Effective Date: 1 January 2023

NOTICE FOR TAKAFUL OPERATORS

NOTICE NO. TIU/N-2/2022/19

NOTICE ON TAKAFUL OPERATIONAL FRAMEWORK

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1. INTRODUCTION

1.1 This Notice is issued pursuant to Section 90 of the Takaful Order, 2008 ("the Order") to outline the parameters that govern the operational requirements relating to the management of takaful funds and shareholders' fund. The Notice also aims to achieve operational efficiency of takaful business and sustainability of takaful funds, thereby safeguarding the best interest of takaful participants as well as to promote uniformity in takaful business practices.

1.2 This Notice shall be read in conjunction with the following:

1.2.1 Section 19, 23, and 27 of the Order, 2008;

1.2.2 Notice on Corporate Governance for Insurance Companies and Takaful Operators [Notice No. TIU/N-3/2017/7];

1.2.3 Guidelines on Risk Management and Internal Controls for Insurance Companies and Takaful Operators [Guidelines No. TIU/G-3/2018/8];

1.2.4 Guidelines on Product Transparency and Disclosure [Guidelines No. FCI/G4/2019/1]; and

1.2.5 Guidelines on Reinsurance and Retakaful Management for Insurance Companies and Takaful Operators [Guidelines No. TIU/G-3/2020/13].

1.3 This Notice shall take effect on 1 January 2023.

2. DEFINITIONS

2.1 For the purpose of this Notice —

(a) "actuary" has the same meaning as section 2(1) of the Order, 2008;

(b) "additional takaful fund" refers to creation of Participants' Risk Fund (PRF) in addition to the minimum requirements for the establishment of PRF;

(c) "assets" refer to movable and immovable property, or otherwise;

(d) "Authority" means Brunei Darussalam Central Bank as defined by the Brunei Darussalam Central Bank Order, 2010 ("BDCB Order");

(e) "bank(s)" has the same meaning as Section 2 of the BDCB Order;

(f) "board" means the Board of Directors of the takaful operator;

(g) "capitalised expenditure" has the same meaning as section 24(1) of the Order;

(h) "family takaful" has the same meaning as section 2(1) of the Order;

(i) "financial institutions" has the same meaning as Section 2 of the BDCB Order;

(j) "general takaful" has the same meaning as section 2(1) of the Order;

(k) "*Hukum Syara*" has the same meaning as section 2 of the Syariah Financial Supervisory Board, 2006 ("SFSB Order");

(l) "insurer" or "reinsurer" refers to a registered insurance or reinsurance company under the Insurance Order, 2006;

(m) "Participant Investment Fund (PIF)" means a takaful fund established to allocate a portion of a takaful participant's contributions for the purpose of investment or savings;

(n) "Participants' Risk Fund (PRF)" means a fund to which contributions paid by takaful participants are allocated for the purpose of meeting claims by takaful participants on the basis of mutual assistance of protection;

(o) "senior management" shall have the same meaning as senior management defined in Notice on Corporate Governance for Insurance Companies and Takaful Operators (Notice No. TIU/N-3/2017/7);

(p) "shareholders' fund" means a fund that represents the assets and liabilities of a takaful operator that is not attributable to participants;

(q) "surplus" refers to underwriting surplus;

(r) "Syariah Advisory Body (SAB)" means a body established pursuant to the requirement of section 10(1)(e) of the Order;

(s) "Syariah Financial Supervisory Board (SFSB)" means the SFSB established pursuant to section 3 of the Syariah Financial Supervisory Board, 2006;

(t) "takaful" has the same meaning as section 2(1) of the Order;

(u) "takaful business" has the same meaning as section 2(1) of the Order;

(v) "takaful certificates" has the same meaning as section 2(1) of the Order;

(w) "takaful fund" refers to a fund established and maintained by that takaful operator pursuant to section 20 of the Order;

(x) "takaful operator" has the same meaning as section 2(1) of the Order; and

(y) "underwriting surplus or deficit" means the participants' risk fund or retakaful risk fund's financial result from the risk elements of its business, being the balance after deducting expenses and claims (including any movement in provisions for outstanding claims) from the contributions income and adding the investment returns (income and gains on investment assets).

3. ESTABLISHMENT OF OPERATIONAL FRAMEWORK

3.1 The board has the overall oversight over the effective management of takaful operations that support a licensed takaful operator's business and risk strategies. In fulfilling this role, the board is responsible to put in place an operational framework governing the management of takaful operations that complies with *Hukum Syara'* and promotes sustainable takaful operations.

3.2 In relation to paragraph 3.1, the senior management shall ensure the operational framework is commensurate with the nature and complexity of the takaful business including the types of takaful funds being managed and relevant Syariah contracts adopted in managing the takaful business.

3.3 The operational framework shall include policies and procedures on:

3.3.1 application of Syariah contracts;
3.3.2 establishment and maintenance of takaful funds and shareholders' fund, including, where applicable, establishment of additional takaful funds or consolidation of additional PRF[s];
3.3.3 product structuring;
3.3.4 management of underwriting and claims [Guidelines No. TIU/G-1/2022/15];
3.3.5 management of retakaful [Guidelines No. TIU/G-3/2020/13];
3.3.6 remuneration for management of takaful funds;
3.3.7 management of investments;
3.3.8 management of operating costs;
3.3.9 management and distribution of surplus; and
3.3.10 management of deficiency and loss rectification.

