

No. S 100

**CONSTITUTION OF BRUNEI DARUSSALAM  
(Order under Article 83(3))**

**TAKAFUL ORDER, 2008**

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**CONSTITUTION OF BRUNEI DARUSSALAM  
(Order under Article 83(3))**

**TAKAFUL ORDER, 2008**

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

**PART I**

**PRELIMINARY**

**Citation, commencement and long title.**

1. (1) This Order may be cited as the Takaful Order, 2008 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notice in the *Gazette*.

(2) The Minister may appoint different dates for the commencement of different provisions of this Order or for different purposes of the same provision.

(3) The long title of this Order is "An Order to provide for the regulation of takaful business in Brunei Darussalam and for other purposes relating thereto or connected with takaful".

**Interpretation.**

2. (1) In this Order, unless the context otherwise requires —

"accounting period", in relation to any takaful operator, means the period for which the takaful operator makes up the accounts of the takaful business carried on by him in Brunei Darussalam; but, unless in any particular case the Authority allows those accounts to be made up for a longer or shorter period, every accounting period for which those accounts have not been made up before the commencement of this Order shall be a period of one year beginning from the commencement of that business or from the end of the preceding accounting period; and "initial accounting period", in relation to any existing takaful operator, means the accounting period beginning with the 1st. January, 2008, or, if the takaful operator has no such accounting period, the first accounting period beginning thereafter;

"actuary" means a Fellow of the Institute of Actuaries in England, a Fellow of the Faculty of Actuaries in Scotland, a Fellow of the Society of

Actuaries in the United States of America, a Fellow of the Canadian Institute of Actuaries, the Australian Institute of Actuaries or any person holding an equivalent qualification and approved in writing by the Authority as an actuary for the purposes of this Order;

"adjuster" means any person who for compensation, fee, commission or salary investigates and negotiates settlement of claims arising under takaful contracts, solely on behalf of either the takaful operator or the participant;

"annuity" means a right to a series of periodical payments at intervals of one year or less under a contract with a family takaful;

"Authority" means such person as is appointed by His Majesty the Sultan and Yang Di-Pertuan under section 4(1) to be the Authority for the purposes of this Order;

"commission" means an amount or a benefit in kind, whether expressed as a percentage of contribution or not, agreed to be paid by a takaful operator to a takaful broker or takaful intermediary including introducer's fees;

"company" means a company incorporated or registered under the Companies Act (Chapter 39);

"contribution" means takaful amount payable by a participant;

"contribution receipt book" includes any book or document held by the participant in which acknowledgments of receipts of contributions payable in respect of the certificate are entered;

"controller" shall be construed in accordance with Part II of the First Schedule;

"existing" means existing immediately before the commencement of this Order;

"family takaful" means takaful for financial aid and assistance to a participant and his family in case of his accidental death or disablement;

"financial year", in relation to a registered takaful operator, means the period for which the registered takaful operator makes up the accounts of its business which shall be a period of one year calculated from the commencement of the business or from the end of the immediately preceding financial year, as the case may be, or such longer or shorter period as the Authority in relation to a particular registered takaful operator, may approve in a particular occasion;



"general takaful" means takaful for financial aid and assistance to a participant in case of loss or damage caused to his property, assets or body due to a casualty or disaster such as fire, flood, accident;

"*Hukum Syara*" means the Laws of Islam according to the Syafeite, Hanafi, Maliki or Hanbali sect of Ahlis Sunnah Waljamaah;

"Minister" means the Minister of Finance;

"net contributions income", in relation to a financial year, means the contributions receivable under contracts of takaful or re-takaful after deducting any contributions payable for re-takaful arranged in respect of such contracts of takaful or re-takaful;

"parent undertaking" shall be construed in accordance with Part III of the First Schedule;

"participant" includes, where a certificate has been assigned, the assignee for the time being and, where they are entitled as against the takaful operator to the benefit of the certificate, the personal representatives of a deceased participant;

"principal officer" means a person, by whatever designation so called, appointed by a takaful operator and charged with the responsibility of managing the affairs of that takaful operator;

"regulations" means regulations made under section 91(1);

"re-takaful" means an arrangement consistent with sound takaful principles for re-takaful of liabilities in respect of risks undertaken or to be undertaken by the takaful operator in the course of his carrying on takaful business;

"re-takaful's deposit" means an amount deposited with or retained by the takaful operator by way of security for the performance by the re-takaful operator of re-takaful contracts in respect of liabilities undertaken by the takaful operator; and includes any similar amount retained by a branch of the takaful operator's business in Brunei Darussalam against a branch outside Brunei Darussalam (the head office of a business being for this purpose treated as a branch);

"statutory balance-sheet" and "statutory valuation" means respectively a balance-sheet lodged with the Authority in order to comply with section 60(1), and a valuation of which results are shown in a valuation balance-sheet lodged with him on an actuarial investigation made in order to comply with section 61(1); any reference to the last statutory balance-sheet or to the last statutory valuation shall be construed as

referring to that last one prepared or made and not superseded by the arrival of the date as at which another is to be prepared or made; any reference to there being shown in a statutory balance-sheet or on a statutory valuation a surplus of assets over liabilities of a takaful fund being construed accordingly by reference to the prescribed form of balance-sheet or valuation balance-sheet and to the rules to be followed under this Order and the regulations in preparing it;

"subsidiary undertaking" (and references to a subsidiary) shall be construed in accordance with Part III of the First Schedule;

"Syariah Financial Supervisory Board" means the Syariah Financial Supervisory Board established by section 3 of the Syariah Financial Supervisory Board Order, 2006 (S 5/06);

"takaful" means a scheme in accordance to *Hukum Syara'* based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for the purpose;

"takaful agent" means a person who does all or any of the following –

- (a) solicits or obtains a proposal for takaful on behalf of a takaful operator;
- (b) offers or assumes to act on behalf of a takaful operator in negotiating a certificate;
- (c) does any act on behalf of a takaful operator in relation to the issuance, renewal or continuance of a certificate;

"takaful broker" means any company who, for compensation as an independent contractor, in any manner solicits, negotiates or procures takaful contracts or the renewal or continuance thereof on behalf of a takaful operator other than himself;

"takaful business" includes the business of takaful whose aims and operations are in accordance with *Hukum Syara'*;

"takaful certificate" includes any contract of takaful for family takaful business or general takaful business whether or not embodied in or evidenced by an instrument in the form of a certificate, and references to issuing a certificate shall be construed accordingly; references to a certificate of a takaful operator include any certificate in respect of which the takaful operator is under any liability, whether the certificates were issued by the takaful operator or the liability was transferred to that takaful operator by another takaful operator;

"takaful intermediary" means a person who, as an agent, broker or adjuster for one or more takaful operators or as an agent, broker or adjuster for a participant or intending participant, arranges contracts of takaful;

"takaful operator" means a takaful operator which has been registered by the Authority under this Order;

"undertaking" shall be construed in accordance with Part III of the First Schedule;

"written contributions" means gross contributions during the accounting period in respect of Brunei Darussalam certificates issued, and re-takaful accepted which are entered in the register, reduced by return of contributions and contributions in respect of re-takaful on Brunei Darussalam certificates ceded during the accounting period to a takaful operator registered under this Order, and related only to general takaful business.

(2) References in this Order to the date of commencement of this Order are to the date of commencement of the main substantive provisions of this Order.

**Classification of takaful business and construction of references to matters connected with takaful.**

3. (1) For the purposes of this Order, takaful business shall be divided into 2 classes —

(a) family takaful business which, in addition to all takaful business concerned with family takaful certificates shall include, in the case of any takaful operator, any type of takaful business carried on as incidental only to the takaful operator's other family takaful business; and

(b) general takaful business, that is to say all takaful business which is not family takaful business.

(2) For the purposes of this Order, the re-takaful of liabilities under takaful certificates shall be treated as takaful business of the class and type to which the certificates would have belonged if they had been issued by the re-takaful operator.

(3) Notwithstanding anything in subsections (1) and (2), if the Authority is satisfied that any part of a takaful operator's business which belongs to a particular class or type of takaful business ought in the takaful operator's case to be treated as belonging to another class or type, the Authority may direct that it shall be so treated for the purposes of this Order.

(4) For the purposes of this Order, references to carrying on takaful business include carrying it on through an agent, or as agent; but "takaful operator" shall not include a takaful agent as such nor, in the case of a person who is both takaful operator and takaful agent, have references to business done as takaful agent.

(5) For the purposes of this Order, "takaful operator" means a person who carries on takaful business as a takaful operator; and references to carrying on takaful business, or any class of takaful business, in Brunei Darussalam mean the receipt of proposals for, or issuing of, takaful certificates in Brunei Darussalam or the collection or receipt in Brunei Darussalam of contributions on takaful certificates.

(6) The operation, otherwise than for profit, of a scheme or arrangement relating to service in particular offices or employments, and having for its object or one of its objects to make provision in respect of persons serving therein against future retirement or partial retirement, or against future termination of service through death or disability, or against similar matters, shall not be treated for the purposes of this Order as carrying on takaful business.

(7) The definitions set out in the Second Schedule shall have effect for the construction of references in this Order to takaful certificates, participants and certificate moneys.

## PART II

### APPOINTMENT OF AUTHORITY, AUTHORISED PERSONS ETC.

#### Appointment.

4. (1) His Majesty the Sultan and Yang Di-Pertuan may, by notification published in the *Gazette*, appoint a person to be the Authority for the purposes of this Order.

(2) The Authority may authorise or appoint any person to assist in the exercise of his powers, duties and functions under this Order, either generally or in any particular case.

(3) Any person appointed by the Authority under subsection (2) shall be deemed to be a public servant for the purposes of the Penal Code (Chapter 22).

PART III

CONDUCT OF TAKAFUL BUSINESS

General restriction on takaful operators

Requirements for carrying on takaful business as takaful operator.

5. (1) Subject to this Order, no person shall carry on any class of takaful business in Brunei Darussalam as a takaful operator unless he is registered as a company under the Companies Act (Chapter 39).

(2) No such company shall carry on family takaful business or general takaful business in Brunei Darussalam as a takaful operator unless —

(a) it has been registered under this Order in respect of that class of business;

(b) it maintains a surplus of assets over liabilities of not less than such amount as may be prescribed;

(c) it has the deposit required by this Order in respect of it; and

(d) it is a member of an association of takaful operators approved by the Authority, provided that this paragraph shall not apply until such an association has been established.

(3) For the purpose of subsection (2)(b), the surplus of assets shall be in the form of cash or securities specified in the Third Schedule.

(4) For the purpose of this section, the value of takaful assets and liabilities may be determined on a basis to be prescribed.

(5) No takaful operator shall carry on takaful business unless it has a Syariah advisory body to advise it on the operation of its takaful business in order to ensure that it does not contain any element which is contrary to *Hukum Syara'*.

(6) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000, imprisonment for a term not exceeding 3 years or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

**Holding out as takaful operator.**

6. Where a company holds itself out to be a takaful operator in respect of family takaful business or general takaful business when it is not registered under this Order in respect of that business, the company shall be guilty of an offence, and every director, manager or officer of the company shall, unless he proves that the holding out by the company was made without his knowledge or consent, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000, imprisonment for a term not exceeding 3 years or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

**Use of words "takaful" or "re-takaful".**

7. (1) No person other than a takaful operator registered under this Order shall, without the written consent of the Authority, use the word "takaful", "re-takaful" or any of its derivatives in any language, or any other word indicating that such person carries on takaful business in the name, description or title under which it carries on business in Brunei Darussalam or make any representation to such effect in any bill head, letterhead, paper, notice or advertisement or in any other manner:

Provided that nothing in the section shall prohibit an association of takaful operators from using the words "takaful", "re-takaful" or "underwriter" or any of their derivatives in any language as part of its name or description of its activities.

(2) Every takaful operator and takaful intermediary registered under this Order shall in every advertisement, letterhead, name-board, brochure or other publication indicate after its name whether it is a takaful operator, takaful broker or takaful intermediary for a takaful operator.

(3) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

**Examination of persons suspected of carrying on takaful business.**

8. (1) Whenever the Authority has reason to suspect or believe that a person is carrying on takaful business without having been registered under this Order, he may call for or inspect the books, accounts and records of that person in order to ascertain whether or not that person has contravened any provision of this Order.

(2) Any person who wilfully refuses to submit such books, accounts and records or to allow the inspection thereof shall be guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$4,000 for every day during which the offence continues after conviction.

### Registration of takaful operators

#### Registration by Authority.

9. (1) A person who desires to carry on takaful business in Brunei Darussalam as a takaful operator shall apply in writing to the Authority for registration under this section and shall furnish such documents and information as may be prescribed or as the Authority may in any particular case require.

(2) Upon receiving and after considering an application under subsection (1), the Authority may, subject to section 10, register the company with or without conditions in respect of family takaful business or general takaful business, or may refuse to register it.

(3) The Authority shall cause notice of the registration of a Brunei Darussalam takaful operator to be published in the *Gazette*.

#### Requirements before registration.

10. (1) The Authority shall not register an applicant under section 9, unless —

(a) the applicant is a company as defined in the Companies Act (Chapter 39) or a company incorporated outside Brunei Darussalam which has an established place of business in Brunei Darussalam;

(b) the applicant has a surplus of assets over liabilities of not less than such amount as may be determined by the Authority; and

(c) the applicant has made the deposit required by section 16.

(d) that the aims and operations of the takaful business which the applicant is desired to carry on will not involve any element which is contrary to *Hukum Syara'*; and

(e) that there is in the Articles of Association of the company provisions for the establishment of a Syariah advisory body to advise the takaful operator on the operation of its takaful business in order to ensure that it does not involve any element which is contrary to *Hukum Syara'*.

(2) For the purpose of subsection (1)(b), different amounts may be prescribed for different classes of takaful business or for different types of takaful operators.

**Conditions of registration.**

11. (1) The Authority may —

(a) impose conditions on the registration of a takaful operator; or

(b) add to, vary or revoke any conditions of registration of a takaful operator who is registered under this Order in order for it to remain so registered.

(2) Any takaful operator which fails to comply with any condition imposed by the Authority under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

**Registration and annual fees.**

12. (1) Takaful operators shall pay such registration and annual fees as may be prescribed.

(2) Different annual fees may be prescribed for different classes of takaful business or for different types of takaful operators.

**Cancellation of registration.**

13. (1) The Authority may, at the request of the takaful operator or on any of the grounds set out in subsection (2), cancel the registration of any takaful operator either wholly or in respect of any class of business, as the case may be.

