

# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, the 13<sup>th</sup> January, 2012

## NOTIFICATION

<sup>29(1)</sup>  
S.R.O. /2012.- The following rules which are proposed to be made by the Securities and Exchange Commission of Pakistan in exercise of the powers conferred by sub-section (2) of section 167 of the Insurance Ordinance, 2000 (XXXIX of 2000), read with clause (ixiv) of section 2 and the second proviso to section 120 thereof and SRO No. 708(I)/2009 dated 27<sup>th</sup> July 2009, are hereby published for eliciting public opinion thereon and notice is hereby given that comments, if any, received within thirty days of the date of this notification will be taken into consideration.

## CHAPTER 1

### PRELIMINARY

1. Short title and commencement.-(1) These rules shall be called the Takaful Rules, 2012.

(2) These rules shall come into force at once and shall replace the Takaful Rules, 2005

2. **Definitions.** - (1) In these Rules, unless there is anything repugnant in the subject or context, -

(i) "Central Shariah Board" means the Central Shariah Board constituted by the Commission under rule 24;

(ii) "Commission" means the Securities and Exchange Commission of Pakistan established under section 3 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(iii) "Contribution" means the amount payable by a Participant to an Operator in order to avail benefits under a Takaful Contract;

(iv) "Conventional Insurance Business" means life or non-life insurance business under the Ordinance, including reinsurance business, which is not Takaful Business;

(v) "Family Takaful" means Takaful for the benefit of individuals, groups of individuals and their families;

- (vi) "General Takaful" means Takaful other than Family Takaful;
- (vii) "Mudaraba Based Contract" means a Takaful contract based on the principle of mudaraba;
- (viii) "Ordinance" means the Insurance Ordinance, 2000 (XXXIX of 2000);
- (ix) "Operator" means an authorized Takaful Operator or an authorized Window Takaful Operator;
- (x) "Operator Fund" means a fund set up by a General Takaful Operator which shall undertake all transactions which the Operator undertakes other than those which pertain to Participant Takaful Funds set up by the Operator.
- (xi) "Operator sub-fund" means a sub-fund of a statutory fund set up by a Family Takaful Operator in which all takaful operator fees shall be credited and from which all expenses relating to the Statutory Fund which are not charged to any Participant Takaful Fund or Participant Investment Fund shall be debited;
- (xii) "Participant" means a person who participates in a Takaful scheme and to whom a Takaful Contract is issued;
- (xiii) "Participant Investment Fund" means a separate group of assets forming a sub-fund of a statutory fund of a Family Takaful Operator which is to be used as a basis for determination of the benefits payable under a Family Takaful contract;
- (xiv) "Participant Takaful Fund" means,-
- (a) in the case of a Family Takaful Operator a sub-fund of a statutory fund into which the participant's risk related contributions are paid and from which risk related benefits are paid out;
  - (b) in the case of a General Takaful Operator a separate fund set up into which the participant's risk related contributions are paid and from which risk related benefits are paid out;
- (xv) "Participants' Membership Documents" means the documents detailing the benefits and obligations of a Participant under a Takaful Contract;
- (xvi) "Principal Officer" means a person, by whatever designation called, appointed by an Operator and charged with the responsibility of managing the affairs of the Operator;
- (xvii) "Registered Insurer" means an insurer registered with the Commission under section 7 of the Ordinance to transact life or non-life insurance business;
- (xviii) "Re-Takaful" means an arrangement consistent with sound principles of Takaful for re-Takaful of liabilities in respect of risks accepted by the Operator in the

course of carrying on Takaful Business and includes ceding risks from Participant Takaful Funds managed by the Operator(s) to one or more Re-Takaful pool(s);

(xix) "Shariah Advisor" means a person appointed by an Operator under rule 25;

(xx) "Takaful Benefit" includes any benefit, whether pecuniary or otherwise, which is secured by a Takaful Contract;

(xxi) "Takaful Business" means to transact Family Takaful or General Takaful either as Takaful Operator or as Window Takaful Operator;

(xxii) "Takaful Contract" means any contract of Takaful for Family Takaful or General Takaful;

(xxiii) "Takaful Operator" means an Insurer who is authorized by the Commission to carry on Takaful Business and not Conventional Insurance Business;

(xxiv) "Wakala based contract" means a Takaful contract based on the principle of Wakala (agency); and

(xxv) "Window Takaful Operator" means a Registered Insurer authorized by the Commission to carry on both Takaful Business and Conventional Insurance Business.

(2) Words and expressions used but not defined in these Rules shall, unless there is anything repugnant in the subject or context, have the same meaning as are assigned to them in the Ordinance.

## CHAPTER II

### AUTHORIZATION AND CONDITIONS TO TRANSACT TAKAFUL BUSINESS

**3. Prohibition to engage in Takaful Business without authorization.-** (1) No person shall begin or continue to carry on Takaful Business in Pakistan or use the word "Takaful" or undertake any activity in the nature of Takaful Business, unless such person has obtained from the Commission a certificate of authorization to carry on Takaful Business as Takaful Operator or as Window Takaful Operator, as the case may be, under these Rules.

Provided that the Takaful Operators registered under the Ordinance prior to the issuance of these Rules shall continue to carry on Takaful Business and shall be deemed to be authorized under the Rules.

(2) The issue of investment linked policies by life insurers transacting Conventional Insurance Business where the underlying assets to which the value of such policies are linked are Shariah compliant shall not be deemed to constitute carrying on Takaful Business.

**4. Persons eligible to transact Takaful Business.-** (1) No person other than a Registered Insurer and authorized in this behalf under these rules shall be eligible to transact Takaful Business.

(2) A Registered Insurer registered to transact life insurance business shall be eligible to transact Family Takaful and a Registered Insurer registered to transact non life insurance business shall be eligible to transact General Takaful.

