

CHAPTER A1

INTRODUCTION TO ISLAMIC MUAMALAT

LEARNING OUTCOMES

At the end of the chapter, the candidate will be able to:

- Understand the concept of Islam, the objectives (*maqasid*) and sources of *shariah*.
- Understand the prohibitions in *muamalat*.
- Understand and explain the rules of *muamalat* contracts.

A1.1 INTRODUCTION

The Arabic word 'Islam' simply means 'submission', and derived from the word meaning 'peace'. In a religious context it means complete submission to the will of Allah (SWT) Islam is not mere religion but a “*deen*”, meaning ‘the way of life’. It touches upon the material as well as spiritual dimensions of human existence.

Allah (SWT) emphasized the completeness of Islam in the following *Quranic* verse;

Meaning:

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

(al-Maidah: 3)

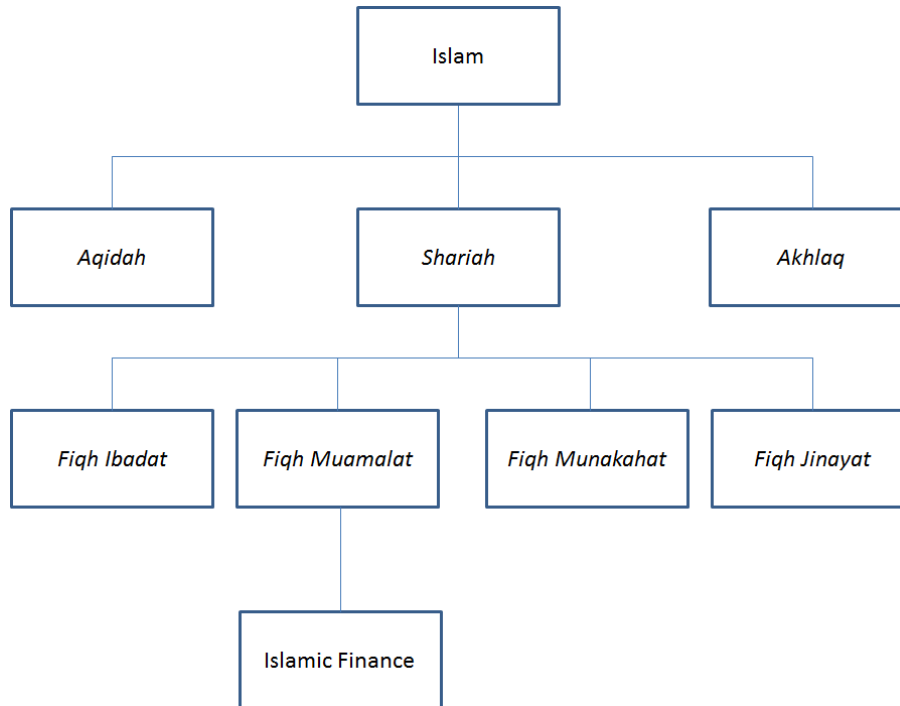
1.1.1 The Concept of Islam

Broken down to its bare elements, Islam comprises of *aqidah* (a set of beliefs), *shariah* (a set of laws) and *akhlaq* (a code of moralities).

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

As such, Islam is also known as *shariah al- kubra* that encompasses the way of life as ordained by Allah (SWT).

Islam can be classified into the following:



<i>Aqidah</i>	<i>Aqidah</i> is defined as the firm belief without any wavering or doubt in Allah (SWT), His Prophets and Angels, the Hereafter, Holy Book and predestination. It is the main foundation in Islam and a starting point in order to be a good Muslim. It is reflected by the activities done by him. The Prophet Muhammad (saw) described Islam as a building where its foundation is <i>aqidah</i> . The foundation of <i>aqidah</i> in Islam is the six pillars of faith (<i>arkan al-iman</i>).
<i>Akhlāq</i>	Practice of virtue, morality, and manners in Islamic theology and philosophy. It consists of relationship between man and Allah (SWT), man and man and man and other creatures.
<i>Shariah</i>	<i>Shariah</i> is the set of rules derived from both the <i>Quran</i> and the authentic traditions (<i>sunnah</i>) of the Prophet Muhammad (saw) and the scholarly opinions (<i>ijtihad</i>) based on <i>Quran</i> and <i>Sunnah</i> . The <i>shariah</i> contains categories and subjects of Islamic law called the branches of <i>fiqh</i> (Islamic jurisprudence).
<i>Fiqh Ibadat</i>	The purification ruling that governs the relationship between man and Allah (SWT) such as prayer, fasting, <i>zakat</i> , <i>jihad</i> and some other forms of worship are dealt under this heading.
<i>Fiqh Munakahat</i>	The ruling related to family law. This area deals with marriage, divorce, inheritance, guardianship and other related matters.

<i>Fiqh Jinayat</i>	It is known as criminal law of Islam. This area deals with major offences like illicit sex (<i>zina</i>), theft (<i>sariqah</i>), murder, etc.
<i>Fiqh Muamalat</i>	The rulings governing commercial transactions between the parties involved.

1.1.2 Objective of *Shariah* (*Maqasid al Shariah*)

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

According to Imam al-Ghazali “ the objective of the *shariah* is to promote the well-being of all mankind, which is safeguarding their faith (*deen*), their self (*nafs*), their intellect (*a’qal*), their posterity (*nasl*) and their wealth (*mal*). Whatever ensures the safeguard of these five principles serves public interest and is therefore desirable.

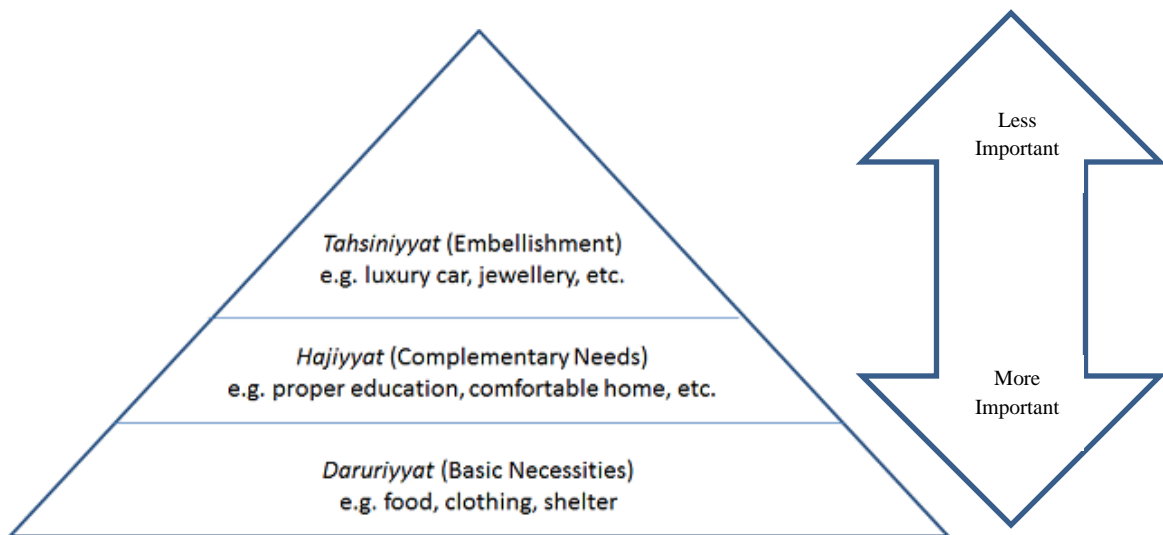
There are five *maqasid* (objectives) as follows:-

The preservation of	Description/Remarks
Religion	The preservation and protection of <i>deen</i> (religion) under all circumstances. Example: Defending the Islamic faith particularly if it attacked by the enemies of Islam.
Life	The preservation and protection of life under all circumstances. Example: In order to protect life is enacting a severe punishment for those who kill another.
Lineage	The preservation and protection of descendants and honor under all circumstances. Example: Islam prohibit it followers in committing adultery or other immoral behaviors.

Intellect	The preservation and protection of intellect and mind under all circumstances. Protection of mind requires safeguarding it from anything that might harm the ability and functions of the brain. Example: The consumption of liquor or similar substances that will affect the functions of the brain.
Property	The preservation and protection of property under all circumstances. Example: The pro-active initiatives and planning in safe guarding ones property against misfortunes or disasters.

1.1.3 Classification of Benefits of the Objectives of the Shariah

The Muslims scholars have classified the entire range of *masalih* – cum – *maqasid* into three categories in a descending order of importance:



1.1.4 Sources of Shariah

In general, the source of *shariah* is divided into two i.e. resources are agreed upon by scholars (*adillah muttafaq 'alaih*) and the resources are not agreed upon by scholars. Resources are agreed upon by scholars is the source used by scholars to issue the rule on a matter or problems that occur. These sources are accepted by scholars without any disagreement among them in terms of sequence or usability.

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

Source	Description/Remarks
<i>Quran</i>	The <i>Quran</i> is the word of Allah (SWT) revealed to Prophet Muhammad (saw) in Arabic conveyed by angel Jibril (as) The Quran is the main primary sources of <i>shariah</i> . It is <i>mu'jizat</i> (meaning which may not be understood by someone) and is immutable and preserved by Allah (SWT).
<i>Sunnah</i>	<p>According to <i>muhaddithun</i> or scholar of science of hadith, <i>sunnah</i> refer anything which came from the Prophet Muhammad (saw) including his acts, sayings, tacit approval as well as physical attribute.</p> <p>It can be divided into three categories¹:</p> <ul style="list-style-type: none"> a. <i>Sunnah Qawliyyah</i> (<i>Sunnah</i> by Words) <p>Example: when Prophet Muhammad (saw) explicitly said, “Pray as you see me pray”</p> b. <i>Sunnah Fi'liyyah</i> (<i>Sunnah</i> by Action) <p>This type of <i>sunnah</i> consists of the Prophet’s deeds and actual instruction, such as the way he performed the prayer, the fasting, the ritual of hajj, or the transaction he concluded such as sale and other financial transaction.</p> c. <i>Sunnah Taqririyyah</i> (<i>Sunnah</i> by Agreement) <p>The tacitly approved <i>sunnah</i> consist of the acts and sayings of the companions in the Prophet’s presence or which came to his knowledge and on which he remained silent. The tacit approval of the Prophet Muhammad (saw) may be inferred from his silence, indicating the permissibility of the acts as the Prophet Muhammad (saw) would never keep silent on prohibited things.</p>
<i>Ijma’</i>	<i>Ijma’</i> is an Arabic term referring to the unanimous agreement amongst the <i>mujtahidun</i> after the demise of Prophet Muhammad (saw). ²
<i>Qiyas</i>	<i>Qiyas</i> refers to the application of an original ruling (<i>hukm</i>) that has been established in the earlier case on the current issue on which the law is silent. ³

¹Aznan Hasan, Fundamentals of Shariah in Islamic Finance, pp. 29

²Aznan Hasan, Fundamentals of Shariah in Islamic Finance, pp. 39

³Aznan Hasan, Fundamentals of Shariah in Islamic Finance, pp. 43

1.1.5 Mandatory Law (*Hukum Taklifi*)

Mandatory law (*hukum taklifi*) law is the law that describes the commands, prohibitions and the option to run or leave an activity / job. According to Islamic terminology, the acts of a Muslim must be guided by these five commandments (*al-ahkam al-khamsah*) classified as follows:

Classification of Commandment	Description
<i>Wajib</i> (obligatory)	The term <i>wajib</i> means an act the performance of which is obligatory for the subject. Example: performing of prayer (<i>solat</i>) and fasting in month of Ramadhan. In its technical sense, it is an act whose commission is demanded by Allah (SWT) in certain and binding terms.
<i>Mandub</i> (recommended)	<i>Mandub</i> is defined as a demand by Allah (SWT). for the commission of an act without making it binding and without assigning any blame for its omission. The rule for <i>mandub</i> is that for doing so there is reward (<i>thawab</i>) for the doer, while omitting it entails no penalty such as giving charity to the others.
<i>Haram</i> (prohibited / unlawful)	<i>Haram</i> is defined as one which omission is required by Allah (SWT) in binding and certain terms. An example of prohibited act (<i>haram</i>) is the misappropriation of another's wealth.
<i>Makruh</i> (reprehensible or disapproved)	<i>Makruh</i> is defined as one which omission is demanded by Allah (SWT) in non-binding terms. An example of reprehensible act (<i>makruh</i>) such as debt which is not documented (unrecorded).
<i>Mubah</i> (permissible)	<i>Mubah</i> or permissible act is one in which Allah (SWT) has granted a choice of commission and omission, without blame or praise for omission or commission. According to this principle, all contracts and transactions are permissible, unless there is evidence indicating otherwise.

A1.2 BASIC MUAMALAT

1.2.1 Introduction to *Muamalat*

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

Basic principles that have a role in forming *shariah* rulings in *muamalat* are:⁴

Basic Principles	Description
Permissibility as a General Rule	The status of all matters other than rituals is permissible until evidence is given that a certain matter is prohibited.
Conclusion of Contract by Mutual Consent	Mutual consent means that the contract entered into by the parties shall be free from any elements of coercion, fraud, misrepresentation or other illegal means.
Conformity of Contract with the <i>Maqasid al Shariah</i>	The transaction or contract entered by individuals shall be accordance with <i>the maqasid al shariah</i> .
The Principle of Wide Circulation of Wealth	Wealth and property should be circulated among the general public and actively transferred from one hand to another in the form of expenditures and investment.
The Principle of Transparency in Commercial Dealing	All financial transactions must be conducted in such a manner that all the parties are clear about all the important facts including the terms and conditions of their dealings.
Justice and Fair Dealing	Justice is the general principle of <i>shariah</i> that needs to be observed in all Islamic transactions and contract.

