TAKAFUL BASIC EXAMINATION (TBE) TEXTBOOK

PART B – GENERAL TAKAFUL

2018
Edition

CHAPTER B1: INTRODUCTION TO GENERAL TAKAFUL

Learning Objectives

To understand the concept and salient features of General Takaful business

Learning Outcome

Able to advise and communicate effectively the characteristics, classes and basic needs of the General Takaful products.

B1.1 INTRODUCTION

The concept of General Takaful is to provide a form of *Sharī'ah*-compliant risk management based on the principle of risk sharing to cover participants against financial losses, liability or injury due to or following a misfortune or accident occurring to their properties and assets or persons.

General Takaful is a risk management tool that seeks to manage risk exposures to participants, taking into account the pre- and post-loss objectives:

Pre-Loss Objectives

- ✓ Prepare for potential losses in the most economical way
- ✓ Reduce fear and worry
- ✓ Compliance with law

Post-Loss Objectives

- ✓ Completeness and speed of recovery
- ✓ Survival of the organization
- ✓ Stability of earnings
- ✓ Reduction in the impact of losses

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B1.2 CHARACTERISTICS OF GENERAL TAKAFUL PRODUCTS

The characteristics of General Takaful products can be summarized as follows:

No	Characteristics	Description
1	Annual/Short-Term Contracts	The General Takaful contracts usually last one year or less and at the end of that period, can be renewed by mutual consent of the Takaful Operator and the participant.
2	Varying Contribution at Renewal	At the end of the contract period, the Takaful Operator will reassess the risk. Based on this reassessment, a possibly different contribution rate may be charged. The difference in the rate could be due to two basic causes: a. Change in the nature of the individual risk to be covered and/or b. Overall change in the certificate/ contribution rates for that particular class of business owing to, for example, an overall worsening of the risk to be covered.
3	Contracts of Indemnity	In General Takaful, the aim is to place the participant in the same financial position before the occurrence of the loss, subject to maximum limits of the covered amount. For the majority of General Takaful contracts, the process of indemnifying a loss leads to the claim amount per unit of certificate, varying considerably even within the same class of business which can be considered to be fairly homogeneous in relation to the covered risk.
4	Payment of a Claim Does Not Terminate the Contract	Under General Takaful, the settlement of a claim will not terminate the contract unless there is total loss claim paid. Further claims can be made within the contract period for the balance of the sum covered.
5	Risk to Be Covered Does Not Necessarily Increase with Time	Unlike Family Takaful contracts where the mortality risk increases with age, covered risk under General Takaful may not increase with duration. In fact it may decrease due to better safety measures taken by the participant (e.g. installation of water sprinklers for the building).

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B1.3 THE BASIC PRINCIPLES OF TAKAFUL AS APPLIED TO GENERAL TAKAFUL

General Takaful contract assimilates six main general insurance principles in its practices that embody the *concept of fairness* as encouraged by *Sharī'ah*. The adopted six General Takaful legal principles are:

1. Principle of Permissible Takaful Interest
2. Principle of Utmost Good Faith
3. Principle of Indemnity
4. Principle of Subrogation
5. Principle of Contribution
6. Principle of Proximate Cause

The above principles have been discussed in general under **Chapter A5**. However, it is obvious that the principles of indemnity, subrogation and contribution have greater relevance to the conduct of General Takaful business.

1.3.1 Principle of Indemnity

General Takaful contracts are contracts of indemnity where Permissible Takaful Interest is measurable, for example property, pecuniary and liability Takaful contracts.

The principle of indemnity shall apply in the following circumstances:

- The participant has to prove that he has suffered a loss on the subject matter covered under the Takaful at the time of the happening of the event and the loss is an actual monetary loss.
- The amount of compensation will be the amount covered under the Takaful whereby indemnification cannot be more than the sum covered.
- If the participant receives more than the actual loss, the Takaful Operator has the right to recover the extra amount from the participant. Similarly, if the participant receives an amount more than his actual loss from a third party after being fully indemnified by the Takaful Operator, the Takaful Operator has the right under the principle of Subrogation to recover such amount paid by the third party.
- It must be cautioned that the sum covered is not a measure of indemnity by itself but it sets an upper limit to which the loss can be indemnified. The actual amount of indemnity will be based on the principle of "the sum covered or the market values whichever is lower".

1.3.2 Principle of Subrogation

The Principle of Subrogation is a corollary of the Principle of Indemnity. Essentially, the Principle of Subrogation is applied in the following:

- It is a corollary to the Principle of Indemnity to ensure that the participant does not profit from his actual loss.

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- It may be applied before payment to the participant in cases where the participant had been partly indemnified by a third party, the Takaful Operator will only pay the balance.
- It is only 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 with the subrogation right to claim the amount settled with participant A from the factory owner who is ultimately responsible for the loss.

5.1.5 Principle of Contribution

The Principle of Contribution is applied to General Takaful in order to prevent the participant from making profit out of multiple claims for the same loss from different Takaful Operators. Under this principle the loss shall be proportionately shared between the Takaful Operators concerned.

Example:

Participant B obtained cover for his house worth RM1 million with Takaful Operator X, Y and Z hoping to make a profit by making claims from all the Takaful Operators for an amount of RM3 million (RM1 million from each Takaful Operator) should his house be damaged by fire.

When the house was destroyed by fire, participant B submitted his claims to all the Takaful Operators as planned. However, upon discovery by the three Takaful Operators of the multiple cover, each Takaful Operator will only pay their proportionate share of the loss i.e. RM333,333 each totaling RM1 million.

The operators' called into contribution must have covered:

- The same interest (i.e. applied only when the same person covers the same interest with more than one insurer)
- The same subject matter interest (i.e., both the certificates must cover the same item in respect of which a claim is made)
- The same peril (i.e. contribution arises only if both certificates include the same perils which caused the loss)

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B1.4 NEEDS OF GENERAL TAKAFUL

As a risk sharing mechanism, the practice of Takaful is aimed at achieving the *Maqāṣid al-Sharī'ah* in its implementation for the *maṣlaḥah* of individuals and public at large.

Through Takaful, individuals and business enterprises avoid the necessity of having to freeze capital to provide for financial protection against losses. It also provides a means of stabilizing the costs involved in managing risks. Takaful also helps remove fears and worries of losses among individuals and business owners.

This removal of fears and worries helps establish confidence and enables forward planning for more beneficial economic activities.

This is line with the *Sharī'ah* Legal Maxim (*Qawā'id al-Fiqhiyyah*), '*al-Ḍararu Yuzāl*' – Harm Must be Eliminated. As such, Takaful plays a crucial role in the socio-economic welfare and *maṣlaḥah* of individuals and societies.

For instance, motor vehicle Takaful provides compensation to road accident victims similar to the system of *Diyāt* as practiced in the Islamic traditions.

In Malaysia for example, motor vehicle Takaful is compulsory under the law. Similarly, individuals and businesses benefit from the various Takaful products towards ensuring the sustainability and profitability of their assets and business, against the risks of loss or damage to the assets concerned.

The outbreak of fire at a factory can cause financial ruin to the company concerned, as well as loss of jobs among the employees and related business counterparts such as suppliers and vendors.

As a business concern, the business owner needs to recover quickly after a fire or loss as part of its business continuity planning. It caters for both the upstream and downstream activities involving vendors, suppliers, distributors and customers; workers need to be retained; alternative temporary business premises need to be sought.

Therefore, participating in fire Takaful and loss of profits Takaful is an important aspect of such business continuity planning.

In many countries, school children and students in tertiary education are required to be covered under the group personal accident and medical Takaful schemes against death or permanent disability and related medical expenses.

The Workmen's Compensation Takaful provides cover to the workmen against occupational related death or injuries. With the increasing trend of litigious society, individuals and businesses need to prudently cover their liability risks to others through the various liability Takaful products such as public liability, product liability and employers' liability, and professional indemnity.

In the same breath, financial institutions that provide financing facilities for businesses or assets will face the possibility of default due to such loss or damage or death of the borrower before

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full repayment of the financing. In this instance, Takaful products that provide cover for such losses such as fire Takaful, engineering Takaful, burglary Takaful and the like will be relevant.

Additionally, Takaful products such as marine cargo Takaful and export credit Takaful will help reduce the financial impact of risks in international trade and commerce, thus facilitating efficient and secured global trading activities.

Islām highly encourages protection of assets as recorded in the following *Ḥadīth*:

Anas bin Malik narrated that a man said:

> *"O Messenger of Allāh! Shall I tie it and rely (upon Allāh), or leave it loose and rely (upon Allāh)?" He said: "Tie it and rely (upon Allāh)."*
>
> (*Jāmi' al-Tirmidzi :* 2517)

It can be deduced from the above *Ḥadīth* the wisdom in ensuring one's properties are safe and secure by taking all the necessary precautions, including taking or participating in the relevant Takaful products.

This is in accord with the provisions of the *Sharī'ah* as well as *Maqāṣid al-Sharī'ah*.

B1.5 DIFFERENCES BETWEEN GENERAL TAKAFUL AND FAMILY TAKAFUL

Basis	Family Takaful	General Takaful
Nature	Subject to a contingency where full assured amount is payable.	Subject to indemnity where actual loss is payable.
Sum covered	Generally a valued cover. No limit as to the amount to be covered.	Based on the agreed intention of the contract i.e. market value, replacement value, agreed value of the asset or etc.
Certainty of event covered against	Death is certain.	Loss is uncertain.
Coverage	Human life, limb, medical, indebtedness.	Property and assets, liability, bodily injuries and accidental death
Loss	Generally full sum covered is payable	Involving partial loss or total loss.
Objective	Protection, in the forms of savings and investments.	Protection.
Period	Generally long-term in nature.	Generally short-term and annually renewable.
Contribution	Generally fixed at time of certificate issuance and throughout the duration of the cover.	May vary from year to year depending on risk profile.
Claim	All certificates may end up with a claim or benefit payment sooner or	Not every certificate may become a claim

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	later.	
Principles of Subrogation and Contribution	Does not apply.	Applicable.
Moral risk	Lower – because generally one does not want to kill or hurt oneself.	Higher - as people may cause damage to or loss of subject matter of cover for compensation.
Acquisition costs	Generally higher. For example, costs due to higher sales commissions.	Relatively low. Sales commissions are lower.

Table 1 : Differences between General Takaful and Family Takaful

B1.6 CLASSES OF GENERAL TAKAFUL BUSINESS

As a customary practice, General Takaful business is categorized into two classes: Motor and Non-Motor business as following:

Classes	Main/Basic Product	Sub Products
Motor	Motor Takaful	• Private Cars • Commercial Vehicles • Motorcycles • Special Types
Non-Motor	• Fire Takaful	• Basic Fire Takaful • Houseowners Takaful • Householders Takaful • Business Interruption • Industrial All Risk (IAR)
	• Marine and Aviation Takaful	• Marine Hull • Marina Cargo • Aviation
	• Engineering Takaful	• Contractors All Risk Takaful (CAR) • Erection All Risk (EAR) • Boiler and Pressure Vessel • Machinery Breakdown • Electronic Equipment/Computer
	• Miscellaneous Takaful	• Theft Takaful • Liability Takaful • Miscellaneous Accident Takaful

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CHAPTER B2: GENERAL TAKAFUL CLASSES – MOTOR TAKAFUL

Learning Objectives

To understand the types and benefits of Motor Takaful

Learning Outcome

Able to advise and communicate the types of Motor Takaful features and benefits according to customers' needs

B2.1 LEGAL PROVISIONS

The Motor Insurance and Takaful industry in Malaysia is generally governed under the Financial Services Act 2013 and the Islamic Financial Service Act 2013 respectively, and specifically under the Road Transport Act 1987 (RTA 1987) which determines the role and functions of insurance and Takaful.

Under RTA 1987, it is an offence for anyone to use, or cause to permit another to use, a motor vehicle on a road unless there is in force in relation to the use of that vehicle an inspection certificate in respect of death or bodily injury to a third party.

A 'motor vehicle' is described by RTA 1987 as "a vehicle of any description, propelled by means of mechanism contained within itself and constructed or adapted so as to be capable of being used on roads, and includes a trailer".

The RTA 1987 further defines 'vehicle' as "a structure capable of moving or being moved or used for the conveyance of any person or thing and which maintains contact with the ground when in motion".

'**Road**' is defined by RTA 1987 as;

a) Any public road and any other road to which the public has access and includes bridges, tunnels, lay-by, ferry facilities, interchanges, round-abouts, traffic islands, road dividers, all traffic lanes, acceleration lanes, deceleration lanes, side-tables, median strips, overpasses, underpasses, approaches, entrance and exit ramps, toll plazas, service areas, and other structures and fixtures to fully effect its use; and
b) for the purposes of sections 70 and 85 which relate to the power of the Minister to restrict use of vehicles on specified roads and construction to existing roads respectively, also includes roads under construction;

However, the above does not include any private road, bridge, tunnel or anything connected to that road which is maintained and kept by private persons or private bodies.

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'**Third Party'** refers to the beneficiary of the certificate who is someone other than the two parties involved in the contract (the policy owner/Takaful Participant and the insurer/Takaful Operator). The basic certificate required by law does not provide any benefit to the Participant. However, it covers the participant's legal liability for death/disability of third-party loss or damage to third-party property.

B2.2 CLASSIFICATION OF MOTOR VEHICLES

Motor Takaful provides the participants coverage against:

- loss or damage to their vehicle due to accidental fire, theft or accident
- bodily injury or death of a third party as well as loss or damage of a third party's property

For the purpose of rating, the Motor Tariff classifies vehicles as follows:

Type of Vehicle	**Description**
Private Cars	These include three-wheeled cars and station-wagons used for social, domestic and pleasure purposes and for business or professional purposes of the participant only. *Note: Use for hire or reward, racing, reliability trial, etc. are excluded.*
Commercial Vehicles	Vehicles used for commercial purposes, which include vans, taxis, pick-ups, open lorries, trucks, articulated vehicles, etc. that are not categorised under private car certificates but under commercial vehicle certificates. These include all vehicles (including three-wheeled carriers) not provided for under the private cars or motorcycles classification.
Motorcycles	These include motorcycles with or without side-cars, motor scooters, auto-cycles or mechanically assisted pedal cycles. The Tariff further sub-divides the motorcycles into: • Private motorcycles • Commercial motorcycles • Motorcycles (with or without side-cars) used for hire • Motorcycles trade

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Special Types	These include forklift trucks, mobile cranes, bulldozers and excavators, agricultural and forestry vehicles, site clearing and levelling plants, mobile plants, delivery trucks (pedestrian controlled), dumpers, (mechanical navies), shovels, grabs, trolleys and goods-carrying tractors, fire brigade vehicles, (road rollers), (gritting machines), hearses, mobile shops and canteens, prison vans, tar sprayers, dust carts, tractors and traction engines.