(3) All provisions of the Ordinance and insurance rules pertaining to life insurance business shall be deemed to apply to Family Takaful business and all provisions of the Ordinance and insurance rules pertaining to non-life insurance business shall be deemed to apply to General Takaful business.

**5. Application for Authorization as Takaful Operator.-** (1) An application for authorization as a Takaful Operator shall be made to the Commission in such form as may be specified from time to time along with all the documents supporting such application and receipt evidencing payment of non-refundable registration fee as prescribed in Schedule-I.

(2) The Commission, while considering the application for authorization, may require the applicant to furnish such further information or clarification as it deem necessary.

(3) Any subsequent change in the information provided to the Commission at the time of filing of application under sub-rule (1) shall be intimated to the Commission immediately.

(4) The applicant shall, if so required, appear before the Commission for a representation through an officer duly authorized for this purpose in writing by the board of directors of the applicant.

**6. Application for Authorization as Window Takaful Operator.-** (1) An application for authorization as a Window Takaful Operator shall be made to the Commission in such form as may be specified from time to time along with all the documents supporting such application and receipt evidencing payment of non-refundable registration fee as prescribed in Schedule-I.

(2) The Commission, while considering the application for authorization, may require the applicant to furnish such further information or clarification as it deem necessary.

(3) Any subsequent change in the information provided to the Commission at the time of filing of application under sub-rule (1) shall be intimated to the Commission immediately.

(4) The applicant shall, if so required, appear before the Commission for a representation through an officer duly authorized for this purpose in writing by the board of directors of the applicant.

**7. Refusal to grant authorization.-** (1) No application for authorization made under rule 5 or rule 6 shall be refused without giving the applicant a reasonable opportunity of being heard.

(2) In case the Commission refuses to grant authorization to an applicant, the decision shall be communicated to the applicant stating therein the reasons for such refusal.

(3) The applicant, being aggrieved by the decision of the Commission under sub-rule (2), may apply, within a period of thirty days from the date of receipt of such communication, to the Commission for review of its decision.

(4) On receipt of the application made under sub-rule (3), the Commission shall review its decision and communicate its findings, in writing, to the applicant within thirty days and the decision of the Commission in this regard shall be final.

**8. Grant of authorization.-** (1) The Commission on being satisfied, that the applicant under rule 5(1) or rule 6(1), as the case may be, is eligible for authorization and has complied with the requirements of the Ordinance and these Rules, may grant a certificate of authorization to the applicant in Form C or Form D, as the case may be.

(2) The Commission may, while authorizing an applicant as a Takaful Operator or Window Takaful Operator, specify conditions for such authorization to be complied with by the Takaful Operator or Window Takaful Operator in such manner, as it may think fit.

(3) The certificate of authorization shall remain valid unless it is revoked or suspended by the Commission.

(4) Nothing in this rule shall prevent the Commission from exercising the powers available to it under section 63 of the Ordinance to direct an Operator to cease entering into new Takaful Contracts.

**9. Conditions applicable to Operator.-** (1) An Operator,-

- (a) shall ensure that the Chief Executive Officer or Principal officer of a Takaful Operator and Head of Takaful Operations of Window Takaful Operator, by whatever name called, shall possess qualification and experience relevant to Takaful Business
- (b) shall appoint a Shariah Advisor in accordance with the provisions of these Rules;
- (c) shall appoint a Shariah compliance auditor in accordance with the provisions of these Rules;
- (d) carrying on Family Takaful business shall set up one or more statutory funds exclusively for Takaful business;
- (e) carrying on Family Takaful business shall divide each statutory fund set up for Takaful business into a number of sub-funds including Participant Takaful

Funds, Participant Investment Funds and an Operator sub-fund;

- (f) carrying on General Takaful business shall set up one or more Participant Takaful Funds and an Operator Fund.
- (g) shall ensure that all investments made in any Participant Takaful Fund are approved by its Shariah Advisor;
- (h) shall ensure that assets and liabilities of each Participant Takaful Fund and each Participant Investment Fund are segregated from its other assets and liabilities;
- (i) shall ensure that receipts and payments from Participant Takaful Fund are made in accordance with the provisions of these Rules;
- (j) shall ensure that the Participant Takaful Fund, at all times, carry reserves in accordance with the provisions of these rules;
- (k) shall ensure that there is in each Participant Takaful Fund, at all times, a surplus of admissible assets over liabilities in accordance with the provisions of these rules;

*Explanation:* For this purpose any amount receivable from any Operator fund/sub-fund shall be deemed to be inadmissible;

- (l) shall ensure that the benefits and obligations of each Participant under a Takaful Contract are documented in a Participant Membership Document;
  - (m) shall manage the Participant Takaful Fund and related risks in accordance with the provisions of these rules;
  - (n) formulate detailed policy for the Participant Takaful Fund with the approval of its Shariah Advisor including risk management and rating procedures;
  - (o) where admissible assets in a Participant Takaful Fund are not sufficient to cover liabilities the deficit shall be funded by way of an interest-free loan in accordance with the provisions of these rules;
  - (p) shall determine the quantum of surplus or deficit in each Participant Takaful Fund at least once in each accounting year in accordance with the provisions of these rules;
  - (q) shall set the fee structure and the profit sharing ratio for investment management in accordance with the provisions of these rules on the advice of the Shariah Advisor and the appointed actuary; and
  - (r) shall participate on a co-insurance basis, only where the policy is issued by the Takaful/Window Takaful operator as Takaful Contract under these Rules.
- (2) An Operator shall not,-

- (a) distribute any material to any person on the extent to which the products of other Operators are compliant with Shariah; and
- (b) make payment out of Participant Takaful Fund for marketing or sales expenses (including commissions), administrative and management expenses;

**10. Further Conditions applicable to Window Takaful Operator.-** (1) In addition to the conditions under rule 10 a Window Takaful Operator,-

- (a) shall ensure that all documents sent by it to third parties shall carry the words "Window Takaful Operations" below the company name using the same font size as the font in which the company's name is printed; and
- (b) shall report its assets, liabilities, revenues and expenses separately for each segment of its Conventional business and Takaful business;
- (c) shall comply with the provisions of these rules or such other conditions as may be imposed by the Commission from time to time;
- (d) shall ensure that the head of departments of the window takaful operations are separate from that of conventional insurance business; and

(2) A Window Takaful Operator shall not accept risks under a Re takaful or Co Insurance arrangement where the direct policy has been issued under conventional insurance or vice versa.