1.2.2 General Prohibition in *Muamalat*

All economic activities are legally permissible as long as these activities do not transgress any of the tenets of *shariah*. In line with this maxim, it is the unanimous opinion of all four major Islamic *shariah* School of thought (*Hanafi, Maliki, Shafii* and *Hanbali*) that all forms of business transactions that transgress any of the tenets of *shariah* are considered invalid.

General Principles

1. No contract should be made for selling or buying forbidden products such as alcohol or any other forbidden substances.

The Prophet Muhammad (saw) said,

Meaning:

"Surely, Allah and His Messenger have prohibited the sale of wine, the flesh of dead animals, swine and idols,"

(Reported by Bukhari and Muslim)

⁴Aznan Hasan, Fundamentals of Shariah in Islamic Finance, pp. 193 - 199

2. Likewise, no contract should be made for any financial deal on the basis of usury (*riba*).

Meaning:

“Allah has permitted trade and forbidden usury”

(al-Baqarah: 275)

3. Contract involves in gambling (*maisir*) is forbidden in Islam.

Meaning:

“They will ask you concerning wine and gambling. Say: “in them is great sin, and some benefit, for men; but the sin is greater than the benefit.”

(al-Baqarah: 219)

4. Contract that involves major uncertainty (*gharar fahish*) is also forbidden and may make the contract voidable.

Meaning:

“O ye who believe! Eat not up your property among yourselves in vanities, but let there be amongst you traffic and trade by mutual good-will, nor kill (or destroy) yourselves, for verily Allah hath been to you Most Merciful.”

(an-Nisaa’: 29)

Prohibited Elements

1. *Riba* (Usury)

Al-Jassas defines *riba* as a loan given for a stipulated period with stipulated increase on the principal payable by the loan-taker. *Riba* also defined as “an increase that has no corresponding consideration in an exchange of property for property.”⁵

The prohibition of *riba* is deduced from the following verse:

Meaning:

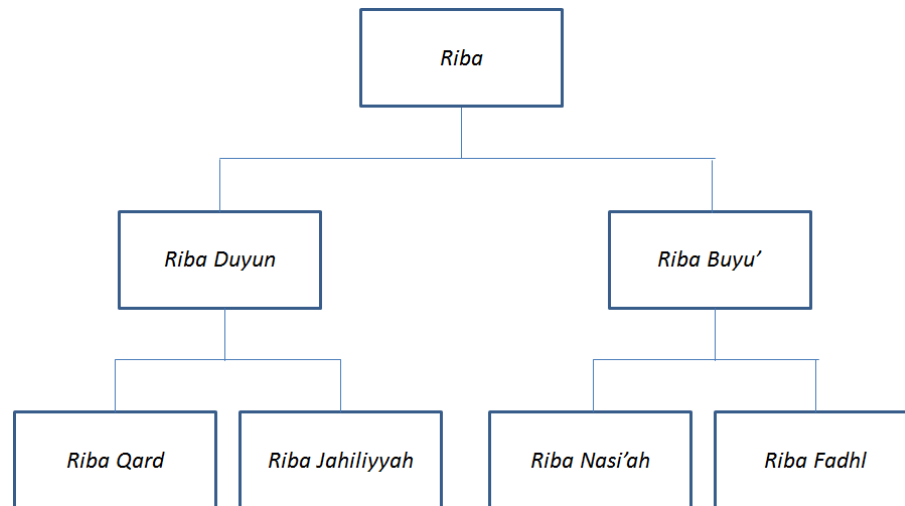
⁵ Aznan Hasan, Fundamentals of Shariah in Islamic Finance, pp. 199

Those who devour usury will not stand except as stand one whom the evil one by his touch hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (the offence) are companions of the fire: They will abide therein (forever).

(*al-Baqarah: 275*)

It would appear that the prohibition regarding *riba* has two dimensions. The first one prohibits increases arising from debts/loans (*duyun*), known as *riba duyun*, while in barter trades (*buyu'*), unequal exchange of *ribawi* item of same kind and same basis in is known as *riba buyu'*.

This can be summarized as follows:⁶



a. *Riba Duyun*

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

Type	Description
<i>Riba Qard</i>	Increase (interest) on the principal sum of the loan is agreed upon at the point of contract
<i>Riba Jahiliyyah</i>	Increase levied on the borrower for late repayment or failure to repay the financial loan

⁶Aznan Hasan, Fundamentals of Shariah in Islamic Finance, pp. 33 - 34

b. *Riba Buyu'*

Occurs in trading and exchange transactions, in which unequal exchange of *ribawi* commodities of same kind and same basis.

Type	Description
<i>Riba Fadhl</i>	Due to unequal amount/quantity
<i>Riba Nasi'ah</i>	Due to extension of time of delivery

Prophet Muhammad (saw) said,

Meaning:

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

(Reported by Muslim)

From the above hadith, gold and silver represent money while wheat, barley, dates and salts represent staple food. These items are known as *ribawi* item.

Type	Currency				Staple Food			
	Gold	Silver	MYR	SGD	Wheat	Barley	Dates	Salt
Currency	Gold							
	Silver							
	MYR							
	SGD							
Staple Food	Wheat							
	Barley							
	Dates							
	Salt							
		On spot and at par						
		On spot only						
		No condition						

Based on the above table:

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

- If payment and delivery are made at the same time but the weights, measurements or numbers of the materials exchanged are not equal, then *riba fadh* occurs.
 - If payment and delivery are not made at the same time but the weights, measurements or numbers of the materials exchanged are equal, then *riba nasiah* occurs.
- ii. Payment and delivery between *ribawi* materials of different kinds and of the same basis must be made at the same time, though they may be made at different prices. Equal weights, measurements or numbers of the materials exchanged are not required to be observed here.
- If payment and delivery are not made at the same time (on spot), then *riba nasiah* occurs

2. *Gharar* (Uncertainty)

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

The prohibition of *gharar* can be deduced from the following verse:

Meaning:

“O ye who believe! Eat not up your property among yourselves in vanities, but let there be amongst you traffic and trade by mutual good-will, nor kill (or destroy) yourselves, for verily Allah hath been to you Most Merciful.”

(*an-Nisaa*: 29)

Prohibition of *gharar* transaction is reaffirmed by the following hadith:

Meaning:

Abu Hurairah ra reported that Prophet Muhammad (saw) forbade a transaction determined by throwing stones, and the type which involves some uncertainty.

(*Reported by Muslim*)

Gharar can be categorized as follow:

- a. Minor (*Yasir*) *Gharar*

Minor *gharar* does not render a sale contract defective because it does not affect the principal components (*arkan* or essential elements) of the contract and necessary conditions of the essential elements (e.g. requirements relating to asset, price, language of the contract etc.)

b. Major (*Fahish*) *Gharar*

In general terms, major *gharar* is

- an uncertainty which is so great that it becomes unacceptable; or
- It is so vague that there is no means of quantifying it.

Major *gharar* causes a contract to be invalid.

3. *Maisir* (Gambling)

The word *maisir* means getting something too easily or getting a profit without working for it. Islam forbids all forms of business in which the monetary gain comes from mere chance or speculation and not from work. Unlike *gharar* which is tolerated to a certain degree, *maisir* is not accepted at all.

Meaning:

“O Believers! Intoxicants and gambling - and divining arrows are an abomination of Satan’s handiwork. Leave it aside in order that you may prosper.”

(al-Maidah: 90)

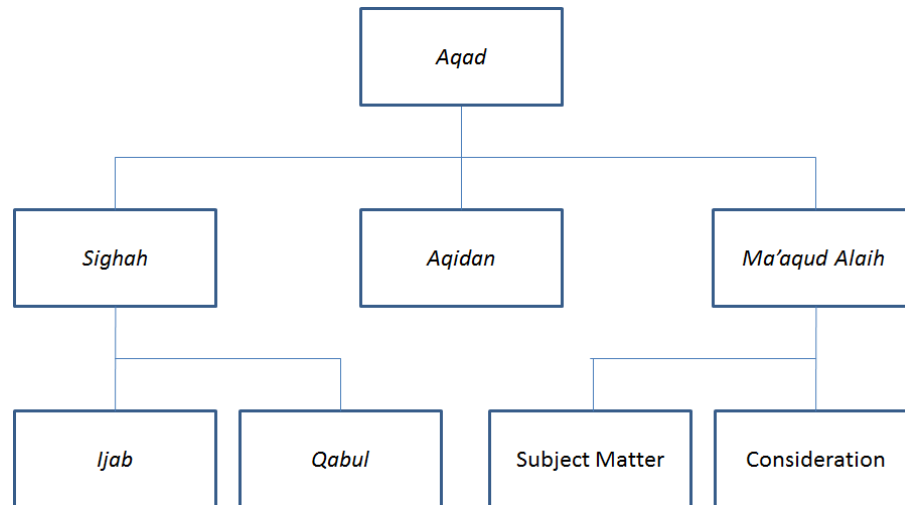
1.2.3 Concept of Contract in Muamalat

The literal meaning of “*aqad*” is “join” or “tie”. It can be translated as “contract”.

Barbati defined “*aqad*” in his kitab “*Inayah ‘ala Fath al-Qadri*” as:

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

The essential elements of an *aqad*:



Essential Elements	Description
<i>Sighah</i>	<p>a. <i>Ijab</i> (offer)</p> <p>Article 101 of <i>Majallah al Ahkam al Adliyyah</i> defined <i>ijab</i> as the word first spoken – for the making a disposition of property and the disposition are proved by it.</p> <p>b. <i>Qabul</i> (acceptance)</p> <p>Article 102 of <i>Majallah al Ahkam al Adliyyah</i> defined <i>qabul</i> as the spoken words by the second party when forming the disposition of property and with it, the agreement becomes complete.</p>
<i>Aqidan (parties to the contract)</i>	It is a condition of a valid contract that the parties possess capacity. Capacity is a quality which makes a person qualified for acquiring rights and undertaking duties and responsibilities.

<p><i>Ma'aqud Alaih</i></p>	<p>a. Subject Matter</p> <p>They are conditions to be taken into consideration according to Islamic jurisprudence for subject of contract:</p> <ul style="list-style-type: none"> • Should exist at the time of contract. • Must be legally owned. • Should bring benefit or significant result for the contracting parties. • Should have commercial value in the light of <i>shariah</i> principles. <p>b. Price/Consideration</p> <p>Defined as value promised to another when making a contract</p> <p>Conditions for valid consideration:</p> <ul style="list-style-type: none"> • In existence (<i>mawjud</i>) • Permissible (<i>halal</i>) • Valid (<i>sahih</i>) • Valuable (<i>mutaqawwim</i>)
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CHAPTER A2

CONCEPT OF RISK

LEARNING OUTCOMES

At the end of the chapter, the candidate will be able to:

- Understand the fundamental concept of risk.
- Understand the risk management process.
- Understand the risk handling method.
- Understand risk from the perspective of Islam.
- Understand the relationship between risk and Takaful.

A2.1 INTRODUCTION

The term “risk” is generally associated with the possibility of the occurrence of harm, injury or loss. There is the element of uncertainty of the event occurring and what the outcome will be.

According to The Occupational Health and Safety Advisory Services, United Kingdom risk is defined as “the combination of the likelihood of an occurrence of a hazardous event or exposure(s) and the severity of injury or ill health that can be caused by the event or exposure(s)”.

In Takaful, the word “risk” refers to the likelihood of an event happening and the severity of the negative consequences. In other words, it always involves the uncertainty arising from the possible occurrence of given events, the outcome of which could leave one in a worse position than one was in before the event.

A2.2 CONCEPT OF RISKS

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

Apart from risk being the uncertainty of whether or not a loss may occur as a result of unexpected event, it is also about the relationship between frequency and severity.

1. Frequency

Refers to the number of times the loss occurs (e.g. 170,670 road accidents per year).

2. Severity

Refers to the size of the loss (e.g. vehicle damage due to road accidents reached RM10 million in 2012).

The relationship between the frequency and the severity of loss is therefore important for insurers and Takaful Operator. Generally, there is a high frequency of low severity incidents and a low frequency of high severity incidents.

For example, there are many small incidents of household fires compared to very few cases where the houses are completely destroyed.

2.2.1 Categories of Risk

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

1. Pure Risk versus Speculative Risk

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

2. Fundamental Risk versus Particular Risk

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

2.2.2 Types of Pure Risk

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

1. Personal Risks;

It is defined as risk that directly affects individuals.

Personal risk can be further divided into the following four (4) types:

No	Type of Risk	Description
1	Premature Death	The death of the head of the household or bread winner can cause financial hardship to the dependents.
2	Insufficient Income during Retirement	Possibility of retirees losing their earned income if they do not have sufficient financial assets or other sources of retirement income.
3	Poor Health	Possibility of having to pay catastrophic medical bills and loss of income.
4	Unemployment	Major threat to financial security resulting from business cycle down swings, technological and economy changes etc.

2. Property Risks

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

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

No	Type of Risk	Description
1	Direct Loss	Financial loss that results from the physical damage, destruction or theft of the property. For example, a factory damaged by a fire (the physical damage to the factory is a direct loss).
2	Indirect or Consequential Loss	Financial loss that results indirectly from the occurrence of a direct physical damage or theft loss of the property. For example, in addition to the physical damage to the factory, the owner would lose his income (consequential loss) due to reduction in turnover whilst the factory is being repaired.

3. Liability Risks.

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

Example:

Business firms can be held legally liable for defective products that could cause bodily injury or property damage to consumers who use these products.

