



**BANK NEGARA MALAYSIA**  
CENTRAL BANK OF MALAYSIA

# **Broader Application of *Ta`awun* in Takaful** Exposure Draft

Applicable to:

1. Licensed takaful operators including professional retakaful operators

This Exposure Draft (ED) sets out the proposed requirements to facilitate the broader application of *ta`awun* by licensed takaful operators and professional retakaful operators with the aim to unlock the full potential of takaful to better serve the needs of all segments of society in promoting financial resilience and inclusion and achieve objectives of Shariah (*maqasid* Shariah). The ED covers aspects of Shariah requirements, governance and oversight, market conduct as well as transparency and disclosure to support an effective implementation of broader application of *ta`awun* by the takaful industry.

Bank Negara Malaysia (the Bank) invites written feedback on the proposed Shariah and regulatory requirements set out by the Bank in this ED, including suggestions for further clarification on any particular issues or areas, or alternative proposals which the Bank should consider. The written feedback should be supported with clear rationale, evidence, or illustrations, as may be appropriate, to facilitate the Bank's assessment.

Feedback must be submitted electronically to the Bank via email to [shariahstandard@bnm.gov.my](mailto:shariahstandard@bnm.gov.my) by 31 December 2024. In the course of preparing the feedback, specific queries can be directed to [shariahstandard@bnm.gov.my](mailto:shariahstandard@bnm.gov.my).

## Table of Contents

<b>PART A</b>	<b>OVERVIEW</b> .....	<b>4</b>
1	Introduction .....	4
2	Applicability .....	5
3	Legal provisions .....	5
4	Effective date .....	6
5	Interpretation .....	6
6	Related legal instruments and policy documents .....	7
<b>PART B</b>	<b>GENERAL REQUIREMENTS</b> .....	<b>8</b>
7	Scope of broader application of <i>ta'awun</i> .....	8
<b>PART C</b>	<b>SHARIAH REQUIREMENTS</b> .....	<b>10</b>
8	Definition .....	10
9	Fairness to contracting parties .....	10
<b>PART D</b>	<b>REGULATORY REQUIREMENTS</b> .....	<b>12</b>
10	Governance and oversight .....	12
11	Operational requirements.....	13
12	Market Conduct and Disclosure .....	15
	<b>APPENDICES</b> .....	<b>18</b>
Appendix 1	Guiding principles on new takaful operational models .....	18
Appendix 2	Illustration on takaful operational models based on various Shariah contracts .....	21

## PART A OVERVIEW

### 1 Introduction

- 1.1 Mutual assistance (*ta`awun*) is a broad concept that has been widely discussed by classical and contemporary Shariah scholars in the context of encouraging piety (*taqwa*) and cooperation among Muslims towards good causes. *Ta`awun* emphasises the ethical obligation of individuals and societies to support one another, embodying the values of solidarity and collective responsibility.
- 1.2 *Ta`awun* forms the foundation of the risk-sharing mechanism in takaful<sup>1</sup>. In line with the definition of “takaful” under section 2(1) of the Islamic Financial Services Act 2013 (IFSA), takaful is an arrangement where takaful participants would mutually agree to contribute to a common fund that provides mutual financial benefits payable to the takaful participants or their beneficiaries in accordance with the specified terms and conditions on the occurrence of pre-agreed events. This fundamental concept differentiates takaful from conventional insurance that works on the basis of risk transfer from policyholders to insurers. At present, the regulatory framework mainly focuses on the confined application of *ta`awun* among takaful participants in a takaful fund. This is intended to preserve the best interest of takaful participants as the collective owner of the takaful fund i.e. participants’ risk fund.
- 1.3 In the context of the takaful industry, a broader application of *ta`awun* encourages takaful operators to adopt business practices that are responsible and beneficial to society at large, fostering stronger culture of empathy and support, which is essential for achieving the socio-economic objectives. Through a broader application of *ta`awun*, licensed takaful operators are expected to contribute significantly to the socio-economic development of the community while adhering to the principles of Shariah, consistent with the aspirations of Value-Based Intermediation<sup>2</sup> (VBI) towards generating positive and sustainable impact to the economy, community, and environment, and significantly enhancing the realisation of objective of Shariah (*maqasid* Shariah) in a more comprehensive manner.
- 1.4 As the industry progresses, *ta`awun* concept can be applied broadly to enable the takaful industry to contribute more meaningfully while continuing to preserve the rights of takaful participants and consistently achieving the initial objective of takaful. Specifically, the broader application of *ta`awun* in takaful can serve to achieve the following key objectives:

---

<sup>1</sup> Shariah Resolutions in Islamic Finance (Second Edition), Bank Negara Malaysia (2010).

<sup>2</sup> VBI refers to intermediation function that aims to deliver the intended outcomes of Shariah through practices, conduct and offerings that generate positive and sustainable impact to the economy, community and environment, consistent with the shareholders’ sustainable returns and long-term interests.

- (a) **promote equitable wealth circulation** by encouraging effective resource distribution to preserve protection needs among takaful participants, as well as support critical protection needs of unserved and underserved segments<sup>3</sup>; and
- (b) **promote social cohesion** by sustaining communal relationships among the takaful participants and the community at large, whose vulnerable protection needs remain unmet due to financial hardships and lack of commercial viability to serve a particular market/ risk segment, such as marginalised groups of people with different abilities.

