaful products provided by the operator;
2. Fund management; and
3. Operation, etc.

In return for rendering the agency services, the Takaful Operator is permitted to charge a fee under the agreement which comes from the Takaful contribution paid by the participant.

Under this model, the Takaful Operator will earn its revenue from:

1. *Wakālah* fee described in the aforementioned; and
2. Returns on the investment of its shareholders' fund

There are also operators practising the above model who charges performance fees on its roles and services of managing the investment of the Takaful fund.

Wakālah **Model for General Takaful**

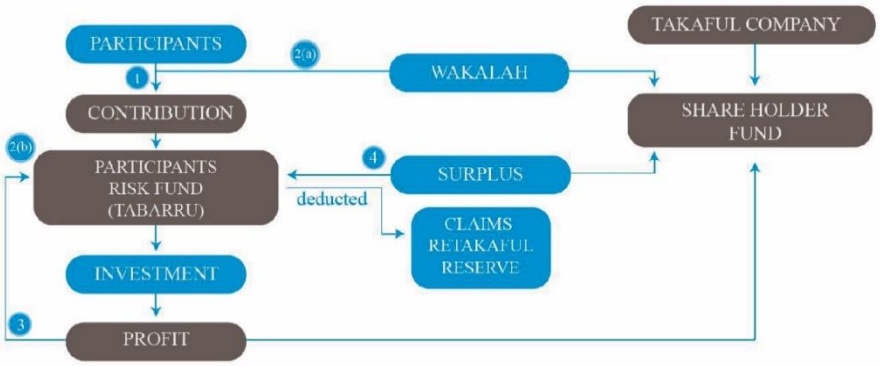


Diagram 7: *Wakālah* Model for General Takaful

Explanations:

1. Participants pay Takaful contributions.
2. a. *Wakālah* fee will be deducted from the contribution.
   b. The participants' contributions will be apportioned into the Participants' Risk Fund (PRF) which is based on the *tabarru'* concept.
3. *Wakālah* fees which consists of agency commissions and administration expenses will be channelled to Takaful Operator
4. The fund will be invested in *Sharī'ah*-Compliant investments such as Government Islamic Instruments (GII), sukuk, equities, fixed assets and General Investment Account (GIA).
5. Investment profit (if any) will be treated as follows:
   a. Payment of performance fee to the Takaful Operator.
   b. Net profit after deducting performance fee will be distributed to PRF.
6. The Participants' Risk Fund will be used for claims, Retakaful and reserve.
7. At year's end, the surplus (if any) will be treated as follows:
   a. Payment of performance fee to the Takaful Operator.
   b. Net surplus after deducting performance fee will be distributed to the participants.

However, in the case of a deficit, the shareholders of the Takaful Operator will provide *qarḍ*.

Wakālah Model for Family Takaful

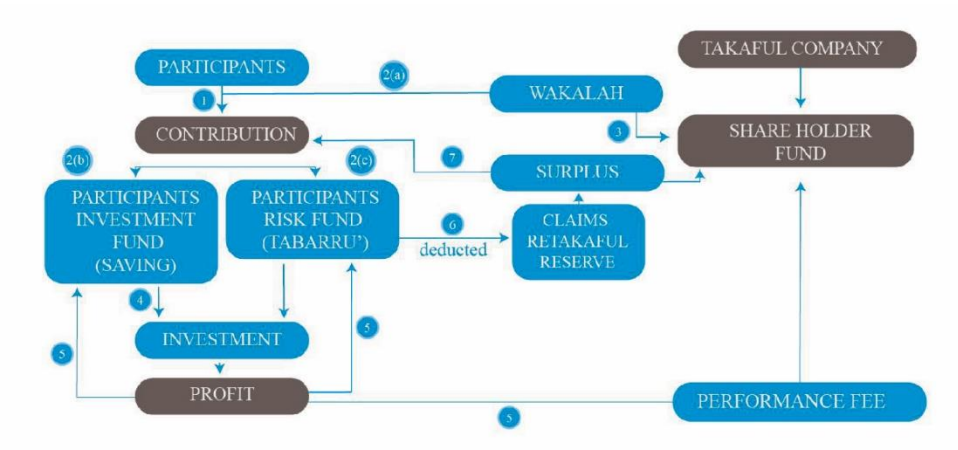


Diagram 8: *Wakālah* Model Family Takaful

Explanations:

1. Participants pay Takaful contributions.
2. a. *Wakālah* fee will be deducted from the contribution.
   b. The participants' contributions will be apportioned into:
      1. Participants' Investment Fund (PIF) which is meant for saving.
      2. Participants' Risk Fund (PRF) which is based on the *tabarru'* concept.
3. *Wakālah* fees which consists of agency commissions and administration expenses will be channelled to Takaful Operator
4. The fund will be invested in *Sharī'ah* -Compliant investments such as Government Islamic Instruments (GII), sukuk, equities, fixed assets and General Investment Account (GIA).
5. Investment profit (if any) will be treated as follows:
   1. Payment of performance fee to the Takaful Operator.
   2. Net profit after deducting performance fee will be distributed to the PIF and PRF respectively.
6. The Participants' Risk Fund will be used for claims, Retakaful and reserve.
7. At year's end, the surplus (if any) will be treated as follows:
   1. Payment of performance fee to the Takaful Operator.
   2. Net surplus after deducting performance fee will be distributed to the participants.

However, in the case of a deficit, the shareholders of the Takaful Operator will provide *qarḍ*.

5.4.2 *Muḍārabah* Model

This is a partnership model where a contract is signed between the Takaful Operator (entrepreneur) who will provide expertise in managing the Takaful business and the participant(s) (as the capital provider) who is obliged to pay the Takaful contributions (as the capital).

The contract will define profit of the Takaful business and the ratio to be shared between the two parties.

In essence, profit in Takaful is defined as returns on the investment and surplus from the underwriting in respect of the Takaful funds only. Therefore, this does not include profit posted by the Shareholders' Fund.

Under the Family Takaful business, it includes the mortality surplus to be allocated to the eligible participant as declared by the actuarial valuation at the end of every financial year.

***Muḍārabah* Model for General Takaful**

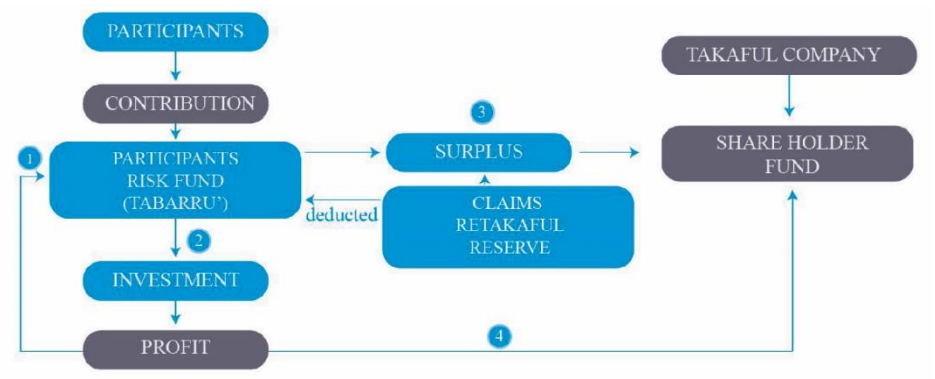


Diagram 9: *Muḍārabah* Model for General Takaful

Explanations:

1. Participants pay Takaful contributions to Participants Risk Fund.
2. The fund will be invested in *Sharī'ah*-Compliant investments such as Government Islamic Instruments (GII), sukuk, equities, fixed assets and General Investment Account (GIA).
3. Investment profit, if any, will be shared among the participants and Takaful Operator based on the pre-agreed ratio.
4. At year's end, the surplus will be distributed to the participants and Takaful Operator based on the pre-agreed ratio.

However, in the case of deficit, the shareholders of the Takaful Operator will provide *qarḍ*.

***Muḍārabah* Model for Family Takaful Model**

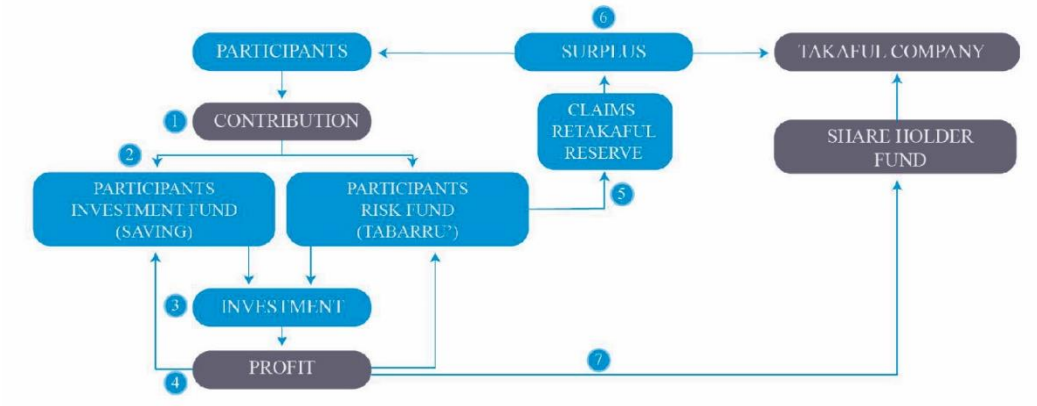


Diagram 10: *Muḍārabah* Model for Family Takaful

Explanations:

1. Participants pay Takaful contributions.
2. The participants' contributions will be apportioned into:
    1. Participants' Investment Fund (PIF), which is meant for saving; and
    2. Participants' Risk Fund (PRF), which is based on the *tabarru'* concept.
3. The fund will be invested in *Sharī'ah*-Compliant investments such as Government Islamic Instruments (GII), sukuk, equities, fixed assets and General Investment Account (GIA).
4. Investment profit, if any, will be shared among participants and the Takaful Operator based on the pre-agreed ratio.
5. The Participants' Risk Fund will be used for claims, Retakaful and reserve.
6. At year's end, the surplus will be distributed to the participants and Takaful Operator based on the pre-agreed ratio.

However, in the case of deficit, the shareholders of the Takaful Operator will provide *qarḍ*.

5.4.3 *Muḍārabah* + *Wakālah* Model (Hybrid Model)

The Takaful *hybrid* model is a combination of *muḍārabah* and *wakālah* models. Under this model, the Takaful Operator assumes the role of entrepreneur (*muḍārib)* as well as the agent (*wakil)* of the participant, and acts as both provider of capital (*rabbul māl)* and principal to the agent. By this arrangement on the part of the operator, an agency fee can be remunerated as upfront charges from the Takaful fund, whilst at the same time the operator will have the right to profit-sharing on the returns on the investment of the Takaful fund in accordance with the *muḍārabah* contract.

In this regard, the *muḍārabah* contract is applied on the investment activity only. Profit from the fund in this instance, comprises surplus from underwriting as well as returns on the investment as

a whole. In addition to the *wakālah* fee, the model provides discretion to the operator to charge, on surplus of the Takaful fund, a performance fee in consideration for managing the Takaful business as a whole. Therefore, the operator has three sources of income: the *wakālah* fee, profit sharing from the investment return of the Takaful fund and returns on the investment of its shareholders fund. As for the participants, they will have the right to share the net underwriting surplus as well as profit sharing on the investment of the Takaful fund.