2.2.3 Characteristics of Risks that Can Be Covered by Takaful

No	Characteristic	Description
1	Pecuniary Value	The risk must involve a loss that is capable of financial measurement where monetary compensation is capable following a loss, e.g. fire damage to home, stolen motorcar.
2	Homogeneous Exposure	There must be a large number of similar, homogeneous risks before anyone of that number is capable of being covered.
3	Pure Risks	In general, only pure risks (loss or break-even situation) are coverable as Takaful cannot be used to make a gain.
4	Particular Risk	Particular risks are coverable if they satisfy other criteria of risks that can be covered under Takaful. Fundamental risks are generally cannot be covered e.g. war, changing customs although certain risks may be considered depending on the geographical location of the risks.
5	Fortuitous	The frequency and severity of any risks must be completely beyond the control of the person insuring.
6	Permissible Interest	Defined as the legal relationship between insured and the subject matter of Takaful. The risk to be insured must result in some form of financial loss recognized by law. The Insured person insuring must be the one who stands to suffer some financial loss if the risk materializes, e.g. homeowner insuring own house.

2.2.4 Sources of Risk

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

1. Peril

Perils cause the deviation in events from those that we expect. They are the immediate cause of loss. Their very existence ensures that we are surrounded by risk for example flood, death, sickness, theft, terrorism etc. and these are discussed below.

a. Natural Perils:

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

b. Man Made Perils:

Then there are the manmade perils, which cause loss, these are an outcome of our society and are the violent actions and unethical practices of people, which result in deviation from the expected. There are many of these but only a few are being discussed to illustrate their significance.

- i. Theft
- ii. Riots, Strikes and Malicious Damage
- iii. Accidents

c. Economic Perils:

The third category of Perils or cause of Risk is economic in nature and the examples of this type of Risk are Depression, Inflation, Local fluctuations and the instability of Industrial firms. Depression in the market leads to low production levels and an increase in unemployment. Low production results in reduced profits or losses for business houses whereas unemployment stops the income of individuals causing mental and physical suffering.

2. Hazards

While perils are the direct cause of loss hazards are the underlying factors, which increase the probability of occurrence of loss. There are conditions, which are more hazardous than others e.g., working, as an electrician is a more hazardous occupation than that of a banker as it is more susceptible to accidents.

No	Type of Hazard	Description
1	Physical Hazard	Physical hazard is defined as the physical condition of the subject matter that increases the chance of loss. Example: Defective wiring in a building that increases the chance of fire.
2	Moral Hazard	Moral hazard is defined as the attitude of an individual that increases the chance of loss. Example: Intentionally burning of unsold merchandise that is covered under Takaful.
3	Morale Hazard	Morale hazard is an attitude of lack of concern about the outcome of his actions. An example of this is a person who is careless about stubbing out cigarettes and just throws them around not in the least bothered that his action may cause fire.

A2.3 RISK MANAGEMENT

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

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

2.3.1 Risk Management Process



1. Risk Identification

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

2. Risk Evaluation

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

a. Risk Frequency

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

b. Risk Severity

Refers to the cost or amount of loss, in money terms, arising from a loss producing event.

3. Develop Risk Management Plan

Once the risks have been evaluated completely, it is time to develop the risk management plan by selecting the appropriate risk handling method. Selection must consider cost and effectiveness.

Following are the risk handling method:

Method	Description
Risk Avoidance	<p>It is a technique that seeks to eliminate or prevent the risk through discontinuation of activities or businesses that presents such a risk.</p> <p>Example: A smoker stops smoking to avoid the risk of lung cancer.</p>
Risk Control	<p>This is a technique to improve the risk to achieve a standard and acceptable level. It involves methods that reduce the severity of the loss or the likelihood of the loss from occurring.</p> <p>Example: Installation of water sprinklers to put out a fire to reduce the severity of the loss.</p>
Risk Retention	<p>It involves accepting the risk if the current level of the risk is already at an acceptable level. Risk retention is a viable strategy for small risks where the cost of insuring against the risk would be greater over time than the total losses sustained.</p>
Risk Transfer	<p>This involves the transferring of risks to an organization or individual. When a risk is transferred, losses will be paid by the organization or individual to whom the risk is transferred.</p> <p>Example: A house owner can transfer the risk of loss incurred when his house is destroyed by fire by entering into a fire insurance contract.</p>
Risk Sharing	<p>Islam does not allow risk to be exchanged i.e. total transfer of financial consequence of losses arising from risks. It is not recognized as being fair to each party as it may lead to an overburden of claims beyond the original intention of the Takaful Operator, or otherwise may also result in charges of unacceptable levels of premium to the insured.</p> <p>As an alternative, individuals or organization can share the risk with the others who have a similar nature of risk. This practice is called Takaful or mutual protection.</p>

4. Implementation of Risk Management Plan

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

5. Reviewing and Monitoring of Risk Management Plan

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

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

A2.4 CONCEPT OF RISKS IN ISLAM

Misunderstanding among the Muslims on the concept of fate (*qadha* and *qadar*) is quite common. They believe that their future is in the hands of Allah (SWT) and human does not have to take any proactive action to change their conditions. This is contrary to the following *Quranic* verse:

Meaning:

"... Verily never will Allah change the condition of a people until they change it themselves."

(*ar Ra'd: 11*)

Islam embraced risk management as one of the ways to ensure the fulfilment of goals and objectives towards *sa'adah* (happiness) both in this world and hereafter. This can be justified by various *Quranic* verses and *hadith*.

***Quranic* Evidence**

Meaning:

"And the king (of Egypt) said: "Verily, I saw (in a dream) seven fat cows, whom seven lean ones were devouring, and seven green ears of corn, and (seven) others dry. O notables! Explain to me my dream, if it be that you can interpret dreams." They said: "Mixed up false dreams and we are not skilled in the interpretation of dreams. Then the

man, who was released, now at length remembered and said: "I will tell you its interpretation, so send me forth. He said: "O Yusuf, the man of truth! Explain to us seven fat cows whom seven lean ones were devouring, and seven green ears of corn, and (seven) others dry, that I may return to the people, and that they may know.

Yusuf said: "For seven consecutive years, you shall sow as usual and that which you reap you shall leave it in the ears, (all) except a little of it which you may eat. "Then will come after that, seven hard (years), which will devour what you have laid by in advance for them, (all) except a little of that which you have guarded (stored)." Then thereafter will come a year in which people will have abundant rain and in which they will press (wine and oil)."

(Surah Yusuf: 43-49)

Based on this interpretation, Prophet Yusuf (as) then advised the King of Egypt on how to face such a catastrophe. In order to prepare themselves to face the 7 years of drought (as foreseen by Prophet Yusuf (as), the people of Egypt to actively plant crops during the first 7 years and store much of the proceeds. The King of Egypt later appointed Prophet Yusuf (as) as Minister of Agriculture. He then implemented his own recommendation, as endorsed by the King, resulting in the country surviving the 7 years of drought.

This is a clear example of risk management, whereby the risk of hunger and famine is mitigated by planting crops and eatables during the 7 years of prosperity.

Hadith Evidence

Meaning:

Prophet Muhammad (saw) once asked a Bedouin who had left his camel untied, "Why do you not tie your camel?" The Bedouin answered, "I leave it to the will of Allah. The Prophet (saw) then said, "Tie up your camel first then put your trust in Allah (SWT).

This conversation depicts not only how Muslims should accept their fate but also indicates how Muslims should make efforts to reduce the risk of loss and calamities i.e. risk management.

A2.5 RISK AND TAKAFUL

There is some misconception among the Muslims on the concept of fate. For some Muslims believe that the future is in the hand of Allah (SWT), where they are facing with fatalistic mentality by putting themselves in the doctrine, whether one is rich or poor, happy or sad, it is fated by Allah (SWT). As a result of these prevalent misconceptions, any effort or risk management strategy to insure the assets or life has been considered against the fate and will of Allah (SWT).

In Islamic financial planning, Takaful is a way to reduce the financial risk of loss due to accident and misfortunes (*Iqtisad Al-Islamy*, 2003). As a matter of fact, Takaful plan is an alternative to the insurance in the conventional financial planning. In Takaful plan, the participant would pay particular amount of money as contribution (known as the premium) partly to risk fund (the participants' special account) using the concept of *tabbaru'* (donation) and partly to another party (known as Takaful company) with a mutual agreement that, the Takaful Operator is under a legal responsibility to provide for the participant a financial protection against unexpected loss, should it happen within the agreed period.

In Takaful, risk from individuals or organizations is spread or shared with other individuals or organizations that have a relatively homogenous pattern. Individuals or organizations that participate in the scheme will make a contribution to the Takaful fund. In the event a risk materializes, they will receive proceeds of Takaful funds in order to recover from their loss.

CHAPTER A3

INTRODUCTION TO TAKAFUL

LEARNING OUTCOMES

At the end of the chapter, the candidate will be able to:

- Understand the fundamental concept of Takaful.
- Understand the application and benefits of Takaful.

A3.1 INTRODUCTION

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

According to a recent report by Bank Negara Malaysia, the Takaful industry experienced a compound average growth rate of 27 percent in terms of net contributions between 2005 and 2012.

3.1.1 Definition

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

According to Islamic Financial Services Act 2013 Takaful means:

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

A3.2 TAKAFUL PHILOSOPHY AND CONCEPT

In principle, Takaful system is based on mutual co-operation, responsibility, assurance, protection and assistance between groups of participants. The same practice can be seen in the practice of *al-aqilah* under Arab tribal custom before the advent of Islam where a killer is required to pay blood-money (*diyat*) as compensation to the family of the slain. The doctrine was approved by Prophet Muhammad (saw) and subsequently made mandatory during the period of the second Caliph, Saidina Umar Al Khatab (ra).

1. Basis of Co-operation

Takaful, is based on the concept of *ta'awun* meaning mutual assistance. Participants of the Takaful scheme mutually agree to assist each other financially in case of certain defined needs (as defined in the Takaful contract) by contributing to a common fund.

This concept is based on Allah (SWT) command in the following verse:

Meaning:

"... Cooperate ye one another in righteousness and piety but help ye not one another in sin and rancor"

(al-Maidah: 2)

Prophet Muhammad (saw) reaffirmed it in the following hadith:

Meaning:

"Allah will always help His servant for as long as he helps others"

(Reported by Ahmad and Abu Daud)

2. Basis of Responsibility

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

Meaning:

The place of relationships and feelings of people with faith, between each other, is just like the body; when one of its parts is afflicted with pain, then the rest of the body will be affected.

(Reported by Bukhari and Muslim)

3. Basis of Mutual Protection

The participants of the Takaful Scheme agreed to be mutually responsible or shared responsibility.

Meaning:

By my life, which is in Allah's power, nobody will enter Paradise if he does not protect his neighbour who is in distress.

(Reported by Ahmad)

A3.3 TAKAFUL APPLICATION AND BENEFITS

The Academic Council of the Muslim World League in 1985, after making appropriate modification concluded that the co-operative form of insurance is acceptable and considered an alternative to insurance. The system within the confines of Islamic framework should be founded on the following:

1. Takaful

Muslim jurists unanimously agreed that cover which fits the requirements of *shariah* may be based on the Islamic concept of Takaful. Takaful is a noun stemming from the Arabic verb "*kafala*" meaning to take care of one's needs. Takaful means mutual help among the group i.e. each member of the group pools efforts to support the needy within the group.

The Takaful concept is based on solidarity, shared responsibility and brotherhood among members. Takaful can be defined as the act of a group of people who desires to reciprocal guarantee each other within the group against certain loss or damage that might be inflicted upon any one of them.

The salient features of Takaful operations are as follows:

- The operator is not the one assuming the risk, the Participants who are mutually covering each other.
- The Takaful Operator is acting as trustee on behalf of the Participants to manage the operation of the Takaful business.
- All contributions (premiums) paid by the Participants will be accumulated in the Takaful fund for payment of the Takaful benefits.
- The Takaful fund at the same time can be invested in areas approved by *shariah* Committee.

2. Takaful Model

a. *Mudharabah* (Profit Sharing Contract)

In Takaful business, the participants as capital provider contribute a sum of money to the Takaful fund, while the Takaful Operator as the

entrepreneur agrees to manage the fund in view of making profit in which both, the participants and the operator share the profit proportionately.

b. *Wakalah* (Agency Contract)

In Takaful business, the participants appoint the Takaful Operator as their *wakil* to manage their Takaful coverage and the Takaful fund.

In return for rendering the agency services, the Takaful Operator is permitted to charge a fee under the agreement. The fee is payable from the Takaful contribution paid by the participant. In this sense under the above model, management expenditure can be charged to the Takaful fund as upfront charges.

3. Takaful Concept and Contract

a. *Tabarru'* (Donation)

In Takaful business, the participants mutually agree to contribute to the Takaful fund based on the contract of *tabarru'*. *Tabarru'* contract is the core element in Takaful business and is not only practiced in Malaysia but also worldwide.

Tabarru' apparently Islamize the insurance contract by removing most of the objectionable elements. This is actually the fundamental difference between insurance that is *shariah* compliance and conventional insurance. In the contract of Takaful, the Participant shall agree to relinquish as donation all or certain portion of his contribution thus enabling him to fulfill his obligation of mutual help and joint guarantee.

The advantages of *tabarru'* in Takaful:

- i. Takaful cover that is *shariah* compliant.
- ii. Benefits of doing a good deed.

