



# NATIONAL INSURANCE COMMISSION, NIGERIA

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## OPERATIONAL GUIDELINES 2013 TAKAFUL-INSURANCE OPERATORS

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## Section 1 Overview

### Introduction

1.1 The National Insurance Commission (the Commission) issues the Guidelines for *Takaful-Insurance* (the Guidelines) pursuant to section 7 of the NAICOM Act 1997.

1.2 As part of the Commission's ongoing pursuit to increase insurance penetration in Nigeria and increase the contribution of insurance to the national GDP, the need for *Takaful-Insurance* was identified following detailed research. *Takaful-Insurance* is a form of insurance which incorporates elements of mutuality and ethical finance considerations and is open to all people regardless of faith and background. These Guidelines are issued to provide regulatory guidance for *Takaful-Insurance* in the industry with the desire of enhancing financial inclusion in Nigeria and to ensure *Takaful-Insurance* providers are not disadvantaged.

1.3 The Guidelines for *Takaful-Insurance* provide guidance on elements that are specific to the operations of a *Takaful-Insurance* Operator. These Guidelines are to be read in conjunction with all other relevant legislations, guidelines and circulars as determined to be applicable to *Takaful-Insurance* Operators by the Commission. The Guidelines will represent the primary regulatory framework with regards to *Takaful-Insurance*.

1.4 It is the responsibility of the *Takaful-Insurance* Operator to obtain any clarification required on the applicability of these guidelines, legislations and all other regulations from the Commission.

### Objectives

1.5 The Guidelines outline and clarify the framework within which *Takaful-Insurance* Operators are to carry out *Takaful-Insurance* business. The objectives of the Guidelines are as follows:

- Establish duties and responsibilities of *Takaful-Insurance* Operators and such other institutions.
- Set requirements and minimum standards for operation and disclosure that aims to protect the interests of consumers/participants.
- Provide a framework for the establishment and growth of *Takaful-Insurance* business that is efficient and leads to financially sound and sustainable *Takaful-Insurance* funds.

1.6 The Guidelines are applicable to all *Takaful-Insurance* Operators carrying out *Takaful-Insurance* business in Nigeria registered by the Commission.

### Scope

1.7 The Guidelines regulate Commercial *Takaful-Insurance* business conducted in Nigeria and cover all operations relating to *Takaful-Insurance* Operators. These include:

- Establishment of *Takaful-Insurance* operating models.
- Specific governance standards for *Takaful-Insurance* operators
- *Takaful-Insurance* fund management methods
- Management of participants (policy holders)
- Operators specific operational requirements
- Capital requirements for a *Takaful-Insurance* Operators
- Reporting requirements for *Takaful-Insurance* Operators

1.8 The Guidelines apply to *Takaful-Insurance* Operators (including *Micro Takaful-Insurance Operators*) that are operating exclusively as *Takaful-Insurance* providers (“stand-alone operation”) and to *Takaful-Insurance* business being provided by a conventional insurance institution alongside existing conventional insurance business (“window operators”). The Guideline is limited in the consideration of *Retakaful-Insurance* to the requirements for a *Takaful-Insurance* Operator as set out in paragraph 6.12. Additional requirements may be set by the Commission from time to time as deemed fit for *Micro Takaful-Insurance* providers. *Micro Takaful-Insurance* providers are required to contact the Commission to seek confirmation of any such additional requirements.

### **Implementation**

1.9 These Guidelines shall take effect from March 2013. Where the Guidelines introduce limits, *Takaful-Insurance* Operators are required to ensure that the participants of existing *Takaful-Insurance* business are not disadvantaged. *Takaful-Insurance* Operators are required to take appropriate actions within a reasonable time to ensure full compliance with the Guidelines.

1.10 Any aspect of the Guidelines that is not being complied with is to be disclosed to the Commission with the *Takaful-Insurance* Operator providing a plan that sets out activities and timeline towards the full compliance.

### **Concept of *Takaful-Insurance***

1.11 *Takaful-Insurance* is a form of insurance that is compatible with the principle of the Shari’ah (Islamic Law). Market survey undertaken by the Commission indicated a significant religiously based objection to conventional insurance. A number of financial principles inspired by Shari’ah are shared by other Abrahamic faith. *Takaful-Insurance* is in consonance with elements of mutual insurance and also ethical financial management and is accountable to all insuring public regardless of faith. *Takaful-Insurance* is based on two principles:

- Tabarru (donation/contribution)—is a donation covenant where all participants agree to mutually support each other and is the basis of participant’s contributions into *Takaful-Insurance* Fund.
- Ta’awun (co-operation) – is the established Islamic concept of mutual assistance and is the basis on which participants willingly agree for the *Takaful-Insurance* fund to be used for the mutual benefit of all participants to meet eligible claims.

1.12 The key elements of a *Takaful-Insurance* scheme include:

- Mutual Guarantee – all policyholders agreeing for the pooled funds to be used for assistance in specified circumstances of loss.
- Ownership of the Fund – the participants are the main owners of the *Takaful-Insurance* fund.
- Management of the *Takaful-Insurance* Fund – the *management role* is performed by the *Takaful-Insurance* Operator in consonance with international best practices.
- Investment Conditions – any investment activity performed using the participants contributions must be in line with the governing principles of *Takaful-Insurance* (e.g. avoiding investment in select unlawful industries that are deemed harmful to society and avoiding interest).

1.13 Additional explanation of certain Arabic terminology used in the Guidelines has been included in Appendix 1 (for the reader’s interest).

1.14 Illustrative *Takaful-Insurance* fund operating models aligned with international *Takaful-Insurance* market practice are provided in Appendix 2.

## Section 2 Establishment of an Operating Model

### Categorization of *Takaful-Insurance* Operation

2.1 *Takaful-Insurance* operations categorized into two types/classes as follows:

- Family *Takaful-Insurance*- typically a long term arrangement between the *Takaful-Insurance* Operator and *Takaful-Insurance* participant providing the policyholder with financial relief. For instance, bereavement, critical illness or disabling injury to a fund contributor.
- General *Takaful-Insurance*- typically a short term agreement between the *Takaful-Insurance* Operator and *Takaful-Insurance* participant providing financial compensation for specified losses such as theft or damage etc. but will exclude Family *Takaful-Insurance*.

### Adoption of Operating Model

2.2 The *Takaful-Insurance* participant and *Takaful-Insurance* Operator enter a contractual relationship for *Takaful-Insurance* services for a fee. The *Takaful-Insurance* Operator will establish and document one of the following operating models, aligned with international best practice, to conduct *Takaful-Insurance* business:

a) *Takaful-Insurance* based on Mudarabah (Profit sharing) Contract

In this model, the *Takaful-Insurance* Operator holds the role of the Mudarib (Entrepreneurial Partner) and the *Takaful-Insurance* Participants are the Rabul-mal (owner of capital). The key aspects of the model are set out in the contract and shall include:

- *Takaful-Insurance* Operator manages investment and underwriting activities.
- The percentage share of investment gains and operating surplus for the *Takaful-Insurance* Operator.
- Financial losses to be borne by *Takaful-Insurance* participants.

b) *Takaful-Insurance* based on Wakalah (Agency) Contract

In this model, the *Takaful-Insurance* Operator holds the role of the Wakil (the agent) acting on behalf of the *Takaful-Insurance* Participants in return for a fee. The key aspects of the model are set out in the contract and will include:

- *Takaful-Insurance* Operator manages investment and underwriting activities.
- *Takaful-Insurance* Operator for performing this service will receive a Wakalah (Agency) fee that is set out in the contract.
- *Takaful-Insurance* Operator is also permitted to a performance related fee as per the contract.

c) *Takaful-Insurance* based on Hybrid Wakalah-Mudarabah (Agency - Profit sharing) contract

In this model, a Wakalah (Agency) contract is in place between the *Takaful-Insurance* Operator and the *Takaful-Insurance* participants for the management of underwriting activities and a Mudarabah (Profit sharing) contract is between the *Takaful-Insurance* Operator and the *Takaful-Insurance* participants for the investment activities.

Specimens illustrating each of the above models are provided in Appendix 2.

2.3 *Takaful-Insurance* Operators are required to obtain the approval of the Commission on the operating model they are intending to use.

2.4 All the operating model(s) and contracts must be presented for approval of the Commission by the *Takaful-Insurance* Operator and are also required to be first approved by the *Takaful-Insurance* Operators' Advisory Council of Experts and Board of Directors.

2.5 Where the *Takaful-Insurance* Operator is implementing an operating model that is not in line with paragraph 2.2, or decides to change its operating model, the *Takaful-Insurance* Operator will require approval from the Commission before further implementation.

### **Operating Model Documentation**

2.6 The *Takaful-Insurance* Operator will maintain as a minimum, the following documentation relating to the operational model(s) in use:

- Contract between *Takaful-Insurance* participants.
- Contract(s) between *Takaful-Insurance* Operator and *Takaful-Insurance* participants.
- Any other relevant information required for understanding of the *Takaful-Insurance* Operator's operational model.

2.7 The *Takaful-Insurance* Operator shall disclose the operating model(s) adopted for use within the participants' policy documentation and its annual report.

2.8 The *Takaful-Insurance* Operator shall maintain at its principal office an updated register of *Takaful-Insurance* certificates for all classes of *Takaful-Insurance* business.

2.9 The *Takaful-Insurance* Operator shall submit specimens of all *Takaful-Insurance* contracts and claim forms to the Commission for approval.

## Section 3 Governance Standards

### General Requirements

3.1 *Takaful-Insurance* business shall only be operated in Nigeria when the business:

- Is established as a limited liability Company or a subsidiary of an insurance company.
- Meet the minimum share capital as may be prescribed by the Commission from time to time.
- Meets registration requirements as prescribed by the Commission.
- Has been registered and registration certificate issued by the Commission.

3.2 The *Takaful-Insurance* Operator shall notify the Commission in writing within 30 days of any change in:

- Registration details.
- Principal place of business.
- Directors.
- Shareholdings over 5%.

3.3 All members of the *Takaful-Insurance* Operators' Board of Directors shall be approved by the Commission prior to appointment. A change in the control of a *Takaful-Insurance* Operator registered in Nigeria can only take place with approval in writing from the Commission.

