

Pak-Kuwait Takaful Co. Ltd.



**One-Day SECP Takaful
Conference
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Presentation Objective



An overview of the
Issues faced by Takaful Industry



Takaful Issues

Issues Pertaining to

1. Wakala Waqf Model
2. Accounting Regulations
3. Takaful Operator's / Wakala Fees
4. Solvency Margin
5. Statutory Deposit
6. Recovery of Qard-e-Hasna
7. Shariah Compliance Audit
8. Govt. levies on Contribution
9. Taxation of PTF's Surplus
10. Shariah Board
11. Central Shariah Board
12. Co-Takaful
13. Takaful Industry

1. Wakala Waqf Model

- Wakala Waqf Model is extension of Wakala Model.
- This model is advocated by the leading Islamic Scholar of Muslim Umah, H' Justice (R) Mohammad Taqi Usmani.
- This model after its first implementation at PKTCL is getting popularity not only in the middle East but also in the Fareast.

1. Wakala Waqf Model

- A Waqf Fund is established by the shareholders of a Takaful Company through the contribution of 'Ceding amount' (part of the Capital).
- Any person by signing the proposal form, contributing to the Waqf and subscribing to the policy documents shall become the member of the Waqf Fund.
- Waqf Fund will extend benefits to its members strictly in accordance with the Waqf Rules lay down in the Waqf Deed.
- The Waqf Fund will become owner of all contributions and has the right to act as a legal entity as per its terms for investment, compensations and dealing with the surplus amounts.

Cont...

1. Wakala Waqf Model

Shareholders being a 'Settlor' are required to

1. Place one time Cede money in the Fund
2. Lay down rules of the Fund
3. Undertake responsibility to manage the Fund
4. Execute a Waqf Settlement Deed

1. Wakala Waqf Model

There is difference of opinion regarding

- Legal Status of Waqf Fund / Waqf Deed?
- Application of Trust Act on Waqf Deed?

1. Wakala Waqf Model

Due to difference in opinion, Takaful Operator needs to have clarification with regard to following;

1. What is the legal status of Waqf?
2. What is the legal status of Waqf Deed?
3. Does this Waqf Deed falls in the purview of Trust Act or any other Act?
4. What is the difference between Waqf Deed and Trust Deed in view of Trust Act?

Cont...

1. Wakala Waqf Model

5. What is the impact of Registered or Unregistered Waqf Deed on the legal status of Waqf Fund?
6. Is Takaful Operator of the Waqf Fund bound to comply the provisions of Trust Act or any other Act in addition to Insurance Regulations?
7. What are the tax implications or consequences of having a Waqf Deed as a separate entity or not being a separate entity for the company & Waqf Fund?

Recommendation

Clarification from Legal experts / Shariah Scholars / SECP will help the Takaful Operators to remove the ambiguity.

2. Accounting Regulations

Recommendation

Since a Takaful Operator is managing two funds SHF & PTF as compare to the conventional Insurance Companies, need for a separate set of Accounting Regulations for Takaful Companies is felt

3. Takaful Operator's / Wakala Fees

- Application of the principle of “earned or unearned” on Wakala Fee.

Recommendation

This need clarification from SECP

4. Solvency Margin

Where should the Takaful Operator maintain solvency margin ?

Waqf Fund/PTF or
Shareholder Fund or
Consolidated Company's account

Recommendation

We are of the opinion that solvency margin should be maintained as aggregate of SHF & PTF.

5. Statutory Deposit

Rule 21(2)

“.....Deposit shall be made in cash or instrument of an approved Islamic financial institution.”

Recommendation

SECP is requested to issue a list of approved Islamic Financial Institutions to satisfy the requirement of State Bank.

6. Recovery of Qard-e-Hasna

Rule 11. When the PTF including reserves are insufficient to meet their current payments less receipts, the deficit shall be funded by way of an interest-free loan (qard-e-hasna) from the SHF.

6. Recovery of Qard-e-Hasna

Recommendation

SECP should allow Takaful Operator to recover Qard as soon as the current balance of receipt and payment warrants the same instead of waiting for the surplus determination at the end of the prescribed period.

7. Shariah Compliance Audit

Rule 31 : Takaful Operator shall appoint a Shariah Compliance auditor who will conduct its audit for each accounting period.

7. Shariah Compliance Audit

Recommendation:

Shariah Compliance Auditor is an Auditor as per Companies Ordinance 1984 who will audit the company as per Shariah perspective.

OR

Shariah Compliance Auditor is a high calibre scholar who is a specialized jurists in fiqh almu' amal (Islamic commercial jurisprudence) and a have knowledge of modern financial dealings and transactions.

(as defined at Rule 34 (2) of Takaful Rules 2005 i.e. for Shariah Board)

8. Govt. levies on Contribution

- Contribution is defined as Tabaru (Donation).

Recommendation

Contribution should be treated at par with donations for all purposes and no levies should be charged on Contribution. SECP may take-up the matter with concerned Government Authorities.

9. Taxation of Waqf's Surplus

- **Recommendation**
- If Waqf is a separate legal entity which is made up of donations/Tabarru then its surplus needs to be exempted from Tax. SECP may consider and forward the same to CBR.
- Simultaneously, SECP may examine the possibility of Tax relief to Takaful Operators in lines with the Tax relief available to Mudarbah Companies of Pakistan.

10. Shariah Board

Role of Shariah Board with respect to its Executive Powers & Advisory Position is overlapping and needs clarification.

Recommendation

Clarification from SECP could remove confusions in this regard.

11. Central Shariah Board

- Rule 35 authorize SECP to constitute a Central Shariah Board.

Recommendation

SECP should immediately constitute the Central Shariah Board with appropriate powers to provide guidance to Shariah Boards of Takaful Operators.

12. Co-Takaful

“The Takaful operator may be permitted by the Commission to share risks with other Takaful operators within and outside Pakistan”

Recommendation

- SECP should coordinate with State Bank to devise mechanism for sharing risk outside country.
- Co-Takaful among Takaful Operators of Pakistan may be allowed without specific approval.
- No prior approval should be made mandatory for Co-Takaful outside the country.

13. Takaful Industry

Dedicated Takaful Operators

Composite Takaful Companies



THANK YOU FOR YOUR ATTENTION !!