A3.4 BENEFITS OF TAKAFUL

Takaful offers both the monetary profits through this protection scheme and the “profit” in the spiritual sense. Some of the benefits are as follow:

1. It allows the participant to fulfill his social obligation towards community and family.
2. Takaful also enables financial assistance for the unfortunate and needy through the concept of *tabarru'* where a portion of the contribution will be apportioned to

the risk fund. *“tabarru” donations also allow* participants to achieve self-purification and peace of mind.

3. Promotes moral values and ethical dealings in all its business activities and operations as it is free from prohibited elements such as *riba*, *gharar* and *maysir* and other similar prohibited elements within financial dealings.
4. It provides protection and security for the family and the group against any misfortune.

CHAPTER A4

COMPARISON BETWEEN TAKAFUL AND INSURANCE

LEARNING OUTCOMES

At the end of the chapter, the candidate will be able to:

- Understand the fundamental concept, basis and types of insurance.
- Understand and explain the prohibited elements in insurance practices.
- Understand and explain the differences between Takaful and insurance.

A4.1 INTRODUCTION

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

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

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

There is evidence showing that such practices were also prevalent among the Chinese, Greeks and Europeans. The first case of life insurance dates back to 1583 in England where a term contract was issued on the life of a certain William Gybbon. A significant development in the life insurance industry was the development of the mortality table by Edmund Halley in 1693. However, it was about a century later that any degree of accuracy was achieved in predicting mortality rates.

The introduction of insurance in Malaysia dates back to the 18th and 19th centuries where trading firms and agency houses acted as agents for insurance companies from the United Kingdom. Upon the achievement of independence, there was an effort to establish domestic insurance companies. The early 1960's saw the growth of many life and general

insurance companies. Some of these companies operated on an unsound basis with improper underwriting guidelines.

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

4.1.1 Definition of Insurance

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

4.1.2 Basis of Insurance

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

A contract of insurance is a contract of indemnity (excluding Life and Personal Accident Insurance) and this principle is to put the Insured in the same financial position as he was in before the misfortune occurs. The sum insured must be fixed at a level, which will provide an adequate compensation at the time of loss. For insurance in real property, depreciation must always be taken into account. The cost of insurance would depend on the scope of cover as additional cover requires additional premium. Generally speaking, only unforeseen and fortuitous losses are insurable. Therefore, foreseeable misfortune or losses are generally not insurable (except in Life Insurance).

4.1.3 Types of Insurance

Financial Services Act 2013 provides that:

1. For the purposes of this Act, insurance business shall be divided into two classes:
 - a. Life business, which in addition to all insurance business concerned with life policies shall include any type of insurance business carried on as incidental only to the life insurer's business; and

- b. General business, which means all insurance business which is not life business.
2. For the purposes of this Act, reinsurance of liabilities under a policy is treated as insurance business of the class and description to which the policy would have belonged if it had been issued by the reinsurer.

A4.2 SHARIAH RESOLUTION ON INSURANCE

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

4.2.1 Fatwas on Prohibition of Insurance

1. Imam Sayyid Muḥammad Amīn ibn Sayyid Ūmar (Ibn Abidin)

Ibn Abidin, Islamic scholar of *Hanafi* School of Taught issued a fatwa in 1836 that the contract of exchange applied in conventional insurance does not comply with the contract of exchange (*muawadhah*) as required by the *shariah*.

2. The National Fatwa Committee

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

Resolved:

That Life Insurance provided by present-day insurance companies is a business transaction which is voidable because it contradicts the Islamic business principles in view that the contract contains the elements of *gharar*, *maisir* and *riba*. As such from the *shariah* point of view, insurance is haram".

3. The Islamic *Fiqh* Academy of OIC

The Islamic *Fiqh* Academy, emanating from the Organization of Islamic Conference, meeting in its Second Session in Jeddah, Kingdom of Saudi Arabia, from 10 to 16 *Rabiulawal*, 1406 H (corresponding to 22 - 28 December 1985). And after reviewing the presentations made by the participating scholars during the Session on the subject of 'Insurance and re-insurance', and after discussing the same, and after closely examining all types and forms of insurance and deeply examining the basic principles upon which they are founded and their goal and

objectives, and having looked into what has been issued by the *Fiqh* Academies and other edifying institutions in this regard;

Resolved:

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

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

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

4.2.2 Prohibited Elements in Insurance Practices

Insurance is based on buy and sell contract which has created the following prohibited elements:

1. *Riba*

<i>Riba Nasi'ah</i>	The exchange of <i>ribawi</i> item between insured (premium) and insurance company (claim benefits) at different time.
<i>Riba Fadhl</i>	The exchange of <i>ribawi</i> item between insured (premium) and insurance company (claim benefits) at different quantity.
<i>Riba Qard</i>	<ul style="list-style-type: none"> • Insurance company invests the premium in interest bearing investment. • Insurance company pays interest on their product. • Insurance company considers future interest when calculating the premium. • Interest charged on policy loan
<i>Riba Jahiliyyah</i>	Interest charged on late payment of premium.

2. *Gharar*

- Both parties to the insurance contract do not know exactly what their obligations and responsibilities are to each other, neither the insurer nor the insured knows the outcome of the contract.
- The insured does not know the amount of compensation he is likely to get in case of an accident or a peril as the insured does not know if there will be compensation as the outcome of the contract is not known.
- The insurer does not know when the peril will occur.
- There is no equity in insurance in that the insured has got to pay the premium but if the peril insured against does not happen, the insured is not paid anything at all.
- Insurance is a promise to pay compensation which is sometimes fulfilled and sometimes not. Uncertainty in the results of the exchange as at the point the contract is made, the result of the exchange is still uncertain.

4. *Maisir*

- Insured could receive huge amount of money, without equivalent input.
- Possibility of paying premium without getting any amount in return.
- Insurer loses if there are too many claimants.
- Premium collected exceeds the claims, Insurers could make huge profits.

A4.3 DIFFERENCES BETWEEN TAKAFUL AND INSURANCE

No	Pertinent Issues	Takaful	Insurance
1	Essence of Intention	Intention is to create both spiritual and legal relationship	Intention is to create legal relation only
2	Subject Matter	Subject matter must be <i>Shariah</i> justified	Subject matter must be Common Law justified.
3	Guarantee	The Takaful Operator is only the Fund Manager. The Participant mutually guarantees each other	The company provides the guarantee
4	Fund	The fund belongs to the Participant and managed by the Takaful Operator for a legitimate consideration for the services rendered	The fund belongs to the Company though separation of assets and is maintained between the Shareholders and the policy holders

5	Payment of contribution/ premium	Contribution is treated as donation (<i>tabarru</i>)	Paid premium creates an obligation against the insurer on a sale and purchase contract
6	Forbidden Elements	Islamic model is based on Islamic principles and free from any of the forbidden elements	Insurance policy revolves around the element of <i>Gharar</i> , <i>Riba</i> and <i>Maisir</i>
7	Profits	The profit is shared between the Participant and the Operator	In insurance the profit is at the discretion of the Company
8	Contract	A combination of <i>tabarru</i> ' contract (donation) and agency or profit sharing contract	An exchange contract (sale and purchase) between insurer and insured
9	Risks Treatment	Risks sharing concept among Participants	Concept of risks transfer from insure to insurance company
10	Benefits	Paid from the defined funds under joint indemnity borne by the participants	Paid from the fund legally owned by the company
11	Profits /Bonus	Specifies from the outset how the profits are to be shared between the participants and the operator	May offer bonus or profit in general terms only especially with profit participating policies
12	Investment of Fund	Assets of the Takaful funds are invested in <i>Shariah</i> -compliant instruments	There is no restriction apart from those imposed for prudential reasons

CHAPTER A5

PRINCIPLES AND BUSINESS MODELS OF TAKAFUL

LEARNING OUTCOMES

At the end of the chapter, the candidate will be able to:

- List the various basic principles of Takaful.
- Understand Takaful business model adopted by Takaful Operators.
- Explain the various principles and model to the prospective clients.

A5.1 BASIC PRINCIPLES

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

5.1.1 Principle of Permissible Takaful Interest

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

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

Relationship	Description
Ownership of Property	Owners of property will lose financially if their property is damaged or destroyed.
Potential Legal Liability	Permissible Takaful Interest can also exist when there is a financial loss arising from legal liability.
Contractual Right	The interest can be established if there is a provision in the contract that one party is financially responsible for any loss or damage to the property and third party liability.

The financial relationship between the participant and the subject matter covered should be such that the participant will financially or economically benefit by the survival or safety or existence of the subject matter or alternatively will suffer financial or economic loss due to the destruction or loss to the subject matter. Permissible Takaful Interest must therefore be capable to be measured or valued financially in order to be covered by Takaful.

Permissible Takaful Interest must exist at the beginning and at time of loss – otherwise, the Takaful affected is void.

Some examples of persons having Permissible Takaful Interest are:-

1. An individual has an unquestionable Permissible Takaful Interest in his own life and body to any amount.
2. Spouses have Permissible Takaful Interest in each other's lives and property.
3. A person has Permissible Takaful Interest to his child or ward being a minor or under the majority age at the time Takaful cover is affected, and of anyone on whom that person is at that time wholly or partly dependent.
4. A creditor can cover the life of a debtor (up to the amount of debt) but not debtor on the life of creditor.

5.1.2 Principle of Duty of Utmost Good Faith

Duty of Utmost Good Faith can be defined as a positive duty to voluntarily disclose, accurately and fully all facts material to the risks being proposed, whether requested or not.

Takaful contracts, both Family and General are entered into by all parties in utmost good faith, meaning that they are both required to disclose all relevant facts, whether asked for or not, that are material to the other party's decision to enter into the contract. Failure to reveal vital information even if not asked for, gives the aggrieved party the right to regard the contract as void. Under the doctrine of Utmost Good Faith both parties i.e. the participants and the Takaful Operator must disclose all the material facts fully and truthfully.

The doctrine of Utmost Good Faith also entails that there should be no concealment, misrepresentation or fraudulent intention about the material facts. This duty of Utmost Good Faith shall continue throughout the period of Takaful where the participant is required to inform and disclose to the Takaful Operator of any changes which might materially increase the risk. The Takaful Operator will then decide whether such increase in risk requires a corresponding increase in the contribution rate, need for additional conditions, or in the worst case, be duly cancelled. An example is a change in the occupation of a building from a sundry shop into fireworks storage.

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

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

- Fails to disclose the material fact, or
- Misrepresents the material fact.

When a participant fails to disclose a material fact, the breach of utmost good faith is termed either as a non-disclosure or concealment i.e. a fraudulent non-disclosure. If he misrepresents a material fact, the breach is termed as an innocent misrepresentation or fraudulent misrepresentation. For example, a participant of Family Takaful has a pre-existing illness but failed to inform the Takaful Operator.

Material Fact

Material fact is defined as any fact that would reasonably influence a Takaful Operators underwriting decision on a certificate, i.e. would influence their underwriter's decision whether to issue a certificate or the contribution for the certificate.

Example:

If the proposer applies for a Medical and Health Takaful certificate and declared that he has no existing serious illnesses, when in fact he is a diabetic. His misrepresentation is considered material as the Takaful Operator would not have issued the certificate if in possession of the facts.

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

Pursuant to Section 141 (4) of Islamic Financial Services Act 2013:

Before a contract of Takaful other than a consumer Takaful contract is entered into, varied or renewed, a proposer shall disclose to the licensed Takaful Operator a matter that:

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

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

- diminishes the risk to the licensed Takaful Operator
- is of common knowledge
- the licensed Takaful Operator knows or in the ordinary course of his business ought to know
- in respect of which the licensed Takaful Operator has waived any requirement for disclosure

5.2.3 Principle of Indemnity

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

Takaful contracts promise to make good the participant's loss or damage. When a loss takes place, the sum which the participant can recover is called the 'measure of Indemnity'. The principle of indemnity requires the Takaful Operator to restore the participant to the same financial position as he had enjoyed immediately before the loss.

5.1.4 Principle of Subrogation

Principle of Subrogation refers to right of the Takaful Operator to stand in place of the participant, after settlement of the claim, in so far as the participant's right of recovery from a third party. The subrogation right may however, be exercised by the Takaful Operator before payment of the loss. This is a corollary of the Principle of Indemnity.

5.1.5 Principle of Contribution

Principle of Contribution can be defined as the right of an insurer to call upon other similarly but not necessarily equally liable to the same participant to share the cost of an indemnity payment. Principle of Contribution is another corollary of Principle of Indemnity. Thus, it only applies to contracts of indemnity only.

5.1.6 Principle of Proximate Cause

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

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

Example:-

A Participant suffers from a gallstones, is knocked down by a motorcar and dies, although for the gallstones, he would not have died. His death is not an accident within the policy (*Louden v British Merchants Ins. Co. Ltd [1961]*).

In the event of a loss, the onus or burden of proof that the loss occurred was the result of a covered peril rests on the Participant. On the other hand, the onus of proof that the loss is excluded by reason of a specific exception in the certificate rests on the Takaful Operator.

5.1.7 Tabarru' (Donation)

“*Tabarru*” (literally means donation), is a shared responsibility and shared guarantee principle which explicitly mentions that the money collected is to be used for the purpose of assisting “fellow participants who require assistance according to the terms agreed as long as these terms are not in conflict with the *shariah*”.

In Takaful business, *tabarru'* (Takaful donation) is a contract where a participant agrees to donate a pre-determined percentage of his contribution (to a Takaful fund) to provide assistance to fellow participants. In this way he fills his obligation of joint guarantee and mutual help should another participant suffer a loss. This concept also eliminates the element of *gharar* from the Takaful contract.