B2.3 TYPES OF MOTOR COVER

There are 4 types of cover available for each category of motor vehicles:

Type of Cover	**Scope of Coverage**
Act	This form of cover provides: • the participants' legal liability for death or bodily injury to third parties (excluding passengers) caused by and arising out of the use of the participant's motor vehicle on a road. It also includes cover for reasonable expenses incurred for hospital treatment for injured persons. *Note: This is the least form of cover required under the Road Transport Act 1987.*
Third Party Cover	This form of cover provides the above Act Only cover plus: • legal liability for loss or damage to third party property caused by or arising out of the use of the motor vehicle. • legal liability refers to tortious liability, not contractual liability, e.g. arising due to the participants' negligent or reckless driving. This is normally the lowest option for Takaful participant; it does not cover loss or damage to the vehicle of the participant.
Third Party, Fire and Theft Cover	This form of cover provides the above Act Only cover plus: • legal liability for third party bodily injury and third party property damage cover. • accidental loss of or damage to the vehicle as a result of fire or theft.

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Comprehensive Cover	The coverage under a comprehensive certificate is divided into two sections. • Section A – Loss or damage to own vehicle (Own Damage). • Section B – Legal liability to third parties (Third Party). ***Risks Covered Under Section A*** 1. Accidental collision or overturning. 2. Collision or overturning caused by mechanical breakdown. 3. Collision or overturning caused by wear and tear. 4. Fire, explosion and lightning: - By malicious act. - By burglary, housebreaking or theft. 5. By impact damage caused by falling objects, provided no flood, typhoon, hurricane, storm, tempest, earthquake, volcanic eruption, landslide, subsidence or sinking of the soil/earth or other convulsion of nature. 6. Whilst in transit (including its loading and unloading) by: - Road rail, inland waterway. - Direct sea route across the straits from the island of Penang. ***Risks Covered Under Section B*** 1. Provides cover against legal liability to a third party that may arise in consequence upon injury/death of any third party arising out of the use of the motor vehicle. This is termed as Third Party Bodily Injury (TPBI). The law allows for unlimited liability for TPBI. 2. Provides cover against any legal liability to a third party in the event of damage or destruction to property belonging to any third party arising out of the use of the motor vehicle. This is known as Third Party Property Damage (TPPD). Currently, the law limits damages under TPPD to RM3 million. 3. Legal costs and expenses incurred by the Participant which is payable with Takaful Operator's consent. Reasonable medical expenses due to a road accident to any person limited up to a maximum of RM400.00 for in-patient and RM40.00 for out-patient treatments. This is the widest and all-encompassing form of cover as the term comprehensive as specified under the Malaysian Motor Tariff.

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B2.4 COMMERCIAL VEHICLES

The scope of coverage is similar to the Private Motor Vehicle except with two additional **exclusions**:

- damage caused by overloading or strain.
- damage caused by explosion of any boiler forming part of or attached to or on the covered vehicle.

B2.5 RATING FACTORS

The rating of motor Takaful contribution is generally based on the following criteria:

- Type of cover – third party or comprehensive.
- Type of vehicle – private car, commercial vehicle, motorcycle.
- Make and model of vehicle - saloon, sports, local, imported etc.
- Year of manufacture / age of vehicle.
- Cubic capacity of engine.
- Use of vehicle.
- Market value of vehicle.
- Driver/owner of vehicle – age, occupation, experience.
- Excess.
- Past claims.

In Malaysia, the motor premium or Takaful contribution for the motor insurance and Takaful business is subject to Malaysian Motor Tariff. However, the practice towards de-tariff has been introduced in 2017.

B2.6 NO-CLAIM-DISCOUNT (NCD)

If no claim is made or arises from a participant's certificate, and provided the Subject Matter Covered is covered for a continuous period of twelve (12) months in each of the following instances, the participant is entitled to a No-Claim-Discount (NCD) upon renewal of the certificate as follows:

Year	No Claim Discount (%)	
	Car	**Motorcycle**
After 1st year	25	15
After 2nd year	30	20
After 3rd Year	38.33	25
After 4th year	45	25
After 5th year	55	-

Table 2: Entitlement of No-Claim-Discount (%) for Car and Motorcycle under the Malaysian Motor Tariff

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This can be regarded as an incentive to the participant for not causing any accident during the preceding period of cover. If an accident occurs involving a third party, the participant will lose his NCD entitlement even though he has not made a claim as the Takaful Operator would have to provide a monetary reserve in anticipation of a third party claim.

The NCD is transferable if there is a change to another Takaful Operator or to another vehicle that belongs to the participant, since this incentive is attached to the person rather than the vehicle.

B2.7 EXCESS

An excess is the first amount that must be borne by the participant in the event of a claim. Excess is the amount of loss the participant has to bear before the Takaful Operator will pay for the balance of your claim.

In other words, the excess amount will be deducted before the final claim payment.

For a Takaful coverage under the Third Party class, no excess is imposed.

However, for coverage under the Comprehensive class, there is compulsory excess for both the Participant and the authorised driver(s) – for both cars as well as motorcycles.

The rates of excess under the Malaysian Motor Tariff are as follows:

Types of Vehicle	Excess Rate
Private Cars	1% of sum covered
4WD Vehicles / MPVs	3% of sum covered
Commercial Vehicles	3% of sum covered
Motor Cycles	5% of sum covered

Example:

If the amount of excess is RM1,000 and the amount of claim for accidental damage is RM1,500, the Takaful Operator will only indemnify RM500.

B2.8 EXCLUSION

Motor Takaful will not cover the following:

- Participant's own death or bodily injury due to a motor accident.
- Damage to tires unless the vehicle is damaged at the same time.

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- Consequential loss, depreciation, wear and tear, rust and corrosion, mechanical or electronic breakdowns, failures or breakages, equipment or computer malfunction.
- Loss, damage or liability occurring outside the geographical area (Malaysia, Singapore and Brunei).
- Loss or damage caused by or due to cheating or criminal breach of trust.
- Loss, damage or liability arising from an act of nature, arising during or consequence of flood, typhoon, hurricane, storm, volcanic eruption, earthquake or landslide and other nature, landslide.
- Loss, damage or liability arising from riot, strike, war and/or warlike operations and nuclear risks.
- If the participant or any person with the participant's consent is not licensed to drive the vehicle.
- If the participant or the authorized driver drives the vehicle whilst under the influence of alcohol or drugs.
- Loss, damage or liability caused by the vehicle being used for an unlawful purpose
- If the vehicle is used for any motor sports or competition (other than treasure hunts) or any other purpose specified in the certificate.

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CHAPTER B3: GENERAL TAKAFUL CLASSES – FIRE TAKAFUL

Learning Objectives

To understand the types and benefits of Fire Takaful

Learning Outcome

Able to advise and communicate the types of Fire Takaful features and benefits according to customers' needs

B3.1 INTRODUCTION

The main types of Takaful under this class of Takaful include:

- Basic Fire Takaful;
- Houseowners Takaful;
- Householders Takaful
- Business Interruption Takaful
- Industrial All Risk Takaful.

B3.2 BASIC FIRE TAKAFUL

Basic Cover	Loss of or damage to buildings (of factories, shops, offices, private dwellings, etc.), and contents (for example, furniture, fixtures & fittings, plants & machinery, office equipment, stocks-in-trade, personal effects and household goods) caused by the following perils: • fire. • lightning. • explosion of gas used for illuminating and domestic purposes only.

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<table>
<tr><td>Extended Peril

In addition to the basic Fire Takaful, a further range of perils may be extended under the standard cover but subject to additional contribution.</td><td>Under this extension the following perils are commonly covered:

<table>
<tr><th>Dry Perils</th><th>Wet perils</th><th>Miscellaneous Perils</th></tr>
<tr><td>Aircraft and aerial devises</td><td>Storm and tempest</td><td>Impact damage</td></tr>
<tr><td>Explosion</td><td>Flood</td><td>Subsidence and landslip</td></tr>
<tr><td>Riot, Strike, malicious damage and Civil Commotion</td><td>Bursting of pipes</td><td>Subterranean fire</td></tr>
<tr><td>Bush, lallang fire</td><td>Overflowing of water tanks</td><td>Spontaneous combustion</td></tr>
<tr><td>Earthquake and Volcanic Eruption</td><td>Sprinkler leakage</td><td>Loss of rent</td></tr>
</table></td></tr>
<tr><td>Property/Asset Can Be Covered under Fire Takaful</td><td>The following items may be covered under Fire Takaful:

• buildings, to include out buildings such as walls, fences, garages, etc.
• plant and machinery.
• stock and stock in trade.
• loss of rent.
• furniture, fixtures and fittings.
• goods held in trust or commission.
• professional fees.
• removal of debris.</td></tr>
<tr><td>Rating and Underwriting Criteria</td><td>Fire Takaful is normally rated and underwritten based on the following criteria:

• construction of building – bricks, wood, steel, etc.
• type of building – detached, attached complexes, etc.
• value of building - cost of rebuilding; (excluding value of land).
• use of building – residential house, shop house, factories, office complex, commercial complex, etc.
• location of building – towns, villagers, industrial areas, residential areas, flood-prone areas.
• additional risks covered.</td></tr>
</table>

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Exclusion	The Fire Takaful excludes the following: a. loss or damage caused directly or indirectly by the following perils- • earthquake, volcanic eruption or other convulsion of nature. • typhoon, hurricane, tornado and the like • warlike risks. • nuclear risks. b. loss or damage caused proximately by the following perils: • burning of property by order of any public authority. • subterranean fire. • explosion other than explosion of gas used for: ▪ illuminating and domestic purposes. ▪ burning of forest, bush, lallang, prairie, pampas or jungle and the clearing of land by fire. c. loss or damage to the following specified property unless expressly stated in the certificate: • goods held in trust or on commission. • bullion or unset precious stones. • any curiosity or work of art exceeding RM500. • manuscripts, plans, drawing or designs, patterns, models or molds. • securities, obligations or documents of any kind, stamps, coins or currency notes, cheques, books of account or other business books or computer systems records. • coal against loss by its own spontaneous combustion. • explosives. d. specified losses by policy condition: • loss by theft during or after occurrence of fire. • loss or damage to property resulting from its own fermentation, natural heating or spontaneous combustion.

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B3.3 HOUSEOWNERS TAKAFUL

Houseowners Takaful covers residential building against loss or damage caused by perils such as fire, flood or earthquake, etc.

Basic Cover	a. Loss or damage to the home building (including fixtures and fittings, garages, out-buildings, walls, gates and fences) by the following covered perils: • fire, lightning, thunderbolt and subterranean fire. • explosion. • aircraft and other aerial devices and/or articles dropped therefrom. • impact damage by road vehicles, horses and cattle. • bursting and overflowing of water tanks, apparatus or pipes excluding first RM50 of every loss and destruction or damage while the insured building is left unfurnished. • theft accompanied by actual forcible and violent breaking into or out of the building or any attempt thereat. • hurricane, cyclone, typhoon, windstorm. • earthquake, volcanic eruption. • flood (including overflow of the sea). b. Loss of rent (not exceeding 10% of the total sum insured) in the event of the building being damaged as to be rendered uninhabitable. Liability of the covered to the public as owner of the premises (this would include liability arising from defects in buildings, fixtures and fittings or in the walls, gates, fences and trees around) up to a limit of RM10,000 plus legal costs subject to the consent of the Takaful Operator.

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Exclusion	This Takaful coverage excludes the following: a. loss or damage arising from: • war, riot and kindred risks. • contamination by radioactivity. b. loss or damage caused by hurricane, cyclone, typhoon, or windstorm to the following: • any building under construction, reconstruction or repair. • metal smoke stacks, awnings, blinds, signs and other outdoor fixtures and fittings including gates and fences. c. loss or damage caused by subsidence and landslip except where it is occasioned by earthquake or volcanic eruption.
Extension	The Houseowners Takaful cover can be extended to include the following perils at additional cost: • riot, strike and malicious damage. • subsidence and landslip. • plate glass exceeding RM500 per piece.

B3.4 HOUSEHOLDERS TAKAFUL

Householder Takaful will cover contents, such as furniture, furnishings, kitchen equipment, television and radio sets, clothing, personal effects and valuables, and also provide coverage for fatal injury to you as a participant.

Basic Cover	Loss or damage to contents (including furniture, furnishings, household goods, personal effects and valuables) caused by: • fire, lightning, thunderbolt and subterranean fire. • explosion. • aircraft and other aerial devices and/or articles dropped therefrom. • impact damage by road vehicles, horses and cattle. • bursting and overflowing of water tanks, apparatus or pipes excluding first RM50 of every loss and destruction or damage while the insured building is left unfurnished. • theft accompanied by actual forcible and violent breaking into or out of the building or any attempt thereat.

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	• hurricane, cyclone, typhoon, windstorm. • earthquake, volcanic eruption. • flood (including overflow of the sea). Property temporarily removed but remaining in Malaysia will be covered against the above perils. Property in transit or on the persons will not be covered against loss or damage by earthquake, volcanic eruption, hurricane, cyclone, typhoon, windstorm and flood. Liability under this extension is limited to 15% of the sum covered. • loss of rent (similar to the Houseowners Takaful). • breakage of mirrors (other than hand mirrors) whilst in the private dwelling only. • fatal injury to the insured occurring in the private dwelling occasioned by outward and visible violence caused by thieves or by fire. The Takaful Operators will pay RM 10,000 or one half of the total sum covered, whichever is less. • loss or damage caused by any of the insured perils to servants' clothing and personal effects. • liability of the participant to the public in respect of accidental occurrence in or about the participant premises as a private householder occupying the private dwelling up to a limit of RM50,000 plus legal costs subject to the consent of the Takaful Operator.
Exclusion	This Takaful coverage excludes the following: a. loss or damage arising from: • war, riot and kindred risks. • contamination by radioactivity. b. loss or damage caused by hurricane, cyclone, typhoon, or windstorm to the following: • any building under construction, reconstruction or repair. • metal smoke stacks, awnings, blinds, signs and other outdoor fixtures and fittings including gates and fences. • loss or damage caused by subsidence and landslip except where it is occasioned by earthquake or volcanic eruption.

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Extension	The Householders Takaful cover can be extended to include the following perils at additional cost: • full theft (without the limitation of being accompanied by actual forcible and violent breaking into or out of the building). • riot, strike and malicious damage. • plate glass exceeding RM500 per piece.

B3.5 BUSINESS INTERRUPTION TAKAFUL (IN CONJUNCTION WITH FIRE TAKAFUL)

Also known as Consequential Loss provides cover to the participant's loss of gross profit due to reduction in turnover as well as increased in cost of working during the indemnity period in consequence of the damage by peril(s) covered under the Fire certificate.

Business Interruption Takaful is really not a class of Property Takaful but is usually underwritten in the commercial property department. It may be called consequential loss, loss of profits or, more usually, Business Interruption Takaful because the certificate covers the loss of profits resulting from a physical property having been damaged. The Fire Takaful provides protection only against material loss or loss of capital, i.e. it deals with the value of the property damaged or destroyed, but not with related losses or additional costs incurred during the repair period and immediately thereafter until full operations are restored.

This Business Interruption Certificate aims to provide the following cover:

- certain overhead costs in the form of standing charges or fixed costs such as salaries, rental, bank charges/ interest, etc. will remain at their full level even though sales may be reduced.
- if stock or production has been lost, the profit achievable on that stock may be lost if they lose the customers.
- there may be increases in costs incurred to keep the business going in a temporary manner (e.g. temporary accommodation) or other expediency costs that increase the cost of working.