**11. Revocation of Authorization.-** (1) The Commission may by order suspend or revoke the authorization of an Operator either wholly or in respect of a class of business, as the case may be, if it is satisfied that,-

- (a) the Operator is pursuing aims or carrying on operations involving any element which is not approved by the Shariah Advisor;
- (b) the Operator has not commenced business within twelve months after being authorized;
- (c) the Operator has ceased to carry on Takaful Business;
- (d) the Operator has failed to maintain a surplus of assets over liabilities in accordance with the provisions of these rules;
- (e) the Operator has neglected or refused to observe any direction or order of the Commission;
- (f) the Operator proposes to make or has made any composition or arrangement with its creditors or has gone into liquidation or has been wound up or otherwise dissolved;
- (g) the Operator is carrying on its Takaful Business in a manner likely to be

- detrimental to the interests of its Participants;
- (h) the Operator is unable to meet its obligations;
  - (i) the Operator has failed to effect satisfactory Re-Takaful arrangements;
  - (j) the Operator is contravening or has contravened the provisions of the Ordinance, rules made thereunder or any conditions imposed or any directions given by the Commission;
  - (k) the Operator has furnished false, misleading or inaccurate information or has concealed or failed to disclose material facts in its application for authorization; or
  - (l) the Operator registration has been revoked as insurer under the Ordinance;
  - (m) the Operator has contravened a condition of authorization specified under rule 10; or
  - (n) it is in the public interest to cancel the registration.
- (2) No orders shall be made under sub-rule (1) except after giving the Operator, as the case may be, a reasonable opportunity of being heard.

### **CHAPTER III CONDUCT OF TAKAFUL BUSINESS'**

**12. Establishment of Participant Takaful Fund.-** (1) An Operator shall, for each Participant Takaful Fund, formulate Participant Takaful Fund Policies defining:

- (a) risks being covered, specifically with reference to classes of business defined in Section 4 of the Ordinance (relating each such risk with classes of business as defined in Section 4 of the Ordinance);
- (b) the events upon which amounts would be payable from the Participant Takaful Fund to a participant and the method of determination of the amount payable;
- (c) expenses which may be charged to the Participant Takaful Fund;
- (d) the method and frequency of determining surpluses or deficits of the Participant Takaful Fund, including a definition of how any reserves being set aside in determining such surpluses or deficits are to be arrived at;
- (e) the method of disposing of any surplus.
- (f) the method of extinguishing any deficit; and



- (g) the procedure of dissolution of Participant Takaful Fund.
- (2) The method of determining surpluses or deficits shall follow international accounting and financial reporting standards as may be modified by the Accounting and Auditing Organization for Islamic Financial Institutions.
- (3) The PTF Policies shall be approved by the Shariah Advisor of the Operator. A copy of the Participant Takaful Fund policy relevant to each Takaful Contract shall be made available to any Participant who requests a copy and shall also be available on the Takaful Operator's web-site.
- (4) The Takaful Operator shall also formulate, for each Participant Takaful Fund, risk management and Rating Procedures which shall specify the policies, procedures and methods implemented so that:
- (a) Contributions receivable in the Participant Takaful Fund, net of any Takaful Operator fees, Re-Takaful contributions and any other costs are sufficient together with any amount receivable from a Re-Takaful Operator, to meet expected claims relating to the risks covered by the Participant Takaful Fund; and
  - (b) the terms on which risks are accepted in the Participant Takaful Fund are such that there is no inherent advantage passed on to any participant without a justification. In particular the terms on which two similar risks are accepted should be similar unless there is a clearly demonstrated rationale for doing otherwise.

Provided that nothing in this rule shall prevent an Operator from charging different gross contribution rates on similar risks, if the net amounts passed onto the Participant Takaful Fund are similar.

- (5) The risk management and rating procedures shall be approved:
- (a) in the case of a Family Takaful Operator, by the appointed actuary;
  - (b) in the case of a General Takaful Operator, by an independent professional possessing professional qualifications and duly approved for the purpose by the Commission:

Provided that where a Participant Takaful Fund of a General Takaful Operator contains any risk which constitutes business classified as Class 7, 9 or 10 as defined in sub-section 3 of section 4 of the Ordinance, the risk management and rating procedures shall be approved by an actuary.

- (6) Copies of the Participant Takaful Fund Policies and Risk Management and Rating Procedures shall be provided to the Commission at least fifteen days before any risk is accepted in any new Participant Takaful Fund and for all existing Participant Takaful Funds these documents shall be submitted to the Commission within ninety days of coming into effect of these Rules.

**13. Establishment of Participant Investment Funds.-** An Operator carrying on Family Takaful business and issuing contracts which have an investment component shall establish one or more Participant Investment Funds which will be sub-funds of a statutory fund set up for conducting Takaful Business. Each Participant Investment Fund shall be set up in the form of investment linked funds.

**14. Participant Membership Document and Takaful Contract.-** The benefits and obligations of each Participant under a Takaful Contract shall be documented in a Participant Membership Document detailing therein terms and conditions relating to the relationship amongst the Participants and between the Participants and the Takaful Operator including the following:

- (a) rights and obligation of Participants;
- (b) procedure for division of Contribution between Participant Takaful Funds, Participant Investment Funds and Operator fund/sub-fund;
- (c) method for determination of fees and, if relevant, share of investment income payable to the Operator;
- (d) procedure for and timing of transfer of funds, if any, between Participant Takaful Funds, Participant Investment Funds and Operator fund/sub-fund;
- (e) procedure for claims and payment of Takaful Benefits and the method of determining such benefits, including, if applicable, any limitations and exclusions applicable;
- (f) in case of Family Takaful contracts, the procedure for pooling of moneys for investment purposes under the Participant Investment Fund; and
- (g) terms and conditions on which the Operator will manage the Participant Takaful Fund and Participant Investment Fund.