3.4 In relation to paragraph 3.3.1, the senior management shall ensure that the policies consist of the following:

3.4.1 provide for the underlying Syariah principle of mutual assistance among takaful participants;
3.4.2 clearly set out the contractual relationship between takaful operator and the pool of takaful participants; and
3.4.3 clearly set out the contractual relationship between takaful operator and individual takaful participants, where relevant.

3.5 The senior management shall ensure the Syariah contracts and Syariah matters in relation to the operational framework are endorsed by the SAB.

3.6 The senior management shall be responsible to ensure effective implementation of the operational framework which include having in place:

3.6.1 reliable infrastructure and information technology ["IT"] system;
3.6.2 adequate human resources with relevant skills and competencies;
3.6.3 appropriate internal controls system; and
3.6.4 a clear communication plan of the policies and procedures particularly for those personnel involved in the day-to-day management of takaful operations.

3.7 The senior management shall maintain documentation for policies and procedures on all aspects of the operational framework as specified in paragraph 3.3.

3.8 The senior management shall review the operational framework on a regular interval in response to changes in the business and operating environment to ensure its continued relevance. Any changes that have material impact on the operational framework shall be approved by the board and be made available to the Authority upon request.

4. ESTABLISHMENT AND MAINTENANCE OF TAKAFUL FUNDS

4.1 A takaful operator shall establish and maintain general takaful or family takaful funds established under section 20 of the Order separate from its shareholders' funds.

4.2 The takaful operator shall establish proper policies and procedures governing the establishment and maintenance of takaful fund[s]. This includes investment and creation of additional takaful fund[s].

4.3 A family takaful operator shall establish and maintain separate takaful fund[s] for certificates in respect of investment-linked takaful business for each investment fund.

4.4 In the case that takaful operators find themselves in liquidation, the assets of each takaful fund shall be used to meet that fund's liabilities to takaful participants before meeting liabilities of other takaful or shareholders' funds.

4.5 The takaful operator establishing additional takaful fund[s] shall develop and implement policies which include, but are not limited to the following:

4.5.1 objective of establishing and maintaining the additional takaful fund[s];
4.5.2 investment and risk strategies of the additional takaful fund[s];
4.5.3 impact of the additional takaful fund[s] to the management of existing takaful fund[s] and overall business strategy;
4.5.4 process to assess performance of the additional takaful fund[s] and its long-term sustainability;
4.5.5 arrangement to report to the board and relevant stakeholders on paragraphs 4.5.1 to 4.5.4;
4.5.6 differentiated pricing methodology for a specific type of takaful product due to business consideration or market practices;
4.5.7 nature of the risks, which can affect the pattern and predictability of claims; and
4.5.8 different surplus distribution method.

4.6 Subject to paragraph 4.8, the takaful operator is allowed to consolidate any additional takaful fund[s] if the takaful operator is of the view that the consolidation will improve the long-term sustainability of the takaful fund[s] to the benefit of takaful participants.

4.7 The takaful operator shall establish and implement policies and procedures for the consolidation of additional takaful fund[s], that include, but are not limited to the following:

4.7.1 requirement to conduct assessment on sustainability of the takaful fund(s) to meet future claims;

4.7.2 requirement to conduct assessment on the impact of the consolidation on fair treatment to takaful participants;

4.7.3 a summary of the actuary's assessment on the impact of the consolidation on the financial condition of the takaful fund(s) and the interest of takaful participants, and recommendations, if any; and

4.7.4 requirement to verify that the affected takaful fund(s) have no outstanding Qardh.

4.8 Upon deciding to consolidate or create takaful fund(s), the takaful operator shall notify the Authority in writing no later than 30 days from the date of any consolidation or creation of the fund(s).

4.9 The takaful operator shall maintain separation of the takaful fund(s) or create additional takaful fund(s) as may be required by the Authority where the Authority deems it is necessary to protect the interests of takaful participants and ensure sustainability of takaful fund(s).

Management of takaful funds

4.10 A takaful operator shall manage each takaful fund and any additional takaful fund(s) separately from each other.

4.11 A takaful operator shall have in place and implement proper accounting system to ensure that assets, liabilities, income and expenditure are properly accounted for under the respective takaful funds or additional takaful funds.

Expenses Attributed to a Takaful Fund

4.12 Takaful operators shall have sound internal processes to ensure that all receipts and expenses of each takaful fund are properly attributable to the takaful funds.

4.13 Expenses that cannot be clearly identified as relating to a specific takaful fund shall be allocated among all the takaful funds on an equitable basis. Each type of expense shall be determined by the actuary or officer in charge of the financial management of the family takaful operator, and be consistently applied annually.

Composition of a Takaful Fund

4.14 With regard to the assets attributed to a takaful fund:

4.14.1 a takaful operator shall maintain the assets of each takaful fund separately; and

4.14.2 the value of assets shall be determined in accordance with the requirements specified in Notice No. TIU/N-1/2016/1.

4.14.3 the following shall not be included in a takaful fund:

i. goodwill;

ii. any amount of capitalised expenditure; and

iii. any other item of expenditure similar to paragraph 4.14.3[ii] which cannot be distinguished or differentiated from the takaful operator's business, wholly or partly, to which that takaful fund relates.

