

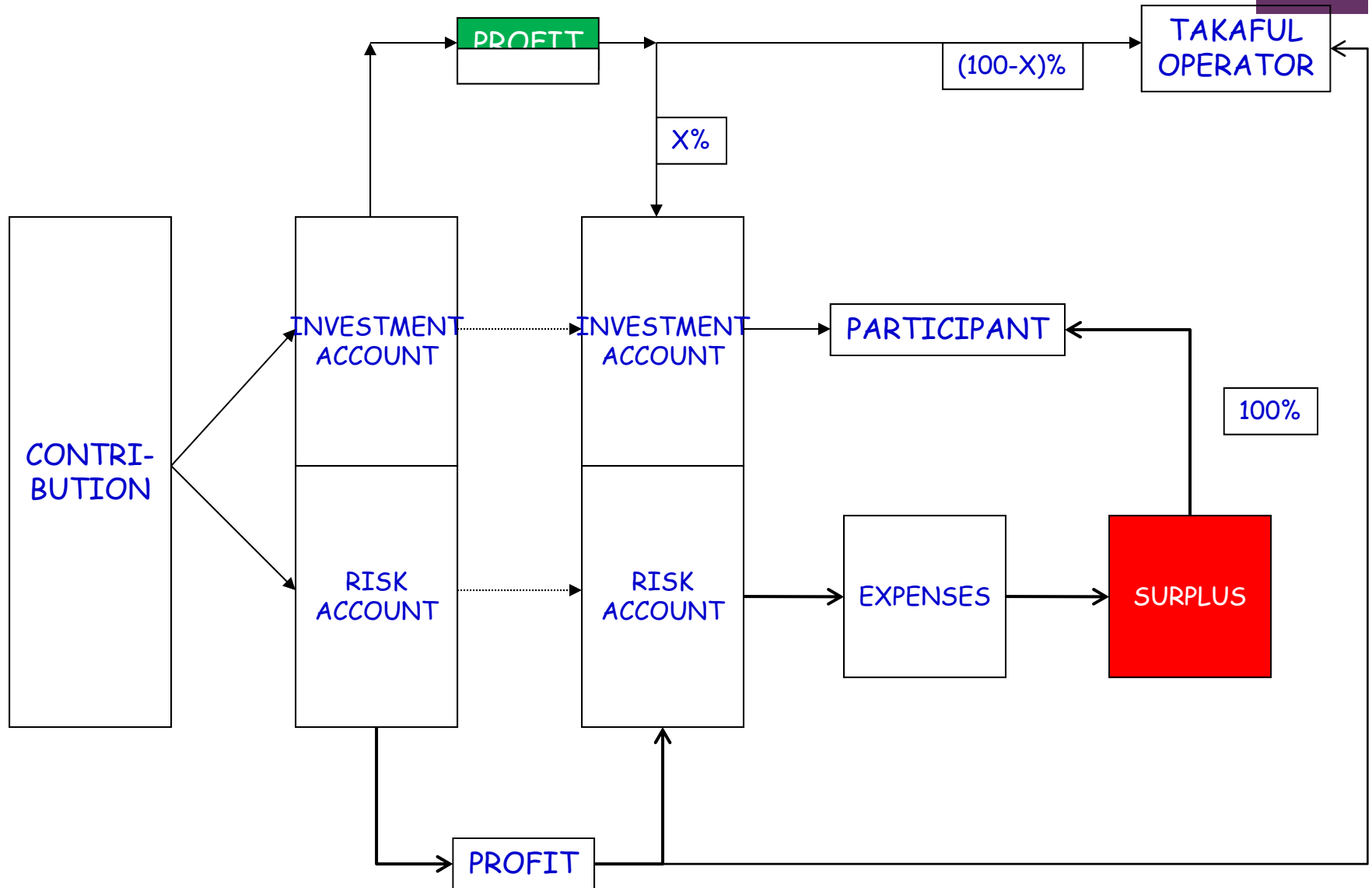
Shariah Issues in the Mudharabah, Wakalah and Waqf models in Takaful