**15. Register of Takaful Contracts.-** (1) Each Operator shall maintain a register of Takaful Contracts in such form as may be specified by the Commission and shall be kept at its principle place of business.

(2) Subject to this rule, there shall be entered in the register all Takaful Contracts of the Operator and no contract entered in the register shall be removed from it till the Operator is under any liability in respect of that Takaful Contract.

**16. Segregation of Contributions and Funds – General Takaful.-** (1) All Contributions recognized under General Takaful contracts, net of any Government levy, shall be credited to one or more Participant Takaful Funds.

(2) The fee due to the Takaful Operator under General Takaful contracts shall,-

- (a) where such fees are a defined part of Contributions (Wakala Based

Contract), be recognized as an expense of the relevant Participant Takaful Fund at the same time that the Contribution is recognized;

(b) where such fees are defined as a share of the investment income (Mudaraba Based Contract), be recognized at the same point the investment income is recognized; or

(c) where such fees are defined in any other way, be recognized on such method as is defined in the Participant Takaful Fund Policies.

(3) Where the fees due to the General Takaful Operator are a part of the Contributions or a share of the investment income, such fees shall not be paid out of the Participant Takaful Fund until the amounts so due have been received by the Participant Takaful Fund.

(4) All Contributions into a Participant Takaful Fund shall be deposited in a bank account designated as belonging to the Participant Takaful Fund or be paid across to such an account within seven days of receipt.

(5) All income earned on assets of a Participant Takaful Fund and receipts from Re-Takaful operators relating to the Participant Takaful Fund shall be deposited in bank accounts designated as belonging to the Participant Takaful Fund or be paid across to such account within seven days of receipt.

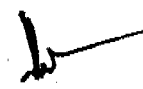
(6) All assets, liabilities, income and expenditure of a General Takaful Operator which do not relate to a Participant Takaful Fund shall be deemed to be part of the Operator's Fund or in the case of a Window Takaful Operator part of the Window Takaful Fund.

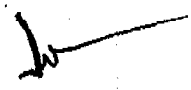
#### **17. Segregation of Contributions and Fund – Family Takaful.-**

(1) Contributions under Family Takaful Contracts, net of any Government levy, shall be segregated into the risk component and takaful operator's fee, and, if relevant, the investment component.

(2) The risk component shall be credited to one or more Participant Takaful Funds; the takaful operator's fee to an Operator sub-fund and any investment component to one or more Participant Investment Funds.

(3) The determination of each component shall be in accordance with provisions of each Family Takaful Contract.



- (4) The fee due to the Operator under Family Takaful contracts shall,-
- (a) where the fees due to a Family Takaful Operator relating to the risk component are defined as a part of the risk contributions, be recognized as an expense of the relevant Participant Takaful Fund at the same time that such contributions are recognized;
  - (b) where any part of a Family Takaful operator's fee is defined as a share of investment income of a Participant Investment Fund, be recognized at the same point the investment income is recognized; or
  - (c) where such fees are defined in any other way, be recognized on such method as is defined in Participant Takaful Fund policy.
- (5) Where the fees due to the Family Takaful operator are to be realized from a Participant Investment Fund on a periodic basis to be levied either as a defined absolute amount, or as a proportion of the net asset value of the Participant Investment Fund, or to recover risk charges or determined in any other manner, such fee shall not be paid out of the Participant Investment Fund until the period to which it relates has expired.
- (6) All Contributions credited to a Participant Takaful Fund or Participant Investment Fund shall be deposited in a bank accounts designated as belonging to Participant Takaful Fund and Participant Investment Fund or paid across to such account within seven days of receipt.
- (7) All income earned on assets of a Participant Takaful Fund and receipts from Re-Takaful operators relating to the Participant Takaful Fund shall be deposited in bank account designated as belonging to the Participant Takaful Fund or be paid across within seven days of receipt.
- (8) All income earned on assets of a Participant Investment Fund shall be deposited in bank account designated as belonging to the Participant Investment Fund or be paid across within seven days of receipt.
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**18. Receipt, Payment, and Reserves to be Held in Participant Takaful Funds. (1)**

The receipts of a Participant Takaful Fund shall consist of the following, namely:-

- (a) Contributions from Participants (in the case of a Family Takaful Operator, net of any amounts credited directly to Participant Investment Funds or the Operator sub-fund;
- (b) share of claims from Re-Takaful operators;
- (c) investment income generated by the investment of funds retained in the Participant Takaful Fund;
- (d) in the case of General Takaful, salvages and recoveries;
- (e) qard-e-hasna;
- (f) rebate/commission from re-Takaful operators/reinsurers;
- (g) share of surplus from Re-Takaful operators; and
- (h) any donation made by the shareholders of the Operator.

