



2ND TAKAFUL SUMMIT
JUMEIRAH CARLTON TOWER,
LONDON
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THE INSURANCE : *HALAL/HARAM CONUNDRUM*

**By:
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Director/Principal Consultant
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DATO' MOHD FADZLI YUSOF



Member of the Board of Directors of Pintar Learning Sdn Bhd, an e-learning provider accredited in the U.S. , Europe and Australia and a member of the Board of Directors of Heitech Padu Berhad, a company listed on the main board of the Malaysian Stock Exchange (Bursa Malaysia). He was a Member of the Islamic Council of the State of Negeri Sembilan (MAINS) until February, 2008. In this capacity he has been appointed as Member of Board of Directors of a number of companies under MAINS Group. From 1996 to 1999 he was a Member of the Islamic Council of the State of Terengganu (MAIDAM) and sat in a number of the Council's Committees including Zakat and Baitulmal, Finance and Muassaswah Gadain (Islamic pawn system). From 1999 to 2004, he was a Member of the Board of Directors of Terengganu Equity Ltd (PTB) as well as a Member of the Board of Directors of PTB Unit Trusts Management Ltd (Pengurusan ASDI).

He is a member of the Board of Directors of the Arab-Malaysian Takaful Company, a Jeddah-based Takaful operator, and Amana Takaful of Sri Lanka. He is also the Chairman, Consultative Committee, Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC), a subsidiary of the Islamic Development Bank (IDB) Group based in Jeddah. Dato Mohd Fadzli Yusof is also currently serving as a member of the Board of Trustees, Sultan Mizan Royal Foundation (Yayasan Di Raja Sultan Mizan).

He retired as the founding Chief Executive Officer of Malaysia's pioneer takaful operator, Syarikat Takaful Malaysia Berhad (Takaful Malaysia) in 2005. Under his stewardship, assets of Takaful Malaysia grew to RM 2.4 Billion. He led Takaful Malaysia in 2001 to be the first takaful company listed on Main Board of Bursa Malaysia. Takaful Malaysia was accorded 'Best Provider for Takaful Services' in 2004 by Euromoney, a London-based financial publication. Prior to joining Takaful Malaysia, he was a senior management of Malaysian National Insurance Bhd, then the largest insurance group in Malaysia. He was appointed by the Government as a member of the 'Special Task Force to Study Towards Establishing an Islamic Insurance Company in Malaysia' set up by the Malaysian Government in 1983.



DATO' MOHD FADZLI YUSOF



Whilst at the helm of Takaful Malaysia he was entrusted with the foundation and development of Asean Retakaful International (Labuan) Ltd, an off-shore retakaful operator in 1997 as a vehicle to provide retakaful facilities particularly to takaful operators in the Asean Region. He remained as its founding Chairman until his retirement in 2005. He was also a founder member of the Board of Commissionaires of P.T Syarikat Takaful Indonesia and Chairman of its family takaful subsidiary company, P.T Asuransi Takaful Keluarga until 2005.

Widely regarded as the man responsible for developing the country's takaful industry into what it is today, his contributions to global Islamic finance included providing primary assistance in the establishment of takaful operators in Brunei, Indonesia, Sri Lanka, Bangladesh and Saudi Arabia. As founder chairman of Asean Takaful Group, he established the foundation for technical and business cooperation among the regional Takaful operators. Takaful Malaysia established its subsidiary, Asean Retakaful International (L) Ltd (ARIL), arguably the world's first full-fledged dedicated retakaful company. Under his chairmanship from 1997 to 2005, not only ARIL's shareholding base has been expanded internationally, ARIL has transformed itself into a global-based retakaful Company that offers retakaful services to more than 40 takaful operators across the globe.

He was a member of the Board of Trustees of AAOIFI (the international Islamic accounting standards body) and also served the Task Force on Islamic Finance of the Labuan Offshore Financial Services Authority from 2002 to 2005. By professional qualification he is a Member of Communication, Advertising and Marketing Foundation UK (now merged as Institute of Marketing United Kingdom) carrying the title M.CAM since 1976. He has written three books on takaful.