Basic Cover	Business Interruption Takaful provides cover for the following which may be suffered as a result of an interruption to the insured's business following damage at the insured premises by fire, lightning or explosion of gas used for illuminating and domestic purposes: • loss of gross profit due to reduction in turnover. • additional expenses incurred in minimizing the loss of turnover. The certificate coverage is normally issued in conjunction with Fire Takaful on the business premises to ensure that funds are

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	available for the repair of material damage and that the insured's business will be reverted to normal without delay. In this regard, the Business Interruption Takaful coverage contains a material damage warranty which provides that at the time of the happening of the damage, the insured must have a Takaful covering his interest in the property at the premises against such damage and that payment has been made or liability admitted under such coverage. By making good the loss of gross profit, the operator provides cover for the standing charges of the business and also its net profit. The standing charges are those expenses which continue to apply even though the manufacturing or trading activities have been disrupted, for example rates, rent wages, salaries, interest on loans, contributions and auditors' fees. The most common Business Interruption Takaful coverage is those which cover losses flowing from: • fire and special perils. • engineering breakdown risks. • computer damage and breakdown risks.
Exclusion	The exclusions under this scheme are similar to those found in the Fire Takaful.
Extension	The certificate may be extended to cover: • special perils which are similar to those offered under the Fire Takaful. • loss of gross profit arising from business interruption on other's premises (example: customer's/ supplier's premises).

B3.6 INDUSTRIAL ALL RISK (IAR) TAKAFUL

An Industrial All Risks (IAR) certificate is an "all risks" form of Takaful which cover not only all the "named perils" of fire Takaful but also extend to cover "accidental damage" which could not be covered under fire Takaful, subject only to specific exclusions of the certificate. This class of business is normally offered to large commercial and industrial risks. It covers:

Section I – Material Damage; and

Section II – Business Interruption

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Generally, the IAR certificate provides cover against loss of or damage to property and/or interests of the Participant caused by any unforeseen, sudden and accidental physical loss, destruction or damage arising from perils such as fire, lightning, explosion, falling of aircraft, smoke, flood, self-combustion, short circuit, burglary and risks other than those specifically excluded in the policy, as well as loss of profit as a consequence of material damage to the property covered.

Basic Cover	**Section I - Material Damage** • Provides cover for any unforeseen, sudden and accidental physical loss, destruction or damage other than those specifically excluded in the General or Special Exclusions. **Section II - Business Interruption** Provides cover if the business carried on by the Participant at the premises specified in the Schedule is interrupted or interfered with, resulting in loss, destruction or damage indemnifiable under Section I**.**
Exclusion	The Takaful Operator will not indemnify the Participant in respect of loss (including consequential loss), destruction, damage or expense whatsoever directly or indirectly caused by or arising out of or aggravated by; • war, invasion, act of foreign enemy, hostilities or warlike operations (whether war is declared or not) or civil war; • riots, strikes, locked-out workers, malicious acts, looting, mutiny, civil commotion, military uprising, insurrection, rebellion, revolution, military or usurped power, confiscation, requisition or nationalisation or acts of terrorism; ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; • radioactive, toxic explosive or other hazardous properties of any nuclear explosive, assembly or component thereof; • wilful act or wilful negligence of the Participant or of his representatives; or • total or partial cessation of work.

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CHAPTER B4: GENERAL TAKAFUL CLASSES – MARINE AND AVIATION TAKAFUL

Learning Objectives

To understand the types and benefits of Marine and Aviation Takaful

Learning Outcome

Able to advise and communicate the types of Marine and Aviation Takaful features and benefits according to customers' needs.

B4.1 INTRODUCTION

Marine Takaful covers the loss or damage of ships, cargo, terminals, and any transport or cargo by which property is transferred, acquired, or held between the points of origin and final destination. Marine also includes Onshore and Offshore exposed property (container terminals, ports, oil platforms, pipelines); Hull; Marine Casualty; and Marine Liability.

Basic Cover	Loss of or damage to property and interest by maritime perils which include: • perils of the sea. • heavy weather. • stranding or collision. • fire and like perils. • pilferage.
Subject Matter of Takaful	The following may form the subject matter of a Takaful: • Hull and machinery. • Legal liability arising out of collision. • Cargo and freight. With the exception of the collision liability which is covered under a marine hull, different marine certificate are generally used to cover the different subject matter.

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Types of Certificate	

Type	Subject Matter
Marine Hull	Vessel, machinery & limited collision liability
Marine Cargo	Goods carried on the vessel
Marine Freight	Freight (Money/Fee charged for carriage of goods by the vessel)
Marine Building	Vessel under Construction/Repair

B4.2 MARINE HULL TAKAFUL

Marine Hull Takaful provides cover against loss or damage to hull and machinery. The hull is the structure of the vessel whilst the machinery is the equipment that generates the power to move the vessel and control the lighting and temperature system such as boiler, engine, cooler and electricity generator.

Scope of Cover

Under the Marine Hull Takaful the scope of cover is categorized as the Time Clauses. It is usually issued for a specific period of usually 12 months. The nature and degree of risks which the Takaful Operator assumes vary according to the kind of vessel and categorized as follows:

- Institute Time Clauses (Hull) – the most comprehensive cover.
- Institute Time Clauses (FPA).
- Institute Time Clauses (Total Loss Only).

Perils covered are perils of the sea, fire & explosion, violent theft, piracy, contact with aircraft, earthquake, volcanic eruptions or lightning, accidents in loading, bursting of boilers, breakage of shaft, latent of defect, negligence of masters, negligence of repairers, negligence of charterers, barratry.

Marine Hull business requires a much more technical underwriting approach by specialist underwriters. Most companies have limited capacity to write this class of business and may rely a great deal on the support from their Retakaful providers.

B4.3 MARINE CARGO TAKAFUL

Delivery of goods via ship and sea is the cheapest form but it is exposed to many type of risks. Marine Cargo Takaful provides the needed risk coverage for delivering of goods via sea. Many types of Marine Cargo Takaful are offered by the market depending on the various terms of sale and coverage required.

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Examples:

"Free on Board" (FOB)	The risk of loss of or damage to the goods is transferred to the buyer when the goods pass the ship's rail.
"Cost & Freight" (C&F)	The seller pay the costs and freight necessary to bring the goods to the named destination, but the risk of loss or damage to the goods is transferred to the buyer when the goods pass the ship's rail in the port of shipment.
Cost, Insurance and Freight (CIF)	Means that the seller delivers the goods on board of the vessel. The risk of loss or damage to the good passes when the goods are on board the vessel. The seller must pay the cost and freight necessary to bring the goods to the named port of destination. The seller also contracts for Takaful cover against the buyer's risk of risk of loss of damage to the goods during the carriage. When using CIF, the seller fulfills his obligation to deliver when it hands the goods over to the carrier and not when the goods reach the place or final destination.
"Ex Quay"	The seller makes the goods available to the buyer on the quay (wharf) at the destination named in the sales contract. The seller has to bear the full cost and risk involved in bringing the goods there.

a. Type of Marine Cargo Cover

There are many types of cover available. Some examples are usually referred to as follows:

- Total Loss Only (T.L.O.)

  Cover total loss only of the participant interest caused by the perils of the seas

- W.A PLUS T.P.N.D (with Average + Theft, Pilferage & Non-Delivery)

  - Total loss & partial loss of any package or packages occurring during loading, transshipment or discharge.

  - Partial loss & partial loss caused if the carrying vessel is stranded, sunk or burnt; and if attributed to fire, explosion, collision or contact of carrying vessel with any external substances (ice included) & the perils of the sea, where the most common peril is seawater damage.

  - Inclusive of the risks of theft, pilferage and non-delivery.

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b. Institute Cargo Clauses (A) / (B) / (C)

i. Types of Marine Cargo Takaful Certificate:

- Individual Cover

These are certificates issued on each and every shipment upon request by the participant.

- Open Cover

An Open Cover is a continuous cover that is issued on a certain date and remains in force until cancelled. It provides automatic protection for all shipments described in the Certificate.

For shipment by vessel, the Marine Cargo Takaful certificate has three main forms of coverage set by three different sets of cargo clauses. They present an easily understandable cover which no longer involves cross-reference to the certificate.

Institute Cargo Clauses A	**Institute Cargo Clauses B**	**Institute Cargo Clauses C**
These provide cover against loss of or damage to the cargo by all risks subject to certain exclusions.	These provide cover against specified perils. *B* cover is almost similar to *A* cover; however, it excludes losses or damages by pirates and thieves, and deliberate 'damage and destruction.	These provide cover against a narrower list of specified perils than clause *B.* This means that the C cover is the most restricted among the three forms of cover.

With the exception of the collision liability risk which is covered under a Marine Hull Takaful, different marine certificates are generally used to cover the different subject matter of Takaful as follows:

Covered (√) and excluded (x) perils under the clause:

	Clause		
Perils	**A**	**B**	**C**
Sinking, stranding, grounding, capsizing	√	√	√
Fire, explosion	√	√	√
Collision	√	√	√
Overturning, derailment of land conveyance	√	√	√
Earthquake, volcanic eruption, lightning	√	√	x
General Average Sacrifice	√	√	√
Jettison	√	√	√

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	Clause		
Perils	**A**	**B**	**C**
Discharge of cargo at port of distress	√	√	√
General average and salvage charge	√	√	√
Washing overboard	√	√	x
Entry of sea, lake, river water into vessel	√	√	x
Total loss of package during loading or discharge	√	√	x
Pirates and thieves	√	x	x
Deliberate damage or destruction	√	x	x
Willful misconduct of the insured	x	x	x
Ordinary leakage, loss in weight or volume, wear & tear	x	x	x
Insufficiency or unsuitability of packing	x	x	x
Inherent vice or nature of the subject matter	x	x	x
Unseaworthiness & unfitness of vessel (when participant is privy to it)	x	x	x
Insolvency or financial default of carrier	x	x	x
War, strikes, riots & civil commotions	x	x	x
Atomic & nuclear weapons	x	x	x

B4.4 AVIATION TAKAFUL

The global aviation industry has transformed modern day travel and international business. It is among the most critical aspect of facilitating movement of people and goods across the planet seamlessly at record speed and affordable cost. However, this mode of transport is exposed and vulnerable to risks of devastating losses should any mishap happens. Records have shown that hundreds of lives were lost in a single air crash. There were also instances where such crashes involved third party properties.

Most aviation certificates are issued on an 'all-risks' basis subject to certain restrictions. The participants of these certificates are the large commercial airlines, the corporate or business aircraft owners, private aircraft owners and flying clubs.

Basic Cover	Usually a comprehensive certificate is issued to cover: • the aircraft itself (the hull). • liability to passengers and others. In addition, the following certificates are also available: • Public Liability Cover This coverage, often referred to as *third party liability* covers aircraft owners for damage that their aircraft does to third

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	party property, such as houses, cars, crops, airport facilities and other aircraft struck in a collision. It does not provide coverage for damage to the insured aircraft itself or coverage for passengers injured on the insured aircraft. After an accident an insurance company will compensate victims for their losses, but if a settlement cannot be reached then the case is usually taken to court to decide liability and the amount of damages. • Passenger Liability Cover This cover protects passengers riding in the accident aircraft that are injured or killed. In many countries this coverage is mandatory only for commercial or large aircraft. Coverage is often sold on a "per-seat" basis, with a specified limit for each passenger seat. • Combined Single Limit (CSL) CSL coverage combines public liability and passenger liability cover into a single coverage with a single overall limit per accident. This type of coverage provides more flexibility in paying claims for liability, especially if passengers are injured, but little damage is done to third party property on the ground. • Freight Liability This protects the aircraft operator against legal liability to refund freight to cargo owners. • Personal Accident This protects pilot and crew members in the event of personal injury or death arising out of an accident. • Loss of License This protects pilots, flight navigators, flight engineers against financial losses as a result of the loss of their licenses.
Exclusion	In general, exclusions are rarely found except as stipulated in the certificate.

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CHAPTER B5: GENERAL TAKAFUL CLASSES – ENGINEERING TAKAFUL

Learning Objectives

To understand the types and benefits of Engineering Takaful

Learning Outcome

Able to advise and communicate the types of Engineering Takaful features and benefits according to customers' needs.

B5.1 INTRODUCTION

Engineering Takaful comprises specialised classes of business and certificate may be classified as:

1. Renewable; and
2. Non-Renewable certificate.

Common types of Engineering Takaful certificate under renewable certificate:

- Boiler and Pressure Vessel Takaful.
- Machinery Breakdown Takaful.
- Electronic Equipment/Computer.

For Non-Renewable Engineering Certificate:

- Contractors All Risk Takaful.
- Erection All Risk Takaful.

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B5.2 CONTRACTORS' ALL RISKS

Basic Cover	The certificate provides cover against loss or damage to temporary works, materials, plants and other things brought onto site by the contractor in connection with a building or civil engineering project. Third Party Liability: In addition to the material damage cover, the CAR certificate includes a section which provides cover against liability for property damage and bodily injury to third parties occurring in connection with the contract works.
Exclusion	The common exclusions include the following: • loss or damage due to faulty design. • cost of replacement of defective material and/ or workmanship. • wear and tear, corrosion, and deterioration. • loss or damage due to mechanical and/or electrical breakdown of construction plant and machinery. • loss or damage to vehicles licensed for general road use or waterborne vessels or aircraft. • loss or damage to files, drawings, accounts, bills, currency, notes, securities and cheques. • loss discovered at time of taking inventory. • excess to be borne by the participant. • consequential loss howsoever caused. • loss due to willful acts of any director, manager or site official of the participant. • nuclear risks. • loss due to war, warlike operations, strike and civil commotion.

B5.3 ERECTION ALL RISKS

Basic Cover	The certificate provides cover against accidental damage to actual works being installed and any temporary works carried on in connection with the erection, testing and commissioning of plant and machinery. Third Party Liability – like the CAR certificate, the EAR certificate has a section which provides cover against liability for property damage and bodily injury to third parties.

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Exclusion	The main exclusions are quite similar to those found in CAR certificate. Perhaps the main difference between these two certificates is that EAR has provision to cover during testing and commissioning during installations, while CAR is strictly a building/civil engineering kind of works.

B5.4 BOILER AND PRESSURE VESSEL

Basic Cover	The certificate incorporates an inspection service and provides cover against damage to the covered plants: • damage to participant's surrounding property. • property damage and bodily injury to third parties, caused by explosion and collapse of boilers and pressure plants.

Exclusion	The common exclusions are:
	
	• wear and tear but explosion or collapse arising from wearing a way of boiler and pressure plant is covered.
	• failure of expendable parts (that is parts requiring routine maintenance) unless such defects result in explosion or collapse.
	• damage to property belonging to insured caused by fire.
	• damage or liability caused by willful act or neglect by participant.
	• loss sustained by stoppage of work.
	• loss or damage caused by:
	  ○ typhoon, hurricane, volcanic eruption, earthquake and the like.
	  ○ war and warlike operations, civil commotion and strike.
	• loss, damage or liability arising from nuclear risks.

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B5.5 MACHINERY BREAKDOWN

Basic Cover	The certificate covers unforeseen and sudden damage to the covered machinery whilst at work or at rest. Cover provided may include damage due to faulty material, design, construction and erection. • accidents arising from working conditions. • excessive electrical pressure. • failure of insulation. • short circuits, open circuits or arcing. • failure of other connected machinery or protective devices. • lack of skill, carelessness of employees or others. • damage from outside sources.