(2) The payments from a Participant Takaful Fund shall consist of the following, namely:-

- (a) any third party costs directly associated with underwriting (specifically medical examination, pre-cover inspection/surveys, costs of installing tracking systems or any consulting costs related with assessing or reducing the risks being covered);
- (b) claims paid related to risks covered under the Participant Takaful Fund and expenses directly related to settlement of claims such as surveyors' and investigators' fees, etc;
- (c) Re-Takaful and reinsurance contributions;
- (d) Takaful operator's fees if it has been credited to the Participant Takaful Fund;
- (e) share of investment profits of the mudarib or wakala fees for investment management or any other combination thereof approved by the Appointed actuary in the case of Family Takaful operator and Shariah Advisor of the Takaful Operator;
- (f) surplus distributed to Participants;
- (g) refund of any Contribution due to Participants; and



- (h) return of qard-e-hasna to the Operator fund / Operator sub-fund.
- (3) The balance of a Participant Takaful Fund at any date shall be the balance of the Participant Takaful Fund measured at any previous date plus any receipt (as mentioned in sub-rule (1) above less any payments as mentioned in sub-rule (2) above.
- (4) A Participant Takaful Fund of a General Takaful operator shall, at all times, carry reserves consisting of the following components:-
- (a) Liability for outstanding claims determined in accordance with section 34(2)(c) of the Ordinance
  - (b) Liability for unexpired risks determined in accordance with section 34(2)(d) of the Ordinance; and
  - (c) A contingency reserve determined on a defined basis, such basis being documented and approved by the Shariah Advisor.
- (5) A Participant Takaful Fund of a Family Takaful Operator shall, at all times, carry reserves consisting of the following components:-
- (a) Policyholder liabilities determined in accordance with the provisions of the Ordinance.
  - (b) A contingency reserve determined on a defined basis, such basis being documented and approved by the Appointed Actuary and the Shariah Advisor.
- 19. Qard-e-hasna.-** (1) If, at any point in time assets in a Participant Takaful Fund are not sufficient to cover liabilities (including reserves specified in Rule 18), the deficit shall be funded by way of an interest-free loan (qard-e-hasna) from :
- (a) in the case of a General Takaful Operators, the Operator's Fund; and
  - (b) in the case of a Family Takaful Operator, the Operator sub-fund in the Statutory Fund of which the Participant Takaful Fund is a part.
- (2) In the event of future surplus in a Participant Takaful Fund to which a Qard-e-Hasna has been made, the Qard-e-hasna shall be repaid prior to distribution of surplus to Participants.
- (3) In the event that deficit in a Participant Takaful Fund has been covered through Qard-e-hasna for three or more consecutive years, the Operator shall submit a report to the Commission within 30 days of the submission of the regulatory returns under section 46 of the Ordinance being submitted explaining why it should not be presumed that the provisions of Rule 12(4)(a) have not been contravened. In the case of a Family Takaful Operator such report shall be signed by the appointed actuary and

in the case of a General Takaful Operator the report shall be signed by the Principal Officer.

**20. Sharing of surplus.**-(1) At the end of each financial year the Operator shall evaluate the assets and liabilities of each Participant Takaful Fund and determine whether the Participant Takaful Fund is in surplus or deficit.

(2) The surplus or deficit shall be determined by the appointed actuary for a Family Takaful operator and by the management of General Takaful Operator in the case of General Takaful.

(3) The surplus in a Participant Takaful Fund at any point in time shall be measured as the excess of the balance of the Participant Takaful Fund (as determined under rule 18(3) above over the reserves which need to be maintained under rule 18(4) and 18(5).

(4) Any surplus shall be distributed amongst the Participants in proportion to their Contributions to the Participant Takaful Fund net of any risk related claims which they may have received during the inter-valuation period.

(5) In the case of General Takaful the distribution of surplus, if any, shall be after each valuation and the surplus shall be distributed amongst the Participants whose Contracts have been completed during the accounting year for which the valuation has been carried out.

(6) In the case of Family Takaful the surplus distribution may be done after each actuarial valuation or at the time participants actually leave the risk pool by way of termination of membership which may be due to the payment of benefits as per the Participants Membership Document or otherwise.

(7) An Operator may compute the distributable surpluses on the basis of the combined results of all the classes of business or calculate the surpluses separately for each class.

(8) The Board of Directors, with the consent of the Shariah Advisor of the Operator shall initially set out the detailed mechanism for the distribution of such surplus and the frequency of distributions made annually or more frequently after the technical evaluation of assets and liabilities and such mechanism shall form a part of the Participant Takaful Fund policy and shall also be provided in the Participants Membership Document.

(9) The Operator may distribute surplus either in cash or adjust the payment against future Contributions or in the case of Family Takaful contracts use the surplus for additional investment in Participant Investment Funds.

(10) A Participant may donate its surplus for social or charitable purposes and may request the Operator to arrange for the transfer of the donation.

**21. Investment management of funds.**- Investment of Contributions in the

Participant Takaful Fund and in the Participant Investment Fund shall be managed under a wakala contract, a Modaraba contract or a combination contract as determined to be sound and workable by the Shariah Advisor of the Operator.

**22. Re-Takaful.-** (1) An Operator shall have arrangements consistent with sound Takaful principles for Re-Takaful of liabilities in respect of risks undertaken or to be undertaken by the Operator in the course of its carrying on Takaful Business.

(2) In the event that the limit provided by a Shariah compliant Re-Takaful is not sufficient to support the business strategy of the Takaful Operator, the Takaful Operator under the advice of its Shariah Advisor may be allowed to enter into Re-Takaful and reinsurance contracts with conventional reinsurance companies till such time that proper Re-Takaful arrangements are available.

#### **Part IV**

### **WINDOW TAKAFUL OPERATIONS**

**23. Transfers of funds by Conventional Insurer into Takaful Business Statutory Funds, Participant Takaful Funds and Participant Investment Funds:** (1) A Conventional Insurer carrying on life Insurance Business and authorized by the Commission as Window Takaful Operator for Family Takaful may transfer its fund from its Shareholders' Fund to the statutory fund for Takaful.

(2) A Conventional Insurer carrying on non-life Insurance Business and authorized by the Commission as Window Takaful Operator may transfer its funds from Operator Fund to a Participant Takaful Fund.

#### **Part V**

### **COMPLIANCE WITH PRINCIPLES OF SHARIAH**

**24. Central Shariah Board.-**(1) The Commission shall establish a Central Shariah Board consisting of not less than three members.