4.14.4 the takaful operator shall maintain all relevant information supporting the valuations in

paragraph 4.14.2 for the Authority's review as and when required by the Authority;

4.14.5 the takaful operator shall obtain a valuation by an independent professional valuer to validate material fair value changes or revaluations at any time should the Authority require of which the cost shall be borne by the takaful operator.

4.15 The takaful operator shall ensure that its records and accounts with regard to each takaful fund are kept in a manner that allows the assets of each takaful fund to be readily accountable and identifiable at all times. There shall be no uncertainty as to the assets comprised in each takaful fund.

4.16 The liabilities of a takaful fund shall be valued in accordance with the requirements of the Risk-Based Capital and Solvency Framework for Takaful Operators, which shall take effect on a date to be notified by the Authority.

Switching of Assets between Takaful Funds

4.17 A takaful operator shall not effect any switching of assets between takaful funds unless it is necessary to do so.

4.18 In the case the takaful operator effects any switching of assets between takaful funds, the following shall apply:

4.18.1 when switching of land or buildings between takaful funds, the takaful operator shall first obtain the Authority's approval, who may grant it subject to such conditions or restrictions as it thinks fit; and

4.18.2 within 30 days from the date of any switching of assets, the takaful operator shall notify the Authority in writing the types of assets switched, the funds involved, the basis of determining the prices, the amount transferred, any transaction costs and reasons for the switch.

4.19 For the purpose of effecting any switching of assets between takaful funds, the takaful operator shall value the assets to be switched in accordance with Notice No. TIU/N-1/2016/1. For takaful operators registered to carry on family takaful business, it shall ensure that its appointed actuary certifies that all such transactions do not adversely affect the interests of the takaful participants.

Withdrawals from a Takaful Fund

4.20 A takaful operator shall not make any withdrawals from a takaful fund unless the takaful operator has complied with sections 20(5) and 20(6) of the Order.

4.21 For the purpose of withdrawals and allocation of the surplus of assets over liabilities in respect of the family takaful funds, the surplus shall be distributed in line with paragraph 11.

5. PRODUCT STRUCTURING

5.1 A takaful operator shall structure takaful products in accordance with the applicable Syariah contracts. While this Notice focuses on the operational requirements of Syariah contracts that are currently adopted by takaful operator including for *Wakalah*, *Mudharabah*, *Qardh* and *Hibah* as part of its product structure, it nevertheless applies to other Syariah standards issued by the Authority. The takaful operator shall observe the requirements in the Syariah standards issued by

the Authority and other requirements specified by the Authority accordingly.

5.2 In relation to paragraph 5.1, where a takaful operator adopts new Syariah contract[1] for the takaful product structuring, the takaful operator shall obtain prior approval from the SAB, SFSB and the Authority.

5.3 A takaful operator shall incorporate the following elements in its product structuring:

5.3.1 a *tabarru'* element for the PRF of family or general takaful products;
5.3.2 where relevant, an investment element for family takaful products; and
5.3.3 where relevant, a savings element for family takaful products.

5.4 In relation to paragraph 5.3.1, a takaful operator shall ensure that the main takaful benefits payable from PRF consist of the following:

5.4.1 benefits to cover for financial loss or misfortune arising from specified events; or
5.4.2 survival or maturity benefits.

5.5 Takaful operators are encouraged to include additional takaful benefits payable from PRF, but are not limited to the following:

5.5.1 distributable surplus from PRF;
5.5.2 payment arising from surrender of takaful certificate; or
5.5.3 cash payout benefit.

5.6 Where a takaful operator includes additional takaful benefits from PRF, such additional benefits shall be related and supplementary to the main takaful benefits as specified in paragraph 5.4.

5.7 A takaful operator shall ensure that the takaful benefits including additional takaful benefits payable from PRF are fully consistent with *Hukum Syara'* and objective of takaful.

5.8 Where a takaful operator offers additional takaful benefits payable from the shareholders' fund to the takaful participants in the form of a *hibah*, such additional takaful benefits shall be related and supplementary to the main takaful benefits as specified in paragraph 5.4.

5.9 In the case where takaful participants are given the option to make a partial cash withdrawal, the takaful operator shall:

5.9.1 clearly disclose the withdrawal option and the terms and conditions for withdrawal in the takaful certificate;

5.9.2 conduct a sustainability test prior to withdrawal to ensure that the withdrawal is not detrimental to the individual takaful participant's future takaful benefits, and that the future takaful contributions in the PIF are sufficient to cover *tabarru'* and any other charges throughout the term of takaful certificate. The results of the sustainability tests shall be disclosed and communicated to the takaful participants; and

[1] This is a case where the Authority has not issued any operational requirements on such contract for takaful operator.

5.9.3 ensure withdrawal charges, if any, are justified in accordance with the costs[2] in managing the partial cash withdrawal.

5.10 In relation to paragraph 5.9.2, in the event where the sustainability test indicates that the takaful certificate will not be sustainable following the partial cash withdrawal, a takaful operator shall:

5.10.1 clearly inform the takaful participant the impact of the partial cash withdrawal on the takaful cover if such takaful participant chooses to proceed with the withdrawal; and

5.10.2 advise the takaful participant not to exercise the partial cash withdrawal option or recommend other alternatives for example, reducing takaful certificate term or takaful coverage.