3.4A *Takaful-Insurance* Operator is required to have a Managing Director / Chief Executive Officer responsible to the Commission for administration of the company. The Managing Director / Chief Executive Officer of the *Takaful-Insurance* Operator shall be approved by the Commission prior to appointment. The cessation of the Managing Director / Chief Executive Officer shall be notified to the Commission by both the *Takaful-Insurance* Operator and Managing Director/CEO within 30 days.

3.5 The Commission may cancel the authorization of a *Takaful-Insurance* Operator by giving 60 days' notice in writing either wholly or in respect of a class of business in certain circumstances as documented in Appendix 3.

### Requirement for an Advisory Council of Experts

3.6 The *Takaful-Insurance* Operator before starting *Takaful-Insurance* operations shall have in place an Advisory Council of Experts (ACE) to ensure the operations are in line with best practice. Any alternative approach to the establishment of the ACE must be preapproved by the Commission as per 3.11.

3.7 ACE must consist of at least three members. A member shall be an individual and not a company, institution or body. A minimum of one Member of the ACE must be professionally qualified and knowledgeable in Insurance. Two members are required to be scholars appropriately qualified and experienced in Shari'ah (Islamic Law) Law with specialization in Fiqh al Mua'amalat (Islamic Commercial Jurisprudence).

3.8 At least one member of the ACE is required to be appropriately qualified and experienced in commercial financial products and services. It is a prerequisite that majority of the ACE members has knowledge and experience in:

- Usul al Fiqh (Islamic Legal Theory).
- Written and verbal communication in Arabic language.
- Written and verbal communication in English language.
- Commercial business transactions in Islamic finance.



3.9 The appointment or reappointment of ACE members must be subject to prior approval by the Commissioner or any other body as it may deem fit.

The *Takaful-Insurance* Operator shall provide in writing the Curriculum Vitae for each proposed ACE member and the *Takaful Operator* Board of Directors resolution approving the proposed appointment(s). Approval of the proposed ACE members from the Commission is required before the *Takaful-Insurance* Operator starts *Takaful-Insurance* business. Appointment of any one member shall be for a term of 4 years and may be subject to renewals.

3.10 The *Takaful-Insurance* Operator shall inform the Commission within 30 days of any change and the reason for the change in the membership of the ACE. The Commission may require disclosure in the Annual Report of the *Takaful-Insurance* Operator the reasons for the changes in the ACE membership where the Commission deems it fit to be in the public interest.

3.11 The *Takaful-Insurance* Operator may consider alternative arrangements to having their own ACE. Any proposal for alternative arrangements must be approved by the Commission before commencement of *Takaful-Insurance* business and include an explanation as to why the ACE structure is not being adopted.

#### **ACE Member Competency Requirements**

3.12 The *Takaful-Insurance* Operator is required to have a formal assessment process in place to ensure that ACE members have appropriate training and experience that allows the ACE members to fulfill their roles. Each member of the ACE should partake in a formal Continuous Professional Development Program that retains as a record evidence of development activity. Such ongoing training should be facilitated by the *Takaful-Insurance* Operator.

3.13 The *Takaful-Insurance* Operator has a responsibility to ensure the suitability of individuals selected for membership of the ACE. ACE members must be fit and proper to perform their role in line with the Commission and other local agency guidelines the Commission deems appropriate and in consideration of international guidelines as issued by Islamic Financial Services Board (IFSB) and Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) guidelines.

3.14 It is the responsibility of the *Takaful-Insurance* Operator to perform appropriate checks to obtain satisfaction that the individuals selected for ACE Membership meet the necessary guidelines and:

- Possess the requisite competency to fulfill the responsibilities required from an ACE member to operate in Nigeria; and
- Have acceptable reputation, character and integrity to be an ACE member.

#### **ACE Members Code of Conduct**

3.15 The *Takaful-Insurance* Operator is required to have an appropriate code of conduct in place. Each member of the ACE shall formally document their agreement to comply with the *Takaful-Insurance* Operator's code of conduct. The agreement shall include:

- Statement that, to the best of their knowledge, they will fully comply with the *Takaful-Insurance* operators Code of Conduct.

- Agreement to conduct themselves in a professional and ethical manner being impartial, just and honest in their role.
- Acceptance of responsibility to declare any conflicts of interest to the appropriate authority within the *Takaful-Insurance* Operator.

3.16 Members of the *Takaful-Insurance* Operators' ACE shall avoid any circumstances that would be perceived to impair their independence. This includes but is not restricted to:

- ACE members having such relationships with the *Takaful-Insurance* Operator, its related companies or officers that could interfere or be reasonably perceived to interfere with the exercise of independent judgment in the best interest of the *Takaful-Insurance* Operation.
- ACE members holding beneficial interests in shares and other investments in the *Takaful-Insurance* Operator or Participants Investment Funds.

3.17 The following general restrictions shall apply in respect of the membership of ACE:

- An individual can only be a member of one ACE at a time or as the circumstances may warrant.
- A member of an ACE in a *Takaful-Insurance* Operator under the regulatory purview of the Commission shall not be a member of the Commission's Takaful Advisory Council.
- A member of an ACE in a *Takaful-Insurance* Operator shall not be a member of the Board of Directors of the *Takaful-Insurance* Operator.
- A member of the ACE in a *Takaful-Insurance* Operator shall not be a Director, Executive Management Staff, or significant shareholder of the *Takaful-Insurance* Operator.

3.18 ACE members are required to provide annual declaration of any circumstances that may be perceived to impact their independent performance of their duties as member of the ACE to the *Takaful-Insurance* Operators' Audit Committee and to the Commission.

3.19 The Commission reserves the right to refuse appointment or disqualify any ACE member who fails to meet the requirements set out above or where the Commission feels it is in the public interest to do so. Appendix 4 sets out circumstances where the Commission would refuse appointment or disqualify an individual from ACE membership. If circumstances arise where it is no longer appropriate for an individual to be an ACE member or if the Commission refuses appointment of an individual to ACE, the *Takaful-Insurance* Operator shall terminate the appointment of the individual.

#### **Duties and Responsibilities of the Advisory Council of Experts (ACE)**

3.20 The ACE is responsible and accountable for all Shari'ah (Islamic Law) decisions, opinions and views provided by them. The ACE will derive consensus on its recommendations and conclusions using the appropriate, standard and accepted methodology including interpretation or analogy from the Qur'an (Holy Book of Islam) and Sunnah (Custom of the Prophet Muhammad). The conclusions and rationale of the ACE shall be fully documented in the minutes of the ACE meetings.

3.21 The responsibilities of the ACE include but are not limited to the following:

- i. Review and endorsement of policies and guidelines related to the principles underpinning *Takaful-Insurance*. Specifically, the ACE is responsible for review and approval of the *Takaful-Insurance* Operating model, underlying contracts and supporting materials such as product manuals and marketing materials adopted by the *Takaful-Insurance* Operator for the conduct of the *Takaful-Insurance* business.
- ii. Formal compliance certification of every product that is to be offered by the *Takaful-Insurance* Operator. An example of a Certification is included in Appendix 5.
- iii. Reporting all cases of non-compliance to the Board of the *Takaful-Insurance* Operator with recommended remedial actions.
- iv. Reporting to the Commission all cases where *Takaful-Insurance* Operator has failed to adequately address or take remedial action of non-compliance.
- v. Providing a formal annual sign off and opinion on compliance in a Report of the ACE that is to be included in the *Takaful-Insurance* Operators annual audited financial report. The formal sign-off shall also be made easily available (including online) by the *Takaful-Insurance* Operators to provide stakeholders, particularly participants, with the assurance that the *Takaful-Insurance* Operators activities and products sold during the specified period have been in compliance. ACE members may place an adverse opinion or highlight any concerns they have on the activities of the *Takaful-Insurance* Operator within their formal opinion as indicated in 3.28.
- vi. Assist or advise related parties to the *Takaful-Insurance* Operator, such as its legal counsel, auditors or other consultants on Islamic jurisprudence related matters upon request.
- vii. Providing support to the *Takaful-Insurance* Operator and participants in respect of questions or queries that may be raised regarding the Shari'ah (Islamic Law) compliance of products. *Takaful-Insurance* Operators and the ACE should ensure adequate opportunity and suitable public forums is provided to address questions or queries from the general public interested in becoming participants per 3.33.
- viii. Issue recommendations on how the *Takaful-Insurance* Operator can fulfill its social role and promotion of *Takaful-Insurance* towards enhancing financial inclusion in Nigeria.
- ix. Performance of any other duties assigned to it by the Board of the *Takaful-Insurance* Operator.

3.22 In fulfilling its responsibilities, the ACE may engage the services of consultants with the appropriate expertise in the required fields for example law, accountancy and, investment management as required. Consultants may attend and contribute to ACE meetings but cannot take part in giving an ACE Shari'ah (Islamic Law) verdict or legal opinion or vote in a decision.

3.23 ACE members in the performance of their duties shall at all times maintain confidentiality and not abuse internal and privileged information received. However, the ACE members shall not be liable for breaching confidentiality where reporting of non-compliance with Shari'ah (Islamic Law) is made to the Commission or in compliance with the order of a court of competent jurisdiction.

3.24 The ACE shall report directly to the Board of Directors of the *Takaful-Insurance* Operator and have a dotted line (close working) reporting relationship to the Managing Director/Chief Executive Officer of the *Takaful-Insurance* Operator.

### **Shari'ah (Islamic Law) Compliance**

3.25 The *Takaful-Insurance* Operator is required to have a dedicated Internal Shari'ah (Islamic Law) Compliance Unit (ICU) comprising of officer(s) with appropriate qualifications and experience in Islamic Commercial Jurisprudence, and conventional insurance/finance to serve as the first point of reference for Shari'ah (Islamic Law) compliance issues. The Shari'ah (Islamic Law) Compliance Unit may also serve as the secretariat to the ACE and membership of the secretariat shall be appropriately carried out in consultation with the ACE.

3.26 The ACE shall have independent access to the *Takaful-Insurance* Operators' ICU to enable the ACE to fulfill responsibilities in relation to reporting on compliance as set out in paragraph 3.27.

