



ISLAMIC FINANCIAL SERVICES BOARD

**GUIDING PRINCIPLES ON GOVERNANCE FOR
TAKĀFUL (ISLAMIC INSURANCE) UNDERTAKINGS**

December 2009

ISBN: 978-983-44579-3-8

ABOUT THE ISLAMIC FINANCIAL SERVICES BOARD (IFSB)

The IFSB is an international standard-setting organisation which was officially inaugurated on 3 November 2002 and started operations on 10 March 2003. The organisation promotes and enhances the soundness and stability of the Islamic financial services industry by issuing global prudential standards and guiding principles for the industry, broadly defined to include banking, capital markets and insurance sectors. The standards prepared by the IFSB follow a lengthy due process as outlined in its Guidelines and Procedures for the Preparation of Standards/Guidelines, which involves, among others, the issuance of exposure drafts, holding of workshops and where necessary, public hearings. The IFSB also conducts research and coordinates initiatives on industry-related issues, as well as organises roundtables, seminars and conferences for regulators and industry stakeholders. Towards this end, the IFSB works closely with relevant international, regional and national organisations, research/educational institutions and market players.

For more information about the IFSB, please visit **www.ifsb.org**.

COUNCIL MEMBERS*

H.E. Rasheed Mohammed Al Maraj	Governor, Central Bank of Bahrain
H.E. Dr Atiur Rahman	Governor, The Bangladesh Bank
H.E. Haji Mohd Roselan Haji Mohd Daud	Permanent Secretary, Ministry of Finance, Brunei
H.E. Djama Mahamoud Haid	Governor, Banque Centrale De Djibouti
H.E. Dr Farouk El Okdah	Governor, Central Bank of Egypt
H.E. Dr Darmin Nasution	Acting Governor, Bank Indonesia
H.E. Dr Mahmoud Bahmani	Governor, Central Bank of the Islamic Republic of Iran
H.E. Dr Ahmad Mohamed Ali AlMadani	President, Islamic Development Bank
H.E. Dr Umayya Toukan	Governor, Central Bank of Jordan
H.E. Sheikh Salem AbdulAziz Al-Sabah	Governor, Central Bank of Kuwait
H.E. Dr Zeti Akhtar Aziz	Governor, Bank Negara Malaysia
H.E. Fazeel Najeeb	Governor, Maldives Monetary Authority
H.E. Rundheesing Bheenick	Governor, Bank of Mauritius
H.E. Sanusi Lamido Aminu Sanusi	Governor, Central Bank of Nigeria
H.E. Syed Saleem Reza	Governor, State Bank of Pakistan
H.E. Sheikh Abdulla Saoud Al-Thani	Governor, Qatar Central Bank
H.E. Dr Muhammad Al-Jasser	Governor, Saudi Arabian Monetary Agency
H.E. Heng Swee Keat	Managing Director, Monetary Authority of Singapore
H.E. Dr Sabir Mohamed Hassan	Governor, Central Bank of Sudan
H.E. Dr Adib Mayaleh	Governor, Central Bank of Syria
H.E. Sultan Bin Nasser Al Suwaidi	Governor, Central Bank of United Arab Emirates

*** In alphabetical order of the country the member represents**

TECHNICAL COMMITTEE

Chairman

Dr Abdulrahman A. Al-Hamidy – Saudi Arabian Monetary Agency

Deputy Chairman

Mr Osman Hamad Mohamed Khair – Central Bank of Sudan (*until 15 August 2009*)

Members*

Dr Sami Ibrahim Al-Suwailem	Islamic Development Bank
Mr Khalid Hamad Abdulrahman Hamad	Central Bank of Bahrain
Mr Gamaal M. Abdel-Aziz Negm	Central Bank of Egypt
Dr Mulya Effendi Siregar (<i>until 31 March 2009</i>)	Bank Indonesia
Mr Ramzi A. Zuhdi (<i>from 1 April 2009</i>)	Bank Indonesia
Mr Hamid Tehranfar (<i>until 31 March 2009</i>)	Central Bank of the Islamic Republic of Iran
Mr Abdolmahdi Arjmand Nehzad (<i>from 1 April 2009</i>)	Central Bank of the Islamic Republic of Iran
Dr Mohammad Yousef Al-Hashel	Central Bank of Kuwait
Mr Bakarudin Ishak (<i>until 31 March 2009</i>)	Bank Negara Malaysia
Mr Ahmad Hizzad Baharuddin (<i>from 1 April 2009</i>)	Bank Negara Malaysia
Dr Nik Ramlah Mahmood	Securities Commission of Malaysia
Mr Pervez Said (<i>until 31 March 2009</i>)	State Bank of Pakistan
Ms Lubna Farooq Malik (<i>from 1 April 2009</i>)	State Bank of Pakistan
Mr Mu'jib Turki Al Turki	Qatar Central Bank
Mr Abdulaziz Abdullah Al Zoom	Capital Market Authority of Saudi Arabia
Mr Chia Der Jiun	Monetary Authority of Singapore
Mr Saeed Abdulla Al-Hamiz (<i>until 31 March 2009</i>)	Central Bank of United Arab Emirates
Mr Khalid Omar Al-Kharji (<i>from 1 April 2009</i>)	Central Bank of United Arab Emirates

*In alphabetical order of the country the member represents

GOVERNANCE FOR *TAKĀFUL* OPERATORS WORKING GROUP

Chairman

Mr Bakarudin Ishak – Bank Negara Malaysia

Deputy Chairman

Mr Mu'jib Turki Al Turki – Qatar Central Bank

Members*

Mr Muhammad Azam	The Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC)
Mr Abdulrahman Khalil Tolefat	Central Bank of Bahrain
Mr Dawood Taylor	Prudential Ltd, Hong Kong
Ms Rand Ali Sami Gharndoke	Insurance Commission of Jordan
Mr Wan Mohd. Nazri Wan Osman	Bank Negara Malaysia
Mr Saiful Bahri Saroni	Takaful Ikhlas Sdn. Bhd., Malaysia
Mr Shankar Garigiparthi	Qatar Financial Centre Regulatory Authority
Mr Husam Abdulaziz Alkannas	Saudi Arabian Monetary Agency
Ms Amna Ali Mohammed	Insurance Supervisory Authority of Sudan
Mr Peter Casey	Dubai Financial Services Authority, United Arab Emirates
Dr Mustafa Rajab Mustafa	Al Dhafra Insurance Company P.S.C., United Arab Emirates

***In alphabetical order of the country of which the member's organisation represents**

ISLAMIC DEVELOPMENT BANK *SHARĪ'AH* COMMITTEE*

Chairman

Sheikh Mohamed Mokhtar Sellami

Deputy Chairman

Sheikh Saleh Bin Abdulrahman Bin Abdulaziz Al Husayn

Sheikh Dr Abdulsattar Abu Ghuddah	Member
Sheikh Dr Hussein Hamed Hassan	Member
Sheikh Mohammad Ali Taskhiri	Member
Sheikh Mohamed Hashim Bin Yahaya	Member

***In alphabetical order**

SECRETARIAT, ISLAMIC FINANCIAL SERVICES BOARD

Professor Rifaat Ahmed Abdel Karim	Secretary-General
Professor Volker Nienhaus	Consultant
Professor Simon Archer	Consultant
Mr Azli Munani	Assistant Project Manager

TABLE OF CONTENTS

ACRONYMS	v
INTRODUCTION	1
Background of the Project	1
Definition of <i>Takāful</i> Undertaking	2
Main Premises and Objectives	2
Scope and Coverage	3
UNDERSTANDING THE CONCEPT OF <i>TAKĀFUL</i> AND ITS UNDERLYING CONTRACTS	3
Stock-taking Initiative	3
<i>Takāful</i> Core Principles	5
Categorisation	5
THE GUIDING PRINCIPLES	7
Part I: Reinforcement of relevant good governance practices as prescribed in other relevant internationally recognised governance standards for insurance companies, while addressing the specificities of <i>Takāful</i> undertakings	7
Part II: A balanced approach that considers the interests of all stakeholders and calls for their fair treatment	12
Part III: An impetus for a more comprehensive prudential framework for <i>Takāful</i> undertakings	21
DEFINITIONS	26
APPENDIX	28

ACRONYMS

BOD	Board of directors
GTOWG	Governance of <i>Takāful</i> Operations Working Group
IAIS	International Association of Insurance Supervisors
ICP	Insurance Core Principles of the IAIS
IDB	Islamic Development Bank
IFSB	Islamic Financial Services Board
IFSI	Islamic financial services industry
JWG	Joint Working Group between the IAIS and the IFSB
OECD	Organisation for Economic Co-operation and Development
PIF	Participants' Investment Fund
PRF	Participants' Risk Fund
SSB	<i>Sharī'ah</i> Supervisory Board
TO	<i>Takāful</i> operator

Bismillahirrahmanirrahim.

Allahumma salli wasallim 'ala Sayyidina Muhammad wa'ala ālihi wasahbihi

INTRODUCTION

Background of the Project

1. In line with its mandate to promote the soundness and stability of the Islamic financial system, and acknowledging that the Islamic insurance/*Takāful* business is an important segment of the Islamic financial services industry (IFSI), which is undergoing rapid development on a global scale, the Islamic Financial Services Board (IFSB) in 2005 formed a Joint Working Group (JWG) with the International Association of Insurance Supervisors (IAIS), which included representatives from insurance and *Takāful* supervisory authorities who are members of the IFSB, to discuss the applicability of the existing IAIS core principles to the regulatory and supervisory standards for *Takāful* to be developed by the IFSB.^{1,2}
2. The JWG's preliminary study on the applicability of the insurance core principles of the IAIS (ICPs) with respect to *Takāful* was presented in a paper entitled "Issues on Regulation and Supervision of *Takāful*",³ published in August 2006. Consequently, the JWG came to a consensus that there is a need for the IFSB to develop standards and guidelines on best practices for the *Takāful* industry in order to achieve the following four objectives:
 - (i) to provide benchmarks for use by *Takāful* supervisors in adapting and improving regulatory regimes or, where necessary, establishing new ones;
 - (ii) to address regulatory issues, such as risk management and financial stability, for the *Takāful* industry;
 - (iii) to provide appropriate levels of consumer protection in terms of both risk and disclosure; and
 - (iv) to support the orderly development of the *Takāful* industry in terms of acceptable business and operational models, and the design and marketing of *Takāful* products.
3. In the light of several different types of contracts and business models adopted by *Takāful* undertakings around the world, the JWG considered it appropriate that the first standard to be developed by the IFSB for the *Takāful* industry should be in the area of governance. This is because understanding the contractual rights and obligations of stakeholders in different business models of *Takāful* undertakings would be central and paramount before the IFSB can proceed to determine how other considerations such as capital adequacy, risk management, transparency and market discipline can be systematically standardised.
4. As a result, in its seventh meeting held on 21 December 2005, the IFSB Council approved the establishment of the Governance of *Takāful* Operations Working Group (GTOWG) whose work is envisaged to become the road map for future IFSB standards and guidelines in the *Takāful* segment of the IFSI. In attempting to address the specificities of the *Takāful* industry, this document should complement and add value to other existing internationally recognised frameworks that set out sound

¹ This initiative resulted from an inaugural seminar on the regulation of *Takāful* (Islamic insurance) co-organised by the IFSB and the Insurance Commission of Jordan. One of the recommendations from the seminar is that the IFSB shall play an active and complementary role to that of the IAIS by issuing prudential and supervisory standards for *Takāful* that would safeguard the interests of consumers and the soundness and stability of the financial system as a whole.

² For convenience, any reference to "TO" in the rest of this document shall mean "Islamic insurance/*Takāful* operator". Reference to "*Takāful*" shall equally mean Islamic insurance.

³ The paper was earlier discussed by the JWG in two meetings held in Jordan on 10 May and 13 September 2005. It was later presented at the IAIS Technical Committee meeting in conjunction with the 11th IAIS Annual Conference in Vienna, Austria on 15 October 2005, as well as to the IFSB Council on 21 December 2005, before it was finally published in August 2006.

principles and best practices pertaining to corporate governance of insurance companies, which are the conventional counterparts of *Takāful* undertakings.