Legal documentation

5.11 A takaful operator shall ensure that the terms and conditions stipulated in the legal documentation does not contravene with *Hukum Syara'* and are enforceable.

5.12 In relation to paragraph 5.11, where applicable, the legal documentation shall stipulate the terms and conditions associated with the application of Syariah contracts in a takaful product which include the following:

5.12.1 ***Tabarru'***

i. a statement that the *tabarru'* takes into effect when a takaful participant contributes to the PRF;
ii. a statement that the PRF is collectively owned by the pool of takaful participants;
iii. a statement that a takaful operator can revise *tabarru'* charges subject to notification being made to takaful participants, for products with non-fixed *tabarru'* charges; and
iv. types and amount of benefits payable from PRF.

Nonetheless, for products with PIF where allocation of *tabarru'* charges from PIF to PRF is made on a periodic basis, a takaful operator shall have effective processes in place, supported by adequate infrastructure, systems and capabilities including IT support for fund accounting to:

(a) ensure the amount of takaful contributions are accurately allocated to the respective funds, which includes detection of any delays or errors in *tabarru'* charges to PRF; and
(b) identify the amount of PIF of each individual takaful participant at any point of time.

5.12.2 ***Wakalah***

i. description of the subject matter or task to be delegated by takaful participants to a takaful operator;
ii. details of the agreed *Wakalah* fees as follows:
- types of fees and the corresponding tasks or services to be undertaken by the takaful operator;
- basis in determining fees, for example as a percentage of the takaful

[2] Refers to costs that are directly related to the partial cash withdrawal, either based on actual or estimated amount, without any profit or mark-up element.

contributions; and
- terms in which fees shall be paid, for example fees are taken upfront upon payment of takaful contributions.

iii. circumstances that would be deemed as mismanagement or negligence by the takaful operator and remedial action that will be undertaken accordingly;
iv. a statement that the principal amount of takaful contributions placed under PIF is not guaranteed by the takaful operator; and
v. conditions for dissolution of the *Wakalah*, which include:
- circumstances in which the contract will be dissolved; and
- treatment of the *Wakalah* fees in the event of a dissolution.

5.12.3 *Mudharabah*
i. profit or surplus sharing ratio;
ii. a statement that principal amount of takaful contributions placed under PIF is not guaranteed by the takaful operator; and
iii. circumstances that would be deemed as mismanagement or negligence by the takaful operator and remedial action that will be undertaken accordingly.

5.12.4 *Hibah*[3]
i. amount and specified events for *hibah* to be given[4]; and
ii. a statement that any *hibah* from shareholders' fund is at the discretion of the takaful operator.

5.13 In determining the pricing of takaful products, a takaful operator shall:
5.13.1 exercise prudence and due care to ensure the price of the takaful product is appropriate and reasonable; and
5.13.2 ensure that the takaful contributions are sufficient to cover the *tabarru'* charges throughout the term of the takaful product.

6. RETAKAFUL

6.1 A takaful operator shall only cede out takaful risks to other takaful operators or retakaful operators including [foreign takaful operators/retakaful operators].

6.2 Where risks are ceded to foreign takaful operator or retakaful operator, the takaful operator shall ensure that such takaful operator or retakaful operator is conducting its business in compliance with *Hukum Syara'*.

6.3 Takaful operator shall not cede out risks to an insurer or reinsurer except under unavoidable circumstances, as per applicable resolutions by SAB.

6.4 Pursuant to paragraph 6.3, a takaful operator shall establish and implement internal policies and procedures that clearly outline the unavoidable circumstances to allow cession[s] to an insurer or reinsurer including any of the following circumstances:

[3] Not applicable for conditional *hibah*.
[4] For example, meeting certain academic achievements in the case of a takaful certificate participated for education purposes.

6.4.1 no takaful operator or retakaful operator is known to accept the particular risk;
6.4.2 no takaful operator or retakaful operator has the capacity or expertise to accept the particular risk; or
6.4.3 a retakaful arrangement with takaful operator or retakaful operator creates potential detrimental effects to the takaful funds.

6.5 In relation to paragraph 6.4.3, where the takaful operator or retakaful operator is unable to meet its financial obligations and deemed to create detrimental effects includes circumstances where the takaful operator or retakaful operator are:

6.5.1 unable to meet its financial obligations;
6.5.2 not established or incorporated in accordance with the laws of its home regulator;
6.5.3 not properly regulated or supervised by its home regulator;
6.5.4 not financially strong, as may be evidenced by its financial statements or financial rating; or
6.5.5 not based in a country that is experiencing political or financial instability which has the potential to affect the takaful operator, retakaful operator or industry.

6.6 In ceding out to insurers and reinsurers, the takaful operator must ensure that the arrangement does not create detrimental effects on the takaful funds.

6.7 The senior management shall provide justification and evidence for each cession to an insurer or reinsurer in demonstrating that all possible efforts have been undertaken in line with the internal policies established under paragraph 6.4. The justification and evidence supporting the cession to the insurer or reinsurer shall be documented and properly kept by the takaful operator.

6.8 In relation to paragraph 6.7, the senior management of a takaful operator shall report to the board on each cession to the insurer or reinsurer.