Hybrid Model for General Takaful

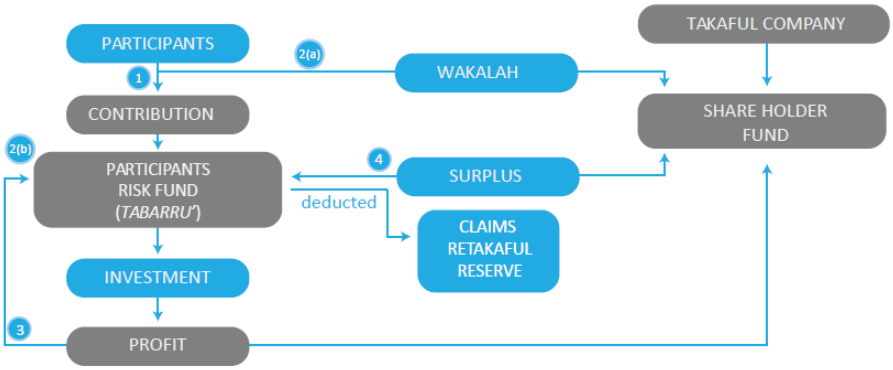


Diagram 11: Hybrid Model for General Takaful

Explanations:

1. Participants pay Takaful contributions.
2. a. *Wakālah* fee will be deducted from the contribution.
   b. The participants' contributions will be apportioned into the Participants' Risk Fund (PRF) which is based on the *tabarru'* concept.
3. The participants' contribution will be apportioned into Participants' Risk Fund (PRF) which is based on the *tabarru'* concept.
4. The fund will be invested in *Sharī'ah*-Compliant investments such as Government Islamic Instruments (GII), sukuk, equities, fixed assets and General Investment Account (GIA).
5. Investment profit, if any will be shared among participants and the Takaful Operator based on the pre-agreed ratio.
6. The Participants' Risk Fund will be used for claims, Retakaful and reserve.
7. At year's end, the surplus (if any) will be treated as follows:
   1. Payment of performance fee to the Takaful Operator.
   2. Net surplus after deducting performance fee will be distributed to the participants.

However, in the case of a deficit, the shareholders of the Takaful Operator will provide *qarḍ* .

Hybrid Model for Family Takaful

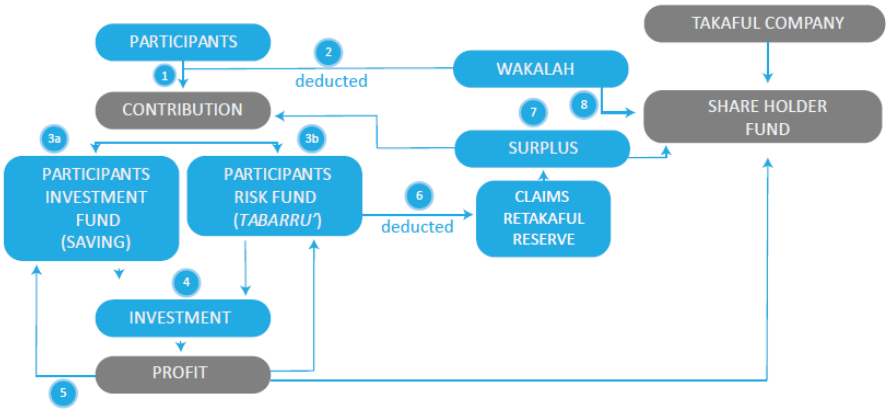


Diagram 12: Hybrid Model for Family Takaful

Explanations:

1. Participants pay Takaful contributions.
2. *Wakālah* fee will be deducted from the contribution.
3. The participants' contribution will be apportioned into:
   a) Participants' Investment Fund (PIF) which is meant for saving.
   b) Participants' Risk Fund (PRF) which is based on the *tabarru'* concept.
4. The fund will be invested in *Sharī'ah*-Compliant investments such as Government Islamic Instruments (GII), sukuk, equities, fixed assets and General Investment Account (GIA).
5. Investment profit, if any will be shared among participants and the Takaful Operator based on the pre-agreed ratio.
6. The Participants' Risk Fund will be used for claims, Retakaful and reserve.
7. At year's end, the surplus (if any) will be treated as follows:
   a) Payment of performance fee to the Takaful Operator; and
   b) Net surplus after deducting performance fee will be distributed to the participants.

However, in the case of a deficit, the shareholders of the Takaful Operator will provide *qarḍ* .

CHAPTER A6: DEVELOPMENT AND SUPERVISION OF TAKAFUL INDUSTRY IN MALAYSIA

Learning Objectives

To understand the function of regulatory and other supporting bodies in Takaful industry

Learning Outcome

Able to explain the function of regulatory and other supporting bodies in Takaful industry

A6.1 TAKAFUL INDUSTRY IN MALAYSIA AT A GLANCE

The development of the Takaful industry in Malaysia started when Takaful Act was enacted by Parliament in 1984. This Act (Takaful Act 1984) provides for the regulation of Takaful business in Malaysia.

6.1.1 Key Milestones of Malaysia's Takaful Industry

1. Phase I (1982 – 1992)

1982	Special Task Force established to explore the viability of setting up an Islamic insurance company.
1984	Takaful Act 1984 was gazetted. Incorporation of Syarikat Takaful Malaysia Bhd. (STMB).
1988	BNM commences the supervision of the insurance and Takaful industry.

2. Phase 2 (1993 – 2000)

1993	MNI-Takaful Sdn. Bhd. commenced operations.
1995	Set-up of ASEAN Takaful Group.
1997	Incorporation of ASEAN Retakaful International (L) Ltd. in the

	International Offshore Financial Centre, Labuan. Appointment of members – National *Sharī'ah* Advisory Council for Islamic Banking and Takaful.
1998	MNI-Takaful changed its name to Takaful Nasional Sdn. Bhd.
2000	STMB and Takaful Nasional (now known as Etiqa Takaful) jointly developed a Code of Ethics for the industry.

3. Phase III (2001 – 2010)

2001	Establishment of IBFIM. BNM launch of the Financial Sector Masterplan.
2002	Mayban Takaful Bhd. commenced operations. Establishment of the Malaysian Takaful Association. Islamic Financial Services Board (IFSB) inaugurated.
2003	Takaful Ikhlas Bhd. commenced operations.
2004	Approval in principal granted to Commerce Asset Holdings Bhd. to conduct Takaful business.
2005-2007	Start of operational Takaful licences - Sun Life Malaysia Takaful, HSBC Amanah Takaful, MAA Takaful, Hong Leong MSIG Takaful, Prudential BSN Takaful.
2006	Establishment of Malaysian International Financial Centre.
2008-2010	Establishment of four Retakaful Operators: ACR Retakaful Bhd, MNRB Retakaful Bhd, Munich Re Retakaful Bhd, Swiss Re Retakaful Bhd. Inter-Takaful Operator Agreement (ITA) was officially signed.
2009	IFSB-8 issued on Takaful governance and IFSB-10 issued on *Sharī'ah* governance principles. Establishment of AIA International Takaful Bhd.
2010	IFSB-11 issued on solvency for takaful.

	Announcement of four new family takaful licenses Establishment of Great Eastern Takaful Bhd.

4. Phase IV (2011 – 2020)

2011	BNM unveiled Financial Sector Blueprint 2011-2020. AIA AFG Takaful, ING PUBLIC Takaful Ehsan and AmMetLife Takaful began operations. Perbadanan Insurans Deposit Malaysia Act 2011 was gazetted.
2012	Enforcement of Takaful Operational Framework and the revised Shariah Governance Framework.
2013	The new Islamic Financial Services Act 2013 was enacted. Merger of AIA AFG Takaful Bhd and ING PUBLIC Takaful Ehsan Bhd (to be known as AIA PUBLIC Takaful Bhd.)
2014	Enforcement of Risk Based Capital for Takaful.
2015	Internal Capital Adequacy Assessment Process (ICAAP) for Takaful Operators. Appointed Actuary and Goods & Services Tax (GST).
2016	Financial Conditions Reports & Operationalisation of Financial Ombudsman Scheme.
2017	LIFE Framework & Phased Liberalization of Motor and Fire Tariffs.
2018	Conversion to Single Takaful Business.

A6.2 MALAYSIAN LEGISLATION, REGULATORY FRAMEWORK AND CONSUMER PROTECTION

6.2.1 Role of Central Bank of Malaysia (Bank Negara Malaysia)

Bank Negara Malaysia (BNM) was established on 26 January 1959 under the Central Bank of Malaysia Act 1958. Its main purpose is to issue currency, act as banker and adviser to the

Government of Malaysia and regulate the country's financial institutions, credit system and monetary policy.

The Central Bank of Malaysia Act 1958 was replaced by the Central Bank of Malaysia Act 2009 (CBA), which came into force on 25 November 2009.

The act provides BNM with a clearer mandate to promote monetary and financial stability, and to exercise oversight over payment systems.

The Islamic financial system in Malaysia is given due recognition by the act via provision of the legal foundation for its development in the overall Malaysian financial system.

Under this ambit, BNM will supervise Takaful Operators, Retakaful Operators as well as international Takaful Operators.

Objectives of Supervision

BNM role as supervisor is to achieve the following objectives:

1. Preserve the stability of Takaful Industry;
2. Instill public confidence in the Takaful Industry;
3. Promote strong governance standards in the management of Takaful Operators;
4. Ensure that consumers are well informed for decision making;
5. Integrate supervision across borders and sectors.

6.2.2 Islamic Financial Services Act (IFSA) 2013

This act was passed by Parliament June 30 2013, replacing the Takaful Act 1984 and the Islamic Banking Act 1983.

The enactment of the Islamic Financial Services Act (IFSA) 2013 is to provide a strengthened regulatory and legal regime to meet the challenges and developments of an increasingly sophisticated and internationalised Islamic finance industry.

The main objectives of IFSA 2013 are to;

1. Promote financial stability;
2. Strengthen compliance with *Sharī'ah*; and
3. Strengthen regulatory framework for Islamic financial institutions.

The penalties and imprisonment term imposed on persons found guilty of contravening this Act is set on a much higher limit. This is to discourage non-compliance by stakeholders and to give matters to be taken seriously for persons involved in this industry.

6.2.3 *Sharī'ah* Governance Framework (SGF)

Sharī'ah Governance Framework (SGF) has been introduced by BNM in year 2010 with the following objectives:

1. to set out the expectations on an Islamic financial institution's *Sharī'ah* governance structures, processes and arrangements with the goal of ensuring that all operations and business activities are consistent with *Sharī'ah* principles at all times;

2. to provide comprehensive guidance to the board, *Sharī'ah* committee and management of Islamic financial institutions in discharging its duties on matters relating to *Sharī'ah*; and

3. to ensure proper functioning of *Sharī'ah* compliance through effective *Sharī'ah* view and *Sharī'ah* audit functions.

The framework has outlined the model structure of roles, functions and reporting relationships of key organs in the IFI's *Sharī'ah* governance framework to ensure that the reporting on *Sharī'ah* matters is carried out effectively and on timely manner.

Sharī'ah governance framework is reflected by effective and responsible board and management, an independent *Sharī'ah* Committee that is both competent and accountable, supported by a strong internal *Sharī'ah* research capacity, and monitored through active *Sharī'ah* review, *Sharī'ah* audit and *Sharī'ah* risk management.