(2) The Central Shariah Board will be responsible for:

(a) advising on investment conditions to be specified by the Commission regarding permissibility of investment in specific assets of:

- (i) Participant Takaful Funds;
- (ii) Participant Investment Funds;
- (iii) Operator fund;
- (iv) Shareholder Fund; and
- (v) Any assets held by insurers conducting Window Takaful Operations to comply with solvency requirements under the Ordinance with respect to Takaful operations;

(b) advising on conditions, to be specified by the Commission regarding



permissibility of the nature of risks which may be covered by a Participant Takaful Fund; and

- (c) advising on procedures under which a Participant Takaful Fund may cede risks to a conventional reinsurer.
- (3) Till the time Commission formulates conditions relating to investments through circular, the provisions of Annexure 1 shall be followed by the Operators.
- (4) The Commission shall be responsible for determining the qualification and experience of individual members of the Central Shariah Board, their term of appointment, their remuneration and their mode of operation including of making decisions.
- (5) The Central Shariah Board shall meet at least once in every quarter of the calendar year.
- (6) A person who is a member of the Central Shariah Board shall not, at the same time or within six months of retiring as a member of the Central Shariah Board, be eligible to act as a Shariah Advisor of an Operator.
- (7) If in the opinion of the Commission different treatment for a similar operational issue is adopted by operators, with the approval of their Shariah Advisor, the matter shall be resolved by the Central Shariah Board and the findings of the Central Shariah Board shall be final.

**25. Shariah Advisor.**-(1) Each Operator shall appoint a Shariah Advisor who shall be responsible for:

- (a) the approval of products including all related documentation;
  - (b) approval of Participant Takaful Fund policy including risk management and rating procedures;
  - (c) approval of investment policy and individual investments by the Operator; and
  - (d) approval of reinsurance/Re-Takaful arrangements.
- (2) Each Operator shall obtain prior approval from the Commission for appointment of its Shariah Advisor at the time of commencing Takaful business and at later dates if there is a change.
  - (3) The Commission may within thirty days of such submission, based on reasonable grounds, require an Operator to change its Shariah Advisor.
  - (4) The Shariah Advisor, in discharging his responsibilities under sub-rule (1), shall ensure adherence to conditions specified by the Commission upon the advice of the Central Shariah Board for investments and permissibility of nature of risks.
  - (5) Where an Operator is required to file a document with the Commission which



requires prior approval of the Shariah Advisor, the Operator shall along with the requisite document annex the approval of the Shariah Advisor.

(6) the minimum qualification and experience of the Shariah Advisor of the takaful operators / window takaful operators shall be as follows:

(a) Educational Qualification:

Shahadat ul Aalmia Degree (Dars e Nizami) from any recognized Board of Madaris with a certificate in Takhasus fil Ifta / Takhasus fil Fiqh and a suitable certificate of Takaful.

OR

Post Graduate Degree in Islamic Jurisprudence/Usooluddin, L.L.M. (Shariah) and a suitable certificate of Takaful.

(b) Experience and Exposure:

Must have at least 4 years experience of giving Shariah rulings including the period of Takhasus fil Ifta or Takhasus fil fiqh. Reasonable command over Arabic and English languages is necessary.

(c) The Commission, at its sole discretion, can give relaxation in respect of educational qualification and experience in exceptional cases where the person is otherwise qualified for giving Shariah rulings on Islamic Finance matters.

(7) A person can work as Shariah Advisor for not more than three Takaful / Window Takaful Operator in Pakistan.

**26. Meeting between Central Shariah Board and Shariah Advisors.**-The Central Shariah Board may hold meetings with the members of the Shariah Advisors of all Takaful Operators, individually or jointly, anytime it deems fit to discuss development of Takaful business and also may hold such meetings on the request of Shariah Advisors of the Takaful Operators.

#### **Part IV MISCELLANEOUS**

**27. Agent training.**- Each Operator shall include in its agent training course, a classroom course on Takaful concepts of a minimum of eight hours duration and every agent of the Takaful Operator intending to sell Takaful business shall be required to attend such course.

**28. Accounting and Reporting:**- For the purposes of sub-sections (1) and (2) of section 46 of the Ordinance the statements as per guidelines issued by the Commission shall be furnished.

**29. Shariah Compliance Audit.**-(1) An Operator shall appoint a Shariah compliance

auditor who will conduct its audit for each accounting period.

(2) The Shariah compliance audit shall report on the state of compliance by the Operator with the requirements of these Rules.

(3) The Commission may specify eligibility requirements for Shariah compliance auditor.

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No. 10-TAK-Rules, 2012

  
(Abdul Rehman Qureshi)  
Advisor/Secretary

## Annexure 1 – Regulations Relating to Investments of Takaful Operators

<p><b>Investments in immoveable property.</b>-The Takaful operators shall be allowed to invest in immoveable property subject to the following conditions, namely:-</p> <p>(i) the use and intended use of the property should be in compliance with the Islamic principles; and</p> <p>(ii) return on rented property may be in the form of fixed rent but in case of delayed payments penalty may be charged and the penalty amount shall be given to charity.</p>
<p><b>Investment in Joint Stock Companies.</b>-The Takaful operator may invest its funds in joint stock companies. However, investments in non-Shariah compliant preferred stocks, debentures and interest based redeemable capital securities are not allowed. For investments in the common stocks of joint stock companies, the following guidelines should be followed in consultation with the Shariah Advisor, namely:-</p> <p>(i) The main business of the investee company must not violate Shariah. Therefore, it is not permissible to acquire the shares, debentures or certificates of the companies providing financial services like conventional banks or the companies involved in business prohibited by Shariah like alcohol production, gambling or night club activities, etc;-</p> <p>(ii) the Shariah Advisor of the Takaful operator shall take into consideration factors such as the proportion of income of the investee company from interest bearing accounts or non-Shariah based activities, the debt to equity ratio and cash or cash equivalents of the investee company; and</p> <p>(iii) investment decision shall be based on fundamental value of the companies instead of short-term speculations.</p>
<p><b>Investments in mutual fund.</b>- The Takaful operator may also make its portfolio investments through various mutual funds operating under the Shariah principles and approved by the Commission Before making any investment therein, the Takaful operator shall have the procedures and practices being followed by such funds scrutinised by its Shariah Advisor.</p>
<p><b>Investments in redeemable capital.</b>-The Takaful operators may invest their funds in Shariah compliant instruments like Musharika Certificates, Term Finance Certificates (TFCs), Participation Term Certificates (PTCs), etc. However, in case of investment in redeemable capital it shall be necessary that the certificates are issued in compliance with the Islamic injunctions and the scheme of their issue be examined by the Shariah Advisor of the Takaful operator. The basic conditions as laid down earlier for investments in the common stock of joint stock companies should also be followed.</p>
<p><b>Placement of excess funds with banks and Islamic financial institutions.</b>-</p> <p>The Takaful operators may invest a portion of their funds in liquid or short notice deposits schemes of Islamic banks and their branches or other Islamic financial institutions, placements in PLS saving accounts of Islamic banks and placement in current accounts of traditional banks without any return thereon.</p>