(2) The grounds referred to in subsection (1) are —

(a) that the takaful operator is pursuing objects or carrying on operations containing any element which is contrary to *Hukum Syara'*;

(b) that the takaful operator has not commenced business within one year after being registered;

(c) that the takaful operator has ceased to carry on takaful business in respect of any class of business;



*(d)* that the takaful operator has failed to maintain a surplus of assets over liabilities required by section 10(1)(b);

*(e)* that the takaful operator has neglected or refused to observe an order of the Authority to make good any deficiency, whenever its takaful fund may have become impaired;

*(f)* that the takaful 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)* that the takaful operator is carrying on its business in a manner likely to be detrimental to the interest of its participants;

*(h)* that the takaful operator is unable to meet its obligations;

*(i)* that the takaful operator has failed to effect satisfactory re-takaful arrangements;

*(j)* that the takaful operator is contravening or has contravened any provision of this Order or of the regulations, or any condition imposed or any direction given by the Authority under this Order;

*(k)* that any officer of the takaful operator holding a managerial or executive position has been convicted of an offence under this Order;

*(l)* that the takaful operator has furnished false, misleading or inaccurate information, or has concealed or failed to disclose material facts, in its application for registration; or

*(m)* that it is in the public interest to cancel the registration.

(3) The Authority shall, before cancelling the registration of a takaful operator under this section otherwise than at the request of the takaful operator, cause to be given to the takaful operator notice in writing of his intention to do so, specifying a date, not less than 14 days after the date of the notice, upon which the cancellation will take effect and calling upon the takaful operator to show cause to the Authority why the registration should not be cancelled.

(4) Notwithstanding that the registration of a takaful operator has been cancelled under this section, so long as the takaful operator remains under any liability in respect of Brunei Darussalam certificates belonging to the class of takaful business to which the registration relates, the takaful operator shall take such action as it considers necessary or as may be required by the Authority to ensure that reasonable provision has been or will be made in respect of that liability and that adequate arrangements exist or will exist for payment in Brunei Darussalam of contributions and claims on those certificates.

(5) When the Authority cancels a registration under subsection (1), he shall forthwith inform the takaful operator of the cancellation.

(6) Any takaful operator whose registration has been cancelled may, within 30 days of being informed in writing of the cancellation, appeal to the Minister whose decision thereon shall be final.

(7) A cancellation made by the Authority shall not take effect until 14 days after the takaful operator has been informed in writing of such cancellation.

**Effect of cancellation of registration.**

14. (1) When the cancellation of registration becomes effective under section 13 —

(a) notice of the cancellation shall be published in the *Gazette*; and

(b) the takaful operator shall, as from the date of cancellation, cease to carry on in Brunei Darussalam takaful business of the class in respect of which its registration has been cancelled, otherwise than by the collection or receipt of contributions on Brunei Darussalam certificates belonging to that class effected before the date of cancellation of registration, and section 6 shall not apply to the takaful operator in respect of the collection or receipt of those contributions.

(2) The provisions of subsection (1)(b) shall not prejudice the enforcement by a participant or person of any right or claim against the takaful operator or by the takaful operator of any right or claim against any participant or person.

**Prohibition of investment-linked takaful business or annuity takaful business without approval.**

15. (1) A takaful operator shall not carry on investment-linked takaful business or annuity takaful business in Brunei Darussalam without the approval in writing of the Authority and subject to such conditions as he may impose.

(2) In this section, "investment-linked takaful business" means the effecting and carrying out of a contract of family takaful under which the benefit payable to the participant is the greater between —

(a) a specified minimum amount payable on death, on survival to a specified date, or at specified intervals; and

(b) an amount which is determined by reference to the value at the relevant date of, or the income during the relevant period from, assets of a description specified in the certificate or in any related statement.

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**Deposits, registers of certificates, takaful funds and re-takaful**

**Deposits.**

16. (1) A takaful operator, while registered in respect of any class of takaful business, shall at all times have in respect of that business a deposit with the Authority of such amount as may be prescribed.

(2) Any such deposit shall be made in cash or in Government securities or such other securities as may be prescribed.

(3) All income accruing in respect of a deposit shall be payable to the takaful operator making the deposit.

(4) A deposit made under this section in respect of any class of business shall be retained by the Authority until either the takaful operator ceases to be registered in respect of that class of takaful business or the deposit is required in the winding-up of the affairs of the takaful operator; and if the takaful operator ceases to be so registered, the deposit or part of it may be further retained for the purpose of and in accordance with any such provision for liabilities in respect of certificates as is required by section 13(4).

(5) If at any time a deposit under this section (other than a deposit retained after the takaful operator has ceased to be registered) comprises assets other than Government securities, and if the value of those assets is less than the sum prescribed by virtue of subsection (1), the Authority may by notice in writing direct the takaful operator to add thereto within 28 days of the service of the notice, cash or security of a value of not less than the difference.

(6) A takaful operator which has made a deposit under this section may at any time substitute for any assets comprised in the deposit, cash or securities as may be prescribed as long as the value of the deposit is not thereby reduced to an amount below that which is required by this Order.

(7) In the foregoing subsections, "securities" (except in the expression "Government Securities") includes any form of investment not contrary to the *Hukum Syara'*, and "Government Securities" means securities of which the principal or profit is charged directly or by way of guarantee on the Consolidated Fund, but no deposit shall include —

(a) any shares in, or other securities of, a takaful operator registered under this Order;

(b) except so far as a debt comprised in the deposit is secured on land, any estate of interest in land; or

(c) any securities authorised in the Third Schedule which the Authority declares in writing to the takaful operator to be unsuitable for the purposes of a deposit.

(8) Where by virtue of subsection (7)(c), any securities comprised in a deposit have been declared to be unsuitable, the takaful operator shall within one month of the securities being so declared, substitute therefore such other securities as are authorised by this section.

**Bank covenants in lieu of deposits.**

17. (1) If, in the case of any takaful operator, a bank licensed under any written law relating to banking makes an agreement with the Authority in a form approved by the Authority whereby that bank covenants to deposit under section 16 with the Authority a specified sum in cash on account of the takaful operator's deposit in respect of either class of takaful business, and the covenant complies with any conditions the Authority may impose as to the circumstances in which that sum is to be deposited, then for the purpose of this Order that takaful operator shall be treated as having made the deposit under section 16 and the sum so covenanted shall be recoverable notwithstanding that no consideration was furnished on the agreement.

(2) Any sum deposited by a bank in pursuance of an agreement made under subsection (1) shall be dealt with under or for the purposes of this Order as if it were a sum deposited by the takaful operator under section 16.

**Requirements in respect of takaful products.**

18. Any takaful product shall be a product which is approved by the Syariah Financial Supervisory Board.

**Register of takaful certificates.**

19. (1) Every takaful operator shall establish and keep a register of Brunei Darussalam takaful certificates where it carries on business relating to Brunei Darussalam takaful certificates.

(2) Subject to this section, there shall be entered in the register of Brunei Darussalam certificates, all Brunei Darussalam certificates of the takaful operator and no certificate entered in the register shall be removed from it so long as the takaful operator is under any liability in respect of that certificate.

(3) Subject to this section, there may be entered in the register of Brunei Darussalam takaful certificates such other certificates as the takaful operator, with the consent (express or implied) of the participants, may determine, and this

Order shall apply in relation to any certificate so entered as if it were a Brunei Darussalam takaful certificate.

(4) Subject to subsection (5), a takaful operator carrying on family takaful business outside Brunei Darussalam (and not doing so only by the collection or receipt of contributions) may, at the request of the participant of a certificate belonging to the takaful operator's family takaful business —

(a) refrain from entering the certificate in the register of Brunei Darussalam takaful certificates, notwithstanding that it is a Brunei Darussalam certificate; or

(b) remove the certificate from the register of Brunei Darussalam takaful certificates,

and this Order shall thereafter apply in relation to that certificate as if it were not a Brunei Darussalam certificate.

(5) Regulations may provide that subsections (3) and (4) shall apply only in such cases as may be prescribed or shall have effect subject to any prescribed exceptions or restrictions.

(6) A Brunei Darussalam takaful operator shall, at the request of any person having an interest in any certificate of the takaful operator, inform him whether or not the certificate is entered in any register of certificates established by the takaful operator under this Order.

(7) Where a Brunei Darussalam takaful operator has established under this Order any register of certificates, the register shall cease to exist as a statutory register under this Order of certificates belonging to either class of takaful business, if the takaful operator ceases to be registered under this Order in respect of that class of business; and any reference in this Order to certificates registered under this Order shall be construed accordingly.

(8) Subject to subsection (7), the register shall, notwithstanding that the takaful operator at any time has ceased to carry on in Brunei Darussalam either class of takaful business, continue to be maintained by the takaful operator for certificates belonging to that class so long as the takaful operator is under any liability in respect of those certificates registered or required to be registered at that time; but no certificates belonging to either class of business shall be entered in the register under subsection (3) when the takaful operator is not carrying on that class of business in Brunei Darussalam or is doing so only by the collection or receipt of contributions.

(9) The register of an existing takaful operator shall be established as at the beginning of the initial accounting period, which shall be taken for the purposes of this Order to be the date of the establishment of the register.

**Establishment and maintenance of takaful funds and allocation of surplus.**

20. (1) Every takaful operator registered under this Order shall establish and maintain in accordance with this section a takaful fund in respect of the class or each of the classes of takaful business carried on by the takaful operator in Brunei Darussalam so far as that business relates to Brunei Darussalam certificate.

(2) The Authority may require any takaful operator to establish and maintain, in addition to the takaful funds under subsection (1) such other takaful fund as the Authority may determine for different types of certificates in respect of each class of business.

(3) There shall be paid into a takaful fund all receipts of the takaful operator properly attributable to the business to which the fund relates (including the income of the fund), and the assets comprised in the fund shall be applicable only to meet such part of the takaful operator's liabilities and expenses as is properly so attributable.

(4) In the case of a fund established in respect of family takaful business, no part of the fund shall be allocated by way of benefits to participating certificates, except with the approval of an actuary and out of a surplus of assets over liabilities as shown on the last statutory valuation of the fund; and on the making of any such allocation that surplus shall be treated for the purposes of this section as reduced by the amount allocated.

(5) If on the last statutory valuation in the case of a fund established in respect of family takaful business there was shown a surplus of assets over liabilities of the fund, there may, subject to the approval of an actuary and to any provision to the contrary in any instrument or contract binding the takaful operator, be withdrawn from the fund an amount not exceeding the surplus, and on the making of any such withdrawal that surplus shall be treated for the purposes of this section as reduced by the amount withdrawn:

Provided that no part of the surplus attributable to a participating certificate other than a re-takaful certificate shall be withdrawn in excess of one-quarter of the amount allocated thereout by way of benefits to participating certificates.

(6) If in the last statutory balance sheet in the case of a takaful fund established in respect of general business there was shown a surplus of assets over liabilities of the fund, there may, subject to any provision to the contrary in any instrument or contract binding the takaful operator, be withdrawn from the fund an amount not exceeding the excess of the surplus over any fund margin of solvency prescribed for that fund under section 21, and on the making of any such withdrawal that surplus shall for the purposes of this section be treated as reduced by the amount withdrawn.

(7) In respect of any certificate belonging to the takaful operator's family takaful business which is under section 19(4) removed from the takaful operator's register of Brunei Darussalam certificates, there may be withdrawn from a takaful fund to which the certificate relates an amount not exceeding the prescribed amount.

(8) Any amount withdrawn from a takaful fund under subsections (5), (6) or (7) and, in a winding-up, any part of a takaful fund remaining after meeting the liabilities and expenses to which the fund is applicable may be dealt with as if it had not formed part of the fund except that, in the case of a winding-up where any other takaful fund of the takaful operator under this Order is in deficit, the surplus remaining after the winding-up shall first be applied to make good the deficit in that fund.

(9) In a winding-up, assets comprised in the deposit made by a takaful operator under section 16 in respect of either class of business may be allocated by the Authority to any takaful fund established by the takaful operator for that class of business in such manner and proportion as he sees fit, and assets so allocated shall be treated as assets of the takaful fund, and subsections (3) and (8) shall apply to those assets accordingly.

(10) Any takaful fund established by a takaful operator for any class of business shall, notwithstanding that the takaful operator at any time ceases to carry on that class of business in Brunei Darussalam, continue to be maintained by the takaful operator so long as the takaful operator is required by this Order to maintain the register of certificates belonging to that class.

(11) In the case of an existing takaful operator, a takaful fund shall be established as at the date of establishment of the register under section 19(9) and by reference to the certificates registered or required to be registered in it as at its establishment, and by reference to the assets and liabilities of the takaful operator as at that date; and —

*(a)* there shall be allocated to the fund assets of a value not less, after allowing for any charges to which the fund is not applicable, than the aggregate of the amounts specified in subsection (12); and

*(b)* all such matters as would subsequently have affected the fund if established at that date shall be brought into account accordingly.

(12) The amounts referred to in subsection (11)*(a)* are —

*(a)* the amount, determined in the prescribed manner, of the liability of the takaful operator in respect of the certificates referred to in subsection (11);

(b) the amount of any other liabilities of the takaful operator in so far as the assets allocated to the fund will be applicable or be treated as having been applicable to meet those liabilities; and

(c) the amount of the fund margin of solvency, if any, required to be maintained for the fund under section 21.

**Paid-up capital and margins of solvency.**

21. (1) Every takaful operator shall maintain —

(a) a fund margin of solvency in respect of each of the takaful funds established by the takaful operator under this Order; and

(b) a margin of solvency,

of such amounts as may be determined by the Authority.

(2) The Minister may prescribe —

(a) a paid-up share capital of a takaful operator incorporated in Brunei Darussalam or, where a takaful operator incorporated outside Brunei Darussalam does not have a share capital, its surplus of assets over liabilities, different margins of solvency under subsection (1) for different classes of takaful business and for different types of takaful operators; and

(b) in respect of any type of takaful operator, any exception from the requirements of subsection (1).

(3) Without prejudice to the generality of section 91, regulations made under this Order may —

(a) provide for the determination of the value of assets and the amount of liabilities in any case in which the value or amount is required by this section to be determined in accordance with regulations;

(b) provide that, for any specified purpose, assets or liabilities of any specified class or description shall not be taken into account or shall be taken into account only to a specified extent; and

(c) make different provision in relation to different cases or circumstances.



(4) For the purposes of this section —

(a) the fund margin of solvency in respect of any takaful fund is the excess of the value of the assets over the liabilities of the fund;

(b) the margin of solvency of a takaful operator is the excess of the value of its assets over the amount of its liabilities, and

(c) that value and amount being determined in accordance with any applicable valuation regulations.

**Regulations regarding investment of assets.**

22. Regulations made under this Order may make provision for securing that, in such circumstances and to such extent as may be prescribed, the assets of any takaful fund of a takaful operator are invested, in accordance with *Hukum Syara'*.

**Requirements as to assets of takaful funds.**

23. (1) The assets of any takaful fund under this Order shall be kept separate from all other assets of the takaful operator, and shall not include assets comprised in a deposit under this Order except as provided by subsection (5), nor any amounts on account of goodwill, the benefit of development expenditure or similar items not realisable apart from the business or part of the business of the takaful operator.

(2) The assets of any takaful fund established in respect of general business shall not include any amount representing the total of outstanding contributions and agents' balances which is in excess of any amount prescribed by the Authority.

(3) Subject to section 27, the assets of any takaful fund shall be such that —

(a) the value of Brunei Darussalam assets as specified in the Third Schedule, with any such additions as are permitted by subsection (4), is not less than any amount prescribed; and

(b) the value of investments in securities of the Government or of a body incorporated in Brunei Darussalam which is not contrary to *Hukum Syara'* is not less than 25 per cent of the total value of the assets of the fund.