For an IFI, the oversight mechanism is usually done by their *Sharī'ah* department.

6.2.4 Takaful Operational Framework (TOF)

Takaful Operational Framework (TOF) was issued by BNM in December 2010 and made effective from January 1, 2012.

The issuance of TOF is part of the government initiatives to promote the orderly growth of Takaful business. It outlines the parameters in governing the Takaful Operators' operational processes. It also outlines the various rules and requirements for Takaful Operators without limiting the Takaful Operators from applying any particular contracts for their operations.

Among the objectives of the TOF are:

1. to enhance operational efficiency of Takaful business;

2. build healthy Takaful funds which are sustainable;

3. safeguard the interests of participants; and

4. promote uniformity in Takaful business practices.

The coverage of TOF also includes operational processes relating to Takaful and Shareholders' Funds, which includes requirements relating to the setting up of funds, management of Takaful operations, management of operating costs and income of the Takaful Operators, management of assets, liabilities and surplus, and rectification of deficiency of the Takaful funds.

6.2.5 Life Insurance and Family Takaful Framework

Bank Negara Malaysia has issued the Life Insurance and Family Takaful Framework on 23 November 2015 that sets out planned reforms to support the long-term development of the life insurance and family Takaful industry.

The larger objective of the framework is to liberalise the insurance and Takaful market in a manner that would ultimately benefit consumers.

The framework aims to :

1. Promote innovation and a more competitive market

   Increase value proposition of products and services to protect against unforeseen circumstances. For example, the industry must introduce commission-free pure protection products relating to term, critical illness and medical coverage. This will lead to lower costs for consumers.

2. Promote higher levels of professionalism

   Strengthen transparency, professionalism and market practices by introducing a balanced scorecard for intermediaries. Currently, the intermediaries' remuneration is based on their sales. With the scorecard, remuneration will take into account non-sales factors like suitability of advice, service quality and high ethical and professional conduct.

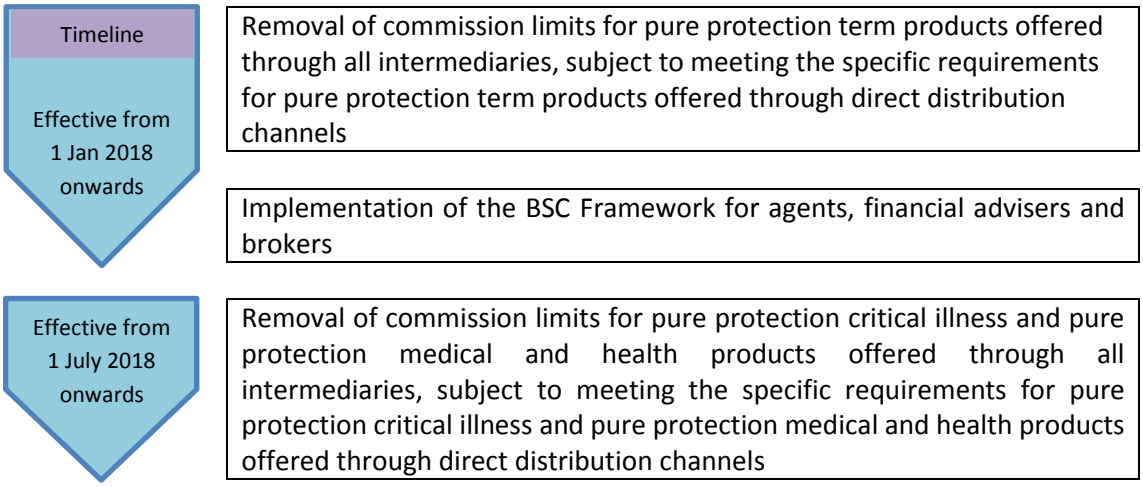
3. Increase transparency in Takaful products and services

   Improve product disclosure in sales/benefits illustrations. Also, increase access to more products and diversify distribution channels especially direct channels (walk-in to head office/branch premises or through websites).

6.2.6 Balanced Score Card (BSC) Framework

Balanced Score Card for Life and Family Takaful intermediaries which was issued on December 2017 is introduced as a tool to further the fair treatment to consumers.

The effective dates for implementation of the BSC Framework are as below:



Implementation of Balanced Score Card (BSC) Framework of which a licensed person:

1) shall following Key Performance Indicators (KPIs) in the design of the BSC Framework:
   a. number of certificates marketed or annualised first year contribution;
   b. completion rate of Customer Fact Find (CFF) form;
   c. persistency rate;
   d. number of substantiated complaints; and
   e. CPD hours.

2) shall measure the specific percentage of commission payable to an intermediary against the KPIs of the BSC Framework.

6.2.7 Malaysia Deposit Insurance Corporation Act 2011

Perbadanan Insurans Deposit Malaysia (PIDM) is a statutory body established under the Malaysia Deposit Insurance Corporation Act 2005 to administer the national deposit insurance system aimed at protecting depositors in commercial and Islamic banks.

PIDM's mandated objects are to:

(a) administer a deposit insurance system and a Takaful and insurance benefits protection system under the act;

(b) provide insurance against the loss of part or all of deposits for which a deposit taking member is liable and provide protection against the loss of part or all of Takaful or insurance benefits for which an insurer member is liable;

(c) provide incentives for sound risk management in the financial system; and

(d) promote or contribute to the stability of the financial system.

The act was later expanded by Parliament to administer the Takaful and Insurance Benefits Protection System (TIPS) effective 31 December 2010.

TIPS is a system established by the Government to protect owners of Takaful certificates and insurance policies from the loss of their eligible Takaful or insurance benefits in the event that an insurer member fails and is unable to honour the Takaful or insurance benefits. The Takaful benefits protected under TIPS and related limits are set out in the tables below.

Benefits Protected	**Maximum Limit (Individual or Group Plans)**
Death and related benefits	RM500,000
Permanent disability	RM500,000
Critical illness	RM500,000
Maturity value (excluding unit portion of investment-linked policies)	RM500,000
Surrender value	RM500,000
Accumulated cash dividends	RM100,000
Disability income	RM10,000 per month
Annuity income	RM10,000 per month
Medical expenses	100% of expenses incurred
Refundable prepaid premiums	100% of amount prepaid

Table 19: Protected Benefits for Family Takaful

Benefits Protected	**Maximum Limit (Plans)**
Loss of or damage to property in relation to: 1. an immovable property located in Malaysia 2. a motor vehicle registered in Malaysia or a foreign registered vehicle insured to drive in Malaysia 3. a ship, aircraft or other movable property insured by a citizen or qualified person[1]	RM500,000 per property
Death and related benefits	RM500,000
Permanent disability	RM500,000

Critical illness	RM500,000
Disability income	RM10,000 per month
Medical expenses	100% of expenses incurred
In relation to indemnification against claims by a third party: 1. loss of or damage to eligible third-party immovable or movable property 2. death and related benefits 3. permanent disability 4. illness or bodily injury 5. disability income 6. medical expenses	1. RM500,000 per property 2. RM500,000 3. RM500,000 4. RM500,000 5. RM10,000 per month 6. 100% of expenses incurred
Refundable prepaid premiums	100% of amount prepaid

Table 20: Protected Benefits for General Takaful

Benefits to Takaful Participants

1. PIDM protects the participant against the loss of eligible Takaful benefits should an insurer member fail.
2. The protection is provided by PIDM automatically and no application is required.
3. There is no charge to owners of Takaful certificates for this protection.

6.2.8 Financial Consumer Complaints and Disputes

1. Ombudsman for Financial Services (OFS)

OFS (formerly known as Financial Mediation Bureau) has been appointed by Bank Negara Malaysia as the operator of the Financial Ombudsman Scheme (FOS) in April 2016 pursuant to the Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA). OFS is an independent body set up as an alternative complaint/dispute resolution body to assist financial consumers to resolve their complaints/disputes with the Financial Service Providers (FSPs) who are its Members.

OFS Mandate:

1. To provide financial consumers an avenue for effective and prompt resolution of complaints/disputes arising from products and services provided by its Members on "free of charge" basis;

2. To resolve complaints/disputes in an independent, impartial and fair manner;

3. To collaborate with Members in resolving complaints/disputes; and
4. To create awareness on matters of common interest to financial consumers and the financial industry.

OFS Jurisdiction:

No	Type of complaint/dispute	Monetary Limit
1.	A complaint/dispute involving financial services or products or Islamic financial services or product, developed, offered or marketed by a Member, or by a Member for or on behalf of another person, other than a complaint/dispute under paragraphs 2 and 3. Type of disputes include: Insurance/Takaful: 1. Life insurance claims 2. General insurance claims 3. Takaful family claims 4. Takaful general claims Conventional/Islamic Banking: 1. Bancassurance/Bancatakaful/Investment-linked Insurance products/ Investment-linked Takaful products	RM 250,000.00
2.	A complaint/dispute on motor third party property damage insurance/Takaful claims.	RM 10,000.00
3.	A complaint/dispute on: 1. An unauthorized transaction through the use of a designated payment instruments or an Islamic designated payment instruments or payment channel such as Internet banking, mobile banking, telephone banking or automated teller machine (ATM); or 2. An unauthorized use of a cheque as defined in section 73 of the Bills of Exchange Act 1949 (Act 204).	 RM 25,000.00 RM 25,000.00

Consumers are required to submit their complaints to OFS, within six months from the date of the final decision by the Member concerned or after sixty (60) calendar days from the date of the complaint/dispute was first referred to the Member concerned in respect of which no response has been received from that Member.

Types of complaints among others **not** handled by OFS:

1. A complaint/dispute that is beyond the maximum monetary limit;
2. A complaint/dispute on general pricing, product features, credit or underwriting decisions;
3. A complaint/dispute concerning the actuarial standards, tables and principles which a Member applies to its long-term insurance/Takaful business for insurance or Takaful claims, except guaranteed payment which are explicitly mentioned in the terms and conditions of the policy/certificate;
4. A complaint/dispute that has been filed in a court or arbitration or referred to arbitration or has been decided by a court or arbitrator;
5. A complaint/dispute that is referred to OFS after more than six months from the date the Member has provided its final decision;

The recommendation of the Case Manager is not binding on both parties. If either claimant or the Member does not accept the Case Manager's recommendation, the complaint/dispute may be referred to the Ombudsman for Adjudication within 30 days from the date of recommendation or by the date stipulated in the recommendation (whichever is later).

The decision of Ombudsman is final and is only binding on the Member if complainant accepts that decision. However, if complainant chooses not to accept the Ombudsman's final decision, complainant is free to pursue the claim through any other means, including initiating a legal proceeding or arbitration.

2. Bank Negara Malaysia LINK

BNMLINK represents one of Bank Negara Malaysia's important points of contact with the general public. It acts as a centralised point of contact to facilitate a rapid and effective response for members of the public and small and medium enterprises (SMEs) in matters related to the financial sector.

BNMLINK through its exhibitions, self-service kiosks and booklets also provide consumer financial education as well as awareness on the role of Bank Negara Malaysia in nation building to the public.

Personnel of BNMLINK are available to assist and effectively address and attend to matters in the areas of banking, insurance, Takaful, SMEs financing, currency as well as other areas under the purview of Bank Negara Malaysia.

