

**Legal Notice No.....2018**

**INSURANCE ACT CAP 487**

**INSURANCE (OPERATIONS OF *TAKAFUL*) REGULATIONS, 2018**

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LEGAL NOTICE NO.....

**THE INSURANCE ACT**

(Cap. 487)

**INSURANCE (OPERATIONS OF TAKAFUL) REGULATIONS, 2018**

**IN EXERCISE** of the powers conferred by section 180 and read together with section 19A of the Insurance Act, the Cabinet Secretary for the National Treasury makes the following Regulations:-

**THE INSURANCE (OPERATIONS OF TAKAFUL) REGULATIONS, 2018**

**PART I — PRELIMINARY**

1. These regulations may be cited as the Insurance (Operations of *Takaful*) regulations, 2018. Citation.
2. In these regulations, unless the context otherwise requires— Interpretation.
  - “**board**” refers to the board of directors of the takaful operator;
  - “**contribution**” refers to the amount payable by a participant to a *takaful* operator under a *takaful* contract;
  - “**family takaful**” refers to insurance for the protection of the lives of individuals, groups of individuals and their families;
  - “**general takaful**” refers to insurance for the protection of participants against losses arising from specified perils;
  - “**operating model**” refers to a model that defines the relationship and fiduciary duties between the takaful operator and the participants.

**“participant”** means the party contributing to the takaful contract who is covered through the mutual protection and solidarity of the takaful contract;

**“participants investment fund”** refers to a fund to credit a portion of contributions from the participant for the purpose of investment or savings and applies to only family takaful.

**“Participants Risk Fund”** refers to a fund where a portion of the participants’ contributions are credited to pay participants who might suffer unexpected financial losses;

**“Qard Hasan”** refers to an interest free loan granted by the *takaful* operator to the participants’ risk fund in the event of a deficit;

**“Shareholders’ Fund”** refers to the account that holds the paid-up capital provided by the company’s shareholders from where administrative expenses are paid;

**“Shari’ah Advisory Council”** refers to a committee of scholars who are well-versed and competent in *Shari’ah* and its approaches to finance and are appointed by the takaful operator;

**“Takaful certificates”** refers to a document evidencing the existence of a *takaful* contract;

**“Takaful Operator”** refers to a company authorized to transact *takaful or re-takaful* business; and

**“Window operator”** refers to an insurer authorized to transact *takaful* business alongside conventional insurance business.

3. The objectives of these regulations are to:

Objectives

- (a) establish mechanism of regulating *takaful* business in Kenya; and

- (b) set requirements and minimum standards for operation and disclosures by *takaful* operators with the aim of protecting the interests of participants.

Scope

- 4. These regulations apply to all persons authorized to transact *takaful* business under the Insurance Act.

## **PART II —TAKAFUL OPERATION**

Sharia Advisory  
Council

- 5. In addition to the board of directors, every *takaful* operator shall have a Shari’ah Advisory Council.

- 6. The Shari’ah Advisory Council shall act as the advisory body on Shari’ah principles relating to *takaful* operations.

- 7. The management shall be responsible to ensuring Shari’ah compliance.

- 8. An insurer that intends to operate a *takaful* window shall:

Authorization of a  
‘window’ operator

- (a) Apply for authorization.
- (b) Submit a feasibility study as provided in the Act.
- (c) Set aside seed capital of at least *Kenya Shillings* three hundred million in respect of general *takaful* window and *Kenya Shillings* two hundred million in respect of family *takaful* window.

Operating Model

- 9. An insurer registered to operate a *takaful* window shall:

- (a) Establish a separate division to transact *takaful* business,
- (b) Appoint a head for the *takaful* operations who has the relevant experience and knowledge.
- (c) Keep separate set of accounts for *takaful* business.
- (d) Ensure separation of the *takaful* and conventional business.
- (e) Ensure that the words ‘*takaful* window’ are prominently displayed in all documents pertaining to *takaful* operations.

- 10. The *takaful* operator is required to adopt an operating model which shall have been approved by the Board and endorsed by the Shari’ah Advisory Council.

- 11. The *takaful* operator shall maintain relevant documentation relating to the operating model in use including:

- a) Contract governing relationship between participants and *takaful* operator.
  - b) Contract governing relationship between participants.
  - c) Fund segregation policy, with details of sub-fund if applicable.
  - d) Investment policy and the method for the calculation of investment profit for participants' investment fund.
  - e) Policy on recognition of surplus or deficit and its distribution.
  - f) Policy on deficit rectification mechanism including the repayment of *qard hassan*.
  - g) Remunerations to *takaful* operator policy and relevant Shari'ah principle or contract underlying the remuneration.
  - h) Any other relevant information required for understanding of the operating model.
12. A *takaful* operator shall submit to the Authority the operating model at the point of registration or prior to adopting a new operating model.
13. The *takaful* operator shall disclose the operating model adopted for use in the proposal forms, participants' certificates and the annual financial statements.
14. *Takaful* operators shall segregate the assets of the participants from the assets of the shareholders.
15. A *takaful* operator shall allocate, establish and maintain separate *takaful* funds and bank accounts in respect of family *takaful* business and general *takaful* business.

Segregation of Funds

### **PART III — DISTRIBUTION OF SURPLUS**

Distribution of  
Surplus

16. A *takaful* operator shall ensure that the funds are managed in an effective manner and that there are sufficient funds available at all times to cover all prudently unforeseeable events.
17. A *takaful* operator shall develop a policy on the management of the surplus in the participants risk fund with the advice of the Shari'ah Advisory Council.