Upon retirement in September 2005 from Takaful Malaysia, together with Islamic finance colleagues in Malaysia, Sri Lanka and Arab Saudi established First International Consulting Sdn Bhd, (consulting house focusing on Islamic finance) of which he is the Director and Principal Consultant.



ISLAMIC VIEW OF INSURANCE

The Concept of Insurance

- What is the common definition of insurance?
 - pooling of common resources to help the needy; the 'fortunate many' assisting the 'unfortunate few'.
 - the rule of 'large numbers'.
- Thus, the concept embodies the element of :-
 - joint help, solidarity, cooperation.
- It resembles the custom of blood money (diyat) under the practice of 'aqila' (joint responsibility) as practice in early Islamic era - basis of mutual insurance.



ISLAMIC VIEW OF INSURANCE

- Essentially, insurance as a concept not contrary to the rules of Islam.
- As religion, Islam propagates and commands the practice of these good virtues by Muslims.

WHY THE NEED FOR ISLAMIC COMPLIANT INSURANCE

Reason Insurance Not Accepted Under Shariah

- Business transaction of insurance based on 'buy-sell' contract.
- Insurance company (insurer) as the 'seller' and policyholder is the 'buyer'.
- The buy-sell contract not in accordance with required characteristics laid down by Shariah



WHY THE NEED FOR ISLAMIC COMPLIANT INSURANCE

Characteristics of a Contract in Conformity with Shariah

- Parties to the contract.
- Subject matter (Ma'qud Alaih)
- Offer and Acceptance (Sigah)



CONTRACT NOT IN LINE WITH SHARIAH

These characteristics must be free from elements which would make the contract void.

- Presence of Gharar (Unknown, Uncertain)
 - Selling/Buying of goods/services that do not exist.
 - Selling/Buying of goods/services that exist but unable to be delivered to buyer.
 - Selling/Buying of goods/services that exist and can be delivered to the buyer, but unable to determine/know its modes, quantum, exact timing, source, etc.



CONTRACT NOT IN LINE WITH SHARIAH

Gharar in insurance

- Due to its Buy-Sell transaction.
- Subject matter uncertain.
- For how long premium to be paid.
- When would claim occur.
- What would be the quantum of benefit.
- Where does the source of payment for the benefit coming from.
- Lopsidedness leading to unjust loss to one party to the contract at expense of the other party.



CONTRACT NOT IN LINE WITH SHARIAH

Gharar leads to 'Maisir' (Gambling)

- The uncertainty element in the transaction would lead to the presence of 'Maisir' (gambling).
- It is not to say that insurance is gambling.



CONTRACT NOT IN LINE WITH SHARIAH

Maisir in Insurance

- Policyholder hoping to receive 'huge' proceed from claim benefit against 'small' payment of premium.
- Under this buy-sell contract chance of policyholder loosing all premium paid is great.
- Like a chance transaction.
 - profit/loss to insurer dependant upon the chance of misfortune happening or otherwise (underwriting result).



CONTRACT NOT IN LINE WITH SHARIAH

Presence of 'Riba'

Financial Transaction of Insurance

Trapped with Practice of Riba (usury)

- Investment of both policyholders money and share holders fund in riba-related avenues.
- Penalty for late payment.
- Interest on policy loan.
- Refund of premium not on pro-rata basis.
- Guaranteed return.



