

## **SURPLUS-SHARING PRACTICES IN TAKAFUL OPERATIONS:SHARĪ‘AH PERSPECTIVE AND THEIR CURRENT IMPLEMENTATION**

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**Abstract:**

One of the arguable issues within the takaful industry is the underwriting surplus on the end of financial year of the takaful operator. In reality, the exercise of handling, allocating and sharing the underwriting surplus of takaful operation diverse depending on legal substructure, regulatory requirements and accepted takaful model by specific operator. It is value mentioning that shariah intellectuals are not on contract whether takaful operator is allowable to share in underwriting surplus or not. Subsequently, there are two main practices centred in Gulf States and Malaysia relating to sharing of underwriting surplus. Moreover, the primary section is dedicated to readdressing the foremost financial concepts related to the surplus such as underwriting surplus and return. Types of distribution for example, pro-rata and offsetting will also be deliberated in the light of equity principle advocated by the Scholars. The second section contracts with the main juristic opinions and policies defined against and in favour of surplus distribution. Legal principles such as possession or otherwise surplus next donation will be meticulously considered and reviewed in light of the present exercise of takāful operators. The final section agreements with a general outline of Sharī‘ah strictures in relation to reasonable surplus distribution, followed by scrutiny of surplus distribution performs of a number of takāful operators. This article examines that, while it is powerfully suggested to reallocate the surplus to the participants only, there are exceptional reasons supported by Sharī‘ah evidence.

**Keywords:** surplus sharing– takaful – justifiable distribution

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## 1. INTRODUCTION

Takaful is derived from the Arabic root-word “kafala”, a verb, which means guarantee, bail, warrant or an act of securing one’s need.<sup>1</sup> Therefore, takaful (in its reciprocal form) means joint guarantee, whereby a group of participants agree to mutually guarantee each other against a defined loss. The element of mutuality in *takafulis* embedded in the legislation, regulatory frameworks and international standards on *takaful*.

The AAOIFI’s Shariah standard 26 (2) of 2007 provide (Bank Negara Malaysia, 2004: 2).

“Islamic Insurance is a process of agreement among a group of persons to handle the injuries resulting from specific risks to which all of them are handle the injuries resulting from specific risks to which all of them are vulnerable.<sup>2</sup> A process, thus initiated, involves payment of contributions vulnerable. A process, thus initiated, involves payment of contributions as donations, and leads to the establishment of an insurance fund that as donations, and leads to the establishment of an insurance fund that enjoys the status of a legal entity and has independent financial liability. enjoys the status of a legal entity and has independent financial liability.”

The Islamic Financial Services Board (IFSB) and International Association of Insurance Supervisors (IAIS) give the following description:

“Takaful is the Islamic counterpart of conventional insurance, and exists in both life (or “family”) and general forms. It is based on concepts of mutual solidary, and a typical takaful Undertaking will consist of a two-tier structure that is a hybrid of a mutual and commercial form of company.” (Bank Negara Malaysia, 2013: 36).

The abovementioned basic principles of takaful make it clear that the stature of takaful contributors in a takaful organization is basically different from that of policyholders in

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<sup>1</sup>See Engku Rabiah Adawiah and Hassan Scott, *Essential Guide to Takāful* (Kuala Lumpur: CERT Publications, 2008), 15 *et seq.*

<sup>2</sup>AAOFI’s definition of surplus reads: ‘[the surplus] is the residue of the participants’ premiums as well as the reserves and their returns, after deducting all expenses and paid and unpaid claims during the financial year. This [residue] is not profit but is called surplus’ ; see AAOFI, *Shari’ ah standards* (Manama: AAOFI, 2004-2005), 451.

conventional insurance (Saaty& Ansari, n.d.). In a commercially-run takaful agreement, the takaful contributors are the ones bearing the risks, therefore, the subject of surplus and its specific nature are considered to be the main change between takāful and conventional insurance. Meanwhile the inception of the takāful industry, two juristic approaches have surfaced as to whether a takāful worker is allowed to portion in the surplus. The ordinary opinion is signified by the majority of Muslim jurists who have definitely prohibited the sharing of the underwriting surplus between the takaful operator and the participants. This view is well regulated by the Auditing and Accounting Organization for Islamic Financial Institutions (AAOIFI) and the Fiqh Academy of Organization of Islamic Conference (OIC), while the other opinion is supported by the Shari'ah Advisory Council (SAC) of the Central bank of Malaysia, which allows the distribution of surplus. In this article we objective to re-examine the Islamic principles of surplus distribution and examine the juristic changes on surplus sharing. We will also explore current practices of surplus sharing in light of the Shariah's general principles and objectives (Younes Soualhi, 2016).