6.2.9 Personal Data Protection Act (PDPA) 2010

The Personal Data Protection Act 2010 (PDPA) came into force in November 2013 to regulate the processing of personal data in a commercial transaction.

PDPA applies to:

1. Any person who processes or authorizes the processing of any personal data in respect of commercial transactions Personal data processed in Malaysia;
2. Uses of equipment in Malaysia for processing personal data.

The purpose of the PDPA is to:

1. Protect personal data belonging to the public from being misused through commercial transactions;
2. Protect sensitive data from being misused;
3. Facilitate international trade;
4. Protect consumer rights.

6.2.10 Anti-Money Laundering Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA 2001)

The AMLATFPUAA provides for the offence of money laundering, the measures to be taken for the prevention of money laundering and terrorism financing offences, investigation powers and the forfeiture of property involved in or derived from money laundering and terrorism financing offences, as well as terrorist property, proceeds of an unlawful activity and instrumentalities of an offence.

The AMLATFPUAA promotes a collaborative and multi-agency approach by setting out the powers and functions of:

a. the competent authority which is responsible to oversee the performance of obligations by the reporting institutions, facilitate the enforcement of the AMLATFPUAA and co-operate with the foreign financial intelligence units;

b. enforcement agencies which are responsible to investigate the offences under the AMLATFPUAA; and

c. supervisory and regulatory authorities which are responsible to facilitate in the implementation of the AMLATFPUAA.

A6.3 *SHARĪ'AH* ADVISORY COUNCIL (SAC) AND *SHARĪ'AH* COMMITTEE (SC)

Sharī'ah Advisory Council (NSAC) for Islamic Banking and Takaful was established by BNM in May 1997. Its objective is to look after the *Sharī'ah* decision and harmonize *Sharī'ah* interpretation of Islamic Banking and Takaful business under its supervision.

6.3.1 *Sharī'ah* Advisory Council (~~N~~SAC) of Bank Negara Malaysia

For the record, BNM Act 1958 and Takaful Act 1984 were amended in 2003 to further strengthen the role of *Sharī'ah* Advisory Council. The amendment provides the recognition to the council as an authoritative body that has the right over *Sharī'ah* matters that relate to Takaful. The status of the council was upgraded as a reference point for the Malaysian court on *Sharī'ah* issues which relates to Takaful cases.

To effectively play its role the SAC operates as an independent body of high integrity. There is a difference between SAC and *Sharī'ah* bodies which act as advisers in Takaful industry. A *Sharī'ah* body in Takaful industry is known as the *Sharī'ah* Committee (SC) and plays a complementary role to the SAC of Bank Negara Malaysia.

6.3.2 *Sharī'ah* Committee (SC) of Takaful Operator

Under IFSA 2013, it is a statutory requirement that a *Sharī'ah* Committee should be set up in each institution licensed under this legislation, which would have the role to ensure that the governance, business and operations of the institution are consistent with *Sharī'ah*.

The objective of the guideline:

1. To set out the rules, regulations and procedures in the establishment of a *Sharī'ah* Committee;
2. To define the role, scope of duties and responsibilities of a *Sharī'ah* Committee;
3. To define relationship and working arrangement between a *Sharī'ah* Committee and the SAC of Bank Negara Malaysia.

This guideline requires every Takaful Operator to establish *Sharī'ah* Committee. This is also in line with Section 30 of IFSA 2013.

The detailed guidelines on the governance of *Sharī'ah* Committee; the role, duties and responsibilities of *Sharī'ah* Committee and its members and the relationship and working arrangement between the *Sharī'ah* Committee at individuals institutions and national level has been detailed out in *Sharī'ah* Governance Framework (SGF).

A6.4 INDUSTRY ASSOCIATIONS

Industry associations are mandatory associations specifically mentioned in both Takaful and Insurance Acts. Takaful Operators and Insurance Companies have to join or subscribe to the association before they can commence business. The main purpose of the industry association is to facilitate "Self-Regulation" among industry players. It also allows mediation between authority and industry, forming a common platform to be addressed by the regulator.

6.4.1 Malaysian Takaful Association (MTA)

Malaysian Takaful Association (MTA) was incorporated in 2003 with the objective of promoting the establishment of a sound Takaful (Islamic insurance) structure in Malaysia in cooperation and consultation with the Director-General of Takaful.

1. To promote and represent the interests of the member companies and the Takaful industry.
2. To render where possible, to member companies such advice and assistance as may be required
3. To circulate information likely to be of interest to member companies, and to collect, collate and publish statistics and other information relating to Takaful.
4. Cooperate with other associations, both domestic and global for common interest.

As a mean of creating a healthy and highly credible business environment for Takaful, MTA has introduced a set of rules for the use of the Takaful Operators' Takaful agents. The Code of Ethics for Takaful agents is the basic guideline for Takaful Agent to observe in their practice, which aims at strengthening universal moral values and upholding the interests and the welfare of the company, the shareholders, the Takaful participants, the community in general and the agents themselves.

6.4.2 Life Insurance Association of Malaysia (LIAM)

Life Insurance of Malaysia (LIAM) was established in 1974 as a trade association under the Societies Act 1966.

LIAM has a total of 17 members which consists of 15 life insurance companies and 2 life reinsurance companies.

The objectives of LIAM are as follow:

1. To promote public understanding and appreciation for life insurance.
2. To strengthen the market practices of the life insurance industry through self-regulation.
3. To support the regulatory authorities in developing a strong and healthy industry.
4. To enhance the professionalism of staff and agents through continuous training and education.
5. To liaise and work with local and foreign insurance organizations towards achieving common objectives and benefits.

6.4.3 Persatuan Insurans Am Malaysia (PIAM)

The Persatuan Insurans Am Malaysia (PIAM) was formed in May 1979 in compliance with Section 3(2) of the Insurance Act, 1963. (This provision has been superseded by Section 22 of the Insurance Act, 1996)

PIAM constitutes the statutory association recognized by the Government of Malaysia for all registered insurers who transact general insurance business in this country.

The objectives of PIAM are:

1. To establish a sound insurance structure in Malaysia.
2. To collect and circulate information and statistics relating to general insurance business.
3. To make rules, regulations, tariff and by-laws in consultation with the Director General of Insurance (DGI) for implementation by the members.
4. To manage the Unplaced Motor Pool and Fire Protection Association.
5. To assist in whatever way within its capacity to reduce losses and/or accidents, and to prevent crime.
6. To work closely with Malaysian Takaful Association in encouraging healthy development of the insurance and Takaful industry.

6.4.4 Malaysian Insurance and Takaful Brokers Association (MITBA)

On 3rd December 1974, The Insurance Brokers Association of Malaysia or its acronym IBAM was founded under the Registration of Society Act. The initial objective was to provide a mean to discuss members' problem of common interest and negotiate with other Insurance associations, regulators bodies and authorities.

To reflect the inclusion of the Takaful Brokers as members of the association, on 1st August 2006, IBAM was renamed The Malaysian Insurance and Takaful Brokers Association or MITBA. Current membership comprises of 38 bodies & Takaful of which 29 are composite and 5 conventional.

The objectives of MITBA are :

1. To promote and establish a sound brokerage business in Malaysia in co-operation and consultation with the DGI.
2. To promote and represent the interests of members.
3. To note events, statements and expressions of opinion affecting members, to advise them thereon and to represent their interests by expression of views on their behalf as may be deemed necessary and expedient.

4. To co-operate with other similar associations elsewhere in the world.
5. To work in conjunction with any legal body or association or any similar body appointed for consideration, training, amendment or alteration of any law relating to insurance.

A6.5 KEY ORGANISATIONS SUPPORTING THE TAKAFUL INDUSTRY

6.5.1 Standard Setting Bodies

1. Islamic Financial Services Board (IFSB)

The Islamic Financial Services Board (IFSB), which is based in Kuala Lumpur, was officially inaugurated on 3rd November 2002 and started operations on 10th March 2003.

It serves as an international standard-setting body of regulatory and supervisory agencies that have vested interest in ensuring the soundness and stability of the Islamic financial services industry, which is defined broadly to include banking, capital market and insurance.

In advancing this mission, the IFSB promotes the development of a prudent and transparent Islamic financial services industry through introducing new, or adapting existing international standards consistent with *Sharī'ah* principles, and recommend them for adoption.

2. Malaysian Accounting Standards Board (MASB)

The Malaysian Accounting Standards Board (MASB) is established under the Financial Reporting Act 1997 as an independent authority to develop and issue accounting and financial reporting standards in Malaysia.

The MASB, together with the Financial Reporting Foundation (FRF), make up the frameworks for financial reporting in Malaysia. These frameworks comprises an independent standard-setting structure with representation from all relevant parties in the standard-setting process, including preparers, users, regulators and the accountancy profession.

The functions and powers of the MASB as provide under the act among others are:

1. Issue new accounting standards as approved accounting standards;
2. Review, revise or adopt as approved accounting standards, existing accounting standards;
3. Amend, substitute, suspend, defer, withdraw or revoke any approved accounting standards in whole or in part;

4. Issue, approve, review, revise, amend, substitute, suspend, defer, withdraw or revoke any statement of principles, any technical and other releases and any other document relating to financial reporting by whatever name called in whole or in part;
5. Collaborate with other national and international accounting standard-setters and monitor the development of other national and international accounting standards;
6. Conduct such public consultation as may be necessary in order to determine the contents of accounting concepts, principles and standards;
7. Develop a conceptual framework for the purpose of evaluating proposed accounting standards;

6.5.2 Learning and Development Institutions

1. IBFIM

IBFIM is an industry-owned institute whose objective is to serve the needs of the Islamic finance industry stakeholders in talent and business development. Since 2001, IBFIM has been conducting training programs as well as extending business and *Sharī'ah* advisory services. IBFIM's tagline "Your Islamic Finance Business Partner" manifests its close rapport with the industry and its wide range of services.

As a market leader, IBFIM's certification programs are developed, moderated and recognised by the industry. The programs cover four disciplines: Banking, Takaful, Capital Market and Wealth Management. IBFIM's Islamic Finance Qualifications are mapped out in an innovative Progression Route, to motivate industry personnel to enhance their competencies in moving up the corporate ladder.

2. Malaysian Insurance Institute (MII)

The Malaysian Insurance Institute (MII) is the leading professional body and education institution for the Malaysian insurance industry.

MII provides internationally recognised qualifications in insurance, risk management and financial planning. It is highly respected as a regional centre that offers an extensive range of quality education programmes and training courses for professionals in the insurance and financial services industry.

MII commitment to providing relevant, high quality professional qualifications and training offerings is underpinned by its role in partnering the industry and its members in the pursuit of professional excellence and business success.

6.5.3 Supporting Associations

1. Association of Malaysian Loss Adjusters

The Association of Malaysian Loss Adjusters established in 1981 is the association of loss adjusters approved by the Minister and is registered as a society under the new Section II of the Societies Act 1966.

The membership of the association is on corporate basis, ie. it is confined to companies carrying on the business of loss adjusting in Malaysia. Section 20C (1) of the Insurance Act 1963 requires that no person shall act or hold himself out as an adjuster unless he is the holder of a licence granted by the DGI and is a member of an association of adjusters approved by the Minister of Finance.