A5.2 MANAGEMENT OF SEPARATE FUNDS UNDER TAKAFUL BUSINESS

Takaful Operators are required to maintain and segregate three types of fund:

1. General Takaful Fund
2. Family Takaful Fund
3. Shareholders' Fund

The salient provisions as provided for in the Islamic Financial Services Act 2013 in respect of Takaful fund are as follows:

Section 90:

A licensed Takaful Operator shall establish and maintain one or more Takaful funds for any class or description of its Takaful business as may be specified by the Bank.

Section 91:

A licensed Takaful Operator shall keep any Takaful fund established and maintained under Section 90 separate from its shareholders' fund.

A5.3 TYPES OF TAKAFUL MODELS

The operation of Takaful within the *tijari* (commercial) sector can be structured on a number of business models as shown below:

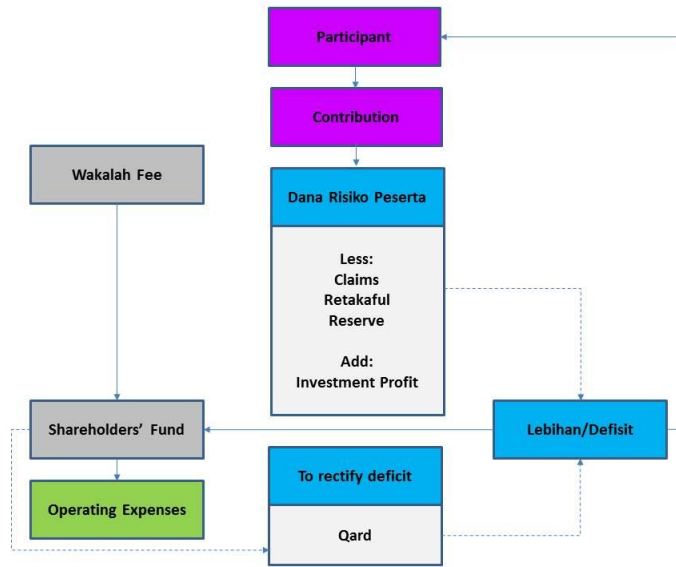
- *Wakalah* model
- *Mudharabah* model
- *Mudharabah + Wakalah* model also known as hybrid model
- *Waqf* model

However, only *wakalah* and *mudharabah* models are practiced in Malaysia.

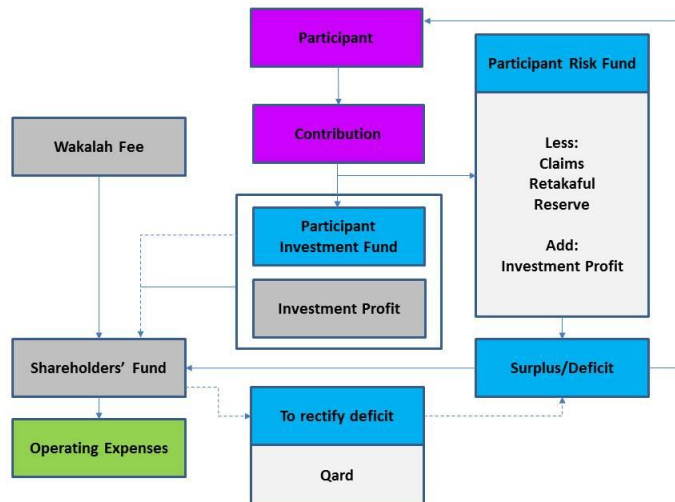
1. *Wakalah* Model

- Under this model, Takaful participant as the principal will appoint Takaful Operator as *wakil* or agent to manage the participation of the former in a variety of Takaful products provided by the Takaful Operator.
- In return for rendering the agency services, the Takaful Operator is permitted to charge a fee under the agreement. The fee is payable from the Takaful contribution paid by the participant. In this sense under the above model, management expenditure can be charged to the Takaful fund as upfront charges.
- The contract will define profit of the Takaful business and the ratio to be shared between the two parties such as 50:50, 60:40 or 70:30 between the participant and operator respectively. In essence, profit in Takaful is defined as returns on the investment and surplus from the underwriting in respect of the Takaful funds only. Therefore this does not include profit posted by the Shareholders' Fund.
- In the event of a loss or deficit of the Takaful fund, the loss will be borne wholly by the participant(s) as provider of capital. Notwithstanding, it is the responsibility of the Takaful Operator to safeguard the interest of the participants in order to ensure the business will not be seriously affected by the loss that might jeopardize the credibility and confidence of Takaful as a whole.
- In the event of such loss, it is incumbent upon the Takaful Operator to make good the loss by "*qard*" or loan by the shareholders.

General Takaful Wakalah Model Flowchart



Family Takaful Wakalah Model Flowchart

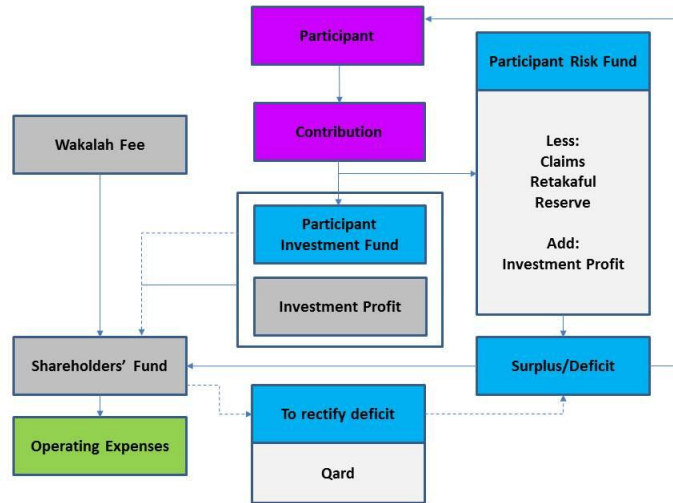


Source: MIFC

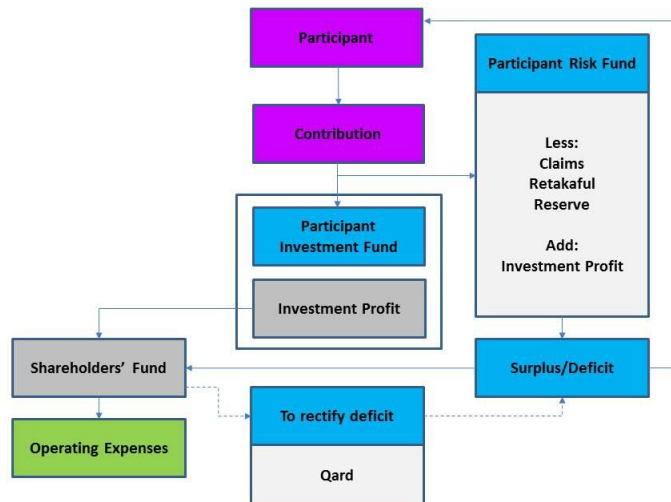
5.3.2 *Mudharabah* Model

- Under this arrangement, the Takaful participant as the capital provider (*sahibul-mal*) will enter into a profit sharing contract with the Takaful Operator as the entrepreneur (*mudharib*). The Takaful participant is obliged to make the Takaful contribution (capital) while Takaful Operator will manage the Takaful business.
- The contract will define profit of the Takaful business and the ratio to be shared between the two parties such as 50:50, 60:40 or 70:30 between the participant and operator respectively. In essence, profit in Takaful is defined as returns on the investment and surplus from the underwriting in respect of the Takaful funds only. Therefore this does not include profit posted by the Shareholders' Fund.
- For the Family Takaful business, it includes the mortality surplus to be allocated to the eligible participant as declared by the actuarial valuation at the end of every financial year. However, unlike the *mudharabah* contract for Islamic banking product, profit sharing in Takaful will be undertaken only after all the obligations of Takaful have been accounted for: the biggest factor is claim.
- In the event of a loss or deficit of the Takaful fund, the loss will be borne wholly by the participant(s) as provider of capital. Notwithstanding, it is the responsibility of the Takaful Operator to safeguard the interest of the participants in order to ensure the business will not be seriously affected by the loss that might jeopardize the credibility and confidence of Takaful as a whole.
- In the event of such loss, it is incumbent upon the Takaful Operator to make good the loss by "*qard*" or loan by the shareholders.
- An important feature to note is that under the *mudharabah* model, management expenditure is not charge on the Takaful fund instead it is borne by the Shareholders' fund. Revenue of the latter is its portion from the profit sharing of the Takaful funds with the participants, and all returns on the investment of the Shareholders fund itself.

General Takaful *Mudharabah* Flowchart



Family Takaful *Mudharabah* Flowchart



Source: MIFC

CHAPTER A6

DEVELOPMENT AND SUPERVISION OF TAKAFUL INDUSTRY IN MALAYSIA

LEARNING OUTCOMES

At the end of the chapter, the candidate will be able to:

- Identify and explain the legal and regulatory requirements of Takaful operation.
- Describe the role of the supervisory and regulatory authorities in the development of Takaful industry.
- Identify Consumer Protection bodies and its function
- Know the various industry associations and the reasons for its existence.

INTRODUCTION

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

A6.1 TAKAFUL INDUSTRY IN MALAYSIA AT A GLANCE

6.1.1 Development of the Malaysian Takaful Industry 1984 - 2013

Issues	1984	2013
Takaful Operator(s)	Sole composite operator with RM10m capital that sets the foundation for the industry	11 Takaful Operators with minimum capital of RM100m each, which enhances competition
Investors/ Shareholders	An Islamic bank and state religious councils and religious foundations	Broad range comprising of private investors, banking groups, insurers and reinsurers
Products	Limited products mainly confined to motor, fire and mortgage Takaful. General products dominated the market with 63% share (in terms of contributions)	Broad range of product mix with sophisticated features. Family products dominated the market with 71% share (in terms of contributions)

Customers	Mainly Muslims	Muslims and non-Muslims with different expectations, preference and demands
Distribution Channels	Branches and marketing officers and Takaful Desks	Branches, marketing officers, agency force, bancatakaful, brokers, internet and strategic alliances
Investment Avenues	Confined to Islamic deposits and Government Islamic securities	Wider range of <i>shariah</i> -compliant investment instruments issued by the Government and the private sector

6.1.2 Development of the Malaysian Takaful Industry - Phase I to III

In developing the Takaful industry in Malaysia, Bank Negara Malaysia has adopted a gradual three-phased approach:

- Phase I (1984-1992)

Phase I started with the enactment of a dedicated regulatory law, i.e. the Takaful Act 1984 and the commencement of the first Takaful Operator in 1985. The Act governs the conduct of Takaful business and requires the registration of Takaful Operators. It also provides for the establishment of Shariah Committees to ensure that the business operations of a Takaful Operator are in compliance with *shariah* principles at all times.

- Phase II (1993-2000)

In Phase II more licenses were granted to operators and there was greater regional cooperation among Takaful Operators, including the formation of the ASEAN Takaful Group in 1995 and the establishment of ASEAN Retakaful International (L) Ltd in 1997. This has facilitated retakaful arrangements among Takaful Operators in Malaysia and in the region, namely Brunei, Indonesia and Singapore.

- Phase III (2001-2010)

The Financial Sector Master Plan (FSMP) was introduced in 2001 during Phase III. The objective among others, is to increase the capacity of Takaful Operators and strengthen the legal, *shariah* and regulatory framework of the Takaful industry.

Under the FSMP, Malaysia aspires to become an international centre for Islamic finance, and during this period there was an increased pace of development of the Takaful

industry. The Malaysian Takaful Association (MTA) an association for Takaful Operators was established in 2002. The MTA aspires to improve industry self-regulation through uniformity in market practices and in promoting higher level of cooperation among the players in developing the industry.

6.1.3 Islamic Financial Services Act 2013

This act was passed by Parliament June 30 2013, replacing the Takaful Act 1984 and the Islamic Banking Act 1983. It empowers BNM to regulate and supervise Islamic financial institutions towards achieving financial stability and compliance with *shariah*. The new act is considered comprehensive and stringent compared to the previous Acts that were replaced. It also provides BNM with the necessary tools for intervention and remedial action.

The act requires among others, that Takaful Operators with composite licenses (i.e. having both Family and General Takaful business) to separate the licenses into different entity and each entity must have a minimum paid capital of RM100 million. Operators are given 5 years to comply with these new rules.

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

A6.2 LEGAL FRAMEWORK OF TAKAFUL INDUSTRY

The recently enacted Islamic Financial Services Act 2013 (IFSA) has replaced Takaful Act 1984 as the source of Takaful legislation and provides for the regulation of Takaful business in Malaysia. Section 30 of the Act requires a Shariah Committee be established by the operator.

The general law governing Takaful rest on the general principles of contract where there must be an offer (*ijab*) and acceptance (*qabul*), and additionally the issuance of a cover note, which is replaced by a Takaful certificate once issued by the operator. The consideration in the contract is the regular contribution/payment to be made by the participant and indemnity by the Takaful Operator from the funds under its management.

The Act is supplemented by the Takaful Regulations (Regulations) through which Bank Negara Malaysia prescribes the details of mandatory requirements contained in certain provisions of the Act.

6.2.1 Bank Negara Malaysia (BNM)

When preparing the regulatory framework for the Takaful industry, Bank Negara Malaysia has to give due consideration between the different objectives of the following stakeholders:

1. Regulator
2. Operators
3. Consumers
4. Domestic and international stakeholders

However, the primary purpose of regulation is to ensure that a Takaful intermediary/agent obtains sufficient information about a prospective participant before rendering appropriate advice on the suitability of a particular Takaful product to the potential client.