(4) For the purpose of subsection (3), there may be added to the value of items specified in the Third Schedule the amount or value of any assets of the fund of the following descriptions —

(a) income arising from those assets but not yet received;

(b) outstanding contribution on family certificates on which future liabilities may be met out of the assets of the fund, being contributions which are to be paid in Brunei Darussalam currency;

(c) outstanding contributions and agents' balances in respect of Brunei Darussalam certificates for general business, but not exceeding the amount permitted in subsection (2);

(d) sums representing claims recoveries from re-takaful in or outside Brunei Darussalam.

(5) The Authority may, in respect of assets of any takaful fund, require a takaful operator —

(a) not to make investments contrary to *Hukum Syara'* of a specified class or description;

(b) to realise, before the expiration of a specified period or such extended period as the Authority may allow, the whole or a specified proportion of investments not contrary to *Hukum Syara'* of a specified class or description held by the takaful operator when the requirement is made.

(6) For the purposes of this section, the assets representing any re-takaful deposit held by the takaful operator to meet liabilities of a takaful fund shall be treated as assets of the fund.

**Restrictions on payment of dividends and grants of advance, loans and financing facility.**

24. (1) No takaful operator shall —

(a) pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisation expenses, share selling commission, brokerage, amount of losses incurred, and any other item of expenditure not represented by tangible assets) have been completely written off;

(b) grant an advance, a loan or a financing facility against the security of its own shares;

(c) except in such circumstances and in such amounts as the Authority may allow, grant an advance, a loan or a financing facility —

(i) to any of its directors other than an advance, a loan or a financing facility secured by a certificate held by that director;

- (ii) to a firm in which it or any of its directors has any interest as partner, manager or agent, or to an individual for whom or a firm for which any of its directors is a guarantor;
- (iii) to a company in which any of its directors owns 20 per cent or more of the voting shares;
- (iv) to a company in which any of its takaful operators owns 20 per cent or more of the voting shares;
- (v) to a company which owns 20 per cent or more of the voting shares of that takaful operator; and
- (vi) to a company in which a company mentioned in sub-paragraph (v) owns 20 per cent or more of the voting shares;

(d) except in such circumstances and in such amounts as the Authority may allow, grant to any person, other than an employee or any person mentioned in paragraph (c), an unsecured advance, unsecured loan or unsecured financing facility;

(e) except in such circumstances as the Authority may allow, act as guarantor of an advance, a loan or a financing facility granted to any person, firm or company mentioned in paragraph (c); or

(f) except with the written approval of the Authority, pledge, mortgage or charge any of its assets or securities.

(2) All the directors of the takaful operator shall be liable jointly and severally to indemnify the takaful operator against any loss arising from the making of an unsecured advance, unsecured loan or unsecured financing facility.

(3) Nothing in this section shall preclude the takaful operator from investing its fund in any manner not contrary to *Hukum Syara'*.

(4) For the purpose of subsection (1), "director" shall be deemed to include the wife, husband, father, mother, son and daughter of a director.

(5) For the purposes of this section and section 25, "unsecured advance", "unsecured loan" and "unsecured financing facility" mean respectively —

(a) an advance, loan or financing facility made without security; or

(b) in the case of an advance, loan or financing facility made with security, any portion of the advance, loan, or financing facility which at any time exceeds —

- (i) the market value of the assets constituting the security; or
- (ii) the value of the assets constituting the security assessed on a basis approved by the Authority where it is satisfied that there is no established market value.

**Disclosure of interest by directors.**

25. (1) Every director of a takaful operator who in any manner whatsoever has an interest, whether directly or indirectly, in an advance, a loan or a financing facility from that takaful operator shall as soon as practicable make to the takaful operator a declaration in writing as to the nature and extent of his interest, and the takaful operator shall within 7 days of its receipt furnish copies of that declaration to the Authority, its auditor and all its directors.

(2) For the purpose of subsection (1), a general notice given to the board of directors of a takaful operator by a director to the effect that he has an interest in a specified enterprise, undertaking, firm or company and that he is to be regarded as having an interest in an advance, a loan or a financing facility which may, after the date of the notice, be granted to that enterprise, undertaking, firm or company shall be deemed to be sufficient declaration of interest in relation to the advance, loan or financing facility so granted if —

(a) it specifies the nature and extent of his interest in that enterprise, undertaking, firm or company; and

(b) at the time the advance, loan or financing facility is made, his interest is not different in nature or greater in extent than had been specified in the notice.

(3) Every director of a takaful operator who holds an office or possesses any property whereby, whether directly or indirectly, a duty or an interest may arise in conflict with his duty or interest as such, the director shall declare at a meeting of the directors of the takaful operator the fact, nature and extent of the conflict which may arise.

(4) A declaration referred to in subsection (3) shall be made at the first meeting of the directors held —

(a) after the person became a director of the takaful operator; or

(b) if already a director, after the person commenced to hold office or to possess the property whereby the conflict may arise.

(5) The secretary to the board of directors of the takaful operator shall cause any declaration made or notice given under this section to be read at the

next meeting of the directors after the declaration was made or the notice was given, and he shall record the same in the minutes of that meeting.

(6) Any director or secretary to a board of directors who acts in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment not exceeding 3 years or both.

**Submission of statement and liquidation of transactions by takaful operator.**

26. (1) A takaful operator which has, or a director of a takaful operator who has, prior to the commencement of this Order, entered into a transaction or has an interest contrary to the provisions of sections 24 or 25, shall within 2 months of such commencement, submit a statement of that transaction or interest to the Authority and that takaful operator or director, as the case may be, shall further within that time or such further time as the Authority may specify, liquidate the transaction, cease to have the interest or comply with the provisions of those sections, and dispose of any property or right that may have been acquired or interest that may have been held.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000, and in the case of a continuing offence to a further fine not exceeding \$4,000 for every day during which the offence continues after conviction.

**Requirements as to documents evidencing title to assets of takaful funds.**

27. (1) Where a takaful operator has established a takaful fund under this Order, the takaful operator shall secure that any documents evidencing the takaful operator's title to assets of the fund, or assets falling within section 23(6), so long as the documents are held by or on behalf of the takaful operator, shall be kept in Brunei Darussalam or, if not so kept, shall be kept in the custody of a person approved by the Authority, and at a place and on terms so approved:

Provided that the Authority may, in the case of a takaful operator who is being investigated under this Order or where the Authority is satisfied that the affairs of a takaful operator are being conducted in a manner likely to be detrimental to the interests of participants or potential participants, direct that all such documents be handed over to be kept by him or by a person approved by him and at a place and on terms so approved.

(2) A takaful operator who has established a takaful fund under this Order shall from time to time notify the Authority in writing —

(a) of the person who has the custody of any such documents on behalf of the takaful operator, and of the fact that any person has ceased to do so; and

(b) of the reason why any such documents are not held by or on behalf of the takaful operator, and the identity of such documents in question.

(3) Any document kept by the Authority or by a person approved by him pursuant to the proviso to subsection (1) shall not be released except with the consent in writing of the Authority.

(4) Any document which is for the time being held by or on behalf of the takaful operator shall, on the Authority giving not less than one day's notice in writing to the takaful operator or to the person having the custody of the document, be produced for inspection to the Authority by the person to whom the notice is given.

(5) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

**Establishment and maintenance of takaful guarantee scheme funds and payment of moneys out of the funds.**

28. (1) There shall be established and maintained by the Authority in accordance with this section, takaful guarantee scheme funds in respect of general takaful business and family business respectively carried out by the takaful operator in Brunei Darussalam, so far as the business relates to Brunei Darussalam certificates; for the purposes of indemnifying in whole or in part, or otherwise assisting or protecting, participants and others who have been or may be prejudiced in consequence of the inability of takaful operators to meet their liabilities under family takaful certificates and compulsory takaful certificates issued by them.

(2) There shall be paid into the takaful guarantee scheme funds through the Authority all such levies as may be imposed on and collected from the takaful operators in such instalments as the Authority may allow.

(3) Subject to any written direction by the Authority, the total amount of levy shall not exceed one per cent of the annual actual contribution of a takaful operator in any year assessable on the general business, and in the case of family takaful business on any new business carried out by the takaful operator in the previous year. In the case of a takaful operator who has failed to submit his returns under section 60 by the due date, the Authority may, for the purpose of

calculating the amount of levy payable by that takaful operator, assess an amount to be that takaful operator's actual contribution income for the preceding year and the amount so collected shall be adjusted against actual contribution income shown in the returns when they have been submitted.

(4) Any sum, including any other moneys or income received or paid into the takaful guarantee scheme funds including any profit or dividends derived from any investment of any sum out of such funds, may be withdrawn and utilised with the approval of and subject to the direction of the Authority to meet the administrative, legal and other costs of maintaining and administering such funds and the liabilities of any insolvent takaful operator to private participants in respect of any valid certificates registered in accordance with section 19:

Provided that any sum so withdrawn and utilised for the purpose of meeting the liabilities of any insolvent takaful operator shall not at any time exceed 90 per cent of the lawful amount due and payable to any private participant or person entitled through him or any other proper claimant. For the purposes of this subsection, a takaful operator shall be deemed to be insolvent if —

(a) at the close of the last accounting period for which statements have been lodged with the Authority under section 60, the takaful operator was insolvent;

(b) winding-up proceedings have been commenced against the takaful operator; or

(c) a receiving order has been made against the takaful operator by the High Court.

(5) The Authority may at any time after the establishment of the takaful guarantee scheme funds, direct the discontinuance of the collection of any sum by way of levy if he is satisfied that there is more than adequate money in either or both of the funds to meet the liabilities of any insolvent takaful operator in accordance with this subsection, but may if the circumstances warrant, direct the resumption of the collection from the takaful operator in respect of either or both of the takaful guarantee scheme funds:

Provided that the Authority may at any time direct that this section shall not apply to certain types of takaful business within any class or may apply only with such exceptions, restrictions or on terms or for any period or in any other manner as he may direct.

(6) The Authority may appoint any person to assist him in the administration and distribution of the takaful guarantee scheme funds.

(7) For the purposes of this section, the annual written contribution of a takaful operator in any other year shall exclude overseas inward re-takaful.

(8) The moneys in the takaful guarantee scheme funds in so far as they are not for the time being required to be expended for the purposes of this section may be invested in such manner not contrary to *Hukum Syara'* as the Authority may approve and all income accruing in respect of such investments shall be credited to the funds.

(9) In this section, "private participant" means a participant who is an individual, a partnership or any other unincorporated body of persons, all of whom are individuals; and "proper claimant" has the meaning assigned thereto by section 87(6).

**Enforcement of requirements as to register of certificates and takaful funds and payment of levies by takaful operators.**

29. (1) If a takaful operator defaults in complying with any of the provisions of sections 19, 20 or 23, the Authority may by notice in writing require him to make good the default.

(2) If the takaful operator does not make good the default within one month after the notice is given, the High Court may, on the application of the Authority, make such order against the takaful operator or any director or officer of the takaful operator as the High Court thinks fit with a view to making good the default and otherwise securing compliance by the takaful operator with sections 19, 20 or 23.

(3) Nothing done under this section shall affect any person's liability for any offence against this Order.

**Re-takaful.**

30. (1) A takaful operator shall make and maintain arrangements consistent with sound takaful principles for re-takaful of liabilities in respect of risks undertaken or to be undertaken by the takaful operator in the course of his carrying on takaful business.

(2) The Authority may by notice in writing require a takaful operator to produce for his inspection, and review within a period specified in the notice, treaties on re-takaful, such other detailed information pertaining thereto and any other such re-takaful arrangements as he may in any particular case require.

(3) Where as a result of a review of the re-takaful treaties, contracts or arrangements, the Authority is of the view that it is in the public interest to do so, the Authority shall direct the takaful operator to cause amendments to be made to the re-takaful treaties, contracts or arrangements when they come up for renewal.



(4) Any person who fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

#### **Miscellaneous requirements as to conduct of business**

**Payment in Brunei Darussalam currency of certificate moneys under family takaful certificates.**

31. (1) In the case of a family takaful certificate issued as a Brunei Darussalam certificate after the commencement of this Order, to a participant who is a citizen of Brunei Darussalam, any certificate moneys or moneys payable on the surrender of the certificate shall, notwithstanding anything in the certificate or in any agreement relating thereto, be paid in Brunei Darussalam currency, unless at the time of payment it is otherwise agreed between the takaful operator and the person entitled to the payment.

(2) Where a takaful operator satisfies the Authority as regards any family takaful certificate registered under this Order by the takaful operator that the certificate moneys (including any moneys payable on the surrender of the certificate) are not, under the certificate or any agreement relating thereto, to be paid in Brunei Darussalam currency, then for the purpose of section 23(3) there shall be disregarded from the value the assets of the relevant takaful fund such amount as is equal to the value of the takaful operator's liability in respect of the certificate determined on a basis approved by the Authority.

**Assumption of risk by takaful operator and collection and refund of contribution.**

32. (1) Subject to subsections (2) and (3), no takaful operator shall assume any risk in respect of any general takaful business unless –

(a) the contribution payable is received by the takaful operator or is guaranteed to be paid by such person in such manner and within such time as may be prescribed; or

(b) a deposit in advance has been made of such amount and in such manner as may be prescribed.

(2) Where the contribution payable pursuant to subsection (1) is received by any person, including a takaful agent or takaful broker, on behalf of a takaful operator, such receipt shall be deemed to be receipt by the takaful operator for the purposes of that subsection, and the onus of proving that the contribution payable was received by a person, including a takaful agent or takaful broker, who was not authorised to receive such contribution shall lie on the takaful operator.

(3) Subsections (1) and (2) shall apply to such description of general takaful business as may be prescribed.

(4) Notwithstanding subsections (1) and (2), a takaful operator shall not grant credit to takaful agents or takaful brokers and participant in respect of motor vehicle takaful business.

(5) Where any person, including a takaful agent or takaful broker receives on behalf of a takaful operator a contribution on a takaful certificate of a description prescribed pursuant to subsection (3), such person shall deposit with, or despatch by post to the takaful operator the contribution so received within such period as may be prescribed in relation to certificates of that description.

(6) Any refund of contribution, in relation to certificates of takaful of a description prescribed under subsection (3), which may become due to a participant on account of the cancellation of a certificate or alteration in its terms and conditions or for any other reason, shall be paid by the takaful operator directly to the participant and a proper receipt shall be obtained by the takaful operator from the participant and such refund shall under no circumstances be paid or credited to any other person, including a takaful agent or takaful broker.

(7) Any person who fails to comply with this section shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

**Appointment of actuary.**

33. (1) No actuary or consulting actuary, as the case may be, shall be appointed by a takaful operator without the prior approval in writing of the Authority.

(2) A takaful operator shall inform the Authority in writing whenever there is a change in the actuary and such change is subject to the written approval of the Authority.

**Regulation of contributions under family takaful certificates.**

34. (1) A takaful operator shall not issue a family takaful certificate of any description, being a Brunei Darussalam certificate, without the prior approval in writing of the Authority.