3.27 The ACE's signoff will be based on the ICU audit work it has performed or has been performed on its behalf during the year along with any additional assessments and work performed by the ACE. Audit work should include but not be limited to:

- Obtaining assurance that any window operators have suitably segregated the funds of the *Takaful-Insurance* participants from those of the conventional insurance policy holders.
- Obtaining assurance that the *Takaful-Insurance* Operator has separated the assets of the *Takaful-Insurance* fund and the *Takaful-Insurance* operator with appropriate checks and balances in place to ensure the funds cannot be integrated.
- Obtaining assurance that the *Takaful-Insurance* Operator has separated the Participants Risk Fund and Participants Investment Fund for both family *Takaful-Insurance* business and general *Takaful-Insurance* business.
- Obtaining assurance that the *Takaful-Insurance* operator is remunerated in line with the *Takaful-Insurance* model adopted and the amounts determined in underlying contracts.
- Obtaining assurance that commissions and management expenses are paid from the *Takaful-Insurance* Operators shareholders' funds.
- Obtaining assurance that expenses paid out of *Takaful-Insurance* funds are direct claims, related expenses or direct investment related expenses that have been approved by the ACE and are not part of previously agreed fees or remuneration.
- Obtaining assurance that investment activity performed by the *Takaful-Insurance* Operator is in compliance with Shari'ah (Islamic Law) i.e. investment in impermissible (haram) is actively avoided.
- Obtaining assurance that management have appropriately identified, calculated and disbursed non-permissible income.
- Obtaining assurance that any surplus generated in the Participants risk Fund is managed in line with the policy approved by the ACE.

- Obtaining assurance that any deficit in the Participants Risk Fund or Participants Investment Fund is appropriately managed in compliance with Shari’ah (Islamic Law) and the *Takaful-Insurance* Operators documented policies.

### **ACE Opinion in Annual Report**

3.28 The ACE in its Annual Report shall provide one of the following opinions on the Shari’ah (Islamic Law) Compliance of the *Takaful-Insurance* Operator:

- Unqualified Opinion on Compliance: opinion that there are no matters to be reported in terms of the Shari’ah (Islamic Law) Compliance by the *Takaful-Insurance* Operator.
- Qualified Opinion: where unqualified opinion cannot be given due to substantial non-compliance or limited instances of breach of Shari’ah (Islamic Law) compliance that in the overall does not lead to a major transgression. Example of scenarios where a qualified opinion may be appropriate include:
  - Breaches of compliance as a result of conventional regulatory requirements such as the need for use of conventional reinsurance companies for *Retakaful-Insurance* purposes due to no *Retakaful-Insurance* operators being in existence within the jurisdiction.
  - A limitation of scope, for example when access to certain documentation is not possible or restricted. An explanatory paragraph can explain the reasons for qualification.
  - Highlighting the use of a particular structure which may have a known difference in opinion between jurisdictions.

3.29 Matters of Shari’ah (Islamic Law) Emphasis: Other factors that the ACE has identified as of concern should be disclosed in a matter of emphasis paragraph in the Report. The ACE may incorporate within the Report areas that the ACE considers that the management of the *Takaful-Insurance* Operator has not sufficiently addressed. For example, there may be concerns that management has failed to improve product designs and is over-reliant on contentious structures that may not be aligned with the Maqasid al Shari’ah (Principles of Islamic Law).

3.30 The Shari’ah (Islamic Law) compliance audit of the *Takaful-Insurance* Operator must be independent. The *Takaful-Insurance* Operator is required to adopt mechanisms that mitigate the risk of self-review by members of the ACE. Examples of such mechanisms include:

- Requiring segregation between ACE members that perform the design of a product and those that are involved in the annual compliance activity for the product.
- The ACE could appoint the existing external auditors or alternatively an independent audit firm could perform a ‘limited scope Shari’ah (Islamic Law) audit’ to encompass select Shari’ah (Islamic Law) compliance work, reporting their findings directly to the ACE and Audit Committee.

### **Duties and Responsibilities of the *Takaful-Insurance* Operator**

3.31 The *Takaful-Insurance* Operator shall ensure:

- i. All Islamic Commercial Jurisprudence issues are referred to the ACE.
- ii. The ACE’s recommendations and decisions are implemented and issued to stakeholders appropriately.

- iii. All *Takaful-Insurance* products are certified by the ACE before being offered for sale.
- iv. Referring all cases of conflict of opinion among the members of the ACE that cannot be resolved by the ACE to the Commission, which shall have the final authority on the matter.
- v. The Report of the ACE is published within its annual financial report.
- vi. A Compliance Manual providing guidance on operations of the ACE including a structured process for making, updating, documenting and disclosing decisions is in place.
- vii. The ACE has access to all the relevant records, transactions or other information required for the performance of its duties.
- viii. The ACE has sufficient resources to perform its duties.
- ix. Appropriate level of remuneration for members of the ACE commensurate with the expected duties and functions of the ACE.

#### **Disclosures by the *Takaful-Insurance* Operator**

3.32 The *Takaful-Insurance* Operator shall incorporate within their annual report the following specific disclosures relating to the ACE:

- Disclosure of fees paid to ACE members within *Takaful-Insurance* Operators annual reports.
- Confirmation that an annual declaration of independence has been made by ACE members to the Commission appropriate bodies.
- Confirmation that specific attestation was made to the *Takaful-Insurance* Operator and the Commission by any new ACE member before accepting an ACE position confirming their appointment does not create a conflict of interest and that there are no other matters such as personal bankruptcy or criminal convictions that the *Takaful-Insurance* Operator or the Commission needs to be aware of.
- Disclosure by all people involved in the audit (ACE, ICU members, et al) of any interests such as shareholdings, a relative/related party working in a senior role in the *Takaful-Insurance* Operators' management, commercial relationships as a customer or supplier (either at the individual or a related/linked company of which the ACE or their relative is a director).
- Changes in the ACE membership as set out in par 3.19.

#### **Public Access to ACE**

3.33 The *Takaful-Insurance* Operator shall ensure that at least one member of the ACE is made available for a minimum of two days per year to the public. This is to allow members of the public to obtain information and clarity on the *Takaful-Insurance* products provided by the *Takaful-Insurance* Operator including information on the rulings and decisions made by the ACE.

3.34 For each product being offered by the *Takaful-Insurance* Operator the ACE certificate shall be made publicly available through various means including copies held by brokers, agents, other intermediaries and copies accessible through the internet.

### **The Commission's Takaful Advisory Council**

3.35 The Commission shall constitute as required a Takaful Advisory Council to provide NAICOM with the necessary Shari'ah guidance to ensure the effective regulation of *Takaful-Insurance* operations. The Takaful Advisory Council or any other body approved by the Commission will have such oversight role over the *Takaful-Insurance* Operators ACE as may be assigned by the Commission. The Commission as it deems appropriate will forward to the Takaful Advisory Council activities that will include but not limited to the following::

- Act as the advisory body on Shari'ah issues pertaining to *Takaful-Insurance* Operations.
- Operational model or underlying contract to be adopted by a *Takaful-Insurance* Operator out of the models provided in paragraph 2.2..
- Ex gratia payments as provided in paragraph 6.4.
- Conflicts of interest disclosed by members of ACE as referred to in paragraph 3.10.
- Resignations from a *Takaful-Insurance* Operators ACE as referred to in paragraph 3.19.

3.36 The Takaful Advisory Council, will act for the furtherance of ACE relevant knowledge and experience that aids in fulfilling their roles within *Takaful-Insurance* Operations. This will include facilitating:

- Group training in the form of lectures, seminars and conferences.
- Individual training in the form of mentoring or computer based training.
- Direct access to *Takaful-Insurance* experts through online resources and telephone helplines.
- Facilitation of access to international experts.

## Section 4 *Takaful-Insurance* Fund

### Operation of *Takaful-Insurance* funds

4.1 The *Takaful-Insurance* Operator is required to ensure that segregation is maintained between the *Takaful-Insurance* fund assets and the *Takaful-Insurance* Operator assets (e.g. shareholder funds) and that these are managed with due professional care.

4.2 The *Takaful-Insurance* Operator shall allocate *Takaful-Insurance* funds separately to family *Takaful-Insurance* business and general *Takaful-Insurance* business. As illustrated in Appendix 2, the *Takaful-Insurance* Operator shall establish:

a) A Participants' Risk Fund

This fund accumulates the portion of participants' contributions that is pooled to fulfill any claims arising from eligible claimants within the cover period. Under a *Tabarru'* (donation) contract the fund is collectively owned by the pool of participants.

b) A Participants' Investment Fund

This fund accumulates the portion of participants' contributions that is to be used for investment to meet future payouts under Family *Takaful-Insurance* business. The fund is individually owned by the participant and the *Takaful-Insurance* Operator must ensure that specific investments can be identified against each fund.

4.3 It is the responsibility of the *Takaful-Insurance* Operator to ensure that these funds are managed in an effective manner and that there are sufficient funds available at all times to cover all prudently discernible eventualities.

### Investment Policies

4.4 The *Takaful-Insurance* Operator shall establish investment policies for the Participants Risk Fund and Participants' Investment Fund. These policies will include:

a) Assets that may be invested in

The *Takaful-Insurance* Operator must seek to manage funds aligned with a Shari'ah compliant methodology as practiced internationally and approved by its ACE. Where there is a lack of compliant asset classes the *Takaful-Insurance* Operator may engage with conventional instruments subject to approval by its ACE.

Where income is generated from non-compliant or partially compliant investments a process of purification of the income must take place by giving a percentage of the income generated to charitable purposes. This approach must be ratified by the *Takaful-Insurance* Operators ACE and approved by the Commission.

b) Risk profile of assets

The *Takaful-Insurance* Operator should ensure assets and liabilities allocated to funds match and it is clearly documented where there have been issues in duration and location to matching assets and liabilities how these have been addressed.

c) Investment objectives

The *Takaful-Insurance* Operator is required to set out the objectives and long term strategy for each fund. The strategy should consider the risk profile of the fund and this should be in line with the characteristics of the *Takaful-Insurance* liabilities.

d) *Takaful-Insurance* through a "Window" operation

Where *Takaful-Insurance* business is offered by a conventional financial institution, the *Takaful-Insurance* Operator must ensure that the *Takaful-Insurance* operations are 'ring-fenced' so as to avoid leakage and co-mingling with non-compliant funds at any point in the life cycle.