RESOLUTION OF SCHOLARS

- 1972 – National Edict (Fatwa) Committee of Malaysia
'Life Insurance by present-day life insurance companies is a transaction containing elements of gharar, maisir and riba, thus as a consequence its contract is void – HARAM'
- 1985 - Fiqh Academy OIC
'The contract of commercial insurance with periodical fixed premium transacted by present-day insurance companies is a contract which is void and therefore HARAM in accordance with the requirements of Shariah'

BASIS FOR SYSTEM OF INSURANCE IN ISLAM

In line with the definition of pooling of common resources which uphold joint-help, brotherhood and mutuality Muslim scholars concluded that the system of insurance in accordance with these virtues and principles ought to be based on the concept of TAKAFUL



WHAT IS TAKAFUL

- Taking care of one's need (Kafala)
- Taking care of each other's needs
- Joint-guarantee (Takaful)

Definition – A pact among a group of members (participants) to jointly guarantee by taking care of each others' needs through financial assistance out of a defined common fund established by way of members' contribution.



WHAT IS TAKAFUL

- Not based on buy-sell transaction.
- It is a joint indemnity.
- Based on cooperation and mutual help among participants.



PUTTING THE CONCEPT INTO PRACTICE

Tabarru'

- Simply means to donate, to give away.
- Contractual obligation – participants agree to donate their contribution money including, if any, returns on its investment to assist fellow participants in need due to specific misfortune.
- Therefore tabarru' is for specific or defined purpose and to be credited in a specific/special account.



PUTTING THE CONCEPT INTO PRACTICE

- Any profit (surplus) to be shared among participants and operator.
 - Hence the principle of profit-sharing (al-Mudharabah) is also a contractual obligation
 - Profit, nevertheless not at the expense of the parties to the contract. Takaful obligation shall take precedent
- In line with doctrines of 'adil and ihsan'.



BUSINESS MODEL

- Scholars have agreed operation of takaful resembling insurance business can be in a number of structures/models.
 - Mudharabah.
 - Wakalah.
 - Mudharabah and wakalah (hybrid)
- Accounting policy will determine these business models.



BUSINESS MODEL

Notwithstanding choice of model

- Tabarru' applicable under all.
- Profit sharing present.