## **1.2 Surplus Sharing Concepts**

One of the arguable is an issue that raises both Shari'ah and legal scrutiny. The opinions of Shari'ah scholars additionally practitioners on surplus join or sometimes diverge due to the different Shari'ah and legal frameworks adapting the takāful industry. Three issues need scrutiny at this junction: the concepts, the modes, and the shift from Islamic surplus/profit sharing to an agency model.

## **1.3 Issues in Product Management**

### **Profit *versus* Surplus**

It must be highlighted that takaful (even when organized as a profit seeking venture) is not the same as conventional insurance. The points of difference are sharp. The differences lie in the source of returns. Returns for a conventional insurance company come from two sources. First, the company makes return by advancing the insurance premiums. Note that premium is the conventional name for participant's or policyholder's contribution. Second, return is sourced from underwriting surplus, which is the difference between what the policyholders donate through premiums and what is paid as insurance claims, benefits and compensation. Such

surplus, unnecessary to say, depends on how the insurance product is estimated or the level insurance premium. An insurance company can improve its bottom line by pricing too high. Though, it is constrained by industry practices. To the extent there is mispricing in the industry, all insurance companies would benefit. The insurance company, of course, incurs expenses in organizing and operating the business of insurance (Obaidullah, 2007).

Debatably, the Sharī'ah provided adequate grounds to share in the underwriting surplus, particularly in the absence of any written or general Sharī'ah principle disapproving such a practice. Besides, the Sharī'ah Advisory Council of the Central Bank of Malaysia permits both takāful operators and participants to share in the underwriting surplus on the grounds of tabarru' or nature of the donation in takāfulas well as the performance fee (Adawiah&Scott). Another argument holds that Middle Eastern takāful companies are allowed by their Sharī'ah boards to charge a performance fee from the surplus. The thrust of this argument will be discussed later in this article (Younes Soualhi,2016).

In contrast, the wakālah model delivers yet additional avenue to practice takāful on aextraSharī'ah-compliant framework. Broadly practiced in the Middle East, the pure wakālah model clearly spells out the difference between the underwriting surplus, which is the excess of influence over claims, and investment returns realized from investing the tabarru' fund using the mudarabahinstrument. Although the profits, being the investment returns, are allowed to be shared on a profit-sharing basis, the underwriting surplus shall be re-distributed to the contributors or be used to establish new reserves or lower future prices forconsequent underwriting years. Paragraph 5/5 of AAOIFI Standard on Islamic Insurance reads (AAOIFI, *supra* note 6 at 451).It is allowable for the policy to contain a provision that deals with the underwriting surplus according to [benefit] maṣlaḥah, as stated in the terms of the policy, for example the establishment of capitals, the bargain of prices, donating [the underwriting surplus] to aids, or distributing it or a part thereof to the participants, provided the takaful operator does not share in it(al-Zuhayli,2000).

The AAOIFI standard can be seen as a counter-argument to the Malaysia approach, a matter that will be talked later in this article.

1.1.2 Modes of Surplus Distribution. In here three main modes of surplus distribution accepted by *takaful* operators:

1. Pro-rata mode: whether the surplus is preserved as underwriting surplus plus income or guaranteeing surplus only, it is dispersed in proportion to the contribution paid by the participants, without distinguishing between claimable and non-claimable accounts. This mode seems to be in line with the Shari'ah's general principles and objectives for *takaful*, which is collaboration, a system that provides mutual guarantee and reciprocal risk protection. Such as type of the partnership (Muhyiddin, 2007).

2. Selective mode: *Takaful* operators tend to divest claimable accounts so that they become more practical in defensive their insured assets in the future. For example, of this mode would be the Islamic Insurance Company in Qatar. Over this selection has a bearing on the Shari'ah principle that reflects the underwriting surplus the 'property' (*milk*) of the contestants, the very point that we will use later to deliberate the ownership element claimed on the underwriting surplus (Salim, 2002).

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3. Off-setting mode This mode is applicable only on accounts the underwriting surplus of which is less than the claims. If the underwriting surplus is equivalent to or greater than the claims, then the contributor does not share in the surplus. This mode is observed as the most reasonable amongst the other modes. It is more precise in terms of calculation and more so in terms of justice and *ta'awun* (cooperation),<sup>12</sup> both are essential *maqāṣid al-sharī'ah* in *takaful* operations. This mode has been accepted by some *takaful* companies such as Islamic Insurance Company of Jordan (Manama, 2010).