Definition of *Takāful* Undertaking

5. *Takāful* is the Islamic counterpart of conventional insurance, and exists in both Family (or “Life”) and General forms. *Takāful* is derived from an Arabic word that means joint guarantee, whereby a group of participants agree among themselves to support one another jointly for the losses arising from specified risks. In a *Takāful* arrangement the participants contribute a sum of money as a *Tabarru’* commitment into a common fund that will be used mutually to assist the members against a specified type of loss or damage. The underwriting in a *Takāful* is thus undertaken on a mutual basis, similar in some respects to conventional mutual insurance. A typical *Takāful* undertaking consists of a two-tier structure that is a hybrid of a mutual and a commercial form of company – which is the *Takāful* operator (TO) – although in principle it could be a pure mutual structure.⁴

Main Premises and Objectives

6. Conventional insurance exists and is regulated in all jurisdictions where *Takāful* undertakings have been established in recent years. Thus, the IFSB takes as a starting point the existing internationally recognised frameworks, codes or standards on corporate governance best practices for conventional insurance that are considered to be relevant and useful for *Takāful* undertakings. On this premise, the Guiding Principles on Governance for *Takāful* (Islamic Insurance) Undertakings aim to adapt and reinforce the existing internationally recognised frameworks or standards⁵ for *Takāful* undertakings so that they stand on a level playing field with their conventional counterparts. To achieve this goal, due consideration has to be given to addressing the specificities of *Takāful* undertakings.
7. In this respect, this document is built around the following premises and objectives:
 - (i) reinforcement of relevant good governance practices as prescribed in other internationally recognised governance standards for insurance companies, while addressing the specificities of *Takāful* undertakings;
 - (ii) a balanced approach that considers the interests of all stakeholders and calls for their fair treatment; and
 - (iii) an impetus for the development of a more comprehensive prudential framework for *Takāful* undertakings.Based on these premises and objectives, six guiding principles (hereinafter referred as the “Guiding Principles”) are put forward for adoption and implementation by TOs.
8. The terminology in this document follows the most widely applied business models of the industry, and references to *Takāful* practices must be understood just as examples related to the mainstream models. Some TOs use different operational models and terms. It is impossible to cover all special cases in their own nomenclatures. But irrespective of different names and operational details, *Takāful* undertakings share common features in essence which are addressed in this document. While it is not the intention of the IFSB to require TOs to change the way they manage the business and risks, it suggests that the same recommendations for

⁴ There are two reasons why pure mutual structures are not normally used for *Takāful* undertakings. First, cooperative or mutual forms of companies are not recognised in a number of countries’ legal systems. Second, and more fundamentally, a newly formed mutual insurance company would hardly be able to meet the capital adequacy requirements that are now standard. Thus, one important role of the TO is to provide the capital backing that allows such requirements to be met.

⁵ In particular, this document builds from the Principles of Corporate Governance issued by the Organisation for Economic Co-operation and Development (OECD Principles, originally issued in 1998 and revised in 2004) whereby, especially for the insurance industry, the OECD had issued a specific guideline for insurers’ governance on 28 April 2005. Meanwhile, the IAIS includes in the ICPs ICP no. 9: Corporate Governance, which requires the corporate governance framework of insurance companies to recognise and protect the rights of all interested parties, and for the respective supervisory authority to require compliance with all applicable corporate governance standards. Certain other ICPs are also partially relevant.

governance structures and processes shall be applied in substance by all (but adjusted in form or terminology to suit each particular operational model).

Scope and Coverage

9. The Guiding Principles shall apply to all *Takāful* undertakings, irrespective of their legal status. They also apply to all operational models adopted by *Takāful* undertakings. *Takāful* undertakings are encouraged to undertake continuous adoption of best practices, consistent with the objectives set out by these Guiding Principles, and to explain this by making relevant disclosures. Their aim should be to implement governance structures and processes so as to be on a par with, if not better than, their conventional counterparts.
10. The Guiding Principles have been formulated for direct General and Family *Takāful* undertakings. The applicability to *Retakāful* operators is limited because their operating concepts differ in important respects: for example, the participants are direct *Takāful* undertakings (as cedants) rather than members of the public, so that the governance issues that arise are somewhat different. A thorough study of business models of *Retakāful* operators is required before good governance structures and processes can be recommended. Nevertheless, *Retakāful* operators and supervisory authorities are encouraged to consider the Guiding Principles in strengthening their governance framework, and to apply them where appropriate.
11. *Takāful* undertakings must duly observe their fundamental obligations towards the participants (policyholders), particularly with regard to compliance with *Sharī'ah* rules and principles. *Sharī'ah* governance must remain an inherent feature of TOs, since the *raison d'être* of *Takāful* is the offering of a protection scheme that complies with the requirements of the *Sharī'ah*. Therefore, the Guiding Principles shall refer to and adapt the recommendations from the IFSB's Guiding Principles on *Sharī'ah* Governance System with regard to all *Sharī'ah* governance issues arising in *Takāful* undertakings.
12. In the case of the disclosure requirements to promote good practice of transparency in *Takāful* undertakings, the Guiding Principles recommend adoption of the "comply or explain" approach.⁶ This approach would enable the implementation of these Guiding Principles to accommodate the diversity of legal frameworks in the respective jurisdictions in which *Takāful* undertakings operate. Furthermore, it would facilitate the adoption of a governance framework that is commensurate with and proportionate to the size, complexity and nature of each *Takāful* undertaking.

UNDERSTANDING THE CONCEPT OF *TAKĀFUL* AND ITS UNDERLYING CONTRACTS

Stock-taking Initiative

13. In the course of developing the Guiding Principles, the IFSB carried out its own survey and stock-taking exercise to verify its understanding of various *Takāful* models being used around the world to govern the relationship between the *Takāful* participants and the TO. This exercise confirmed that the most frequently used models at the time of preparing this document are the *Muḍārabah*, *Wakālah* and *Wakālah–Muḍārabah* models.

⁶ IFSB-3 explains that the "comply or explain" approach builds on the idea of market discipline, whereby stakeholders are empowered to react to unsatisfactory governance arrangements or sub-standard disclosures (which can be either false, substantially incomplete or misleading). The stakeholders' sanctions may range from reputational damage, to loss of trust in the management (forcing some managers to quit), to taking legal action based on contractual terms. Supervisory authorities particularly should have adequate enforcement instruments, from the power to direct the necessary disclosures, to imposing reprimands and fines to curb deliberate serial non-compliances.

(i) Mudārabah Model⁷

In a *Mudārabah* model, the TO acts as a *Mudārib* (entrepreneur) and the *Takāful* participants as *Rabb-ul-mal* (capital provider). As *Mudārib*, the TO manages both investment and underwriting (of risk) activities on behalf of the *Takāful* participants. In return, the TO is remunerated by a predetermined percentage share in the investment profit and/or underwriting surplus, which usually would be stated explicitly in the *Takāful* contract. The TO and *Takāful* participants cannot unilaterally alter the agreed sharing ratio of the investment profit and/or underwriting surplus once the contract is signed. Any financial losses suffered from the investment and underwriting activities are to be borne solely by the *Takāful* participants as the *Rabb-ul-mal*, provided that the losses are not attributable to the TO's misconduct or negligence. In this regard, the TO can generally expect to make a profit only by ensuring that the expenses of managing the *Takāful* operation are less than the total share of investment profit and/or underwriting surplus it may receive.

(ii) Wakālah Model

Under this model, the TO and the *Takāful* participants form a principal-agent relationship whereby the TO acts strictly as a *Wakīl* (agent) on behalf of the *Takāful* participants as the principal, to run both the investment and underwriting activities. In return for the service rendered by the TO as *Wakīl*, the TO receives a management fee, called a *Wakālah* fee, which is usually a percentage of the contributions paid. The *Wakālah* fee must be pre-agreed and expressly stated in the *Takāful* contract. For the TO, the *Wakālah* fee is expected to cover the total sum of: (a) management expenses; (b) distribution costs, including intermediaries' remuneration; and (c) a margin of operational profit to the TO. In this respect, a TO will be profitable if the *Wakālah* fee it receives is greater than the management expenses incurred. It also does not directly share in the risk borne by the *Takāful* fund or any of its investment profit or surplus/deficit.

In addition, the *Wakālah* model may permit the TO to receive part of its remuneration as *Wakīl* in the form of a performance-related fee, as an additional incentive. A performance-related fee, as agreed in the *Takāful* contract, is typically related to the underwriting outturn. Subject to maintaining adequate reserves as capital within the fund for solvency purposes, there is no need for any underwriting surplus from the participants' perspective. However, the level of participants' contributions needs to be set high enough to allow for the payment of a reasonable *Wakālah* fee, including any performance-related element.

(iii) Wakālah–Mudārabah Model

Under this model, the *Wakālah* contract is adopted for underwriting activities, while the *Mudārabah* contract is employed for the investment activities.

For a better illustration of how the *Mudārabah* and *Wakālah* models work, the generic flows of funds under these *Takāful* models are shown in the Appendix.

⁷ This model is employed in some *Takāful* operations, but the *Shari'ah* Committee of the Islamic Development Bank (IDB) does not agree with the TO taking any percentage of an underwriting surplus in *Takāful* contribution because an underwriting surplus is not a profit.

Takāful Core Principles

14. The concept of *Takāful* is significantly defined by the following core principles:

(i) Tabarru' Commitment

Tabarru' commitment, is a type of Islamic financial transaction that is fundamental to *Takāful* schemes.⁸ It is the amount contributed by each *Takāful* participant to fulfil obligations of mutual help and to pay claims submitted by eligible claimants.

(ii) Ta'awun

The concept of *Ta'awun*, or mutual assistance, is another core principle to the operation of *Takāful*, with participants agreeing to compensate each other mutually for the losses arising from specified risks. As *Takāful* has often been perceived as a form of cooperative or mutual insurance, the initial objective is not to gain profit but to assist one another mutually, under the principle of *Ta'awun*. It is clearly stated in the *Qur'ān*, "help one another in goodness and piety, and do not help one another in sin and aggression" (*Al Maidāh:2*). Even the word "*Takāful*" itself, in Arabic, means "solidarity".

(iii) Prohibition of Riba (Usury)

Conventional insurance business involves the element of *Riba*. Hence, it is important that investments in both the *Takāful* funds and the shareholders' funds are *Riba*-free types of investment.

15. The significance of *Tabarru'* and *Ta'awun* in a *Takāful* undertaking is tested in modern *Takāful* models when *Takāful* as a financial product is widely offered and operated through a proprietary business entity set up by shareholders. In a *Takāful* undertaking, the underwriting needs to conform to the principle of mutuality – that is, the underwriting fund belongs to the *Takāful* participants, who share the risk, and not to the shareholders. Correspondingly, the shareholders do not take on any underwriting risk.⁹ It is the management of the underwriting, investment and administration that are performed by the TO as *Muḍārib* or *Wakīl*, or both.

Categorisation

16. Similar to the way conventional insurance can be categorised into general and life insurances, *Takāful* can be divided into General *Takāful* and Family *Takāful*, with the following features:

(i) Family Takāful

- a. Family *Takāful* deals with the provision of financial relief to the participants and/or their family in the event of misfortunes that relate to the death or disability of the participants. This category of *Takāful* normally requires the TO to engage in a longer-term relationship over a defined number of years with the *Takāful* participants, throughout

⁸ The use of *Tabarru'* commitment as the basis of the contributions (premium payments) mitigates the element of *Gharar* (lack of certainty in a contract, which may vitiate the contract) in *Takāful*. In a *Takāful* scheme, it becomes clear that a *Takāful* participant becomes entitled to the benefit of the *Takāful* fund, because the other *Takāful* participants willingly agree, under the principle of mutual assistance, to donate the amount of his legitimate claim to him to relieve him from a loss suffered.