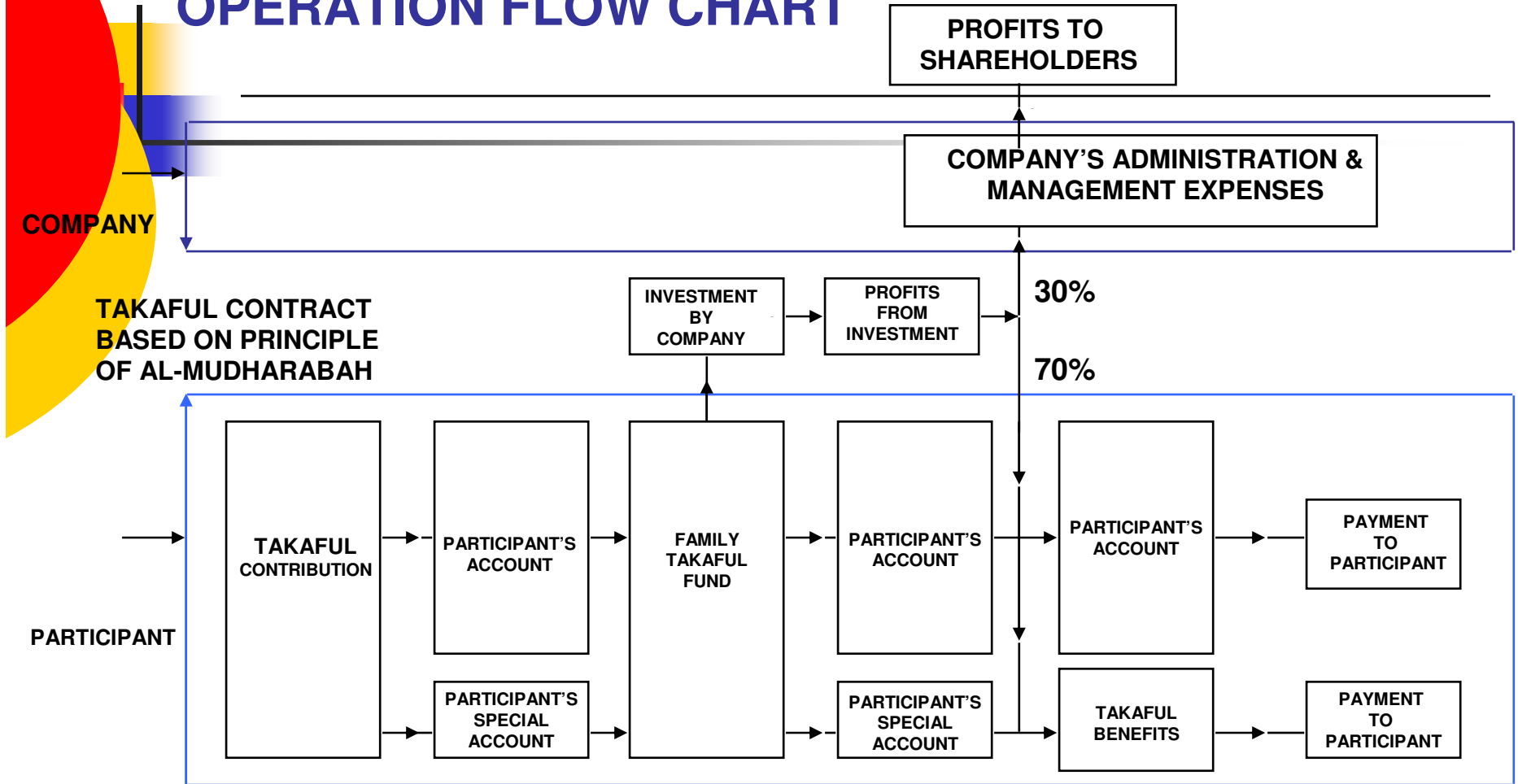


TYPES OF TAKAFUL BUSINESS