(2) Such family takaful certificate shall only be issued if the rate of contribution under the certificate is approved by the actuary appointed under section 33, or the value of the rates fixed for such certificates, is a contribution approved by the actuary.

(3) An actuary shall not for the purposes of this section approve a contribution for a certificate or a rate of contribution for any description of a

certificate, unless it is satisfied that it is suitable and in accordance with sound takaful principles.

(4) An actuary, in giving his approval in respect of any description of family takaful certificate, shall have regard to the maximum rate of commission proposed to be paid or allowed to any person in respect of that description of certificate, and shall certify the maximum rate.

(5) Where in the case of any takaful operator a rate of contribution is approved by an actuary for any description of family takaful certificate, the takaful operator shall not, except with the approval of the Authority, pay or allow in respect of any certificate of that description a commission at a rate greater than the maximum rate of commission certified by the actuary.

(6) The Authority may by notice in writing require any Brunei Darussalam takaful operator to obtain and furnish him within a time specified in the notice with a report by an actuary as to the suitability of the rates of contribution for the time being chargeable by the takaful operator for any description of family takaful certificate and, if the actuary considers that the rates are not suitable or not in accordance with sound takaful principles, a report as to the rates of contribution which the actuary approves for that description of certificate; and for the purposes of subsection (2) regard shall be had to any such report to the exclusion of any previous approval or report.

(7) For each occasion on which a takaful operator issues a certificate or allows a commission in contravention of this section, the takaful operator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

**Notice regarding proof of age.**

35. Where a takaful operator issues a family takaful certificate which provides that proof of age of the participant is a condition precedent to the payment of the sum, the takaful operator shall, unless the age of the participant has already been admitted by the takaful operator, issue on or with the certificate a printed notice stating that proof of age of the participant will be required prior to the payment of the said sum.

**Mis-statement of age and non-avoidance of certificate.**

36. (1) A takaful certificate shall not be called in question by reason only of a mis-statement of the age of a participant.

(2) Where the true age as shown by the proof is greater than that on which the certificate is based, the takaful operator may vary the takaful sum and the bonuses (if any) allotted to the certificate so that, as varied, they bear the same

proportion to the takaful sum under and the bonuses (if any) allotted to the certificate before variation as the amount of contributions that have become payable under the certificate bear to the amount of contributions that would have become payable if the certificate had been based on the true age.

(3) Where the true age as shown by the proof is less than that on which the certificate was based, the takaful operator shall either —

*(a)* vary the takaful sum under and bonuses (if any) allotted to, the certificate so that, as varied, they bear the same proportion to the takaful sum and the bonuses (if any) allotted to the certificate before variation as the amount of the contributions that have become payable under the certificate by the participant bears to the amount of the contributions that would have become payable if the certificate had been based on the true age; or

*(b)* reduce, as from the date of issue of the certificate, the contributions payable to the amount that would have been payable if the certificate had been based on the true age and repay the participant the amount of over-payment of contributions less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the certificate had been based on the true age.

(4) No family takaful certificate effected after the commencement of this Order shall, after the expiry of 2 years from the date on which it was effected, be called in question by a takaful operator on the ground that a statement made in the proposal for takaful or in a report of a doctor, referee or other person, or in a document leading to the issue of the certificate, was inaccurate or false, unless the takaful operator shows that such statement was on a material matter or suppressed a material fact and that it was fraudulently made by participant with the knowledge that the statement was false or that it suppressed a material fact.

(5) For the purposes of subsection (4) "material matter" or "material fact" means such matter or fact which, if known by the takaful operator, would have led to a refusal by the takaful operator to issue a family takaful certificate to the participant or would have led the takaful operator to impose terms less favourable to the participant than those imposed in the certificate.

(6) Nothing in this section shall prevent the takaful operator from calling for proof of age at any time, and no certificate shall be called in question merely because the terms of the certificate are adjusted in accordance with subsections (2) or (3).

#### **Objection to family takaful certificate.**

37. (1) A participant may, within 14 days after the delivery of a family takaful certificate to him or, if delivered at his residence, to a person who is resident

therein, return the certificate to the takaful operator with an objection in writing to any term or condition of the certificate and the takaful operator shall forthwith refund any contribution which has been paid in respect of the certificate which shall thereupon be cancelled.

(2) For the purposes of this section, a certificate shall be deemed to be returned to a takaful operator with an objection when the certificate with the objection in writing are received by the takaful operator or are posted to the takaful operator by registered post.

**Control of form of proposals, certificates and brochures.**

38. (1) The Authority may by notice in writing require a takaful operator to submit to him the forms of proposal and certificate in used by the takaful operator in Brunei Darussalam, and any brochures which are in used by the takaful operator for describing the terms or conditions of, or the benefits to be or likely to be derived from such certificates; and where the whole or part of any such forms or brochures are not in the Malay or English language, there shall be submitted with them a translation in the Malay or English language.

(2) A requirement under this section, unless it is otherwise provided therein, shall apply to all such forms and brochures coming into use after the making of the requirement and until the Authority notifies the takaful operator that the requirement has been withdrawn.

(3) If it appears to the Authority, after affording the takaful operator an opportunity to make representations orally or in writing, that any such form or brochure contravenes or fails to comply with any provision of this Order, or is in any respect likely to mislead, he may by notice in writing direct the takaful operator to discontinue the use of the form or brochure in Brunei Darussalam either forthwith or from a date specified in the notice.

(4) No Brunei Darussalam takaful operator shall use in the course of carrying on takaful business in Brunei Darussalam a form of proposal which does not have prominently displayed therein a warning that if a proposer does not fully and faithfully give the facts as he knows them or ought to know them, he may receive nothing from the certificate.

(5) For each occasion on which any takaful operator uses a form or brochure in contravention of subsections (3) or (4), the takaful operator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

(6) In this section, "brochure" includes any printed leaflet and advertising material.

**Misleading statements, promises or forecasts inducing persons to enter into contract of takaful.**

39. Any person who, by any statement, promise or forecast which it knows to be misleading, false or deceptive, by any fraudulent concealment of a material fact or by the reckless making (fraudulently or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces another person to enter into or to offer to enter into any contract of takaful with a takaful operator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

**Requirements as to prospectuses and statements of capital.**

40. (1) In any case where, under section 37 of the Companies Act (Chapter 39), it is an offence to knowingly be a party to the issue of a prospectus relating to a company without a copy of it being first delivered for registration under that Act, it shall also be an offence, in the case of a company registered or intended to be registered as a takaful operator under this Order, to do so without the prospectus having been approved by the Authority; and any person who is knowingly a party to the issue, circulation or distribution of a prospectus in contravention of this subsection shall be guilty of such offence and shall be liable on conviction to a fine not exceeding \$20,000.

(2) Where a notice, advertisement or other official publication of a company registered or intended to be registered as a takaful operator under this Order contains a statement of the company's authorised share capital, and does not state how much of that capital has been subscribed and how much is paid up, the company shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

(3) In this section, "prospectus" includes any printed document to which the expression applies in section 37 of the Companies Act (Chapter 39).

**Opening of counter or branch office.**

41. (1) Except with the prior approval in writing of the Authority, no takaful operator shall open a counter or branch office in Brunei Darussalam.

(2) Subject to subsection (1), such takaful operator shall pay such fees as may be prescribed.

**Approval of proposed managing director, director, chief executive or principal officer of takaful operator.**

42. (1) No takaful operator incorporated in Brunei Darussalam shall appoint a person as its managing director, director, chief executive or principal officer, and no takaful operator incorporated outside Brunei Darussalam or otherwise carrying on business outside Brunei Darussalam shall appoint a chief executive or principal officer for Brunei Darussalam, unless —

(a) the takaful operator has served on the Authority a notice stating that the person it proposes to appoint fulfils the minimum criteria of "a fit and proper person" as may be prescribed; and

(b) the Authority has, before the expiration of 3 months from the date of service of the notice, notified the takaful operator in writing that there is no objection to that person being appointed to that position or such period elapses without the Authority having served on the takaful operator a notice of objection in writing.

(2) A notice under subsection (1)(a) shall contain a statement signed by the person proposed to be appointed that it is served with his knowledge and consent.

(3) The Authority may object to the person proposed to be appointed and serve notice thereof under subsection (1)(b) on the ground that it appears to him that such person is not "a fit and proper person" to be so appointed, but before serving such notice the Authority shall serve on the takaful operator and on the person a preliminary notice in writing stating —

(a) that the Authority is considering the service on the takaful operator of a notice of objection on that ground; and

(b) that the takaful operator and that person may, within one month from the date of service of the preliminary notice, make representations in writing to the Authority.

(4) The Authority shall not be obliged to disclose any particulars of the grounds on which he is considering the service of the notice of objection or on which he has served the notice of objection.

(5) Where representations are made in accordance with this section, the Authority shall take them into consideration in deciding whether to serve the notice of objection.

**Approval of person proposing to become controller of takaful operator where section 42(1) does not apply.**

43. (1) No person shall become a controller of a takaful operator incorporated in Brunei Darussalam otherwise than by virtue of an appointment in relation to which section 42(1) has effect, unless —

(a) he has served on the Authority a notice stating that he intends to become a controller of that takaful operator and containing such particulars as may be prescribed; and

(b) the Authority has, before the expiration of a period of 3 months from the date of service of the notice, notified him in writing that there is no objection to his becoming a controller of the takaful operator or such period elapses without the Authority having served on him a notice of objection in writing.

(2) The Authority may object to the person who intends to become a controller of the takaful operator and serve notice thereof under subsection (1)(b) on the ground that it appears to him that such person is not "a fit and proper person" to so become, but before serving such notice the Authority shall serve on that person a notice in writing stating —

(a) that the Authority is considering the service on that person of a notice of objection on that ground; and

(b) that person may, within one month from the date of service of the notice, make representations in writing to the Authority.

(3) The Authority shall not be obliged to disclose any particulars of the grounds on which he is considering the service of the notice of objection or on which he has served the notice of objection.

(4) Where representations are made in accordance with this section, the Authority shall take them into consideration in deciding whether to serve the notice of objection.

**Disqualification of managing director, director etc.**

44. (1) Without prejudice to anything contained in the Companies Act (Chapter 39), any person who is a managing director, director, chief executive, principal officer or controller of a takaful operator shall cease to hold office —

(a) if he has been adjudged bankrupt;



(b) if he makes a conveyance or assignment of his property for the benefit of his creditors or makes an arrangement with his creditors generally;

(c) if he is convicted of any offence involving fraud or dishonesty; or

(d) if he becomes insane.

(2) No person who is a managing director, director, chief executive, principal officer or controller or any member of his immediate family of a takaful operator shall hold shares or other interests in a company that carries on the business of a takaful broker.

(3) For the purposes of subsection (2), "member of his immediate family" includes the wife, husband, father, mother, son and daughter of a managing director, director, chief executive, principal officer or controller.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

**Duty to notify change of controller, managing director, director, chief executive or principal officer.**

45. (1) A person who becomes or ceases to be controller of a takaful operator shall, within 7 days from the day following that on which he becomes or ceases to be a controller, notify the takaful operator in writing of that fact and of such other matters as may be prescribed; and a person who is appointed a managing director, director, chief executive or principal officer of any such takaful operator shall, within 7 days from the day following that on which he is so appointed, notify the takaful operator in writing of such matters as may be prescribed.

(2) A takaful operator shall give notice in writing to the Authority of the fact that any person has become or ceased to be its controller or appointed or ceased to be a managing director, director, chief executive or principal officer and of any matter of which such person is required to notify the takaful operator under subsection (1); and the notice shall be given within 14 days from the day following that on which that fact or matter came to the knowledge of the takaful operator.

**Power of Authority to require information, inspect books etc.**

46. (1) The Authority may cause to be inspected, under conditions of secrecy, the books, accounts and transactions of any takaful operator, and of any of its branch offices and counters.

(2) For the purposes of an inspection pursuant to subsection (1), the takaful operator shall allow access to its books, accounts and documents and shall give such information and facilities as may be required to conduct the inspection:

Provided that the books, accounts and documents shall not be required to be produced at any time or place which interferes with the proper conduct of the normal daily business of the takaful operator.

(3) Where the Authority is of the opinion that it is necessary for any of the purposes of this Order to do so, he may by notice in writing require any director, officer or representative of any takaful operator –

(a) to furnish him with any information; or

(b) to appear before him,

in connection with any matter related to any business carried on by that takaful operator in or outside Brunei Darussalam in the manner and to the extent, and in the case of an appearance before him, at the time and place, specified in the notice.

(4) Any person who fails to comply with any requirement under subsections (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, and in the case of a continuing offence to a further fine not exceeding \$5,000 for every day during which the offence continues after conviction.

(5) There shall be no change in the control of a takaful operator incorporated in Brunei Darussalam unless the Authority has given approval in writing for such change.

#### **Takaful intermediaries**

**Takaful agents to act only for takaful operators entitled to carry on business in Brunei Darussalam.**

47. No person shall carry on takaful business in Brunei Darussalam as takaful agent for any takaful operator not entitled under this Order to carry on the business in question in Brunei Darussalam and any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$4,000 for every day during which the offence continues after conviction.

**Application of section 46 to takaful agents.**

48. Section 46 shall apply to takaful agents.

**Registration of takaful agents.**

49. (1) No person shall, without being registered by the Authority, carry on takaful business in Brunei Darussalam as a takaful agent.

(2) In registering a takaful agent, the Authority may appoint a person, a body of persons or an association of takaful operators to administer examinations for a person who wishes to apply for registration as a takaful agent.

(3) Notwithstanding subsection (2), the Authority may register a person as a takaful agent for a period not exceeding one year, pending the passing of the required examination.

(4) The registration of a takaful agent under this section shall be for a period of one year and is renewable every year.

(5) Takaful agents shall pay such registration and annual fees as may be prescribed.

(6) No director or other management staff, or any member of his immediate family, or any company carrying on business as a takaful agent, shall hold shares in any takaful company. Upon the commencement of this Order, any such person holding shares or any other interest in any takaful company shall within a period of one year after such commencement relinquish such shares or other interest.

(7) For the purposes of subsection (6), "member of his immediate family" includes the wife, husband, father, mother, son and daughter of that person.

(8) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations prescribe such qualifications for takaful agents as he considers fit.

(9) A person who contravenes subsections (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

**Pre-contract disclosure by takaful intermediary.**

50. (1) No takaful intermediary shall invite any person to make an offer or proposal to enter into a contract of takaful without disclosing to the person all material information, including —

- (a) the name of the takaful operator;
- (b) his relationship with the takaful operator;
- (c) the contribution charged by the takaful operator; and
- (d) such other information as may be prescribed or specified in directions.

(2) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both.

**Takaful intermediary in takaful transactions.**

51. (1) Any takaful intermediary who collects money on behalf of a takaful operator shall remit such money to the takaful operator without undue delay —

- (a) in respect of an individual takaful agent who carries on family takaful business, within 7 days from the date of receipt thereof;
- (b) in respect of a corporate takaful agent who carries on general takaful business, within 30 days from the date of receipt thereof.