6.9 A takaful operator shall not accept reinsurance inwards from an insurer or reinsurer except for risk that is permissible under *Hukum Syara'* and the inward arrangement is based on a retakaful contract between the takaful operator and that insurer or reinsurer, as per applicable resolutions by SAB. Pursuant to paragraph 3.3.5, the takaful operator shall establish and implement policies on permissible risk for accepting reinsurance inwards which shall be endorsed by SAB and approved by the board.

6.10 In line with the concept of mutual assistance and collective ownership of the retakaful PRF, a takaful operator shall ensure that any form of performance-based payment to a cedant of a retakaful arrangement from the retakaful PRF shall only be made based on the overall performance of the fund, as per applicable resolutions by SAB.

6.11 A takaful operator shall ensure that any commission, profit sharing or performance-based payments arising from the retakaful arrangement are fairly redistributed to the relevant funds taking into consideration the source of the retakaful contributions and the performance of the funds leading to such payments.

7. INVESTMENT OF TAKAFUL FUNDS

7.1 A takaful operator shall manage investments of takaful funds in a sound and prudent manner, in line with Syariah requirements and takaful participants' reasonable expectations as specified under section 22 of the Order.

7.2 A takaful operator shall have in place robust system to support the investment management of the takaful funds. In this regard, the takaful operator shall ensure that the system is able to:

7.2.1 earmark specific investments to the relevant funds; and
7.2.2 precisely determine and account for the distribution of investment profits accrued to individual takaful participants and the takaful operator for PIF.

7.3 A takaful operator shall ensure that the policies on investment management established under paragraph 3.3.7 includes method for calculating investment profits and that method is applied consistently for all takaful certificates with PIF throughout the financial year.

7.4 In managing investments, the takaful operator shall establish and implement clear policies and procedures which govern the investment activities as to ensure the sustainability of affected takaful funds and that the best interest of takaful participants is preserved. The takaful operator shall ensure that the policies and procedures specify the following:

7.4.1 investment objectives and strategies;
7.4.2 types of Syariah-compliant investment asset;
7.4.3 control and monitoring mechanism; and
7.4.4 escalation process and information disclosure to the board which include assessment on the impact of investment instruments on takaful funds and takaful participants.

8. PAYMENT AND CHARGES ON SURRENDER OF TAKAFUL CERTIFICATE

8.1 A takaful operator shall determine the surrender value, including the cost of any applicable surrender charge, in a manner consistent with ensuring the fair treatment of takaful participants and in accordance with generally accepted actuarial principles.

8.2 A takaful operator shall ensure that the amount payable to takaful participants upon surrender of takaful certificate is made from the appropriate funds.

8.3 In the case of single contribution for a long-term takaful product that is allocated only in the PRF as *tabarru'*, the surrender value shall include the unexpired *tabarru'* amount, where applicable.

8.4 For a takaful product with PIF features, the surrender value shall include the balance of PIF, where applicable.

8.5 Where a takaful operator imposes a surrender charge for the surrender of takaful certificate, the surrender charge shall reasonably reflect the expected incurred expenses which have not yet been recouped by other charges levied up to the point of surrender of takaful certificate.

8.6 For purposes of paragraph 8.5, the surrender charge can include administrative expenses incurred

in processing the surrender of takaful certificate.

8.7 In relation to paragraph 8.5, a takaful operator which inadvertently imposes a surrender charge greater than the expected incurred expenses to mitigate the risks of surrender of takaful certificate, shall maintain the excess amount in the PRF.

8.8 A takaful operator shall document the computation for the cancellation basis and shall make the documents available to the Authority upon request.

9. REMUNERATION FOR THE MANAGEMENT OF TAKAFUL FUNDS

9.1 A takaful operator can be remunerated in consideration for the services rendered, costs incurred and performance outcome in managing takaful funds, subject to SAB's approval. Any such remuneration can include elements of fixed remuneration [i.e. upfront *Wakalah* fee], performance-based remuneration and compensation for direct costs incurred.

9.2 In relation to paragraph 9.1, the remuneration shall be made in accordance with the requirements of the relevant Syariah contracts.

9.3 In relation to paragraph 3.3.6, takaful operator shall establish and implement remuneration policies which ensure that:

9.3.1 the remuneration structure reflects the specific work or services undertaken and commensurate with the nature, scope and complexity of the work or services; and

9.3.2 the remuneration is consistent with prudent risk-taking, preserves the interest of the takaful participants and ensures the long-term sustainability of the takaful funds.

9.4 Where a takaful operator is remunerated under paragraph 9.1, any remuneration for work undertaken or services provided by the takaful operator shall be charged only once in a takaful certificate.

9.5 A takaful operator shall document the approach and justification of the remuneration for such product and shall make the documents available to the Authority upon request.

Upfront Wakalah fee

9.6 The upfront *Wakalah* fee shall be used to cover mainly for the commissions and management expenses incurred in managing the takaful funds. Any residual margin in the *Wakalah* fee intended for profits shall be reasonable and appropriate.

Remuneration from PRF

9.7 A takaful operator adopting a *Wakalah* or *Mudharabah* can be remunerated based on the performance of the PRF.

9.8 In relation to paragraph 9.7, the remuneration shall be determined based on a proportion of the distributable surplus in PRF or a proportion of the component of the distributable surplus in PRF, as specified in paragraph 11.