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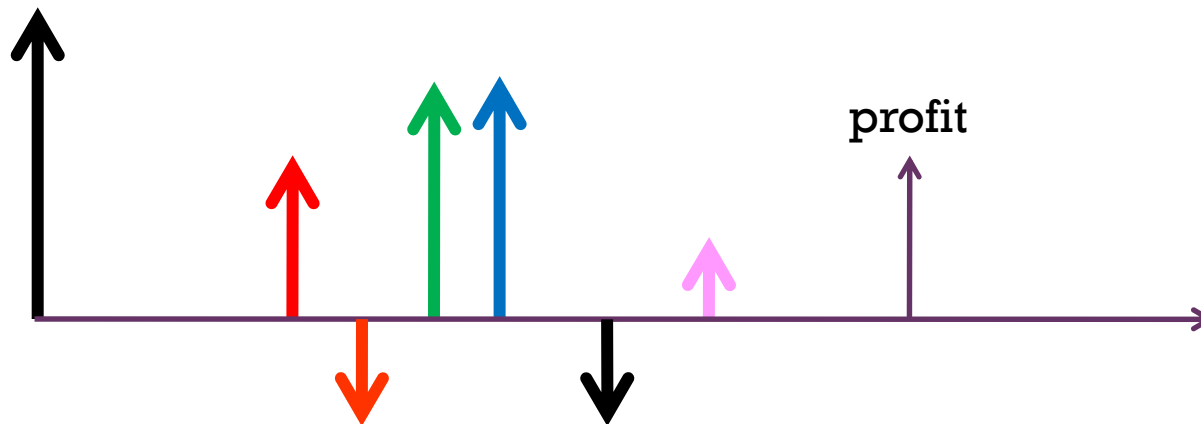
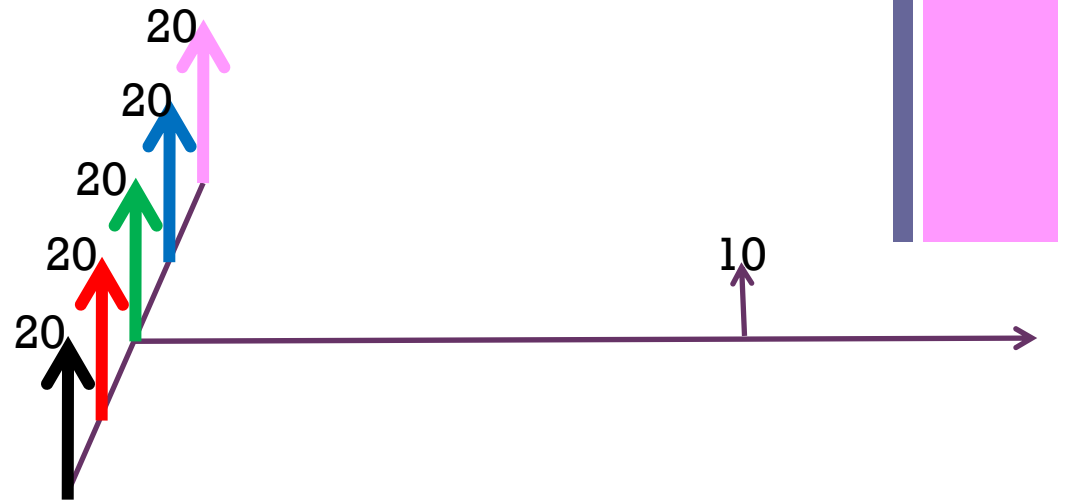