1.5 The requirements in this policy document aim to facilitate a smooth and effective broader application of *ta`awun* in the takaful business by setting out the following:

- (a) the scope of a broader application of *ta`awun* encompassing the sources of fund that can be utilised;
- (b) Shariah requirements in preserving the rights and ensure fair treatment of existing takaful participants particularly when the broader application of *ta`awun* is also benefitting third parties beyond the existing takaful participants;
- (c) regulatory requirements to support prudent and innovative implementation of a broader application of *ta`awun*, encompassing introduction of new and/or enhanced requirements on governance and oversight, market conduct as well as transparency and disclosure; and
- (d) guiding principles to facilitate the exploration and development of new takaful operational models to support an effective implementation of broader application of *ta`awun*.

1.6 The Bank endeavours to review and assess the relevant policies in phases, centred on the principle of proportionality and coherence while preserving the capability of achieving the desired objective as outlined in paragraph 1.4 and safeguarding financial stability and the interests of takaful participants.

## 2 Applicability

2.1 This policy document is applicable to licensed takaful operators as defined in paragraph 5.2.

## 3 Legal provisions

3.1 The requirements in Part B and Part D of this policy document are specified pursuant to sections 29(2), 57(1), 90, 135 and 155 of the IFSA.

---

<sup>3</sup> For avoidance of doubt, the unserved and underserved segments refer to the example of critical protection gaps provided in Appendix I of the Licensing and Regulatory Framework for Digital Insurers and Takaful Operators (DITO) ED issued on 25 November 2022. Please note that once the DITO ED is finalised, the relevant part in the finalised DITO policy document on unserved and underserved segments would be applicable for the purpose of this policy document.

- 3.2 The Shariah requirements in Part C of this policy document are specified pursuant to section 29(1) of the IFSA.
- 3.3 The guidance in this policy document is issued pursuant to section 277 of IFSA.

#### 4 Effective date

- 4.1 This policy document comes into effect at a later date which will be determined upon finalisation of the requirements by the Bank.

#### 5 Interpretation

- 5.1 The terms and expressions used in this policy document shall have the same meanings assigned to them in the IFSA, as the case may be, unless otherwise defined in this policy document.

- 5.2 For the purposes of this policy document –

“**S**” denotes a standard, an obligation, a requirement, specification, direction, condition and any interpretive, supplemental and transitional provisions that must be complied with. Non-compliance may result in enforcement action;

“**G**” denotes guidance which may consist of statements or information intended to promote common understanding and advice or recommendations that are encouraged to be adopted;

“**critical protection gaps**” in respect of takaful include the examples provided in the Licensing and Regulatory Framework for Digital Insurers and Takaful Operators Exposure Draft (DITO ED)<sup>4</sup>. Examples of protection gap cited include retirement, long-term care, business interruption, cyber and climate-related;

“**distributable surplus**” refers to surplus as determined by a licensed takaful operator based on requirements specified in paragraph 18.3 of the Policy Document on Takaful Operational Framework, that is distributed between a licensed takaful operator and takaful participants;

“**licensed takaful operator**” refers to a licensed takaful operator, including a professional retakaful operator;

“**orphan surplus**” refers to surplus residing in a takaful fund that has no in-force takaful certificates (i.e. all takaful certificates have expired or are out-of-force), and such takaful fund has no outstanding takaful liabilities and expenses;

---

<sup>4</sup> Please note that once the DITO ED is finalised, the relevant part in the finalised DITO policy document on unserved and underserved segments would be applicable for the purpose of this policy document.

“**Perlindungan Tenang product**” refers to the definition provided in the Policy Document on Perlindungan Tenang; and

“**vulnerable consumer**” has the same meaning assigned to it in paragraph 5.2 of the Bank’s Policy Document on Fair Treatment of Financial Consumers.

### Question 1

- (a) In relation to paragraph 5.2, please provide–
- (i) views on whether the interpretations particularly on orphan surplus are sufficient to promote understanding and implementation of the broader application of *ta`awun*, and please highlight any challenges based on the current practice (if any) as well as other considerations that the Bank can consider; and
  - (ii) details on any orphan surplus currently maintained by your institution for the period as at financial year end of 2022 and 2023 respectively, including the usage of the orphan surplus and internal controls that have been put in place by the licensed takaful operator in respect of its orphan surplus.

## 6 Related legal instruments and policy documents

- 6.1 This policy document must be read together with other relevant legal instruments and policy documents that have been issued by the Bank, including any amendments or reissuance thereafter, in particular–
- (a) Appointed Actuary: Appointment and Duties issued on 28 April 2014;
  - (b) Appointed Actuary: Appointment and Duties (for reinsurers and retakaful operators) issued on 24 December 2014;
  - (c) Corporate Governance issued on 3 August 2016;
  - (d) Fair Treatment of Financial Consumers issued on 27 March 2024;
  - (e) *Hajah* and *Darurah* issued on 3 January 2024;
  - (f) Introduction of New Products by Insurers and Takaful Operators issued on 15 May 2015;
  - (g) *Mudarabah* issued on 24 April 2015;
  - (h) *Musyarakah* issued on 20 April 2015;
  - (i) Perlindungan Tenang issued on 2 July 2021;
  - (j) Product Transparency and Disclosure issued on 29 February 2024;
  - (k) Risk-Based Capital Framework for Takaful Operators issued on 17 December 2018;
  - (l) Shariah Governance issued on 20 September 2019;
  - (m) Takaful Operational Framework issued on 26 June 2019; and
  - (n) *Wakalah* issued on 24 June 2016.