**FORM - A**  
[see Rule 5 of the Takaful Rules 2011]  
**APPLICATION FOR PERMISSION TO REGISTER AS A TAKAFUL OPERATOR**

Dated: .....

Executive Director (Insurance)  
Securities and Exchange Commission of Pakistan  
Insurance Division  
5<sup>th</sup> Floor, State Life Building No. 2  
Wallace Road, Off I I Chundrigar Road  
Karachi

Dear Sir

We hereby apply for grant of approval/permission under Rule (5) of the Takaful Rules 2011, to form a Takaful Company under the name and style of ..... bearing Insurance Registration # ..... dated .....

2. The information and documents as required in the Annexure to this form duly verified and signed by all promoters and proposed directors along with five spare copies of this application and an affidavit by them as to the correctness of the details is submitted.

3. We hereby undertake that the information submitted in this application is true to the best of the Board's knowledge, information and belief. We further attest that Mr....., Designation..... holding CNIC #: ..... has been authorized to provide clarification and further information regarding this application for and behalf of .....

4. We undertake to keep this information up-to-date by communicating changes or modifications therein within fourteen days of such changes or modifications.

5. The original paid challan of Rupees One hundred thousand only (Rs. 100,000/-) being the non-refundable registration fee, deposited in ..... on ..... is enclosed.

6. Misrepresentations or omissions of material facts may be grounds for rejecting this application.

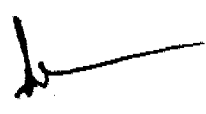
Yours faithfully

(Principal / Authorized Officer)

Verification by Oath Commissioner/Notary Public

- Name of the company

Encl: As stated.

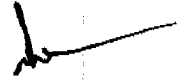


# ANNEXURES TO FORM A

[See Rule 6 of the Takaful Rules 2011]  
**INFORMATION TO BE SUPPLIED FOR OBTAINING AUTHORISATION  
AS A TAKAFUL OPERATOR**

		FLAGGED
1.	Name of Applicant.	
2.	Contact Details <ul style="list-style-type: none"> <li>Registered Office: Address:</li> <li>Telephone Number:</li> <li>Facsimile Number:</li> <li>Website address (if any):</li> </ul>	
3.	Company Brief.	
4.	Ownership Structure & Organisational Chart.	
5.	Certified True Copy in respect of: <ul style="list-style-type: none"> <li>Form 21;</li> <li>Form 29;</li> <li>Certificate of Incorporation issued under the Companies Ordinance 1984;</li> <li>Certificate of Registration issued under the Insurance Ordinance 2000;</li> <li>Memorandum and Articles of Association.</li> </ul>	
6.	Feasibility Report of the proposed company along with Short Term and Long Term Business Plan, including: <ul style="list-style-type: none"> <li>the business model it intends to adopt, details on distribution channels, products and services that will be offered;</li> <li>specify the assumptions used in deriving the projections and key performance indicators;</li> <li>Outline the risk management and rating procedures;</li> <li>Plans of internal controls and scale of authority.</li> </ul>	
7.	Declaration on a stamped paper in line with Regulation 3(i) and (ii) of the Sound and Prudent Management Regulations 2011.	
8.	Resolution of Board of Directors to initiate application for grant of approval under Takaful Rules 2011	
9.	Resolution of the Board of Directors approving the appointment of the authorized representative to act on behalf of the applicant with respect to this application and to authorize him to respond to queries by the Commission.	
10.	Undertaking by the applicant to keep the Securities and Exchange Commission of Pakistan informed of any material adverse developments affecting its financial soundness and/or reputation.	
11.	Declaration that all takaful undertakings will be in accordance with the injunctions of Shariah.	
12.	Detailed CV of the proposed Shariah Advisor along with an undertaking that the appointment shall be made in the compliance of Rule 25 of the Takaful Rules 2011	
13.	Evidence of deposit of Rs.100,000 being the non-refundable registration fee. Incomplete application shall be returned.	

14.	Any additional information/document as required by the Securities and Exchange Commission of Pakistan.	
	<b>Note:</b> All documents should be certified by a Notary Public or Oath Commissioner.	



FORM - B

[see Rule 6 of the Takaful Rules 2011]  
APPLICATION FOR PERMISSION TO REGISTER AS A WINDOW TAKAFUL OPERATOR

Dated: .....

Executive Director (Insurance)  
Securities and Exchange Commission of Pakistan  
Insurance Division  
5<sup>th</sup> Floor, State Life Building No. 2  
Wallace Road, Off I I Chundrigar Road  
Karachi

Dear Sir

We hereby apply for grant of approval/permission under Rule (6) of the Takaful Rules 2011, to undertake "Window Takaful Operation" under the name and style of ..... bearing Insurance Registration # ..... dated .....