Pure Mudharabah For Family Takaful

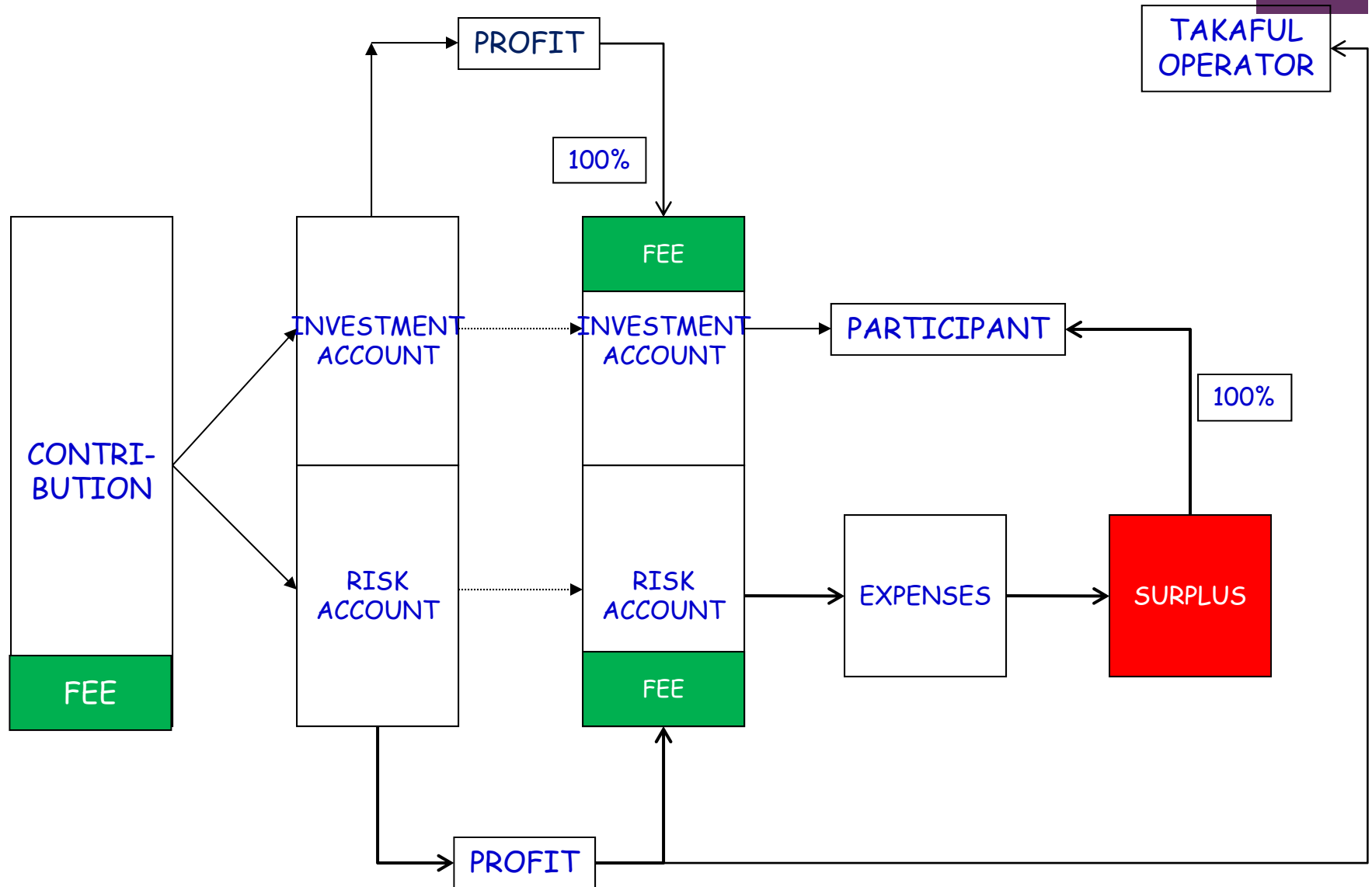


+ The Issue

- Capital
- Tabarru'
- Investment Return
- Successive mudharabah



Wakalah For Family Takaful

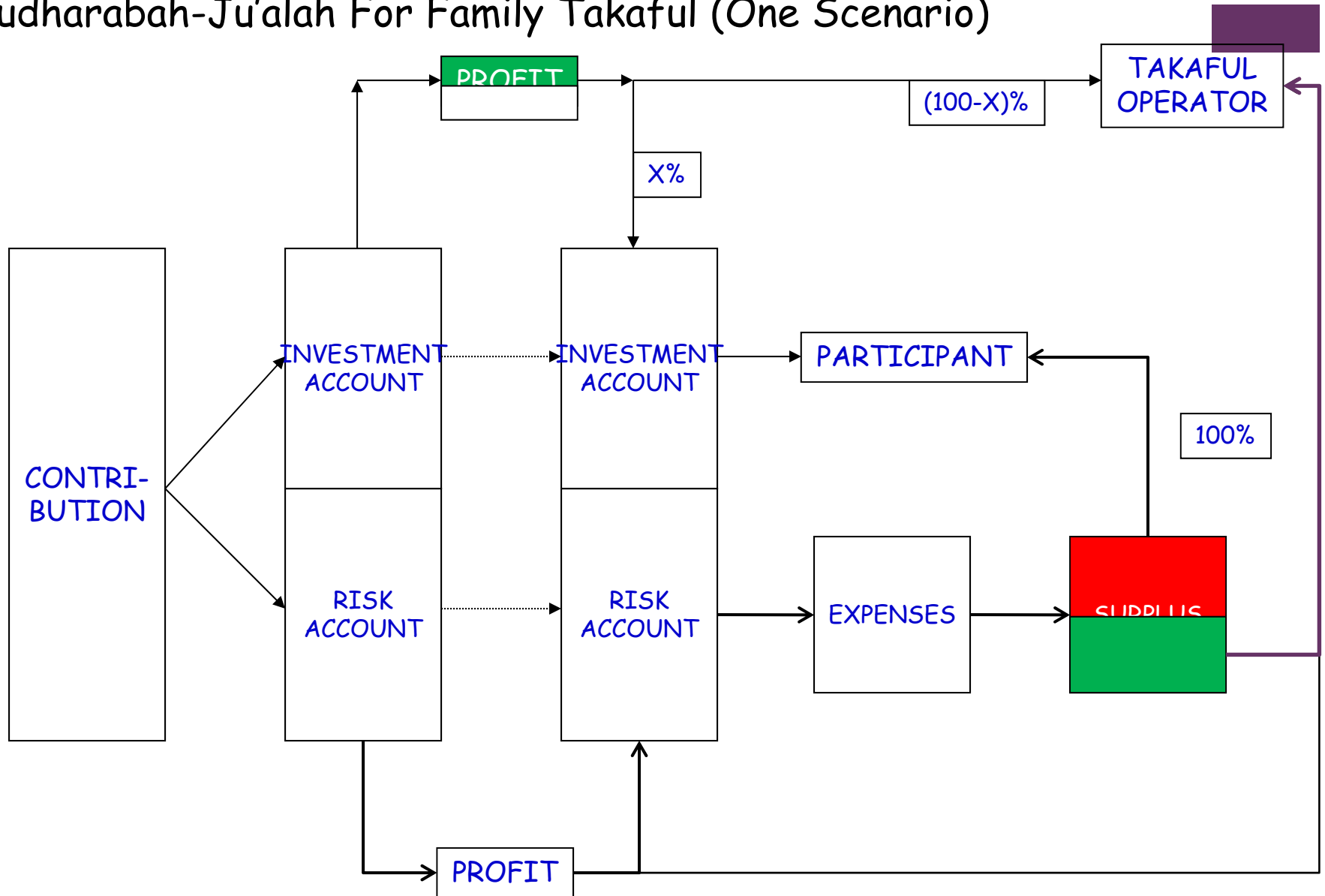


+ Similar Issues in Wakalah

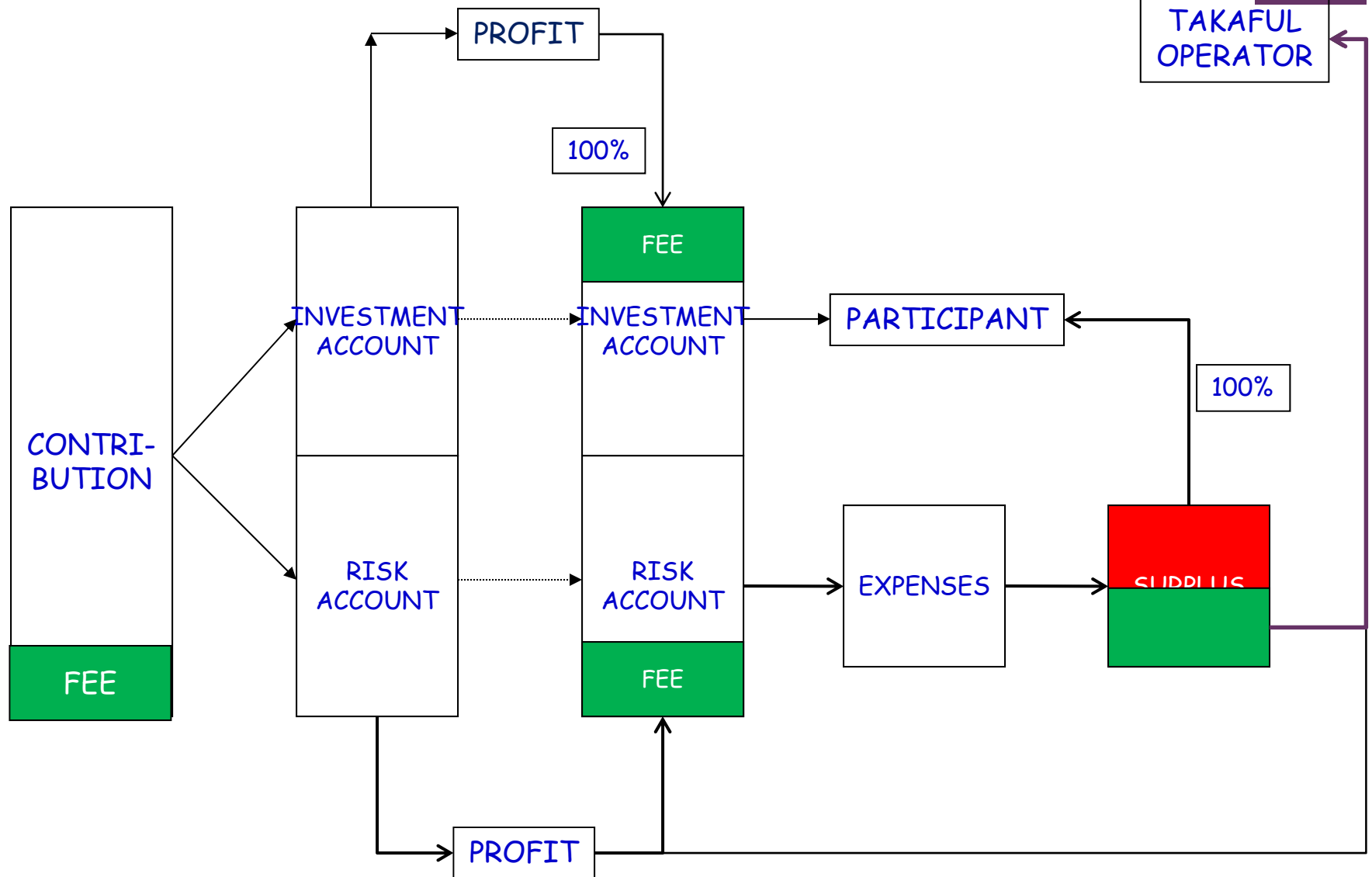
- Amount of contract object (muwakkil bih) is not clear as it depends on both the retakaful contribution, claims, reserves and investment returns. Successive wakalah as in mudharabah.
- Is the TO managing the operations or investments? amount of capital must be made clear, otherwise disputes may occur.
- In the event of disagreements relating to the amount of capital and losses, wakil's claim prevail based on the principle “الأصل براءة الذمة” & “الأصل بقاء ما كان على ما كان”



Mudharabah-Ju'alah For Family Takaful (One Scenario)



Wakalah-Ju'alah For Family Takaful (One Scenario)