⁹ The TO should be prepared to provide a *Qarḍ* facility whereby it may make an interest-free loan to an underwriting fund if necessary to meet an underwriting deficiency. A deficiency occurs when a deficit exceeds any surplus retained in the *Takāful* fund. This loan stands to be recovered out of future underwriting surpluses and does not constitute a taking on of underwriting risk. See, however, paragraph 19(iii) below.

which the participant is required to make regular instalment payments in consideration for his or her participation in the *Takāful* scheme.

- b. In Family *Takāful*, the paid *Takāful* contribution of a participant will usually be segregated into two accounts which feed two different funds.¹⁰ The first is the Participants' Investment Fund (PIF), and the aggregate PIFs constitute an investment fund for the purpose of capital formation. The second is the Participants' Risk Fund (PRF),¹¹ which is a risk fund – that is, an element of the business that is inherent in the underwriting activities, and the contributions to which are made on the basis of *Tabarru'* commitment.
- c. The segregation of the amounts credited to the PIF and the PRF, respectively, is commonly made based on certain percentages of the *Takāful* contributions paid, and this is normally part of the Family *Takāful* product pricing and design. The TO will indicate in the Family *Takāful* contract the distinction between the two accounts and their relative proportions within the overall contribution, which cannot be unilaterally altered throughout the term of the *Takāful* contract.
- d. Nevertheless, there are some Family *Takāful* products, such as group *Takāful* or term *Takāful*,¹² that do not necessarily involve a long-term relationship between the *Takāful* undertakings and the *Takāful* participants. These products offer a shorter period of coverage and, as such, they have no investment element in favour of the participants. Normally, these types of products would work on a similar mechanism to General *Takāful*, whereby all *Takāful* contributions are considered as *Tabarru'* and credited directly into the PRF.

(ii) General *Takāful*

- a. General *Takāful* schemes are basically contracts of joint guarantee on a short-term basis (normally one year), providing mutual compensation in the event of a specified type of loss. The schemes are designed to meet the needs for protection of individuals and corporate bodies in relation to material loss or damage resulting from a catastrophe or disaster inflicted upon real estate, assets or belongings of participants. The *Takāful* contribution paid is pooled into the PRF under the principle of *Tabarru'* to match the risk elements of the business that are inherent in its underwriting activities.¹³
- b. Although investment activities in the General *Takāful* pool or fund are secondary to the underwriting activities, they may be important for the solvency of the fund, especially in the case of longer-tailed risks.

¹⁰ In *Wakālah*, a portion of the paid *Takāful* contributions will be set apart for the *Wakālah* fee.

¹¹ The term "participants' risk account" is also sometimes referred to as "participants' special account".

¹² Group Family *Takāful* product based on a *Takāful* coverage of a group of people under a master *Takāful* contract. It is typically subscribed to the benefit of employees, or to the members of an association.

¹³ In the *Wakālah* model, a portion of the paid General *Takāful* contributions will be set apart for the *Wakālah* fee.

THE GUIDING PRINCIPLES

Part I: Reinforcement of relevant good governance practices as prescribed in other relevant internationally recognised governance standards for insurance companies, while addressing the specificities of *Takāful* undertakings

17. While it is not an objective of the Guiding Principles to resolve all governance issues in *Takāful* undertakings, it is hoped that they are capable of sufficiently:
- (i) sending a message about the importance of good governance for preserving public confidence; and
 - (ii) exemplifying useful guidance and helpful options for *Takāful* undertakings in terms of effective governance structures and processes.
18. The IFSB shares the opinion of most international organisations, including the OECD and the IAIS, that there is no single model of corporate governance that can work well in every country and for all types of business. Each country, or even each organisation, should develop its own governance model that can cater for its specific needs and objectives. Accordingly, the Guiding Principles should be viewed as promoting and contributing to the development of effective governance that goes beyond the mere completion of compliance checklists by *Takāful* undertakings. Hence, the emphasis is not so much on the form, as on the substance through which the objective of good governance can be achieved by TOs.
19. While generally *Takāful* undertakings share some similarities with conventional insurers in attempting to serve certain economic objectives, it should be noted that structurally *Takāful* undertakings can be distinguished from conventional insurers, particularly with regard to the following facts:
- (i) *Takāful* undertakings are generally structured as “hybrids” between mutual and proprietary entities; thus, they may face various conflicts of interest that ordinarily would not arise in conventional insurance.
 - (ii) *Takāful* undertakings must adhere to the core principles of *Ta`awun* and *Tabarru'* and the prohibition of *Riba*.
 - (iii) An inherent component that adds value and differentiates between *Takāful* undertakings and conventional insurers is the sharing of risks among the *Takāful* participants, rather than the transfer of risks from the participants to the TO. This becomes part of the rationale for the practice of creating a separate account for underwriting activities on behalf of the *Takāful* participants, while shareholders of TOs will not bear any implications in the event of deficit or loss suffered by the *Takāful* fund, other than having in place a *Qard* facility to enable the PRF to meet its obligations in the event of a deficiency.¹⁴ However, the capital of the TO is exposed in extreme cases where the PRF suffers a loss on such a scale that the *Qard* loan once made cannot be recovered from contributions over any reasonable period.
- It follows that in view of the different nature of the contracts, the fiduciary relationships between the TO and *Takāful* participants differ substantially from those in conventional proprietary insurance.

¹⁴ The term “deficit” refers to the case where claims and other expenses exceed contributions for a financial period, while “deficiency” refers to the situation where a deficit exceeds any reserves in the fund, so that the fund has a debit balance.

Principle 1.1: TOs shall have in place in *Takāful* undertakings that they manage a comprehensive governance framework appropriate for their *Takāful* business models, in which the independence and integrity of each organ of governance shall be well defined and preserved, and the mechanisms for proper control and management of conflicts of interest shall be clearly set out.

Rationale

20. As a basic principle, a TO is supposed to be the *Muḍārib* or *Wakīl* (depending on which model is adopted) that administers the *Takāful* fund on behalf of the participants, and in return will be remunerated via fees (in the *Wakālah* model) or profit share (in the *Muḍārabah* model¹⁵) in the *Takāful* fund. The TO is not responsible for any deficit or loss suffered by a *Takāful* fund, as it is not the owner but only the custodian of the *Takāful* fund, unless the loss is proven to be attributable to an act of misconduct or negligence on its part. In reality, being the *Wakīl* or *Muḍārib* gives the TO considerable discretion, as:
 - (i) being an independent proprietary entity, it is the TO who actually initiates and manages the *Takāful* scheme, including determining the range of products, pricing, terms and conditions of each contract, etc.; and
 - (ii) there is no clear mechanism by which the *Takāful* participants can control and influence, not to mention sanction, the behaviour of the TO. It is the shareholders of the TO and not the *Takāful* participants who appoint the management, and the shareholders have commercial interests that may conflict with the interests of the *Takāful* participants.
21. The demarcation of rights and obligations between the TO and *Takāful* participants requires a clear segregation of the *Takāful* participants' funds from the TO's shareholders' funds. The separation of ownership and control could potentially raise what are known in economics as agency problems,¹⁶ such as:
 - (i) information asymmetry – that is, the principal (*Takāful* participants) lacks the necessary power or information to monitor and control the agent (the TO); as well as
 - (ii) misalignment of the incentives of the principal and agent.
 Furthermore, the fact that the management of the TO is appointed and instructed by the TO's shareholders, rather than by the *Takāful* participants, raises the issue of various conflicts of interest, as the management of the TO has duties towards two sets of "principals", and would be under pressure to favour shareholders rather than the participants in the event of such conflicts. Such conflicts provide an overlay on the possible conflicts between the interests of management and those of shareholders, which is a more traditional concern of corporate governance.
22. Where the *Takāful* undertaking is established in a totally mutual structure, *Takāful* participants may have a say in how *Takāful* undertakings are managed or run. For example, *Takāful* participants could take part in the governance of the *Takāful* undertaking through voting rights at the undertaking's general meetings, which, among other matters, vote for the appointment of the board of directors (BOD¹⁷) and/or the management. The *Takāful* undertaking having the form of a hybrid structure with a proprietary company as TO, rather than a pure mutual, has excluded the possibility of participants voting in typical *Takāful* undertakings' general meetings. However, it should be noted that experience with mutuals in conventional insurance suggests that effective governance by participants can be difficult once they grow

¹⁵ See footnote 7.

¹⁶ Agency problems arise due to conflicts of interest when one party (the manager or agent) acts on behalf of another party (the owner or principal) and has an incentive to engage in self-interested behaviour to the detriment of the principal. Conflicts of interest may also arise between two categories of principal, such as policyholders and shareholders. These may entail "conflicts of duty" for the agent and are an issue in *Takāful* undertakings. See also the IFSB Exposure Draft of Guiding Principles on Conduct of Business for Institutions Offering Islamic Financial Services.

¹⁷ In jurisdictions that adopt a two-tier system, the "board of directors" in this document shall refer to the "supervisory board", rather than the "management board"

above a certain size. In this situation, management may effectively become autonomous.

23. In the case of a weak governance and accountability framework, there may be further incentives and opportunities for TOs to act against the interests of *Takāful* participants. This is observed as a particular problem in a proprietary structure where the TO's shareholder representatives (i.e. the BOD) and the management) have an express fiduciary duty to maximise value for the shareholders. While they similarly owe such a fiduciary duty to the *Takāful* participants, the lack of representation for the *Takāful* participants and the inadequate information environment may give ample room for the maximisation of value for the shareholders at the expense of the *Takāful* participants' interests.
24. TOs act in a fiduciary capacity on behalf of the participants in performing underwriting and managing the *Takāful* funds. The *Takāful* funds are funded by the *Takāful* participants under the concept of mutuality. If a *Takāful* scheme is strictly implemented under the principle of *Ta'awun*, the problems of conflicts of interest are mitigated so that the scheme operates in the interests of the *Takāful* participants. Hence, the requirement to abide by a specific code of governance is intended (among other things) to induce TOs to cultivate a culture of accountability and transparency for the benefit of the *Takāful* participants.

Recommended Best Practices

25. While it may not be realistic simply to restrict the discretionary powers of TOs with the aim of eliminating conflicts of interest, there are strong justifications for calling for appropriate governance structures and processes to be put in place. This implies that TOs shall establish a comprehensive governance framework in the *Takāful* undertakings they manage, tailored to vest in the respective organs of governance appropriate powers to exercise oversight, control and review of the administration of the PRF and PIF, in particular as a "check and balance" mechanism for ensuring the TO's adherence to the objective of protecting the interests of *Takāful* participants and their beneficiaries. The organs of governance should uphold the objective of a *Takāful* scheme being a vehicle for mutual assistance among the *Takāful* participants.
26. As noted earlier, there are already several useful governance guidelines issued by international organisations that could be used as points of reference to develop and implement governance frameworks and practices that meet internationally recognised standards. TOs shall ensure that the governance policy framework that they apply within a *Takāful* undertaking that they manage adheres to the relevant *Sharī'ah* rules and principles. In addition, TOs shall comply with any governance directives issued by their respective supervisory authorities.
27. In the governance framework of *Takāful* undertakings, TOs shall set out and document:
 - (i) a clear identification and segregation of strategic and operational roles and responsibilities for each organ of governance, including but not limited to the BOD and its committees,¹⁷ the management, *Sharī'ah* governance function (whether in the form of a *Sharī'ah* Supervisory Board, or SSB, or a *Sharī'ah* advisory firm, as the case may be), as well as the internal and external auditors;
 - (ii) mechanisms for observing and addressing the rights and interests of all stakeholders, as well as the reporting lines and accountabilities of each organ of governance; and
 - (iii) a compliance mechanism on the underwriting and investment activities in accordance with the legal and regulatory frameworks applicable in their respective jurisdictions.

¹⁷ See paragraph 48 below.

Principle 1.2: TOs shall adopt an appropriate code of ethics and conduct to be complied with by their officials at all levels.