4.5 The investment policies must be reviewed and approved by the *Takaful-Insurance* OperatorsACE and the Commission. The *Takaful-Insurance* Operator shall ensure utmost diligence when selecting where the funds are to be invested, in order to maintain strict compliance with Shari'ah (Islamic Law) standards.

4.6 The Commission may require compliance with existing guidance on asset allocation to ensure a suitable risk adjusted investments are being made by the *Takaful-Insurance* Operator in the best interest of the participants.

#### **Deficit in Fund**

4.7 A deficit is deemed to have occurred in the Participants Risk Fund where in the balance sheet the total assets of the Participant Risk Fund are exceeded by the actuarial and other liabilities of the Participant Risk Fund.

4.8 The *Takaful-Insurance* Operator is required to fund any deficit that has occurred in the Participants' Risk Fund using a loan from its shareholders funds. This can be through an interest free loan (Qard Hassan) that can be repaid to the *Takaful-Insurance* Operator in subsequent years when a surplus is generated in the Participants Risk Fund or where applicable the Participants Investment Fund.

4.9 The *Takaful-Insurance* Operator is required to have a documented policy on deficit resolution for the Participants Risk Fund that must be approved by the *Takaful-Insurance* Operator's Board of Directors and Advisory Council of Experts. The policy must include the following:

- Events which would require the instigation of the interest-free (or Shari'ah compliant) loan facility.
- The process and assessment methodology to determine loan repayments that provides assurance there is no negative short or long term impact on the fund in meeting participants claims.
- Surplus distribution methodology to participants while the interest free loan is outstanding.
- Remuneration to *Takaful-Insurance* Operator while the interest free loan is outstanding.
- Time period over which the interest free loan is to be repaid.
- Circumstances where the interest free loan may no longer be required to be repaid.
- Consideration required for any sub funds operated in the Participants Risk Fund.
- Where deficit occurrences in one fund are allowed to be offset with surpluses in another fund; this will have implications on the use of interest free loan facilities and must be clearly defined in the policy.

4.10 The *Takaful-Insurance* Operator cannot use interest free loan from its shareholders funds to meet any loss occurring in the Participants Investment Fund.

4.11 The *Takaful-Insurance* Operator is required to make a transfer from its shareholders funds to the Participant Risk Fund or the Participants Investment Fund where a loss in either was the result of negligence or mismanagement by the *Takaful-Insurance* Operator.

4.12 The *Takaful-Insurance* Operator is required to report any scenario where loss has occurred or is expected to occur in either the Participants Risk Fund or Participants Investment Fund to the Commission.

### **Use of third parties**

4.13 Where investment management activities are performed for the *Takaful-Insurance* Operator by a third party, the *Takaful-Insurance* Operator must ensure that the investment activities are in line with the *Takaful-Insurance* Operators investment strategy and are in compliance with Shari'ah (Islamic Law). The *Takaful-Insurance* Operator must monitor performance and the *Takaful-Insurance* Operator's ACE must obtain adequate assurance on the compliance of the investment activities.

### **Transferability of Funds**

4.14 Where a *Takaful-Insurance* Operator is authorized to perform both Family and General *Takaful-Insurance* business, no Participants Risk Fund should encompass both Family and General Business.

4.15 Any non-transferability of funds between Participants Risk Funds must be disclosed to the Commission. Where contracts do not set out any details relating to the transferability of funds, the assumption is that there is no transferability.

4.16 The *Takaful-Insurance* Operator is required to disclose to participants any restriction in place on the transferability of funds.

## Section 5 Managing Participants

### Rights and Obligations of the Participant

5.1 The participant is required to provide complete and accurate information to the *Takaful-Insurance* Operator. The *Takaful-Insurance* Operator will use appropriate tools and techniques to obtain information from participants before entering into a *Takaful-Insurance* contract with a potential participant. Tools and techniques to be used by a *Takaful-Insurance* Operator include but are not limited to proposal forms, questionnaires and interviews.

5.2 Where a participant has not provided complete or accurate information, the *Takaful-Insurance* Operator may have the option to cancel the policy with the participant or not fulfill any claims. The *Takaful-Insurance* Operator must set out in the contract the participants duty of disclosure.

5.3 This duty of disclosure should be presented to the participant before the *Takaful-Insurance* contract is completed and should state the requirement for the participant to provide all facts specifically requested and where there is any doubt over what is requested the participant should seek clarification from the *Takaful-Insurance* Operator.

5.4 The *Takaful-Insurance* Operator and Participant will have entered into a contract once an offer made by the *Takaful-Insurance* Operator is accepted by the participant. This is determined as having occurred when the participant has confirmed acceptance of the offer (e.g. signed policy documentation) and the *Takaful-Insurance* Operator has received payment of the agreed contribution amount.

5.5 The *Takaful-Insurance* Operator shall issue a *Takaful-Insurance* Certificate to evidence the existence of the contract within 30 days of the payment being received by the *Takaful-Insurance* Operator.

5.6 Where the participant pays the contribution to an authorized *Takaful-Insurance* agent, broker or other intermediary the contribution will be deemed to have been received by the *Takaful-Insurance* Operator.

### Claims Settlement

5.7 *Takaful-Insurance* Operators are required to process claims and payments to claimants in a reasonable period of time where there are no issues with the claim.

5.8 The *Takaful-Insurance* Operator must ensure amounts paid for a claim are from the correct *Takaful-Insurance* fund and in line with the *Takaful-Insurance* contract terms and conditions.

### Distribution of Surplus

5.9A *Takaful-Insurance* Operator may generate a surplus in the Participants Risk Fund. Surplus here is the amount that remains in the *Takaful-Insurance* fund after the payment of participants' claims and other liabilities at the end of the underwriting year. The *Takaful-Insurance* Operator is required to have a written policy related to the treatment of the surplus generated in the Participants Risk Fund. The policy shall include:

- Details on how the level of surplus to be retained in the fund will be arrived at.
- Details on how surplus will be distributed.

5.10 Distribution of surplus can only occur if:

- It does not lead to a deficit arising in the Participants Risk Fund.
- It is in accordance with the standard guidelines applicable to insurance.
- Any surplus to be distributed is recommended by the fund actuary and approved by the *Takaful-Insurance Operator's* Board of Directors.
- Written approval of the Commission has been obtained.

5.11 The *Takaful-Insurance Operators' ACE* is required to approve the policy on the surplus generated in the Participants Risk Fund.

5.12 The *Takaful-Insurance Operator* may distribute the surplus from the Participants Risk Fund in the form of a no claims discount. Where the *Takaful-Insurance Operator* uses this business model it must be clearly documented and explained to participants with adequate illustrations of the calculation methodology so as to avoid any confusion to the participants.

5.13 The profits made in the Participants Investment Fund will be distributed to the participants and *Takaful-Insurance Operator* based on the underlying agreed contract.

#### **Certificate Surrender**

5.14 Where a participant surrenders *Takaful-Insurance* policy it may be appropriate for the *Takaful-Insurance Operator* to make a surrender payment to the participant.

5.15 The *Takaful-Insurance Operator* is required to ensure that the *Takaful-Insurance* contract specifies the circumstances where a surrender payment would be made to the participant and the basis of calculation for the surrender payment.

5.16 The *Takaful-Insurance Operator* is required to ensure that the amounts payable to participants on surrender are made from the correct funds.

5.17 The *Takaful-Insurance Operator* may only apply a surrender charge where it is clearly specified in the *Takaful-Insurance* contract. The *Takaful-Insurance* contract should specify on what basis the surrender charges should be calculated. Operator charges may recover expected costs of managing certificates not already recovered and administrative costs in processing the certificate surrender.

5.18 The *Takaful-Insurance Operator* is required to retain the basis for deriving surrender amounts and surrender charge and make this available to the Commission upon request.

## Section 6 Operator Related Operational Requirements

### Allowable Expenses of the Operator

6.1 The *Takaful-Insurance* Operator shall ensure effective policies and procedures are in place to manage costs.

6.2 Costs relating to *Takaful-Insurance* operations must not be met from the *Takaful-Insurance* funds. The *Takaful-Insurance* Operator shall bear the costs relating to the operation of the *Takaful-Insurance* business. These costs include:

- Expenditure in starting the *Takaful-Insurance* business, for example product design, advertising, IT systems and office fittings.
- Policy drafting and issuance.
- Premium collection.
- Commission to intermediaries.
- Professional services for example, actuaries, accountants, and auditors etc.

6.3 The *Takaful-Insurance* operator can only pay expenses out of the *Takaful-Insurance* fund if they are direct claims related, *Retakaful-Insurance* expenses or direct investment related expenses. The expense to be charged to the *Takaful-Insurance* fund must:

- Not have been previously incorporated into upfront fees or remuneration set by the *Takaful-Insurance* Operator.
- Be approved by the *Takaful-Insurance* Operators ACE.
- Only be charged to the *Takaful-Insurance* Fund at actual cost.
- Be documented and disclosed to participants.

6.4 *Takaful-Insurance* involves participants adopting a mutually supportive structure and subsequently the Operator should not make any discretionary ex-gratia payments. Any ex gratia payments request need to be reviewed and preapproved by the ACE.

### Remuneration of the Operator

6.5 The remuneration arrangements for the *Takaful-Insurance* Operator must be set and documented in *Takaful-Insurance* contracts before a *Takaful-Insurance* agreement is signed. The *Takaful-Insurance* Operator shall receive a fee or remuneration which depends upon the underlying *Takaful-Insurance* model and contracts in use:

a) *Takaful-Insurance* based on Mudarabah (Profit sharing) contract

The *Takaful-Insurance* Operators' remuneration shall be based on a percentage share of the underwriting surplus from the Participants Risk Fund and investment profit from the Participants Investment Fund.

b) *Takaful-Insurance* based on Wakalah (Agency) contract

The *Takaful-Insurance* Operator shall receive a Wakalah (Agency) fee based upon a percentage of participants' contributions. The *Takaful-Insurance* Operator may also receive a performance related fee which would for example be linked to the effectiveness of underwriting activities.

c) *Takaful-Insurance* based on Hybrid Wakalah-Mudarabah (Agency -Profit sharing) contract

The *Takaful-Insurance* Operator shall receive a percentage share of the underwriting surplus from the Participants' Risk Fund and investment profit from the Participants Investment Fund for investment management activities. For underwriting activities the *Takaful-Insurance* Operator shall receive a Wakalah (Agency) fee based on a percentage of participants' contributions and potentially a performance related fee.