The abovementioned basic principles of *takaful* modes are all Shari'ah compliant based on the principles of *maṣlahah* and general views or customs (*urf*) which would leave it to the practitioners to opt for any mode that best serves the *takaful* industry.

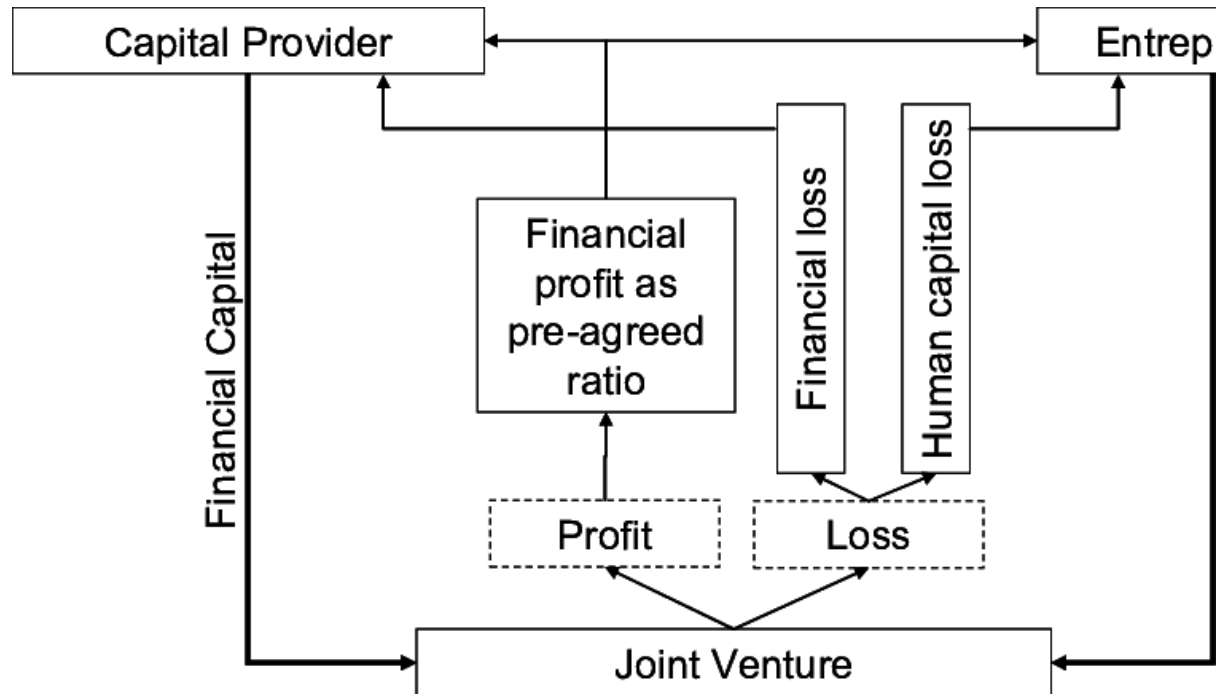
### 3.4 Contracts and Models of Takaful

#### The Mudaraba Model

*Mudharabah* is a partnership contract whereby one party provides a capital whereas second party offers ability and entrepreneurship. A profit, if any, will be shared through on the pre agreed

ratio. If Any financial loss will be borne only by the capital provider (*rabbmaal*) but the fund manager (*mudharib*) will bear the loss of effort and labor.