Rationale

28. Adherence to professional ethics and appropriate business conduct is important in the observation of fiduciary duties by the TO's officials at all levels. TOs need to ensure that their officials fully understand and undertake to preserve and uphold the sanctity of the aforesaid *Takāful* core principles. The IFSB Guiding Principles on Conduct of Business for Institutions Offering Islamic Financial Services are also applicable to TOs.
29. Some *Takāful* contracts, especially Family *Takāful* plans, establish long-term relationships between *Takāful* participants and TOs. Adequate ethics and conduct shall be observed by the representatives of TOs:
 - (i) "at the point of contract" – that is, before a *Takāful* contract is concluded between a TO and the *Takāful* participants, considering that this is where the long-term relationship between the TO and the *Takāful* participants is defined and established; and
 - (ii) "after the point of contract" – that is, when the *Takāful* participants wish to monitor the performance of a TO in meeting their expectations, particularly with regard to the fulfilment of their rights and entitlements under the *Takāful* contracts.
30. It is understandable that TOs would like their representatives (including brokers) to be able to register and engage with as many *Takāful* participants as possible. Apart from seeking information from the *Takāful* participants in order to assess their *Takāful* needs before giving advice or concluding a contract, TOs should ensure that these representatives observe and explain properly to the participants and potential participants the *Takāful* core principles and never mislead them into expecting that *Takāful* is no different from conventional insurance.
31. The actuary must, whenever needed, act independently of the TO in accordance with the professional code of conduct and ethics established by the professional body of which he or she is a member. The actuary must disclose to the relevant stakeholders (including the supervisory authority) any material concerns in respect of having accurate data, integrity and sufficiency in the course of the work that is undertaken with all honesty and with the highest professionalism.
32. If TOs outsource some of their activities to external parties, such as the information technology system for keeping data on *Takāful* participants and their *Takāful* plans, the actuarial services, investment management or *Sharī'ah* governance function, the TOs remain responsible for the fiduciary and ethical aspects of the outsourced services. This responsibility applies to the selection of the providers of the outsourced services and the monitoring of their performance to ensure that the fiduciary and ethical aspects are satisfactory.
33. In respect of investment activities, TOs are expected to adhere strictly to Islamic ethical principles. Therefore, TOs should ensure that the investment mandate and instructions to officials or representatives that handle and manage the investments clearly spell out this ethical requirement.

Recommended Best Practices

34. TOs shall have in place an appropriate code of ethics and business conduct requiring employees and agents (if any) of TOs to observe high standards of integrity, honesty and fair dealing.¹⁸ Internal regular review mechanisms should be in place to verify and enforce compliance with the code. Professionals employed by a TO should always observe the code of business conduct of their respective affiliated professional body.
35. Wherever an official of a TO finds himself or herself in a conflict of interest, he or she shall be required to declare this conflict in writing to the immediate superior, and should be restrained from any position of decision-making or influence in relation to it. In particular, a TO's officials must do so in the case of related party transactions (i.e. involving members of their family, business associates, or companies in which they may have an interest).¹⁹
36. The ethical standards that TOs may impose on their officials should be commensurate with the levels and significance of responsibilities held by the officials. There shall be adequate systems in place to monitor compliance with this code, and to ensure that any misbehaviour or misconduct is dealt with swiftly and effectively.
37. It is noted that sometimes a *Takāful* scheme is offered through other financial institutions or corporate entities or a department within a conventional insurer. Under such circumstances, the TO shall use its best efforts to ensure that the officials and representatives who promote *Takāful* products observe the appropriate ethics and standards of conduct as prescribed by the TO, without compromising the *Takāful* core principles or the interests of its participants.
38. A TO proposing to outsource some of its functions to another service provider should carry out a due diligence exercise to assess the service provider's viability, capability, reliability, expertise and track record prior to engagement, or renewal of engagement, in order to ensure that the objectives of the outsourcing arrangement are appropriately achieved, and should monitor the service provider's performance to ensure, in particular, that it upholds the same ethical principles as the TO itself.
39. At the point of contract, which includes offering product literature and advice regarding the *Takāful* contract, TOs shall ensure that their representatives provide relevant and meaningful information to the *Takāful* participants. The explanation of the *Takāful* core principles is a necessity to avoid any risk of misleading the *Takāful* participants into expecting that *Takāful* is no different from conventional insurance. In this respect, it is recommended that the supervisory authority develop a set of prescribed disclosures to be made prior to contract, including disclosures on the *Takāful* core principles and *Sharī'ah* governance arrangements.
40. Specifically for Family *Takāful* investment products, the pre-contract illustration should be expressed and presented from a layman's point of view to gauge better understanding and appreciation by *Takāful* participants who may not be conversant with the intricacies of a *Takāful* product. The pre-contract illustration should contain relevant and meaningful information so as to enable the potential *Takāful* participants to make a balanced and informed decision. The information should include the benefits and risks to the *Takāful* participants presented in a fair and balanced way, setting out the obligations of both the TO and the *Takāful* participants in a clear and understandable manner. Any forecast used in the pre-contract illustration should not be over-optimistic, so as to avoid creating false expectations in the minds of *Takāful* participants. In addition, TOs should take reasonable care that the information is accurate in all material respects, not misleading, easily understandable, and available in printed or appropriate electronic forms.

¹⁸ The IFSB Guiding Principles on Conduct of Business for Institutions Offering Islamic Financial Services (IFSB-9) is applicable.

¹⁹ Reference should also be made to the IFSB-4, which adopts the IAS24 on related party transactions.

Part II: A balanced approach that considers the interests of all stakeholders and calls for their fair treatment

41. As much as possible, this standard aims to promote a balanced approach by TOs in seeking to create value for their shareholders while equally giving due attention to the interests of their other stakeholders, with particular reference to participants. Accordingly, TOs are expected to:
- (i) have in place an appropriate governance structure and processes that adequately represent the interests of stakeholders; and
 - (ii) nurture an information environment that gives stakeholders adequate and fair access to information according to the materiality and relevance of the information.
42. Assuming that shareholders of TOs are already in a position to use several channels to express their views, including through board representation and general meetings, as well as monitoring the performance of TOs through periodical and annual reports, the Guiding Principles focus on the need for a representation structure and disclosure process that addresses the needs and interests of stakeholders other than the shareholders – in particular, the *Takāful* participants.
43. It is hoped that as a result of creating an enabling environment whereby TOs are given adequate time, space and incentives, a good governance culture will continue to strengthen and prosper within the *Takāful* industry, thus ensuring continuous support from its stakeholders.

Principle 2.1: TOs shall have in place an appropriate governance structure that represents the rights and interests of *Takāful* participants.

Rationale

44. As mentioned previously, the separation of *Takāful* participants' funds and management's control in the corporation as practised by TOs could cause agency problems to occur. Consequently, the challenge for good governance is to ensure that the *Takāful* participants, or some organ of governance mandated to act on their behalf, can influence the TO to act with due regard to their interests, as well as the interests of the shareholders. Due to the wide discretion of TOs in the administration of the *Takāful* undertakings, including discretion to pursue maximisation of value for the shareholders, effective internal systems and controls are crucial for the safe and sound operation of *Takāful* undertakings. The BOD should put in place strong internal controls and risk management within the organisation, a central feature of which is the establishment of systems for effective communication of relevant information across all levels of management.
45. There are bound to be conflicts of interest between the two main stakeholders – that is, the shareholders and the participants. The *Takāful* funds belonged to the participants and not the TO. The TO will be remunerated, whether in the form of a *Wakālah* fee or an investment profit share, for managing the underwriting and investment activities of the *Takāful* funds. Hence, the challenge of good governance is in reconciling and aligning the incentives of shareholders and *Takāful* participants so that, while shareholders may continue to enjoy a healthy profit from the TOs in which they invest, the spirit of mutual assistance by the *Takāful* participants shall continue to be appropriately observed and their objectives satisfied.

Recommended Best Practices

46. As the organ of governance that is ultimately responsible for deciding all the *Takāful* undertaking's internal policies, the BOD shall be the body steering the establishment of the governance framework and overseeing its implementation. The BOD is also responsible and accountable for the performance and conduct of the TO with regard to the TO's operations, as well as for protecting stakeholders' interests. Delegating authority to the committees of the BOD or management does not diminish or relieve the duties and responsibilities of the BOD. The BOD would need to be satisfied that all internal policies have been implemented and compliance has been monitored. The BOD shall be ultimately responsible for reviewing the governance arrangements, to ensure that they are operating effectively and that any reported deficiencies have been adequately addressed. In the event of any ambiguity, functional overlaps or other gaps in the implementation of the governance framework, the BOD is to be the final decision-maker.
47. Each TO shall appoint an actuary who shall report directly to the BOD and the management.²⁰ As the recognised specialist and professional in the evaluation and analysis of risks faced by *Takāful* undertakings and their *Takāful* funds, the actuary shall be responsible for, among other things, controlling the integrity and quality of information that TOs disclose to their supervisory authorities, BOD, other organs of governance and *Takāful* participants. For this purpose, the actuary shall take the appropriate initiatives in:
- (i) identifying and monitoring the risks of a *Takāful* fund that may have material impact on its liabilities;
 - (ii) conducting the actuarial investigation of the present and future liabilities of the *Takāful* fund in order to determine its financial solvency in accordance with the duly recognised actuarial and accounting methods;
 - (iii) assessing the funding needs for the *Takāful* fund (taking account of (iv) below), and estimating the level of *Takāful* contributions to be imposed on the *Takāful* participants, taking account of the nature of the liabilities of the *Takāful* fund; and
 - (iv) assessing the values, and where necessary obtaining valuations, of the assets of PRFs, to determine their adequacy to meet the funds' liabilities.

The appointment of the actuary should be subject to strict qualification and suitability requirements as specified by the supervisory authorities. In addition, the actuary should be protected by the applicable *Takāful* legislation or regulation of the jurisdiction or by the by-laws and statutes of the entity and if possible of the professional body in order to strengthen its independence.

48. While it is not objectionable for the actuary to be either an employee of the TO or an external party,²¹ whenever an outsourced actuarial service provider is engaged, whether in part or in whole, the TO must maintain control, including monitoring and reviewing the performance of that outsourced actuarial service provider. Since under an outsourcing arrangement the TO may have to share sensitive information with the external actuary, the BOD should evaluate the capability of the service provider to maintain strict confidentiality. Rigorous processes should be adopted to protect the sanctity of confidential information, especially that of participants.
49. It would not be appropriate to give the appointed actuary the responsibility for dealing with potential conflicts of interest between the TO's shareholders and the participants, as this is essentially a governance role. Hence, in order to achieve adequate protection of *Takāful* participants' interests in the governance framework, it is recommended that the BOD should set up a Governance Committee, comprising at least three members, to coordinate and integrate the implementation of the

²⁰ Adopted from the OECD Guidelines on Governance for insurers, issued on 28 April 2005.

²¹ In some jurisdictions, TOs would be allowed to use the services of an external actuarial service provider.

governance policy framework. This Governance Committee²² may comprise, for example:

- (i) an independent non-executive director (selected for the director's experience and ability to contribute to the process);
- (ii) a *Shari'ah* scholar (possibly from the TO's SSB); and
- (iii) an actuary.²³

Any increase of membership in the Governance Committee should preferably be filled by independent non-executive directors. TOs may explore the option of including a representative of the *Takāful* participants who could provide a direct view of the *Takāful* participants' interests in the Governance Committee. The chair of the Governance Committee should preferably be an independent non-executive director.