6.2.2 Objectives of Supervision

BNM role as supervisor is to achieve the following objectives:

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

When undertaking a supervisory role, BNM issues various circulars and guidelines aimed at raising the professional standards and accountability of Takaful intermediaries/agents as well as to protect the participants' interests. This will ensure that prospective clients are able to make an informed decision when participating in any Takaful schemes. (Visit www.bnm.gov.my to view the various Guidelines issued by BNM).

For stakeholders' Market Conduct and Consumer Protection, BNM has identified the following areas of concern:

- Disclosures to consumers:
Ensuring that participants have access to accurate, timely and relevant information
- Competency of Intermediaries:
Greater supervision is required to ensure proper selling practices in view of non-guaranteed nature of benefits
- Consumer education:
Fostering greater awareness and understanding of risks and rights with regard to Insurance and Takaful products

- Availability of Channels:
Dispute resolution mechanisms that offer speedy resolution to resolve disputes

A6.4 SHARIAH ADVISORY COUNCIL AND SHARIAH COMMITTEE

Shariah Advisory Council for Islamic Banking and Takaful was established by BNM in May 1997. Its objective is to look after the *shariah* decision and harmonize *shariah* interpretation of Islamic Banking and Takaful business under its supervision.

6.4.1 Shariah Advisory Council (SAC) of Bank Negara Malaysia

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

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

6.4.2 Shariah Committee (SC) of Takaful Operator

BNM has issued Guidelines on the Governance of Shariah Committee for the Islamic Financial Institutions in April 2005 to govern the Shariah Committee for the Takaful industry.

The objective of the guideline:-

- to set out the rules, regulations and procedures in the establishment of a Shariah Committee
- to define the role, scope of duties and responsibilities of a Shariah Committee
- to define relationship and working arrangement between a Shariah Committee and the SAC of Bank Negara Malaysia

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

The detailed guidelines on the governance of SC are as follows:

- Appointment of Membership

The Board of Directors upon recommendation of its Nomination Committee shall appoint the members of the SC. The appointment of SC members shall obtain prior written approval of Bank Negara Malaysia. The appointment of a SC member is valid for a renewable term of 2 years.

- Qualification

The proposed member of the SC must at least either have qualification or possess necessary knowledge, expertise or experience in the areas of:

- Islamic jurisprudence (*usul al-fiqh*)
- Islamic transaction/commercial Law (*fiqh al-mu'amalat*)

However, paper qualification is not mandatory as long as the candidate has the necessary expertise or experience in the above areas.

- Composition

The composition of the SC shall consist of a minimum of five (5) members. In addition to the SC, a minimum of one officer should preferably be a person with knowledge in *Shariah*, who will serve as the secretariat to the SC.

- Restrictions on SC

In line with Section 16B(6) of the Central Bank of Malaysia Act 1958, a Takaful Operator is not allowed to appoint any member of the Shariah Advisory Council to serve in its SC.

- Duties and Responsibilities of SC

SC members must not be involved in the management of the Takaful Operator. The management and policies are the responsibility of the Board of Directors. To ensure the smooth running of the Takaful operation, the roles and responsibilities of the SC are as follows:

- To submit its annual report and certification of the company's adherence to *shariah* in the Annual General Meeting of the Shareholders.
- Audit and supervise the actual application of contract operation in line with the spirit of the Fatwas.
- Respond to enquiries from the operator regarding Takaful issues related to Islamic Law and the decision must be by consensus (*syura*) and not by majority.

- To provide justification and to advise on matters to be referred to the Shariah Advisory Council.

A6.5 CONSUMER PROTECTION

1. Financial Mediation Bureau (FMB)

Correspondingly, Bank Negara has set up Financial Mediation Bureau (FMB) to help consumers in settling disputes with financial services providers. FMB is a non-profit organization incorporated as a company limited by guarantee. The main function is to provide an alternative dispute resolution channel which is independent, convenient, efficient and free for the complainants.

The method of dispute resolution that FMB uses is known as mediation. The Mediator study and / or investigate the case including all the issues, circumstances and situations beyond the law and industry practices.

The Mediator may discuss the complaint including his findings and observations with either one or both the parties concerned. In the event both parties agree to an amicable settlement, the matter is considered resolved/mediated.

In the event both parties cannot reach an amicable settlement, then the Mediator will make a decision based on the following:

- his investigation and study of the case
- the industry practices and the relevant applicable law
- the responses from the financial service provider
- the information/documents provided by the complainant
- the mediator's other observations

The decision made by the Mediator is binding on the member company, but not on the complainant. The complainant has a choice of either accepting the Mediator's decision or proceeding with other avenues available. It is part of National Consumer Protection Framework that provides mediation service under one roof for the convenience of the consumers. FMB has qualified, experienced and dedicated staff to undertake these tasks.

FMB jurisdiction is as follow:

Complaints/Disputes	Dispute Limit
Motor and Fire Takaful	Max. RM200,000
Third Party Property Damage	Max. RM5,000
Others	Max. RM100,000

Exclusion:

FMB will not consider complaints, disputes or claims relating to:

- General pricing
- Product policies
- Services of members
- Credit decisions (approvals, rejection & rescheduling of loans)
- Fraud cases (other than those for which the limit is not more than RM25,000.00)
- Cases which are time barred or more than 6 years
- Cases which have been or are referred to the court and/or for arbitration

2. Perbadanan Insurans Deposit Malaysia (PIDM)

Perbadanan Insurans Deposit Malaysia (PIDM) is a Government body established in 2005 under the Akta Perbadanan Insurans Deposit Malaysia (Akta PIDM).

Under the PIDM Act, its role is to administer and provide deposit insurance to protect depositors against the loss of part or all deposits as well as a Takaful and insurance benefits system to protect owners of Takaful certificates and insurance policies in the event of a failure of a member institution.

Takaful & Insurance Benefits Protection System (TIPS)

TIPS is a system established by the Government to protect owners of Takaful certificates and insurance policies from the loss of their eligible Takaful or insurance benefits in the event that an insurer member fails and is unable to honour the Takaful or insurance benefits. Takaful Operators and insurance companies that are member institutions of PIDM are also referred to as 'insurer members'.

The Takaful and Insurance Benefits Protection System was brought into effect on 31 December 2010 and is administered by Perbadanan Insurans Deposit Malaysia (PIDM).

The Takaful benefits protected under TIPS and related limits are set out in Tables 1 and 2 below.

Table 1: Protected Benefits for Family Takaful

Benefits Protected	Maximum Limit (Individual or Group Plans)
Death and related benefits	RM500,000
Permanent disability	RM500,000

Critical illness	RM500,000
Maturity value (excluding unit portion of investment-linked policies)	RM500,000
Surrender value	RM500,000
Accumulated cash dividends	RM100,000
Disability income	RM10,000 per month
Annuity income	RM10,000 per month
Medical expenses	100% of expenses incurred
Refundable prepaid premiums	100% of amount prepaid

Table 2: Protected Benefits for General Takaful

Benefits Protected	Maximum Limit (Plans)
Loss of or damage to property in relation to: <ul style="list-style-type: none"> an immovable property located in Malaysia a motor vehicle registered in Malaysia or a foreign registered vehicle insured to drive in Malaysia a ship, aircraft or other movable property insured by a citizen or qualified person¹ 	<ul style="list-style-type: none"> RM500,000 per property
Death and related benefits	RM500,000
Permanent disability	RM500,000
Critical illness	RM500,000
Disability income	RM10,000 per month
Medical expenses	100% of expenses incurred
In relation to indemnification against claims by a third party: <ul style="list-style-type: none"> loss of or damage to eligible third party immovable or movable property death and related benefits permanent disability illness or bodily injury disability income medical expenses 	<ul style="list-style-type: none"> RM500,000 per property RM500,000 RM500,000 RM500,000 RM500,000 RM10,000 per month 100% of expenses incurred
Refundable prepaid premiums	100% of amount prepaid

Eligibility for TIPS

- a. The Takaful certificate must be issued in Malaysia by an insurer member.
- b. The Takaful certificate must be denominated in Ringgit Malaysia.
- c. Qualified person includes resident, corporation, statutory body, local authority, embassy, the Government or any State Government, society, trade union, cooperative society, partnership or any other body, organization, association or group of persons, whether incorporated or unincorporated, in Malaysia

Note: Any claims of certificate will be subject to the conditions and limits specified in their Takaful contracts.

Benefits to Takaful Participants

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

A6.6 INDUSTRY ASSOCIATIONS

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

1. Malaysian Takaful Association (MTA)

Malaysian Takaful Association (MTA) was incorporated in 2002 with the objective of promoting the establishment of a sound Takaful (Islamic insurance) structure in Malaysia in cooperation and consultation with the Director-General of Takaful.

- To promote and represent the interests of the member companies and the Takaful industry.
- To render where possible, to member companies such advice and assistance as may be required
- To circulate information likely to be of interest to member companies, and to collect, collate and publish statistics and other information relating to Takaful.

- Cooperate with other associations, both domestic and global for common interest

2. Life Insurance Association of Malaysia (LIAM)

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

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

The objectives of LIAM are as follow:

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

3. Persatuan Insurans Am Malaysia (PIAM)

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

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

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

4. Malaysian Insurance and Takaful Brokers Association (MITBA)

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

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

Objectives:

- To promote and establish a sound brokerage business in Malaysia in co-operation and consultation with the DGI
- To promote and represent the interests of members
- To note events, statements and expressions of opinion affecting members, to advise them thereon and to represent their interests by expression of views on their behalf as may be deemed necessary and expedient.
- To co-operate with other similar associations elsewhere in the world
- To work in conjunction with any legal body or association or any similar body appointed for consideration, training, amendment or alteration of any law relating to insurance

A6.7 SUPPORT ORGANIZATION

1. IBFIM

IBFIM is an industry-owned and Regulator-linked institute whose objective is to serve the needs of the Islamic finance industry stakeholders in talent and business development.

Since 2001, IBFIM has been conducting training programs as well as extending business and *shariah* advisory services. IBFIM's tagline "*Your Islamic Finance Business Partner*" manifests its close rapport with the industry and its wide range of services.

As market leader, IBFIM's certification programs are developed, moderated and recognized by the industry. The programs cover four disciplines: banking, Takaful, capital market and wealth management. IBFIM's Islamic Finance Qualifications are mapped out in an innovative Progression Route, to motivate industry personnel to enhance their competencies in moving up the corporate ladder.

CHAPTER A7

RETAKAFUL

LEARNING OUTCOMES

At the end of the chapter, the candidate will be able to:

- Understand the definition and types of Retakaful.
- Understand the importance of Retakaful

A7.1 INTRODUCTION TO RETAKAFUL

Retakaful is a risk aversion method in which the Takaful Fund managed by the Operator maybe faced with limited financial resources, hence to hedge against possible incapability, an appointed Retakaful Operator will take over the coverage of a large proportion of the risk sharing with the participants. Takaful Operators allow the participants to insure or share the original insured risks against an undesirable future situation if the risk insured were above the normal underwriting or claim estimates.

7.1.1 Definition

Retakaful is defined as “a contract whereby one for a consideration agrees to indemnify another wholly or partially against loss or liability by a risk the latter has covered under a separate and distinct contract as operator of a third party.”

Therefore a contract of retakaful is one in which an operator procures a third party to cover him against loss or liability by reason of such original Takaful cover.

7.1.2 Shariah View on Retakaful

In line with the scholars’ resolution on the permissibility of Takaful as a system of Islamic insurance, retakaful likewise has been resolved to be *shariah* compliance along with the same principles of Takaful. The resolution of the *Fiqh Academy* (Resolution No.9 December 1985) of the OIC on this subject is as follows:

“...Commercial insurance contract commonly used by commercial insurance companies is a contract which contains major elements of risks which is prohibited according to shariah. The alternative for both insurance & reinsurance should be based on the principles of cooperative insurance...”

7.1.3 Parties to Retakaful

There are two parties involve in Retakaful operations:

1. Ceding Company

The ceding company which desires to relieve the participants from the part of the risks insured. This party we call it as Takaful Operator

2. Insurer

The company which accepts that portion of risk, which is reinsured. This party is called the Retakaful Operator.

A7.2 BASIC PRINCIPLES OF RETAKAFUL

Retakaful is as an arrangement in which a company, the Retakaful Company, agrees to indemnify a Takaful Operator, the ceding company, against all or a portion of the primary Takaful risks underwritten by the ceding company under one or more Takaful contracts. Retakaful, however, does not discharge the ceding company from its liability to participants.

In this respect:

- the original participant has no rights against the Retakaful Operator whatever the circumstances
- if the Retakaful Operator becomes insolvent, the ceding company still remains liable under the terms of the contract
- If the ceding company becomes insolvent, the Retakaful Operator is still liable under the terms of his the contract
- the Retakaful Operator has no contractual rights against any wrong doing of the original participant

Based on these definitions, we can summarize the important elements of retakaful as follows:

- Retakaful is a type of Takaful but is a distinct and separate contract from the original Takaful and itself takes the form of a contract of Takaful
- Retakaful may cover part of the risks, but no more than that
- The retakaful contract must cover the same risk as the original Takaful coverage
- Both Takaful and retakaful certificates are to be in existence at the same time.

A7.3 TYPES OF RETAKAFUL

Basically there are two main types of Retakaful;

1. Facultative Retakaful

Facultative retakaful is a form of retakaful in which a contract is placed on case to case basis. This type of retakaful is participated when Takaful cover is unusual or large and the original operator is concerned about the exposure.

The ceding company may offer the risk, or any part of it, to any Retakaful Operator which has the option whether to accept or decline the offer.

This form of retakaful is generally used only to enable the ceding company to dispose of shares of a particularly large risk which is beyond the scope of the treaty retakaful facilities available and is also can be used for an extra hazardous nature.