Issues With Modified Versions

In addition to issues raised in pure mudharabah & wakalah

- AAOIFI's shariah standards - company is not entitled to the surplus
- Violates the tenets of mudharabah whereby under mudharabah it is the profits that is shared and not the surplus



+ The Waqf Model

- Essentially wakalah but “tabarru” replaced with “waqf”
- Applied in Pakistan and South Africa
- TO creates a Waqf fund by executing an irrevocable Waqf deed and the shareholders set aside a part of their capital as seed funding for the Waqf fund (c.f. Mufti Hasan Kaleem)
- Solves the problem of the contribution, claims & investment return components since all are waqf.
- Solves the problem of ownership.
- What about suitability in other countries?



تغير الأحكام بتغير الأزمان

+ Waqf Issues

- Seed waqf “not recoverable at any stage”.
- Issue of surrender
- Rules on waqf are strict. Example :
 - It means that once a property, often a real estate, is dedicated as Waqf it remains Waqf for ever. Elimination of the Waqf character off a property requires difficult and lengthy process and is restricted to cases of substitution (istibdal) only. It needs an exchange against another property of equivalent value and equivalent service to the community in addition to a local court's approval. Upon completion of such an exchange, the new property is immediately dedicated as Waqf for the same purpose and beneficiaries of the former one. Hence theoretically perpetuity implies that Waqf properties should not decrease. (Monzer Kahf)

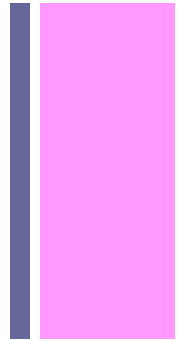


+ Monzer Kahf also said...

- Since Waqf is a voluntary act of benevolence, conditions specified by the founder must be fulfilled to their letter as long as they do not contradict or violate any of the Sharicah rulings. This implies that revenues of Waqf should exclusively be used for the objective stipulated by its founder. Diverting Waqf revenues to other objectives is not within the authority of management or supervisory courts as long as the stipulated objective is compatible with Sharicah on one hand and is still feasible on the other hand. If a Waqf purpose becomes unfeasible, the revenue of such a Waqf should be spent on the closest purpose available, both conceptually and geographically and if this is not workable the benefits of the Waqf must go to the poor and needy in accordance with the general rule that assumes “helping the poor and needy is the default objective of the Islamic Waqf.” Permanence covers all founder's stipulations whether they relate to purpose, distribution of revenues, management, supervisory authority, etc.



+ Issue of Perpetuity and Permanence



- Principle of probability amounting to certainty
 - What is the probability that the TO will survive forever?
 - Would not the principle of tabarru' solves these issues?



+ Having said that...

What about wadi'ah?

- Types of Wadi'ah - trust Wadi'ah (Wadi'ah yad al-amanah) and guarantee Wadi'ah (Wadi'ah yad al-dhamanah)
- Latter - combination of two contracts, i.e., deposit (Wadi'ah) and guarantee (dhaman)
- Similar to current or savings account in banking system
- To guarantees deposit (pls note that we only discussing risk fund here)

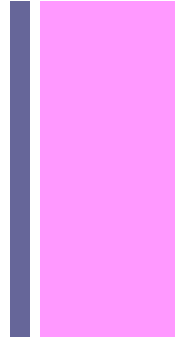


+ How?

- Wadiah amount will be reduced (wadiah naqisah) in line with deduction of claims, reserves and retakaful expenses.
- Similar to current accounts in Islamic banks - wadiah jariah or wadiah mutaharikah.
- In Islamic banking, payment of financing, utility bills and the like activated thru SI
- Similarly, the participants in a takaful contract makes the 'standing instruction' through the takaful contract.



+ Conclusion?



- Wadi'ah with guarantee (Wadi'ah yad al-dhamanah) solves all above issues
 - Only elements of contribution, claims, reserves. Element of investment return taken out of equation
 - Burden of proof on TO instead of participants
- Only need to look from economic and business viability.



+ Q & A

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