Exclusion	The main exclusions include:
	
	• normal wear and tear.
	• loss or damage arising from:
	  ▪ fire and explosion.
	  ▪ inundation, subsidence, landslide, earthquake and the like.
	  ▪ war, riot and similar risks.
	  ▪ nuclear risks.

B5.6 ELECTRONIC EQUIPMENT/COMPUTER

Basic Cover	The certificate provides cover against physical loss or damage to covered electrical equipment by any cause other than those specifically excluded by the certificate.

Exclusion	The main exclusions are:
	
	• deductibles.
	• loss by theft.
	• loss arising from:
	  ▪ earthquake, volcanic eruption, hurricane, cyclone or typhoon.
	  ▪ faults or defects existing at the commencement of the certificate within the knowledge of the participant.
	  ▪ failure or interruption of any gas, water or electricity supply.
	  ▪ atmospheric conditions.

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	• maintenance costs. • loss or damage for which supplier or manufacturer is responsible by law or contract. • loss or damage to hired equipment for which the owner is responsible by law or contract. • consequential loss or liability.

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CHAPTER B6: GENERAL TAKAFUL CLASSES – MISCELLANEOUS TAKAFUL

Learning Objectives

To understand the types and benefits of other classes of General Takaful (Miscellaneous Takaful)

Learning Outcome

Able to advise and communicate the types of other classes of General Takaful (Miscellaneous Takaful) features and benefits according to customers' needs

B6.1 INTRODUCTION

Other classes of General Takaful Products (Miscellaneous Takaful) refer to the types of risk that are not covered by Motor, Fire, Marine or Engineering Takaful. Its scope is therefore very wide and extensive and includes such a wide range of contingencies that may not be included under the strict interpretation of the term "Accident".

Other classes of General Takaful Products (Miscellaneous Takaful) cover many branches, which are grouped together but not necessarily related to each other (for example, Burglary or Plate Glass Takaful vs. Personal Accident Takaful). However, in practice, unrelated risks are grouped together for the convenience of the participant. This class of business can be broadly categorised into Property Takaful and Pecuniary Takaful respectively.

B6.2 THEFT TAKAFUL

1. Burglary Takaful

Basic Cover	A Burglary Takaful Scheme provides cover against loss of or damage to the contents in a business premises (for example stocks and materials-in-trade, furniture, office equipment, plants and machinery, household goods and personal effects of employees) following theft involving entry to or exit from the covered premises by forcible and violent means. In addition to the theft losses, the certificate also covers damage to the covered building and contents consequent upon such theft or any attempted thereat.

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Exclusion	The common exclusions are: • loss or damage by fire however caused. • damage to stained or plate glass or any decoration or lettering thereon. • loss or damage occasioned by any person lawfully in the premises or brought about with the connivance of an employee or any member of the covered household. • loss of or damage to deeds, bonds, bills of exchange, promissory notes, money or securities of money, coins, stamps, precious stones, documents of title to property, business books, manuscripts, computer systems, records, curios, sculptures, rare books, plans, patterns, moulds, models or designs unless same be specially covered hereunder. • riot, strike, war and kindred risks or confiscation or destruction by order of any government or public authority. • loss occasioned by forces of nature such as volcanic eruption, subterranean fire, earthquake and the like; and. • nuclear risks.

2. All Risks Takaful

Basic Cover	The All Risks Takaful is normally issued to provide cover for valuables such as jewelry, watches, cameras, paintings and work of art. The scope of cover is very wide and it covers against all risks (fire, theft and all accidental causes) other than those excluded from the certificate.

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Exclusion	The common exclusions are: • loss or damage consequent upon riot, strike, civil commotion, earthquake or volcanic eruption. • war and kindred risks. • loss or damage arising from wear and tear, depreciation, gradual deterioration, moth, vermin or from any process of cleaning or restoring any article. • scratching and breakage of lenses, glass or other brittle substances, mechanical or electrical breakdown or derangement of any mechanical or electrical equipment. • loss or damage arising from confiscation or detention by customs or other official authorities; and nuclear risks.

3. Goods in Transit Takaful

Basic Cover	This provides cover on an 'all-risks' basis, indemnifying the participant for loss of or damage to goods by fire, accident, theft or pilferage while being loaded on, carried by, or unloaded from the motor vehicles and their trailers, and while temporarily garaged during transit anywhere in Malaysia.
Exclusion	The common exclusions are: • radioactive contamination. • war, riot and civil commotion. • earthquake and subterranean fire. • moth, vermin, insects, damp, mildew or rust. • delay, loss of market, consequential loss of any kind. • deterioration and changes by natural cause. • theft or pilferage which involves the insured's employees. • goods accompanying commercial travelers. • property not covered, for example explosives, acids, cash, bank and currency notes, securities, jewelry, and business books.

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B6.3 LIABILITY TAKAFUL

1. Workmen's Compensation Takaful

Basic Cover	Indemnifies the employer (participant) to pay compensation under Workmen's Compensation Ordinance to all employees who are 'workmen' in respect of death or injuries due to accidents or occupational diseases arising out of and in the course of employment. This covers: • death, permanent total or partial disablement resulting from any injury arising out of and in the course of employment. • hospitalization and medical expenses. • occupational diseases, e.g. lung cancer caused by asbestos. • repatriation expenses – compensation payable to repatriate remains to the country of origin of the worker in the event of death or permanent total disablement. • personal accident (off - work hours).
Exclusion	The common exclusions are: • any employee who is not a "workman" within the meaning of the Law(s) • liability to employees of contractors to the insured • war and kindred risks • any contractual liability • any sum which the insured would have been entitled to recover from any party but for an agreement between the insured and such party • any liability caused by or contributed to by nuclear weapon materials, ionizing, radiations or radioactivity contamination

2. Foreign Workers' Compensation Scheme (FWCS)

Effective 1 November 1996, all legal foreign workers (excluding expatriates) must be covered under a separate Foreign Workers' Compensation Scheme. The Foreign Workers' Compensation Scheme (Insurance) 1998 issued under the Workmen's Compensation Act 1952 requires every employer employing foreign workers to cover with the panel of insurance or Takaful Operator appointed under this order and to effect payment of compensation for injuries sustained from accidents during and outside working hours.

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Basic Cover	This covers: • death, permanent total or partial disablement resulting from any injury arising out of and in the course of employment. • hospitalization and medical expenses. • occupational diseases, e.g. lung cancer caused by asbestos. • repatriation expenses – compensation payable to repatriate remains to the country of origin of the worker in the event of death or permanent total disablement. • personal accident (off - work hours).
Exclusion	The common exclusions are: • compensations brought in the Courts of Law of any territory outside Malaysia. • any employee who is not a "workman" within the meaning of the Law(s). • liability to employees of contractors to the insured. • war and kindred risks. • any contractual liability. • any sum which the insured would have been entitled to recover from any party but for an agreement between the insured and such party. • any liability caused by or contributed to by nuclear weapon materials, ionizing radiations or radioactivity contamination.

3. Public Liability Takaful

Basic Cover	The Public Liability certificate is designed to protect a business firm in respect of its legal liability to pay compensation for death or injury to third parties and damage to property of third parties caused by or through negligence of the firm or its employees or by defects in its premises. The cover includes legal costs incurred by the firm, with the prior consent of Takaful Operator.

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Exclusion	The common exclusions include:
	
	• liability that can be covered under the Workmen's Compensation policy, Employers' Liability policy and the SOCSO scheme (established under the Employees' Social Security Act, 1969).
	• loss or damage to property belonging to the insured or under his charge or control.
	• loss or damage to property associated with steam boiler or any boiler vessel or apparatus.
	• liability in respect of injury or damage caused by:
	  ▪ passenger lift or escalator owned by or in possession of the insured.
	  ▪ mechanically propelled vehicle licensed for road use.
	• professional liability; contractual liability.
	• nuclear risks.
	• war and warlike risks; sonic boom.

4. Professional Indemnity Takaful

Basic Cover	Professional Indemnity Takaful protects a professional (for example, an accountant, engineer or doctor), in respect of liability arising out of professional negligence committed by him, or his predecessors, or his employees. The cover includes legal costs incurred by the professional, with the insurer's prior consent.
Exclusion	The professional indemnity certificate usually excludes claims: • for libel or slander. • arising out of dishonesty, fraud, criminal or malicious act or omission by the insured, or his predecessors or employees. • arising from contamination by radioactivity. • which the insured is entitled to indemnify under any other certificate.

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5. Product Liability Takaful

Basic Cover	A Product Liability Takaful provides cover to a manufacturer or seller against his legal liability for death or injury or damage to property caused by defects in the goods supplied or sold by the insured. Examples of products that may give rise to product liability include electrical appliances, machinery, pharmaceutical products, cosmetics and toys. The cover includes legal costs incurred by the firm, with the Takaful Operator's prior consent.
Exclusion	The common exclusions are: • injury to employees. • contractual liability unless such liability would have attached in the absence of any contract. • liability arising in respect of wrong formula or specification of products. • loss or damage to products supplied or sold arising out of repairs or alteration works on the products.

6. Directors' and Officers' Liability (D&O)

Legislation has also made directors liable for the behavior of a company, and in this way, shareholders, creditors, customers, employees and others can now take action against directors as individuals.

Basic Cover	A directors' and officers' liability certificate provides cover for: • an indemnity to the company in respect of the costs it incurs in indemnifying a director against the successful defense of a claim. • an indemnity to the director in circumstances where this cannot be obtained from the company because the defense has not been successful.

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Exclusion	The coverage excludes: • claims for bodily injury or damage. • action brought against individual directors as result of their own dishonesty, fraudulent or malicious conduct. • claims arising from improper personal gain, profit or advantage. • breaches of professional duty.

B6.4 MISCELLANEOUS ACCIDENT TAKAFUL

1. Personal Accident Takaful

Personal Accident (PA) Takaful is an annual plan that provides compensation in the event of death, disablement or injuries arising *solely* from an accidental cause. Participation in a PA Takaful can be for an individual or group plan for the family, company or any registered groups. PA Takaful is also available for short durations, like for travelling abroad; to cover should any accident occurring during the travel.

Cover for PA Takaful is usually provided in respect of accidents occurring anywhere in the world, 24 hours a day, subject to the terms and conditions of the certificate. Companies covering their employees may want to save contribution by restricting cover to business hours plus business travels and activities only.

- Scale of Benefits

  The scale of benefits refers to the amount of compensation payable by the Takaful Operator in the event of death, disablement or injury.

  The usual benefits are for:

  - death.
  - permanent total disablement.
  - temporary disablement where the participant is not able to perform his normal work, either totally or partially.

  Participants are advised to note the scale of benefits in the plan and the definitions of permanent and temporary disablement, as these vary between Takaful Operators.

  The scale of benefits refers to the amount of compensation payable by the Takaful Operator in the event of death, disablement or injury. Participants are advised to note the scale of benefits in the plan as these vary between Takaful Operators.

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- Multiple Coverage

  If a person has more than one PA Takaful certificate, in the event of death or disablement claim, he or his beneficiary will be entitled to compensation under each certificate. However, for certain claim such as medical expenses where compensation is on reimbursement basis, he will only be compensated once, up to a maximum of actual expenses incurred.

- Beneficiary

  Participants are advised to nominate a beneficiary and ensure that his beneficiary is aware of the PA Takaful that he has participated.

Basic Cover	The basic cover of a PA Takaful includes death and disablement arising from accidents. The coverage may also include medical expenses, hospitalization benefits, corrective surgery and funeral expenses, if required. A person may choose to either take up a PA Takaful for himself or join a group plan for his family. Employers can purchase PA Takaful for their employees and in such cases; payment of compensation to the employees is at the discretion of the employer, unless PA benefits has been specifically mentioned in their letter of employment. Certain PA Takaful plans specify the range of age limits that can be covered.
Exclusion	PA Takaful will usually **not cover** accidents caused by the following events: • war risks. • suicide and insanity. • self -inflicted injury. • influenced by liquor, drugs or narcotics. • AIDS/HIV or any other venereal diseases. • provoked murder or assault. • childbirth, pregnancy or miscarriage. • involvement in unlawful activities. • hazardous sports. • operating or riding a two-wheel motor vehicle. In addition, it is quite common for PA Takaful to also exclude persons employed under the following professions: • police/ military and law enforcement officers. • divers.

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	• pilots or crew members. • aircraft testers. • racing drivers. • seamen and sea fishermen. • professional sports person. Note: The above may vary between Takaful Operators

2. Money Takaful

Basic Cover	The certificate provides cover for loss of money against all risks, subject to certain specified exclusions whilst in transit; • coverage specifies that the transit is only between the insured premises and the bank. • on the covered premises during business hours. • in a locked safe or strong room in the covered premises out of business hours. • in the private residence of any principal or director of the insured. • other specified situations. A money limit on any one loss is normally imposed for any of the said situations. The term "money" includes cash, bank and currency notes, cheques, postal orders, currency, postage and revenue stamps belonging to the insured or for which he is legally responsible.
Exclusion	The certificate is not liable for any loss arising from: • dishonesty of an employee. • confiscation, nationalization, requisition or willful destruction by any government authorities. • shortages due to error and omission. • outside the territorial limits. • safe or strong-room following the use of key • nuclear risks. • depreciation in value. • riot, strike, war and associated risks.

3. Fidelity Guarantee

A Fidelity Guarantee (FG) is a contract of Takaful that provides cover in the form of guarantee to a participant that in the event of a dishonest act or dishonesty of its employee, and as consequence, suffers direct financial loss, the Takaful Operator will

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indemnify the said loss to the participant as employer within the limitations prescribed by the contract.

There are three (3) types of fidelity certificate issued and type of guarantee by Takaful Operator:

1. Individual Certificate:

   This certificate covers a named employee for a stated amount or a specific position.

   Type of guarantee : Per employee/person

2. Collective Certificate:

   - Named Collective

     This certificate incorporates a schedule containing the names and duties of guaranteed individuals. The amount of guarantee is set against each name, and this can be an individual sum or a floating sum over the whole schedule.

   - Unnamed Collective

     This certificate covers the employer against loss arising from dishonest or fraudulent acts committed by employees belonging to certain specified categories, for example managers, cashiers, store-keepers and clerks.

     Type of guarantee :

     - Per person and event.
     - Per year.

3. Blanket Certificate:

   This certificate covers employers against loss arising from dishonest or fraudulent acts of all employees, without showing names or positions.

   Type of guarantee :

   - Per person and event.
   - In the annual aggregate/per certificate.

Exclusion:

- Any indirect or consequential loss.
- Any third party losses.
- Inventory losses or any losses discovered during stock-taking.
- Losses in consequence, directly or indirectly of war, strike, riot, civil commotion, military rising, state of martial law and act of terrorism.

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CHAPTER B7: GENERAL TAKAFUL PRACTICES - RISK ASSESSMENT AND UNDERWRITING

Learning Objectives

To understand the basic General Takaful underwriting processes.

Learning Outcome

Able to understand the basic General Takaful underwriting processes

B7.1 INTRODUCTION

Underwriting can simply be defined as a means of evaluation or assessment of a proposal to participate in a Takaful. The process of evaluating a proposal to either accept or decline is usually based on an established set of guidelines or procedures.