6.6 Where the *Takaful-Insurance* Operator remuneration includes amounts based on the surplus in the Participants' Risk Fund, the following conditions must be met:

- There must be no interest free loan balancedue to the Shareholders funds of the *Takaful-Insurance* Operator.
- The remuneration must be in line with the *Takaful-Insurance* Operators Surplus Management Policy and subject to review from an actuary.
- Remuneration to *Takaful-Insurance* Operator is only permitted if Participants will also be receiving their share of the surplus.
- Total remuneration payable to the *Takaful-Insurance* Operator shall not exceed surplus to be received by participants. In certain circumstances this is permissible but requires to be approved by the *Takaful-Insurance* Operator ACE and subsequent submission to the Commission for approval.

6.7Where the *Takaful-Insurance* Operator's remuneration includes amounts based on participants' contributions, the following conditions must be met:

- Fee shall be collected and retained in the Participants Risk Fund.
- The fee shall only be paid where the Participants Risk Fund is in a surplus position.
- A fee which cannot be paid in one year due to Participants' Risk Fund being in deficit may not be carried forward to a future year.
- The amount of distribution is subject to recommendation from an actuary.

6.8 Where the *Takaful-Insurance* Operator's remuneration includes amounts based on the investment profit from the Participants Investment Fund, elements of the aforementioned conditions should be considered along with the following:

- Investment profit to be calculated in line with the *Takaful-Insurance* Operators policy which documents the investment profit calculation method.
- Investment profit distribution based on independently audited results of the Participant Risk Fund with Actuarial certification of the liabilities.
- Distribution to be recommended by the actuary and approved by the Board of the *Takaful-Insurance* Operator.
- Distribution of the investment profit to be in line with the profit sharing ratio set out in the *Takaful-Insurance* contract.
- Distribution does not impact solvency of the fund.

## **Use of intermediaries and third parties**

6.10 *Takaful-Insurance* business may be arranged by intermediaries. These can consist of brokers, agents and other individuals or corporate entities registered by the Commission that play an intermediate role in the placement of *Takaful-Insurance* business between *Takaful-Insurance* Participant and *Takaful-Insurance* Operator.

6.11 A *Takaful-Insurance* Operator may appoint as required and appropriate surveyors, actuaries and consultants with required skills and knowledge for the purpose of inspecting, examining and analyzing technical aspects of *Takaful-Insurance* claims.

## ***Retakaful-Insurance***

6.12 The *Takaful-Insurance* Operator shall establish and regularly update a *Retakaful-Insurance* strategy appropriate to the risk profile of the *Takaful-Insurance* business. The *Retakaful-Insurance* strategy should incorporate:

- *Retakaful-Insurance* requirements taking into consideration the specific *Takaful-Insurance* Business Characteristics (nature, size, complexity).
- Risk tolerance of the *Takaful-Insurance* funds and *Takaful-Insurance* operator.
- Appropriate diversification of *Retakaful- Insurance* arrangements.

6.13 The *Takaful-Insurance* Operator shall place all its *Retakaful* insurances with insurance or reinsurance companies providing *Retakaful-Insurance* arrangements. Where *Retakaful-Insurance* arrangements are not available and thus required to be placed with a conventional reinsurance company, the *Takaful-Insurance* Operator's ACE must validate and approve the decision.

6.14 Detailed *Retakaful-Insurance* guidance is not within the scope of these Guidelines. For further guidance on *Retakaful-Insurance*, Operators should contact the Commission.

## Section 7 Capital

### General Capital Requirements

7.1 The *Takaful-Insurance* Operator is required to maintain a minimum deposit with the Central Bank of Nigeria (CBN) at all times during the operation of the *Takaful-Insurance* business. The Share Capital shall be in line with the amounts prescribed by the Commission.

7.2 The *Takaful-Insurance* Operator shall provide evidence of this deposit to the Commission prior to the commencement of the *Takaful-Insurance* business. The *Takaful-Insurance* Operator may request the CBN to provide a deposit structure that is compliant with its fund management policy.

7.3 The *Takaful-Insurance* Operator shall not utilize or remove this deposit from the Central Bank of Nigeria without prior approval from the Commission.

7.4 The *Takaful-Insurance* Operator in considering its solvency requirements shall take into consideration value of the *Takaful-Insurance* Funds assets and liabilities.

### Valuation of Assets and Liabilities

7.5 The *Takaful-Insurance* Operator is required to value assets and liabilities in line with the Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) standards. The *Takaful-Insurance* Operator shall ensure assets of the *Takaful-Insurance* fund are suitable to back the liabilities and absorb the risks of the *Takaful-Insurance* business. Consideration should include the following:

- Diversification of the assets.
- Liquidity of assets.
- Marketability of assets.
- Match in duration and currency.

7.6 In the Participants Risk Fund, technical provisions are the amounts set aside to cover expected obligations arising on *Takaful-Insurance* contracts. Each element of the technical provision is required to be clearly defined with the following two elements required to be included:

- a) Current estimate of meeting costs of underwriting obligations at net present value.
- b) Margin for risk over current estimate.

### Solvency Requirements

7.7 The *Takaful-Insurance* Operator must adopt a total balance sheet approach with a distinct separation between the *Takaful-Insurance* fund and the *Takaful-Insurance* Operators Shareholders funds. The *Takaful-Insurance* Operator should ensure:

- a) Adequate solvency provisions are made in the Participants Risk Fund to ensure that participants' claims can be met.
- b) It has adequate capital resources to meet its own expenses and obligations including need to provide interest free loan to the *Takaful-Insurance* Fund in the event of deficit in the Participants Risk Fund.

7.8 Where the *Takaful-Insurance* Operator identifies its own capital holding that is available for interest free loan to the Participants Risk Fund for inclusion by the Operator in meeting solvency requirements, it is required that the available balance shall include a cushion above minimum requirement.



7.9 The *Takaful-Insurance* Operator shall provide supporting information to the Commission that validates the existence and availability of the funds for the interest free loan to the *Takaful-Insurance* fund. These funds must be separately identifiable and in a suitably liquid form.

7.10 The *Takaful-Insurance* Operator has the following obligations for solvency requirements:

a) Participants Risk Fund – the assets held must equal technical provisions plus a solvency margin reserve. The solvency margin reserve is required to meet the risk of underestimation in the technical provision and of measurement error in asset or liability measurement.

b) Shareholders Funds – the *Takaful-Insurance* Operator needs to ensure it has adequate capital resources to meet unexpected increases in management expenses or reduced income. In addition, this should incorporate the requirement for the *Takaful-Insurance* Operator to provide an interest free loan to the *Takaful-Insurance* fund to meet any deficit occurring in the Participants Risk Fund.

7.11 The *Takaful-Insurance* Operator should note the following:

- The interest free loan facility to meet deficits in the Participants Risk Fund is to be catered for out of *Takaful-Insurance* Operators Shareholders Funds.
- The *Takaful-Insurance* Operators right to receive the repayment of the interest loan facility cannot be counted as an asset for the *Takaful-Insurance* Operator when considering solvency requirements.
- Any assets held by the *Takaful-Insurance* Operator that are considered as part of the regulatory capital of the Participants Risk Fund can be also not be considered as assets supporting the solvency of the *Takaful-Insurance* Operator.

7.12 The following elements of capital are allowed to be considered for the solvency of the Participants fund:

a) Reserves in the Participants Risk Fund.

b) Undrawn interest free loan facility made available by the *Takaful-Insurance* Operators' Shareholders funds.

7.13 Any investment income generated by the loan facility while it is undrawn is owned by the *Takaful-Insurance* Operators shareholders.

7.14 Any investment income generated by the loan once it is drawn down shall form part of the Participants Risk Fund.

7.15 The *Takaful-Insurance* Operator is required to carry out regular actuarial appraisals on the solvency of Participants Risk Funds to ensure that adequate loan facility is available.

7.16 The *Takaful-Insurance* Operator is required to ensure that:

- a) Each Participants Risk Fund that is non-transferable meets solvency requirements.
- b) Where Participants Risk Funds are transferable solvency requirements can be met in total.
- c) Available loan facility from the *Takaful-Insurance* Operators Shareholders funds is included in considering solvency levels.

## Reporting to the Commission

7.17 The *Takaful-Insurance* Operator shall report to the Commission when it does not meet the following required measures:

- Participants Risk Fund Minimum Capital Requirement.
- Participants Risk Fund Prescribed Capital requirement.
- *Takaful-Insurance* Operators Shareholders Funds Minimum Target Capital.
- *Takaful-Insurance* Operators Shareholders Funds Prescribed Target Capital.

7.18 Where the *Takaful-Insurance* Operator does not meet these minimum levels, the Commission can take action including but not limited to the following:

- Requiring use of *Takaful-Insurance* Operators interest free loan with the amount determined by the Commission.
- Restrictions on undertaking new business.
- Increased supervision, reporting or external audit requirements.
- Strengthening or replacing the *Takaful-Insurance* Operators management.

7.19 The interest free loan facility set up by the *Takaful-Insurance* Operator is required to meet the following conditions:

- Interest free loan facility cannot be removed by the *Takaful-Insurance* Operator unless the Participants Risk Fund meets solvency requirements independently of the loan facility.
- In a winding up position any loan provided to the Participants Risk Fund will be considered as donated.

7.20 Any winding up requires approval from the Commission with the Commission requiring sufficient draw down of loan facility prior to the winding up being initiated.

7.21 Any insolvent winding up of a *Takaful-Insurance* Fund is required to be fully compliant with conventional insurance requirements.

7.22 The Commission will set parameters and target criteria for *Takaful-Insurance* Operators Solvency requirements.

7.23 A Participants Investments Fund is not required to meet the capital requirements applicable to the Participants Risk Fund. The *Takaful-Insurance* operator is required to ensure that assets are appropriate to meet withdrawals.

7.24 The *Takaful-Insurance* Operator is required to disclose in its annual report an overview of the risk management framework for identifying, measuring, monitoring and controlling relevant risks in maintaining solvency control levels.

## Section 8 Reporting

### Supervisory Considerations

8.1 All *Takaful-Insurance* operators shall pay a Supervisory Levy of one percent (1%) of Gross *Takaful-Insurance* Contributions.