9.9 In relation to paragraph 9.8, a takaful operator shall ensure that:

9.9.1 the shareholders' portion of the surplus is only distributed after the takaful participants' portion of the surplus has been paid or accrued to the takaful participants;

9.9.2 the surplus payable to a takaful operator is to be capped at 50% of total distributable surplus; and

9.9.3 remuneration is in line with the takaful operator's policies on surplus management and the requirements as specified in paragraph 11.

9.10 Notwithstanding paragraph 9.9.2, in the case where takaful operator adopts solely *Mudharabah* for its takaful business model and intends to increase the surplus payable to the takaful operator beyond the 50% cap, the takaful operator shall obtain prior written approval from the Authority. In this regard, the takaful operator shall submit the application to the Authority together with endorsement by SAB and approval by the board.

Fee on risk fund

9.11 A takaful operator adopting the Wakalah can be remunerated based on the proportion of the takaful contributions allocated to the PRF in the form of fee on risk fund.

9.12 The fee on risk fund shall be maintained in the PRF and shall not be distributed to the takaful operator unless the following conditions are fulfilled:

9.12.1 PRF is in surplus position as determined under paragraph 11;

9.12.2 the quantum of the distributable fee shall be recommended by the appointed actuary based on the requirements stipulated in paragraph 11.8; and

9.12.3 the distribution of such fee is in conformance with the requirements outlined in paragraph 9.9. For purposes of meeting the requirement in paragraph 9.9.2, the fee to be distributed as income shall form part of the total amount of remuneration from PRF.

9.13 Pursuant to paragraph 9.12, a takaful operator shall not carry forward the fee that is not distributed to the takaful operator for a particular financial year to the subsequent financial years.

Remuneration from PIF

9.14 A takaful operator adopting the *Wakalah bi al-istithmar* or *Mudharabah* can be remunerated based on an agreed profit-sharing ratio from the PIF.

9.15 For the remuneration from PIF, a takaful operator shall ensure that:

9.15.1 financial accounts of the takaful operator have been audited by an external auditor;

9.15.2 the amount to be remunerated to the takaful operator is within the profit-sharing ratio as stated in the takaful certificate; and

9.15.3 the amount to be remunerated to the takaful operator shall not affect the future ability of PIF to meet the *tabarru'* charges to PRF and take into consideration takaful participants' reasonable expectations.

Compensation for direct costs

9.16 In managing *Qardh*, a takaful operator can be remunerated based on the compensation for the direct costs incurred.

9.17 In relation to paragraph 9.16, a takaful operator shall establish and implement appropriate policies and procedures for identifying the eligible actual or estimated direct costs in line with policy document on *Qardh*.

10. MANAGEMENT OF OPERATING COSTS

Operating costs incurred by stakeholders' fund

10.1 As manager of the takaful funds, the operating costs incurred by a takaful operator in carrying out the takaful operations shall be borne by shareholders' fund.

10.2 The operating costs shall include commissions, related expenses payable to the distribution channels, management expenses and other operational expenses.

10.3 A takaful operator shall give rebate to the takaful participants for savings on acquisition costs by the takaful operator, where the takaful certificates are arranged via direct distribution channels.

10.4 A takaful operator shall establish effective controls to ensure expenses incurred by the shareholders' fund do not lead to cost overruns which can affect the viability of the takaful operator and hence its ability to manage the takaful funds effectively.

10.5 A takaful operator shall ensure that the remuneration received under paragraph 9 is prudently managed to cover operating costs incurred in managing the takaful funds for the full contractual obligation of the takaful certificate. In this regard, a takaful operator shall establish appropriate and adequate provisions to meet the expense liabilities of the shareholders' fund to ensure all remuneration received is sufficient to meet the operating costs incurred.

Expenses charged to takaful funds

10.6 A takaful operator shall not pay expenses out of the takaful funds except for:

10.6.1 direct claims-related expenses which refer to fees or costs directly associated with settling of claims such as adjustor and legal fees; and

10.6.2 direct investment-related expenses which refer to transaction costs directly attributable to the acquisition, issuance or disposal of a financial asset of the takaful funds.

10.7 In relation to paragraph 10.6, a takaful operator shall ensure that the:

10.7.1 amount charged to the takaful funds is limited to the actual amount of expenses incurred; and

10.7.2 expenses incurred are not factored into the determination of any forms of remuneration to the takaful operator.

10.8 Where expenses charged to the takaful funds are deemed inappropriate by the Authority, a takaful operator shall apply retrospective adjustments and repay the expenses to the takaful funds as may be required by the Authority.

11. MANAGEMENT AND DISTRIBUTION OF SURPLUS

11.1 A takaful operator must develop a policy with clear methodology for determining the surplus or deficit arising from takaful operations, the basis of determining and allocating that surplus or deficit to the participants, and the method of transferring any surplus or deficit to the participants. A takaful operator shall manage the operations of takaful funds to ensure that the funds' experience is within that assumed in the pricing of takaful products.

11.2 The policy must be approved by the SAB as well as the board.

11.3 More than one policy may be developed where the takaful operator offers different types of takaful products. In this event, any surplus or deficit allocation shall be in line with the policy developed under paragraph 11.1.

11.4 The policy developed in accordance with paragraph 11.1. shall not be amended or varied without the approval of the SAB and endorsement from the respective board and shall be made ready for inspection by the Authority as and when requested.