(2) Any amount collected under subsection (1) is deemed to have been collected by the takaful operator.

(3) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both.

**Takaful brokers to act only for takaful operators entitled to carry on business in Brunei Darussalam.**

52. (1) Subject to subsection (2), no takaful broker shall in the course of his business as such negotiate any contract of takaful with a takaful operator other than a takaful operator entitled under this Order to carry on the business in question in Brunei Darussalam, and no person in Brunei Darussalam shall solicit takaful business for a takaful operator not entitled to carry on that business in Brunei Darussalam; and any person contravening this subsection shall be guilty

of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$4,000 for every day during which the offence continues after conviction.

(2) The references in subsection (1) to a contract of takaful and to takaful business shall not apply to re-takaful or business relating to risks outside Brunei Darussalam or such other risks as may be prescribed.

**Application of sections 42 to 46 to takaful brokers.**

53. Sections 42 to 46 shall apply to takaful brokers.

**Registration of takaful brokers.**

54. (1) No person shall, without being registered by the Authority, carry on takaful business in Brunei Darussalam as a takaful broker unless —

(a) it is a company as defined in the Companies Act (Chapter 39);

(b) it has a minimum paid-up share capital as may be prescribed;

(c) it has a professional indemnity takaful as may be prescribed; and

(d) the Authority has been furnished with such documents and information as may be prescribed or as he may require in any particular case.

(2) In registering a takaful broker, the Authority may impose such conditions as he thinks fit and may at any time add to, vary or revoke such conditions.

(3) The registration of a takaful broker shall be for a period of one year and is renewable every year.

(4) Takaful brokers shall pay such registration and annual fees as may be prescribed.

(5) The Authority may revoke the registration of any takaful broker if he is satisfied that any of the conditions imposed in relation to the registration has been breached or that it is in the interests of the public to do so.

(6) No director or other management staff, or any member of his immediate family, or any company carrying on business as a takaful broker shall hold shares in any takaful company. Upon the commencement of this Order, any such person holding shares or any other interest in any takaful company shall

within a period of one year after such commencement relinquish such shares or other interest.

(7) For the purposes of subsection (6), "member of his immediate family" includes the wife, husband, father, mother, son and daughter of that person.

(8) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

**Takaful brokers in takaful transactions.**

55. (1) A takaful broker who collects money from a participant shall remit such moneys to the takaful operator within 30 days from the date of receipt of the contribution.

(2) Any amount collected under subsection (1) is deemed to have been collected by the takaful operator.

(3) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both.

**Takaful broking contribution accounts.**

56. (1) Subject to subsection (2), every registered takaful broker which receives any money –

(a) from or on behalf of a participant or intending participant for or on account of a takaful operator in connection with a contract of takaful or proposed contract of takaful; or

(b) from or on behalf of a takaful operator for or on account of a participant or intending participant,

shall for the purposes of this section establish and maintain a separate account with a bank licensed under the Banking Order, 2006 (S 45/06), Islamic Banking Order, 2008 or with such other financial institution as may be prescribed.

(2) Any registered takaful broker which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

**Registration of adjusters.**

57. (1) No person shall, without being registered by the Authority, act or hold himself out as an adjuster unless —

(a) he is a member of an association of adjusters approved by the Authority, provided that this paragraph shall not apply until such an association has been established;

(b) being a body corporate, he has a minimum paid-up share capital as may be prescribed; and

(c) the Authority has been furnished with such documents and information as may be prescribed or as he may require in any particular case.

(2) In registering an adjuster, the Authority may impose such conditions as he thinks fit and may at any time add to, vary or revoke such conditions.

(3) The registration of an adjuster shall be for a period of one year and is renewable every year.

(4) Adjusters shall pay such registration and annual fees as may be prescribed.

(5) The Authority may revoke the registration of any adjuster if he is satisfied that any of the conditions imposed in relation to the registration has been breached or that it is in the interests of the public for him to do so.

(6) Nothing in this section shall apply to —

(a) advocates and solicitors and members of other professions who act or assist in adjusting takaful claims as an incident to the practice of their respective professions and who do not hold themselves out as adjusters;

(b) adjusters of maritime losses;

(c) employees of a takaful operator who, in the course of their employment, act or assist in adjusting takaful claims and who do not hold themselves out as adjusters.

(7) Every adjuster shall within one month after the end of each quarter of the year submit to the Authority a report in the prescribed form of all losses which were the subject of adjustments effected by him during that quarter.

(8) Sections 42 to 46 shall apply to adjusters.

(9) No person who carries on the business of a loss adjuster, loss assessor, surveyor or no other registered person providing auxiliary services to the takaful industry or any member of his immediate family, shall hold shares or other interests in a takaful company.

(10) For the purposes of subsection (9), "member of his immediate family" includes the wife, husband, father, mother, son and daughter of a loss adjuster, loss assessor, surveyor or any other registered person providing auxiliary services to the takaful industry.

(11) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$800 for every day during which the offence continues after conviction.

(12) Where a person fails to submit a report as required by subsection (7), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

**Examination of persons suspected of acting or holding out as takaful broker, takaful intermediary or adjuster.**

58. (1) When the Authority has reason to suspect or believe that a person is acting or holding himself out as a takaful broker, takaful intermediary or adjuster without being registered under this Order, it may call for or inspect the books, accounts and records of that person in order to ascertain whether or not he has contravened any provision of this Order.

(2) Any person who wilfully refuses to submit his books, accounts and records or to allow the inspection thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

**Savings for validity of takaful certificates.**

59. Nothing in this Part shall operate to invalidate any takaful certificate.



**PART IV**

**RETURNS, INSPECTIONS AND INVESTIGATIONS, WINDING-UP AND  
TRANSFERS OF BUSINESS**

**Returns**

**Annual accounts and audit.**

60. (1) Every takaful operator and registered takaful broker shall prepare such statements of account and other statements in the form and manner as set out in the Fourth Schedule and lodge them with the Authority.

(2) Every takaful operator and registered takaful broker shall cause to be kept such books and records according to international accounting standards including, but not limited to, those issued by the Auditing Organisation for Islamic Financial Institutions (AAOIFI), the International Accounting Standards Board (IASB) or as directed by the Authority as will sufficiently explain the transactions and financial position of the takaful operator in Brunei Darussalam and enable the takaful operator to comply with the requirements of this section and of section 61, and shall cause such books and records to be kept in such manner as to enable them to be conveniently and properly audited.

(3) A takaful operator shall have its accounts audited for each accounting period for which statements of account have been prepared in accordance with subsection (1).

(4) A registered takaful broker shall have its accounts audited for each financial year for which statements of account have been prepared in accordance with subsection (1).

(5) No person shall act as auditor for any takaful operator or registered takaful broker unless —

(a) he has a place of business in Brunei Darussalam;

(b) he has been authorised pursuant to section 131 of the Companies Act (Chapter 39) to perform the duties required by that Act to be performed by an auditor; and

(c) he has the approval of the Authority.

(6) An auditor shall not be approved by the Authority as an auditor for takaful operators or registered takaful brokers unless he is able to comply with such conditions in relation to the discharge of his duties as may be determined by the Authority.

(7) The Authority may impose all or any of the following duties on an auditor —

*(a)* a duty to submit such additional information in relation to his audit as the Authority considers necessary;

*(b)* a duty to enlarge or extend the scope of his audit of the business and affairs of the takaful operator;

*(c)* a duty to carry out any other examination or establish any procedure in any particular case; and

*(d)* a duty to submit a report on any of the matters referred to in paragraphs *(b)* or *(c)*,

and the takaful operator or takaful broker shall remunerate the auditor in respect of the discharge by him of all or any of these duties.

(8) An auditor's report made under subsection (7) shall be lodged with the Authority, together with the statements of accounts lodged by the takaful operator or the takaful broker under subsection (1).

(9) If an auditor, in the course of the performance of his duties as an auditor of a takaful operator, is satisfied that —

*(a)* there has been a serious breach or non-observance of the provisions of this Order or that a criminal offence involving fraud or dishonesty has been committed;

*(b)* any transaction or dispute has taken place which will have a material effect on the solvency of any takaful fund established by the takaful operator under this Order;

*(c)* serious irregularities have occurred, including irregularities that jeopardise the interests of participants; or

*(d)* where the takaful operator is incorporated or established in Brunei Darussalam, the takaful operator is unable to meet its obligations,

he shall immediately report the matter to the Authority.

(10) In the case of a company incorporated or established outside Brunei Darussalam, the audit required by subsection (3) need not extend beyond the business for which a takaful fund is maintained under this Order.

(11) The documents to be lodged with the Authority under this section for any accounting period of a takaful operator shall be accompanied by copies of any

report submitted to the members of the takaful operator with respect to that period and, if it is not among the documents so lodged, by any statement of accounts so submitted with respect to that period; but references in this section to documents lodged with the Authority shall be deemed not to include documents required by this section to accompany documents so lodged.

(12) Where any report or statement referred to in subsection (10) is in a language other than the Malay or English language, the copy required by that subsection shall be in the Malay or English language and shall be certified to be a true translation of the original by the translator.

#### **Actuarial investigations and reports as to family takaful business.**

61. (1) Subject to this section, a takaful operator registered under this Order in respect of family takaful business shall once in every period of one year have an investigation to be made by an actuary into the financial condition of its family takaful business and shall lodge with the Authority (together with any prescribed fee) such abstract of the actuary's report and certificate relating thereto and such statements as to that business as are referred to in section 60(1).

(2) An investigation under subsection (1) shall be made at the end of each accounting period. The actuary shall certify that in his opinion the reserves of the takaful operator are adequate or otherwise for the takaful operator's business and also how the surplus if any, of the funds of the takaful operator attributable to its family takaful business shall be apportioned between its participants and its shareholders.

(3) In the case of a company incorporated or established outside Brunei Darussalam, the investigation required by subsection (1) need not extend beyond the business for which a takaful fund is maintained under this Order, but if such a company is required by the law relating to takaful in the country in which it is incorporated or established to furnish the authority having the administration of that law with returns as to actuarial investigations of its family takaful business, the document to be lodged with the Authority under this section shall be accompanied by certified copies of any such returns made since the company was first registered under this Order in respect of family takaful business (or, in the case of an existing takaful operator, since the commencement of this Order), other than returns of which copies have previously been furnished under this subsection. References in this section to documents lodged with the Authority shall be deemed not to include documents required by this section to accompany documents so lodged.

(4) Where a takaful operator registered under this Order in respect of family takaful business —

(a) has an actuarial investigation made into the family business for which it maintains a takaful fund under this Order (whether with or without any other family business carried on by it); and

(b) the investigation is not made to comply with subsection (1) or with any provision as to returns in the law relating to takaful in a country outside Brunei Darussalam, but the results of the investigation are made public,

then the takaful operator shall, as to the lodging of documents with the Authority, comply with the requirements of subsection (1) as in the case of an investigation made under that subsection.

**Power to require returns under sections 60 or 61 to be rectified.**

62. (1) If it appears to the Authority that any document lodged in accordance with sections 60 or 61 is in any particular way unsatisfactory, incomplete, inaccurate or misleading or that it does not comply with the requirements of this Order, the Authority may by notice in writing require such explanation as it considers necessary to be made by or on behalf of the takaful operator within such time (not being less than 14 days) as is specified in the notice.

(2) The Authority may, after considering any explanation made under subsection (1), or if such explanation has not been given by or on behalf of the takaful operator within the time specified in the notice given pursuant to that subsection, reject the document or give such directions as he thinks necessary for its variation within such time (not being less than one month) as is specified in such directions.

(3) Directions given under subsection (2) with respect to any document may require such consequential variations of any other document lodged by the takaful operator under sections 60 or 61, as may be specified in such directions.

(4) Where directions are given under subsection (2), any document to which they relate shall be deemed not to have been lodged until it is re-submitted with the variations required by the directions, but the takaful operator shall be deemed to have submitted the document within the time limited under section 60(1) if it is re-submitted with the required variations within the time limited by the directions.

**Additional provisions as to returns under sections 60 or 61.**

63. (1) Any member or participant of a takaful operator shall have the right, on applying to the takaful operator, to be sent by the takaful operator to an address supplied by him copies of documents lodged by the takaful operator to comply with sections 60 or 61, and to have such copies despatched not later than 14 days after the takaful operator receives the application:

Provided that this right shall not extend to any document exempted from this provision by section 60(1).

(2) Any person shall have the right, on payment of the prescribed fee, to inspect at the office of the Authority any document lodged by a takaful operator to comply with sections 60 or 61, and any document required by section 60(11) and section 61(3) to accompany the document so lodged and make a copy of the whole or any part of it:

Provided that the right shall not extend to any document exempted from this provision by section 60(1) or to any document of any other description lodged more than 10 years previously.

(3) In any proceedings, a certificate signed by any person appointed by the Authority that a document is one lodged by a takaful operator to comply with sections 60 or 61 or one that accompanied a document so lodged, shall be admissible as evidence of the facts certified.

(4) Where a takaful operator fails to comply with sections 60 or 61, the takaful operator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

#### **Returns of changes in registration particulars.**

64. (1) Subject to subsection (3), where a takaful operator is registered under this Order in respect of either class of takaful business, he shall, until he ceases to be so registered, notify the Authority in writing of any change affecting his registration particulars within 3 months of such change taking place.

(2) Where the change results in the amendment of any document or the replacement of any document by a new document, the takaful operator shall furnish the Authority with a copy of the document showing the amendment or, as the case may be, with a copy of the new document.

(3) This section shall have effect subject to any prescribed exceptions, and the Authority may in any particular case dispense (either unconditionally or subject to any conditions) with the furnishing of information under this section about any change.

(4) In this section, "registration particulars" means the documents and information furnished by the takaful operator to comply with section 9(1) when applying to be registered in respect of the class of business in question or furnished by the takaful operator to comply with this section in respect thereof.

**Inspections and investigations**

**Inspections and investigations of affairs of takaful operators.**

65. (1) The Authority may from time to time inspect the books, accounts and transactions of a takaful operator and institute an investigation into the whole or any part of the takaful business carried on in Brunei Darussalam by the takaful operator.

(2) The costs and expenses of any investigation under subsection (1) shall be paid by the takaful operator.

(3) In making an inspection or investigation under this section, the Authority may by notice in writing require —

(a) the takaful operator or any person having the custody thereof on behalf of the takaful operator;

(b) any person who is or has at any time been or acted as a director, actuary, auditor, officer, servant or agent of the takaful operator; or

(c) any past or present member or participant of the takaful operator,

to produce for his inspection and allow him to copy the whole or any part of any books, accounts, records or other documents of the takaful operator, whether kept in Brunei Darussalam or elsewhere (including documents evidencing the takaful operator's title to any assets):

Provided that a requirement under this subsection shall extend only to documents relating to business carried on by the takaful operator in Brunei Darussalam or evidencing the takaful operator's title to assets held for the purposes of any such business.