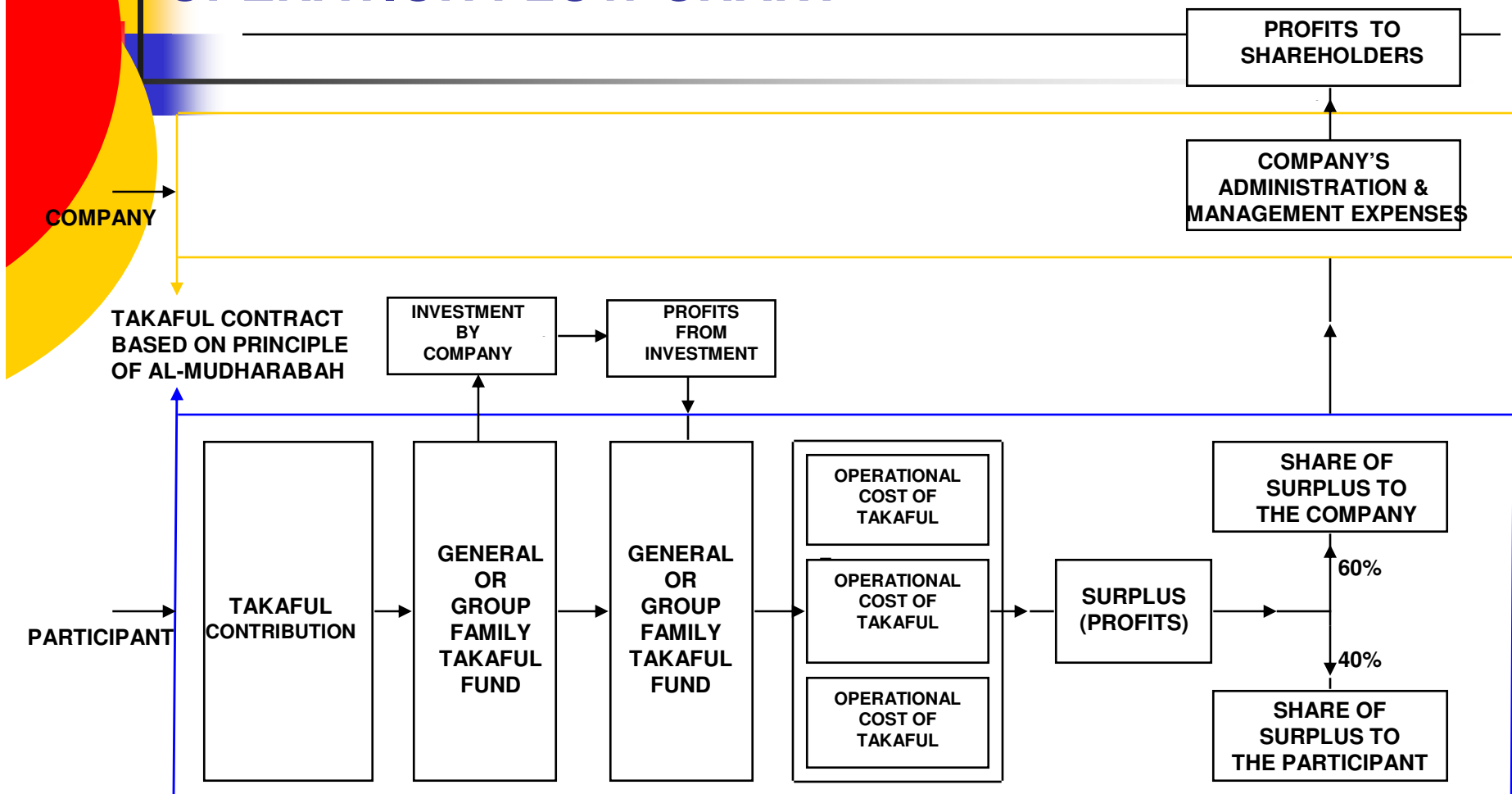
- General Takaful.
- Family Takaful.