## PART B GENERAL REQUIREMENTS

### 7 Scope of broader application of *ta`awun*

- S** 7.1 A licensed takaful operator shall comply with the requirements in this policy document on utilisation of distributable surplus<sup>5</sup> belonging to takaful participants, or orphan surplus<sup>5</sup> for purposes specified under paragraph 11.1.
- S** 7.2 A licensed takaful operator shall submit a written application to the Bank for the Bank's consideration on the following:
- (a) Adoption of the broader application of *ta`awun* for purposes other than as specified under paragraph 7.1<sup>6</sup>; or
  - (b) Introduction of new takaful product<sup>7</sup> or new takaful operational model based on the Shariah contracts other than *wakalah*, *mudarabah* or *tabarru`* concept as provided under the Policy Document on Takaful Operational Framework, including the new takaful product to be offered under the new takaful operational model.
- G** 7.3 For the purpose of paragraph 7.2(b), a licensed takaful operator may refer to **Appendix 1** – 'Guiding principles on new takaful operational model' and **Appendix 2** – 'Illustration on takaful operational models based on various Shariah contracts'<sup>8</sup> as guidance.

#### Question 2

- (a) In respect of paragraphs 7.2 and 7.3, please share any current and future initiatives to explore new takaful operational model or product based on other structures and/or Shariah concepts that necessitate broader application of *ta`awun* which are not covered in this policy document. Please–
- (i) provide supporting information on Shariah considerations e.g. types of Shariah concepts and *fiqh* adaptation (*takyif fiqh*) in the structuring of new takaful operational model or product; and
  - (ii) identify the potential calibration of regulatory requirements, such as the Risk Based Capital Framework for Takaful Operators or Takaful Operational

<sup>5</sup> Under the existing takaful operational model based on *wakalah* and *mudarabah* contracts, as well as *tabarru`* concept.

<sup>6</sup> For example, utilisation of surplus or fund other than distributable surplus or orphan surplus for different types of applications beyond assistance to existing takaful participants, vulnerable consumers and unserved and underserved segments.

<sup>7</sup> For the avoidance of doubt, the approval for the introduction of new takaful product under broader application of *ta`awun* is required if the new product falls within the scope of paragraph 9.1 of the Introduction of New Products by Insurers and Takaful Operators Policy Document issued on 15 May 2015.

<sup>8</sup> Appendix 2 is intended to provide illustration on potential use cases of the guiding principles provided in Appendix 1 and does not constitute an endorsement of the operational models in Appendix 2.

Framework that may be considered by the Bank to facilitate the adoption of broader application of *ta`awun* by licensed takaful operators.

### Question 3

Whilst the discussion paper on Broader Application of *Ta`awun* issued on 11 March 2022 explored the utilisation of excess surplus to absorb losses of another takaful fund, the Bank wishes to reiterate that excess surplus of a takaful fund shall only be recognised as capital available if they meet the minimum eligibility criteria of a capital instrument as per our Exposure Draft on Risk Based Capital Framework for Insurers and Takaful Operators issued on 28 June 2024. In view that a licensed takaful operator is required to provide *qard* or any other form of financial support to rectify deficits in the takaful fund<sup>9</sup>, the excess surplus in a takaful fund is considered as not fungible to absorb losses of other takaful funds. Therefore, only the surplus of respective takaful fund can be recognised as regulatory capital at the fund level in the computation of the takaful operator's Capital Adequacy Ratio.

Notwithstanding, a licensed takaful operator may consider the takaful fund consolidation approach to improve the sustainability of the takaful fund, as outlined under paragraphs 9.12 to 9.15 of the Policy Document on Takaful Operational Framework. To better understand takaful fund consolidation practices in the industry, and how takaful fund consolidation may help achieve the objectives of the broader application of *ta`awun*<sup>10</sup>, we invite responses to the following questions:

- (a) please elaborate considerations that are applied by licensed takaful operators in deciding whether to consolidate or segregate participants' risk funds, including regulatory barriers and operational challenges faced; and
- (b) please share suggestions on potential regulatory adjustments that the Bank may explore to promote best practices in takaful fund consolidation and achieve objectives of the broader application of *ta`awun*.

---

<sup>9</sup> Section 95 of IFSA requires licensed takaful operators to provide *qard* or other forms of financial support to the takaful fund from the shareholders' fund.

<sup>10</sup> For example, fund consolidation allows capital optimisation and may help reducing claims volatility as it allows better risk pooling across more participants, and therefore may help licensed takaful operators to achieve the objectives outlined in paragraph 1.4 such as providing wider access of protection to unserved and underserved segments.

## PART C SHARIAH REQUIREMENTS

### 8 Definition

- G** 8.1 *Ta`awun* refers to the concept ordained in the Al-Quran that encourages mutual assistance for good causes and prohibits assistance or cooperation for ill-intent causes<sup>11</sup>.

### 9 Fairness to contracting parties

- S** 9.1 In line with the objectives of Shariah and the value propositions of Islamic finance<sup>12</sup>, the preservation of fairness and best interest of the contracting parties is paramount in the management of takaful fund by a licensed takaful operator under a *wakalah* contract as the agent (*wakil*) of takaful participants i.e. the principal (*muwakkil*). In this regard, the licensed takaful operator must ensure the implementation of the broader application of *ta`awun* preserves fairness and is not detrimental to the interest of the takaful participants.
- S** 9.2 In relation to paragraph 9.1 and subject to paragraph 9.3, a licensed takaful operator shall obtain the express consent of existing takaful participants prior to utilising takaful participant's portion of distributable surplus<sup>13</sup> for the broader application of *ta`awun*. At minimum, the licensed takaful operator shall ensure that–
- (a) contractual terms and conditions between the licensed takaful operator and takaful participants in the takaful certificate include all pre-agreed events<sup>14</sup> leading to the broader application of *ta`awun* and do not give rise to a conflict of interest to the licensed takaful operator as an agent in managing the takaful fund on behalf of the takaful participants;
  - (b) express consent by a takaful participant referred to in paragraph 9.2(a) is obtained without undue influence, coercion, or deliberate omission of any material information; and
  - (c) specific contractual obligations of the licensed takaful operator with regard to the broader application of *ta`awun* are clearly provided to takaful participants, such as the obligation to ensure the utilisation of distributable surplus or orphan surplus is in line with Shariah requirements and for the intended eligible recipients.