The main objectives of the association are as follows :

1. The promotion of the establishment of a sound loss adjusting structure in Malaysia in co-operation and consultation with the DGI;
2. The promotion and representation of the interests of members in or connected with Malaysia by all means and methods consistent with the laws and Constitution of Malaysia;
3. Co-operation with other similar associations elsewhere in the world;
4. Circulation of information likely to be of interest to members and to collate and publish statistics and any other relevant information relating to loss adjusting; and
5. Work in conjunction with any legal body or association or any similar body appointed or to be appointed for the consideration, framing, amendment or alteration of any law relating to loss adjusting.

2. National Association of Malaysian Life Insurance and Family Takaful Advisers (NAMLIFA)

NAMLIFA is the premier organization for life insurance professionals and financial planners/practitioners.

NAMLIFA is a professional body that protects, promotes and strengthens the critical role of life insurance industry through sound financial services and the essential role of the agency force.

3. Motor Insurance Bureau (MIB)

MIB was incorporated on 24 October 1967 as a company limited by guarantee under the Company's Act 1965.

The objectives of the MIB are :

1. To ensure as far as possible that Part IV of the RTO 1958 or any amendments shall be just and equitable and the objective be achieved to the fullest possible extent;

2. To administer jointly with the government, the Insurance Guarantee Scheme Fund in respect of insolvent insurers;
3. To make compassionate payments or allowances to persons injured or to dependents of persons killed through the use of motor vehicles; and
4. To make calls or impose levies upon its members to enable the bureau to discharge its obligations.

4. Malaysian Financial Planning Council (MFPC)

The Malaysian Financial Planning Council (MFPC) comprises office bearers elected by its members to provide leadership and direction. MFPC is a self-regulatory body to promote financial literacy and enhance the profession of Financial Planners through education and training.

The Registered Financial Planner (RFP) programme introduced by MFPC was launched by Bank Negara Malaysia (BNM) in November 2002. The RFP qualification signifies the twin pillars of professionalism in financial planning - Professional Education and Practice Excellence. The RFP and the *Sharī'ah* RFP programmes are recognised by BNM and the Securities Commission as pre-requisite for the Financial Adviser's Licence and the Capital Market Services Representative Licence respectively.

In addition, MFPC has also established Best Practice Standards and the Code of Ethics for Financial Planners, which are continually reviewed and updated in line with changes in the legal and regulatory framework.

Key objectives of MFPC are:

- To certify financial planners and uplift their professionalism;
- To enhance the image of the financial planning profession;
- To set practice standards; and
- To provide self-regulation in the financial planning industry.

CHAPTER 7: TAKAFUL INTERMEDIARIES

Learning Objectives

To understand the role and responsibilities of intermediaries in Takaful industry

Learning Outcomes

Able to explain the roles and responsibilities of intermediaries

A7.1 INTRODUCTION

A Takaful intermediary is a professional who solicits Takaful business or invites potential customers to enter into Takaful contracts with Takaful Operators. They are commonly known as Takaful agents, Takaful brokers or Financial Advisers.

Intermediaries are usually paid commissions (or brokerage fees for brokers) for each plan promoted which is based on a percentage of the contributions made by customers who are also called "participants".

A7.2 TYPES OF TAKAFUL INTERMEDIARIES

1. Takaful Agent

   A Takaful agent represents a Takaful Operator and primarily promotes Takaful plans issued by the Takaful Operator.

   According to IFSA 2013, Takaful agent means a person who does all or any of the following:

   a) Solicits or obtains a proposal for Takaful certificate on behalf of a Takaful Operator;
   b) Offers or assumes to act on behalf of a Takaful Operator in negotiating a Takaful certificate; and
   c) Does any other act on behalf of a Takaful Operator in relation to the issuance, renewal or continuance of a Takaful certificate.

2. Takaful Broker

According to IFSA Act 2013, Takaful broker is defined as a person who, as an independent contractor, carries out Takaful and/or Retakaful broking business. He is independent of any Takaful Operator, and represents the interests of the potential participant in searching for Takaful coverage at the lowest cost that provides the most comprehensive benefit to the potential participant. Some of the main duties of a Takaful broker are as follows:

a) Assists the customer in obtaining and renewing a Takaful cover from a Takaful Operator.
b) Recommends and advises the customer on the most appropriate Takaful plan coverage and terms being offered by Takaful Operators.

3. Financial Adviser

A financial adviser is an independent party that provides financial advisory business. A financial advisory business is defined as:

a) analysing the financial planning needs of a person relating to a Takaful product;
b) recommending an appropriate Takaful product to a person;
c) sourcing a Takaful product from a licensed Takaful Operator for a person;
d) arranging a contract in respect of a Takaful product for a person; or
e) such other business, service or activity in relation to a financial service.

The differences between the intermediaries are illustrated as follows:

Types of Intermediaries	Represents	Licensed/Registered by:
Takaful Agent	Takaful Operator	Malaysia Takaful Association (MTA)
Takaful Broker	Customer	Bank Negara Malaysia
Financial Adviser	Customer	Bank Negara Malaysia

Table 21: The Differences between Intermediaries in Takaful Industry

A7.3 DUTIES OF A TAKAFUL AGENT

The contract of agency between the principal and agent is normally in writing. However, it may be verbal. It contains the terms and conditions relating to the conduct of the agency and the remuneration payable to the agent.

Some of the main duties of a Takaful agent are as follows:

1. Promotion of Takaful products and services.
2. Giving advisory services (related to Takaful products) and customer support to the clients.
3. To submit proposal to the principal as required.
4. Provide general awareness about Takaful products and services.
5. Maintain good rapport with his/her existing and prospective clients.
6. Aware about the market conditions to guide their customers accordingly.

A7.4 TAKAFUL AGENT IN ISLAMIC FINANCIAL SERVICES ACT 2013

IFSA 2013 put a greater emphasize on the conduct of agent as one of the Takaful intermediaries.

1. Disclosure Requirement

   Section 140 (Para 10) of IFSA 2013 requires all agents who market Takaful products for a Takaful Operator to inform potential customers that he is an agent and acting on behalf of a particular Takaful Operator.

2. Takaful Agent to Represent Licensed Takaful Operator

   As stated under Section 26 of IFSA 2013 no person shall market or promote Takaful products or business as an agent or broker for a person or operator other than a licensed Takaful Operator. Any person found guilty of this provision, can be fined not exceeding RM50 million or imprisonment not exceeding 10 years, or both.

3. Non-Compliant of IFSA 2013

   Section 136 (4) of IFSA 2013 states that if any agent is found to be non-compliant with the provisions of the Act and if found guilty, can be fined not exceeding RM10 million or imprisonment for a period not exceeding five years or both.

A7.5 RIGHTS OF A TAKAFUL AGENT

The agent is entitled to receive payment and reimbursement.

1. The agent's most important right is the right to receive payment for his services, usually in the form of a commission or a fee.

2. The agent is also entitled to reimbursement of moneys which he has expended with the express authority of his principal within the acceptable limits.

3. The agent has the right to perform his duties in the manner which he considers to be appropriate. He may reject any attempt by his principal to control the manner in which he works.

A7.6 OBLIGATIONS OF THE PRINCIPAL

The principal has always the following duties towards his agents:

1. To pay remuneration and expenses as agreed; or, failing agreement, as is customary; or, failing a custom, to pay what is reasonable.

2. Indemnify the agent against consequences of any act lawfully done, within his authority, on behalf of his principal.

A7.7 TERMINATION OF AGENCY

The relationship of principal and agent may be terminated by act of the parties or by operation of law as follows:

1. By notice of revocation given by the principal to the agent.
2. By notice of renunciation given to the principal by the agent.
3. By the completion of the transaction where the authority was given for that transaction only.
4. By expiration of the period stipulated in the contract of agency.
5. By mutual agreement.
6. Generally, by death, lunacy or bankruptcy of the principal or agent.
7. By operation of any law which renders the contract of an agent illegal.

CHAPTER 8: INTRODUCTION TO MEDICAL AND HEALTH TAKAFUL

Learning Objectives

To understand the concept of Medical and Health Takaful Plan

Learning Outcomes

Able to define the categories and characteristics of Medical and Health Takaful Plan

A8.1 INTRODUCTION

Item 4 of the 'Guidelines on Medical and Health Takaful Business' defined 'Medical and Health Takaful certificate' as a certificate of Takaful that provides specified benefits against risks of persons becoming totally or partially incapacitated as a result of sickness or infirmity. The benefits may take the form of reimbursement of medical expenses incurred by the participant either in the form of a lump sum payment of the sum participated, or payment of an allowance or income stream at regular intervals for a specified period in the event of participants' incapacitation and/or hospitalisation.

In recent years, a greater number of Malaysians have turned to private healthcare to ensure and secure quicker service and greater healthcare options. Certainly the option does not come cheap. The better the service the higher is the cost. With healthcare costs increasing steadily, more and more Malaysians are turning to Medical and Health Takaful to finance their healthcare expenses.

Like all developing countries, disease patterns in Malaysia are in epidemiological transition. Major health problems have changed from that of acute infectious diseases to chronic lifestyle related disorders like cardiovascular diseases, diabetes mellitus, cancers and age related disorders. Rates of obesity and diabetes are on the rise as people consume more unhealthy food and do not adhere to healthy lifestyle practices.

All these factors suggest the need for long-term and expensive healthcare support, which leads to greater demand for Medical and Health Takaful to finance the cost.

A8.2 CATEGORIES OF MEDICAL AND HEALTH TAKAFUL

There are **two** categories of Medical and Health Takaful, namely:

1. Indemnity Certificate

   It is a type of medical plan that reimburses the participants for relevant medical expenses incurred. An example of an indemnity certificate is Hospitalisation and Surgical Takaful where a participant will be reimbursed for the costs of medical treatments and services which he has incurred upon hospitalisation.

2. Benefit Certificate

   A benefit certificate pays a pre-determined sum of money if a covered event occurs during the certificate period. Examples of benefit certificates are Hospitalisation Cash Benefit plan and Critical Illness Takaful.

A8.3 CHARACTERISTICS OF MEDICAL AND HEALTH TAKAFUL

Main characteristics of Medical and Health Takaful are as follows:

1. Non-Termination of Coverage with Claims Payment

   A Medical and Health Takaful Plan usually provides payment of claims up to the limits stipulated in the Takaful certificate. Such limits could be one or a combination of the following:

Limit	Description
Per disability limit	The maximum amount of benefits available to a participant per disability
Overall annual limit	The maximum amount of benefits available to a participant in any particular certificate year
Lifetime limit	The maximum amount of benefits available to a participant during his lifetime.

Table 22: Limit for Medical and Health Takaful Plan

The payment of a claim does not result in a termination of the certificate except in the event of a death claim.

2. Increase of Risk with Time in Medical and Health Takaful

   Medical and Health Takaful is also involved in morbidity of the participants (probability of a disability resulting from an accident or illness). Generally, with this kind of risk, it increases with age.

A8.4 COST CONTAINMENT MEASURES

Healthcare costs continue to rise making the Medical and Health Takaful becoming less profitable. To contain costs and abuses arising from inflated claims, various methods are used by Takaful Operators, which include the following:

1. Inner Limits

   An inner limit is a limit within a limit. For example, if the participant's *inner limit* for surgery is RM20,000, that is the maximum that he can claim although his annual limit might be higher than that.

2. Schedule of Surgical Procedures

   List of surgical procedures covered by the certificate.