8.2 An operator shall prepare and file with the Commission statements of account, other statements and any prescribed fee thereto not later than the first of April of the following year.

8.3 An operator shall have its accounts audited for each accounting period, ending 31<sup>st</sup> December of every year, for which statements of account are prepared in accordance with this Guidelines, and when those statements are lodged with the Commission, there shall be lodged with them a certificate of the auditor.

8.4 The Commission shall cause to be inspected, the books and operations of *Takaful-Insurance* Operators at least once in every two years.

8.5 Any participant shall have a right, on applying to the operator, to be sent copies of documents filed by the Operator to the Commission.

### Quarterly and Annual Submissions

8.6 The *Takaful-Insurance* Operator is required to submit quarterly reports to the Commission on the following:

- *Takaful-Insurance* fund
- Interest free loan
- *Takaful* transactions

8.7 The *Takaful-Insurance* Operator is required to provide annual report and accounts on the following:

- *Takaful-Insurance* fund
- Interest free loan

8.8 The *Takaful-Insurance* Operator shall report separately by class of business and type of account:

- Family *Takaful-Insurance*: Participants Risk Fund and Participants Investment Fund
- General *Takaful-Insurance*: Participants Risk Fund

### Financial Reporting

8.9 The *Takaful-Insurance* Operator is responsible to ensure the following shall be prepared and submitted to the Commission for each accounting period:

- Separate Revenue Accounts for each class of *Takaful-Insurance* business (Family and General) of the *Takaful-Insurance* Operator.
- A profit and loss account for each class of *Takaful-Insurance* business (Family and General) of the *Takaful-Insurance* Operator.
- Separate balance-sheets, as at the end of that accounting period, for each class of *Takaful-Insurance* business (family or general) in respect of which the *Takaful-Insurance* Operator is registered.

- Statements for each accounting period giving the following particulars, in respect of family business:
  - New certificates issued during the period.
  - The termination or reduction of the liability or of the *Takaful-Insurance* contributions or certificates during the period, and transfers of certificates to or from the Register during the period.
  - Certificates in force at the end of the period.
- Statements for each accounting period giving particulars as to contributions and claims in respect of general *Takaful-Insurance* business.
- Statement for each calendar year giving particulars of assets held at the end of the year as assets of the *Takaful-Insurance* fund maintained for that class of business.

8.10 Goodwill shall not be recognized as assets in preparation of accounts.

#### **Audit Requirement**

8.11 For any accounts and balance-sheet submitted to the Commission in line with this Guidelines, there shall be submitted a certificate signed by the auditor stating whether in his opinion:

- The Accounts and balance-sheet are in accordance with the Guidelines.
- The Balance-sheet truly reflects the financial position of the operator.
- The books of the *Takaful-Insurance* Operator have been properly kept and record correctly the affairs and transactions of the *Takaful-Insurance* Operator.
- Any part of the assets of the *Takaful-Insurance* fund or funds maintained under the Guidelines has been applied in contravention of the Guidelines.
- The *Takaful-Insurance* Operator is complying with the requirements of the Guidelines or otherwise.
- All necessary and proper apportionments have been made in preparing the accounts and balance-sheet, and have been made in an equitable manner.

8.12 The persons signing any balance-sheet shall certify that in their belief the assets set forth in the balance-sheet are fully of the value stated in the balance-sheet, less any investment reserve fund taken into account; and shall also certify that in the relevant accounting period no part of the assets of the *Takaful-Insurance* fund has been dealt with in contravention of this Guidelines.

8.13 The *Takaful-Insurance* operators shall prepare annual financial account for the operation in accordance with Accounting Standards approved by the Commission.

8.14 There shall be paid into a *Takaful-Insurance* fund all receipts of the operator properly attributable to the business.

8.15 In the case of a fund established in respect of family business, no part of the fund shall be allocated by way of *Takaful-Insurance* benefits to participants, except with the approval of a qualified actuary and out of a surplus of assets over liabilities as shown on the last valuation of the fund.

8.16 The *Takaful-Insurance* fund shall be in the custody of the *Takaful-Insurance* Operator unless its value is eroded by claims payment.

## Appendix 1

### Glossary of Islamic Terms

The definitions have been replicated or adapted from the Islamic Finance Glossary from the Institute of Islamic Banking and Insurance website.

<b>Term</b>	<b>Definition</b>
<b><i>Fiqh al Mua'amat</i></b>	Islamic commercial jurisprudence, jurisprudence of financial transactions or the rules of transacting in a Shari'ah-compliant manner
<b><i>Haram</i></b>	Unlawful in Islam. Activities which are explicitly prohibited by The Qur'an or the Sunnah. The prohibitions also include professions, contracts and transactions as well as earnings. When guidance is not clearly given in the Qur'an there are several other sources of law, for example, guidance can be sought from Fiqh, which means 'understanding' and is the science of jurisprudence: the science of human intelligence, debate and discussion. The concept of haram is one of the distinctive features of Islamic economics vis-a-vis Western economics where no such concept exists. In Western economics, all activities are judged on the touchstone of economic utility. In Islamic economics, other factors, mostly ethical and moral are also involved. An activity may be economically sound but may not be allowed in the Islamic society if it is not permitted by the Shari'ah. Opp. Halal.
<b><i>Ijma</i></b>	Consensus, usually on a given issue as represented by the agreement of the jurists. It has traditionally been recognised by most Muslim jurists as an independent source of Islamic jurisprudence, along with the Qur'an, Sunnah and Qiyas (analogical deduction).
<b><i>Maqasid al Shari'ah</i></b>	Principles of Islamic Law
<b><i>Mudarabah (Profit sharing contract)</i></b>	An investment partnership with profit-loss-sharing implications. One or more partners as investors (Rab al Mal) provide 100% the capital to an entrepreneur (the partner who provides entrepreneurship and management known as Mudarib) to undertake a business activity. Profit is shared between the partners on a pre-agreed ratio; any loss is borne only by the investing partner(s) alone. For the Mudarib the loss is the share of the expected income for the efforts put into the business activity. The investors have no right to interfere in the management of the business but can specify conditions that would ensure better management of the capital money. In this way Mudarabah (Profit sharing contract) is sometimes referred to as a sleeping partnership.
<b><i>Mudarib</i></b>	The partner in Mudarabah providing entrepreneurship and management to a partner providing the capital. Profit is shared between the partners on a pre-agreed ratio; any loss is borne only by the investing partner alone. For the Mudarib the loss is the share of the expected income for the efforts put into the business activity. The investors have no right to interfere in the management of the business but can specify conditions that would ensure better management of the capital money.
<b><i>Qur'an</i></b>	The sacred book of Islam.
<b><i>QardHasan</i></b>	A virtuous loan. Loan in the meaning of a virtuous loan that is interest-free and extended on goodwill basis, mainly for welfare purposes, the borrower is only required to pay back the borrowed amount. The loan is payable on demand and repayment is obligatory.
<b><i>Rabul-Mal</i></b>	Owner of capital. In a mudarabah contract the person who invests the capital (the capital owner or financier); the investor in mudarabah contract.
<b><i>Shari'ah</i></b>	Often referred to as Islamic law. Shari'ah as a legal case did not exist at the time the Qur'an was revealed. It is a system that is all too often misunderstood and misinterpreted in the West. Refers to the rulings contained in and derived from The Quran and the Sunnah (sayings and living example of the Prophet Muhammad (pbuh). These cover every action performed by an individual or a society. It is primarily concerned with a set of values that are essential to Islam and the best manner of their protection. The essential values of the Shari'ah (Islamic Law) include those of faith, life, intellect, lineage, property, protection of honour, fulfillment of contracts, preservation of ties of kinship, honouring the rights of one's neighbour in so far as the affairs of this world are concerned, and the love of God, sincerity, trustworthiness and moral purity, in relationship to the hereafter.  The linguistic meaning of the word Shari'ah is a non-exhaustive source of water from which people satisfy their thirst. Thus, the linguistic significance of Shari'ah is that the Islamic rulings are effectively a source of guidance. As water is the fundamental basis for life, the Islamic rulings are an essential source for guiding human life.  The method of finding solutions to new issues in the light of the goals and principles of Islam are Ijtihad (independent reasoning), Ijma (consensus) and Qiyas (analogy), these solutions are all upheld and supported by The Qur'an and the Sunnah.
<b><i>Sunnah</i></b>	Literally, custom, habit or way of life. Commonly understood as the sayings and living example of the Prophet Muhammad (pbuh) as recorded in the books of Hadith. Sunnah is a legislative source along with The Qur'an; The Qur'an cannot be understood without the application of Sunnah.
<b><i>Ta'awun / Ta'awuni</i></b>	A principle of mutual assistance.
<b><i>Tabarru'</i></b>	Act of charity out of one's own free will without any compulsion or obligation. A donation covenant in which the participants agree to mutually help each other by contributing financially should a fellow