<sup>11</sup> *Surah al-Maidah*, verse 2.

<sup>12</sup> Refers to the universal objectives of Shariah in preserving wealth through upholding fairness, transparency, circulation and tranquility, as well as the specific objective in takaful i.e. provision of protection to takaful participants.

<sup>13</sup> For the avoidance of doubt, the utilisation of orphan surplus does not require express consent from participants due to no in-force takaful participant and is subject to the internal policy of respective licensed takaful operator that is endorsed by the Shariah committee.

<sup>14</sup> For example, in the event there is distributable surplus declared for the financial year or specific events for the utilisation of distributable surplus, such as during pandemic.

- S** 9.3 Where a licensed takaful operator proposes to obtain takaful participant's consent through deemed consent approach, the licensed takaful operator shall observe the following conditions:
- (a) the broader application of *ta`awun* must not adversely impact takaful participants, such as no increase in the pricing of takaful contributions;
  - (b) adequate notification outlining information on distributable surplus for the year and periodic disclosures on the impact achieved from the utilisation of distributable surplus for the broader application of *ta`awun* are provided to the takaful participants;
  - (c) takaful participants are provided with the option to revoke their earlier deemed consent; and
  - (d) the amount involved in the utilisation of the distributable surplus for the broader application of *ta`awun* is negligible (subject to the requirement in paragraph 12.2(c)).

**Question 4**

Please provide views from the Shariah committee on the following:

- (a) the appropriate *fiqh* adaptation (*takyif fiqhi*) on the utilisation of takaful participant's distributable surplus under paragraph 7.1, for example, *tanazul*, *hibah* or *waqf*; and
- (b) the relevant Shariah considerations for the application of express and deemed consent for existing takaful participants of in-force takaful certificates as well as appropriate parameters to safeguard the rights and interest of takaful participants.

## PART D REGULATORY REQUIREMENTS

### 10 Governance and oversight

- S** 10.1 The Board must provide an effective oversight over the implementation of the broader application of *ta`awun* and ensure that such application is governed by robust and clear internal policies and procedures<sup>15</sup>.
- S** 10.2 In ensuring that the implementation of the broader application of *ta`awun* complies with Shariah requirements, the Shariah committee shall endorse the following to ensure fairness and protect the interest of takaful participants:
- (a) implementation broader application of *ta`awun* in line with Shariah requirements specified under paragraph 9;
  - (b) eligibility criteria of beneficiaries or recipients to the benefits under the broader application of *ta`awun* in line with requirements specified under paragraph 11.2;
  - (c) terms and conditions on the broader application of *ta`awun* stipulated in the relevant legal documentations, including in proposal form or takaful certificate that is in line with paragraph 12.3; and
  - (d) information disclosed in the relevant promotional materials or related publications under paragraph 12.4.
- S** 10.3 In relation to paragraph 7.1 on utilisation of distributable surplus, senior management must establish internal policies and procedures governing broader application of *ta`awun* that take into consideration the relevant factors including the following:
- (a) compliance with regulatory requirements including preservation of takaful participants' best interest and licensed takaful operator's fiduciary duty;
  - (b) sustainability of takaful funds in meeting current and future obligations to pay out takaful benefits, based on recommendations from the Appointed Actuary; and
  - (c) mitigation of adverse impact to takaful participants, such as increase in pricing of annual takaful contributions attributed to the implementation of broader application of *ta`awun*.
- S** 10.4 The determination and management of distributable surplus shall be subject to, among others, the policy documents on Takaful Operational Framework and Appointed Actuary: Appointment and Duties.

#### Question 5

- (a) Please provide views on the implication of the broader application of *ta`awun* relating to sustainability of takaful funds at fund level and managing existing takaful

---

<sup>15</sup> In line with paragraph 8.4 of Corporate Governance Policy Document issued on 3 August 2016 and paragraph 8.1 of Shariah Governance Policy Document issued on 20 September 2019.

participant's expectation on future surplus. In relation to this, we would also appreciate the Head of Pricing's view on whether there are expected increases in *tabarru'* and/or contribution rates with implementation of broader application of *ta`awun*.

- (b) For licensed takaful operators with existing products that already embed surplus utilisation to assist takaful participants who are vulnerable consumers and unserved and underserved segments, please elaborate the current internal policies and procedures, governance and controls that have been put in place.

## 11 Operational requirements

- S** 11.1 A licensed takaful operator must ensure that the utilisation of distributable surplus belonging to takaful participants and orphan surplus for broader application of *ta`awun* would promote–
- (a) equitable wealth circulation by encouraging effective resource distribution while preserving protection needs among takaful participants; and
  - (b) social cohesion by sustaining communal relationships among takaful participants and the community at large, including critical protection needs of unserved and underserved segments whose protection needs remain unmet due to financial hardships and commercial non-viabilities.
- S** 11.2 In relation to paragraph 11.1, a licensed takaful operator shall establish internal criteria in defining the eligible beneficiaries or recipients of distributable surplus or orphan surplus for the purpose of the broader application of *ta`awun* that must be endorsed by Shariah committee and approved by the Board. At minimum, a licensed takaful operator must ensure the eligibility criteria consider the following types of beneficiaries or recipients of distributable surplus or orphan surplus utilisation, and first prioritise existing takaful participants:
- (a) existing takaful participants within the same takaful fund for utilisation of distributable surplus, or any takaful participant for utilisation of orphan surplus who are vulnerable consumers including those who face genuine financial hardships in paying the takaful contribution;
  - (b) unserved and underserved segments; or
  - (c) charitable organisations registered with the Lembaga Hasil Dalam Negeri Malaysia under Subsection 44(6) of the Income Tax Act 1967 or authorised bodies under the State Islamic Religious Councils (SIRC).
- G** 11.3 In line with the Bank's aspiration to grow social finance<sup>16</sup> solutions to improve social resilience through the provision of affordable and accessible financial protection and to further strengthen the application of *ta`awun* concept in takaful, a licensed takaful