50. The objectives of the Governance Committee should include:
- (i) developing and recommending to the BOD a set of effective corporate governance policies and procedures applicable to the *Takāful* undertaking, including the formulation of appropriate business conduct and ethics codes for employees and agents;
 - (ii) developing and recommending to the BOD the additional governance structure and processes applicable to the TO, and reviewing and reassessing their effectiveness;
 - (iii) overseeing and monitoring the implementation of the governance policy framework by working together with the management, the Audit Committee and the SSB;
 - (iv) monitoring the financial management of the *Takāful* undertaking, particularly with respect to reserving and distribution of underwriting and/or investment profit; and
 - (v) providing the BOD with reports and recommendations based on its findings in exercising its functions.
51. The role and functions of the Governance Committee should not duplicate or overlap with the roles and functions of other committees of the BOD, such as the nomination and remuneration committee, audit committee or risk management committee. In fact, the role of the Governance Committee should complement those of other committees of the BOD in terms of some of the governance functions, taking into account that the other committees already have very specific and demanding mandates. Furthermore, other committees of the BOD primarily monitor issues from the perspective of the shareholders' interests, rather than the interests of *Takāful* participants. Conflicts of interest between a TO's shareholders and *Takāful* participants could be difficult for the other committees of the BOD to resolve.
52. The primary objective of the Governance Committee is to find an appropriate balance in addressing the interests of all stakeholders, while giving special attention to the interests of *Takāful* participants who, at the moment, are largely underrepresented and lack adequate access to information. The BOD should support the Governance Committee by investing it with all the authority needed to perform its function, given its key mandate. Moreover, the supervisory authority should monitor the functioning of the Governance Committee (e.g. by examining minutes of its meetings and checking how the BOD has responded to its recommendations) and take up with the BOD any matters giving rise to concern.
53. The Governance Committee shall regularly carry out a full analysis in order to detect and mitigate any conflict of interest in the course of the operations and management of the *Takāful* funds, particularly in relation to costs and expenses chargeable to the *Takāful* funds, and the level of underwriting surpluses produced, especially where the

²² This requirement is consistent with the OECD Principles recommending that the BOD may consider establishing a specific committee to consider issues relating to management of conflicts of interest. This committee may require a minimum number, or be composed entirely, of non-executive members. The OECD Principles further recommend that the BOD should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment on the occasion of any conflict of interest.

²³ See paragraph 47 for the appointment of an actuary.

TO receives a percentage share of the surplus as a fee. The analysis will be a useful whistle-blower mechanism, as well as enabling checks and balances, so that the *Takāful* fund will not be exposed to abuse.

54. The recommendation of a Governance Committee does not rule out alternative institutional arrangements which have not been elaborated here. However, any alternative institutional arrangement – for example, one with an independent trustee at its core – should be functionally equivalent to the Governance Committee.

Principle 2.2: TOs shall adopt and implement procedures for appropriate disclosures that provide *Takāful* participants with fair access to material and relevant information.

Rationale

55. Good governance practices require that appropriate disclosures be made to all stakeholders in order to contribute to a well-functioning information environment. The existence of such an environment, where material and relevant information is readily accessible, results in more effective accountability and thus helps to safeguard the integrity of *Takāful* undertakings, as well as guiding potential *Takāful* participants in their decisions on whether or not to participate in a *Takāful* scheme. Adequate disclosure assists potential and existing *Takāful* participants, as well as other market participants, to evaluate the financial standing of *Takāful* undertakings and the risks to which they are exposed. Such disclosure should include the availability of, and conditions relating to, a *Qardʿ* facility from the TO to a PRF facing insolvency. In regard to all the above, the quality of information disclosed to the public is heavily dependent on the standards and practices applied in its preparation and presentation. It should be noted that, especially in Family *Takāful*, appropriate and reliable disclosure could be a major factor in establishing a long-term relationship based on confidence on the part of the *Takāful* participants towards the *Takāful* undertaking and its TO.
56. The investment products of Family *Takāful* undertakings, being *Sharīʿah*-compliant, generally do not provide guarantees regarding the amount of the *Takāful* benefit payable. (For example, pension products operate on a “defined contribution”, rather than a “defined benefit”, basis.) The benefits depend on the performance of the assets in the relevant fund, which are exposed to market risk. The risk profile is thus different from that of conventional insurance products, where guarantees are normally given in terms of maturity benefits, surrender benefits and death benefits. This has an impact on the risk management and solvency strategies, as well as on the appropriate disclosures regarding *Takāful* funds.
57. In principle, a clear separation is required in Family *Takāful* between the assets of the PRFs and those of the PIFs, as well as between the assets of the *Takāful* Fund and those of the shareholders’ funds. Commingling of the PIF’s and the shareholders’ funds would raise governance concerns regarding potential conflicts of interest. Accordingly, the accumulation of investment profits in the PIFs requires transparent methods of profit calculation and accounting, as well as an efficient accounting system to record the declared PIF’s profit and credit it to the respective *Takāful* PIF.
58. While all corporations are subject to problems of asymmetric information, *Takāful* undertakings, like other financial institutions, are particularly opaque, which makes it very difficult for the public to monitor and evaluate them. This opaqueness may make it easier and more likely for a TO to exploit its position as the manager of a *Takāful* undertaking to act in its own interests, taking advantage of the private benefits of control.²⁴ It is a commonplace that most insurance, outside compulsory lines such as

²⁴ For example, TOs that undertake underwriting activities as *Mudārib* are well positioned, in the absence of competitive pressures, to perform underwriting so as to generate a surplus for the benefit of their shareholders, at the expense of *Takāful* participants, by charging higher *Takāful* contributions. This is one reason why there is a need for a Governance Committee.

motor and (sometimes) health, is “sold”, rather than “bought”. In circumstances where the initiative lies with the seller, potential *Takāful* participants will have even less chance than usual to evaluate the financial performance of a TO. Thus, adequate disclosure at the point of contract should be made by a TO to potential *Takāful* participants.

59. In addition to information about *Takāful* principles and the financial situation of the undertaking, it is necessary to provide information about specific products. Where appropriate, this should include information on investment policies and practices. Particularly in the case of unit-linked *Takāful* products, appropriate and timely disclosure would assist the *Takāful* participants in making an informed decision on their selection or choice of the investment portfolio in which to place their funds with the TO. It should be noted that the IFSB Guiding Principles on Conduct of Business for Islamic Financial Institutions, and in particular the principles relating to honesty and fairness and information to clients, are applicable.
60. It is sometimes difficult to strike a balance between providing enough information to help *Takāful* participants understand the *Takāful* product in which they are about to participate, or have already participated in, and overloading them with information. This is particularly so for certain *Takāful* products that can be difficult to understand and explain concisely. Hence, disclosure can only meet specific aims of good governance but not necessarily all aims. Its effectiveness will be limited by the extent of *Takāful* participants' appetite for information and their ability to understand and act on it. A key issue that needs to be addressed is how to get the right balance so that the amount of information provided before and after the point of contract helps, rather than hinders, *Takāful* participants' understanding of the scheme.
61. *Takāful* contracts and product information tend to be drafted in legalistic and protective terms, with the aim primarily of protecting the TO, rather than of plainly informing the *Takāful* participants of their rights and obligations. Ordinary *Takāful* participants would need help in understanding the provisions of the contract into which they were about to enter, or had already entered. *Takāful* undertakings must place emphasis on greater clarity of *Takāful* products' offering literature and contracts through the use of plain language and a consistent *Takāful* terminology (including applications of the *Takāful* core principles) so that the documents can be easily understood.
62. After the signing of the contract, although *Takāful* participants are generally not in a position to be entitled to vote in general meetings or to pass resolutions on the appointment of directors and auditors, or to intervene in the management of the *Takāful* funds, this does not mean they should not have access to appropriate information in order to monitor the performance of the *Takāful* funds.
63. With particular respect to Family *Takāful*, without adequate and timely disclosure it would be difficult for *Takāful* participants to exercise their exit option by simply terminating their *Takāful* contract. Family *Takāful* participants often have longer-term *Takāful* contracts. An early termination may put *Takāful* participants at a disadvantage in terms of the exit cost (such as penalties, cash values, etc.). Hence, the strength of the exit option that is available to the *Takāful* participants could very much depend on the availability of information for *Takāful* participants to use in evaluating the performance of the *Takāful* funds, or having an appropriate organ of governance to oversee and protect the interests of *Takāful* participants where the organ of governance could act as a “voice option” for the *Takāful* participants.
64. It is acknowledged that additional disclosures may entail higher costs, which may be passed on directly or indirectly to the *Takāful* participants. This may also have an impact on the competitiveness of the *Takāful* undertakings, and hence should be appropriately weighted against the potential benefits. As a rule of thumb, disclosure should be based on the obligations set out in the contractual relationship between the TO and its *Takāful* participants, and should include:

- (i) disclosures before and/or after the point of contract; and
- (ii) periodical disclosures in the form of quarterly reports, semi-annual reports and annual reports.

Recommended Best Practices

65. For *Takāful* undertakings, TOs shall adopt appropriate international accounting, auditing and financial disclosure standards and practices that enable an insightful and meaningful reflection of their financial position and results, as well as allowing comparisons from one reporting period to another.²⁵ An adequate description of how information is prepared, including methods applied and assumptions used, must be incorporated into the financial statements so as to assist interested *Takāful* participants in comparing the financial standing of different *Takāful* undertakings.
66. In addition, TOs shall disclose in their annual reports information on their financial position and the risks to which they are subject, in order to give stakeholders (including *Takāful* participants, shareholders, supervisory authorities, etc.) a proper observation of TOs' business activities and financial position, and to facilitate understanding of the risks to which TOs are exposed.²⁶ The disclosed information should include quantitative and qualitative information on financial position, key financial performance indicators, risks exposure (especially how the risks are managed) and the TO's governance framework. Hence, TOs must produce, at least annually, audited financial statements and make them available to all stakeholders. This information should make clear the position of the TO regarding the provision by it of back-up capital in the form of a *Qardʿ* facility to a PRF facing potential insolvency.
67. Furthermore, TOs should provide relevant and sufficient qualitative and, where relevant and available, quantitative information on the *Takāful* undertakings to assist *Takāful* participants in understanding the nature of material exposures to risk, how it is managed and its potential impact. Disclosures on risk should be meaningful because risk exposures can change very quickly and strategies for dealing with risk have become more sophisticated, and thus more difficult to explain. The relevant disclosures might include descriptions of the *Takāful* undertaking's overall risk management philosophy and policy, such as its risk appetite and how risks are managed and controlled.²⁷
68. TOs should also provide information on the investment performance of the *Takāful* undertakings, such as the returns on assets and, where relevant, components of such returns. Since investment performance is one of the key determinants of a *Takāful* undertaking's profitability, the implications of such performance may have a direct impact, positively or negatively, on the *Takāful* fund's manner of reserving. Disclosure of investment performance is therefore essential to *Takāful* participants. A TO should disclose changes in values, both over the accounting period and since an asset was acquired, and in income, both received and accrued.
69. In view of the complexity of *Takāful* concepts, it is recommended that TOs should disclose their *Takāful* model in their annual report or on their website in order to facilitate better understanding of their *Takāful* products. The disclosure should be clear, concise, and meaningful to the existing and potential *Takāful* participants, and should assist them in making informed decisions about whether they wish to subscribe to the *Takāful* contract. The illustrated *Takāful* model should at a minimum include the following:

²⁵ IAIS Guidance Paper on Public Disclosure by Insurers (January 2002) emphasised that accounting and actuarial policies, practices and procedures differ not only between countries but also between insurers within the same country.

²⁶ Adopted from IAIS ICP 26 – information, disclosure and transparency towards the market.

²⁷ For more information on disclosure practices and regimes, reference could be made to the IAIS Standard on Disclosures concerning Technical Performance and Risks for Non-Life Insurers and Reinsurers of October 2004, the corresponding Standard for Life Insurers of October 2006, and the Standard on Disclosures concerning Investment Risks and Performance for Insurers and Reinsurers of October 2005.

