

No. S 101

TAKAFUL ORDER, 2008

TAKAFUL REGULATIONS, 2008

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TAKAFUL ORDER, 2008

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In exercise of the power conferred by section 91(1) of the Takaful Order, 2008, the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

PART I

PRELIMINARY

Citation and commencement.

1. These Regulations may be cited as the Takaful Regulations, 2008 and shall commence on the same date as the Takaful Order, 2008.

PART II

REGISTRATION AND FEES

Documents and information required for registration.

2. For the purposes of section 9 of the Order, the prescribed documents and information to be furnished in respect of an application for registration are —

- (a)* the name of the applicant company;
- (b)* its place of incorporation;
- (c)* if incorporated outside Brunei Darussalam, the address of its principal place of business in Brunei Darussalam;
- (d)* a copy of its memorandum and articles of association;
- (e)* the amount of its paid-up share capital;
- (f)* the names of its directors and, for each director, the address of the director's principal place of business;
- (g)* the name and registered address of any shareholder holding 5 per cent or more of its paid up share capital;
- (h)* the number of its employees and the proportion of those who are citizens of Brunei Darussalam;

(i) a copy of its audited accounts for each of the last 5 years for which they are available;

(j) whether the application is for registration in respect of family takaful business or general takaful business;

(k) in the case of a company incorporated outside Brunei Darussalam, confirmation from the appropriate authority in its home jurisdiction that it is authorised in that jurisdiction to carry on the type of takaful business for which registration is sought and complies with all relevant regulatory requirements in respect of such business within that jurisdiction;

(l) a business plan describing its intended strategy for the following 5 years in respect of the takaful business for which registration is sought; and

(m) any other related documents as may be required by the Authority.

Registration and annual fees.

3. (1) A registered takaful operator shall pay to the Authority the following fees —

(a) for registration in respect of family takaful business, \$20,000;

(b) for registration in respect of general takaful business, \$20,000.

(2) A registered takaful operator shall pay to the Authority the following annual fees on or before 1st. January —

(a) for carrying on family takaful business, \$10,000;

(b) for carrying on general takaful business, \$10,000;

(c) for opening a branch office, \$3,000;

(d) for opening a counter, \$1,000.

(3) Where a registered takaful operator becomes registered in respect of family takaful business or general takaful business after 1st. January in any year, that takaful operator shall pay to the Authority, in addition to the fee payable under sub-regulation (1), one-twelfth of the fee which will become payable under sub-regulation (2) on or before 1st. January in the following year for each remaining month in that year.

Takaful agent's and annual fees.

4. (1) The registration fee payable to the Authority by any person under section 49(5) of the Order to act or hold himself out as —

(a) a corporate agent is \$2,000;

(b) an individual agent is \$300.

(2) The annual fee payable to the Authority on or before 1st. January by any person under section 49(5) of the Order to act or hold himself out as —

(a) a corporate agent is \$1,000;

(b) an individual agent is \$200.

Takaful broker's and annual fees.

5. (1) The registration fees payable to the Authority by any person under section 54(4) of the Order —

(a) to act or hold himself out as a takaful broker is \$5,000;

(b) for opening a branch office is \$2,000.

(2) The annual fee payable to the Authority on or before 1st. January by any person under section 54(4) of the Order —

(a) to act or hold himself out as a takaful broker is \$3,000;

(b) for opening a branch office is \$2,000.

Adjuster's and annual fees.

6. (1) The registration fees payable to the Authority by any person under section 57(4) of the Order —

(a) to act or hold himself out as an adjuster is \$2,000;

(b) for opening a branch office is \$1,000.

(2) The annual fee payable to the Authority on or before 1st. January by any person under section 57(4) of the Order —

(a) to act or hold himself out as an adjuster is \$1,000;

(b) for opening a branch office is \$1,000.

Inspection fee.

7. The fee payable to the Authority by any person for inspection of or inspection and copying of any document pursuant to section 65(2) of the Order is \$5.00 in respect of each document inspected on each occasion of inspection together with such reasonable charge as may be levied in respect of any photocopy supplied to that person.

PART III

FINANCIAL AND OTHER REQUIREMENTS

Surplus of assets over liabilities.

8. For the purposes of sections 5(2)*(b)* and 10(1)*(b)* of the Order, a takaful operator shall have a surplus of assets over liabilities of not less than 20 per cent. In determining the minimum amount of such surplus of assets, the Authority shall take into consideration the nature and modalities of takaful business.

Deposit with Authority.

9. (1) For the purposes of section 16(1) of the Order, the amount to be deposited by a takaful operator with the Authority –

(a) in respect of a takaful operator carrying on family takaful business, a minimum of \$1,000,000; and

(b) in respect of a takaful operator carrying on general takaful business, a minimum of \$1,000,000.

(2) In addition, in respect of a takaful operator carrying on general takaful business, the minimum deposit from the year after registration shall be subject to 40 per cent of its contribution income net of payment on account of re-takaful in excess of an amount to be determined by the Minister.

(3) If in a subsequent year there is a decrease in the net contribution income of the takaful operator, it shall be refunded the difference between 40 per cent of its contribution income in that year and that of the previous year.

(4) Any refund as referred to at sub-regulation (3) will be subject to the takaful operator having satisfied the requirements of the Order relating to the pledging of assets to the appropriate takaful fund as well as satisfying the solvency requirements.

Minimum paid-up share capital.