---

<sup>16</sup> Social finance refers to financial business that is focused on social outcomes and uses recognised instruments, such as donations and cash waqf, to deliver financial products and services.

operator may consider to donate a portion of the licensed takaful operator's distributable surplus, or use alternative funding sources such as philanthropic funds (i.e. grants, *sadaqah*, and *zakat*) or the licensed takaful operator's existing corporate social responsibility (CSR) funds for the purposes in line with the broader application of *ta`awun* under paragraph 11.1.

- S** 11.4 In relation to the implementation of broader application of *ta`awun* under paragraph 11.2(b), a licensed takaful operator shall incorporate its commitments in its business plan to develop new products and/or extend takaful coverage to address emerging risks based on the broader application of *ta`awun*. A licensed takaful operator must ensure that the products and risks covered demonstrate innovation and/or expansion of takaful penetration among unserved and underserved segments.

**Question 6**

- (a) In relation to paragraph 11.2 on eligible recipients of distributable surplus belonging to takaful participants and orphan surplus, please share–
- (i) the anticipated challenges and consideration in identifying and distributing the surplus to the eligible beneficiaries or recipients; and
  - (ii) your views on specific segments or other potential eligible recipients that your institution may consider. For example, mental health, climate-aligned protection, business interruption, cyber-attack, retirement solutions. Please provide the relevant supporting information, for example, brief market study, implementation strategies including technical capacity building.
- (b) In relation to paragraph 11.3, what are the potential implications and challenges to donate distributable surplus portion that belongs to shareholders fund (i.e. operational, legal and financial risks)?

- G** 11.5 To further amplify the impact of the broader application of *ta`awun* and optimise on the economies of scale, an industry-level *ta`awun* fund may be established by licensed takaful operators to consolidate distributable surplus belonging to takaful participants who have provided their consent and orphan surplus, as the case may be. In the event that a licensed takaful operator intends to participate in the industry-level *ta`awun* fund (collectively will be referred to as “participating licensed takaful operators”), the participating licensed takaful operators may consider the following principles in establishing the industry-level *ta`awun* fund:
- (a) the application of new structures and/or Shariah contracts is subject to the Bank's prior written approval;
  - (b) a party to be appointed as the *ta`awun* fund administrator must have strong, robust and secured technology that promotes innovation and efficiency in the broader application of *ta`awun* offerings, transparency, as well as impact disclosures; and
  - (c) scope of benefits and eligible recipients to be collectively decided by participating licensed takaful operators and their respective Shariah committees.

- G** 11.6 In relation to paragraph 11.5, a licensed takaful operator may consider the following in designing the structure, benefit and eligible recipients of the industry-level *ta`awun*:
- (a) prioritisation on the protection relating to cyber-attack, climate-resilience, health for uninsured coverages such as HIV or disabled community;
  - (b) features or tools to encourage partial self-contribution by the eligible recipients or philanthropic fund to reduce total reliance on distributable surplus only; and
  - (c) integration with structured financial literacy and empowerment programmes suited to the identified recipients.

**Question 7**

In relation to paragraphs 11.5 and 11.6, please highlight–

- (a) your institution's appetite to participate in the initiative to establish an industry-level *ta`awun* fund, and please elaborate your institution's consideration and aspiration on the utilisation of distributable surplus to meet the requirement under paragraph 11.5; and
- (b) any challenge or concern in establishing an industry-level *ta`awun* fund, as well as any further guidance or clarity required from the Bank.

**12 Market Conduct and Disclosure**

- S** 12.1 In relation to paragraph 9.2 and where express consent cannot be obtained from all takaful participants of a takaful fund for utilisation of distributable surplus for the broader application of *ta`awun*, a licensed takaful operator shall ensure that the amount of distributable surplus to be utilised for the broader application of *ta`awun* is confined to the portion belonging to the takaful participants who have provided the express consent.

**Question 8**

In respect of paragraphs 9.2 and 12.1 on the requirement to obtain express consent from takaful participants, please–

- (a) elaborate on your institution's current and future practice in obtaining express consent from participants (for example, via short message services (SMS), e-mail, mobile application or others), including the relevant cost, operational and legal considerations on the approach adopted; and
- (b) provide views on other provisions in the takaful certificate, apart from surplus sharing clause, that will be impacted by the variation of surplus sharing arrangement to give effect to the implementation of broader application of *ta`awun*, and whether existing takaful participants are required to enter into new takaful contract with respective takaful operator; and
- (c) what are the potential impacts, challenges and strategies to ensure effective implementation of express consent requirement, in particular for existing participants?

- S** 12.2 Where a licensed takaful operator adopts deemed consent approach as specified in paragraph 9.3, the implementation shall encompass –
- (a) the licensed takaful operator has provided a written notification to obtain express consent from the takaful participant concerned within at least 30 calendar days prior to the utilisation of takaful participant’s portion of distributable surplus for the broader application of *ta`awun*;
  - (b) the approach is applied for participants who have not responded to the written notification in relation to paragraph 12.2(a) within the notice period;
  - (c) the amount of the distributable surplus to be utilised for the broader application of *ta`awun* is negligible, which must be less than or equal to RM10 per takaful participant per financial year;
  - (d) the takaful participant had not previously provided their banking information to facilitate direct crediting of funds;
  - (e) the distributable surplus does not arise from investment-linked takaful or a Perlindungan Tenang product; and
  - (f) takaful participants are provided the option and avenue to revoke their earlier deemed consent (if any) during the term of contract.