- (i) the operating models of the *Takāful* undertaking in terms of funds separation (investment – PIFs and/or risk elements – PRFs), shown separately for General and Family *Takāful* operations;
 - (ii) whether the contributions are made for the overall fund or are for the risk community of a specific fund based on the line of business. This is essential in order to determine the allocation basis of the underwriting surpluses;
 - (iii) the source and level of remuneration for the TO shown separately for the Family and General *Takāful* businesses, including any charges of performance fee or sharing arrangements for investment profits and/or underwriting surpluses;
 - (iv) allowable expenses charged to the *Takāful* funds;
 - (v) distribution of underwriting surpluses and/or investment profits, including the eligibility of *Takāful* participants who are entitled to a distribution of profit, the ratio of profit-sharing, etc.;
 - (vi) for Family *Takāful*, information on policies and procedures based on the product design/type concerning the separation between PIFs and PRFs, as well as between profit and/or underwriting surplus allocation bases;
 - (vii) obligations of the TOs and *Takāful* participants; and
 - (viii) an assurance that all the information given to the potential participant is accurate, fair and not misleading.
70. TOs shall disclose in their annual reports their policies in respect of:
- (i) reserving, surplus sharing and deficit mitigation – as the method of reserving for estimated contingent liabilities and retaining underwriting surplus in reserves could play a crucial part in ensuring the solvency and sustainability of *Takāful* undertakings as a business concern; and
 - (ii) distribution of underwriting surpluses and/or investment profits – as, prior to the distribution of any underwriting surplus, it is important that *Takāful* undertakings must meet the requirement of reserving over a period of time in order to achieve a high level of confidence in being able to meet the expectations of the *Takāful* participants, particularly with regard to payment of *Takāful* benefits.
- Any significant changes in such information should be made accessible to the public at the earliest possible time through the website and in mainstream media organs, as well as in any periodical *Takāful* statement issued to the *Takāful* participants.
71. Noting that investment is an essential feature of Family *Takāful* operations, as more funds can be accumulated from the renewal contributions on to the long-term plans, and given the *Takāful* participants' expectations of competitive returns on their investments, it is appropriate that TOs be transparent in their investment activities. Disclosure of the investment strategy for the PIFs and its historical performance would be a key disclosure at the point of contract, since the *Takāful* participants are bearers of the investment risks.
72. TOs shall disclose material and relevant information with respect to *Takāful* undertakings to the *Takāful* participants in a clear, accurate and timely fashion. At the point of contract, all *Takāful* participants should be entitled to receive in clear language information on the following, as appropriate:
- (i) illustration and explanation of benefits and any risks associated with the *Takāful* product, which may include non-guaranteed elements of investment products;
 - (ii) information on the basis for investment profit-sharing distribution and deficit mitigation, especially under a *Muḍārabah* contract where the profit-sharing ratio must be declared in advance;
 - (iii) the product benefits such as aims of product, cover, conditions, risk factors, contribution, guarantees, special exclusions, etc.;
 - (iv) charges (including termination charges of any existing *Takāful* contract in the case of early termination of a *Takāful* contract) and estimated returns (if applicable);

- (v) exit options, including the consequences of early termination of the *Takāful* contract in terms of benefit payment from the PRF and/or investment profit from their PIF, if any;
 - (vi) the frequency of disclosure statements;
 - (vii) the frequency of investment profit and/or underwriting surplus declaration; and
 - (viii) complaints-handling and other contractual arrangements.
- TOs and supervisory authorities should ensure that this information is provided, whether the product is sold by the TO itself or through some other distribution channel.
73. Depending on the type of contractual arrangement and *Takāful* product, after the point of contract it is also important for *Takāful* participants to monitor the performance of *Takāful* undertakings in terms of meeting their expectations with regards to *Takāful* benefits, and evaluating any exit options. In particular, TOs should provide adequate information that is relevant to Family *Takāful* participants by disclosing the investment activities, risks and performance of the *Takāful* funds, given the long-term nature of the contracts and the importance of investment performance to overall outcomes. TOs should disclose qualitative and quantitative information on investment objectives, policies and practices to enable *Takāful* participants to assess the risk and return performance of the asset portfolios of *Takāful* funds.
74. Family *Takāful* participants should therefore receive periodical disclosures on at least the following:
- (i) risk position (quantitative and qualitative aspects) and risk management;
 - (ii) overall investment strategy and objectives, including explanatory notes on the underlying principle for asset allocation, asset–liability management and investment performance, including the ability of assets to produce returns that are adequate to meet liabilities;
 - (iii) performance management according to the business lines, which consists of explanatory notes on the frequency and types of measurement used and methods adopted to monitor performance;
 - (iv) the management of liquidity, and asset–liability matching and any changes thereto, inclusive of the qualitative information explaining the appropriateness of investments in matching liabilities;
 - (v) the actual and historical distribution of underwriting outcomes (surpluses or deficits) and/or investment profits;
 - (vi) reserving policy;
 - (vii) *Sharī'ah* compliance; and
 - (viii) actual and historical fees and participation ratios.
- These disclosures should cover the investment activities for both the PIFs and PRFs.
75. Additionally, for Family *Takāful* products, a financial statement should be provided, at least annually if not semi-annually, to *Takāful* participants describing the received contribution and the expected financial benefits of the *Takāful*, particularly showing their PIF balances, and the investment regime and performance of the *Takāful* fund in standardised format. (For example, the net of fees performance should be comparable across each fund managed by the TO.)
76. It is acknowledged that many of the disclosures specified here will not be understood by the vast majority of *Takāful* participants. There may nevertheless be effective elements of market discipline if they are understood, and where necessary interpreted, by counterparties and analysts, including financial journalists and rating agencies. Supervisory authorities also have a role, both in specifying how disclosures can be made effective and in themselves interpreting and acting on the information disclosed.
77. It is also appropriate that the public be given easy access to general information about the operation of a *Takāful* fund. TOs shall provide, as part of their customer services, a channel for the public to be able to access information pertaining to

Takāful benefits, the *Takāful* fund's asset allocation, claims information, and other relevant aspects of the operations of the *Takāful* fund, either online or through service counters.

78. In all of the above, a TO shall apply the IFSB's Guiding Principles on Conduct of Business for Institutions Offering Islamic Financial Services, particularly those relating to honesty and fairness and information to clients.

Part III: An impetus for a more comprehensive prudential framework for *Takāful* undertakings

79. Since the Guiding Principles will not be the only IFSB standard aimed at the *Takāful* industry, this document should be read in conjunction with other relevant standards that may follow it in the future. As recommended by the JWG, besides good governance, other areas that the IFSB may address through appropriate standards and guidelines on best practices for the *Takāful* industry include solvency, financial and prudential regulation, transparency and disclosure, conduct of business, and the supervisory review process. These additional standards and guidelines on best practices are expected to be developed in due course.
80. In this respect, a key aspect of good governance by TOs is an appropriate mechanism for sustaining *Takāful* undertakings' solvency and adherence to sound risk management. In view of their paramount importance, particularly their effects on systemic stability, TOs must always bear these in mind while planning and mapping their governance strategies. This is necessary whatever the strength of the solvency regime imposed by the supervisory authority.

Principle 3.1: TOs shall ensure that they have in place appropriate mechanisms properly to sustain the solvency of *Takāful* undertakings.

Rationale

81. As mentioned previously, the method of provisioning for estimated contingent liabilities and retaining underwriting surplus as reserves plays a crucial part in ensuring the solvency and sustainability of *Takāful* undertakings as a business concern. Although, as a matter of principle, *Takāful* participants are expected to bear the risk of insolvency of the PRFs whenever the contributions they make (together with income from underwriting fund assets) cannot meet the total amount of *Takāful* benefits, it has been well accepted as part of the prudential framework that TOs shall put in place appropriate mechanisms to buffer any temporary deficits suffered by the PRFs.
82. Their disproportionate discretionary power may encourage TOs, whether deliberately or otherwise, to adopt underwriting and investment policies that either maximise charges of fees and expenses without giving due regard to the risk expectations of the *Takāful* participants and the PRFs, or lead to the generation of unnecessarily large underwriting surpluses in order to maximise the remuneration for the TO by way of *Mudārib* share. In the event that a PRF experiences financial difficulties, the TO could, without adequate checks and balances, establish a new fund and continue to undertake business in a way that further exacerbates the initial PRF's problems. In other words, since the insolvency of the *Takāful* undertaking does not necessarily imply the insolvency of the TO (depending on the insolvency law of the jurisdiction), the latter may "walk away" from insolvency of a PRF. From a prudential perspective, such a situation is simply unacceptable, given that it would potentially place *Takāful* participants' interests at risk and undermine the integrity of the *Takāful* market in particular and the financial system in general. No supervisory authority should permit this.
83. Besides ensuring the adequacy of provisioning and reserves in the PRFs, regulatory authorities can require that a TO possess the financial strength to provide a *Qard* facility to meet deficiencies of PRFs. The repayment of *Qard* loans drawn down from such facilities will be made from future surpluses of the PRFs. This requirement is part of the formal licensing and regulatory procedures of some jurisdictions. Since the *Takāful* participants are not represented in any negotiations and agreements on the terms and conditions of the *Qard* facility and its repayment in case it needs to be exercised, the TO will be in the position to lay down the terms and conditions of the

Qard facility unless there is appropriate involvement of both the Governance Committee and the supervisory authority before such an arrangement is finalised.

84. As part of their risk management, *Takāful* undertakings may subscribe to a *Retakāful* scheme that suits the needs and requirements for primary *Takāful* undertakings to protect against unforeseen or extraordinary losses. *Retakāful* could serve to spread liability on specific risks, share liability when losses overwhelm the primary *Takāful* undertakings' resources, and help the primary *Takāful* undertakings to spread the risk inherent in some segments of the *Takāful* business.

Recommended Best Practices

85. A TO shall strive to have in place the best appropriate mechanism to sustain the solvency of a *Takāful* undertaking under its management and the related *Takāful* funds. Besides having the appropriate provisioning and reserving methodologies, the relevant organs of governance, including the BOD and the Governance Committee, as well as the actuary, shall play a role in strengthening the internal controls and risk management of the *Takāful* undertakings. Their collective efforts, as well as consistent monitoring by the supervisory authorities, are crucial in ensuring that *Takāful* undertakings remain sound and stable.

86. It is vital from the *Takāful* participants' perspective that the TO should adopt appropriate methodologies in the provisioning and reserving policy for soundness and solvency of *Takāful* undertakings, including the process of determining the distribution of any underwriting surplus. TOs should take great care in establishing the following:
- (i) the provisioning methods, including the pros and cons of the methods in the light of the solvency of the PRFs;
 - (ii) the identification and determination of pools of assets and related income, and the basis of such determination;
 - (iii) the treatment of the *Takāful* contributions, whether consolidated into the overall pool or segregated into the various risk pools;
 - (iv) the handling of investment profit allocation and its treatment basis according to the lines of business (if any);
 - (v) the policy for charging provisions against non-performing investment assets and to whom these provisions shall revert, in case of write-back or recovery;
 - (vi) the basis for allocating expenses to a PRF and the various lines of business for determination of the underwriting outturn;
 - (vii) the surplus ratio and weightings for the distribution of surplus among various categories of line of business. *Takāful* participants should be provided with adequate advice and information on the sharing basis, before entering into *Takāful* contracts with the *Takāful* undertakings;
 - (viii) the *Qard* facility (interest-free loan) provided by the TO for meeting deficits of PRFs, and the conditions relating to its availability;
 - (ix) with reference to (iii) above, whether the rules of the *Takāful* undertaking allow a deficit in one PRF to be offset by a surplus in another PRF fund, and the implications of this for the use of the *Qard* facility;
 - (x) whether participants may be liable to meet calls made by the TO to meet an underwriting deficit on a PRF; and
 - (xi) the entitlement of *Takāful* participants to share in the distribution of any underwriting surplus over a specific financial period.

These will, of course, be points in which supervisory authorities will take an active interest.

87. Separate procedures for provisioning and reserving should be in place for Family and General *Takāful* funds, due to the different nature of assets and liabilities classifications. The procedures should be prepared by the actuary and endorsed by the BOD, taking into account any regulatory requirements. Moreover, TOs shall have in place proper procedures for accumulation of investment profits in the PIFs. This requires transparent methods of profit calculation and treatment, as well as an

efficient operating system to credit the declared PIF's profit to the respective *Takāful* PIFs.