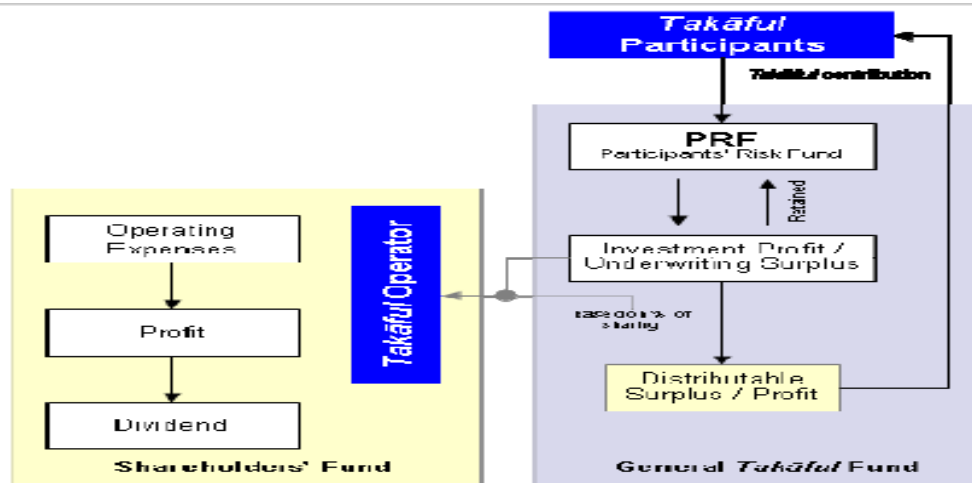
	<p>participant suffer a loss. A contract to provide somebody any goods or service without compensation in return. <i>Takaful</i> is commonly referred to as Islamic insurance as the system must comply with the Shari'ah. The Tabarru concept is the main core of the Takaful system making it free from uncertainty and gambling. In a Takaful contract, a participant agrees to donate a pre-determined percentage of the contribution to a Takaful fund set up to provide assistance to fellow participants. In this way the participant fulfill the obligation of mutual assistance and shared responsibility. Also termed as Aqdtabaru.</p>
<b>Takaful</b>	<p>An Arabic word meaning "guaranteeing each other" or joint guarantee through mutual support and shared responsibility whereby a group of persons agree to jointly guarantee among themselves against a defined loss. Known as Islamic insurance, a form of insurance based on the Quranic principle of mutual assistance (Ta'awuni). Structured as a charitable collective pool of funds based on the idea of providing mutual protection and shared responsibility and joint risk sharing in the event of a loss by one of its participants. The participants regularly contribute a sum of money into the pool of funds. Takaful schemes are designed to avoid the elements of conventional insurance (i.e. interest and gambling) as well as investment of the (Takaful) funds in activities that are prohibited by the Shari'ah.</p> <p>There should be a credible Shari'ah Supervisory Board comprising of Shari'ah scholars and advisors; they should be independent and qualified to give rulings that pass moral judgment on proposed contracts and transactions as well as to ensure that business is conducted according to the requirements of the Shari'ah.</p> <p>Reinsurance on Islamic principles is known as Retakaful; reinsurance is a mechanism used by direct insurance companies to protect their retained business by achieving geographic spread and obtaining protection above certain threshold values from larger specialist reinsurance companies.</p>
<b>Usul al-Fiqh</b>	Islamic legal theory.
<b>Wakalah</b>	<p>Agency. A contract of agency in which one party appoints another party to perform a certain task on its behalf, usually for payment of a fee or commission. An agency arrangement without provision for payment of a fee cannot be considered irrevocable, thus allowing an agent the right to terminate the agency at any time. It can be commutative or non-commutative. A bank may charge fees for providing certain services to its customers; the bank can also pay a fee to perform an activity on behalf of the bank, such as an agent to take delivery of goods or investing the bank's funds. Also termed as Al-wakala.</p>
<b>Wakil</b>	In a <i>wakala</i> contract, a representative (agent), who acts on behalf of the principal/investor.

## Appendix 2

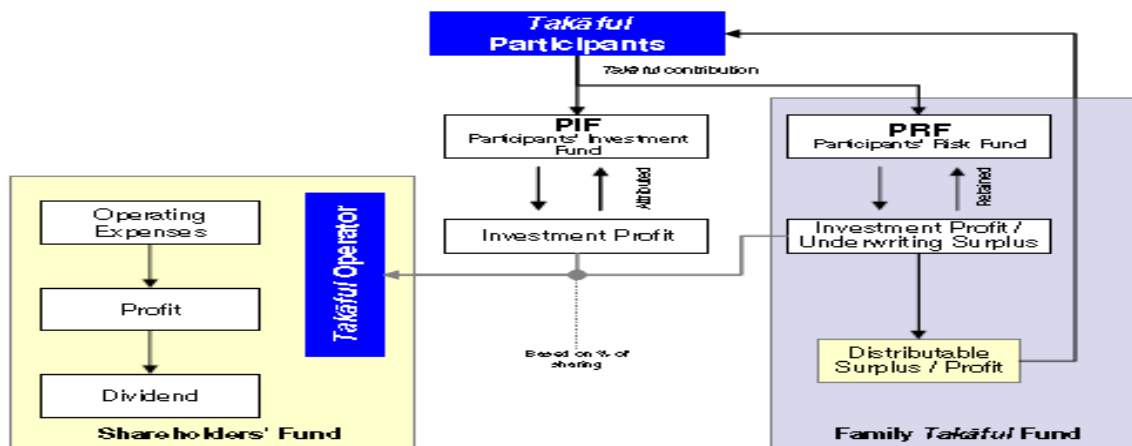
### Illustrative Diagrams of *Takaful-Insurance Operational Models*

The illustrative models have been adopted from the Islamic Financial Services Board, IFSB, and Guidelines on Takaful.

#### Mudarabah based Takaful Contract – General Takaful



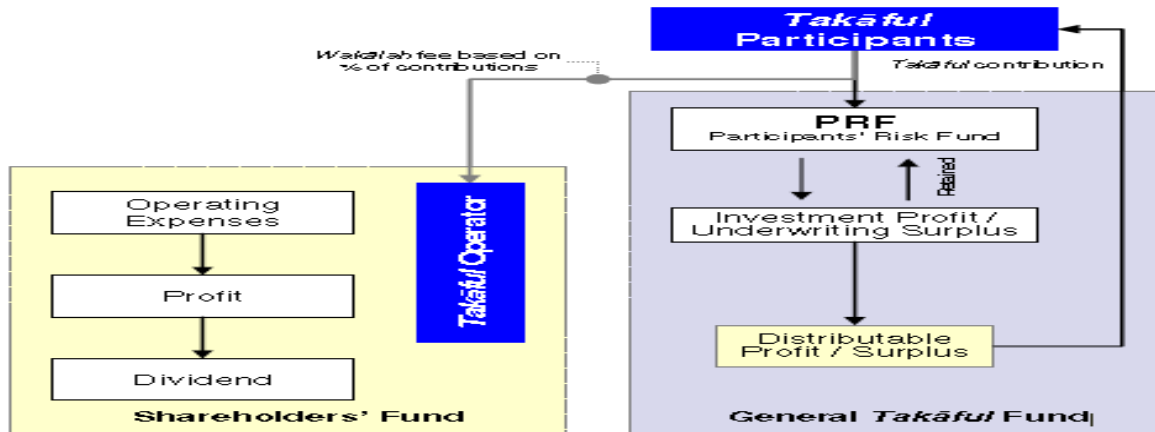
#### Mudarabah based Takaful Contract – Family Takaful



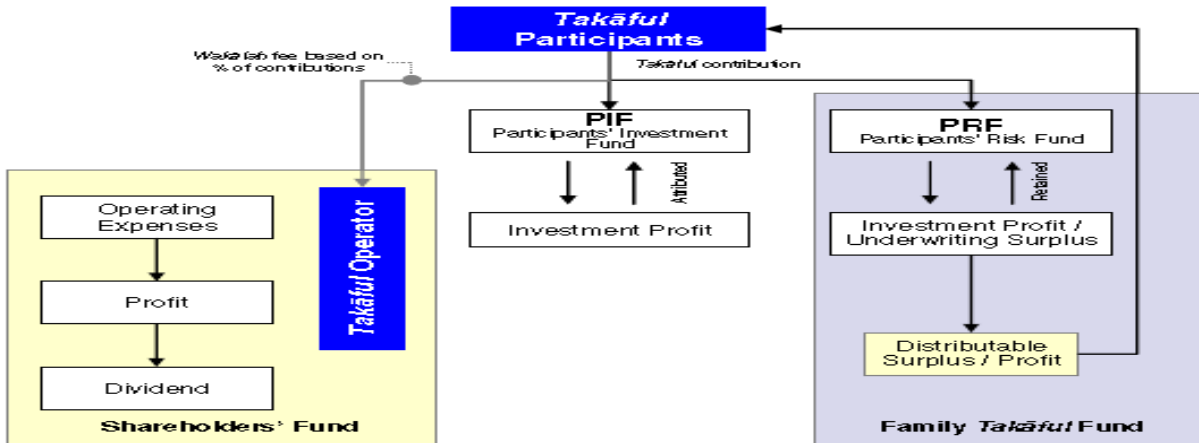


Appendix 2 continued.

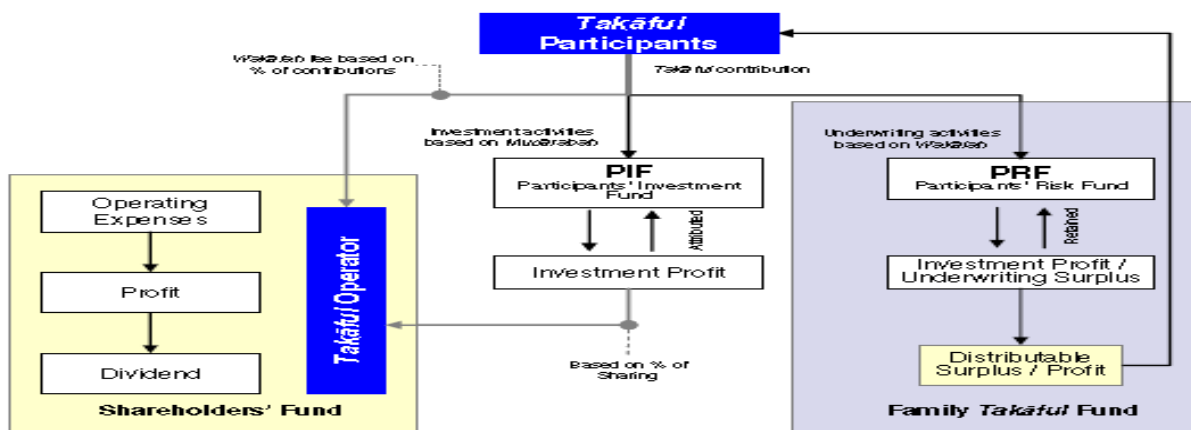
Wakalah based Takaful Contract – General Takaful



Wakalah based Takaful Contract – Family Takaful



Wakalah–Mudarabah based Takaful Contract – Family Takaful



## Appendix 3

### Cancellation by the Commission of authorization of a *Takaful-Insurance* Operator

- (i) The operator is pursuing aims or carrying on operations involving any element which is not approved by the Shari'ah (Islamic Law).
- (ii) The operator has not commenced business within twelve months after being registered.
- (iii) The operator has ceased to carry on *Takaful-Insurance* business in respect of any class of business.
- (iv) The operator has neglected or refused to observe an order of the Commission to make good any deficiency, whenever its *Takaful-Insurance* fund shall have become impaired.
- (v) The operator proposes to make, or has made any arrangement with its creditors or has gone into liquidation or has been wound up or otherwise dissolved.
- (vi) The operator is carrying on its business in a manner likely to be detrimental to the interests of its participants.
- (vii) The operator is unable to meet its obligations as defined in the Guidelines.
- (viii) The operator has failed to effect satisfactory *Retakaful-Insurance* arrangements.
- (ix) The operator is contravening the provisions of the Guidelines or any of the regulations or conditions imposed or any directives given by the Commission.
- (x) The operator has furnished false, misleading or inaccurate information, or has concealed or failed to disclose material facts in its application for registration.
- (xi) It is in the public interest to cancel the registration.