2. Treaty Retakaful

Treaty is an annual agreement in writing between the direct Takaful Operator and a Retakaful Operator, whereby the Retakaful Operator will automatically accept any cessions (amount given away to a Retakaful Operator) falling within the terms of agreement.

This treaty will be for a time period and subject to restriction as to the type of risk or value involved. The treaty provides automatic facility, which is arranged in advance and negotiations are normally only necessary at renewal each year.

This method of retakaful is usually arranged on a 'portfolio' basis involving a bouquet of risks ceded to the retakaful, over and above the retention limits of the cedant. Usually arranged on an annual basis, all risks within the agreed portfolio will be ceded and automatically accepted by the retakaful. Accounts related to this portfolio will be prepared and accepted between the parties of the treaty on quarterly basis.

A7.3 WHY RETAKAFUL IS IMPORTANT TO TAKAFUL OPERATION?

1. Enhance Underwriting Capacity

Risk sharing by allowing Takaful funds received business exceeds its underwriting capacity. It will enable the Takaful Operator to fulfil the needs of the public, in particular the Takaful of large industrial and mega risks.

2. Stabilization Cost of Claims

Help the Takaful fund against fluctuations of aggregate claims costs arising from the frequency and/or severity, because the cost of claims against the Takaful fund will be limited to retention capacity.

3. Flexibility

Without retakaful, Takaful Operator would only be able to accept risks in an amount and type that they could handle from their own resources. This would limit the service they could provide to the public and would also cause considerable inconvenience to the customers.

4. Expansion

Retakaful can provide additional expertise to an operator in areas where the operator has limited experience, expertise or knowledge. By providing this assistance and accepting part or all of the risk, the company accepting the risk helps the operator to grow in the number of products it can offer.

5. Accumulation

An operator/company could not incur losses on business written on a number of different risks which results from a single event. For example, we may cover groups of people working in many different companies located in different parts of the world who, at any one time, could be traveling on the same aircraft. If the aircraft crashes and all those people killed, the resulting claims could far exceed the maximum losses that were predetermined acceptable. Retakaful assists the operator to limit such losses to an amount which the ceding company can afford.

CHAPTER A8

TAKAFUL INTERMEDIARIES

LEARNING OUTCOMES

At the end of the chapter, the candidate will be able to:

- Identify the various Takaful intermediaries involved in the distribution of Takaful products.
- Understand the roles and responsibilities of Takaful intermediaries.

A8.1 INTRODUCTION

A Takaful intermediary is a professional who promote Takaful products to the potential customers.

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

A8.2 TYPES OF TAKAFUL INTERMEDIARIES

1. Takaful Agent

A Takaful agent represents a Takaful Operator and performs the following functions:

- Promotes Takaful products on behalf of the Takaful Operator
- Explains features of Takaful plans to potential customers
- Provides services related to the issuance, renewal or continuance of any Takaful certificate
- A Family Takaful agent promotes Family Takaful products and a General Takaful agent promotes General Takaful products

2. Takaful Broker

A Takaful broker is appointed by a customer and performs the following:

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

3. Financial Adviser

A financial adviser is appointed by the customer and performs the following:

- help the client maintain the desired balance of investment income, capital gains, and acceptable level of risk by using proper asset allocation
- use shares or stocks, *sukuk*, mutual funds, real estate investment trusts (REITs), options, futures, notes, and Takaful products to meet the needs of their clients
- receive a commission payment for the various financial products that they proposed, although "fee-based" planning is becoming increasingly popular in the financial services industry

A8.3 DUTIES OF A TAKAFUL AGENT

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

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

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

A8.4 TAKAFUL AGENT IN ISLAMIC FINANCIAL SERVICES ACT 2013

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

1. Disclosure Requirement

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

2. Takaful Agent to Represent Licensed Takaful Operator

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

3. Non-Compliant of IFSA 2013

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

A8.5 RIGHTS OF A TAKAFUL AGENT

The agent is entitled to receive payment and reimbursement.

1. The agent's most important right is the right to receive payment for his services, usually in the form of a commission or a fee.
2. The agent is also entitled to reimbursement of moneys which he has expended with the express authority of his principal within the acceptable limits.
3. The agent has the right to perform his duties in the manner which he considers to be appropriate. He may reject any attempt by his principal to control the manner in which he works.

A8.6 OBLIGATIONS OF THE PRINCIPAL

The principal has always the following duties towards his agents:

1. To pay remuneration and expenses as agreed; or, failing agreement, as is customary; or, failing a custom, to pay what is reasonable.
2. Indemnify the agent against consequences of any act lawfully done, within his authority, on behalf of his principal.

A8.7 TERMINATION OF AGENCY

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

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

A8.7 CHARACTERISTICS OF TAKAFUL AGENTS

Takaful agents are considered as one of the integral part in Takaful industry. They are also ambassador of Islamic finance. Thus, it is very important for a Takaful agent to have the following characteristics:

1. Truthful (*siddiq*)

One should be truthful in his words, his thought and his action. If he speaks truth and does the reverse then he is not truthful. As an ambassador of Islamic finance, Takaful agent must be truthful in his words when promoting Takaful products.

Saiditina A'ishah (ra) said:

Meaning:

"The trait and characteristic which the Prophet (saw) hated most was lying. A man would tell a lie in the presence of the Prophet (saw) and he would hold it against him, until he knew that he repented."

(Reported by Tirmidhi)

2. Upholding Trusts (*amanah*)

The meaning of *amanah* is trustworthiness, or, it is something or someone left to someone to protect or keep. The opposite of *amanah* is betrayal or even treason. That is, to *fail* to keep the trust or *amanah* in the way the person who left it expected or wanted.

Takaful agent must be *amanah* such as being honest, fair in dealing, honoring trusts, punctual, keeping promises and commitments, etc.

Allah (SWT) said in the following verse:

Meaning:

“Those who are faithfully true to their amanah (all the duties which God has ordained, honesty, moral responsibility and trusts, etc.) and to their covenants...these indeed are the inheritors. Who shall inherit Paradise. And dwell therein forever”

(al-Mu’minuun: 8, 10-11)

3. Convey (*tabligh*)

Takaful agent as an ambassador of Islamic finance must convey the relevant information to their prospect and not hiding any information from them.

The Prophet (saw) said:

Meaning:

There is none who invites (others) towards guidance, except that for him shall be the rewards of all those who follow him - and this shall not in the slightest cause a reduction in their own rewards.

(Reported by Muslim)

4. Intelligence (*fathonah*)

Takaful agent as an ambassador of Islamic finance requires intelligence and wisdom. The agent should be able to explain the Islamic finance especially Takaful to the market.

Thus, it is very important for them to equip themselves with the relevant knowledge of Islamic finance and Takaful.

Takaful intermediaries’ professional such as an agent, broker or financial adviser must be competent and possess the following characteristics:

- Good knowledge of Takaful products
- Understands the customer’s needs and interest
- Ensures the clients understand the product that they participating in
- Disclose all material facts about the product
- Delivers quality and timely service

CHAPTER A9

INTRODUCTION TO MEDICAL AND HEALTH TAKAFUL

LEARNING OUTCOME

At the end of the chapter, the candidate will be able to:

- Understand the principles and practices applicable to Medical and Health Takaful.

A9.1 INTRODUCTION

Increases in medical bills are outpacing the general inflation rate each year. That raises the question of whether healthcare is reserved only for those who can afford it. In Malaysia, medical costs inflation rate is estimated to be around 15% each year.⁷ In the case of an accident or dread diseases, the medical cost could be catastrophic and astronomical.

Medical and Health Takaful is one way public can reasonably afford to pay for the cost of such treatment by pooling resources in the Takaful fund with other participants.

9.1.1 Definition

Item 4 of the Guidelines on Medical and Health Takaful Business defined Medical and Health Takaful certificate as a certificate of Takaful that provides specified benefits against risks of persons becoming totally or partially incapacitated as a result of sickness or infirmity.

The benefits may take the form of reimbursement of medical expenses incurred by the participant either in the form of a lump sum payment of the sum participated, or payment of an allowance or income stream at regular intervals for a specified period in the event of participants' incapacitation and/or hospitalization.

A9.3 CATEGORIES OF MEDICAL AND HEALTH TAKAFUL

1. Indemnity Certificate

It is a type of medical plan that reimburses the participant/patient as expenses are incurred. It will place covered person in the same financial position as before the occurrence of the covered risk, subject to maximum limits of the coverage. An example of an indemnity is Hospitalization and Surgical Takaful where a

⁷ Source: The Star March 14, 2009

participant will be reimbursed for the costs of medical treatment and services which he or she has incurred.

2. Benefit Certificate

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

A9.4 CHARACTERISTICS OF MEDICAL AND HEALTH TAKAFUL

1. Non-Termination of Coverage with Claim Payment

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

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

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

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

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

A9.5 COST CONTAINMENT MEASURES

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

1. Inner Limits

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

2. Schedule of Surgical Procedures

List of surgical procedures covered by the certificate.

3. Maximum Period of Compensation

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

4. Co-payment

The amount that the covered person must pay out of pocket before the certificate pays for a particular visit or service. For example, a covered person might pay 10% co-payment for an admission. A co-payment must be paid each time a particular service is obtained.

5. Deductibles

The amount that the participant must pay out of pocket before the certificate pays its share. For example, participant might have to pay a RM1,000 deductible per year, before any of their health care is covered by the Takaful Operator.

6. Panel of Hospitals

List of hospital covered by the certificate.

A9.6 “CASHLESS” HOSPITAL ADMISSION

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

It is important to note that “cashless” hospital admission arrangements are usually non-contractual unless specifically mentioned in the Takaful contract. Usually, they are

merely a value added service provided by the Takaful Operator to certain eligible certificate owner.

Third Party Administrator

Third Party Administrators are the outsourcing party for the Takaful Operator who are responsible for settling both reimbursement claims as well as cashless claims. It is the third party administrators who have to approve the claimant’s request for cashless service and provides the service.

The functions of third party administrators are as follows:

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

A9.7 MINIMUM STANDARDS ON PRODUCT DISCLOSURE AND TRANSPARENCY IN THE SALE OF MEDICAL AND HEALTH TAKAFUL PLAN

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

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

The important features of the Standard are as follows:

1. The Standard is applicable to all types of individual Medical and Health Takaful plans including riders attached to individual family plans.
2. For group Medical and Health Takaful plans, Takaful Operators should ensure that the disclosures are made to the master certificate owners.
3. The Standard shall apply to all channels through which Medical and Health Takaful plans are distributed.
4. Specific Disclosure Requirements

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

- a. Information on the Takaful Operator including the name and address.
- b. Product description to describe the plan and its main objectives and purposes.
- c. The specific information that should be disclosed regarding the benefits of a particular Medical and Health Takaful plan includes: -
 - The form and amount of the benefits payable under the certificate; and
 - Details of the events, circumstances or contingencies upon which benefits are payable.
- d. Exclusions and limitations of benefits, pre-existing conditions, specified illnesses and qualifying period
- e. Contributions
- f. Other important disclosures regarding the Medical and Health Takaful plan are as follows:-

- Participants are given a “free-look period/cooling-off period” of 15 days from the delivery date of the certificate to review the suitability of the newly participated Medical and Health Takaful plan. It should be highlighted that participants can return the certificate and deduction of expenses incurred for the medical examination would be made to the contributions if the certificate is returned to the Takaful operator during the period; and
 - The possible implications of switching from one type of Medical and Health Takaful plan to another or from one provider to another.
5. Checklist indicating confirmation that the intermediary has clearly highlighted important aspects of the product to the proposer.

CHAPTER A10

MEDICAL AND HEALTH TAKAFUL TYPES OF PLAN

LEARNING OUTCOME

At the end of the chapter, the candidate will be able to:

- Understand and explain the types and scope of cover under Medical and Health Takaful.

A10.1 TYPES OF COVER

1. Hospital Services and Professional Fees

This plan covers the hospitalization treatment cost. The plan is intended primarily to cover expenses incurred by having surgery and hospital stays. Coverage options and costs vary depending on the specific certificate plan.

Generally benefits provided by a hospital and surgical Takaful plan include the following:

- Hospital Room and Board
- Intensive Care Unit
- Hospital Supplies and Services
- Anesthetist's Fees
- Surgeon's Fees
- Operating Theatre Fees
- In-hospital Physician's Visits
- Pre-Hospitalization Diagnostic Tests
- Pre-Hospitalization Specialist Consultation
- Post-Hospitalization Treatment
- Emergency Accidental Outpatient Treatment
- Ambulance Fees

Some plan may be extended to cover the following:

- Hospital Cash Allowance
- Outpatient Cancer Treatment
- Outpatient Kidney Dialysis
- Organ Transplant

2. Hospitalization Benefits

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

3. Critical Illnesses

The plan provides protection against any of the specified critical illnesses. It is also known as dread diseases Takaful. Upon being diagnosed with any of the specified critical illness, the plan will cover the participant a lump benefit.

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

A10.2 GROUP MEDICAL AND HEALTH TAKAFUL PLAN

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

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

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

A10.3 GENERAL EXCLUSIONS

Medical and Health Takaful will usually not cover the following:

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

A10.4 KEY TERMS AND CONDITIONS

Some of the more important terms are:

Terms	Descriptions
Pre-existing Conditions	These are disabilities that existed before the effective date of the plan, for which you are receiving treatment or have shown symptoms. If you had consulted a medical doctor for any pain or discomfort, this would be regarded as symptom of disability.
Misstatement of Age	Age is an important factor in Medical and Health Takaful because it will affect the contribution rate. Thus, in the case of misstatement of age that lead to a lower contribution, any claim under the certificate will be pro-rated, based on the actual contribution paid to the contribution that should have been charged.
Qualifying Period	The eligibility of benefits under the Takaful plan will only starts 30 days after the effective date of the certificate.