10. (1) For the purposes of section 21(2)(a) of the Order, the paid-up share capital of a takaful operator having a share capital unimpaired by losses, shall be —

(a) in the case of a takaful operator carrying on family takaful business, not less than \$8,000,000; and

(b) in the case of a takaful operator carrying on general takaful business, not less than \$8,000,000.

(2) A takaful operator established or incorporated outside Brunei Darussalam not having a share capital shall maintain in Brunei Darussalam a surplus of assets over liabilities of an amount not less than the requirements for the minimum amount of paid-up share capital of a takaful operator incorporated in Brunei Darussalam.

(3) For the purposes of section 54(1)(b) of the Order, the minimum paid-up share capital of a takaful broker shall be \$200,000.

(4) For the purposes of section 57(1)(b) of the Order, the minimum paid-up share capital of an adjuster shall be \$100,000.

Professional indemnity takaful.

11. For the purposes of section 54(1)(c) of the Order, the minimum limit of indemnity to be covered under a professional indemnity takaful for any person who intends to be registered as a takaful broker shall be of not less than \$1,000,000 under which the deductible allowance shall be \$10,000.

PART IV

MINIMUM CRITERIA OF "FIT AND PROPER PERSON"

Minimum criteria of "fit and proper person".

12. (1) In determining, for a takaful operator or a controller of a takaful operator, whether a person is a fit and proper person to hold the position of a managing director, director, chief executive or principal officer pursuant to section 42 of the Order, regard shall be had to —

(a) his probity, competence and soundness of judgment for fulfilling the responsibilities of that position;

(b) the diligence with which he is fulfilling or likely to fulfill those responsibilities; and

(c) whether the interests of participants, potential participants, named beneficiaries and creditors, as the case may be, are likely to be in any way threatened by his holding that position.

(2) Notwithstanding sub-regulation (1), a takaful operator shall also have regard to the criteria under regulations 13 and 14 in determining whether a person is a fit and proper person.

(3) Without prejudice to the generality of sub-regulation (1), regard may be had to the previous business conduct and activities of that person and in particular to any evidence that he —

(a) has compounded or been convicted, or as managing director, director, chief executive or principal officer, of a takaful operator or a controller of a takaful operator, has compounded or been convicted, of an offence under the Order, the Insurance Order, 2006 [S 48/06], the Companies Act (Chapter 39), the Finance Companies Act (Chapter 89), or any other written law which is punishable with —

(i) imprisonment for a term of one year or more, whether by itself or in addition to a fine; or

(ii) a fine of \$50,000 or more;

(b) has compounded or been convicted, or as managing director, director, chief executive or principal officer, of a takaful operator or a controller of a takaful operator has compounded or been convicted, of an offence under the Banking Order, 2006 [S 45/06] or the Islamic Banking Order, 2008 which is punishable with —

(i) imprisonment for a term of 6 months or more, whether by itself or in addition to a fine; or

(ii) a fine of \$10,000 or more;

(c) has engaged in any business practice appearing to the Authority to be deceitful, oppressive or otherwise improper, whether unlawful or not, or which otherwise reflects discredit on his method of conducting business; or

(d) has engaged in, or been associated with, any other business practice, or otherwise conducted himself in such a way, as to cause doubt as to his competence and soundness of judgment.

Criteria for managing director or director of takaful operator.

13. A person who is, or is to be, a managing director or director of a takaful operator —

(a) shall have educational qualifications and experience which will enable him to effectively perform his duties;

(b) shall not have acted in a manner which may cast doubt on his fitness to hold the position of a director;

(c) shall have agreed to attend, or have attended, at least 75 per cent of the takaful operator's board of directors meetings in a year unless his absence is with the approval of the Authority; and

(d) shall not have been a party to any action or decision of the board or management of the takaful operator, which is detrimental to the interests of the takaful operator and its participants.

Criteria for chief executive or principal officer of registered takaful operator.

14. A person who is, or is to be, a chief executive or principal officer of takaful operator —

(a) shall have the educational qualifications and experience to enable him to satisfactorily discharge his responsibilities;

(b) shall not have held a position of responsibility in the management of any company which has been convicted of an offence under any written law during his tenure of office unless he proves that such offence was committed without his knowledge or consent and he was not in a position to prevent the offence;

(c) shall not have held a position of responsibility in the management of any company which during his tenure of office —

- (i)* has defaulted in payment of any judgment against it;
- (ii)* has suspended payment or has compounded with its creditors; or
- (iii)* has had a receiver or manager appointed in respect of its property;

(d) shall be available for full-time employment, and shall not carry on any other business or vocation, except as a non-executive director or shareholder of another company;

(e) shall not be engaged actively in any political activity;

(f) shall not cause a conflict of interest situation with that of the takaful operator, either by himself or his wife, husband, father, mother, son or daughter;

(g) shall not have acted in a manner which may cast doubt on his fitness to hold the position of chief executive or principal officer, or acted in blatant disregard for proper professional conduct, especially in dealings with participants, potential participants and named beneficiaries; and

(h) shall not have been a party to any action or decision of the management of the takaful operator which is detrimental to the interests of the takaful operator and its participants.

Discretion of Authority.

15. The Authority shall have full discretion to determine whether a person has complied with this Part.

Made this 29th. day of Ramadan, 1429 Hijriah corresponding to the 30th. day of September, 2008.

DATO PADUKA HAJI ALI BIN APONG
Permanent Secretary,
Ministry of Finance,
Brunei Darussalam.