11.5 No takaful operator is permitted to make any distributions to participants if either the PRF, does not, or through the payment of the distribution, will not meet all the capital available and solvency requirements set by the Authority.

11.6 The surplus distribution shall not cause adverse financial implications or a deficit in the PRF and the takaful operator must ensure that the PRF[s] is sufficiently liquid to cover any proposed surplus distribution.

11.7 On an annual basis, takaful operator shall determine any surplus or deficit arising from each separate PRF. The surplus distribution or remedial action for deficit reduction shall be approved by the actuary and acknowledged by the SAB and the Board.

11.8 In determining the amount of surplus to be recommended for distribution, the actuary shall:

11.8.1 assess the strength of the PRF[s] to ascertain the extent it would be appropriate for surplus to be distributed such that the long-term sustainability of the PRF[s] is not affected; and

11.8.2 refrain from recommending the distribution of surplus should it be that in the actuary's professional judgment, the surplus should remain in the PRF as a buffer to maintain the ability of the PRF[s] to meet future liabilities, if there is an outstanding *Qardh* in the PRF[s], or participants' reasonable expectations not specifically provided for in the actuarial valuation.

11.9 A takaful operator shall not retain or accumulate the distributable surplus allocated to the shareholders with the PRF[s].

11.10 In addition to section 20 of the Order, the surplus shall only be distributed to participants who have not received indemnity during the financial year in a manner that may include, but is not limited to the following:

11.10.1 retain the distributable surplus in the PRF[s], where the amount shall be made available and to be paid upon claim, maturity or surrender;

11.10.2 accumulate the distributable surplus in investment or savings of the individual participants;

11.10.3 pay the distributable surplus directly to the bank account of each individual participants; or

11.10.4 donate to charitable organisation, in the case where individual participants agree to forgo their rights to the distributable surplus; and

11.10.5 the mode of surplus above shall be clearly stipulated in the takaful certificates.

11.11 Any variation [wholly or partially] of the distribution method from paragraph 11.10 shall be approved

by the SAB and the board of the takaful operator.

12. DEFICIENCY AND LOSS RECTIFICATION

Deficiency and loss in PRF

12.1 A takaful operator shall provide *Qardh* or other forms of financial support to the takaful fund which would include PRF, from the shareholders' fund for an amount and on such terms and conditions as may be approved by SAB.

12.2 For purposes of paragraph 12.1:

12.2.1 a deficit in the PRF occurs when assets of the PRF are insufficient to meet the liabilities of the PRF, where assets and liabilities refer to the total assets of the PRF and the sum of actuarial liabilities and other liabilities[5] of the PRF, respectively, as reported in the balance sheet of the takaful funds; and

12.2.2 takaful operator shall immediately rectify the deficit in PRF.

12.3 Where the deficit is to be rectified by *Qardh*, a takaful operator shall ensure that the *Qardh* is repaid from excess of assets over liabilities as defined in paragraph 12.2.1 arising in the PRF in the future years.

12.4 Where the deficit is to be rectified by *Qardh*, a takaful operator shall establish and implement policies to rectify any deficiency in the PRF as specified in paragraph 3.3.10 which shall include, at the minimum, the following:

12.4.1 the manner in which the *Qardh* provided by shareholders will be repaid. The repayment of *Qardh* shall take into account the ability of the PRF to meet future liabilities and takaful participants' reasonable expectations;

12.4.2 the manner in which the surplus will be distributed to takaful participants during the period where *Qardh* has not been fully repaid by the PRF, for example, whether the distribution of surplus shall be continued, reduced or put on hold;

12.4.3 the time period during which *Qardh* shall be repaid and where the *Qardh* shall be deemed irrecoverable beyond the specified time period; and

12.4.4 the circumstances under which the *Qardh* is not repayable.

12.5 In relation to paragraph 12.4.3, in determining the time period to repay *Qardh*, a takaful operator shall take into account the following:

12.5.1 likelihood of *Oardh* being repaid over the foreseeable future;

12.5.2 the expected future experience of the PRF in generating a surplus; and

12.5.3 the potential adverse impact to the viability of the PRF shall the *Qardh* persist.

12.6 Notwithstanding paragraph 12.4.3, a takaful operator shall write-off the *Qardh* prior to the time period specified by the takaful operator as may be required by the Authority.

12.7 A takaful operator can provide *hibah* as other form of financial support to rectify the deficiency in PRF by way of actual transfer of the assets from the shareholders' fund to the PRF with no

[5] "Other liabilities" shall exclude the amount of outstanding Qardh in PRF.

obligation for repayment to the shareholders' fund.

12.8 In the event that there is a deficit or loss in the PRF due to mismanagement or negligence, a takaful operator shall immediately rectify the deficit or loss through an outright transfer of assets from the shareholders' fund to the PRF. Pursuant to paragraph 3.3.10, the takaful operator shall establish policies that specify circumstances of mismanagement or negligence by the takaful operator.

12.9 Pursuant to paragraph 12.8, a takaful operator shall explain and provide the following information to the Authority:

12.9.1 reasons for the deficit or loss;
12.9.2 remedial measures to avoid recurrences of deficit or loss and the expected duration to implement such measures; and
12.9.3 implications of the deficit or loss to the takaful participants.