**Question 9**

- (a) In relation to paragraph 12.2, what are the strategies to preserve participants’ rights and to mitigate any legal/reputational risks against licensed takaful operator? In cases where your institution has implemented a deemed consent approach, please elaborate on any challenges or risks as well as the mitigation strategies. Please also provide opinions on the sufficiency of the proposed safeguards for negligible distributable surplus mechanism taking into account views from your institution’s Shariah committee, the Appointed Actuary and Head of Marketing or Communication.
- (b) What are your views on the suggestion to allow implementation of deemed consent for annual distributable surplus amounting to RM10 or less? What are other alternative thresholds that the Bank should consider, and why?
- (c) Please provide details on the yearly amount of the distributable surplus per takaful participant, and the estimated total negligible distributable surplus based on the latest financial audited period. In answering this question, please provide inputs in Form C in the feedback template.

- S** 12.3 A licensed takaful operator must provide adequate information to existing and prospective takaful participants to support informed decision-making and instill confidence among takaful participants on the broader application of *ta`awun*. At minimum, a licensed takaful operator must ensure that the terms and conditions on the broader application of *ta`awun* to be included in the takaful certificate include–
- (a) the purpose of the broader application of *ta`awun* and the impact of its application; and
  - (b) the takaful participants’ rights, if any, under the broader application of *ta`awun*.

- 
- S** 12.4 A licensed takaful operator must disclose to existing and prospective takaful participants on the impact arising from the broader application of *ta`awun*, such as the amount of contribution or takaful benefit to be received by beneficiaries or recipients, donations to charitable organisations and increased access of protection by unserved and underserved segments.
- G** 12.5 Information under paragraph 12.4 may be disclosed by a licensed takaful operator through various mediums and platforms, including on its website, social media or annual renewal or takaful certificate statements.
- S** 12.6 In relation to paragraph 11.3 and where a licensed takaful operator opts to market the broader application of *ta`awun* as part of its CSR activities, the licensed takaful operator shall disclose that the CSR funds are sourced from the distributable surplus of takaful participants, and licensed takaful operator, where applicable.

## APPENDICES

### Appendix 1 Guiding principles on new takaful operational models

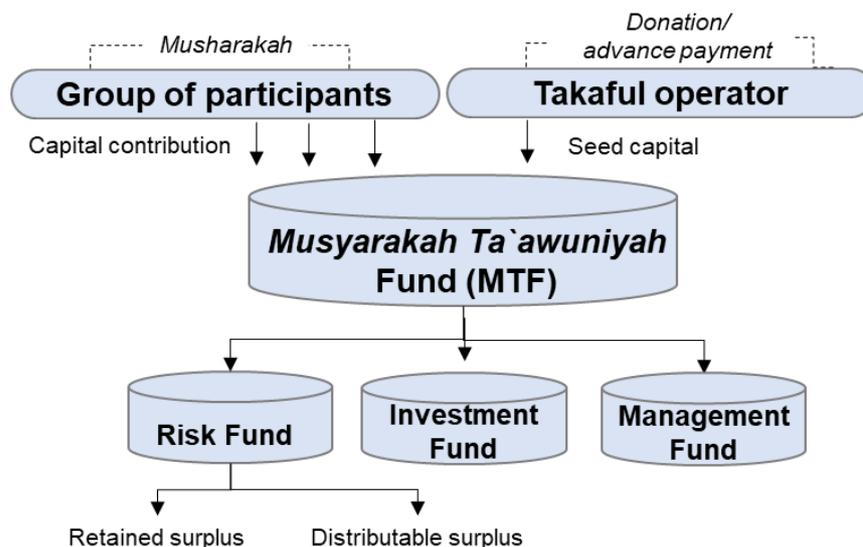
Area	Guiding principle	Guidance
<b>Shariah contract</b>	1. A licensed takaful operator may consider adopting other types of Shariah contracts that reinforces mutual assistance ( <i>ta`awun</i> ) values in takaful.	<p>a. A licensed takaful operator can consider adopting other Shariah contracts (e.g. <i>kafalah</i>, <i>musyarakah</i>, <i>waqf</i>) in a takaful or retakaful arrangement, as well as the adaptation (<i>takyif fiqhi</i>) of takaful and the mechanisms for payment of takaful benefits as an alternative to the current practice of conditional <i>hibah</i>.</p> <p>b. For example, a <i>musyarakah</i> contract establishes the relationship among takaful participants, and/or with a licensed takaful operator while in the context of a retakaful arrangement, it is a partnership between the licensed takaful operator and retakaful operator.</p> <p>c. Based on the Shariah contract chosen, a licensed takaful operator can better clarify the application of <i>ta`awun</i> in its overall takaful operations, for example, a wider coverage of mutual assistance.</p>
<b>Structure of takaful operational model</b>	2. A licensed takaful operator may explore various takaful operational models that can better deliver value proposition of takaful and <i>ta`awun</i> .	<p>a. A licensed takaful operator may consider a takaful operational model with features that are aligned with <i>ta`awun</i> values. For example, a licensed takaful operator may consider the following takaful operational models:</p> <ul style="list-style-type: none"> <li>i. mutual or discretionary mutual-based takaful operational model; and</li> <li>ii. cooperatives or friendly society-based takaful operational model.</li> </ul> <p>b. Based on the new takaful operational model adopted, a licensed takaful operator should assess the relevant legal and operational requirements. For example, in the case of a mutual or cooperative-based</p>