(4) For the purpose of this Order, "assets" include —

(i) immovable property      any land, building and fixtures;

(ii) movable property      any furniture, equipment, books, periodicals and any motor vehicles, vessels, ships, aircraft and other means of conveyance of whatever description, including tractors, bulldozers and any other type of light and heavy machinery, as well as tools and appliances;

(iii) investments	any Government Securities, including bonds and securities of any quasi-government bodies or agencies and Treasury Bills which are in accordance with <i>Hukum Syara'</i> ;
(iv) company and other investments	any stocks and shares, whether quoted on any stock exchange or unquoted, including any bonds, ordinary or preference shares and debentures which are in accordance with <i>Hukum Syara'</i> ;
(v) cash	any cash deposited in any bank or lending institution or placed with any other body or agency for whatever period, either on current or fixed deposit account, including any determinable amount of cash in hand; and
(vi) other assets	any outstanding contribution, commission and other debt or payment due and payable, and rights contractual or otherwise.

(5) In making an investigation under this section, the Authority may require any such person as is referred to in subsection (3) to attend before him and be examined on oath with respect to the takaful operator's business, and for the purposes of this subsection may administer oaths.

(6) Any person who refuses or fails when required to do so under subsections (3) or (5) to produce any document in his custody, to attend for or submit to examination by the Authority or any person appointed by him or to answer any question put to him on such examination shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

#### **Power of Authority to issue directions.**

66. (1) Where the Authority is satisfied that the affairs of any takaful operator are being conducted in a manner likely to be contrary to *Hukum Syara'* or detrimental to the public interest, the interests of the participants or the interests of the takaful operators, the Authority may issue such directions to the takaful operator as he considers necessary, and may in particular require the takaful operator —

(a) to take such action or recruit such management personnel as may be necessary to enable it to conduct its business in accordance with sound takaful principles;

(b) to remove any of its directors or any person whom the Authority considers unfit to be associated with it;

(c) to take action as to the disposition or recovery of its assets;

(d) to take any available steps for the recovery by the takaful operator of sums appearing to the Authority to have been illegally or improperly paid;

(e) to stop renewing or issuing further certificates of the classes of business to which the direction relates;

(f) to make such arrangements with respect to re-takaful as the Authority may specify in the directions; and

(g) to take action to make good any default under sections 18, 19, 20, 21, 22 or 23.

(2) The Authority may, upon representation being made to him, or on his own motion, modify or cancel any direction issued under subsection (1) and, in so doing, may impose such conditions as he thinks fit.

(3) A takaful operator who fails to comply with any direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

### **Winding-up**

#### **General provisions as to winding-up.**

67. (1) The persons who may petition under the Companies Act (Chapter 39) for the winding-up of a takaful operator or takaful broker registered under this Order or for the continuance of the winding-up of such a takaful operator or takaful broker subject to the supervision of the High Court, shall include the Minister.

(2) The Minister may, in accordance with the provisions of the Companies Act (Chapter 39), present a petition for the winding-up of a takaful operator or takaful broker registered under this Order if the takaful operator or takaful broker has contravened or failed to comply with any provision of this Order.



(3) The Minister shall be a party to any proceedings under the Companies Act (Chapter 39) relating to the winding-up of such a takaful operator or takaful broker, and the liquidator in such a winding-up shall give him such information as he may require about the affairs of the takaful operator or takaful broker, as the case may be.

(4) The Minister if he thinks fit, may support or oppose the petition.

(5) For the purposes of any proceedings under the Companies Act (Chapter 39), for the winding-up of such a takaful operator by the High Court, the contingent and prospective liabilities of the takaful operator in respect of certificates shall, in determining whether it is unable to pay its debts, be estimated in accordance with such rules as may be prescribed, and evidence that the takaful operator was insolvent at the close of the last accounting period for which statements of account have been lodged with the Authority under section 60 shall be evidence that the takaful operator continues to be unable to pay its debts.

(6) In the winding-up of a takaful operator registered under this Order, section 249 of the Companies Act (Chapter 39) shall not apply to the valuation of liabilities in respect of certificates, but in any such winding-up, whether the takaful operator is insolvent or not, those liabilities shall be estimated in accordance with any prescribed rules or, as regards matters not fixed by the rules, on a basis approved by the Authority.

(7) References in this section to a takaful operator registered under this Order shall extend to a Brunei Darussalam takaful operator which has ceased to be so registered but remains under any liability in respect of Brunei Darussalam certificates.

#### **Transfers of business**

##### **Special provision for takaful operators directed to cease takaful business.**

68. (1) Where the Authority issues a takaful operator a direction under section 66(1)(e) by reason of the insolvency of the fund maintained by the takaful operator under this Order for either class of takaful business, the affairs of the takaful operator may be wound up by the High Court under the Companies Act (Chapter 39) as if it had suspended its business for a whole year or as if it had ceased to carry on business.

(2) Where the Authority gives a takaful operator a direction under section 66(1)(e) but, on a petition for the takaful operator to be wound up by the High Court, the High Court is satisfied that the takaful operator will be able to pay its debts in full within one year or such longer period as the High Court thinks reasonable, the High Court may (if it thinks fit) order the affairs of the

takaful operator to be wound up only as regards the takaful fund maintained for the class of business to which the direction relates.

(3) An order under subsection (2) for a limited winding-up shall be of the same effect as an order for the affairs of the takaful operator to be wound up generally, except in so far as this section otherwise provides.

(4) Where such an order is made, the powers of the liquidator shall be exercisable only for the purpose of applying the assets of the relevant takaful fund (including the deposit under this Order) in discharging the liabilities to which they are applicable, together with the costs, charges and expenses incurred in the winding-up; but the takaful operator shall, as the High Court may direct, make such additions to those assets as are required to secure that they are sufficient for the purpose or shall, if the High Court so directs, discharge any of those liabilities out of other assets.

(5) In the winding-up of a takaful operator under such an order, the Companies Act (Chapter 39) shall have effect subject to the following modifications —

*(a)* section 155 of that Act and other sections so far as they relate to contributories shall not apply;

*(b)* section 166 of that Act shall apply after, as it applies before, the making of the winding-up order;

*(c)* sections 167, 168, 224 and 251 to 255 of that Act shall not apply.

(6) Where such an order is made, the High Court may at any time, on the application of the liquidator or of any person who has a right to petition for the takaful operator to be wound up, substitute an order for the takaful operator to be wound up generally and give such directions as it thinks fit as to matters in progress under the previous order; and, subject to any such directions, the winding-up shall for all purposes connected with the substituted order be deemed to have commenced at the time of the application for that order.

(7) Notwithstanding any written law, the High Court may allow the liquidator of a takaful operator who carries on a family takaful business to continue on its business with a view to transfer it to another takaful operator but the takaful operator shall not issue any new certificate.

(8) The liquidator may transfer its assets and liabilities to another takaful operator.

(9) The liquidator, for the purpose of subsection (7), may apply to the High Court for an order to reduce the amount of liabilities to the extent necessary

taking into consideration the value of its available assets subject to such condition as it thinks fit.

**Priority of claim of participants.**

69. Where a takaful operator becomes insolvent or is unable to meet its obligations, the assets of the takaful operator shall be available to meet its liabilities to all participant of Brunei Darussalam certificates and these liabilities shall have priority over all unsecured liabilities of the takaful operator other than the preferential debts referred to in section 250(1) of the Companies Act (Chapter 39).

**Schemes for transfer of business.**

70. (1) The whole or part of the takaful business of a registered takaful operator may be transferred to another takaful operator registered in respect of the class or classes of business to be transferred, if the transfer is effected by a scheme under this section, but shall not be transferred except by such a scheme:

Provided that this subsection shall not apply to the transfer of any takaful business of a company incorporated or established outside Brunei Darussalam, except in so far as it relates to Brunei Darussalam certificates.

(2) Any takaful operator, not being a company incorporated or established outside Brunei Darussalam, shall by virtue of this section have power to make such a transfer by a scheme under this section, and the directors shall have authority on behalf of the takaful operator to arrange for and do all things necessary to give effect to such a transfer; and this subsection shall apply notwithstanding the absence of that power or authority under the constitution of that takaful operator or any limitation imposed by its constitution on its powers or on the authority of its directors.

(3) A scheme under this section may provide for the business in question to be transferred to a body not registered as a takaful operator under this Order (including a body not yet in existence) in respect of the relevant class of business, if the scheme is so framed as to operate only in the event of the body becoming so registered.

(4) A scheme under this section for the transfer of any takaful business may extend to the transfer with it of any other business, not being takaful business, where the other business is carried on by the takaful operator as ancillary only to the takaful business transferred.

(5) A scheme under this section may include provision for matters incidental to the transfer thereby effected, and provision for giving effect to the transfer, and in particular —

(a) for any property, rights or liabilities of the transferor (including assets comprised in a deposit under this Order or in a takaful fund) to vest, by virtue of the scheme and without further or other assurance, in the transferee; and

(b) for the registration by the transferee of certificates transferred, for the amounts to be included in respect of those certificates in the transferee's takaful fund and for other matters arising under this Order out of the transfer.

(6) A scheme under this section shall be of no effect unless confirmed by the High Court, but may be prepared and submitted for confirmation to the High Court by any of the takaful operators concerned; and if so confirmed, the scheme shall have effect according to its tenor notwithstanding anything in the preceding sections of this Order and be binding on any person thereby affected.

#### **Confirmation of schemes.**

71. (1) Before an application is made to the High Court for confirmation of a scheme under section 70 —

(a) a copy of the scheme shall be lodged with the Authority, together with the copies of the actuarial and other reports (if any) upon which the scheme is founded;

(b) not earlier than one month after the copy is so lodged, notice of the intention to make the application (containing such particulars as are prescribed) shall be published in the *Gazette* and in not less than 2 newspapers approved by the Authority; and

(c) for a period of 15 days after the publication of the notice, a copy of the scheme shall be kept at each office in Brunei Darussalam of every takaful operator concerned, and shall be open to inspection by all members and participants of such a takaful operator who are affected by the scheme.

(2) The Authority may cause a report on the scheme to be made by an actuary independent of the parties to the scheme and, if he does so, shall cause a copy of the report to be sent to each of the takaful operators concerned.

(3) Copies of the scheme and any report mentioned in subsections (1)(a) or (2) or summaries approved by the Authority of the scheme and of any such report shall, except in so far as the High Court upon an application made in that behalf

otherwise directs, be transmitted by the takaful operators concerned, at least 15 days before the application is made for confirmation of the scheme, to every participant who is affected by the scheme.

(4) An application to the High Court with respect to any matter connected with the scheme may, at any time before confirmation by the High Court, be made by the Authority or by any person who in the opinion of the High Court is likely to be affected by the scheme.

(5) The High Court may confirm the scheme without modification or subject to modifications agreed to by the takaful operator concerned, or may refuse to confirm the scheme.

(6) The takaful operators concerned shall be jointly and severally liable to reimburse the Authority any expenses incurred by him under this section in connection with any scheme or proposed scheme (subject to any order of the High Court as to costs); and a scheme shall include provision as to how that liability is as between the takaful operators, to be borne.

**Documents to be filed when scheme confirmed.**

72. (1) Where by a scheme under section 70, takaful business of one takaful operator is transferred to another, the transferee shall, within one month after the scheme takes effect, lodge with the Authority –

(a) statements of the assets and liabilities of each takaful operator concerned as at the time immediately before the transfer, signed on behalf of the takaful operator and, in the case of the transferor, indicating whether the transfer is of the whole of the transferor's business and, if not, the extent to which the transferor's assets and liabilities relate to the business transferred;

(b) a copy of the scheme as confirmed by the High Court, and a certified copy of the order of the High Court confirming the scheme;

(c) copies of any actuarial or other reports upon which the scheme was founded (being reports made since a copy of the scheme was lodged under section 71(1)); and

(d) a statutory declaration made by the chairman of the board of directors of the transferee or by its principal officer in Brunei Darussalam, fully setting forth every payment made or to be made to any person on account of the transfer, and stating that, to the best of his belief, no other payment beyond those so set forth has been, or is to be made on account thereof by or with the knowledge of any takaful operator concerned. In this paragraph, the references to the making of a payment include references to the transfer of property or rights of any description.

(2) On the confirmation of a scheme under section 71, each of the takaful operators concerned shall file a copy of the scheme with the Registrar of Companies.

## PART V

### GENERAL

#### Administration and enforcement

##### **Exemption.**

73. (1) The Authority may, subject to such conditions as he thinks fit, exempt any person or class of person from any or all of the provisions of this Order.

(2) An exemption granted under this section may be withdrawn by the Authority at any time.

##### **Annual reports.**

74. (1) Not later than the end of June in any calendar year, the Authority shall prepare and present to the Minister, who shall submit it to His Majesty the Sultan and Yang Di-Pertuan in Council, a report on the working of this Order during the preceding calendar year.

(2) The Authority shall include in this report under this section for any year copies or summaries of documents lodged with it in that year under sections 60 and 61, other than documents excepted from section 63(1) and (2), and may include copies or summaries of documents accompanying those lodged; and it may also include in the report such notes on any such documents or summaries as he thinks fit, and copies of any correspondence between him and a takaful operator about any such documents lodged by or received from takaful operator.

##### **Statistics.**

75. (1) Regulations may be made for the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to takaful as may be prescribed, and may provide for the collection and use of such information for any purpose, whether or not connected with takaful.

(2) Such regulations may make provision for requiring Brunei Darussalam takaful operators, takaful intermediaries, takaful brokers and adjusters to furnish to the Authority, in the prescribed form, such information as may be prescribed.

(3) No use shall be made of any information obtained by or on behalf of the Authority by virtue only of this section, except in a form which does not disclose the affairs of any particular person.

**Service of notices.**

76. A letter containing a notice or other document to be served by the Authority under this Order shall be deemed to be properly addressed if it is addressed to the place in Brunei Darussalam which the addressee last indicated to the Authority as his address or to the addressee's latest address in Brunei Darussalam known to the Authority.

**Secrecy and penalty.**

77. (1) Except for the purposes of this Order or of any criminal proceedings under this Order, no person appointed to exercise any powers under this Order shall disclose any information which has been obtained in the course of his duties and which is not published in pursuance to this Order.

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding one year.

**Identification of officers.**

78. (1) Any person exercising any function under this Order shall carry an authority card in a form approved by the Authority which card shall identify the holder and his office and which shall be produced by the holder on demand to any person having reasonable grounds to make that demand.

(2) Where any person exercising any functions under this Order produces an authority card in a form approved under subsection (1) or any other written identification or authority, then, until the contrary is proved, that authority card or other written identification or authority shall be presumed to be genuine and he shall be presumed to be the person referred to therein.

(3) It shall not be an offence for any person to refuse to comply with any demand or order made by any person exercising any functions under this Order, if such latter person refuses on demand being made by such first-mentioned person to declare his office or to produce his authority card or other written identification or authority.

**General provisions as to offences.**

79. (1) Any person who —

(a) signs any document lodged with the Authority under sections 60 or section 71(1)(a); or

(b) furnishes the Authority with any information under or for the purposes of any other provision of this Order,

shall use due care to secure that the document or information is not false in any material particular; and if he does not use due care in this behalf and the document or information is false in a material particular, he shall be guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 2 years or both.