The underwriting process determines the physical, moral, environmental, market and legal hazards of the subject matter to be covered, including its loss experience. Underwriting would help to uphold the principle of fairness or *'adl'* that is highly propagated in *Islām*. By this process, appropriate terms and conditions as well as the rating class for the cover can be determined or alternatively declined.

In any general Takaful scheme, the participant is required to make a payment known as contribution into a General Takaful Fund (also known as Risk Fund or *tabarru'* fund) that is used to pay losses suffered by participating members. To ensure that sufficient funds will be available to pay such claims/losses, the Takaful Operator must:

1. Manage against Anti-Selection

   Anti-selection occurs when an applicant who knows that he has a very high risk of loss submits a proposal for Takaful. When anti-selection exists within a class of risks, the actual loss will be greater than the expected loss because the class of risks does not represent a randomly selected group (referred to as 'the law of large numbers).

   The law of large numbers is one of the most fundamental premises in making a Takaful scheme work. Simply put, this mathematical premise says that the larger the number of randomly selected group of participants covered, the more accurate the predictions of loss will be.

   Since the contribution charged is based on the expected loss of the randomly selected group, the amount collected will not be adequate to pay claims if anti-selection exists.

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2. Charge a Contribution Commensurate with the Risk Shared by the Participants

   For a Takaful scheme to function appropriately, it must have a fairly large group of participants facing similar risks paying an equal amount into a common fund that is used to pay for losses incurred by the unfortunate few.

   In reality, applicants for Takaful cover have varying loss probabilities. To ensure that the contributions collected from a class of risks are sufficient, operators would have to charge the applicant a contribution rate that commensurate with the risk being brought to share.

   In other words, operators will charge a higher contribution rate to an applicant with a more than average loss probability. In practice, operators, through their underwriters, carry out a process called 'underwriting' to ensure that they will not be selected against (anti-selection) and the rates charged are equitable to the risk shared.

3. Develop a List or Table of Acceptable Risks to Ensure the Risk Fund Can Be Sustained

   Takaful operators may have developed a strategic plan that is consistent with its business portfolio and risk appetite. It has to decide whether to go either conservatively or aggressively for their respective market share of businesses to be procured.

   In the course of attaining such goals, Takaful Operators are expected to come up with their list of "Acceptable Risk" that is consistent to their risk appetite. This will ensure only risk are that within their "means" will be underwritten and eventually accepted.

   Other risks which are considered "unacceptable" due to perhaps extreme moral and physical risk factors are clearly stated as "declined risks". Therefore, not every risk is acceptable and even then, those which are acceptable are subject to limits.

4. Arrange a Retakaful Program Aligned to the Risk and Claims Profiles

   An effective Retakaful Program helps the Takaful Operator to spread the risk so that in the event of catastrophic losses, their actual losses are within the limits of the risk fund under management. This will prevent operators from being financially crippled due to major losses that may occur unexpectedly.

B7.2 THE UNDERWRITING PROCESS

A key element in the underwriting process is the role of the agent. It may even be argued that the agent is the most important part of the risk selection process. This is due to the fact that he is in a position to actually see and talk to the prospective participant, to ask the questions contained on the Proposal Form.

The agent must not omit pertinent information or submit inaccurate information in order to facilitate the certificate's issuance. Thus, the highest ethical conduct is required from agent.

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Finally, if the prospective participant's application is declined for coverage, it is the agent's role to explain the reasons for such decision.

Since "underwriting" can be defined as a process of assessment and selection of risks, and the determination of contribution, terms and conditions, the underwriting process will involve the following:

1. Risk Selection Process

This risk selection process consists of evaluating information to determine how a risk will be classified (i.e. whether a standard, substandard, or declined risk).

After this classification procedure is completed, the risk is rated in terms of the contribution to be charged. A certificate is then issued and subsequently delivered by the agent to the client.

a. Identification and Evaluation of Risk

When a proposal is submitted for Takaful, the underwriter will need to identify and evaluate the physical and moral hazards associated with the proposed risk. The information on hazards can be obtained from the proposal form completed earlier by the proposer.

However, if additional information is required, the underwriter may take one or more of the following actions:

- request for a survey report on the risk
- make direct enquiries

The following are some factors that may reveal physical hazards in the various classes of General Takaful:

i. Fire Takaful

- type of construction.
- height of building.
- nature of flooring.
- type of occupancy.
- nature of goods stored.
- situation of risk.

ii. Motor Takaful

- type of vehicle.
- cubic capacity.
- age and condition of vehicle.
- use of vehicle.

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- modification of vehicle.
- age of participant/driver.
- occupation of participant/driver.

iii. Burglary Takaful

- nature of stock.
- situation of risk.
- type of construction (premises).
- security precautions.

iv. Personal Accident Takaful

- age of person.
- nature of occupation.
- health and physical condition.
- lifestyles/hobbies.

b. Independent Survey Report (if applicable)

This would constitute additional information over and above the ones provided in the Proposal Form and Application. The information prepared by independent experts is for the benefit of both the operators and the participant. This is particularly pertinent for large commercial or specialized risks like energy, aviation, marine hull, etc.

Naturally, the information provided herein would be in depth and comprehensive, and may likely be used as part of the information required or need to be supplied when operators commence Retakaful exercise for such magnitude risk.

c. Selection of Risk

After the underwriter has identified and evaluated the hazards associated with the proposed risk, the underwriter is ready to decide whether to accept or reject the proposal. If the underwriter decides the risk is a standard risk, the proposal will be accepted, pending issuance of the certificate.

In some circumstances, a proposal may be declined due to poor moral hazards. For instance, when the probability of fraud is suspected, however much increase in contribution will not be adequate to cover the risk. Risks can be managed, on the other hand, by imposing warranties and special conditions. The probability of small but frequent claims can be minimized by imposing excesses, franchises or arranging co- or Retakaful.

In some circumstances, a proposal may be declined due to poor moral hazards. For instance, when fraud exists, no increase in contribution will be adequate to cover the

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risk. Carelessness, on the other hand, can be handled to some extent by the imposition of excess and warranties.

2. Determination of Contribution, Terms and Conditions

For the majority of classes of Takaful, the contribution charged is the rate per unit of coverage multiplied by the number of units of coverage required.

The rate per unit of coverage can be expressed either in terms of RMX per cent (RMX per RM100 coverage) or RMX per mille (RMX per RM1,000 coverage). The unit of coverage is measured differently according to the type of Takaful. In determining the contribution for a risk, the underwriter would ensure that the rate charged reflects the degree of hazard, and the total units of coverage required reflect the value of risk "shared"; otherwise, the contribution charged will be inadequate to pay for losses.

Thus, when two risks of equal value are submitted for Takaful, the risk with normal hazards will be charged a normal rate, while the risk with abnormal or poor hazards will be charged a higher contribution rate. The terms and conditions to be imposed will depend on whether the risk accepted presents normal or abnormal hazards.

Risks with normal hazards are accepted on the standard terms and conditions for each particular class of Takaful. Risks with abnormal hazards are acceptable subject to the following underwriting measures:

Abnormal Hazard Risks Underwriting Measures	**Description**
Risk Improvement	Risk improvement requires the proposer to undertake certain improvements (for example, the installation of a fire alarm, an automatic sprinkler system, etc.) on the risk before the proposal is accepted.
Warranties	Warranties are imposed to control hazards and to ensure that: • new/additional hazards are not introduced during the currency of the certificate; or • Recommendations made by the operator are carried out by the participant.
Exclusion	Exclusion clause limits the operator's liability from certain losses that would otherwise be covered under the standard cover.
Restricted Cover	With restricted cover, the proposer is offered a lower Takaful coverage than the one originally requested. For example, under motor Takaful cover, instead of being provided comprehensive cover, the proposer may only be granted third party cover.

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Excess	When excess is applied, the participant is required to bear a specified amount or portion of each and every loss.
Franchise	Similar to excess, in the case of franchise, the participant will not be able to claim if the loss amount is lower than the franchise amount. However, unlike excess, if the loss exceeds the franchise amount, the participant will not be required to bear the franchise amount. Franchise is rarely used in General Takaful, except in Marine Takaful.

Table 3: Underwriting Measures

3. Confirmation of Acceptance

If the terms and conditions set by the operator are acceptable to the proposer, the operator will issue a cover-note (or an e-cover in the case of Motor Takaful), as evidence of temporary cover until the certificate is issued.

B7.3 RETAKAFUL AND CO-TAKAFUL

When an underwriter assesses a risk, he may have to consider the size of the risk being proposed. For large and complex risk, a Takaful Operator may not be able to assume the whole risk alone and therefore may have to arrange for Retakaful or co-Takaful.

Such risk may have to be declined if Retakaful or co-Takaful arrangement is not available. Fortunately, such instances are quite rare and Takaful Operators are usually able to arrange for either Retakaful or co-Takaful cover when the need arises.

Retakaful is an arrangement whereby the Takaful Operator “shares” (or cedes) part of the risk assumed in excess of the retention to other Takaful Operators or Retakaful Operators. Retention is the amount of risk that is retained by the original Takaful Operator. Retakaful can be arranged on a facultative basis, i.e. one-off placements, or by way of a treaty program, i.e. on a pre-agreed basis for the whole portfolio.

There are two classifications of treaty:

1. Proportional treaty.
2. Non-proportional treaty.

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Below is an example of how a proportional treaty or facultative placement works:

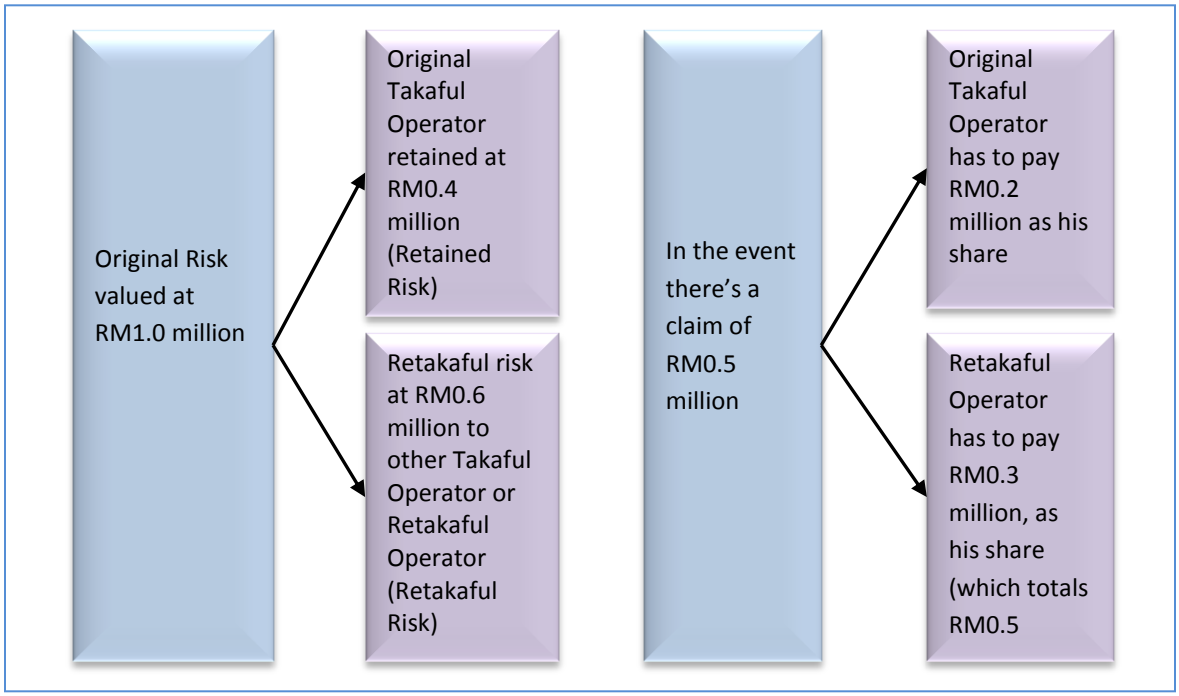

Table 4: Proportional Retakaful

Co-takaful is an arrangement between two or more Takaful Operators to share the original risk and each operator is directly responsible for that portion of the risk covered. Thus in the tabulated figure above, the boxes representing Retained Risk and Retakaful Risk shows their respective share in proportion to the risk accepted, in the event of a claim.

B7.4 RATING

7.4.1 Types of Rate

The rates charged can be broadly categorized as individual rates, class rates, and merit rates.

No	Type of Rate	Description
1	Individual Rates	When an underwriter determines the rate to be charged on each risk separately without referring to an established formula or manual, the rate determined is known as an individual rate.

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2	Class Rates	When there is a large number of a risk to be covered under a class of Takaful, it is possible to classify the risks by certain characteristics into various classes. For example, in Fire Takaful, risks are classified according to three major characteristics, namely: • construction of the building (wooden, bricks, concrete). • occupation (the building is occupied as a factory, warehouse, office, etc.). • location of the building (urban area or out of town). The main objective is to establish a contribution rate known as a class rate for that class of risks which will generate sufficient contribution to cover losses arising from that class of risks.
3	Merit Rates	A merit rating scheme is a combination of class rating and individual rating. When a risk is subject to merit rating, the underwriter will determine the class rate and then adjust the rate upwards or downwards depending on the merits of the risk. The merits evaluated would include (but not limited to) electrical installation, hazardous goods stored, sprinkler system, etc. Merit rating is used in many classes of Takaful including fire, motor, workmen's compensation, and burglary coverage.

Table 5: Type of Rate

7.4.2 Gross Contribution Rate

When the contribution rate (whether individual, class or merit rate) is calculated based on expected claims cost, it is referred to as the pure contribution rate. Since Takaful Operators do incur expenses and pay commissions as well as provide for variation in losses and earn a small profit in the course of managing the risks, the rate charged would be a gross contribution rate.

The gross contribution rate is made up of four components:

1. pure contribution rate.
2. expenses and commissions margin.
3. contingency margin (provision for variation in losses).
4. profit margin.

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Determining the Gross Contribution Rate

One of the methods for determining the gross contribution rate is by making such additions required to provide for the other components to the pure contribution rate. The additions required, referred to as the 'loading', may be expressed as a proportion of the pure contribution rate. For example, if the loading required for the other components is 40%, the gross contribution rate is determined by increasing the pure contribution rate by 40%, i.e.:

Gross Contribution Rate = (Pure Contribution Rate x 140) / 100

It is important to bear in mind that the operator has to carry out further investigations as to the level of expenses experienced, cost of capital, influence of competition and other variable factors, before arriving at a loading figure.

7.4.3 Tariff Rating

The rating of Fire, Motor and Workmen's Compensation Takaful is governed by their respective tariffs originally formulated by Persatuan Insurans Am Malaysia (PIAM), wherein Takaful Operators are instructed by BNM to adopt the same. When the rating of a class of Takaful is governed by a tariff, the rate charged should not be lower than that laid down for that class of risks and the cover granted should not be wider than that provided in the standard certificate form and endorsements.

The main objective of the tariff is to ensure that price competition among operators and insurers (both inter and intra) will not go below the economic level.

In general, the tariffs formulated by PIAM provide the following information:

- a schedule of minimum rates for different classes of risk.
- surcharges on special hazards associated with each class of risk.
- discounts for various improvements on the risk.
- general rules and regulations governing the practice of insurance/Takaful.
- wordings for the standard policy forms, endorsements, clauses, warranties, etc.
- minimum contribution

It is usual for operators to set a minimum contribution to be charged under each certificate so that the administrative expenses incurred in issuing the certificate are covered.