Area	Guiding principle	Guidance
		<p>takaful operational model, the type of legal entity that fits such structure such as a company limited by guarantee or cooperatives.</p> <p>c. Based on the Shariah contract adopted, a licensed takaful operator should consider the role of takaful participants and licensed takaful operators within the current legal and regulatory requirements.</p> <p>i. rights and responsibilities of takaful participants: based on the Shariah contract adopted, for example, to pay capital in partnership (<i>musyarakah</i>) contract, pay fee in guarantee (<i>kafalah</i>) and endow an asset in endowment (<i>waqf</i>); and</p> <p>ii. roles of licensed takaful operators: based on the Shariah contract adopted, for example, as a guarantor in <i>kafalah</i> contract, trustee in <i>waqf</i> or partner in <i>musyarakah</i> contract.</p> <p>d. A licensed takaful operator should initiate discussion with the Bank should the proposed new takaful operational model requires an enhancement to the current legal and regulatory framework.</p>
<b>Business model</b>	3. With the adoption of other Shariah contracts and new takaful operational model, a licensed takaful operator may design a business model and takaful product that can better deliver the value proposition of takaful, in line with the aspiration under the Financial Sector	<p>a. In designing the business model and takaful product, licensed takaful operator may consider the following areas:</p> <p>i. flexibility of the risk coverage (such as the list of exclusions and assistance to other takaful funds with different risk profile);</p> <p>ii. the targeted customer segment such as unserved and underserved customers; and</p> <p>iii. a new takaful model with its own risk absorbent arrangement.</p>

Area	Guiding principle	Guidance
	Blueprint 2022 – 2026.	
<b><i>Ta`awun</i> features</b>	4. A licensed takaful operator may assess and identify <i>ta`awun</i> features or elements that would guide the exploration of a new takaful operational model.	<p>a. In exploring a new takaful operational model, a licensed takaful operator may consider the following features or elements of <i>ta`awun</i>:</p> <ul style="list-style-type: none"> <li>i. inclusivity and solidarity: mutual assistance beyond the takaful participants of a particular takaful fund, including community empowerment efforts. Product benefits structured to cater for specific protection needs of unserved and underserved segments;</li> <li>ii. transparency and traceability: impact of the disclosure on fund utilisation towards takaful participants and the wider community (aligned with VBI aspirations); and</li> <li>iii. fiduciary duty: expanded fiduciary duty on the licensed takaful operator to continue managing takaful funds in the best interest of takaful participants and consider the impact to other participants, other licensed takaful operators and the broader community.</li> </ul>

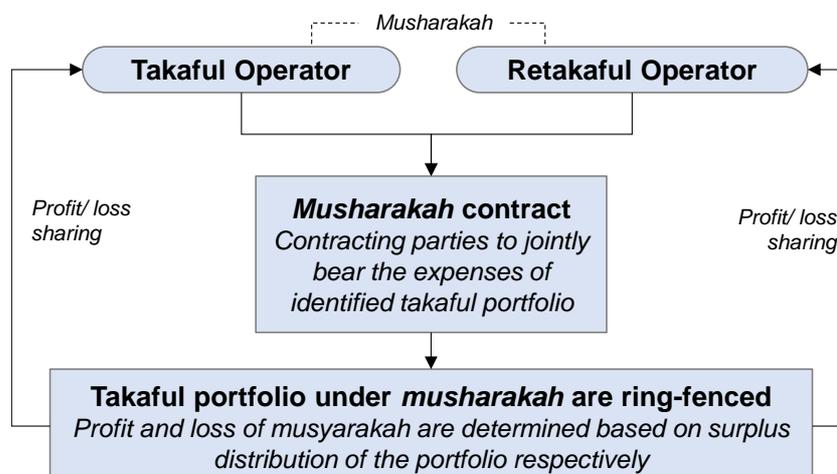
## Appendix 2 Illustration on takaful operational models based on various Shariah contracts

### *Musyarakah ta`awuniyah* model



1. A licensed takaful operator may consider a *musyarakah ta`awuniyah*<sup>17</sup> model as an alternative takaful operational model to achieve the objectives of the broader application of *ta`awun* and strengthen the value propositions of takaful.
2. A *musyarakah ta`awuniyah* arrangement may have the following features;
  - (a) a licensed takaful operator may establish a general *Musyarakah Ta`awuniyah* Fund (MTF) either as a donation or advance payment, while participants will also pay contributions into the MTF, as per the pre-agreed ratio;
  - (b) the MTF will flow into three sub-funds, i.e. the Management Fund (for running the operations), Risk/Retakaful Fund (for payment of claims & retakaful contributions), and Investment Fund;
  - (c) proceeds of the Investment Fund will be invested into Shariah compliant investment avenues and its profit will be distributed between the licensed takaful operator and the takaful participants;
  - (d) a part of the amount over and above the payment of claims is to be kept as retained surplus. Any distributable surplus (above the claims and retakaful contribution payments and retained surplus) shall be distributed between the licensed takaful operator and takaful participants; and
  - (e) if the actual claims and expenses exceed the expected claims experience for the year, both licensed takaful operator and takaful participants must provide a capital call into the MTF based on a pre-agreed ratio. If the capital call from takaful participants is insufficient, the licensed takaful operator may adjust the claims benefits accordingly. This demonstrates a feature similar to a discretionary mutual.