88. An adequate capital backing from the TO in the form of the capacity to provide a *Qard* facility to meet any overall deficiency of the PRFs (i.e. a periodic deficiency that exceeds the amount of any accumulated reserves in a PRF) is crucial, and often essential, in meeting solvency requirements. In the event of a deficiency on a PRF due to misconduct and negligence, the deficiency shall be borne by the shareholders.
89. TOs shall regularly carry out actuarial investigation reports on the financial standing of *Takāful* funds for which they are responsible, to assess whether the assets could meet the liabilities of the *Takāful* funds, together with whatever additional reserves are required or considered prudent. Where the TO operates more than one *Takāful* fund, the actuarial investigation reports for these may differ significantly. Thus, the report should cover each *Takāful* fund separately. Based on the report, the TO management shall report the likely financial consequences, if any, to the relevant organs of governance.
90. In justifying any distribution of the underwriting surplus, the actuarial investigation report should normally apply the same valuation methods and assumptions from year to year, for accurate comparisons. If there are material changes in the methods and assumptions, this should be clearly stated in the report as specified by the supervisory authorities, and TOs should explain to the *Takāful* participants and the supervisory authorities the positive and/or adverse impacts of such changes to the long-term viability of the PRFs as well as the impact on underwriting surplus distribution to the *Takāful* participants.
91. TOs shall ensure that any *Retakāful* arrangement duly serves the purpose of the *Takāful* undertakings and is undertaken with the interests of *Takāful* participants as the foremost consideration. The pricing and protection offered by the *Retakāful* operator shall be consistently reviewed from time to time to ensure that it is commensurate with the needs and requirements of the *Takāful* undertakings. As far as possible, TOs should strive to use *Retakāful* operators, rather than conventional reinsurers, in support of a fully *Sharī'ah*-compliant financial system for the *Takāful* undertakings.

Principle 3.2: TOs shall adopt and implement a sound investment strategy and prudently manage the assets and liabilities of *Takāful* undertakings.

92. In setting the contribution level for a specific *Takāful* plan, the TO will take into account the income from the *Takāful* fund investments. As TOs are corporations owned by shareholders, their primary objective is to create value for the shareholders. It is pertinent to note here that TOs may commingle the shareholders' funds with the *Takāful* funds, in which case the investment objectives and expected returns would be the same for both. However, this may result in a conflict of interest. For example, the *Takāful* participants may benefit from a low-risk investment strategy with stable returns as far as the reserving and savings elements are concerned, whereas the shareholders of the TO may prefer a more aggressive investment strategy offering higher returns. As the investment policy and strategy of the *Takāful* fund are crucial in enabling it to meet its liabilities, the distinct identities and investment strategies of the funds attributable to the *Takāful* participants and to shareholders, respectively, should normally remain separate (unless both are aligned with the requirements of the *Takāful* fund). Note that in some jurisdictions separate regulations are applied to *Takāful* funds and shareholders' funds, but in many jurisdictions this is not the case.
93. As owners of the *Takāful* funds, the *Takāful* participants bear the investment risk and other associated risks. The investment activities are expected to produce income that is added to the amount available to pay the *Takāful* benefits or to be retained as

reserves in the *Takāful* funds. Since *Takāful* participants are not involved in the management of the *Takāful* funds, they cannot exercise any rights as owners of the funds. Without adequate and appropriate oversight of the investment activities of the TO in respect of *Takāful* funds, there would be no mitigation of the problem of potential conflicts of interest indicated in the preceding paragraph.

94. Another pertinent aspect regarding the investment activities is the process of selecting or purifying assets to achieve *Sharī'ah* compliance. Given the volatility of the stock market and the domination of *Riba*-based conventional financial instruments in the market, TOs cannot always avoid receiving income that is tainted by being derived from impermissible activities or questionable sources. This is exemplified by investments in the shares of certain corporations, the activities of which have previously been considered permissible but which over time have become impermissible as the corporation has entered into activities that transgress the *Sharī'ah*.

Recommended Best Practices

95. TOs shall use their best endeavours to implement a sound investment strategy, as *Takāful* participants are mutually guaranteed among themselves in the respective category of *Takāful* business. In developing their investment strategies on behalf of *Takāful* participants, TOs shall carefully consider the risk and return expectations of participants in savings products, based on the product features in their benefit illustrations.²⁸ For example, products should not be marketed using unduly aggressive (i.e. low) pricing assumptions in order to show highly competitive values on the *Takāful* benefits illustrations.
96. TOs should set forth in a written statement, and stringently observe, a clear overall investment policy for the *Takāful* undertakings under their management. The investment policy should establish clear investment objectives for each category of *Takāful* business, taking account of the diverse characteristics of the liabilities of each category and the acceptable risk tolerance for each category, and for the *Takāful* participants. The method for achieving those objectives should consider the necessity of having proper diversification and risk management, the maturity of the financial obligations and the liquidity needs of the category of *Takāful* business, and any specific legal restrictions on portfolio allocation. At a minimum, the investment policy should identify the asset allocation strategy for the *Takāful* fund, the overall performance objectives for the category of *Takāful* business, and the monitoring mechanism and, when necessary, adjusting the allocations and performance objectives in the view of changing liabilities and market conditions. Furthermore, a separate investment policy should be in place for Family and General *Takāful* business, where both are undertaken in the same undertakings, due to the different nature of their assets and liabilities. For Family *Takāful* business, the investment policies for the PRF and PIFs may require further separation. For General *Takāful* business, the investment strategy may differ significantly in terms of risks and liabilities for different lines of business.
97. In the investment policies, an investment strategy for each category of *Takāful* business should set out specific investment objectives for different underlying risks or liabilities. For instance, Family *Takāful* operations may very well have different investment needs and objectives as compared to General *Takāful* operations due to the duration of the liabilities that the fund needs to met. A Family *Takāful* fund has longer-term liabilities, while a General *Takāful* fund has shorter-term liabilities. Therefore, it is essential that objectives and long-term strategy be set for each fund, with proper monitoring of results against these objectives.
98. A sound and comprehensive risk management process should be established that measures, controls, monitors and reports the associated risks of the invested assets

²⁸ See ICP 21, especially Essential Criterion c, and the IAIS Standard on Asset–Liability Management of October 2006.

in an integrated manner. All parties who are involved and responsible for the overall implementation of the investment policy should be identified. This also includes any other significant parties that will be part of the investment management process. The investment policy should address whether or not internal or external investment managers will be engaged, the scope of their activities and authority, and the process by which they will be selected and their performance monitored. If external investment managers are used, an investment management agreement is required.

99. In addition, TOs shall have internal guidelines that set out:
 - (i) the eligibility of the TO's employees or external fund managers who are responsible for managing the PIF's investment activities and the investment of the funds of a PRF operated by the TO;
 - (ii) the adequate protection of the *Takāful* participants' investments, particularly if the PIF may be potentially commingled with shareholders' funds;
 - (iii) the disclosure of relevant and material information to the *Takāful* participants; and
 - (iv) the disclosure of profit allocation and investment policies based on the risk expectations of the *Takāful* participants.
100. Whenever an external investment management is engaged, in part or in whole, the TO should specify in the risk management and outsourcing policy how it maintains control of, and monitors and implements its risk mitigation controls over, the outsourced entity. At the same time, appropriate contacts and due diligence processes should be undertaken prior to the engagement of any outsourced entity in order to ensure that the objectives of the arrangement can be achieved.
101. A TO should also disclose the manner in which the investment management function is organised within its organisation structure, the mechanisms used by the BOD to oversee the function, and changes to key personnel and other management infrastructure, including whenever there are changes in the investment management structure. Where investment objectives, policies and management differ significantly, TOs should make disclosures of such changes and of the expected impact on the *Takāful* funds and the asset–liability matching policy.
102. A TO should put in place the appropriate processes to ensure that its investment portfolios are in compliance with *Sharī'ah* rulings, including the process for purifying the returns from tainted/non-*halal* income.
103. There should be procedures and criteria by which the BOD periodically reviews the effectiveness of its investment policy and risk management approach, in order to determine whether there is a need for change in the implementation procedures, decision-making structure, as well as responsibilities linked to the design, implementation, review, etc.

DEFINITIONS

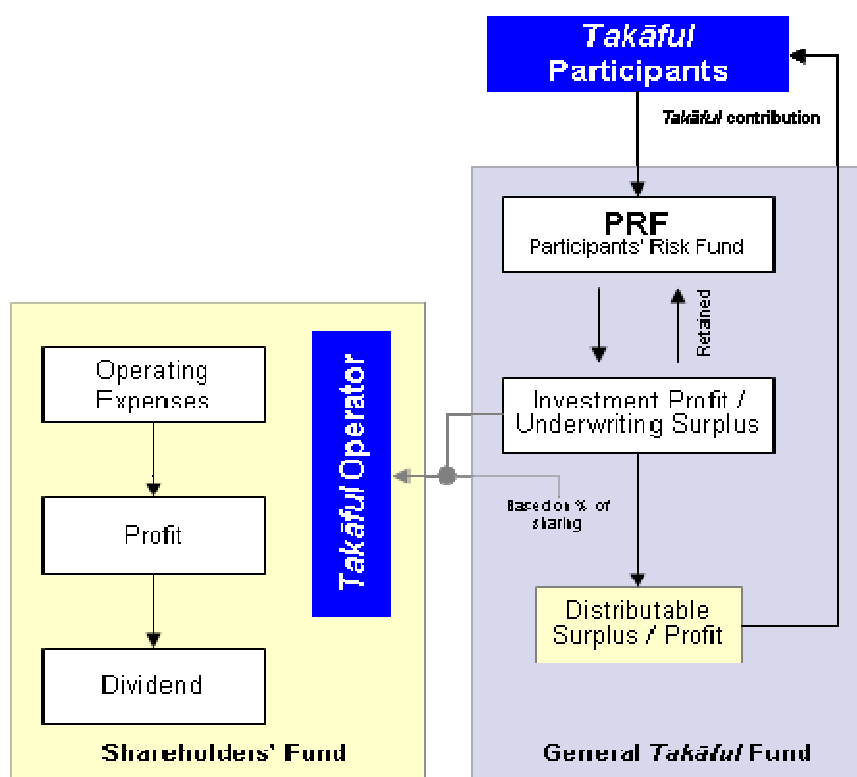
The following definitions are a general understanding of the terms used in this document. It is by no means an exhaustive list.

Actuarial Investigation Report	A report on the financial standing of <i>Takāful</i> funds conducted by an actuary, to assess if the assets of a <i>Takāful</i> fund could meet its liabilities.
Corporate governance	A defined set of relationships between a company's management, its board of directors, shareholders and other stakeholders that provides the structure through which: (i) the objectives of the company are set; and (ii) the means of attaining those objectives and monitoring performance are determined. In the context of <i>Takāful</i> operators (TOs), good corporate governance should encompass: (i) a set of organisational arrangements whereby the actions of the management of TOs are aligned, as far as possible, with the interests of its stakeholders; (ii) provision of proper incentives for the organs of governance such as the board of directors, the <i>Sharī'ah</i> Supervisory Board and management to pursue objectives that are in the interests of the stakeholders and facilitate effective monitoring, thereby encouraging TOs to use resources more efficiently; and (iii) compliance with the <i>Sharī'ah</i> rules and principles.
<i>Muḍārabah</i>	A contract between the capital provider and a skilled entrepreneur whereby the capital provider would contribute capital to an enterprise or activity that is to be managed by the entrepreneur as the <i>Muḍārib</i> (or labour provider). Profits generated by that enterprise or activity are shared in accordance with the terms of the <i>Muḍārabah</i> agreement, while losses are to be borne solely by the capital provider unless they are due to the <i>Muḍārib</i> 's misconduct, negligence or breach of contracted terms.
Participants' Investment Fund (PIF)	A fund to which a portion of contributions paid by <i>Takāful</i> participants is allocated for the purpose of investment and/or savings.
Participants' Risk Fund (PRF)	A fund to which a portion of contributions paid by <i>Takāful</i> participants is allocated for the purpose of meeting claims by <i>Takāful</i> participants on the basis of mutual assistance or protection.
Pre-contract illustration	A numerical representation and basic terms and conditions used by a TO to explain a <i>Takāful</i> product to a potential <i>Takāful</i> participant.
Provisions	The amounts set aside on the balance sheet to meet liabilities arising out of <i>Takāful</i> contracts, including claims provision (whether reported or not), provision for unearned contribution, provision for unexpired risks, <i>Takāful</i> provision, and other liabilities related to <i>Takāful</i> contracts (e.g. contributions, deposits, savings accumulated over the term of the <i>Takāful</i> contract).
Stakeholders	Those with a vested interest in the well-being of TOs, including: (i) employees; (ii) <i>Takāful</i> participants; (iii) suppliers; (iv) the community (particularly the Muslim <i>ummah</i>); and (v) supervisors and governments, based on the unique role of TOs in national and local economies and financial systems.

<i>Tabarru'</i> commitment	The amount of contribution to be relinquished by the <i>Takāful</i> participant as a commitment for fulfilling the obligation of mutual help and to be used to pay claims submitted by eligible claimants.
<i>Takāful</i>	<i>Takāful</i> is derived from an Arabic word which means solidarity, whereby a group of participants agree among themselves to support one another jointly for the losses arising from specified risks. In a <i>Takāful</i> arrangement, the participants contribute a sum of money as <i>Tabarru'</i> commitment into a common fund, which will be used for mutual assistance of the members against specified loss or damage.
<i>Takāful</i> fund	The aggregate PIFs and PRFs constitute the <i>Takāful</i> fund.
<i>Takāful</i> operator (TO)	Any establishment or entity that manages a <i>Takāful</i> business.
<i>Takāful</i> participants	A party that participates in the <i>Takāful</i> product with the TO and has the right to benefit under a <i>Takāful</i> contract (similar to "policyholders" in conventional insurance).
<i>Takāful</i> undertakings	A hybrid structure comprising a TO and one or more underwriting funds (<i>Takāful</i> funds) that belong to the <i>Takāful</i> participants.
Underwriting surplus or deficit	The <i>Takāful</i> fund's financial outturn from the risk elements of its business, being the balance after deducting expenses and claims (including any movement in provisions for outstanding claims) from the contributions income and adding the investment returns (income and gains on investment assets).
<i>Wakālah</i>	An agency contract where the <i>Takāful</i> participants (as principal) appoint the TO (as agent) to carry out the underwriting and investment activities on their behalf.

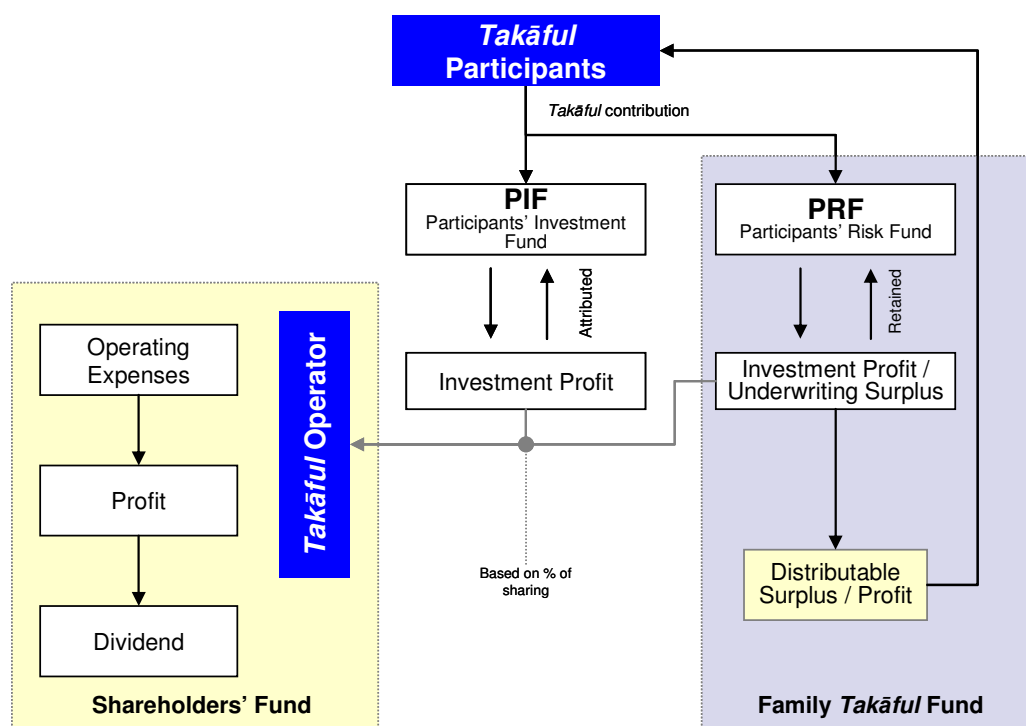
The Generic Flow of Funds within *Takāful* Undertakings

Muḍārabah-based *Takāful* Contract – General *Takāful*



(*Takāful* structures of different TOs may vary in detail from that shown here.)

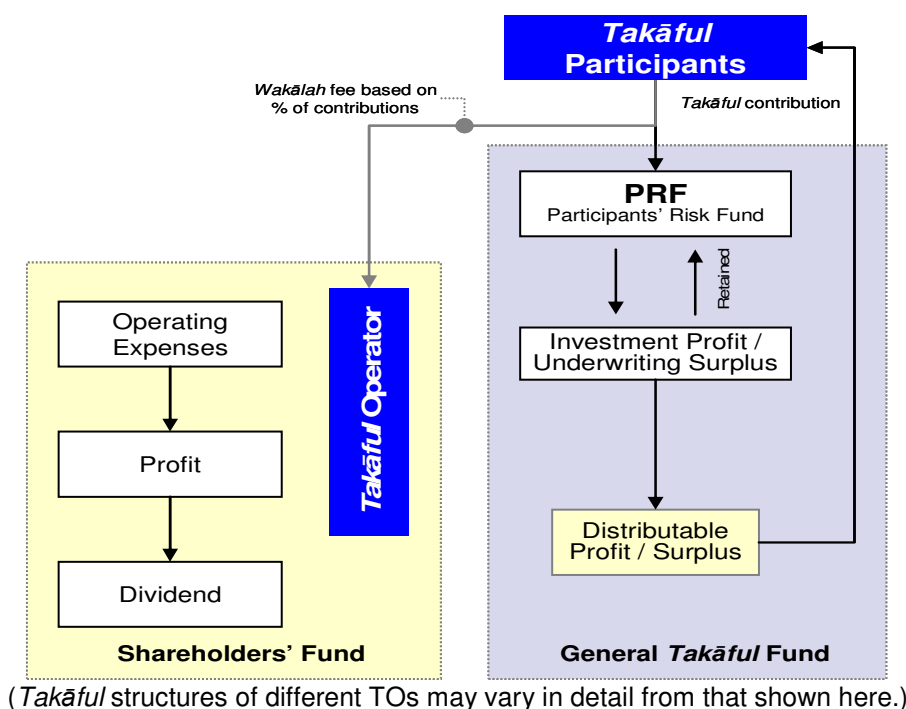
Muḍārabah-based *Takāful* Contract – Family *Takāful*



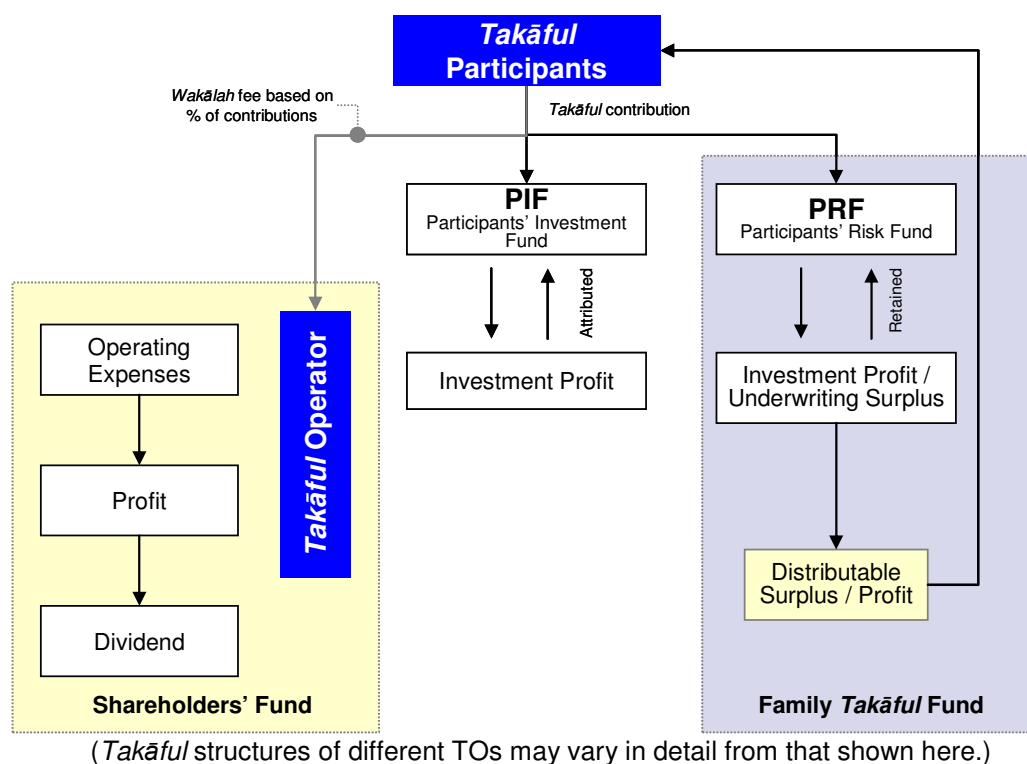
(*Takāful* structures of different TOs may vary in detail from that shown here.)

The Generic Flow of Funds within *Takāful* Undertakings

Wakālah-based *Takāful* Contract – General *Takāful*

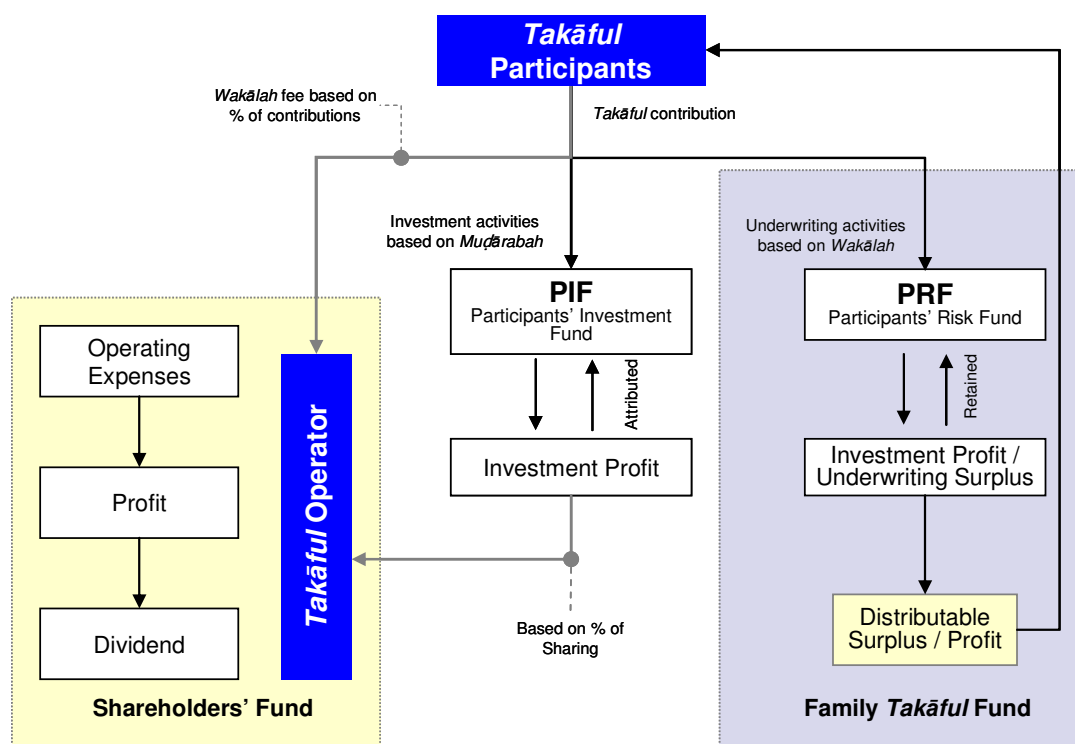


Wakālah-based *Takāful* Contract – Family *Takāful*



The Generic Flow of Funds within *Takāful* Undertakings

Wakālah–Muḍārabah-based Takāful Contract – Family Takāful



(*Takāful* structures of different TOs may vary in detail from that shown here.)