3. Maximum Period of Compensation

   The maximum period that the certificate will cover the participant for any services/treatment. For example, the certificate will cover room and board for a maximum 30 days for an admission.

4. Co-Takaful

   The amount that the covered person must pay out-of-pocket before the certificate pays for a particular hospital admission, visit or services. Usually it will be a fixed percentage or an amount which is clearly spelled-out in the certificate. Thus, Takaful Operator have fixed the co-Takaful payment at 10% of the overall claim. The co-Takaful must be paid each time a claim is made by a covered person. The percentage of co-Takaful may vary from one operator to another but Bank Negara Malaysia will also put a capping for this co-Takaful percentage chargeable by operators.

   Example:

   En. Ahmad was admitted in the hospital for 12 days and the total claim comes up to RM12,000. During discharge from hospital, En. Ahmad has to pay RM1,200 (10%) and the balance RM 10,800 will be settled by the Takaful Operator.

5. Co-Payment

Upgrading to a Room & Board (R&B) rate higher than what the covered persons are entitled for in their Medical and Health Takaful certificate may trigger a certain co-payment clause in the Takaful contract. Aside from paying the difference in the R&B rate, they might need to share a certain percentage of the total medical bill with the Takaful Operator.

6. Deductible

Deductible is a fixed amount the participant must first pay regardless of the total cost of an eligible benefit.

If a deductible of RM1,000 is selected, the participant will have to pay the first RM 1,000 of the total cost of an eligible benefit (excluding cost of daily room and board) and the remaining balance will be paid by the Takaful Operator up to the annual limit.

7. Panel of Hospitals

List of hospital covered by the certificate.

A8.5 "CASHLESS" HOSPITAL ADMISSION

In the case of Cashless Hospital Admission, when the participant of Medical and Health Takaful is hospitalized, admission to a panel hospital is usually facilitated by the issuance of a letter of guarantee and the hospital deposit may be eliminated. Upon discharge from the hospital, the participant does not have to settle the bill with the hospital. All the eligible benefits will be taken care of by the Takaful Operator. The Takaful operator represented by a third party administrator, co-ordinates with the hospital and settles the bill. The claimant only needs to pay for non-reimbursable charges.

It is important to note that "cashless" hospital admission arrangements are usually non-contractual unless specifically mentioned in the Takaful contract. Usually, they are merely a value-added service provided by the Takaful Operator to certain eligible certificate owner.

Third Party Administrator

Third Party Administrators are the representatives of the Takaful Operator who are responsible for settling both reimbursement claims as well as cashless claims.

The Third Party Administrators are also responsible for processing the claimants request for cashless service.

The functions of third party administrators are as follows:

Function	Database
Cashless Service	Cashless Service is one of the important functions of the third party administrators today which means that if participant is hospitalized in a hospital among the ones listed by the Takaful operator, the bill is paid directly by the Takaful operator and the participant does not have to make advance payment.
Claim Settlement	Third party administrators are the ones concerned with Claims - complete from taking intimations of claims, advising customers on network hospitals, approving cashless and reimbursement claims, to finally disbursing the claims to the customer.
Maintaining Database	Once the certificate has been issued, all the records are passed on to the third party administrators and all further communication of the participant is with the third party administrators and not with the Takaful operator. It is the responsibility of the third party administrator to maintain database of the participants and issue identity cards to them with unique identification numbers.

Table 23: Functions of Third Party Administrators

A8.6 MINIMUM STANDARDS ON PRODUCT DISCLOSURE AND TRANSPARENCY IN THE SALE OF MEDICAL AND HEALTH TAKAFUL PLAN

Medical and Health Takaful is a complex plan thus it is very important for the consumers to have a reasonable understanding before they make a decision to participate in any of this Takaful plan. Takaful Operators have the obligation to disclose sufficient and essential information to the prospective participants to help them to have a better understanding of the plan and reduce the possibility of lapse cases due to non-contribution.

The minimum standard stipulates the disclosure requirements that all Takaful Operators underwriting Medical and Health Takaful business must comply with. It also provides prospective participants some perspective as to the information that should be disclosed to them by Takaful Operators before they make a commitment to participate in a Medical and Health Takaful plan.

The important features of the Standard are as follows:

1. The Standard is applicable to all types of individual Medical and Health Takaful plans including riders attached to individual family plans.

2. For group Medical and Health Takaful plans, Takaful Operators should ensure that the disclosures are made to the master certificate owners.

3. The Standard shall apply to all channels through which Medical and Health Takaful plans are distributed.

4. Specific Disclosure Requirements

   Item 8 of the Standard states that there are particular aspects of Medical and Health Takaful plan features and Takaful certificates that need careful explanation. Takaful Operators and their intermediaries should therefore provide sufficient details of the essential features of the Medical and Health Takaful plan to prospective participants.

   1. Information on the Takaful Operator including the name and address.

   2. Product description to describe the plan and its main objectives and purposes.

   3. The specific information that should be disclosed regarding the benefits of a particular Medical and Health Takaful plan includes: -

      1. The form and amount of the benefits payable under the certificate;
      2. Details of the events, circumstances or contingencies upon which benefits are payable;
      3. Exclusions and limitations of benefits, pre-existing conditions, specified illnesses and qualifying period; and
      4. Contributions.

5. Other important disclosures regarding the Medical and Health Takaful plan are as follows:-

   1. Participants are given a “free-look period/cooling-off period” of 15 days from the delivery date of the certificate to review the suitability of the newly participated Medical and Health Takaful plan. It should be highlighted that participants can return the certificate and deduction of expenses incurred for the medical examination would be made to the contributions if the certificate is returned to the Takaful operator during the period;

   2. The possible implications of switching from one type of Medical and Health Takaful plan to another or from one provider to another; and

   3. Checklist indicating confirmation that the intermediary has clearly highlighted important aspects of the product to the proposer.

CHAPTER A9: MEDICAL AND HEALTH TAKAFUL TYPES OF PLAN

Learning Objectives

To understand the types of Medical and Health Takaful Plan

Learning Outcomes

Able to identify the types of Medical and Health Takaful Plan features and benefits according to customers' needs

A9.1 TYPES OF COVER

1. Hospitalisation and Surgical Takaful Plan

   This plan covers the expenses for hospitalization treatment cost. The plan is intended primarily to cover expenses incurred due to hospitalisation and surgical.

   Generally benefits provided by a Hospitalisation and Surgical Takaful plan include the following:

   1. Hospital Room and Board.
   2. Intensive Care Unit.
   3. Hospital Supplies and Services.
   4. Anesthetist's Fees.
   5. Surgeon's Fees.
   6. Operating Theatre Fees.
   7. In-hospital Physician's Visits.
   8. Pre-Hospitalization Diagnostic Tests.
   9. Pre-Hospitalization Specialist Consultation.
   10. Post-Hospitalization Treatment.
   11. Emergency Accidental Outpatient Treatment.
   12. Ambulance Fees.

Some plans may be extended to cover the following:

1. Hospital Cash Allowance.
2. Outpatient Cancer Treatment.
3. Outpatient Kidney Dialysis.
4. Organ Transplant.

2. Hospitalisation Income Benefits

This plan provides participants with daily cash benefit, should the participant be hospitalised due to all causes, subject to the terms and conditions of the certificate/rider. It can be offered as stand-alone certificate or as rider to Family Takaful or Medical and Health Takaful plan.

3. Critical Illnesses

Critical Illnesses is a Takaful plan which provides a lump sum benefit if the person covered is diagnosed with one of the specific illnesses on a predetermined list as part of the certificate.

1. Alzheimer's Disease/Irreversible Organic Degenerative Brain Disorders	19. HIV Due To Blood Transfusion
2.Bacterial Meningitis	20. Loss of Independent Existence
3. Benign Brain Tumor	21. Loss of Speech
4. Blindness/Total Loss of Sight	22. Major Burns
5. Brain Surgery	23. Major Head Trauma
6. Cancer	24. Major Organ/Bone Marrow Transplant
7. Chronic Aplastic Anemia	25. Medullary Cystic Disease
8. Coma	26. Motor Neuron Disease
9. Coronary Artery By-Pass Surgery	27. Multiple Sclerosis
10. Deafness/Total Loss of Hearings	28. Muscular Dystrophy
11. Encephalitis	29. Other Serious Coronary Artery Disease
12. End Stage Kidney Failure	30. Paralysis/Paraplegia
13. End Stage Liver Failure	31. Parkinson's Disease
14. End Stage Lung Failure	32. Primary Pulmonary Arterial Hypertension
15. Full Blown AIDS	33. Severe Cardiomyopathy
16. Fulminant Viral Hepatitis	34. Stroke
17. Heart Attack	35. Surgery to Aorta
18. Heart Valve Surgery	36. Systemic Lupus Erythematous with Lupus Nephritis

Diagram 14: List of Specific Illnesses under Critical Illnesses Takaful

A9.2 GROUP MEDICAL AND HEALTH TAKAFUL PLAN

Group Medical and Health Takaful plan is similar in cover to individual medical and health plan. It is normally an employer-sponsored coverage for business owners, employees and often for dependents.

The contributions for group medical and health plan is calculated based on the following:

a. Average age of the group.
b. Degree of occupational hazard i.e. degree of risk that is peculiar to a particular type of occupation.

A9.3 GENERAL EXCLUSIONS

Medical and Health Takaful usually excludes the following:

1. Pre-existing illness at the time of application.
2. Claims for illness or injury caused through illegal or unlawful acts.
3. Pregnancy or childbirth.
4. Venereal disease, infection or parasites.
5. Murder or physical assault.
6. Cosmetic or plastic surgery.

A9.4 KEY TERMS AND CONDITIONS

Some of the more important terms are:

Terms	Descriptions
Pre-existing Conditions	These are disabilities that existed before the effective date of the individual cover, for which the proposer is receiving treatment or have shown symptoms. If the proposer had consulted a medical doctor for any pain or discomfort, it would be regarded as symptomatic of disability.
Misstatement of Age	Age is an important factor in Medical and Health Takaful because it will affect the contribution rate. Thus, in the case of misstatement of age that lead to a lower contribution e.g. the true age as shown by the proof is greater than that on which a Family Takaful certificate is based, any claims (sum covered, surplus or profit) under the certificate will be adjusted proportionately, based on the actual contribution paid to the contribution that should have been charged according to correct age.

Qualifying Period	The eligibility of benefits under the Takaful plan will commence 30 days after the effective date of the coverage except for accidental causes.
Co-Takaful	A form of medical cost sharing in a Medical and Health Takaful plan where the participant has to pay a certain amount of his medical fees, generally set at 10% - 20% of the total bill. The balance will then be covered by the Medical and Health Takaful plan.
Co-Payment	Upgrading to a Room & Board (R&B) rate higher than what the covered persons are entitled for in their Medical and Health Takaful certificate may trigger a certain co-payment clause in the Takaful contract. Aside from paying the difference in the R&B rate, they might need to share a certain percentage of the total medical bill with the Takaful Operator.

Table 15: Key Terms and Conditions for Medical and Health Takaful

CHAPTER A10 : MEDICAL AND HEALTH TAKAFUL UNDERWRITING

Learning Objectives

To identify the basic Medical and Health Takaful underwriting processes

Learning Outcomes

Able to advise and communicate effectively on basic Medical and Health Takaful underwriting processes to customers

A10.1 INTRODUCTION TO UNDERWRITING

10.1.1 Definition

Underwriting is the process of selecting risks for Takaful and classifying them according to their risk profiles so that the appropriate rates and terms may be assigned. The process also includes rejection of those risks that do not qualify. This process is usually based on an established set of guidelines or procedures.