## Appendix 4

### Circumstances where the Commission would refuse ACE Membership

This is not an exhaustive list – the Commission will refuse appointment or disqualify an individual from ACE membership where it feels it is in the public interest to do so. This will include where the individual:

- i. Is of unsound mind or as a result of ill-health is incapable of carrying out their duties.
- ii. Is declared bankrupt or suspends payments or compounds with their creditors including their bankers.
- iii. Is convicted of any offence involving dishonesty or fraud.
- iv. Is guilty of serious misconduct in relation to their duties.
- v. Fails to attend 75% of the meetings of the ACE in a year without satisfactory excuse.
- vi. In the case of a person possessed of professional qualification, is disqualified or suspended (except on his own request) from practicing his profession in Nigeria by the order of any competent authority made in respect of the person personally.
- vii. Has been a member of an ACE, Director of or directly concerned in the management of a financial institution which failed or was wound up by a Federal High Court.\*
- viii. Has had their appointment with a financial institution terminated for gross misconduct, fraud, dishonesty or conviction for an offence involving dishonesty or fraud.

\*The individual may apply to the Commission for consideration of the Commission to approve their appointment or continuation to act as an ACE Member for other financial institutions.

## Appendix 5

### Example of *Takaful–Insurance* Product Certificate of Endorsement by an ACE

#### **Certificate of Shar’iah Compliance for [Product X]**

In compliance with the Terms of Reference of the Advisory Committee of Experts, having reviewed the **[Product XXXXX]** documentation including all related contracts, literature and associated processes, and after making all required amendments:

We the Advisory Committee of Experts for **[Takaful Insurance Operator]** confirm that in our opinion the **[Product XXXXX]** is in accordance with the **[Wakala/Mudaraba/Hybrid]** Principle of Islamic Finance and is thus deemed to be Shari’ah compliant.

The **[Product XXXXX]** has also received the approval of **[the Commissions’/NAICOM ACE]** and therefore we allow the Operator to provide this product to its customers.

**[ACE Member 1 signature]**

**[ACE Member 2 signature]**

**[ACE Member 3 signature]**

*This certificate was signed on [DATE].....*

## Appendix 6

### REGISTRATION REQUIREMENT FOR TAKAFUL OPERATORS IN NIGERIA

#### Preamble

The National Insurance Commission (NAICOM) issues this Registration Requirements for intending *Takaful-Insurance Operators* pursuant to sections 7 and 49 of the NAICOM Act 1997. The following Registration Requirement in addition to the Commission's Operational Guidelines shall form part of the regulatory and supervisory tools for Takaful Operators seeking license to operate in Nigeria.

#### Part 1: Corporate Status

- a. The applicant must be a Limited Liability Company registered under the Companies and Allied Matters Act (CAMA1990).
- b. The Company must have as part of its name such words or terminology that connotes takaful operation.
- c. The applicant must have any of the following minimum deposit to be kept with Central Bank of Nigeria:
  - i. General Takaful N100,000,000 (One hundred million Naira)
  - ii. Family Takaful N100,000,000 (One hundred million Naira)
- d. The object of the Company's business shall be for Takaful Business and shall not engage in other business not related to takaful insurance.
- e. The Article of Association of the Company shall make provision for the establishment of the Advisory Council of Experts (ACE).
- f. All issued shares shall be ordinary shares and shall rank paripassu.

#### Part 2: Application Requirement

- a. Submission of completed application form to be accompanied with:
  - i. A non-refundable Registration Fee of Two Hundred Thousand Naira (N200,000:00) and a Certification Fee of Eight Hundred Thousand Naira (N800,000:00) to be paid when Application is successful.
  - ii. Certificate of incorporation
  - iii. Particulars of directors
  - iv. Particulars of share holders
  - v. Registered address
  - vi. Memorandum and Article of Association (MEMART)
  - vii. Evidence of minimum deposit with the Central Bank of Nigeria
  - viii. Operators should have a Professional Indemnity Cover with a minimum of 100 Million Sum Insured proportionate to their risk portfolio.
  - ix. Details of Takaful Operational Model
- b. Submission of business plan which shall contain :

- i. Introduction/background of the Company- Brief background about the organization, including past experience of the sponsors/promoters, CVs of the proposed directors/Management who are anticipated to carry on the proposed insurance business in Nigeria, along with its pattern of shareholding.
- ii. Vision Statement – should define the purpose of the Organisation.
- iii. Mission Statement – The mission statement should guide the actions of the organization, spell out its overall goal, provide a path, and guide decision-making. It provides the framework or context within which the company's Strategies are formulated.
- iv. Target Market
- v. Risk Management & Rating Procedures
- vi. Organizational Structure
- vii. Human Resource Structure
- viii. Initial Estimated Set up Cost
- ix. Use of IT
- x. Branches/Sales Offices Structure
- xi. Proposed Reinsurance/Retakaful Arrangement
- xii. Targeted Volume of Business
- xiii. Marketing Strategy (including Product Innovation, Distribution Channels, Pricing Mechanism
- xiv. Promotion & Publicity
- c. Operational System Manuals ;
  - i. Underwriting Policy
  - ii. Claims Policy and Procedure
  - iii. Complaints Policy and Procedure
  - iv. Reinsurance Arrangement,
  - v. Commission fee
  - vi. Contribution rates and basis
- d. Investment Policy, Accounting & MIS Reporting
- e. Projected Financial Statement for Five (5) years in respect of Family Takaful & Three (3) Years for General Takaful;
  - i. including Balance Sheet, P&L Account,
  - ii. Revenue Account (for Family Takaful],
  - iii. Cash Flow Statement, Changes in Equity Statement,
  - iv. Premium Statement, Claims Statement,
  - v. Investment Income Statement,
  - vi. Expenses Statement and
  - vii. Any other ancillary detail of projected financial information or assumptions.
- f. Business Operational Structure
- g. Proposed Class of Business to be underwritten
  - i. Family Takaful; or

- ii. General Takaful
- h. Proposed Products and Services
- i. Proposed method of distribution of profits, surplus etc.
- j. A specimen copies of;
  - i. Proposal forms
  - ii. Cover notes/Certificate
  - iii. Policy Document
  - iv. Claims forms
- k. Notice of location of principal office or registered office of the Company

### **Part 3: Corporate Governance**

1. Proposed number of Executive Director, Non-Executive Directors and Company Secretary
2. Details and Employment/career history of the proposed CEO, senior management, Secretary of ACE and/or head of ICU
3. Details and career history of the proposed ACE members
4. Proposed list of Executive Directors and comprehensive resume
5. Proposed management structure
6. Details of individual or group of related individual having substantial share holding
7. A declaration signed by at least two Directors that the business shall be transacted in accordance with sound Takaful insurance principles.
8. A sworn affidavit by each Director, manager and secretary that he/she is not disqualified under the provisions of section 12(1) of the insurance Act 2003 from being a director, Chief Executive, Manager or Secretary (details to be stated in the affidavit) together with a recent passport photograph of the Directors, Chief Executive Managers and secretary.
9. Completed Personal History Statement (PHS) form containing names, addresses and employment history including directorship of other companies of the Chief Executive and all other Directors of the Company for the past Ten (10) years.
10. Names, qualifications, experience and addresses of each of the proposed heads of Departments and Executive Directors. Evidence of expertise must be provided including formal practical training in both conventional and Takaful insurance Business.
11. A signed copy of the Company's ACE Members Code of Conduct

### **Part 4: Procedure for Product Approval**

All applications for product approval shall be accompanied by the following:

- a. Specimen of proposal form, cover note/ certificate (where applicable), claims form, policy document etc.
- b. Contribution and commission rates
- c. Feasibility study report
- d. Actuarial statement (where applicable)

- e. Retakaful/Reinsurance arrangement
- f. Certification from the ACE



# FORM 1

## APPLICATION FOR REGISTRATION AS A TAKAFUL- INSURANCE OPERATOR

(a).....

NAME OF APPLICANT

To: The National Insurance Commission

1. This application for the registration of the above mentioned applicant as Takaful Insurance Operator under the Takaful- Insurance Operational Guidelines 2013.

(b).....

Directors of the applicant by whom this application is signed.

2. The applicant is a Company incorporated and registered under the Companies and Allied Matters Degree 1990 and its registration number

(c).....

3. The name of the applicant is stated above and its registered office within the meaning of section 630 (2) of the Companies and Allied Matters Degree 1990 is

(d).....

4. The particulars of the share capital of the applicant are as follows:

Authorized:

(e) ₦.....

Issued:

(f) ₦.....

Paid:

(g) ₦.....

(5) The class and categories of Takaful Insurance business in respect of which this application is made are as follows:

(h) .....

(6) It is proposed that the principal office of the applicant shall be situate

.....

(7) The Chief Executive shall be and .....

8) This application is accompanied by a certified copy of each of the following documents, that is.....

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.....etc

(9) The fee of (h) ₦ ..... Payable in respect of this  
Application has been paid to the Commission vide receipt No. .... of  
.....

10) We have been duly authorized by the applicant to this application on its behalf.

Date: ..... 201....

Signature (o) .....

Director

.....  
Director

## FORM 2

### CERTIFICATE OF REGISTRATION AS TAKAFUL OPERATOR

(a).....

Registration No (b).....

It is hereby certified that

(a).....

has this (c).....day of ..... 201...been registered to commence / carry-on as a Takaful Operator under the Takaful Insurance Guidelines 2013 to transact Life/ General Insurance Business of categories:

(d).....

.....  
.....  
.....

Dated this ..... Day of ..... 201...

Signature (e) .....  
**Commissioner for Insurance**