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B7.5 PAYMENTS AND REFUNDS

1. Payment of Contributions

   a. Sixty (60) Days Contribution Warranty Clause

   Takaful Operators writing the General Takaful business are required to enforce the Contribution Warranty ruling on most classes of Takaful except for motor, personal accident, travel and marine. Under this ruling, the participant is required to pay the contributions charged for the cover within 60 days from the effective date of Takaful.

   If the contribution is not paid by the 60th day, the cover will be cancelled on the 61st day and the operator shall be entitled to the pro-rata contribution for the period they have been on risk.

   For the purpose of this warranty, any payment received by the agent shall be deemed to be received by the operator. The common principle relating to insurance and Takaful agents, however, is that they are *del credere* agencies, i.e. they are responsible for all contributions due regardless whether such have been paid or not.

   b. Cash-Before-Cover Regulations

   The Takaful (Assumption of Risk and Collection of Contribution) Regulations 1985 known as CBC Regulations were enforced on 2 January 2005. Subsequently, the regulations were extended to include Personal Lines of business such as Personal Accident Takaful, Houseowner/ Householder Takaful, etc. effective 1 July 2007.

   In the case of motor cover, it has been prescribed by law that Motor Takaful/insurance can only be issued by operators/insurers or their agents on 'cash-before-cover' basis. This means that the contributions/premiums must be paid before a motor cover note or certificate/policy can be issued. The above ruling applies to intermediaries, brokers, as well as Takaful Operators and insurers.

   By virtue of Section 96 IFSA 2013: Assumption of Risk:

   "No operator shall cause any fund under its management to assume any risk in respect of any general business unless and until the contribution payable is received by the operator in such manner and within such time as may be prescribed by the Bank."

2. Refund of Contribution

   Contribution is refundable if the certificate is either cancelled upon request by either the operator or the participant. The calculation of the refund is usually on a pro-rated basis.

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B7.6 USING THE TARIFF

1. Fire Tariff

The rating for Fire Takaful follows the conventional insurance Fire Tariff. The rating plan provided under the Fire Tariff is similar to the merit rating plan. Thus, when a proposal for a standard fire cover is submitted, the underwriter will have to determine the classification of the proposed risk in order to determine the class rate and warranties (if any) applicable for that class of risk as provided under the Fire Tariff.

Unfavourable Risk Factors	Favourable Risk Factors
Poor electrical wiring	Sprinkler system
Open fire burning	Hydrant system
Storage of hazardous goods	Fire extinguishers
Poor housekeeping	Automatic fire alarm

Table 6: Extract from the Fire Tariff

After determining the class rate, the next step involves the evaluation of physical factors/ hazards (other than construction, location and occupation) associated with the risk. This 'discrimination' process ensures that risks with poor physical factors will be charged a higher contribution rate while discounts are granted to those with favourable physical factors.

The contribution rate determined by the above steps is the rate applicable for the basic cover under a standard fire certificate. If one or more special perils are requested to be covered, the contribution rate will be increased accordingly.

2. Motor Tariff

As for fire insurance, the rating of motor insurance in Malaysia is governed by the PIAM Motor Tariff. The Motor Tariff is classified under three broad categories, namely the Private Car Tariff, the Motorcycle Tariff, and the Commercial Vehicles Tariff. The Private Car Tariff is applicable to cars of private type including three-wheeled cars and station wagons, used for social, domestic and pleasure purposes and for the business or professional purposes (excluding use for the carriage of goods, other than samples) of the insured. It excludes the use for hire or reward or for racing, pacemaking, reliability trial, speed testing or use for any purpose in connection with the motor trade.

The Motorcycle Tariff is applicable to motorcycles (with or without sidecars) including motor scooters and auto cycles. The Motorcycle Tariff further sub-divides the vehicles into private motorcycles, commercial motorcycles, motor- cycles used for hire and motorcycle trade, for rating and insurance purposes. The Commercial Vehicles Tariff is applicable to all vehicles (including 3-wheeled carriers) not provided for under the Private Car Tariff and the Motorcycle Tariff. The Commercial Vehicles Tariff further sub-divides the vehicles into

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motor trade (road risks), goods-carrying vehicles, hire cars, omnibuses and special types for rating and insurance purposes.

Under each broad category of the Motor Tariff, the basic rating factors generally considered include the following:

a. Scope of insurance cover required, e.g. Comprehensive, Third Party Fire and Theft, Third Party only, or Act only.
b. Cubic capacity of the vehicle.
c. The estimated value of the vehicle.

When the cover required does not include 'own damage', then (a) and (b) as above are usually used to ascertain the premium amount in the Tariff. When the cover required is on comprehensive basis, then a, b and c as above would be used.

B7.7 LIBERALISATION OF MOTOR INSURANCE AND TAKAFUL

The first phase of the Liberalisation of the Motor and Fire Tariff was introduced on 1 July 2016. During this phase, insurers and Takaful Operators were given the flexibility to offer new motor products and add-on covers at market-based pricing.

Effective 1 July 2017, contribution pricing for Motor Comprehensive; and Motor Third Party Fire and Theft and Fire products was liberalised where premium/contribution pricing will be determined by individual insurers or Takaful Operators.

Contribution will take into account broader risk factors that will drive fairer pricing; greater innovation on new products tailored to consumer needs with improved services; and sustainable motor and fire insurance/Takaful protection for consumers over the long-term at competitive prices**.**

However, premium/contribution rates for Motor Third Party product will continue to be subjected to tariff rates.

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CHAPTER B8: GENERAL TAKAFUL PRACTICES – DOCUMENTATIONS IN GENERAL TAKAFUL

Learning Objectives

To understand the basic documentations in General Takaful

Learning Outcome

Able to advise and communicate effectively on the basic documentations available in General Takaful to customers

B8.1 PROPOSAL AND DECLARATION FORM

A Takaful contract is concluded when the offer made by the proposer is accepted by the Takaful operator. In Takaful, the offer is usually submitted through a Proposal and Declaration Form duly completed and signed by the proposer. The declaration in the proposal form is the '*aqad*' and is intrinsic to the Islamic financial contract.

The Proposal and Declaration Form shall serve as an important tool for the Takaful Operator to assess the risk in a practical, customer-friendly and uniformed manner. Legally, it forms as the basis of the contract between the proposer and the Takaful Operator.

All questionnaires, statements, and declarations made in the Proposal and Declaration Form must be answered accurately and fully in line with the principle of Utmost Good Faith, termed as, Duty of Disclosure. Any misrepresentation or concealment of facts in the Proposal and Declaration Form may render the Takaful contract void. The duty of disclosure is outlined in detail in Schedule 9 (Section 141) of the IFSA 2013.

1. The Usefulness of Proposal Forms

   Proposal Forms are documents drafted by the operator in a questionnaire format to assist the underwriter to:

   - gather information required to assess a risk being proposed
   - speedily and accurately consider the application since the information is furnished in a structured manner

2. Proposal Form Structure

   It is important to note the questions in the proposal form are not exhaustive and if full answers to these questions still leave some material facts undisclosed, the proposer is

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bound to disclose them. This is usually done by attachment of additional supporting information in respect of the risk being proposed.

3. Contents of a Proposal Form

A proposal form generally contains the following:

a. A statement pertaining to the Anti-Money Laundering Act 2001:

"Where operators are required to obtain and verify the identity, occupation or business purpose when underwriting such proposal on their prospective client."

b. Questions of a General Nature

Questions which are common in all proposal forms:

i. Proposer's Name

This is required for identification purposes but it may also indicate an aspect of the risk proposed. For example, the name of a company may indicate the nature of their trade. Further, the name of a person who is known to be disreputable may prompt the operator to decline the risk, or subject to further information/clarification, or modification to the proposal.

ii. Proposer's Address

This is required for correspondence purposes.

iii. Risk Address

Risk often depends on its location. Information concerning the risk address is important because a high-risk location tends to increase not only the chance of loss occurring, but also the severity of loss.

iv. Proposer's Occupation

Occupation is an important risk factor. Certain trade or occupations present higher risk than others. For instance, a plastic manufacturer is considered a high risk occupation for fire.

v. Previous and Present Insurance/Takaful

Such history can provide useful information on moral and physical hazard of the Proposer. The current Takaful Operator would like to know if there are any adverse terms imposed by the previous insurer/Takaful Operator (if any).

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vi. Loss Experience

Information on loss experience provides an indication of the quality of the risk proposed. The information required here includes details of all losses suffered by the proposer, whether covered or otherwise.

vii. Sum Covered

Information concerning the sum covered provides an indication of the liability and contribution income for the operator. This information gives an indication of the maximum liability of the operator and is an important factor in the calculation of contribution for many types of Takaful scheme including fire, motor and theft.

viii. Subject Matter

This provides a description of the subject matter to be covered (the property, assets, and liability to be covered)

c. Takaful-Related Questions.

The questions here are specific to the type of Takaful and usually concern hazards that are commonly associated with the type of Takaful proposed.

Some examples are as follows:

i. Fire Takaful

- type of construction and use of the building.
- whether building is detached or ad joined to another.
- type of power used.
- goods/stock kept in the building (combustible/hazardous).
- occupation of adjoining buildings (to the left and the right).

ii. Motor Takaful

- cubic capacity of the vehicle.
- year of manufacture.
- age of driver.
- driving offences, if any.
- sum cover and type of cover required.

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iii. Marine Cargo Takaful

- method of packing.
- port of discharge.
- name, age, class, gross tonnage of vessel.
- cover required.
- value of consignment or limit per bottom.

d. Declaration

The majority of the proposal forms used by General Takaful Operators contain a declaration clause which requires the proposer to:

i. warrant the answers are true.
ii. warrant that the information is complete.
iii. agree that the proposal becomes the basis of contract.
iv. accept the usual form of certificate/cover for that class of business.

The declaration clause in effect changes the proposer's common law duty to disclose all material facts into a contractual obligation. In consequence, all representations made in the proposal are converted to warranties.

In addition, the declaration outlines how the Takaful model works, describes the basis of profit sharing or surplus return, states the *Wakālah* fee to be deducted and a statement on the conditional donation (*tabbaru'*).

e. Signature

Below the Declaration Clause, there is a provision for the signature of the proposer and date. The proposer should always sign the proposal form since it represents the offer in the contract.

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B8.2 COVER NOTE

1. Uses and Limitations of the Cover Note

   Once the completed proposal form is accepted by the underwriters, a cover note is usually issued in advance of a certificate.

   A cover note:

   - as a temporary Takaful certificate and it is the evidence of the cover provided by the Takaful Operator .
   - provides the usual coverage found in any standard certificate for a class of business and is subject to the usual terms and conditions of the said certificate.
   - specify that the cover is subject to tariff warranties and/or special clauses whenever applicable.

2. Contents of a Cover Note

   The contents commonly found in a cover note would include:

   - Name and address of the participant.
   - Time and date of commencement of cover.
   - Period of Takaful.
   - Description of risk covered.
   - Sum covered.
   - Rate and contribution (if rate is not known, the provisional contribution will be shown).
   - Any special terms.
   - Serial number of the cover note.
   - Date the cover note is issued.
   - Signature of the authorized person;
   - Terms of cancellation (usually 24 hours upon written notice).
   - A statement to the effect that the participant is held covered on terms of the operator's usual form of Takaful for the risk, subject to any special terms noted on the cover note.

   The cover note has a limited validity period usually thirty (30) days and has to be followed with the issuance of the actual Takaful certificate.

3. E - Cover

   Under the Motor Takaful business, the issuance of paper cover note and the manual method of renewing road tax are no longer in use since 1 January 2005. The process has now been replaced by the e-JPJ or electronic cover note system. The electronic cover note system is part of the e-government initiative undertaken by the Road Transport Department under the Ministry of Transport. It was agreed by all the parties involved that:

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a. Takaful Operators must transmit Motor Takaful information electronically to JPJ.
b. Certificate holders would receive a confirmation slip from their Takaful Operators/agents as proof of Takaful purchase (confirmation of participating in Takaful).
c. Once successful transmission is confirmed, certificate holders would then proceed to JPJ or POS Malaysia offices for road tax renewal.

B8.3 TAKAFUL CERTIFICATE

The certificate signifies that the cover is issued by an authorized operator in accordance with the requirements of the respective law. For example, a certificate of Takaful is issued in compliance with the Road Transport Act 1987, and it provides evidence of Takaful to the police and motor vehicle registration authorities.

However, Marine Cargo certificates are issued by mutual agreement between the participant and the operator. Marine cargo certificates are usually issued on an "Open Cover" basis, and a certificate is issued as and when a shipment is declared by the participant.

1. Contents in Takaful Certificate

A scheduled certificate is divided into several distinct sections with details of the particular risk inserted in one section of the certificate. The structure of a scheduled certificate is as follows:

- **Heading -** This section provides the full name and registered address of the Takaful Operator at the top of the front page.

- **Preamble or Recital Clause -** This clause introduces the parties in the contract - the participant and the Takaful Operator. It also refers to the Takaful contribution paid or to be paid, and it makes reference to the effect that the Proposal and Declaration Form is the basis of the Takaful contract.

- **Operative Clause or Takaful Clause -** This clause sets out the essence of the contract. It specifies the perils covered under the certificate and the circumstances in which the Takaful Operator will become responsible to make payment or its equivalent to the participant.

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

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- **Schedule** – this section contains all the type-written information applicable to the particular contract such as: participant name and address, sum covered, Takaful contribution, certificate number, risk covered, period of Takaful.

- **Attestation or Signature Clause -** This clause makes provision for the Takaful Operator to attest his undertakings under the certificate and signed by an authorised signatory of the Takaful Operator.

- **Conditions**

  Types of Condition:

  - **Express Conditions** are printed on the certificate which serves to regulate the Takaful contract. In the absence of the express conditions, the contract of Takaful would be subject only to implied conditions.

  - **Implied Conditions** relate to: the duty of utmost good faith, existence of permissible Takaful interest, existence of the subject matter of Takaful and identification of the subject matter of Takaful.

B8.4 ENDORSEMENTS

Endorsements are used to modify the terms of the certificate as well as alterations to an existing certificate. These endorsements form part of the certificate. Both the endorsements and certificate constitute the evidence of contract.

Endorsements may also be issued during the currency of the certificate to record any alterations to the contract as and when needed.

Examples of alterations to a certificate are as follows:

a. variation in sum in covered.
b. change of permissible Takaful interest by way of sale, mortgage, etc.
c. extension of Takaful to cover additional perils.
d. change in risk or transfer of risk/property to another location.
e. cancellation of Takaful cover.
f. change in name and address.

B8.5 WARRANTIES

Warranty is a risk-specific or situation-specific condition. Although there are some standard wordings, Takaful Operators often draw up warranties to meet specific situations. Warranties have to be strictly complied with, whereby a breach of warranty would enable the Takaful Operator to avoid a claim.

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Examples of warranties are as follows:

- Something shall be done – for example that waste material would be removed daily
- Something shall not be done – for example that in certain cases no direct heat be applied
- A certain state of fact exists – for example that the alarm system is kept in working order.
- A certain state of fact does not exist – for example no inflammable material is stored.

An example of a warranty in a Burglary Takaful Scheme reads:

Warranted that the burglar alarm installed at the premises be kept in efficient working order and be kept in full operation at all times when the premises are unattended.