**Figure 1: MudharabahModel**



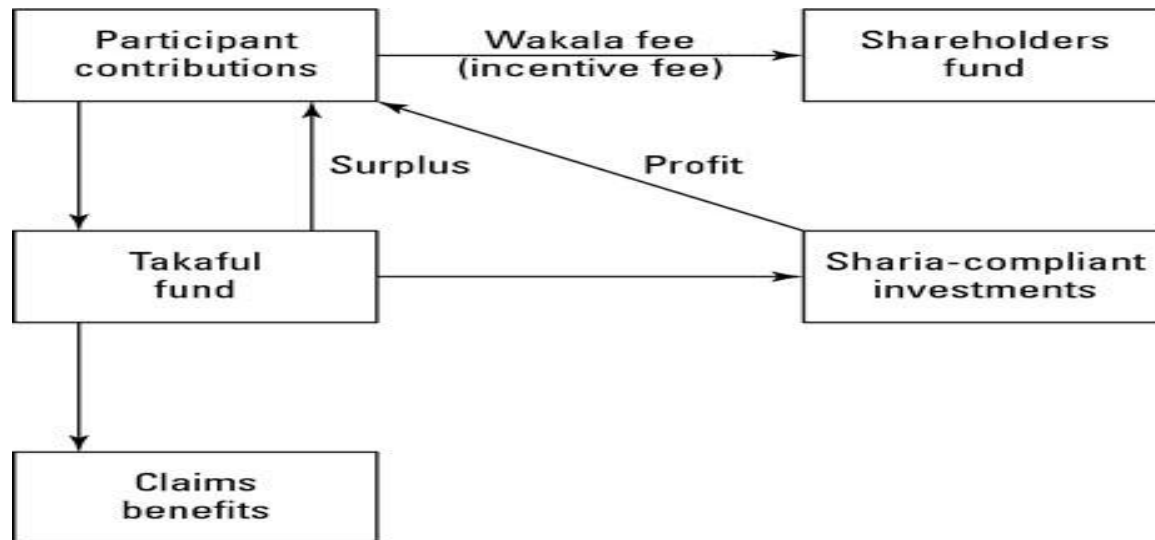
In respect to *takaful* operation, the capital providers are known as the participants while the fund managers are the *takaful* operators. Below this contract, the *takaful* operator will accept the donations from the participants. The contribution is deemed as a capital (*ra'sulmaal*) that will be managed and capitalized in a *Shari'ah*compliant manner. The contract agrees that any profit from managing the fund will be shared among the *takaful* operator and participant based on the ratio agreed truthful. In the event of loss in the Participant's Risk Fund (PRF), but, *takaful* operator shall provide an interest free loan (*qard*) that should be repaid when the PRF generates profit (Dusuki (ed), 2011).

### The Wakala Model

In the case of *wakalah*, it is an agency contract whereby party orders another party as his agent to achieve a particular task. Accepting this in the *takaful* practice, the principal (*muwakkil*) is known as the participant while the agent (*wakil*) is observed as the *takaful* operator. The

participant employs the *takaful* operator as an agent to manage the fund. As recompense, the *takaful* operator is permitted to reach a pre-determined agreed fee. *Takaful* operator then invests the fund in *Shari'ah*compliant funds. Any profit or surplus will be fully circulated to the participants. As represented above, the pure *mudharabah*model allows *takaful* operator to only enjoy profit sharing based on agreed ratio, and not an underwriting surplus. The underwriting surplus in this model should be fully distributed to the participants as it is part of the principle, and not the profit. But, this condition is not chosen by most *takaful* operator. Therefore, the *takaful* operator constructs a modified *mudharabah*model whereby the underwriting surplus is construed as “*mudharabah*profit” to be shared between the participants and the *takaful* operator (Adawiyah and Odierno, 2008).

**Figure 2: WakalahModel**



The absent of surplus distribution in the Wakalah model calls for the *takaful* operator to re-examine this above-mentioned model. With that, approximately of the *takaful* operators then planned the application of a modified *wakalah*. In this model, the *takaful* operator are entitled to reach a pre agreed fee based on the principle of *wakalah*and concomitantly a portion of surplus, called as performance fee (Hassan, 2014).

The Modified Muḍārabah and Modified Wakālah new models may have been generated by the quick development in the takāful and re-takāful industry that would occasionally necessitate diversification of models. Furthermore, issues pertaining to pricing and incentives do have an impact on the diversity of models. Values could be dropped in a modified wakālah model due to



surplus sharing. Consequently, if the shift would lead to more modest prices, and the entire operational framework would be added cooperative than commercial (Bank Negara Malaysia, 2006) then the modified wakālah model should be addressed as a positive development in the takāful industry. Equally, if the shift would finally enhance another source of return to the shareholders, i.e., wakālah fee at the expenditure of the participants, particularly when they get a actual low percentage of the underwriting surplus, then the whole idea of a cooperative promise (ta'aminta'awuni) would be at stake, especially when prices are not reduced or in the worst scenario the participants would be asked to top up the risk fund to cover deficits since the fund is presumably theirs.

## **2.0 The distribution of surplus from Shariah perspective**

The major debatable issue among Middle Eastern *takāful* companies and most Malaysian *takāful* operators is the sharing of underwriting surplus. The opponents of sharing the underwriting surplus back their contention through choices taken by highly commended institutions such as AAOIFI whose standard on *takāful* reads: 'Tetakāful operator does not share in the [underwriting surplus]'. A rare major reasons are given to deny the *takāful* operator a share of the underwriting surplus. The 2013 Fiqh Academy Resolution on Surplus made it clear that 'it is possible to plough back the whole surplus to the *takāful* fund or redistribute it wholly or partially to the participants in accordance with the principle of justice as well as the terms and conditions of the *takāful* policy (YounesSoualhi, 2016).