12.10 Notwithstanding paragraph 12.8, a takaful operator shall rectify the deficit or loss in the PRF through an outright transfer of assets from the shareholders' fund as may be required by the Authority where the Authority determines that the deficit or loss is due to mismanagement or negligence.

Deficiency and loss in PIF

12.11 A takaful operator shall ensure sufficient and relevant information is disclosed to takaful participants to facilitate their understanding of market performance and its implications including potential shortfall of the PIF and possibility of takaful certificate to lapse.

12.12 Where the deficiency and loss in the PIF is due to mismanagement or negligence, a takaful operator shall immediately rectify the loss through an outright transfer of assets from shareholders' fund. Pursuant to paragraph 3.3.10, the takaful operator shall establish policies that specify circumstances of mismanagement or negligence by the takaful operator.

12.13 In relation to paragraph 12.12, mismanagement and negligence includes, but not limited to the following:

12.13.1 poor disclosure of the investment risk that is borne by takaful participants;
12.13.2 non-compliance with the investment strategy or improper execution against approved policies;
12.13.3 investment strategy adopted by takaful operator is inconsistent with the strategy that had been agreed with takaful participants at the point of entering into the takaful certificate; and
12.13.4 misleading information disclosed in the product disclosure sheet.

13. OTHER REQUIREMENTS

Assets of takaful funds

13.1 A takaful operator shall keep the documents referred to section 27[1] of the Order in Brunei Darussalam under its custody or the custody of the following persons:

13.1.1 a licensed Islamic bank under Islamic Banking Order, 2008 or a licensed bank under Banking Order, 2006; or

13.1.2 any other person on behalf of the takaful operator subject to the takaful operator notifying the Authority in writing of the identity of such person and the reasons for the appointment of such person as the custodian and of any change in that custody and the reason for it.

13.2 Notwithstanding paragraph 13.1, a takaful operator have the option to keep the documents:

13.2.1 outside Brunei Darussalam in the custody of a person at such place subject to obtaining the prior written approval from the Authority and compliance with any conditions that may be specified by the Authority; or

13.2.2 in the custody of takaful operator, a bank, or financial institutions in the country where it is carrying on business to the extent the assets relate to its business in that country.

13.3 Pursuant to paragraph 13.2.2, the takaful operator shall notify the Authority in writing of the custodian of its documents and where the Authority so requires, the takaful operator shall produce a certificate from the custodian or its auditor verifying the existence of the documents.

13.4 A takaful operator shall obtain approval from the Authority in writing before the takaful operator can pledge, mortgage or charge any of the assets or securities of takaful funds or shareholders' fund as per the requirement under section 24[f] of the Order.

13.5 The assets or securities pledged or charged for which the Authority's prior written approval is required under paragraph 13.4 include those pledged for a Syariah-compliant repurchase agreement [Syariah-compliant repo] entered into by a takaful operator. The Authority may grant a one-off approval for all subsequent Syariah-compliant repos undertaken by the takaful operator. However, any approval granted to takaful operator may be reviewed by the Authority from time to time, taking into account the adequacy and appropriateness of the takaful operator's risk management as well as internal governance to manage risks associated with such transactions.

Register of takaful certificates and claims

13.6 Takaful operator shall maintain a separate register for its Brunei Darussalam takaful certificates as per section 19[1] of the Order and a separate register for takaful claims under its Brunei Darussalam takaful certificates, as follows:

13.6.1 information relating to takaful certificates and claims to be recorded in the registers shall include the information necessary for identification of the liabilities underwritten as well as the processing and validation of the liabilities and takaful claims against the takaful certificates, respectively; and

13.6.2 information for register of takaful certificates shall be recorded upon issuance or transfer of the takaful certificates. Whereas for the register of takaful claims, the information shall be recorded upon the takaful operator becomes aware of the takaful claims.

13.7 A takaful operator shall, at the request of any person having an interest in the takaful certificate or claim, inform that person whether the takaful certificate or claim is entered in the register.

Free-look period and advanced contributions

13.8 For family takaful contributions received during free-look period in line with *Guidelines No. FCI/G4/2019/1*, a takaful operator shall allocate the contributions in the PRF or PIF.

13.9 Notwithstanding paragraph 13.8, in the event of cancellation of takaful certificate by takaful participants during free-look period, a takaful operator shall return the full amount of takaful contributions to the takaful participants and deduction is only allowed for expenses incurred for the medical examination of takaful participants.

13.10 In relation to paragraph 13.9, for takaful contributions received as advanced takaful contributions[6], a takaful operator shall similarly return the full amount of advanced takaful contributions to the takaful participants in the event of surrender of takaful certificate or claims by the takaful participants.

14. PROVISIONS REPEALED

14.1 The following Notices are hereby repealed on 1 January 2023:

14.1.1 Notice No. TIU/N-1/2020/12 on Notice on Surplus Distribution for Takaful Operators; and

14.1.2 Notice No. TIU/N-4/2020/15 on Notice on Establishment and Maintenance of Takaful Funds for Takaful Operators.

MANAGING DIRECTOR
BRUNEI DARUSSALAM CENTRAL BANK

Date: 14 Zulhijjah 1443H / 14 July 2022

[6] Refers to takaful contributions received by the takaful operator for takaful certificates which have already been incepted but where the takaful contributions are not yet due for payment.