Co-Takaful	A form of medical cost sharing in a Medical and Health Takaful plan that requires a covered person to pay a stated percentage of medical expenses after the deductible amount, if any, was paid.
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CHAPTER A11

MEDICAL AND HEALTH TAKAFUL UNDERWRITING

LEARNING OUTCOME

At the end of the chapter, the candidate will be able to:

- Understand process and procedures of underwriting for Medical and Health Takaful.

A11.1 INTRODUCTION

Underwriting is a term used by Takaful Operator to describe the process of assessing risk, ensuring that the cost of the cover is proportionate to the risks faced by the individual concerned. In simpler terms, it is a risk selection process.

This selection process consists of evaluating information and resources to determine how an individual will be classified (whether as a standard or sub-standard risk). After this classification procedure is completed, the certificate is rated in terms of the contribution that the applicant will be charged. The certificate is then issued and delivered to the participant.

A11.2 PURPOSE OF UNDERWRITING

Underwriting is a critically important function and is performed each time a Takaful application is taken. Its purpose is to determine if applications represent risks acceptable to the Takaful Operator to determine whether or not the Takaful Operator will issue a certificate to an applicant.

A11.3 ANTI-SELECTION

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

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

standard risk. This should bring equitable distribution of risks among all the participants in the scheme.

A11.4 ADEQUACY OF CONTRIBUTION

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

A11.5 UNDERWRITING PROCESSES

1. Collection of Information

The process of underwriting takes place when the applicant (proposer) submits the application. To assess a person's risk, the underwriter relies on information from a range of sources.

Sources	Description
Proposal Form	<p>The form is the most basic requirement for the functioning of the Family Takaful contract between participant and the Takaful Operator. It needs to be completed by the proposer, who may seek the assistance of a Family Takaful agent to fill it up.</p> <p>The responsibility of the Takaful agent in the application process includes:</p> <ul style="list-style-type: none"> • Making sure the application is completed fully • Making sure all questions are answered accurately • Making sure contributions are handled correctly
Agent Statement	<p>The statement is part of the application, and requires that the Takaful agent provides certain information regarding the proposer such as information regarding the agent's relationship to the proposer, data about the proposer's financial status, habits, general character, and any other information that may be pertinent to the risk proposed.</p>

Medical Report	<p>If the underwriter decides that the proposal needs to be medically underwritten, they will request the proposer to undergo a medical examination. A medical examination includes questions about the proposer’s medical history, height, weight, pulse, and blood pressure.</p> <p>Additional requirements may be needed by the Takaful Operator in addition to the medical exam and will include the following:-</p> <ul style="list-style-type: none"> • An examination by a physician • Resting EKG • Treadmill stress test • Chest x-ray
Attending Physician Statement	<p>An attending physician's statement is prepared by the physician who treats the individual who wants to participate in a Takaful plan. The description provided in an APS is evidence of the proposer’s mortality risk.</p>
Hospital Medical Report	<p>By signing and submitting the application, the proposer is giving the Takaful Operator the right to obtain and review the medical records; both prior to and after becoming an accepted medical and health plan member.</p>

2. The Risk Selection Process

In this step the underwriter decides whether or not to accept a particular risk. It involves securing factual information from the applicant, evaluating that information, and deciding on a course of action. The underwriter is typically aided by a list of acceptable and prohibited risks.

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

a. Current and Past Health Factors

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

b. Financial Factors

The underwriter will also look into the proposer’s overall financial situation. This is to guard the fund from the risk of exceptionally high disability income claim as there is tendency of some certificate holders to

make profit from Takaful compensation by extending the period of disability (malingering).

c. Occupational Factors

Underwriter has to look into occupational factors because different occupations have a different level of hazard. The higher the risk means the higher the likelihood of medical expense claim. Occupations with higher risk such as Class 3 (factory worker) normally have higher claim ratio compared to Class 1 and 2 (office workers).

d. Age and Gender

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

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

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

3. Medical Underwriting

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

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

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

a. Current Physical Condition

Takaful Operator will require the applicant to complete an application form that details the full medical history and current physical condition of

each applicant. Applicants' statements on an application form and medical examination results (if applicable) are the first indicators of present physical condition.

b. Medical History

The process of evaluation starts with the review of the proposer's statement in the proposal form. If the medical history contains relevant data about illnesses or diseases, it will make the Takaful Operator believe that the proposer is an increased risk. The cost of Takaful plan will be adjusted accordingly to offset the higher financial liability.

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

Takaful Operators review histories of previous conditions to determine the:

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

c. Family History

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

4. Underwriting Decisions

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

Type of Risk	Decision
Standard	<p>Accept the application</p> <p>If the proposer is considered an average or typical risk, he will be charged the standard rate without any special exclusion or reductions in benefits.</p>
Sub-standard/ Modified	<p>Approve an application with conditions attached</p> <p>If the proposer poses an above-average risk, the proposer may be classified as an increased risk. Underwriter can still offer coverage with modification such as:</p> <ul style="list-style-type: none"> <li data-bbox="727 657 902 688">• Exclusion <p data-bbox="773 730 1430 940">Exclusion endorsement is used by Takaful Operators as a way to issue coverage to persons who would otherwise have to be declined. In some cases such as hypertension or thyroid, the Takaful Operator may still offer coverage with exclusion of the said diseases.</p> <li data-bbox="727 989 1138 1020">• Loading (extra contribution) <p data-bbox="773 1062 1409 1167">Loading is the amount a Takaful Operator adds to the basic contribution to cover the expense of securing and maintaining the business.</p> <li data-bbox="727 1209 1008 1241">• Modified Benefits <p data-bbox="773 1283 1398 1461">Takaful Operator may offer modified benefits to the applicant such as lower annual limit, a larger deductible on a medical expense or sometimes in conjunction with extra contribution or exclusion riders.</p> <li data-bbox="727 1503 1273 1535">• Some combination of these approaches
Declined	<p>Underwriter may reject the application if the proposed insured is rated as unfavorable (perhaps due to a serious illness or engaging in extremely dangerous occupations or hobbies).</p>

A11.7 RENEWAL OF MEDICAL AND HEALTH TAKAFUL

There are four different renewability options that may be practiced in medical and health Takaful:

Renewability Options	Descriptions
Non-Cancellable and Guaranteed Renewable	<p>Medical and health Takaful plan with guaranteed renewable provides the greatest amount of protection to the insured. There are two important guarantees:</p> <ul style="list-style-type: none"> a. The contribution will not be increased. b. Takaful operator will not refuse to renew the coverage.
Guaranteed Renewable	<p>The fundamental difference between non-cancellable and guaranteed renewable coverage and coverage that is just guaranteed renewable lies in the Takaful Operator's right to change contribution for the coverage. However, the Takaful Operator cannot just increase the participant's contribution because of the claims history. Instead, the Takaful Operator can increase the contribution for all of the participants in same age band.</p>
Conditionally Renewable	<p>The third type of renewability provision is known as conditionally renewable. The conditionally renewable provision gives the certificate owner a conditional right to renew the certificate, but the Takaful Operator retains the right to refuse to renew the certificate of those participants in a specific class, and rate increases are also possible.</p>
Optionally Renewable	<p>The fourth and final type of renewability provision offers the least security for the participants and has little application in modern medical and health coverage. It is known as optionally renewable coverage. Under an optionally renewable provision, contribution may be increased and benefits modified on a class basis. In addition, the Takaful Operator may cancel an individual certificate, but only on a certificate anniversary or on a certificate due date.</p>

A11.8 PAYMENT OF CONTRIBUTION

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

A grace period maybe allowed in the case of guaranteed renewable certificates, conditional renewal certificates and non-cancellable certificates, to provide the convenience to the certificate owner to make the payment. However, any claim occurring during the grace period is not payable although the Takaful Operator will not consider the certificate as lapsed. The certificate will only be considered lapsed if no contribution is made before the end of the grace period.

A11.9 TERMINATION OF CERTIFICATE

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

- Death of the participant;
- Certificate anniversary immediately following the participant's maximum eligibility age;
- Total benefits paid under the certificate exceed the maximum limit specified in the benefits schedule.

CHAPTER A12

MEDICAL AND HEALTH TAKAFUL CERTIFICATE ADMINISTRATION

LEARNING OUTCOME

At the end of the chapter, the candidate will be able to:

- Understand and explain the types, processes and procedures of certificate administration for Medical and Health Takaful.

A12.1 OVERVIEW OF MEDICAL AND HEALTH TAKAFUL CERTIFICATE ADMINISTRATION

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

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

A12.2 PROPOSAL FORM

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

Generally a proposal form comprised of the following items:

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

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

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

- c. Information of previous and present insurance/Takaful.
- d. Specific questions relating to medical and health such as family and medical history, smoking habits, hazardous hobbies and AIDS-related questions
- e. Under Section 13 under the same guideline, a proposal form shall include a statement of declaration, which incorporates the following minimum information:-
 - The *aqad* (contract) that binds the participants of Takaful
 - The *aqad* (contract) that binds the participants and the Takaful Operator
 - The allocation of investment profit and surplus to the participants
 - The allocation of investment profit, surplus or fees to the Takaful Operator
- f. Below the declaration clause, there is a provision for the signature of the proposer and date.

A12.3 CERTIFICATE

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

1. Heading comprising of the full name and the registered address of the Takaful Operator is placed at the top of the front page.
2. The Preamble or Recital Clause

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

3. Operative Clause

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

4. Exclusions

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

5. The Schedule of Benefits

The schedule of benefit provides for the following information:

- participant's name and address
- contribution
- certificate number
- date of issue
- agency
- date of birth of the participant
- period of Takaful
- occupation of the participant
- specific exclusion clause
- various types and amounts of benefits

6. Attestation or Signature Clause

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

7. Conditions

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

- Duty of utmost good faith
- Existence of permissible interest
- Existence of subject matter of Takaful products, and
- Identification of subject matter of Takaful.

A12.4 ENDORSEMENT

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

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

- variation in amount of benefits

- change in any maximum benefit period
- extension of Takaful coverage to cover additional members of the family
- change in occupational risk
- cancellation of Takaful
- change in name and address

A12.5 RENEWAL NOTICE

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

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

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

A12.6 DOCUMENTS FOR TAX RELIEF FOR MEDICAL AND HEALTH TAKAFUL CONTRIBUTION PAYMENT

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

- Deduction from taxable income of up to a maximum of RM3,000 for the contribution for education and or medical Takaful.
- Deduction from taxable income of up to a maximum of RM6,000 allowed for contribution in respect of Family Takaful certificate and contributions to approved retirement schemes.

Medical and Health Takaful plan coverage should be for a period of 12 months or more. Expenses should be related to the medical treatment resulting from a disease or an accident or a disability. The plan can be a stand-alone certificate or as a rider to a Family Takaful. If it is a rider, only the rider contribution can qualify for deduction.

Inland Revenue Board requires proof of such contribution payment in order to qualify for the tax allowance. The participant is advised to file away all these documents for future tax auditing and verification purposes.

CHAPTER A13

MEDICAL AND HEALTH TAKAFUL CLAIMS

LEARNING OUTCOMES

At the end of the chapter, the candidate will be able to:

- Understand and explain the types, processes and procedures of claim for Medical and Health Takaful.
- Explain the reasons for claims rejection and various available redress avenues.

A13.2 NOTIFICATION OF CLAIM

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

The two main reasons why the claim notification is important:

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

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

A13.2 PROOF OF ILLNESS/CLAIM

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

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

- Proof of identification,
- The copy of the certificate document,
- The original bills of the hospitals in which the insured was admitted,
- The discharge certificate from the hospital, and

- The original investigation reports.

A13.3 MEDICAL HEALTH AND TAKAFUL CLAIM FORM

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

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

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

A13.4 CHECKING COVERAGE

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

1. Determine whether or not the claim is valid by checking among other things whether the certificate is in force, contribution has been paid, is the loss caused by an insured peril, etc.
2. Once the claims department completed the preliminary check and found the claim is valid, a claim form will be given to the claimant. The form will be issued without prejudice, which means that issuance of the claim form does not mean liability is admitted under the certificate.
3. All claims must be registered in the claim register once it is notified to the Takaful Operator. The claims register must be maintained as long as they are still liable for the claims.

A13.5 CLAIMS INVESTIGATION

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

The claim investigation process involves the following:

1. Investigate to determine whether:
 - The loss exists.
 - The loss is caused by a peril covered under the certificate.
 - The loss does not fall within the scope of an exclusion of the certificate.
 - The person making the claim is the rightful claimant.
2. Checking the claims documentation e.g. claims form, bills, etc.
3. Request for additional documentations such as medical report, attending physician statement and etc. (if necessary).

A13.6 SETTLEMENT OF MEDICAL AND HEALTH TAKAFUL CLAIMS

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

A13.7 REPUDIATION OF LIABILITY BY TAKAFUL OPERATOR

Takaful Operator may repudiate liability on several grounds such as:

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

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

A13.8 DISPUTES

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

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

1. Negotiation and Compromise Settlement

The claimant may meet the Takaful Operator to settle the dispute through discussion.

2. Financial Mediation Bureau (FMB)

The Financial Mediation Bureau (FMB) is an independent body set up to help settle disputes between the customers and their financial services providers regulated by Bank Negara Malaysia. It serves as a centre that provide free, fast, convenient and efficient avenue for the resolution of a broad range of retail consumer complaints.

3. Arbitration

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

4. Litigation

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