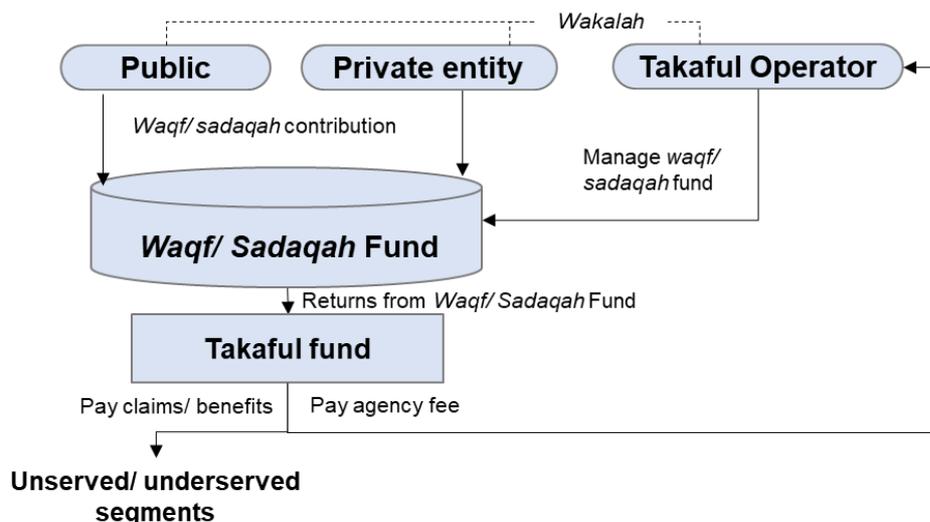
<sup>17</sup> Exploratory model adapted from Ahmad (2014), *Exploring the Model of Musyarakah Ta`awuniyah in Takaful*, ISRA.

**Musyarakah retakaful model**

1. A licensed takaful operator may consider the *musyarakah* retakaful<sup>18</sup> model to promote *ta`awun* between a licensed takaful operator and a licensed retakaful operator, as a method to manage the expense strain of the licensed takaful operator.
2. A *musyarakah* retakaful arrangement may have the following features:
  - (a) initial capital is contributed by the licensed takaful operator and retakaful operator, where the proportion of the capital contribution by both parties is determined at the time of entering into the *musyarakah* contract;
  - (b) profit payment is contingent on the positive net cash flow<sup>19</sup> generated from the identified block of business. The profit-sharing ratio is mutually agreed at the time of entering into the *musyarakah* contract;
  - (c) loss absorbing, where actual loss i.e., negative net cash flow on the identified block of business is borne by the licensed takaful operator and retakaful operator proportionate to their capital contribution; and
  - (d) the shareholders' fund (SHF) portion of the *musyarakah* capital contributed by both licensed takaful operator and retakaful operator shall be ring-fenced against the overall SHF maintained by the licensed takaful operator. The participant risk fund (PRF) related to the block of business shall also be ring-fenced to ensure profit sourced from surplus, is clear and accounted properly.

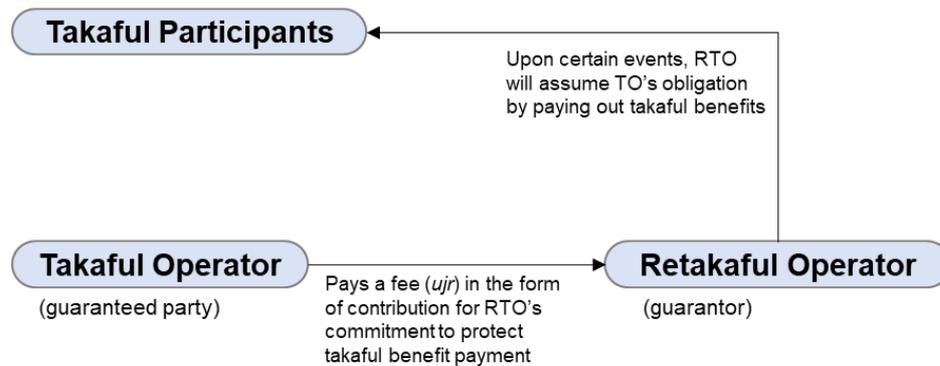
<sup>18</sup> The Shariah Advisory Council in its 187th meeting has resolved that the application of *musyarakah* contract between a retakaful operator and takaful operator in managing the expense strain of the latter is permissible.

<sup>19</sup> Net cash-flow = [*Wakalah* fee + certificate charge + *tabarru`* fund's surplus] minus (-) [Commission for agent + management expenses].

**Waqf or sadaqah model**

1. A licensed takaful operator may consider the *waqf* or *sadaqah* model to cater for unserved and underserved segments, moving away from a profit centric focus.
2. A *waqf* or *sadaqah* model arrangement may have the following features;
  - (a) a *waqf* or *sadaqah* fund is created and funded by *waqf* or *sadaqah* related rider products<sup>20</sup>, distributable surplus belonging to participants or licensed takaful operators as per Broader Application of *Ta`awun* requirements, or *waqf* or *sadaqah* contributions from the general public;
  - (b) a takaful fund is created and will be funded by the returns from the *waqf* or *sadaqah* fund, as well as contribution from private entities or government agencies;
  - (c) licensed takaful operator will act as the agent managing the *waqf* or *sadaqah* fund and the takaful fund;
  - (d) returns from the *waqf* or *sadaqah* funds may fund beneficiaries' claims and benefits; and
  - (e) the beneficiaries receive claims and benefits from the takaful fund, funded by returns from the *waqf* or *sadaqah* funds.

<sup>20</sup> For example, rider may provide option to participants to donate a portion of their takaful benefits to *waqf* and *sadaqah* fund.

***Kafalah* retakaful model**

1. A *kafalah* retakaful model may be used as an alternative Shariah contract to promote *ta`awun* between a licensed takaful operator and a retakaful operator.
2. Under the *kafalah* contract, a retakaful operator guarantees the payment of takaful benefits/claims to the takaful participants, upon certain events i.e., when a licensed takaful operator is not able to fulfil takaful benefit payments to the takaful participants. The licensed takaful operator pays a fee to retakaful operator.