Essentially, the underwriting process determines the physical, moral, environmental, market, financial and legal hazards of the subject matter to be covered, including its loss experience.

It is from this process that a final decision can be made by the operator either to accept or decline the participation, and if it is to accept what will be the rates of contribution to be paid by the proposer or the amount of *tabarru'* to be credited into the special or risk account of the Takaful fund, as well as other terms and conditions to be imposed.

10.1.2 Purpose of Underwriting

Underwriting is a critically important function and is performed each time a Takaful application is taken.

The main purpose of underwriting is to protect the Takaful fund from undue financial strain or exposure, by scientifically striving to avoid expected risks from ocurring, and if unavoidable how its impact can be significantly mitigated.

The basic assumption of underwriting is to ensure that the Takaful fund is financially sufficient to pay claims, whilst at the same time able to provide a margin of profit for the Takaful Operator.

10.1.3 Factors in Underwriting

The factors used during the underwriting process vary based upon the type of Takaful being underwritten. In the case of Medical and Health Takaful, key factors used in the underwriting process may include:

1. Age;
2. Gender;
3. Health and health history;
4. Occupation and occupation history;
5. Lifestyle/hobby;
6. Sum covered;
7. Current Takaful/insurance in force; and
8. Financial condition.

A10.2 ANTI-SELECTION

Anti-selection occurs when more sub-standard risks are accepted for coverage, resulting in less than favorable underwriting results. Usually, contribution rate is based on a sample representing the overall market profile of risks. When anti-selection occurs, it is an indication of operators lacking good underwriting controls, and eventually ending up with a portfolio that contains a higher proportion of less favorable risks.

To prevent anti-selection, underwriters should carefully assess all applications and charge an appropriate contribution that commensurate with the risk and impose exclusions, where necessary. In order to be fair to all participants, proposals that are considered sub-standard should rightfully be declined or charged a higher contribution rate compared to a standard risk. This should bring equitable distribution of risks among all the participants in the scheme.

Example:

Flight crew members have a special coverage plan with higher contribution due to nature of work is much higher risk compared to people working on the ground.

A10.3 ADEQUACY OF CONTRIBUTION

Takaful Operators are required to run their operations in an equitable and fair manner for all participants. It has to ensure that contribution charged is reasonable, adequate, equitable and fair among participants. In this respect, underwriters play a pivotal role in ensuring that only appropriate risks are selected and the rates charged commensurate with the risk accepted. This means that higher than average risk should attract higher contribution charge.

A10.4 UNDERWRITING PROCESSES

1. Identification and evaluation of risk

   Takaful Operator will need to identify and evaluate the physical and moral hazards associated with the proposed risk.

   To assess a person's risk, the underwriter relies on information from a range of sources.

Sources	Description
Proposal Form	The form is the most basic requirement for the functioning of the Family Takaful contract between participant and the Takaful Operator. It needs to be completed by the proposer, who may seek the assistance of a Family Takaful agent to fill it up. The responsibility of the Takaful agent in the application process includes: 1. Ensure the application is completed fully. 2. Ensure all questions are answered accurately. 3. Ensure contributions are handled correctly.
Agent Statement	The statement is part of the application, and requires that the Takaful agent provides certain information regarding the proposer such as information regarding the agent's relationship to the proposer, data about the proposer's financial status, habits, general character, and any other information that may be pertinent to the risk being assumed by the Takaful fund.
Medical Report	If the underwriter decides that the proposal needs to be medically underwritten, they will request the proposer to undergo a medical examination. A medical examination includes questions about the proposer's medical history, height, weight, pulse, and blood pressure. Additional requirements may be needed by the Takaful Operator in addition to the medical exam and will include the following:- 1. An examination by a physician 2. Resting EKG 3. Treadmill stress test 4. Chest x-ray
Attending Physician Statement	An attending physician's statement is prepared by the physician who treats the individual who wants to participate in a Takaful plan. The description provided in an APS is evidence of the proposer's mortality risk.

Hospital Medical Report	By signing and submitting the application, the proposer is giving the Takaful Operator the right to obtain and review the medical records; both prior to and after becoming an accepted medical and health plan member.

Diagram 16: Sources for Identification and Evaluation of Risk

2. Selection of Risk

After identifying and evaluating the hazards associated with the risk, underwriter will decide on whether to accept, accept with condition, decline or defer the proposal.

In the case of Medical and Health Takaful, underwriters consider the following in risk selection:

1. Current and Past Health Factors

   The underwriter will thoroughly investigate the current and past health of the applicant, within applicable terms.

2. Financial Factors

   The underwriter will also look into the proposer's overall financial situation. This is to guard the fund from the risk of exceptionally high disability income claim as there is tendency of some certificate holders to make profit from Takaful compensation by extending the period of disability (malingering).

3. Occupational Factors

   Underwriter has to look into occupational factors because different occupations have a different level of hazard. Occupation is categorized into four classes below:

   - Class 1 refers to white collar workers in non-hazardous industry and confined within the office premise. For example teacher and administration officer.
   - Class 2 refers to workers overseeing or superintending, involved in non-office works, workers with industry riskier than Class 1. For example nurse, housewife and workers who work outstation.
   - Class 3 refers to skilled or semi-skilled workers using light machinery. For example factory worker, technician, farmer and workers in a fastfood restaurant; and
   - Class 4 refers to industrial workers involved with heavy and hazardous machinery. For example construction builder and oil rig worker.

The higher the risk means the higher the likelihood of medical expense claim. Occupations with higher risk such as Class 3 (factory worker) normally have higher claim ratio compared to Class 1 and 2 (office workers).

4. Age and Gender

Age	As a person grows older, he is more likely to experience medical problem.
Gender	For medical and health Takaful, female rates are higher because their morbidity (sickness) rate is higher than males.

Diagram 17: Age and Gender Factors for Risk Selection

Several tentative classifications are usually assigned before a final decision on classifying the risk is reached. The purpose of using classifications is to separate risks into homogeneous groups to which rates can be assigned.

a) Standard - if the risk is considered normal risk
b) Rated - if the risk is considered higher than normal risk.

5. Medical Underwriting

Medical underwriting is the process of reviewing a medical and health Takaful proposer's medical records and determining the level of risk. As part of the underwriting process, health information may be used in making two related decisions:

a) Whether to offer or deny coverage; and
b) What contribution rate to set for the certificate.

To conduct medical underwriting, a Takaful Operator will enquire about pre-existing medical conditions. Takaful Operators are allowed to ask questions about a person's medical history in order to decide whether to offer coverage or not and whether to impose additional charges.

1. Current Physical Condition

Takaful Operator will require the applicant to complete an application form that details the full medical history and current physical condition of each applicant. Applicants' statements on an application form and medical examination results (if applicable) are the first indicators of present physical condition.

2. Medical History

The process of evaluation starts with the review of the proposer's statement in the proposal form. If the medical history contains relevant data about illnesses or

diseases, it will make the Takaful Operator believe that the proposer is an increased risk. The cost of Takaful plan will be adjusted accordingly to offset the higher financial liability.

Takaful Operators may require further investigation if there are medical histories listed in the proposal form. For example, if the applicant admits receiving treatment for elevated blood pressure, an attending physician's statement will usually be required. However, in a case of a statement on the application form indicating treatment and subsequent full recovery from a broken arm, no additional information may be required.

Takaful Operators review histories of previous conditions to determine the:

1. Possibility of recurrence. Some diseases have a tendency to recur.
2. Effect of a medical history on the applicant's general health.
3. Complications that may develop at a later date.
4. Normal progression of any impairment that can be considered indicators of a higher future incidence of impairment. Example, obesity, and hypertension.

3. Family History

A section of Takaful proposal form asks several questions about the medical history of family members. Clear connections have been made between the presence of certain life-threatening conditions and genetic development, and Takaful Operator will consider the proposer's relatives issues as indicators of the participant's own risk.

3. Underwriting Decisions

Once the analysis of the provided information is complete, the underwriter basically has three options:

Type of Risk	Decision
Standard	Accept the application: If the proposer is considered an average or typical risk, he will be charged the standard rate without any special exclusion or reductions in benefits.

Sub-standard/ Modified	Approve an application with conditions attached. If the proposer poses an above-average risk, the proposer may be classified as an increased risk. Underwriter can still offer coverage with modification such as: 1. Exclusion: Exclusion endorsement is used by Takaful Operators as a way to issue coverage to persons who would otherwise have to be declined. In some cases such as hypertension or thyroid, the Takaful Operator may still offer coverage with exclusion of the said diseases. 2. Loading (extra contribution): Loading is the amount a Takaful Operator adds to the basic contribution to cover the expense of securing and maintaining the business. 3. Modified Benefits: Takaful Operator may offer modified benefits to the applicant such as lower annual limit, a larger deductible on a medical expense or sometimes in conjunction with extra contribution or exclusion riders. 4. Some combination of these approaches
Declined	Underwriter may reject the application if the proposed is rated as unfavorable (perhaps due to a serious illness or engaging in extremely dangerous occupations or hobbies).

Diagram 18: Underwriting Decisions

A10.5 RENEWAL OF MEDICAL AND HEALTH TAKAFUL

Renewal conditions may vary from one Takaful plan to another. Generally, there are four (4) renewability options that may be practiced in Medical and Health Takaful plan:

Renewability Options	Descriptions
Non-Cancellable and Guaranteed Renewable	Medical and health Takaful plan with non-cancellable and guaranteed renewable means that the certificate cannot be cancelled and the contract provisions cannot be changed without participant's consent. In addition, the contributions cannot be changed as long as the participants continue pay the contributions.

Guaranteed Renewable	As long as the contributions are paid on the certificate, the Takaful Operator is obliged to renew the certificate (if lifetime limit is not exceeded). However, Takaful Operator can raise contributions as long as the change affects an entire class of participants and does not single out. In the long run, guaranteed renewable certificate although more expensive are safer option.
Conditionally Renewable	A contract stating that the certificate is renewable under certain conditions as defined in the contract.
Optionally Renewable	The fourth and final type of renewability provision offers the least security for the participants and has little application in modern medical and health coverage. It is known as optionally renewable coverage. Under an optionally renewable provision, contribution may be increased and benefits modified on a class basis. The Takaful Operator may give the right to renew the certificate or not at its option on the certificate's anniversary date; midterm cancellation is not permissible.

Diagram 19 : Types of Renewability Options for Medical and Health Takaful Plan

A10.6 PAYMENT OF CONTRIBUTION

The payment of contribution will depend on the type of the certificate. Some certificates are issued on “cash-before-cover” basis, whereas other certificate may be subject to the 60 days contribution warranty.

A grace period maybe allowed in the case of guaranteed renewable certificates, conditional renewal certificates and non-cancellable certificates, to provide the convenience to the certificate owner to make the payment. However, any claim occurring during the grace period is not payable although the Takaful Operator will not consider the certificate as lapsed. The certificate will only be considered lapsed if contribution is made before the end of the grace period.

A10.7 AUTOMATIC TERMINATION OF A CERTIFICATE

On the happening of the following events, it will automatically terminate a medical and health Takaful.