2. The information and documents as provided vide this application is duly verified and signed by all promoters and proposed directors along with five spare copies of this application and an affidavit by them as to the correctness of the details is submitted.

3. We hereby undertake that the information submitted in this application is true to the best of the Board's knowledge, information and belief. We further attest that Mr....., Designation..... holding CNIC #: ..... has been authorized to provide clarification and further information regarding this application for and behalf of .....

4. We undertake to keep this information up-to-date by communicating changes or modifications therein within fourteen days of such changes or modifications.

5. The original paid challan of Rupees One hundred thousand only (Rs. 500,000/-) being the non-refundable registration fee, deposited in ..... on ..... is enclosed.

6. Misrepresentations or omissions of material facts may be grounds for rejecting this application.

Yours faithfully,

(Principal / Authorized Officer)

Verification by Oath Commissioner/Notary Public

Name of the company

Encl: As stated.

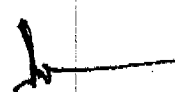


**ANNEXURES TO FORM B**  
**[See Rule 6 of the Takaful Rules 2011]**  
**INFORMATION TO BE SUPPLIED FOR OBTAINING AUTHORISATION**  
**AS A WINDOW TAKAFUL OPERATOR**

		FLAGGED
1.	Name of Applicant.	
2.	Contact Details <ul style="list-style-type: none"> <li>• Registered Office: Address:</li> <li>• Telephone Number:</li> <li>• Facsimile Number:</li> <li>• Website address (if any):</li> </ul>	
3.	Company Brief.	
4.	Ownership Structure & Organisational Chart.	
5.	Certified True Copy in respect of: <ul style="list-style-type: none"> <li>• Form 21;</li> <li>• Form 29;</li> <li>• Certificate of Incorporation issued under the Companies Ordinance 1984;</li> <li>• Certificate of Registration issued under the Insurance Ordinance 2000;</li> <li>• Memorandum and Articles of Association.</li> </ul>	
6.	Feasibility Report of the proposed company along with Short Term and Long Term Business Plan, including: <ul style="list-style-type: none"> <li>- The business model it intends to adopt, details on distribution channels, products and services that will be offered</li> <li>- Specify the assumptions used in deriving the projections and key performance indicators</li> <li>- Outline the risk management and rating procedures.</li> <li>- Plans of internal controls and scale of authority.</li> </ul>	
7.	Declaration on a stamped paper in line with Regulation 3(i) and (ii) of the Sound and Prudent Management Regulations 2011.	
8.	Resolution of Board of Directors to initiate application for grant of approval under Takaful Rules 2011 as a 'Window Takaful Operator'.	
9.	Resolution of the Board of Directors approving the appointment of the authorized representative to act on behalf of the applicant with respect to this application and to authorize him to respond to queries by the authority.	
10.	Undertaking by the applicant to keep the Securities and Exchange Commission of Pakistan informed of any material adverse developments affecting its financial soundness and/or reputation.	
11.	Declaration that all takaful undertakings will be in accordance with the injunctions of Shariah.	
12.	Details on the expertise and other facilities available for ensuring compliance of the business operations in line with Shariah principles.	
13.	Detailed CV of the proposed Shariah Advisor along with an undertaking that the appointment shall be made in the compliance of Rule 25 of the Takaful Rules 2011	



14.	Detailed CV of the proposed Head of Departments of Window Takaful Operations along with an undertaking that the appointment shall be made in compliance of Rule 10(1)(e) of the Takaful Rules 2011	
15.	Published audited financial statements for the last 3 years of the applicant;	
16.	Evidence of deposit of Rs.500,000 being the non-refundable registration fee. Incomplete application shall be returned.	
17.	Any additional information/document as required by the Commission.	
	<b>Note:</b> All documents should be certified by a Notary Public or Oath Commissioner.	



FORM - C

[See Rule 5 of the Takaful Rules 2011]

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Authorization Reference No. ....

**AUTHORISATION UNDER RULE 5 OF THE TAKAFUL RULES 2011  
TO ACT AS A TAKAFUL OPERATOR**

*The Securities and Exchange Commission of Pakistan having considered the application for grant of authorization under Rule 5 of the Takaful Rules 2011 by ..... bearing Insurance Registration # ..... dated ..... and being satisfied that the said company is eligible to transact Family / General Takaful business, hereby grants, in exercise of powers conferred under Rule (8) of the Takaful Rules 2011, authorization to undertake or carry out Family / General Takaful business subject to the conditions stated herein below.*

*Executive Director*

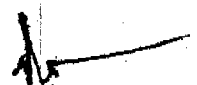
*Date/Place of Issue.....*

*Classes of business which may be transacted:*

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Authorization Reference No. ....

**AUTHORISATION UNDER RULE 6 OF THE TAKAFUL RULES 2011  
TO UNDERTAKE TAKAFUL WINDOW OPERATION IN RESPECT OF FAMILY OR GENERAL TAKAFUL  
PRODUCTS**

*The Securities and Exchange Commission of Pakistan having considered the application for grant of authorization under Rule 6 of the Takaful Rules 2011 by ..... bearing Insurance Registration # ..... dated ..... and being satisfied that the said company is eligible to transact Window Takaful Operation in respect of Family or General Takaful products, hereby grants, in exercise of powers conferred under Rule (8) of the Takaful Rules 2011, authorization to undertake or carry out Window Takaful business in respect of Family or General Takaful products subject to the conditions stated herein below.*

Executive Director

Date/Place of Issue.....

Classes of business which may be transacted:


*du* \_\_\_\_\_

**SCHEDULE -- I**  
[See Rule 5 & 6 of the Takaful Rules 2011]

**TABLE OF FEES TO BE PAID TO THE COMMISSION**

Sr. No.	ITEMS	AMOUNT Rs.
1	Authorization of Takaful Operator	100,000
2	Authorization of Window Takaful Operator	500,000