18. Takaful operators shall observe the following when distributing the surplus:
- (a) The surplus to be distributed shall be recommended by the Actuary, approved by the Board of Directors and the Authority and endorsed by the Shari'ah Advisory Council.
  - (b) The surplus distribution shall be in line with the underlying contract.
  - (c) The surplus shall be determined based on full valuation of liabilities as certified by the Actuary and full audited results.
  - (d) The participants risk fund shall not be in a deficit after surplus is distributed.
  - (e) The surplus distribution shall not cause adverse financial implications on the participants risk fund.
  - (f) The surplus distribution shall be based on generally accepted actuarial principles.
  - (g) The surplus shall be distributed in a manner which ensures fair treatment of participants.
19. The Actuary shall not recommend surplus distribution if in his professional judgment, the surplus should remain in the participants risk fund as a buffer to meet future liabilities or to meet participants' reasonable expectations not specifically provided for in the actuarial valuation.
20. Profits earned in the Participants Investment Fund (PIF) shall be distributed to the participants and the *takaful* operator according to the underlying agreed contract.

#### **PART IV — SURRENDER OF CERTIFICATES**

21. The takaful operator shall ensure that the *takaful* contract specifies the circumstances where a surrender payment would be made to the participant and the basis of calculation for the surrender payment.
22. Takaful operators shall take into consideration the following when determining the surrender value, including the cost of any applicable surrender charge:
- (a) where relevant, in accordance with generally accepted actuarial principles;

Surrender of  
Certificate



- (b) in a manner ensuring fair treatment of participants; and
- (c) in compliance with standards on market conduct or fair treatment of participants issued by the Authority.

- 23. The takaful operator shall ensure that the amounts payable to the participants on surrender are made from the appropriate fund.
- 24. The takaful operator shall only apply a surrender charge where it is clearly specified in the takaful contract and the takaful contract shall specify the basis of calculating the surrender charges.

**PART V — MANAGEMENT OF OPERATION COSTS**

- 25. Takaful operators shall establish effective policies and procedures to manage operating costs. Management of Operating Cost
- 26. Takaful operator shall ensure that commissions and operating expenses are paid from the shareholders' funds.
- 27. The takaful operator shall ensure that claims and re-takaful contributions are paid from the participants funds.
- 28. The takaful operator shall ensure that commissions and related expenses paid to the distribution channels and management expenses of the takaful operations are in compliance with requirements and limits set by the Authority.
- 29. The takaful operator shall pay direct claims related expenses and direct investment related expenses from the participants' fund and the expenses must have been approved by the Shari'ah Advisory Council.
- 30. Takaful operators shall set and document their remuneration arrangements in the takaful contracts prior to signing a takaful agreement with the participants. Remuneration of the Takaful Operator
- 31. Takaful operators shall receive a fee or remuneration depending on the underlying takaful model and contracts.
- 32. Takaful operators shall ensure that the contribution agreed at inception of the takaful contract are adequate to service the certificate until the end of the contract and the recognition of income and profits are aligned to related expenses and liabilities.

33. The takaful operator shall report any scenario where a deficit has occurred or is expected to occur in the Participants Risk Fund to the Authority within seven days.
34. Takaful operators shall rectify the deficit via *qard hasan* from the shareholders' fund where the assets of the participants risk fund are insufficient to meet the liabilities.
35. For the purpose of determining a deficit in the participants risk fund, the takaful operator shall use assets and liabilities of the participants risk fund.
36. The *qard hasan* from shareholders' fund shall be repaid from the surplus arising in the participants risk fund in subsequent years.
37. The features in the policy on deficit rectification for the Participants Risk Fund shall include:
  - (a) Events which would require the prompting of the *qard hasan*.
  - (b) The process and assessment methodology to determine repayments.
  - (c) Surplus distribution methodology to participants while the *qard hasan* is outstanding.
  - (d) Remuneration to takaful operator while the *qard hasan* is outstanding.
  - (e) Time period over which the *qard hasan* is to be repaid.
  - (f) Circumstances where the *qard hasan* may no longer be required to be repaid.
  - (g) The impact of *qard hasan* on potential participants.
  - (h) Treatment of deficit or surpluses in the various sub funds operated in the Participants Risk Fund.
38. Takaful operator shall not use *qard hasan* from its shareholders funds to meet any loss occurring in the Participants Investment Fund, unless the loss is either as a result of negligence or mismanagement by the takaful operator.

## PART VI — DISCLOSURE AND TRANSPARENCY

39. Takaful operators shall publish details of its operational model together with its underlying Shari’ah principles. Disclosure and Transparency
40. The information published shall be accurate, adequate and up-to-date and shall be in a clear and understandable language with minimum technical jargon.
41. Where participants bear the investment risks, information disclosed shall be sufficient to enable understanding of market movements and its implications on the *takaful* funds.
42. Takaful operators shall ensure consistency in information being disclosed in different documents and the information given to participants shall be consistent with the information submitted to the Authority.
43. Takaful operators shall within seven days inform participants of any modifications or changes to its operational model or to the terms and conditions of the products and the impact of the changes.
44. Where the impact of the changes is material and financially significant, such disclosure shall be sufficiently detailed to be reasonably understood by the participants.
45. The Authority may prescribe specific reporting requirements for takaful operators.

Issued .....2018

**HENRY ROTICH.**  
Cabinet Secretary for the National Treasury