1. Death of the participant;
2. On the certificate anniversary date following the participant’s maximum eligibility age;
3. Total benefits paid under the certificate exceeded the maximum limit specified in the benefits schedule.

A10.8 PERSONAL INCOME TAX RELIEF

Tax regulations currently allow an individual resident of Malaysia deduction on taxable income as follows:

1. Deduction from taxable income of up to a maximum of RM3,000 for the contribution for Education and/or Medical Takaful.
2. Deduction from taxable income of up to a maximum of RM6,000 allowed for contribution in respect of Family Takaful certificate and contributions to approved retirement schemes.

Medical and Health Takaful plan coverage should be for a period of 12 months or more. Expenses should be related to the medical treatment resulting from a disease or an accident or a disability. The plan can be a stand-alone certificate or as a rider to a Family Takaful. If it is a rider, only the rider contribution can qualify for deduction. Inland Revenue Board requires proof of such contribution payment in order to qualify for the tax allowance. The participant is required to file the relevant receipts for tax auditing and verification purposes.

CHAPTER A11 : MEDICAL AND HEALTH TAKAFUL CERTIFICATE ADMINISTRATION

Learning Objectives

To identify the basic Medical and Health Takaful certificate administration processes

Learning Outcomes

Able to advise and communicate effectively basic Medical and Health Takaful features and benefits certificate administration processes to customers

A11.1 OVERVIEW OF MEDICAL AND HEALTH TAKAFUL CERTIFICATE ADMINISTRATION

Certificate administration involves the exchange and issuance of documents as evidence of the existence of a valid contract of Takaful. Such documents include the following:

1. Proposal Form;
2. Certificate;
3. Endorsement;
4. Renewal Notice;
5. Proof of Medical and Health Takaful contribution payment for tax relief.

A11.2 PROPOSAL FORM

The Takaful Proposal form is an integral part of the Takaful contract. The purpose of a proposal form is to assist the Takaful Operator to gather the information required for underwriting. This will then enable the underwriter to assess the proposal in a speedy and accurate manner and to issue a certificate based on that information.

Generally a proposal form comprised of the following items:

1. Disclosure statement as required under Section 141 of the Islamic Financial Services Act 2013:

   "You are to disclose in the proposal form, fully and faithfully all the facts which you know or ought to know, otherwise the certificate issued hereunder may be void".

2. Basic questions on the proposer such as name, correspondence address, risk address, occupation, etc.

3. Information of previous and present insurance/ Takaful.

4. Specific questions relating to medical and health such as family and medical history, smoking habits, hazardous hobbies and AIDS-related questions

5. Under Section 13 under the same guideline, a proposal form shall include a statement of declaration, which incorporates the following minimum information:-

    1. The *aqad* (contract) that binds the participants of Takaful.
    2. The *aqad* (contract) that binds the participants and the Takaful Operator.
    3. The allocation of investment profit and surplus to the participants.
    4. The allocation of investment profit, surplus or fees to the Takaful Operator.

6. Below the declaration clause, there is a provision for the signature of the proposer and date.

A11.3 CERTIFICATE

Takaful Operator drafts the Takaful certificate which represents the written evidence of the Takaful contract. In order to be accepted as evidence in the court of law, a certificate has to be stamped in accordance with the provisions of the Stamp Act. The certificate is divided into the following sections:

1. Heading comprising of the full name and the registered address of the Takaful Operator is placed at the top of the front page.

2. The Preamble or Recital Clause

    This clause introduces or recites the parties in the contract - the Takaful Operator and the participant.

3. Operative Clause

    This clause sets out the essence of the contract by specifying the perils covered under the certificate and the circumstances in which the Takaful Operator will become responsible to make compensation or payment or its equivalent to the participant.

4. Exclusions

    Exclusions are restrictions on the scope of the Takaful cover. Exclusions are inserted in a certificate because certain perils and losses cannot be covered under the certificate.

5. The Schedule of Benefits

   The schedule of benefit provides for the following information:

   1. participant's name and address;
   2. contribution;
   3. certificate number;
   4. date of issue;
   5. agency;
   6. date of birth of the participant;
   7. period of Takaful;
   8. occupation of the participant;
   9. specific exclusion clause; and
   10. various types and amounts of benefits.

6. Attestation or Signature Clause

   This clause is called the attestation clause because it makes provision for the Takaful Operator to attest the undertakings. The certificate is signed by an authorized official of the Takaful operator.

7. Conditions

   In a Takaful contract conditions can be expressed or implied. Takaful Operator will print the express conditions on the certificate and it regulates the Takaful contract. In the absence of express conditions, the contract of Takaful would be subject only to implied conditions. Implied conditions relate to the following:

   1. Duty of utmost good faith;
   2. Existence of permissible interest;
   3. Existence of subject matter of Takaful products; and
   4. Identification of subject matter of Takaful.

A11.4 ENDORSEMENT

Takaful Operator will issue a standard certificate covering certain specific perils and excluding others. However, if there is a need to modify the terms and conditions of the certificate, Takaful Operator will usually attach one or more memorandums or endorsements to the certificate. The endorsements form part of the certificate and constitute the evidence of contract.

The alterations to be made may relate to any of the following:

1. variation in amount of benefits;
2. change in any maximum benefit period;
3. extension of Takaful coverage to cover additional members of the family;

4. change in occupational risk;
5. cancellation of Takaful;
6. change in name and address.

A11.5 RENEWAL NOTICE

For an annual renewable Medical and Health Takaful plans, the Takaful Operator usually issue a renewal notice one or two months in advance of the date of expiry, reminding the participant that the certificate expires on a certain date.

The renewal notice will include all relevant particulars of the certificate including:

1. Participant's name;
2. Certificate number;
3. Certificate expiry date;
4. Annual contribution;
5. Revised certificate terms (if any);
6. Note requesting the participant to disclose any material alterations in the risk since the inception of certificate (or last renewal date).

CHAPTER A12 : MEDICAL AND HEALTH TAKAFUL CLAIMS

Learning Objectives

To identify the basic Medical and Health Takaful claims processes

Learning Outcomes

Able to advise and communicate effectively on the basic Medical and Health Takaful claims processes to customers

A12.1 NOTIFICATION OF CLAIM

Once an event of a possible claim occurred, the Takaful Operator cannot start the claim process and indemnify the certificate owner unless and until it had been notified of the claim. Thus, the notification of a claim is fundamental to the Takaful contract.

The two main reasons why the claim notification is important:

1. Takaful Operator must be given the opportunity to investigate the claim.
2. Takaful Operator needs to raise a provision for the potential cost of the claim.

Takaful certificate requires the certificate owner to notify the Takaful Operator in writing of any claim within a reasonable period, which is usually between 14 days to 30 days.

Upon confirmation of the claim, the Takaful Operator must confirm whether the loss is covered under the certificate.

A12.2 PROOF OF ILLNESS/CLAIM

The claimant is required to submit written proof of loss, or claim within a time frame as stipulated in the loss provision. In the case of a claim for hospital or medical expenses benefit, affirmative proof of hospital confinement (original hospitalization bill and claim form) must be furnished within a stipulated time frame of the date of loss.

The claimant must first register their claims with the Takaful Operator within the stipulated time frame and submit all their documents for the easy processing of the claim. The documents that are needed for the making of claim are as follows:

1. Proof of identification;
2. The copy of the certificate document;
3. The original bills of the hospitals in which the insured was admitted;
4. The discharge certificate from the hospital; and
5. The original investigation reports.

A12.3 MEDICAL HEALTH AND TAKAFUL CLAIM FORM

The Medical and Health Takaful Claim Form is designed to elicit the information needed to determine the Takaful Operator's liability under the certificate. Generally it comprised a claimant's statement and an attending physician statement. Some questions are relatively standard such as:

1. Name;
2. Address;
3. Date of birth;
4. Takaful certificate number and group number;
5. Information, if the certificate owner is covered under a group plan through his employer;
6. Description of the injury or sickness that caused the loss; and
7. Dates of any medical treatments or doctors' visits, etc.

The claimant also needs to provide the authorization permitting any medical provider, physician, or employer to release records or information concerning the insured's medical history or employment status.

A12.4 CHECKING PROCESS

Once the Takaful Operator received the claim notification, the claims department will proceed with the following processes:

1. Determine whether or not the claim is valid by checking among other things whether the certificate is in force, contribution has been paid, is the loss caused by an insured peril, etc.

2. Once the claims department completed the preliminary check and found the claim is valid, a claim form will be given to the claimant. The form will be issued without prejudice, which means that issuance of the claim form does not mean liability is admitted under the certificate.

3. All claims must be registered in the claim register once it is notified to the Takaful Operator. The claims register must be maintained as long as they are still liable for the claims.

A12.5 CLAIM INVESTIGATION

The next part of the Takaful claims process is the investigation to determine whether Takaful Operator as the insurer is liable for the loss. The extent of the investigation will depend on the complexity and size of the claim.

The claim investigation process involves the following:

1. Investigate to determine whether:

    i. The loss exists.
    ii. The loss is caused by a peril covered under the certificate.
    iii. The loss does not fall within the scope of an exclusion of the certificate.
    iv. The person making the claim is the rightful claimant.

2. Checking the claims documentation e.g. claims form, bills, etc.

3. Request for additional documentations such as medical report, attending physician statement and etc. (if necessary).

A12.6 SETTLEMENT OF MEDICAL AND HEALTH TAKAFUL CLAIMS

The Takaful claims process ends with settlement. Once the Takaful Operator completed the investigation and decided to pay the claim, it will compute the amount payable and issue compensation to the claimant.

A12.7 REPUDIATION OF LIABILITY BY TAKAFUL OPERATOR

Takaful Operator may repudiate liability on several grounds such as:

1. Non-existence of loss as reported.
2. The loss or damage was due to the peril that is not covered under the certificate.
3. The loss or damage is within the scope of an exclusion of the certificate.
4. The certificate has been rendered void as a result of a breach in condition.

Once the claim is rejected, Takaful operator will notify the claimant by issuing letter to the certificate owner informing of the decision.

A12.8 DISPUTES

A small proportion of many claims settled each year by Takaful Operator usually end up in disputes. The disputes between claimants and the Takaful Operator generally will involve cases like whether the Takaful Operator is liable, quantum of loss, etc.

When a claim dispute arises, it may be resolved through any one of the following channels:

1. Negotiation and Compromise Settlement

   Normally at the beginning, claimant may meet the Takaful Operator to settle the dispute through discussion.

2. Mediation

   The Ombudsman for Financial Services is approved by the Bank under the Financial Services Act 2013 and Islamic Financial Services Act 2013 to provide a fair and efficient avenue for financial consumers to resolve disputes against financial service providers

3. Arbitration

   Arbitration is a well-established and widely used means to end disputes. It provides parties to a controversy with a choice other than litigation. Unlike litigation, arbitration takes place out of court: the two sides select an impartial third party, known as an arbitrator; agree in advance to comply with the arbitrator's award; and then participate in a hearing at which both sides can present evidence and testimony. The arbitrator's decision is usually final, and courts rarely reexamine it.

4. Litigation

   A claimant may take the Takaful Operator to court if he is unhappy with the outcome of his discussion/negotiation with the claim department. However, litigation is considered a last option as it will normally involve a high cost.