Highlights of the

DOME

International Takaful Report 2012 – 2013

Shariah and Legal Analysis

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International Takaful Summit 2012

Laporan Takaful Antarabangsa 2012 – 2013

Analisa Syariah dan Perundangan

تقرير التكافل الدولي ٢٠١٢ – ٢٠١٣

تحليل شرعي وقانوني

Rapport International sur le Takaful 2012 – 2013

Analyse du Charia et Juridique

Chapter 1

Legal and Regulatory Considerations for Establishing Takaful and Retakaful Operations in the GCC

Rationale

- Fragmented legal and regulatory landscape
- No single set of laws and regulations applicable to Takaful and Retakaful
- No passporting concept
- Providers must comply with the regulatory requirements of each individual GCC state
- Significant challenges to achieve sufficient scale

Non-admitted business

- ‘Non-admitted’ business is not permitted by the local regulators in the GCC
- In practice, enforcement is variable and ‘non-admitted’ insurance business is undertaken

UAE	Qatar	KSA	Bahrain	Oman	Kuwait
Non-admitted insurance is prohibited by Articles 24(1) and 26 of Federal Law No. 6 of 2007. No exceptions apply.	Non-Admitted insurance is prohibited by Article 44 of Decree No. 1 of 1966. Exceptions apply other than for insurances of governmental entities.	Non-admitted insurance is prohibited by Article 1 of the law of Cooperative Insurance Companies 2003. An exception applies for risks that cannot be insured locally.	Non-admitted insurance is prohibited by the Central Bank of Bahrain (“CBB”) Rulebook section AU 1.1.1. Some exceptions apply, including in respect of risks that cannot be insured locally.	Non-admitted insurance is prohibited by Article 57 of Decree 12/79. In theory an exception applies for individual life insurance. However, this exception is not utilised in practice.	Non-admitted insurance is prohibited by Article 50 of the Insurance Law No. 24 of 1961. No exceptions apply.

Exceptions

Notable exceptions to non-admitted business:

- Acquisitions
- Retakaful
- ‘Fronting’
- Financial Interest coverage
- Islamic windows

Chapter 3

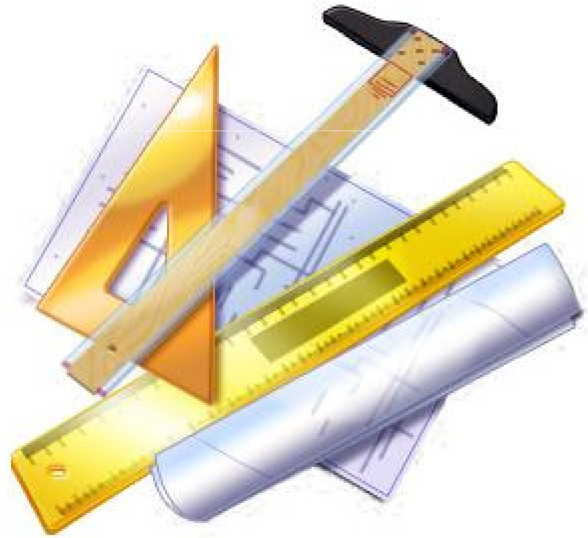
Country Case Study:
Analysis of Oman’s draft Takaful and Retakaful Regulations

Proposed new framework

- A new Takaful Undertakings Law and accompanying Takaful Undertakings Regulations
- Amendments to Ministerial Decision No. 101/90 dated 15/1/1990 regarding the Regulation Organizing Brokers Profession
- Amendments to the Code of Corporate Governance for Insurance Companies based on the Islamic Financial Services Board ("IFSB") guiding principles on governance for Takaful undertakings
- Amendments to Circular No. 2/2005 regarding the Code of Conduct for Insurance Business (with amendments broadly following the provisions of the IAIS Insurance Core Principles (ICP 24 to ICP 26))

Chapter 4

Wordings of Retakaful Contracts: Drafting Notes for Specific Clauses



Contractual certainty

- Certainly enables the purchaser to evaluate its Retakaful asset
- Certainty allows the Retakaful provider to determine the level of required reserves
- The Arbitration Act 1996 in English law allows the parties to elect Shariah to determine Retakaful disputes
- Shariah, legal and commercial points should be expressly detailed to avoid uncertainty

Chapter 5

Arbitration and Dispute Resolution for Takaful and Retakaful

Uncertainty in Governing Law

The requirement to comply with Shariah may arise in a number of ways :

- The Takaful agreement is governed by a secular national law but the Takaful operator wants to hold itself out as Shariah compliant
- The Takaful agreement is governed by a secular national law but the Takaful operator is forbidden by law or by its constitution from entering into any non-Shariah compliant contracts
- The Takaful agreement is governed by a secular national law but it also states that it shall be interpreted in accordance with Shariah principles
- The Takaful agreement is governed by a Shariah based or partially Shariah based national law and disputes could theoretically be subject to the jurisdiction of foreign courts or arbitral tribunals

Chapter 7

Implications of Protected Cell Companies, Segregated Account Companies and Similar Entities for Takaful and Retakaful

Pooling and segregation

Problem:

- Takaful companies have different approaches to underwriting risk appetite
- There is divergence in each Takaful company's contribution of underwriting surplus or deficit
- A participating Takaful company generating high surplus may not wish to share its surplus with loss or low surplus making participants

Solution:

- The Shariah principle of risk pooling encourages sharing of the upside and the downside
- The Shariah also permits the segregation of funds by business line, geographical scope etc. as long as there is risk sharing between at least two participants
- The Retakaful operator may set up various funds or segregated cells based on underlying risk characteristics

Chapter 8

Implications of Solvency II and the IFSB Standards for Takaful and Retakaful

Issues of Special Relevance

- Ring-fenced funds
- Qard

Conclusion and Q&A

The Report is available at:

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