B8.6 RENEWAL NOTICE AND RENEWAL CERTIFICATE

Renewal Notice

Operators usually issue a renewal notice one month in advance of the expiry date, reminding the participant that his certificate will expire on a certain date. The notice incorporates all relevant particulars of the certificate including the participant's name, certificate number, expiry date of certificate, sums covered and contribution.

It is also the practice to include a note advising the participant to disclose any material alterations in the risk since the inception of cover (or last renewal date). Renewal notices issued by motor operators further advise the participant to revise the sum covered (that is the participant's estimated value of the vehicle) to reflect the current market value and draw his attention to the need to comply with the statutory provision of 'Cash Before Cover' requirement.

Renewal Certificate

When a certificate is renewed for a further period, a new contract is formed. If the renewal is on similar terms as the original contract, Takaful Operators frequently confirm the renewal by issuing the Renewal Certificate. On the other hand, if the renewal is on revised or different terms, a fresh certificate will be issued. A renewal certificate contains all the information similar to that found in the schedule of the certificate, and states any changes to the certificate, if any.

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CHAPTER B9: GENERAL TAKAFUL PRACTICES - CLAIMS

Learning Objectives

To understand the basic General Takaful claims processes

Learning Outcome

Able to advise and communicate effectively basic General Takaful claims processes to customers

B9.1 INTRODUCTION

The term 'claim' in Takaful business has been defined separately as, '**Takaful Claims**' and '**Takaful Benefits**' respectively by the IFSA 2013.

It defines:

Takaful Claims as "…a demand for payment of an amount due under a Takaful certificate…"

Takaful Benefits as "…includes any benefit, whether pecuniary or not, which is payable under a Takaful certificate..."

For this purpose, a proper guideline on claims ought to be established by the Takaful Operator which must be approved by the Board of Directors to serve as a guide to the employees especially for the claims staff. Primarily, the purpose is to ensure that all claims would be processed timely, efficiently, accurately and fairly.

B9.2 CLAIMS PROCEDURES

Whenever an event covered by the Takaful contract occurs, it becomes an obligation that participants/claimants notify Takaful Operator immediately of such event. For example, a visitor to a shop slipped on the floor and hurt his back; at time of event, the shop owner may not know whether the visitor will sue for the injury but he has to report the incident to his Public Liability Takaful Operator.

Under normal circumstances, a written notification is required and eventually full particulars of the loss to be submitted within a stipulated timeframe. Further, the participant is bound by the **duty of good faith** to act as if he is not covered, including taking steps to minimize a loss.

In the event intermediaries are involved, the intermediary shall inform the operator without delay of such losses and also inform the participant/claimant of operator's claims process and documentation for an expeditious settlement.

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9.2.1 Notification of Loss

It is a condition precedent to liability that when a loss occurs, immediate notification of the loss is given to the Takaful Operator. Depending on the wording of the notification condition, notice may be verbal or written and it may require the participant or covered person to furnish full particulars together with the claim form with details of the loss, identity of the claimants, etc. with supporting documents as proof within time frame as stipulated in the certificate, for example 7, 14 or 30 days.

9.2.2 Checking Coverage

Once intimation of loss or accident is received, a preliminary check is made to see if the event is likely to be covered. The preliminary check involves checking whether:

a. the certificate in force.
b. the contribution has been paid.
c. the loss or liability is caused by a covered peril.
d. the subject matter is the same as that covered under the certificate.
e. notice of loss been given without undue delay.

Once the preliminary check is completed and the claim is determined to be covered by the certificate, the claimant will be given a Claim Form or Accident Report Form.

Claimant will also be informed of the claim procedures, together with a list of documents needed to be submitted.

However, if the claim official finds that the event falls outside the scope of cover or policy liability is not engaged, the claimant will be informed of the decision and settlement proceedings will not continue.

9.2.3 Claims Register

The Guidelines on Claim Settlement Practices issued by BNM in 2003, requires that every Takaful Operator maintains an up-to-date register of all Takaful claims. None of these claims shall be removed from the claims register for as long as the claim is not settled. The claims register serves as an official record of claims notified to the Takaful Operator.

9.2.4 Investigation of Claims

When a claim form is issued, it does not mean that the Takaful Operator has admitted liability. The claim form seeks to obtain immediate additional information for registration purposes.

The Takaful Operator may:

a. Rely only on the information submitted on the claims form and other documents submitted to proceed with settlement, or

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b. Conduct a thorough investigation, either by its own staff or by appointing independent adjusters; the extent and manner of investigation will vary according to the size and complexity of the claim. A small claim is usually paid on the basis of documents submitted by the claimant and managed by a claim official. Large and complicated claims will be investigated in more detail by an independent loss adjuster.

When a claim form is issued, it does not mean that the Takaful Operator has admitted liability. It only implies that the Takaful Operator after making a preliminary check has not found anything to disqualify the claim. To determine if a claim is eventually payable, a thorough investigation may be necessary. However, the extent and manner of investigation will vary according to the size and complexity of the claim. A small claim is usually paid on the basis of documents submitted by the claimant and managed by a claim official. Large and complicated claims will be investigated in more detail by an independent loss adjuster.

In general, claims investigation involves ascertaining the following:

a. The Validity of a Claim

This involves ensuring whether:

- the event actually occurred
- the event is caused by a covered peril
- the event does not fall within the scope of an exclusion
- the subject matter affected by the event is the same as covered under the certificate
- the event occurred within the geographical area mentioned in the certificate
- the person making the claim is the rightful claimant
- any breach of condition/warranties which may invalidate the claim

b. Loss Amount or Potential Liability

This involves determining the amount or quantum of the loss or potential liability.

Where property is damaged or lost, the amount of loss is ascertained from proof of the value of such items or estimates of repair, replacement or reinstatement. In liability claims, the potential liability is an estimate of the loss suffered by the third party and mitigated by the extent of their own contributory negligence.

Claimants need not appoint other parties to submit claims; they can do so on their own accord. Following completion of an investigation, a decision on policy liability and quantum is reached and a settlement offer would be made to the claimant. If the offer is accepted, the claimant would be required to sign an Acceptance and/or a Discharge Form, before final claims payment is made.

In the Claims Settlement Offer letter, if the claim involves individuals and are below RM100,000 Takaful Operators are required to state that in the event the offer is not acceptable, the claimant may have the claim mediated by the Ombudsman for Financial

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Services (OFS) (formerly known as Financial Mediation Bureau (FMB)) established by Bank Negara Malaysia. Mediation by the OFS does not take away the participants' right to have the matter adjudicated in a court of law;

c. Ascertaining Subrogation Rights and Contribution Duties

If cause of the loss, damage or accident is caused by some other party and the participant has a right of action against that party, the Takaful Operator after settling the claim, can stand in the shoes of the participant and seek recovery from the third party responsible. This is called subrogation. In the event there are multiple policies or certificates covering the same subject matter and loss, damage or liability is caused by the same event, then each policy or certificate will share the claim on a rateable proportion basis.

B9.3 CLAIM DOCUMENTS

In addition to the completed claim form or accident report form and loss adjuster's report, certain other documents are required to substantiate the claim. The documents required may vary depending on the type and nature of claim as summarised below:

MOTOR TAKAFUL OWN DAMAGE CLAIM
• police report • certified copy of vehicle registration card and road tax • certified copy of driving license and identity card for driver
FIRE TAKAFUL
• photographs • technician's report (where applicable) • purchase invoices, repair bills, sales record and other related documents • police report (where damage is extensive) • fire brigade report (where damage is extensive)
BURGLARY TAKAFUL
• police report • purchase invoices, repair bills, sales record and other related documents
PERSONAL ACCIDENT TAKAFUL DEATH CLAIM
• post-mortem report • death certificate • burial certificate • police report • letter of employment

B9.4 DISCHARGE FORM

1. Claims Settlement Methods

Claims settled by the operator may be one of two kinds, namely:

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a. settlement with a participant in respect of a covered loss; or
b. settlement with a third party on behalf of a participant in respect of the latter's liability.

2. Purpose of a Discharge Form

In both cases, the Takaful Operator would require the claimant to execute a discharge. This avoids the possibility of any further claims being made in relation to the same loss, either against the Takaful Operator or the participant.

B9.5 CLAIM SETTLEMENT

When the Takaful Operator is satisfied that the claim is in order, settlement would be affected by any of the following methods:

1. Methods of Claim Settlement

a. Cash payment of claim by cheque.
b. Repair.
c. Replacement.
d. Reinstatement.

2. Documentary Evidence is Needed to Determine the Rightful Claimant

When settlement is effected by cheque, it is important to ascertain that payment is made to the right claimant. Documents may be required to validate the claimant. For example, in the case of Marine Takaful, the claimant has to produce a marine certificate which has been endorsed in his favour. In practice, a claimant is usually required to execute a proper discharge under the certificate before settlement is effected by the Takaful Operator.

3. Market Agreements

a. Motor Insurers' Bureau (MIB)

The Motor Insurers' Bureau shall be interpreted under Section 89 of the Road Transport Act 1987 (RTA) as the bureau which has executed an agreement with the Minister of Transport to secure compensation to third party victims of road accidents in cases where such victims are denied compensation by the absence of insurance or of effective insurance as required under section 90 of the same Act. Section 89 further provides the statutory definition for "authorised insurer" as used in the context of this Part of the Act:

"Authorised insurer" means a person lawfully carrying on motor vehicle insurance business in Malaysia who is a member of the Motor Insurers' Bureau.

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It should be noted that MIB has a unique position, having been established following an agreement between the motor insurance industry and the Government.

By making specified levels of insurance and Takaful compulsory and by limiting the ways in which insurers/operators can escape liability to compensate, the RTA goes a very long way to establishing this ideal. It is a general desire to ensure that innocent victims of road traffic accidents should not go uncompensated.

However, where a motorist ignores the legal requirement to cover or where the defect in an existing Takaful contract is sufficient for the operator to escape responsibility under the RTA, then some further safeguards are required. In addition, the remedies under the RTA rely upon there being a negligent person to sue, which would not be the case, for example, in a hit-and run accident.

MIB is a company limited by guarantee; this means that MIB holds no assets to cover its potential liabilities, but that its members guarantee that they will pay its liabilities as and when the need arises.

b. Revised Knock-for-Knock Agreement (KfK)

The Revised Knock-for-Knock Agreement dated 18 March 1987 (hereinafter referred to as the Principal Agreement) was made between the insurance and Takaful Operators who are the signatories, the insurance companies and operators agree to the terms, conditions, procedures and practices set out under Section 1 of the said Principal Agreement and incorporated in the Malaysian Motor Tariff.

Most motor insurers and operators subscribe to the KfK claims settlement agreement whereby each insurer/operator deals with the damage to their own policyholder's/certificate holder's vehicle, if such damage is comprehensively covered, irrespective of who was responsible for the accident.

The knock-for-knock agreement works on the principle of swings and roundabouts with each motor insurer/operator agreeing not to exercise subrogation rights against each other and if this is arranged on a long-term basis, no one insurer/operator will gain or lose from participating in such a scheme.

Further, it is a device which enables motor insurers/operators to speed up the settlement of claims and reduce legal and administrative expenses. The agreement applies to damage being caused to vehicles in connection with which indemnity is granted against damage and/or third party risks by parties hereto:

- as a result of collision or attempt to avoid collision;
- by the loading or unloading of a vehicle; or
- by goods falling from a vehicle.

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Each party shall bear its own loss within the limits of its policy / certificate, in respect of such damage, irrespective of legal liability. The main provisions under the agreement are:

- the application of excess (if any).
- the exclusion of the following vehicles:
  - any vehicle licensed or insured / covered for the carriage of passengers for hire or reward.
    Examples: taxis, public buses, stage buses, school buses and factory buses for hire.
  - any vehicle licensed or insured / covered by the owner for purposes which include driving by a hirer.
    Examples: chauffeur- driven taxis, hire cars with hirer driving.
  - non-application of the agreement to loss or damage covered by a policy / certificate for Fire only.
  - application of the agreement only to accidents for which indemnity is provided under policies / certificates issued in Malaysia, Republic of Singapore, and Brunei Darussalam.

The knock-for-knock agreement was further revised in June 2001 (Supplemental Agreement - Revised Knock-For-Knock Agreement). This provides that in the event of an accident involving the participant and a Third Party vehicle, the participant, under a comprehensive Takaful cover, has an option to make a claim for damage to his own vehicle from his own operator - if the participant or his authorized driver is deemed not to be at fault and opts to make a claim for the damage to his vehicle under his own Takaful certificate instead of making a claim against the Third Party insurer/operator, the participant's NCD shall not be forfeited.

c. Centralised database for Motor Repairers Estimation

With the support of Bank Negara Malaysia, the insurance and Takaful industry implemented the centralised database for motor repairs estimation, developed by Motordata Research Consortium Sdn Bhd (MRC) in 2001 with the objective of minimising subjectivity in motor repairs estimation, it also has the added benefit of improving transparency in claims estimation and anti-fraud mechanism.

With improved transparency in the estimation of accident damage claims, incidences of fraud and leakage as a result of collusion between the vehicle owner and repairer would be reduced.

The diagram below shows the information and workflow in the processing of a Motor Takaful claim.

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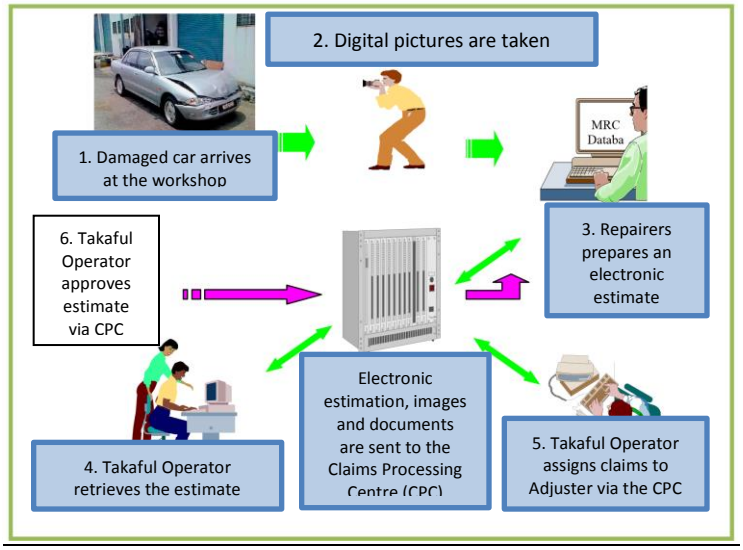

Diagram 1 : Process Workflow for Motor Takaful Claim

4. Disputes

Of the many claims settled, only a small proportion usually ends up in disputes. Disputes between claimants and operators may generally involve one of two issues:

a. the question of whether the operator is liable or
b. the quantum of loss, if the operator is liable

When a dispute arises, it may be resolved through the following channels:

a. Negotiation

When there is a dispute, the claim official will try to settle the dispute through discussion with the claimant. If the dispute relates to a claim that has been rejected by the operator, the claim official will try to explain why the claim was rejected. On the other hand, if the dispute concerns the quantum of loss, the official may try to negotiate for an amicable solution. Failing this, the claimant may have the matter mediated by the Ombudsman for Financial Services (OFS).

b. Litigation

When a claim is repudiated or the arbitrators' or mediators' decision is being further challenged by the claimant, he may institute legal action against the operator. The operator normally considers litigation as a last resort and therefore would try to bring about an out-of-court settlement unless it involves a huge claim or an important principle of law.