There will be variation in operational flow between the above types of business

FAMILY TAKAFUL OPERATION FLOW CHART



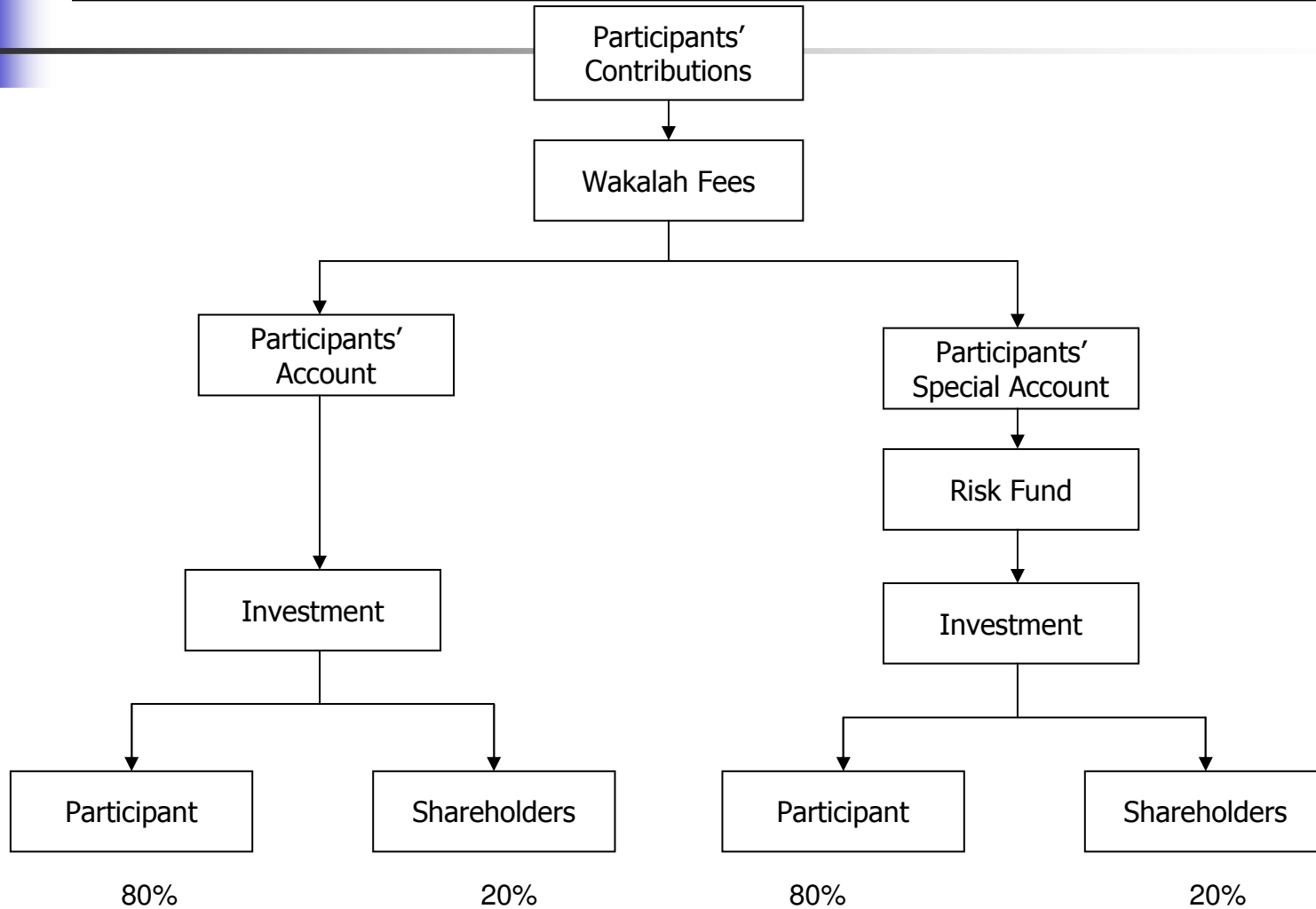
GROUP FAMILY / GENERAL TAKAFUL OPERATION FLOW CHART



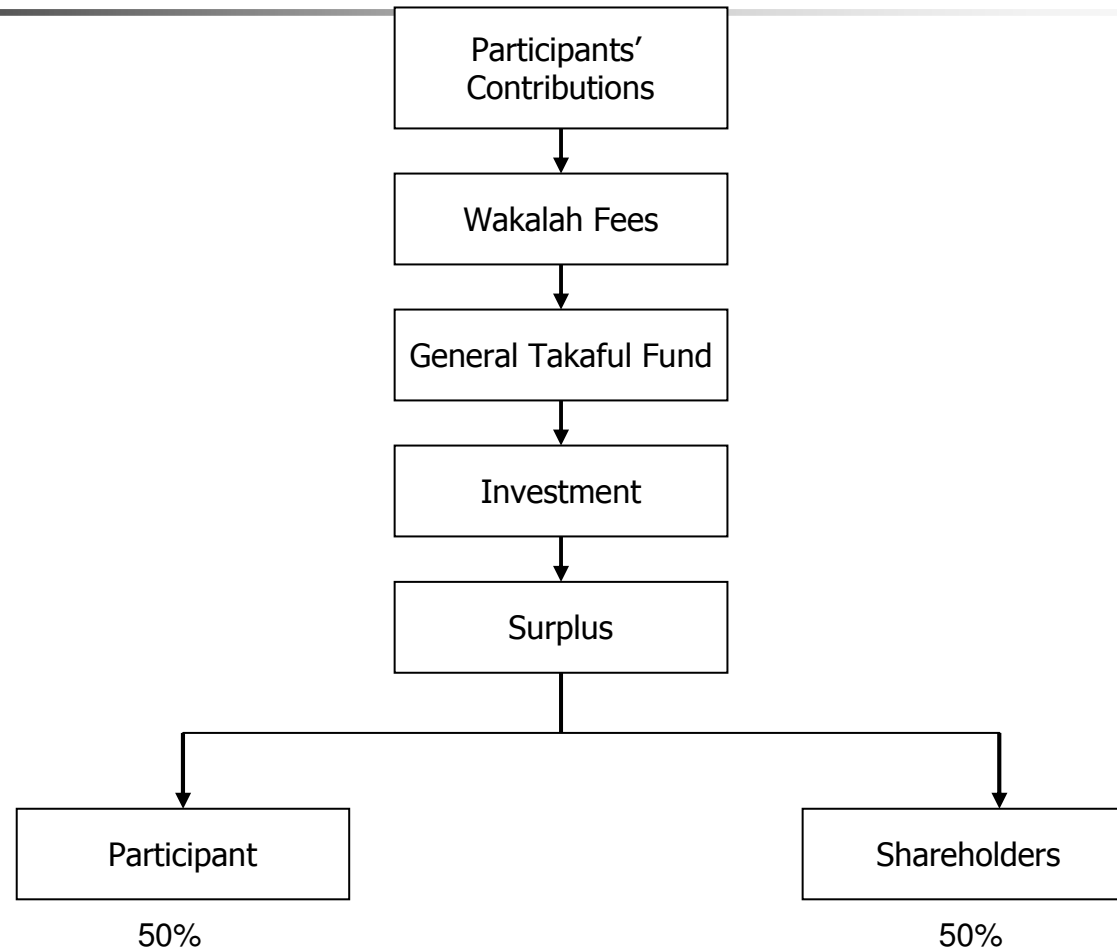
FAMILY TAKAFUL

OPERATION FLOW CHART

BASED ON AL-WAKALAH



GROUP FAMILY / GENERAL TAKAFUL OPERATION FLOW CHART BASED ON AL-WAKALAH



DIFFERENCES BETWEEN INSURANCE & TAKAFUL

<u>Standpoint</u>	<u>Insurance</u>	<u>Takaful</u>
■ Jurisprudence	Non-compliance Shariah principles	Compliance Shariah principles
■ Contract	Buy-sell transaction	Tabarru'/Mudhara bah/Wakalah
■ Obligation of company	Guarantee to insured	Fund manager/trustee

DIFFERENCES BETWEEN INSURANCE & TAKAFUL

<u>Standpoint</u>	<u>Insurance</u>	<u>Takaful</u>
■ Guarantee	Given by company	Mutual among participants based on joint-guarantee
■ Compensation	Paid from company's fund	Paid from takaful fund
■ Investment	Riba/usury and non-compliance with Shariah	Compliance with Shariah

DIFFERENCES BETWEEN INSURANCE & TAKAFUL

<u>Standpoint</u>	<u>Insurance</u>	<u>Takaful</u>
<ul style="list-style-type: none">Operating Expenses	Charged to the insurance fund	Either borne by shareholders' fund (for mudharabah model) or charged to participants as fixed upfront charges (for wakalah model)

DIFFERENCES BETWEEN INSURANCE & TAKAFUL

<u>Standpoint</u>	<u>Insurance</u>	<u>Takaful</u>
■ Profit	Belong to shareholders	Shared among participants and shareholders
■ Shariah Body	None	Establishment of the Body



RETAKAFUL

- Retakaful is a necessity of ensuring progressive and for the orderly growth of takaful operation.
- Takaful operator/company needs to protect its takaful fund/portfolio.
- Seen as not fully 'Islamic' if the facility has to be sourced/provided by conventional reinsurance.
- Opportunity to exchange business among/within takaful market.
- Developing expertise through experience.
- Balance of payment.



CONCLUDING REMARKS

- Takaful is a system not a product
- It must not only be seen but in actual practice must be fully shariah compliant
- Every facet of the operation/transaction must be shariah compliant



Thank you

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ABOUT US

First International Consulting Sdn Bhd

- A financial consulting group specialising in Islamic banking, capital market, takaful and other areas of Islamic financial services including but not limited to consultancy, advisory and training

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