

Takaful Basic Principles

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Overview

This Practice Note provides a high-level overview of the basic principles of Takaful in Oman.

Definitions

- *MSX*: Muscat Stock Exchange

Practical Guidance

The word “Takaful” is derived from the Arabic word “kafala”, which means guarantee. This corresponds to the essence of the concept of Takaful, which is a form of Sharia-compliant insurance according to which each participant (i.e., an insured party) contributes a specific monetary sum into a collective pool system (i.e., a Takaful fund) for the collection of contributions from all Takaful participants in order to protect and guarantee the other participants against loss. Each Takaful participant’s contribution is based and determined on the type of coverage they seek (e.g., life, healthcare, property, etc.) and their personal circumstances. Therefore, the basis of Takaful is mutual guarantee, cooperation, indemnity and protection of all Takaful participants covered by the Takaful scheme. Thus, the objective of Takaful is to diversify and distribute the risk of loss or damage among the participants.

Takaful was introduced as an alternative to conventional insurance and which, inter-alia, excludes non-Sharia compliant elements commonly found in conventional insurance i.e., excessive uncertainty (gharar), gambling (maisir), and interest (riba). Conventional insurance involves the elements of excessive uncertainty in the contract of insurance, gambling as a consequence of the presence of excessive uncertainty that rely on future outcomes, and interest associated with investment activities of the conventional insurance companies.

The Takaful fund is managed and administered on behalf of the participants by a specialised Takaful insurance manager (i.e., the Takaful insurance company), which charges a specific consideration from the participants to cover its costs (which include sale, underwriting, claims management etc.). Takaful claims filed by participants are reviewed by the Takaful insurance company and, once approved are paid out of the Takaful fund. This concept of Takaful is generally recognised and applied across the different GCC countries.

Oman Sultani Decree No. 11/2016 on the Issuance of Takaful Insurance Law provides a robust and comprehensive framework covering all aspects of the Takaful insurance sector and regulates all aspects of a Takaful operator’s activities e.g., oversight and reporting requirements, product standards and liquidity levels, under the oversight of the Capital Market Authority of Oman, which has been tasked with regulating and supervising Takaful operators in the Sultanate.

Article 10 of the Oman Sultani Decree No. 11/2016 requires Takaful insurers to be publicly listed on the MSX and to have a capital of no less than OMR10 million. Additionally, article 10 of Oman Sultani Decree No. 11/2016 implies that the carrying out of Takaful insurance business is limited only to dedicated Takaful companies; there is no mention of Takaful windows anywhere in the aforementioned law. Consequently, conventional insurers may not set up Islamic insurance windows. Both of the high capital requirement and limitation of business to dedicated Takaful insurers make investment in the Takaful sector in Oman a challenging task.

Further, article 22 of the Oman Sultani Decree No. 11/2016 requires Takaful operators to form an internal specialised Sharia committee for auditing the Takaful operator’s Sharia compliance. Other provisions of Oman Sultani Decree No. 11/2016 govern the maintenance of solvency margins, fund set-up and management and the transfer of Takaful business from one company to another.

Related Content

Legislation

- Oman Sultani Decree No. 11/2016 on the Issuance of Takaful Insurance Law

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- Associate member of the 3VB Chambers

Biography

- Mansoor Malik is founder and managing partner of Al Busaidy Mansoor Jamal & Co where he heads the firm's top tier, award-winning Corporate Commercial department and the litigation department. He has more than 35 years' experience of law and practice in Oman in both the contentious and non-contentious fields. He has been involved in Oman's most significant transactions over the past four decades, and is ranked as a star performer and leading lawyer by the major global legal directories.
- In the non-contentious field, Mansoor's expertise spans all aspects of banking and finance law including Islamic, corporate, project, acquisition, asset and structured finance, securitisation, corporate restructurings, mergers and acquisitions, capital markets, private equity and investment funds. He advises clients on complex projects, banking and regulatory matters.
- In the dispute resolution arena, Mansoor has expertise in prosecuting and defending high-value domestic and international arbitration of both public and private law disputes under ICSID and UNCITRAL rules before the International Court of Arbitration and the London Court of International Arbitration. In Oman, he is a Court of Appeal panel arbitrator. Mansoor also handles complex commercial litigation claims across a wide span of industry sectors including banking, power, water, agencies, insurance, employment and oil and gas and enjoys rights of audience before Oman's Supreme Court. His roster of clients includes major national and international corporates, financing institutions, credit agencies, government entities as well as some of the world's leading law firms.



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Biography

Zarrar is an associate in the Commercial Team and has broad legal experience with a focus on corporate and commercial work, Islamic Finance, real estate and projects. Within his areas of focus, Zarrar has advised multiple clients on mergers & acquisitions, commercial transactions and various real estate development projects.