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c. Arbitration

In practice, most General Takaful certificates have an arbitration clause which may provide that all disputes (or disputes relating to quantum only) will have to be referred for arbitration before court action can be considered by the participant. Generally, arbitration is preferred to litigation because it is speedier and less costly than legal action, and hearing is in private rather than in open court.

d. Mediation

Bank Negara Malaysia prescribes mediation by the Ombudsman for Financial Services (OFS) if claimants are not happy with the Takaful Operators' decisions, either in respect of policy liability or quantum.

The mediation process includes investigating the complaint through various sources based on the facts presented, having face-to-face discussions, having meetings with all the parties concerned or conducting an enquiry, taking into account industry practices, and consulting legal basis/sources before a decision is made.

However, in the event both parties cannot reach an amicable settlement, the Mediator will make a decision based on the investigation, industry practices and the relevant applicable law(s).

5. Guidelines on Claim Settlement Practices

In 5 December 2003, the JPIT/GPT 3-Guidelines on Claims Settlement Practices are to further enhance claims processing and include fraud control and risk management measures as well as improvement introducing both Bank Negara Malaysia and the insurance industry. Takaful operators should apply professionalism and fair practices in handling general takaful claims and continuously endeavor to provide their claimants with the highest service standards possible.

The following are the prescribed timelines for Takaful operators under the Guidelines:

Claim Process	Timelines
1. Notification of Claims	• **Within 7 days** from receipt of claim notification, register and initiate claim processing
2. Verification of Facts	• **Within 14 working days** of receipt of claim form, acknowledge the receipt in writing
3. Assessment of Claims	• **Within 7 working days** from the date of receipt of the completed claim form and all relevant supporting documents, appoint licensed/in-house staff adjusters • **Within 14 working days** from appointment, the adjuster's final report must reach the Takaful Operator • **Within 60 working days** from the date of first

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	notification and every 30 working days thereafter, to notify the claimant of the position of a claim, until the matter is resolved; and • If fraud is suspected, the claimant should be advised in writing that he claim is under examination
4. Settlement	(a) Offer of Settlement • **Within 7 working days** from receipt of the final adjuster's report, send offer letter to claimant or his/her authorized representative; • Where there is no dispute as to liability, accept the recommendation made in the adjuster's report; and • Any dispute with the adjuster's final report should be resolved with the adjuster before making an offer of settlement to the claimant. (b) Repudiation of Liability • **Within 7 working days** after receipt of the adjuster's final, advise the claimant in writing on the rejection of his/her claim.
5. Payment of Claims	• Full payment must be made to claimant from date of receipt of the acceptance of offer and/or Discharge Voucher and all relevant documents within: (i) **14 working days** for claims of up to RM1 million; or (ii) **21 working days** for claims exceeding RM1 million • For claims payable on a reimbursement basis, **within 7 working days** from date of receipt of original bills from the claimant.

6. Post-Settlement Action

When a claim has been paid, the operator may take one of the following actions:

1. Terminate the Takaful certificate.
2. Reduce the sum covered (or reinstate with additional contribution payment).

B9.6 APPLICATION OF AVERAGE IN CLAIMS

When the sum covered of an asset or property is less than the market value and the certificate is subject to average, a claim under such certificate will only be met in the proportion which the sum covered bears to the full value of the property at the time of loss.

The formula generally used to adjust the claim is as follows:

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$$\textit{Claim payable} = \frac{\textit{Sum Covered}}{\textit{Value at risk}} \times \textit{Loss}$$

Example:

A participant covered his car under Motor Takaful for RM30,000 when the market value is actually RM50,000. When the car was damaged in an accident, if the repair costs is RM20,000, the claims amount is:

$$\frac{\text{Sum Covered (RM30,000)}}{\text{Market Value (RM50,000)}} \times \text{Loss (RM20,000)} = \text{RM20,000}$$

In this case the Takaful Operator will only pay the participant RM12,000. The balance RM8,000 will have to be borne by the participant himself.

Table 7 : Calculation for Average Clause

When a property is under-valued for purpose of Takaful cover, the contribution paid by the participant is based on such value instead of its full value. This means the participant will be making a contribution to the General Takaful fund (for payment of losses) which is less than the risk shared with the other participants. The principle of average is therefore applied to penalize the participant who has under-valued his property. When a loss is subject to average, the participant will be considered as the risk-bearer for the proportion so under-valued and therefore has to contribute to the loss.

It is the duty of the agent to recognize under-valuation of the property to be covered.

To avoid disputes arising from the application of average, agents should draw their clients' attention to the principle of average at the outset and ensure that the sum proposed for Takaful cover is adequate not only at the commencement of the cover but also throughout the currency of the certificate.

B9.7 RECOVERIES FROM RETAKAFUL, CO-TAKAFUL, SUBROGATION AND CONTRIBUTION

The claim settlement process will also involve making appropriate recoveries from Retakaful and/or co-Takaful Operators, third parties under subrogation rights, and other Takaful Operators under contribution rights, if such rights exist.

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B6.6 REPUDIATION OF LIABILITY

Not every claim filed by a claiming participant will result in payment as Takaful Operators may have reason to repudiate liability on grounds:

1. there was no loss or damage as reported
2. the loss or damage for which a claim has been made was not caused by a peril or was excluded under the certificate
3. the certificate had been rendered void as a result of a breach in condition or warranty

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CHAPTER B10: GENERAL TAKAFUL PRACTICES - ETHICS AND CODE OF CONDUCT

Learning Objectives

To understand the ethics and code of conduct to be practiced by General Takaful intermediaries

Learning Outcome

Able to abide with the ethics and code of conduct and compliance requirement for Takaful intermediaries pertaining to General Takaful

B10.1 INTRODUCTION

The Inter-Takaful Operator's Agreement (ITA) on Takaful Business is a joint effort by industry players at self-regulation for the betterment of the industry. The Agreement was made amongst all members of the Malaysian Takaful Association (MTA) with the objectives of:

- promoting and protecting the interests of the Takaful industry, for the mutual benefits of all the members of MTA and the public.
- regulating and controlling the conduct and activities of every person transacting Takaful business.
- monitoring the tariffs, commissions and remuneration applicable to Takaful business.

For the purpose of regulating and controlling the conduct and activities of all registered agents and to ensure compliance with the Regulations, a Committee may be appointed by the Management Committee of MTA. The powers of the Committee amongst others include:

- to receive and to consider applications for registration as agent, for and on behalf of any Takaful Operator.
- to issue, renew or extend certificates of registration to agents.
- to approve and certify the appointment by agents of any corporate nominees.
- to monitor and to control the conduct and activities of agents to comply with the Regulations and/or Guidelines.
- to recommend to the Management Committee the appointment of a Registrar or any other person for the administration of the functions of the Committee.
- to notify the Management Committee of any breach or foreseeable breach of the Regulations and/or Guidelines committed or to be committed by any agents.
- to consider and to approve appeals for exemptions from the terms of the Regulations and/or Guidelines.
- to consider and to approve the appointment and removal of motor vehicle franchise holders in the Second Schedule of the ITA.

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The Agreement also provides for the formation and appointment of an Inspection Task Force. The Task Force is given the authority to conduct inspections and carry out investigation on the conduct and activities of any member of MTA in accordance with the manner provided in the Agreement. This includes the authority to enter any of the member's premises and the inspection of documents on the premises.

The Agreement also makes provisions for disciplinary procedures, penalties and appeals.

B10.2 DEALINGS WITH AGENTS

In respect of matters involving agents, the Inter-Takaful Operator's Agreement on General Takaful Business provides for the following:

a. Authorized Agents

All members of MTA shall only authorize, deal and/or transact General Takaful business with registered agents or brokers.

b. Restriction on Payments

Commission shall only be paid to agents or brokers who are involved in the procuring, selling, transacting, dealing or negotiating of any General Takaful business.

c. Compliance with Regulations

All members of MTA shall ensure that their agents comply with all the rules for the registration and regulation of General Takaful agents stipulated under the Agreement.

d. Scope of Agency

Members of MTA shall not permit or authorize their agents to:

i. issue or complete Takaful certificates.
ii. conduct a loss survey or make loss adjustments.
iii. settle or approve Takaful claims.

e. Suspension of Agent

If the Committee, after due investigation found that an agent had breached a Regulation, the agent shall be suspended and not allowed to transact any business. The suspension is to be in force until further notice from the Committee.

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f. Cancellation of Certificate of Registration

MTA member companies shall terminate their agent within thirty days of notification if such agent's certificate has been revoked, cancelled or refused renewal by the Committee.

MTA Member companies shall:

i. keep a complete and up-to-date record of all their agents, including their corporate agents, directors, shareholders and corporate nominees.
ii. maintain proper and accurate accounts showing the amount of commission paid to their agents.
iii. provide the Committee with any information concerning any of their agents as and when requested.

10.3 MINIMUM ENTRY QUALIFICATION

The Takaful Basic Examination (TBE) is an entry qualification for all those who intend to be a registered Takaful agent in the financial services industry promoting Takaful products and services. It is a compulsory qualification to enhance the competency and professionalism of the Takaful agents.

The implementation of TBE was effective on 1 January 2009 and the requirement of individual to pass the TBE is stipulated in the MTA Inter-Takaful Operators Agreement where every new applicant who would like to be registered as an Agent (including corporate nominee) needs to pass TBE or its equivalent as approved by the management committee (MC). This requirement is irrespective of whether or not the applicant possesses the Pre Contract Examination (PCE) certificate or any other qualification. The TBE qualification is segregated into two categories, namely the General Takaful and Family Takaful which are governed by MTA Rules and Regulation on Takaful Agent Registration.

10.4 CORPORATE NOMINEE

A corporate agency shall be represented by a Corporate Nominee subject to the approval and fulfilling the following qualifying criteria:-

- is the principal officer of the corporate agency or such other officer as approved;
- is engaged full time in the principal office of the corporate agency; and
- is a person of good character and high business integrity.

Where a Corporate Nominee leaves the employment of the agency, the agency is required to replace the Corporate Nominee.

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B10.5 COMMISSION WITHIN *WAKĀLAH* FEES AND DISCLOSURE

An efficient and responsible Takaful Operator is one that conducts its business in a prudent manner which includes the exercise of control over collection of contributions, expenses and its business development strategies.

The Guidelines "Valuation Basis for Liability of General Takaful Business" which came to effect 1 July 2011 and together with the Guidelines on Takaful Operational Framework, form the basis for Takaful Operators to conduct their business in a transparent and prudent manner. It also provides amongst other, matters for the maximum gross commissions and agency-related expenses for the following classes of Takaful business written within Malaysia to be limited to the following percentages of gross direct contributions:

No	Classes	Rate
1	Marine Cargo, Aviation and Transportation (MAT)	15%
2	Motor	10%
3	Fire	15%
4	Marine Hull	15%
5	Engineering	15%
6	Bonds	10%
7	Other classes	25%

Table 8: Commission Structure for General Takaful Business

The maximum limits should apply on a cover to cover basis from the date of commencement of risk. In respect of a package scheme, the maximum commission allowed is that applicable to the cover with the largest proportion of the contribution.

The Inter-Takaful Operator's Agreement on General Takaful Business further provides that no discount or rebate whatsoever shall be given by an intermediary to any participant or certificate holder on any commission paid or payable by the Takaful Operator to the agent.

In addition, if the client deals with the insurer or operator directly without an agent or broker as intermediary, the Takaful Operator may allow a discount not exceeding the amount as stated in the table 8 above.

Agents are also compelled to disclose commissions received on a particular business transacted whenever requested by the respective client / participant.

B10.6 COMPLIANCE WITH CASH-BEFORE-COVER (CBC) FOR MOTOR TAKAFUL CERTIFICATES

Pursuant to the circular issued by BNM and in compliance with Section 96 of the IFSA 2013 and Takaful (Assumption of Risk and Collection of Contribution) Regulation 1985, identifies the motor and other "personal lines" business as that which the Takaful Operator or its agent shall not assume unless the contributions for such covers:

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1. has been paid to the Takaful operator or its agent (cash-before-cover); or
2. is secured by an irrevocable bank guarantee and is paid by the end of the month following the month in which the risk is assumed, failing which a demand is made on the bank guarantee.

The Regulation also provides that where the contribution in respect of a motor certificate covering a commercial vehicle is more than RM5,000 the Takaful Operator may assume risk upon the payment to its account an amount of at least 30% of the contribution, with the balance being paid within 45 days of the assumption of risk. Further, the Regulation also provides that a Takaful agent receiving contribution for a motor certificate shall pay the amount into the Takaful Operator's account within seven (7) working days from the date of assumption of risk.

In this regard, an agent shall maintain a bank account designated in the name of the Takaful Operator which the agent represents and shall deposit into such account all contributions and/or monies collected on behalf of his principal operator (in gross before deducting any commission).

The definition of "payment" has been extended to include payment by way of credit/debit or charge cards and electronic fund transfers in the purchase of Motor Takaful cover. The old regulations which provide for payment by way of cash, cheque, money order or postal and bank draft/cashier's order still remains valid.

In other classes of business (with the exception of marine cargo, marine hull, bonds, contractors' all risks and erection all risks certificates), the agent may offer credit to the client for a maximum period of sixty (60) days from the date of commencement of cover and on such terms as approved by his principal in writing. An agent must also ensure that all cheques or drafts from the client / participant are drawn in favour of the Takaful Operator.

B10.7 THE DUTY OF DISCLOSURE

The principle of utmost good faith applies to Takaful business and this is evident in Section 141 of the IFSA 2013, (specifically Paragraphs 4 to 12 of Section 141) where the followings are observed:

1. Before a contract of Takaful is entered into, a proposer shall disclose to the Takaful Operator a matter that:

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

2. The duty of disclosure does not require the disclosure of a matter that

    a. diminishes the risk to the Takaful Operator;

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b. is of common knowledge to both the proposer and the Takaful Operator;
c. the Takaful Operator knows or in the ordinary course of his business ought to know;
d. in respect of which the Takaful Operator has waived any requirement for disclosure.

3. Where a proposer fails to answer or gives an incomplete or irrelevant answer to a question contained in the proposal form or asked by the Takaful Operator and the matter was not pursued further by the latter, compliance with the duty of disclosure in respect of the matter shall be deemed to have been waived by the Takaful Operator.

4. No Takaful Operator or his agent, in order to induce a person to enter into or offer to enter into a contract of Takaful with it or through him

   a. shall make a statement which is misleading, false or deceptive, whether fraudulently or otherwise;
   b. shall fraudulently conceal a material fact; or
   c. in the case of an agent, use sales brochure or sales illustration not authorized by the Takaful Operator.

5. Where a person is induced to enter into a contract of Takaful in a manner described in subsection (4), such contract shall be voidable and the person shall be entitled to rescind it.

6. The following changes are most likely to affect the contribution rates applicable at renewal:

   a. a change in the nature of the individual risk to be covered; and/or
   b. an overall change in the contribution rates for that particular class/portfolio owing to, for example, an overall worsening of the risk of the entire class of business.

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