(2) Any person who breaches any duty imposed on him by this Order or regulations as being or having been a takaful operator, takaful agent, takaful broker or adjuster shall be guilty of an offence and shall, in a case where no other punishment is provided for by this Order or regulations, be liable on conviction to a fine not exceeding \$5,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

(3) Where an offence against this Order is committed by any body corporate, any person who at the time of the commission of that offence was a director, manager, secretary or other similar officer of that body, or who was purporting to act in such capacity, shall, as well as the body corporate, be guilty of the offence unless he proves that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(4) Where an offence under this Order is committed by a body corporate, being an offence consisting in the breach of a duty imposed only on bodies corporate, any individual guilty of that offence (whether by virtue of subsection (3) or otherwise) shall be liable on conviction to imprisonment for a term not exceeding one year in addition to or in substitution for any fine.

(5) For the purpose of any proceedings under subsection (1)(a), a document purporting to be signed by any person shall be presumed to have been signed by him unless the contrary is proved.



**Prosecution.**

80. No prosecution in respect of any offence under this Order or regulations shall be instituted except with the consent of the Public Prosecutor.

**Miscellaneous amendments of law**

**Advice of Syariah Financial Supervisory Board.**

81. (1) Without prejudice to section 18, a takaful operator may consult with the Syariah Financial Supervisory Board on Syariah matters relating to takaful business.

(2) An association whose members are takaful operators may consult with the Syariah Financial Supervisory Board on Syariah matters relating to the takaful business of its members and the association.

**Insurable interest required for family takaful business.**

82. (1) A family takaful certificate providing the takaful coverage of anyone, other than the person effecting the takaful or a person connected with him as mentioned in subsection (2), shall be void unless the person effecting the takaful has an insurable interest in that life at the time the takaful is effected; and the certificate moneys paid under such a certificate shall not exceed the amount of that insurable interest at that time.

(2) The lives excepted from subsection (1), besides that of the person effecting the takaful, are those of that person's wife or husband, that person's child or ward being of the age of majority at the time the takaful was effected, and of anyone on whom that person was at that time wholly or partly dependent.

(3) In so far as in the case of any family takaful certificate where the certificate moneys do not consist wholly of a cash payment due on the death in question, the limit under this section on the amount to be paid shall be applied by reference to the value of the right to the certificate moneys immediately after the death or to the happening before the death of any event on which they become payable.

(4) This section shall not affect certificates issued before the commencement of this Order.

(5) In this section, "providing the takaful coverage" of a person means covering the payment of money (or the equivalent) on the person's death or on the happening of any contingency dependent on the termination or continuance of that person's life, and includes the granting of an annuity to commence on that

death or at a time to be determined by reference thereto or to any such a contingency.

**Capacity of infant to participate.**

83. A person under the age of 18 years shall not have the capacity to enter into a contract of takaful.

**Particulars to be set out in family takaful certificate.**

84. Every family takaful certificate issued shall contain a statement in distinctive type setting forth whether it is or is not a participating certificate.

**Family takaful certificate moneys to be paid without deduction.**

85. (1) Any certificate moneys payable under a family takaful certificate or moneys payable on the surrender of a family takaful certificate shall be paid without any deduction for sums not due under the certificate or under an agreement charging them on the certificate, unless the deduction is made with the consent of the person entitled to these moneys; and any provision contained in a family takaful certificate or in any agreement relating thereto shall be void, in so far as it entitles the takaful operator to make any such deduction without that consent.

(2) In any proceedings for the recovery of certificate moneys due under the family takaful certificate or of moneys payable on the surrender of a family takaful certificate, no set-off or counterclaim shall be allowed except for sums due under the certificate or under an agreement charging them on the certificate.

**Family takaful certificates (surrenders; non-payment of contributions; paid-up certificates).**

86. (1) Where a family takaful certificate, has been in force, in the case of an ordinary certificate, for 3 years or more, the participant may by notice in writing to the takaful operator surrender the certificate and shall thereupon become entitled to receive the surrender value thereof, determined in accordance with the terms and conditions applicable to the certificate (but subject to any deduction of sums due under the certificate or under an agreement charging them on the certificate).

(2) Where a family takaful certificate has been in force for 3 years or more, the certificate shall not lapse or be forfeited by reason of the non-payment of contributions, but shall have effect subject to such modifications as to the period for which it is to be in force or the benefits receivable thereunder or both as may be determined in accordance with any terms and conditions applicable to the certificate.

(3) Where a family takaful certificate has been in force for 3 years or more, the participant may by notice in writing to the takaful operator elect to exchange the certificate for a paid-up certificate, which shall be a non-participating certificate for an amount determined in by the takaful operator.

(4) A certificate issued in place of an earlier certificate shall for the purposes of this section (including this subsection) be treated as having been in force since the earlier certificate began to be in force.

(5) Subsections (1) to (3) shall not apply —

(a) to a certificate securing the grant of an annuity for a term dependent upon human life; or

(b) to a certificate under which no certificate moneys are necessarily payable, not being a certificate which provides for the payment of certificate moneys on a death after a specified period.

(6) The rights conferred by this section shall be in addition to, and not in derogation of, any other rights available to the participant under the terms of the certificate or otherwise; but this section shall not be taken to confer on a participant any rights except against the takaful operator as such.

(7) This section shall apply to certificates whenever issued and, subject to subsection (5), shall extend to any Brunei Darussalam certificate.

**Payment of family takaful certificates and personal accident certificate claims without probate etc.**

87. (1) In any case where a participant of any family takaful certificate or personal accident certificate of a takaful operator dies, and the certificate moneys are payable thereunder on his death, the takaful operator may pay any proper claimant a prescribed amount of the certificate moneys of all such certificates issued by the takaful operators on the deceased's life without the production of any probate or letters of administration; and the takaful operator shall be discharged from all liability in respect of the amount paid.

(2) If, in any case as is mentioned in subsection (1), estate duty is payable in Brunei Darussalam on any such certificate moneys as are there mentioned, the takaful operator may pay any proper claimant a prescribed amount of the certificate moneys of all such certificates issued by the takaful operator.

(3) Before making any payment under subsection (2), the takaful operator shall give notice by registered post to the Collector appointed for the purpose of the Stamp Act (Chapter 34) with such particulars as the Collector may require.

(4) Subsection (2) shall apply in relation to certificate moneys under certificates of which the deceased was not the participant at his death as it applies in relation to any such certificate moneys as are mentioned in subsection (1).

(5) Where an amount is paid under subsection (2) on account of any certificate moneys, the takaful operator may, before payment of the balance of such certificate moneys to any proper claimant, apply the whole or part of the certificate moneys to pay any unpaid estate duty payable on the death of the participant.

(6) In this section, "participant" includes a part participant of a certificate, and "proper claimant" means a person who claims to be entitled to the sum in question as personal representatives of the estate of the deceased or who claims to be entitled to that sum under the relevant law.

**Knowledge of and statement by authorised agent deemed knowledge and statement by takaful operator.**

88. (1) A person who has at any time been authorised as its agent by a takaful operator and who solicits or negotiates a contract of takaful in such capacity shall in every such instance be deemed, for the purpose of the information of the contract, to be the agent of the takaful operator, and the knowledge of such person relating to any matter relevant to the acceptance of the risk by the takaful operator shall be deemed to be the knowledge of the takaful operator.

(2) Any statement made or any act done by any such person in his representative capacity shall be deemed, for the purpose of the formation of the contract, to be a statement made or act done by the takaful operator, notwithstanding any contravention of section 38 or of any other provision of this Order by such person.

(3) This section shall not apply —

(a) where there is collusion or connivance between such person and the proposed participant in the formation of the contract; or

(b) where such person has ceased to be its agent, and the takaful operator has taken all reasonable steps to inform or bring to the knowledge of potential participants and the public in general the fact of such cessation.

**Application of other laws.**

89. Where there is any conflict or inconsistency between the provisions of this Order and those of the Companies Act (Chapter 39) (other than sections 135A to 135N, sections 149A to 149U and the Thirteenth and Fourteenth Schedules), the Contracts Act (Chapter 106), the Road Traffic Act (Chapter 68) or the Motor

Vehicles Insurance (Third Party Risks) Act (Chapter 90), the provisions of this Order shall prevail.

### **Supplementary**

#### **Power to issue guidelines.**

90. The Minister may issue guidelines, circulars or notices in respect of this Order to the conduct of the business and affairs of the takaful operator.

#### **Regulations.**

91. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

#### **Transitional provisions.**

92. (1) Any takaful operator which on the commencement of this Order is already permitted under administrative arrangements by the Ministry of Finance to carry on general takaful business or family takaful business, as the case may be, shall be deemed to be registered under section 9(2) for a period of 6 months from such commencement and may within that period carry on the takaful business which was being lawfully carried on by it immediately before the commencement of this Order.

(2) Within the period of 6 months referred to in subsection (1), the takaful operator shall apply for registration in accordance with section 9(1) in respect of the period after the period referred to in subsection (1).

(3) A takaful operator which is deemed by virtue of subsection (1) to be registered under section 9(2) shall no later than 3 months after the date of the commencement of this Order comply with section 5 regarding the requirements for carrying on business as a takaful operator (save the requirement as to registration).

FIRST SCHEDULE

DEFINITION OF "ASSOCIATE", "PARENT" AND "SUBSIDIARY" UNDERTAKINGS

PART I

ASSOCIATE

1. (1) In this Order, "associate", in relation to another person, means any of the following —

(a) the wife or husband, or son, daughter or more remote issue, of that person;

(b) the brother or sister, or parent or more remote lineal ancestor, of that person;

(c) the trustees of any settlement under which that person has a life interest in possession;

(d) any company of which that person is a director;

(e) any person who is an employee or partner of that person;

(f) if that person is a company, any director or subsidiary undertaking of that company and any director or employee of such a subsidiary undertaking.

(2) In relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, any undertaking, sub-paragraph (3) applies in addition to sub-paragraph (1).

(3) If such person as is referred to in sub-paragraph (2) (call him "A"), has with any other person ("B") an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in the undertaking concerned, or under which they undertake to act together in exercising their voting power in relation to that undertaking, B is an associate of A.

2. For the purposes of paragraph 1 —

"daughter" includes step-daughter;

"settlement" includes any disposition or arrangement under which property is held on trust;

"son" includes step-son.

**PART II**

**CONTROLLERS**

3. (1) In this Order, "controller", in relation to a takaful operator, means a person who, either alone or together with any associate —

*(a)* holds 20 per cent or more of the shares in that body or in another body of which that first-mentioned body is a subsidiary undertaking;

*(b)* is entitled to exercise or control the exercise of 20 per cent or more of the voting power at any general meeting of that body or of another body of which that first mentioned body is a subsidiary undertaking; or

*(c)* is able to exercise a significant influence over the management of that body or of another body of which that first-mentioned body is a subsidiary undertaking, by virtue either of a holding of shares in that body or in the other body or of an entitlement to exercise, or control the exercise of, the voting power at a general meeting of the takaful operator.

(2) Without prejudice to a generality of sub-paragraph (1)(c), in the case of a takaful operator, which is a partnership, every partner shall be regarded as a person falling within that paragraph.

**PART III**

**PARENT AND SUBSIDIARY UNDERTAKING ETC.**

**Undertakings.**

4. In this Order, "undertaking" means —

*(a)* a body corporate or a partnership; or

*(b)* unincorporated association carrying on a trade or business with or without a view to profit.

**Parent and subsidiary undertakings.**

5. (1) For the purposes of this Order, an undertaking is a parent undertaking in relation to another undertaking (a "subsidiary undertaking") if —

*(a)* it holds a majority of the voting rights in the undertaking;

*(b)* it is a member of the undertaking and has a right to appoint or remove a majority of its board of directors;

*(c)* it has a right to exercise a dominant influence over the undertaking —

*(i)* by virtue of provisions contained in the undertaking's memorandum or articles; or

*(ii)* by virtue of a control contract;

*(d)* it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking;

*(e)* it is a member of the undertaking, no other person is the undertaking's parent by virtue of any of sub-paragraphs *(a)* to *(c)*, and at all times since the beginning of the undertaking's immediately preceding financial year, a majority of the undertaking's board of directors have been directors who were appointed solely as a result of the exercise of its voting rights;

*(f)* it has a participating interest in the undertaking and either actually exercises a dominant influence over the undertaking or it and the undertaking are managed on a unified basis;

*(g)* it has a participating interest in the undertaking which either entitled it to 20 per cent or more of the voting rights in the undertaking or comprises 20 per cent or more of the shares in the undertaking,

and any reference to the participating interest provisions of this paragraph is a reference to sub-paragraphs *(f)* and *(g)*.

(2) For the purposes of sub-paragraph (1) an undertaking shall be treated as a member of another undertaking —

*(a)* if any of its subsidiary undertakings is a member of that other undertaking; or

*(b)* if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(3) Subject to sub-paragraph (4), a parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings.



(4) An undertaking ("A") shall not be treated as a parent undertaking of an undertaking ("B") by reason only that another undertaking which is A's subsidiary undertaking by virtue of sub-paragraph (1)(g) is a parent undertaking of B.

(5) Expressions used in the preceding provisions of this paragraph shall be construed in accordance with the following provisions of this Part.

**Fellow subsidiary undertakings.**

6. (1) Subject to sub-paragraph (2), "fellow subsidiary undertakings" are undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other.

(2) 2 subsidiary undertakings of the same parent undertaking are not fellow subsidiary undertakings if either of them is a subsidiary undertaking by virtue only of paragraph 5(1)(g).

**Participating interests.**

7. (1) A "participating interest" is an interest held by an undertaking in the shares of another undertaking which it holds on a long term basis for the purpose of securing a contribution to its activities by the exercise of control of influence arising from or related to that interest.

(2) A holding of 20 per cent or more of the shares of an undertaking shall be presumed to be participating interest unless the contrary is shown.

(3) The reference in sub-paragraph (1) to an interest in shares includes —

(a) an interest which is convertible into an interest in shares; and

(b) an option to acquire shares or any such interest,

and an interest or option falls within sub-paragraphs (a) or (b), notwithstanding that the shares to which it relates are, until conversion or the exercise of the option, unissued.

(4) For the purposes of this paragraph, an interest held on behalf of an undertaking shall be treated as held by it.

(5) For the purposes of this Part —

(a) there shall be attributed to an undertaking any interest held by any of its subsidiary undertakings; and

*(b)* the reference in sub-paragraph (1) to the purpose and activities of an undertaking shall be taken to include the purposes and activities of any of its subsidiary undertakings and of the group as a whole.

**Shares.**

8. (1) In this Part, references to shares —

*(a)* in relation to an undertaking with share capital, are to allotted shares;

*(b)* in relation to an undertaking with no share capital, are to rights to shares in the capital of the undertaking;

*(c)* in relation to an undertaking without capital, are to interests —

- (i)* conferring any right to share in the profits or liability to contribute to the losses of the undertaking;
- (ii)* giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding-up;
- (iii)* permitted by the law under which the undertaking is established.

(2) Nothing in this paragraph affects the construction of the expression "actually exercises a dominant influence" in paragraph 5(1)(f).