### **2.1 Hibat al-thawāb as Ground for Distributing Surplus Entirely to Participants**

The principle of *hibat al-thawāb* requires that a donor can require a thought (*thawāb*) from the beneficiary in exchange for the gift. According to al-Qaradaghi, the surplus is the *thawāb* that must be given to the donor in exchange for the gift. Though, this argument does not stand as strong proof for the following reasons. All prophetic Ḥadīths verifying *hibat al-thawāb* are based on the contrast between *hibah* (gift) from one side and *thawāb* (exchange) from the other, i.e., total *hibah* for total *thawāb*. Imām San'ani refers to the Ḥadīth of 'Aisha (r.a.) who said: The Prophet (s.a.w.) used to accept *haddiyyah* (gift) and reward its giver (al-Bukhārī)'. Obviously, the underwriting surplus is remotely unspoken as the *thawāb* referred to in the above-mentioned Ḥadīth. In the context of *takāful*, the underwriting surplus is truly part of the initial



*hibah*(contribution) for which a *thawāb*(indemnification/surplus) is sought, while in *hibat al-thawāb*, the *thawāb* should be something different from the *Hibah* and not part thereof. If the same *hibah* is returned to the same donor (Salim, 2016). On the other hand, Al-Qaradaghi also argued that Ḥadīth of Nahd/Nihd also provides solid ground for confining the surplus distribution to the participants only. According to al-Jurjānī, *tanahudis* defined as an act of contributing an expense similar to that of his fellow companions while on a journey (YounesSoualhi, 2016). Imām al-Bukhārī states: ‘Muslims did not see any harm in *nahd*’. The latter, as Ibn Hajar explains is ‘the allocation of a fund in proportion to the number of the participants [in the fund]’.<sup>3</sup> Although, this arrangement had more practical use in journeys to provide mutual coverage of expenses, it has been viewed as a mechanism to share risks regardless of the undertaking. The Ḥadīth of *nihd* reads:<sup>4</sup> Jabir bin ‘Abdillah narrated that: then the Prophet (s.a.w.) dispatched a battalion along the coast, appointing Abu ‘Ubaidah bin al-Jarrah as their leader while they were three hundred including myself. As we reached a certain location, our food finished, thereafter Abu ‘Ubaidah ordered all the food of the battalion to be pooled, of which mine was dates. Every day He would feed us little food until it finished, and then we started getting one date each (Riyad, 2004).

### 3.0 Justifiable versus Arbitrary Surplus Distribution

A central issue arises as to whether current surplus distribution is equitable or arbitrary. We would discourse this issue on the premise that surplus distribution is permissible under Sharīah law, in opinion of our earlier juristic argument. There is more than one practice of surplus distribution in *takāful* business, and one can only afford to be selective for the sake of brevity and simplicity. Though, before addressing roughly experiences of surplus conduct, the author would like to place emphasis on the concept of equitability in surplus distribution. From a Sharīah perspective, the entire issue of *takāful*, including that of surplus distribution ratios, is a matter for *ijtihād* that would depend on benefits (*maṣlahah*) and customary practices.<sup>5</sup> Firstly, the ratio of surplus distribution is to be definite by both *takāful* operators and the participants or their

<sup>3</sup> Ibn Hajar al-‘Asqalani, *Fath al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Muhibuddin al-Khatib (Beirut: Dār al-Ma’rifah, n.d), 5/129.

<sup>4</sup> Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, (Beirut: Dār Ibn Kathir, 1987), 2/879.

<sup>5</sup> See also ‘Guidelines on *Takāful* Operational Framework’ by Bank Negara Malaysia, 12

legislatures on the Board of Directors. Secondly, corporate governance framework for *takāful* operations should allow for a fair and actual illustration of participants on the Board of Directors to protect their rights to claim a surplus. Finally, the *takāful* operator may or may not share in the underwriting surplus, depending on the model adopted, which should be approved by the respective Sharīah Board.<sup>6</sup>

### 3.1 Performs of Surplus Distribution

Surplus distribution varies according to the *takāful* model as well as the supervisory framework governing the respective *takāful* market. The following study will focus both on the Gulf region (GCC) and Malaysia experiences, selecting a few *takāful* legislations and some *takāful* certificates as example.

### 3.2 The Malaysian Experience

The Malaysian experience in *takaful* has witnessed two phases: (1) promulgation of the *takaful* Act 1984 which laid the ground for the *takaful* industry to be officially launched, and (2) promulgation of the Islamic Financial Services Act 2013, which repealed the *takaful* Act 1984.<sup>7</sup> The first *takaful* operator, MNI *takaful*, adopted the modified *muḍārabah* model whereby profit, defined as underwriting surplus plus investment returns, could be shared between the *takaful* operator and participants based on a ratio agreed upfront.<sup>60</sup> The ratio for MNI *takaful* is 20:80 and 30:70 ratios for Sharikat Takāful, meaning that 20% for MNI Takāful and 30% for Sharikat Takāful are credited to the shareholders' fund.<sup>8</sup>

The second phase began newly when all of Malaysia's *takaful* operators lifted to the *wakālah* model. Malaysian *takāful* operators have recently accepted a modified *wakālah* model, which would agree them to earn from a *wakālah* fee, investment returns from the participant fund and a share from the underwriting surplus. Bank Negara Malaysia, in its 2013 enforceable rules on *takāful*, has set general guidelines for surplus/profit sharing, which must be

<sup>6</sup>See also 'Guidelines on *Takāful* Operational Framework' by Bank Negara Malaysia, 12.

<sup>7</sup>See <http://www.secp.gov.pk/notification/pdf/2012/Takaful-Rules-2012.pdf>.

<sup>8</sup>There are different ratios of surplus distribution applied by Malaysian *takāful* operators based on different Sharīah principles followed. Sharikat Takāful Malaysia, the only company which has been applying *muḍārabah* model in Malaysia since inception in 1984 used to distribute the surplus with a ratio of 70:30 for Family *takāful*, and 60:40 for General *takāful*.

permitted by the actuary. The Common Guidelines read: ‘*takaful* operators are necessary to establish a written policy on the management of PRF surplus which shall be permitted by the Sharīah Committee and the Board. Written policy established shall comply with Sharīah principles underlying the operational model approved. The policy shall comprise the policy on application of surplus including surplus distribution and the level of surplus to be retained in the fund to cushion future instabilities in experience of that PRF’.<sup>9</sup> One question may be renowned at this juncture: Do the proponents of the surplus sharing model share in the underwriting loss in addition to sharing in the underwriting surplus? Muhammad Ayub noted that ‘the *takāful* operator (adopting this *muḍārabah* model) becomes the underwriting surplus, but does not bear the underwriting loss’.<sup>10</sup> Though, the interest-free loan (*qarḍḥasan*) injection that the *takāful* operator delivers in case of deficit would expose it to losses as the loan may never be recovered from future surpluses.

The other problem is that participants are not actually involved in determining the ratios of surplus distribution despite Bank Negara’s assertion in the 2006 *Takāful* Operational Framework (TOF) that the ‘Surplus of the Risk Fund belongs wholly to the pool of participants, and that the *takāful* operators are permissible to share the surplus or investment profit, based on the contract between the participants and *takāful* operator’. In the 2013 TOF, but, BNM has not confined ownership of the surplus to the participants, but the importance assigned to them to obtain their surplus before the *takāful* operator can get his, may hint that the surplus is far from being an undivided property. Calling it a performance fee, BNM has allowed the *takāful* operator to share in the surplus only ‘if the participants’ portion of the PRF surplus is also paid or accrued to the participants’.<sup>11</sup>

This writer deliberates these ratios more equitable, provided the concept of incentive should not become the main drive to provide *takāful* treatment. The *takāful* fee is supposed to provide such an incentive if truthfully calculated in proportion to the underwriting and administrative expenses.

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<sup>9</sup>Bank Negara Malaysia, Guidelines on *Takāful* Operational Framework, June 2013. In TOF, 2006, Bank Negara, 13, the surplus distribution proposed by BNM was as follows:

<sup>10</sup>Muhammad Ayub, *Understanding Islamic Finance* (London: John Wiley, 2007), 424.

<sup>11</sup>BNM, *Guidelines on Takāful Operational Framework* 2013, 22.

### 3.4 The Gulf Experience

One of the top Islamic insurance banks in the Gulf is Bank Aljazira in Saudi Arabia. Approving the *wakālah* model, the company is compensated via agency fees in the form of a proportion of contribution.

A performance-related commission is the underwriting surplus, which is clear as the surplus of contributions over claims. This fee is observed as an incentive to ensure prudent underwriting, enhance investment performance of the *takāful* funds, minimize direct expenses related to the *takāful* fund such as issue cost, stamp duty, legal fees re *takāful* cost, etc.<sup>12</sup> The writer is of the opinion that this is an arbitrary surplus redistribution guidelines, which has gone afar the element of incentives. The extension of this practice may defeat the whole resolution of the *takāful* industry as it would be more driven to profit maximization rather than to cooperation. The injustice is even bitter when participants are not involved in determining the ratio of surplus distribution. The ratio 10:90 is clearly arbitrary and may cast doubt over its Sharīah agreement in opinion of the proposed parameters of equitable surplus distribution. Article 25 of the United Arab Emirate *Takāful* Law<sup>13</sup> forbids the distribution of surplus to savers. The Sudanese *Takāful* Law,<sup>14</sup> although ambiguous with regards to specific ratios of surplus distribution, has not quantified any distribution to shareholders. The Jordanian *Takāful* Guidelines has not made any reference to the methods of surplus sharing but the practices of the Jordanian *takāful* companies show that the shareholders do not share in the surplus.

Though, one can perceive an ambiguity in Articles 2 and 6 of the Jordanian *Takāful* Guidelines 2011. Article 2 states that the surplus would be distributed after claims are paid, practical funds are maintained, reserves are formed and the share of the shareholders is subtracted ‘in profit for managing equally risks and investment’. Article 6 of the same Guidelines obviously states that remuneration of the shareholders is made from the *wakālah* fee occupied upfront. Article 6.6 of the Qatari Insurance Law<sup>15</sup> clearly states that it is ‘the duty of the *takāful* company to regulate the

<sup>12</sup>See [www.sama.gov.sa/ar/insurance](http://www.sama.gov.sa/ar/insurance); see also Mohammad Liba. *Al-Ta'mīn al-Ta'awūniyat biqatuhufiā Bank al-Jazirah wa Shrikat Ikhlas li-l Takāful Bi-Malaysia*, Ph.D. Thesis, Department of Fiqh and Uṣūl al-Fiqh, International Islamic University, Kuala Lumpur, 2006.

<sup>13</sup>See <http://www.ia.gov.ae/ar/Documents>.

<sup>14</sup>See <http://www.moj.gov.sd/content/laws4/11/6.htm>

<sup>15</sup>See [http://www.takaful.coop/images/stories/QFCRA\\_Qatar\\_Insurance\\_Business\\_Rules\\_2006.pdf](http://www.takaful.coop/images/stories/QFCRA_Qatar_Insurance_Business_Rules_2006.pdf)

surplus and shortfall realized as a result of the insurance operations, and the basis on which the surplus and deficit are to be shared between the participants and the shareholders. However, this clause seemingly contradicts another clause of the Qatari Insurance Law, which states: the insurance policy must comply to all AAOIFI standards including Standard No. 13'. This is ambiguous, as the AAOIFI Shari'ah standard on *takāful* strictly forbids surplus sharing, while Article 6.6 of the Qatari Insurance Law appears clearly to allow it. Pakistani legislation on *takāful* is quite similar to AAOIFI standards on the same.<sup>16</sup>

#### 4.0 CONCLUSION AND RECOMMENDATIONS

The results on the surplus management and distribution practice of the *takāful* machinists in Malaysia and Gulf states indicate the criticality of sound and robust surplus management. Current surplus management will not only provision the long-term well-being of the *takāful* fund, which is in the interest of the participants i.e. the *takāful* operator's clients, it will also help endorse the competitiveness of the *takāful* operator itself. The distinctiveness of the surplus-sharing feature can also be one of the tools to attract customers to subscribing to *takāful*. More significantly, the application of internal guides on surplus sharing set by *takāful* operators must be meditative of the operators' fiduciary duties to the participants, to whom the ownership of the *takāful* fund and hence surplus belong.

The another conclusion highlights the importance of expressing adequate Sharīah parameters for reasonable surplus redistribution. This author has attempted to shed some light on these parameters, however further independent reasoning (*ijtihād*) is required to arrive at sound and practical parameters that would enhance the *takāful* industry, equally locally and abroad. By and large, whereas some *takāful* operators are accepting equitable ratios of surplus distribution, others still need to revise their ratios, not only to satisfy the dictates of collaboration in *takāful*, but also to continue competitive in the square. For future work relevant to the surplus as a unique feature in *takāful*, a study on the effectiveness of the surplus in enticing consumers' interest in participating in the *takāful* contract could be explored. This could be approached from the

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<sup>16</sup>See the different practices of surplus sharing in the author's working paper, 'MadaTawāfuqA'malShariakatal-Takāfulma'aQarar al-Majma'al-Fiqhī200/2013', in Organization of Islamic Cooperation (OIC) Fiqh Academy Special Seminar on Takāful (Jeddah 2014).

perspective of both retail and corporate consumers' perceptions and awareness of the concept of surplus.

### References:

- [1] See Engku Rabiah Adawiah and Hassan Scott, *Essential Guide to Takāful* (Kuala Lumpur: CERT Publications, 2008), 15 *et seq.*
- [2] Bank Negara Malaysia. (2004). *20 Years' Experience of Malaysian Takāful Industry*. Kuala Lumpur: Bank Negara Malaysia.
- [3] Bank Negara Malaysia. (2010). *Shariah Resolution in Islamic Finance – 2nd Edition*. Kuala Lumpur: Bank Negara Malaysia.
- [4] Malaysia, B. N. (2013). Guidelines on Takāful Operational Framework (TOF). *Kuala Lumpur: Bank Negara Malaysia*.
- [5] Saaty, A. S. (2008). TAKAFUL—AN ISLAMIC WAY OF INSURANCE-DEVELOPMENTS, GROWTH, CHALLENGES AND ISSUES.
- [6] Soualhi, Y. (2016). Surplus Distribution in Current Takāful Operations: A Critical Sharī'ah Perspective. *arab law quarterly*, 30(3), 224-244.
- [7] Akhter, J. (2007). Mohammed Obaidullah, Islamic Financial Services.
- [8] AAOFI, Sharī'ah standards (Manama: AAOFI, 2004-2005), 451.
- [9] Wahbah al-Zuhayli, *al-Mu'amalat al-Maliyyah al-Mu'asirah* (Damascus: Dār al-Fikr, 2002), 278.
- [10] Ali Muhyiddin al-Qaradaghi, *Al-Ta'mīn al-Islāmī* (Beirut: Dār al-Basha'ir al-Islamiyyah, 2006), 311. See also Abdussatar Abu-Guddah & 'Izzuddin Khojah (eds.), *Fatāwā al-Ta'mīn* (n.p: al-Sharī'ah al-Islāmiyyah li-l-Ta'mīn al-Islāmī).
- [11] Ahmad Salim Milhim, *Al-Ta'mīn al-Islāmī* (Dār al-I'lam: Amman, 2002), 167.
- [12] 'Ujail Jasim al-Nashmi, '*Al-Fa'idwa Tawzī'uhu 'alā Sharikat al-Ta'mīn al-Islāmī*', in *The 9th Conference of Islamic Sharī'ah Board of Islamic Financial Institutions* (Manama, 2010).
- [13] Dusuki, A. W. (2011). *Islamic Financial System: Principles & Operations*. Kuala Lumpur: ISRA.
- [14] Engku Ali, R.A. & Odierno, H.S. P. (2008). *The Philosophy and Shariah Principles in Takāful*. Kuala Lumpur: CERT

- [15] Ali, M. M., Hassan, R., & Hasan, S. M. (2015). An Exploratory Study of Shari'ah Issues in the Application of Tabarru'for Takaful. *Global Review of Islamic Economics and Business*, 1(3), 164-174.
- [16] *Takāful* Operational Framework, Bank Negara Malaysia, 2006, 9.
- [17] Al-San'ani, *Subul al-Salām* (Beirut: Dār al-Ihya' al-Turath, H1379), 3/91.
- [18] Ibn Hajar al-'Asqalani, *Fath al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Muhibuddin al-Khatib (Beirut: Dār al-Ma'rifah, n.d), 5/129.
- [19] Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, ed. Mustapha Dib al-Bugha (Beirut: Dār Ibn Kathir, 1987), 2/879.
- [20] Hussein Hamid Hassan, 'Usus al-Takāful al-Ta'mīnīfī Daw' al-Sharī'ah al-Islāmiyyah', in
- [21] *The 1st International Takāful Seminar* (Riyad, 2004).
- [22] Guidelines on *Takāful* Operational Framework' by Bank Negara Malaysia, 12.
- [23] <http://www.secp.gov.pk/notification/pdf/2012/Takaful-Rules-2012.pdf>. Bank Negara
- [24] Malaysia, Guidelines on *Takāful* Operational Framework, June 2013. In TOF, 2006, Bank Negara, p. 13, the surplus distribution proposed by BNM was as follows:
- [25] Muhammad Ayub, *Understanding Islamic Finance* (London: John Wiley, 2007), 424.
- [26] BNM, *Guidelines on Takāful Operational Framework* 2013, 22.
- [27] <http://www.ia.gov.ae/ar/Documents>.
- [28] <http://www.moj.gov.sd/content/lawsv4/11/6.htm>
- [29] the different practices of surplus sharing in the author's working paper, 'Mada Tawāfuq A'mal Shariakat al-Takāful ma'a Qarar al-Majma' al-Fiqhī 200/2013', in *Organization of Islamic Cooperation (OIC) Fiqh Academy Special Seminar on Takāful* (Jeddah 2014).