**Rights exercisable only in certain circumstances or temporarily incapable of exercise.**

9. (1) Rights which are exercisable only in certain circumstances shall be taken into account for the purposes of this Part only —

*(a)* when the circumstances have arisen, and for so long as they continue to obtain; or

*(b)* when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

**Rights held by one person on behalf of another.**

10. (1) Rights held by a person in a fiduciary capacity shall be treated for the purposes of this Part as not held by him.

(2) Rights held by a person as nominee for another shall be treated for the purposes of this Part as held by the other.

(3) Rights shall be regarded as held as nominee for another if they are exercisable only on these instructions or with his consent or concurrence.

**Rights attached to shares held by way of security.**

11. Rights attached to shares held by way of security shall be treated for the purposes of this Part as held by the person providing the security –

(a) where, apart from the right to exercise them for the purposes of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with instructions; and

(b) where the shares are held in connection with the granting of loans as part of normal business activities and, apart from the right to exercise them for the purposes of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

**Rights attributed to parent undertaking.**

12. (1) Rights shall be treated for the purposes of this Part as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in paragraphs 13 or 14 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purposes of paragraph 14, rights shall be treated as being exercisable in accordance with the instructions, or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

**Group undertakings.**

13. In this Part "group undertaking", in relation to an undertaking, means an undertaking which is –

(a) a parent or subsidiary undertaking of that undertaking; or

*(b)* a subsidiary undertaking of any parent undertaking of that undertaking; and references to a group shall be construed accordingly.

**Disregard of certain rights.**

14. For the purposes of this Part, the voting rights in an undertaking shall be taken to be reduced by any rights held by the undertaking itself.

**Undertakings which are not companies.**

15. Subject to any specific provision made by this Part, expressions used in this Part which are appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding person, officers or organs, as the case may be, appropriate to undertakings of that description.

**SECOND SCHEDULE**

(section 3(7))

**DEFINITION OF TAKAFUL TERMS**

**General**

1. (1) "Certificates" includes any contract of takaful whether or not embodied in or evidenced by an instrument in the form of a certificate, and references to issuing a certificate shall be construed accordingly.

(2) References to a certificate of a takaful operator include any certificate in respect of which the takaful operator is under any liability, whether the certificate was issued by the takaful operator or the liability was transferred to the takaful operator from another takaful operator.

2. (1) Subject to this paragraph and to sections 19(3) and (4) of the Order, "Brunei Darussalam certificate", in relation to any takaful operator, means a certificate issued in the course of the takaful operator's business in Brunei Darussalam and falling within one of the following descriptions —

*(a)* a family takaful certificate or personal accident certificate in the case of which, at the date of issue of the certificate and (if the certificate was issued before then) at the date of the establishment of the takaful operator's register of Brunei Darussalam certificates, the participant's address is or was an address in Brunei Darussalam;

(b) in relation to direct general takaful (other than personal accident certificates) and facultative general re-takaful, a certificate in the case of which the risk arises in Brunei Darussalam or where the participant is a person resident in Brunei Darussalam or has a permanent establishment in Brunei Darussalam;

(c) in relation to treaty general re-takaful, a certificate in the case of which more than 10 per cent of the total risks in terms of gross contributions arises in Brunei Darussalam.

(2) In this paragraph —

(a) any certificate belonging to the takaful operator's family business shall be deemed to be a family business certificate, and not to be a certificate of any other description;

(b) "permanent establishment" means a fixed place where a business is wholly or partly carried on including —

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a warehouse;
- (f) a workshop;
- (g) a farm or plantation;
- (h) a mine, oil well, quarry or other place of extraction of natural resources;
- (i) a building or work site or a construction, installation or assembly project; and

without prejudice to the generality of the foregoing, a person shall be deemed to have a permanent establishment in Brunei Darussalam if that person —

- (j) carries on supervisory activities in connection with a building or work site or a construction, installation or assembly project; or

- (k) has another person acting on his behalf in Brunei Darussalam who —
- (i) has and habitually exercises an authority to conclude contracts;
  - (ii) maintains a stock of goods or merchandise for the purpose of delivery on behalf of that person; or
  - (iii) habitually secures orders wholly or almost wholly for that person or for such other enterprises as are controlled by that person;

*(c)* "participant's address" means the address for the time being known to the takaful operator as the address for communicating with the participant about the certificate;

*(d)* "resident in Brunei Darussalam" has the same meaning as in section 2 of the Income Tax Act (Chapter 35); and

*(e)* where any risk is in transit in Brunei Darussalam it shall be deemed to be a risk outside Brunei Darussalam,

but sub-paragraph (1)(a) shall apply to a certificate of re-takaful as if the references to the date of issue of the certificate and to the participant's address refer to those of the certificate under which the liability of the re-takaful ultimately arises.

3. "Participant" means, where a certificate has been assigned, the assignee for the time being and, where they are entitled as against the takaful operator to the benefit of the certificate, the personal representatives of the estate of a deceased participant.

4. "Certificate moneys" includes any benefit, pecuniary or not, which is secured by a certificate, and "pay" and other expressions, where used in relation to certificate moneys, shall be construed accordingly.

**Definitions related to family takaful Business.**

5. "Cancellable group family takaful business" means the business of family takaful of a group of persons where it is written on a yearly renewable term basis and where the contract can be terminated by either the participant or the takaful operator at any certificate anniversary.

6. "Family certificate" means any certificate by which payment of certificate moneys is covered on death (otherwise than by way of takaful against personal

accident, disease or sickness only) or on the happening of any contingency dependent on the termination or continuance of human life, and includes a certificate which is subject to payment of contributions for a term dependent on the termination or continuance of human life and a certificate securing the grant of an annuity for such a term.

7. "Participating certificate" means a family certificate conferring any right to share in the profits or surplus arising from the business of the takaful operator or any part of it, and "non-participating certificate" means a family certificate not conferring any such right.

**Definitions related to general takaful business.**

8. "Employers liability certificate" means the issue of or the undertaking of liability under certificates covering employers against liability to pay compensation or damages to workmen in their employment but does not include any business carried on as incidental only to marine, aviation and transit takaful business.

9. "Marine, aviation or transit takaful certificate" means a certificate of takaful —

(a) upon vessels or aircraft, or upon the machinery, tackle, furniture or equipment of vessels or aircraft;

(b) upon goods, merchandise or property of any description whatever (in accordance to *Hukum Syara'*) on board vessels or aircraft;

(c) upon the freight of, or any other interest in or relating to, vessels or aircraft;

(d) against damage arising out of or in connection with the use of vessels or aircraft, including third-party risks;

(e) against risks incidental to the construction, repair or docking of vessels, including third-party risks; or

(f) against transit risks (whether the transit is by sea, inland water, land or air, or partly one and partly another) including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the takaful.

10. "Motor vehicle takaful business" means the business of effecting contracts of takaful against loss of, or damage to or arising out of or in connection with the use of motor vehicles, including third-party risks.

**THIRD SCHEDULE**

(sections 5(3), 16(7)(c), 23(3)(a) and (4))

**BRUNEI DARUSSALAM ASSETS AUTHORISED FOR TAKAFUL FUNDS**

Brunei Darussalam assets (in accordance with *Hukum Syara'*) authorised for Takaful funds may include the following:

1. Government Bond issued by the Government and such other assets as the Authority may approve.
2. Shares in, or securities of a company.
3. Estates or interests in land in Brunei Darussalam and, up to the value of that security, advances, loans and financing facilities all secured on any such estate or interest.
4. Any Brunei Darussalam currency, and any amount payable in that currency which is held on current account or deposit account in Brunei Darussalam with a bank licensed under the Banking Order, 2006 (S 45/06), the Islamic Banking Order, 2008 or with such other financial institution as may be prescribed.
5. Such other loans or investments in or connected with Brunei Darussalam as may be prescribed.

**FOURTH SCHEDULE**

**RETURNS BY TAKAFUL OPERATORS**

(section 60(1))

**PART 1**

**DOCUMENTS TO BE LODGED YEARLY**

1. (1) A takaful operator, to comply with section 60(1), shall lodge such statements of accounts and other statements as are mentioned in this paragraph.

(2) There shall be lodged for each accounting period —

(a) a statement that the takaful operator has, during the relevant accounting period, complied with the provisions of sections 5(2)(b) and (c);

(b) by a takaful operator registered in respect of family takaful business or general takaful business, a revenue account in respect of that business; and



(c) by any takaful operator, a profit and loss account for the whole of the takaful operator's business, together with separate balance sheets, as at the end of that accounting period, for each class of takaful business in respect of which the takaful operator is registered:

Provided that in the case of a company incorporated or established outside Brunei Darussalam, the accounts and balance sheets need not show the results of or relate to business other than takaful business for which the company maintains a takaful fund under this Order.

(3) There shall be lodged —

(a) by a takaful operator registered in respect of family takaful business, statements for each accounting period giving, as regards certificates belonging to that class of business, particulars —

- (i) as to the issue of new certificates during that period;
- (ii) as to the termination or reduction of the liability, or of the takaful contributions on certificates during that period, and transfer of certificates to or from the register during the period; and
- (iii) as to certificates in force at the end of that period;

(b) by a takaful operator registered in respect of general takaful business, statements for each accounting period giving as regard certificates belonging to that class of business particulars as to contributions and claims; and

(c) by a takaful operator registered in respect of either class of business, a statement for each calendar year giving particulars of the assets held at the end of each year as assets of the takaful fund maintained for that class of business.

(4) Regulations may modify sub-paragraph (3)(c) so that it requires statements of the assets of a takaful fund to be made for parts of a calendar year instead of an entire year.

(5) Statements required by sub-paragraph (3)(c) shall be excepted from sections 61(1) and (2).

2. (1) With any accounts and balance sheet lodged under paragraph 1, there shall be lodged a certificate of the auditor signed by him and advised to the Authority and stating whether in his opinion —

(a) the accounts and balance sheet are in accordance with this Order;

(b) the balance sheet truly represents the financial position of the takaful operator; and

(c) the books of the takaful operator have been properly kept and correctly record the affairs and transactions of the takaful operator:

Provided that where the audit does not extend to the whole business of the takaful operator, the certificate shall, as regards sub-paragraphs (b) and (c), be given subject to an appropriate limitation.

(2) The certificate of the auditor shall also state —

(a) whether in the relevant accounting period any part of the assets of the takaful fund or funds maintained under this Order has been applied in contravention of section 20, and whether during that period section 23 has been complied with in relation to those assets and any assets falling within section 23(6);

(b) as regards the documents evidencing the takaful operator's title to any such assets whether it has inspected such of those documents as are held by or on behalf of the takaful operator within Brunei Darussalam, and whether it has received satisfactory information as to the whereabouts and custody of any others, specifying whether the takaful operator has complied with the requirements of section 27;

(c) whether all necessary and proper apportionments have been made in preparing the accounts and balance sheet, and have been made in an equitable manner; and

(d) such other contravention of this Order as may be discovered in the course of the audit.

3. In respect of a takaful operator carrying on family takaful business, a separate certificate from its actuary stating whether or not in his opinion the liabilities of its family takaful business exceed the amount shown on the balance sheet should be included.

**PART II**

**DOCUMENTS TO BE LODGED ON ACTUARIAL  
INVESTIGATION OF FAMILY TAKAFUL BUSINESS**

4. (1) A takaful operator registered in respect of family takaful business in order, to comply with section 61(1) in the case of any actuarial investigation, shall lodge such documents as are mentioned in this paragraph.

(2) There shall be lodged an abstract of the actuary's report, which shall be signed by the actuary and shall include —

(a) a summary and valuation of the certificates as at the date of the investigation; and

(b) a valuation balance sheet as at the date of the business to which the report relates.

(3) There shall be lodged a certificate by the actuary, signed by him, that it has satisfied himself as to the accuracy of the valuations made for the purposes of the investigation and as to their being made in accordance with this Order, and as to the accuracy, of the data on which they are based:

Provided that, if the actuary is not a permanent officer of the takaful operator, the certificate shall, so far as it relates to the accuracy of the data on which the valuations are based, be given and signed by or on behalf of the takaful operator's principal officer in Brunei Darussalam, and the actuary shall in his part of the certificate state the precautions taken by him to ensure the accuracy of the data.

(4) There shall be lodged statements signed by the actuary analysing, as at the date of the investigation, the position as regards certificates and contributions of the business to which the report relates.

**PART III**

**LODGMET, FORM AND CONTENTS**

5. (1) A document to be lodged by a takaful operator shall be lodged by sending to the Authority 5 copies thereof, of which (unless the document itself is required by this Schedule to be signed) one copy at least shall be signed by 2 of the takaful operator's directors and by or on behalf of the takaful operator's principal officer in Brunei Darussalam.

(2) The persons signing any balance sheet shall certify that in their belief the assets set forth in the balance sheet are fully of the value stated in the balance

sheet, less any investment reserve fund taken into account; and they shall also either certify that in the relevant accounting period no part of the assets of the takaful fund has been applied in contravention of section 20, and that during that period, section 23 has been complied with in relation to those assets and any assets falling within section 23(6), or shall state the exceptions.

(3) The persons signing a balance sheet in respect of family takaful business shall certify that in the relevant accounting period the provisions of section 87(5) with respect to deposits of balance of certificate monies with the Authority have been complied with.

6. A document shall be lodged within 3 months of the relevant date, or within such longer period as the Authority may allow (but not exceeding, except in the case of the documents to be first lodged by an existing takaful operator, 6 months from the relevant date); and for this purpose the relevant date is the date to which the document relates or, in the case of an account or statement for an accounting period, the end of that period:

Provided that the Authority, upon being satisfied that the affairs of any takaful operator are being conducted in a manner likely to be detrimental to the public interest, the interests of the participants or the interests of the takaful operator, may in any such case specify a period shorter than 6 months for the purposes of this paragraph.

7. A document shall be in the Malay or English language, and shall (as regards all 5 copies) be either printed or, with the permission of the Authority, produced by other mechanical means approved by him.

8. Where by this Schedule a document is required to be signed by or on behalf of the takaful operator's principal officer in Brunei Darussalam, it shall, if not signed by that person, be signed by one of the takaful operator's officers in Brunei Darussalam who has been notified to the Authority as having authority for the purposes of this Schedule to sign in the place of the principal officer in Brunei Darussalam.

9. (1) Subject to the following sub-paragraphs, a document shall be in the prescribed form and contain the prescribed particulars and be prepared in accordance with regulations, including regulations for the way in which any valuation is to be made or in which any item is to be dealt with.

(2) The Authority may in any particular case permit such departure as he thinks fit from any requirement of the regulations under sub-paragraph (1), if he is satisfied that the purpose of the document in question will nevertheless be substantially fulfilled.

(3) Without prejudice to sub-paragraph (2), where an abstract is to be lodged of an actuary's report on an investigation made otherwise than to comply

15th. OCTOBER, 2008

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with section 61(1), the abstract may conform with regulations made under sub-paragraph (1), subject to any modifications which the Authority may approve having regard to the purpose of the actuary's investigation and the form and contents of his report.

Made this 29th. day of Ramadan, 1429 Hijriah corresponding to the 30th. day of September, 2008 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM