

The Takaful Law

(English Translation of the Final Dari Draft)

8th July, 2019

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Chapter 1: PRELIMINARY

Article 1. Basis

This Law has been enacted pursuant to Articles 10 and 11 of the Constitution of Afghanistan.

Article 2. Objectives

This Law achieves the following objectives:

1. Establish mechanism of regulation and supervision of all Takaful affairs.
2. Provide a framework for the establishment, investment and growth of Takaful.
3. Protect the rights and interest of Takaful customers.
4. Promote and support professional development of Takaful market.
5. Support sound competitive environment among Takaful Operators.

Article 3. Definitions

The following terms have been used to denote the meanings specified herein:

1. **Takaful:** a Shariah compliant collective contractual system aiming at attaining cooperation between a group of Participants to cover specific risks whereby each Participant pays a certain Contribution that leads to formation of an account through which due compensation is paid to whomever the covered risk is realized in accordance with the provisions of this Law.
2. **Takaful Operator:** a person who is permitted by the Takaful Authority to carry out Takaful business as Takaful operator.
3. **Takafulnama:** a document concluded between the Takaful Operator and the Participant, consists of the terms of contract, the rights and obligations of the two parties and the beneficiaries of the Takafulnama.
4. **Family Takaful:** Takaful providing financial protection to Participants and/or beneficiaries in the event of death or disability or at the end of Takafulnama period.
5. **General Takaful:** means Takaful other than Family Takaful.
6. **Takaful Contribution:** Takaful instalment payable by a Participant to the Takaful Operator pursuant to the Takafulnama.
7. **Beneficiary:** a person who acquires the rights of the Takafulnama at the start or acquired through legal transfer.
8. **Participant:** holder of a Takafulnama who signed the contract with the Takaful Operator and is obligated to pay the Takaful Contribution.
9. **Board of Directors:** the Board of Directors of the Takaful Operator.
10. **Investments:** the act of investing, laying out money or capital by a Takaful Operator with the expectation of profit.

11. **Minimum Capital Requirement:** the minimum capital required to be always maintained by a Takaful Operator as directed by Takaful Authority.
12. **Operating Model:** a Shariah compliant mechanism that defines relationship and duties between Takaful Operator and Participants.
13. **Shareholders' Fund:** the account that holds paid-up capital provided by Takaful Operator's shareholders from where administrative expenses and other amounts are paid as stipulated in this Law.
14. **Participants Takaful Fund:** a fund to which Contributions are paid.
15. **Takaful Risk Fund:** a fund risk component to which Participants' Contributions are deposited and from which risk related benefits are paid out.
16. **Takaful Investment Fund:** a fund to which the savings component of Participants' Contributions is deposited.
17. **Re-Takaful:** Takaful cover arranged by a Takaful operator with a re- Takaful operator for the risks it administers, wholly or partly.
18. **Supreme Shariah Board:** Board of Shariah experts constituted by Takaful Authority to act as advisory and policy making body on Shariah principles relating to Takaful operations.
19. **Shariah Board:** a Shariah Board constituted by a Takaful Operator to ensuring Shariah compliance of its Takaful business.
20. **Shariah Audit:** periodical assessment conducted from time to time, to provide an independent assessment of implementing Shariah guidelines in this law, in the Takaful regulations, of Shariah Board and Supreme Shariah Board.
21. **Shariah Auditor:** a person permitted by Takaful Authority to conduct Shariah audit of Takaful business.
22. **Takaful Certificate:** a document evidencing existence of Takafulnama.
23. **Takaful Window or Takaful Window Operator:** an insurance company authorized to transact Takaful business through a division.
24. **Takaful Practitioner:** a person licensed by Takaful Authority in their specific role to carry out Takaful business and includes Agent, Broker, Consultant, Auditor, Shariah Auditor, Signing Actuary, surveyor and loss adjuster.
25. **Agent:** a person who acts on behalf of Takaful Operator.
26. **Broker:** a person who carries out Takaful Broking business.
27. **Broking:** refers to the activities that includes mediation, preparation, and negotiating of Takafulnama or its renewal or extension for Participants.
28. **Consultant:** a person licensed by Takaful Authority to provides consultancy services to Takaful Operator, including but not limited to Takaful risk assessment and Shariah consultancy.

29. **Signing Actuary:** a person licensed by Takaful Authority who carries out duties as a signing or reviewing actuary.
30. **Surveyor:** a person licensed by Takaful Authority to examine damages and ascertains condition of losses such as damages of vehicles, goods, equipment or property.
31. **Loss Adjuster:** a person licensed by Takaful Authority to evaluate a Takaful claim and decides the amount of compensation to be paid to the claimant.
32. **Fit and Proper:** a person who in the judgment of Takaful Authority on the basis of documents and evidence available is honest, trustworthy, fair, possessing integrity and ability to make sound and effective decisions in his/her activities and requisite skills and experience for conducting the intended activities.

A legal person is considered to be a fit and proper person if in the judgment of Takaful Authority, all members of its Board of Directors, management, key staff and heads of the committees individually and collectively possess the qualities mentioned above.

A person shall not be regarded as a fit and proper person if he/she:

1. has been convicted by a competent court of an offense.
2. has been declared bankrupt by a competent court of law.
3. has been disqualified or suspended by a competent authority on grounds of personal or professional gross misconduct.
4. is an associate, representative who would not be regarded as a fit and proper person according to part 1, 2, and 3 of this Clause.

Article 4. Scope of the Law

- (1) This Law shall apply to all Takaful Operators, including government owned companies carrying out Takaful business and to all Takaful Practitioners.
- (2) The term "Takaful Operator" in this law includes Takaful Window Operator, unless mentioned otherwise.
- (3) Matters related to establishment and management of Re-Takaful Operators shall be regulated through a separate act.

Article 5. Prohibited Takafulnama

- (1) An individual or entity shall not obtain Takafulnama from outside Afghanistan except when domestic Takaful Operators are not capable to cover the risk.
- (2) The person referred to in Clause (1) of this Article who wants to obtain Takafulnama from outside of Afghanistan, must obtain prior approval of the Takaful Authority.

Article 6. General Principles of Takaful

(1) The parties to Takafulnama are required to adhere to the following general principles:

1. Shariah compliance
2. Mutual cooperation
3. Good faith
4. Insurable interest on Takaful basis
5. Proximate cause
6. Subrogation
7. Indemnity
8. Permissibility of Re-Takaful

Chapter 2: TAKAFUL AUTHORITY, DUTIES AND FUNCTIONS

Article 7. Takaful Authority

- (1) Insurance Authority of Afghanistan, in addition to the duties and functions under the conventional insurance law, is responsible to regulate, supervise and monitor Takaful affairs of Takaful industry in the country.
- (2) Insurance Authority of Afghanistan is referred to in this Law as Takaful Authority.
- (3) Takaful Authority shall have independent structure and state budget and operate in accordance with the provisions of this law.
- (4) Takaful Authority shall, for the purpose of its Takaful operation, duties and functions, make changes in its structure in accordance with changing needs and demands.
- (5) Issues and affairs related to Takaful Authority shall be defined through a separate regulation.

Article 8. General Duties and Authorities

- (1) Takaful Authority shall have following duties and functions:
 1. Establish, implement and supervise the policies and procedures and the general and developmental plans related to the Takaful sector.
 2. Set the future course of development of Takaful sector in the country.
 3. Supervise, regulate, evaluate, audit and inspect activities of Takaful Operators, branches of Takaful Operators, and Takaful Practitioners.
 4. Issuance, renewal, suspension, modification and revocation of licenses of Takaful Operators, branches of Takaful Operators, and Takaful Practitioners.
 5. The Takaful Authority, subject to the applicable law, shall sign agreements, memorandums of understanding with other countries, international organisations, intergovernmental entities, and private persons.
 6. Obtaining and exchanging supervisory information with other Takaful and insurance authorities in respect of Takaful Operators, in the country, or foreign Takaful operators intending activities in the country, or their legal entities.
 7. Design and implement regulations, procedures, circulars, and guidelines in relation to the Takaful affairs and conduct, ethics, governance, audit, risk management, Shariah governance and compliance, solvency, reserve mechanism and types of reserve of the Takaful Operators, rights and benefits of the Participants and for other rules mentioned in this Law.
 8. Collect reports, information and documents from Takaful Operators and Takaful Practitioners, as and when required.
 9. Opening a special bank account in Da Afghanistan Bank.

10. Receive and take action upon complaints and identify offenders and practitioners violating provisions of this law and conditions stipulated under their business license.
11. Publication of reports and information on the activities related to Takaful Operators and Practitioners.
12. Submission of reports to the competent authorities relating to the Takaful sector.
13. Implement all rulings issued by the Supreme Shariah Board.
14. Obtain approval of the Supreme Shariah Board for all new products and Shariah related matters submitted by the Takaful Operators.
15. Hire, train and maintain Takaful professionals and Takaful experts.
16. Perform other duties as specified under this law.

Article 9. Supervisory and Audit Powers

- (1) Takaful Authority shall have the following powers in order to supervise and audit Takaful activities:
 1. Supervise and audit Takaful Operators and Takaful Practitioners both from compliance and risk aspects and to use both off-site and on-site monitoring and risk-based supervision in order to examine the activities of Takaful Operators and Practitioners, evaluate its condition, risk profile and inspect the quality and effectiveness of its corporate governance and its compliance with relevant legislation and supervisory requirements.
 2. Conduct Shariah Audit of the Takaful Operators.
 3. Require auditors to submit their annual audit plan in the first quarter of the financial year to the Takaful Authority.
 4. Establish and implement standards for ensuring transparency in activities conducted by Takaful Operators and Takaful Practitioners.
 5. Evaluate and supervise Fit and Proper status of the Shareholders, Shariah Board Members, members of the Board of Directors, management and key staff of the Takaful Operators individually and collectively.
 6. Supervise the Takaful Operators and Practitioners in their conduct of Takaful business, to act with due skills, care and diligence, and to treat the Participants fairly, both before a Takafulnama contract and through to the point at which all obligations under a Takafulnama contract have been satisfied.
 7. Identify, monitor and analyse market and financial developments and other environmental factors that may affect Takaful sector.
 8. Take necessary emergency steps in case of extraordinary situation.
- (2) Employees of the Takaful Authority must oversee high standards of professionalism while performing their duties and shall ensure confidentiality.

- (3) Employees of the Takaful Authority shall have legal and personal immunity while performing their official duties.
- (4) The Takaful Authority shall periodically audit books and records of the Takaful Operators and Takaful Practitioners.

Article 10. Conducting Supervision

- (1) Takaful Authority shall carry out on-site audits of Takaful Operator, the frequency of such audits shall be based on the risk profile of each Takaful Operator. During such on-site audits, the Takaful Authority shall review financial, administrative and legal affairs, Shariah compliance, transactions, accounts, assets and documents including Re-Takaful agreements, evidence of income and expenses, and other necessary documents related to current and past affairs of Takaful Operator.
- (2) Takaful Operators shall be required to provide the necessary documents, records, and reports to the assigned auditors or the Takaful Authority during or before the audit. Auditor shall have access to where documents and records are kept such as computers and safes.
- (3) Except in cases where Takaful Operator faces bankruptcy proceedings or other emergencies, the Takaful Authority shall inform the Takaful Operator at least 10 days prior to performing the actions referred to the above through an official letter.
- (4) All information received by the Takaful Authority shall be dealt with confidentially except otherwise required by law.
- (5) Takaful Authority may use external auditor in order to audit Takaful Operator and give the necessary directions for accomplishment of the duties and the Takaful Operator shall bear the cost.

Article 11. Supreme Shariah Board

- (1) On the proposal of the Takaful Authority, High counsel of the Takaful Authority shall establish Supreme Shariah Board.
- (2) Supreme Shariah Board shall consist of 3 to 5 members.
- (3) Takaful Authority shall ensure that every member of Supreme Shariah Board fulfils the criteria and qualifications stated in Article 41 of this Law.
- (4) The Takaful Authority can suggest to its High counsel to add, in addition to the 3 to 5 Shariah members, experts in Takaful, insurance, legal or other relevant fields as non-voting members of the Supreme Shariah Board.
- (5) The members of Supreme Shariah Board shall elect one among them as chairman and another as vice chairman.

- (6) A member of a Supreme Shariah Board shall not be a director, member of Shariah Board, executive management staff, or a shareholder of any Takaful Operator in the country.
- (7) Supreme Shariah Board can invite the Shariah Boards of Takaful Operators for bilateral or collective meetings for deliberation on issues falling under the responsibilities of the Shariah Boards or issues concerning the Takaful Sectors.

Article 12. Functions of Supreme Shariah Board

- (1) Supreme Shariah Board is the highest authority for the Shariah compliance of the Takaful sector. In case of difference, Shariah opinions in the Takaful sector or dispute in the court, the opinion of the Supreme Shariah Board shall be final.
- (2) The Supreme Shariah Board shall have the following main functions:
 1. Advising Takaful Authority in supervising the Shariah compliance of Takaful sector.
 2. Evaluating and approving regulations, rules, procedures, policies, and guidelines of the Takaful Authority for Shariah compliance before sending and approving them from the relevant authorities and applying them to the Takaful sector.
 3. Evaluating and approving Shariah governance and compliance policies, products, manuals, and guidelines for operations and management of Takaful operators for Shariah compliance.
- (3) Supreme Shariah Board shall provide its opinions and recommendations in written form.
- (4) Members of the Supreme Shariah Board shall keep all information received from Takaful Authority, Takaful Operators and Takaful Practitioners as confidential.

Chapter 3: LICENSING

Article 13. Establishment of Takaful Operator

- (1) State-owned Takaful Operators shall be established based on the proposal of the Ministry of Finance, and pursuant to the approval of the State-Owned Supervision Committee and approval of the government.
- (2) Private Takaful Operators shall be established in accordance with the provisions of this law and private investment law and the Law of Limited Liability Companies.
- (3) Takaful Operators' method of operation with adherence to the provisions of this law is set through Articles of Association.

Article 14. Applicant Eligibility

- (1) A person with the following conditions is eligible to apply for license:
 1. Having trade license.
 2. Considered Fit and Proper.
 3. Not convicted in any financial or other crime or declared insolvent by a court of law.

Article 15. Separate License

- (1) Takaful Operator is required to obtain license from the Takaful Authority for Family Takaful and General Takaful separately before providing new Takaful Business.

Article 16. License Application

- (1) Takaful Operators and Practitioners licensed by the Takaful Authority shall carry out related activities in accordance with this Law and within the terms of issued license.
- (2) The Takaful Authority shall provide the application form to the interested persons for a fee of 2,500 AFs.
- (3) Applicant shall fill, sign and submit the application form provided by the Takaful Authority, which shall include but not limited to:
 1. Name and address of the company.
 2. Name, address and identification documents, Curriculum vitae and sufficient information of Shareholders.
 3. Name, address and identification documents and Curriculum vitae of Board of Directors, management and Shariah Board members.
 4. Type of intended Takaful Business
 5. Capital.
 6. Bank name where the minimum capital will be deposited.

- (4) The application shall be accompanied with supporting documents and information as specified by the Takaful Authority in accordance with this law, including but not limited to:
 1. Trade License
 2. Company's articles of association.
 3. Structure, operation plan, if required by the Takaful Authority.
 4. Tax identification number.
 5. Agreement or memorandum of understanding with Re-Takaful Operator.
 6. Feasibility study if required by the Takaful Authority.
- (5) Takaful Operator's name shall not resemble the name of any existence Takaful operator or insurance company or to the Takaful Operator or insurance company even if that has been dissolved in the last 10 years.
- (6) Initial approval of the proposed Takaful Operator' name shall be taken from the Takaful Authority before applying for the trade license.
- (7) The approval of the name shall be valid for 6 months only which could be renewed for another 6 months.

Article 17. Application Processing Fee

- (1) Applicant shall pay the following processing fee along with the Application to Takaful Authority:
 1. AFs. 100,000/- for Family Takaful, General Takaful, and Takaful Window.
 2. AFs. 10,000/- for Broker and Agent.
 3. AFs. 2,500/- for Consultant, Auditor, Shariah Auditor, Signing Actuary, Surveyor and Loss adjuster.
- (2) In case of multiple applications, the fee as stated in Clause 1 above shall be paid separately for each application.
- (3) Takaful Authority can modify the fee mentioned in Article 16 (2) and section (1) in this Article.

Article 18. Evaluation of Application

- (1) The Takaful Authority shall evaluate and issue initial approval of the application within 45 days from the date of submission of completed application in accordance with the provision of this Law.
- (2) The Takaful Authority may accept or reject the application or may request for further information.
- (3) The Applicant shall provide the missing or additional required information or documents within 30 days from the date of the Takaful Authority's notification.

Otherwise, the application shall be cancelled and a new application shall be submitted in accordance of the provisions of this Law.

- (4) The Takaful Authority shall issue the initial approval to the applicant after the completion of the application within 30 days in accordance with the provision this Law.
- (5) The initial approval shall be valid for 45 days only, otherwise, the application shall be cancelled and a new application shall be submitted in accordance with the provisions of this Law.
- (6) The Takaful Authority shall provide the applicant with grounds for its rejection in writing.
- (7) The applicant reserves the right to file a formal complaint to the high counsel of the Takaful Authority.

Article 19. Non-Issuance of License

- (1) Takaful Authority shall not issue license in the following cases:
 1. Chief executive officer, or its deputy, or senior staffs as stated in the application are not Fit and Proper.
 2. Board of directors' lack administrative experience or their activities are in conflict with the interests of Takaful business.
 3. Takaful Operator, directly or indirectly, has shared interest and control over Re-Takaful Operator or commercial relation with any other persons and entities, not considered Fit and Proper.

Article 20. Minimum Capital

- (1) Upon initial approval of the application by the Takaful Authority, the applicant shall deposit the following minimum capital into a bank approved by the Takaful Authority:
 1. AFs 70,000,000/- for Family Takaful, and General Takaful.
 2. AFs 1,500,000/- for Takaful Broking Business.
 3. AFs 250,000/- for Agent and Broker.
- (2) In case of multiple licenses, the fee as stated in Clause (1) above shall be paid separately for each license.
- (3) The Takaful Authority may modify the above-mentioned Minimum Capital and may require the minimum capital from other Takaful Practitioners.
- (4) Takaful Window is exempted from separate minimum capital requirements as it is a division of the insurance company, therefore, it shall operate within the framework of the insurance company's capital.

Article 21. Guarantee

- (1) Upon initial approval of the application by the Takaful Authority and before the issuance of the License, the applicant shall deposit the following guarantee into designated account in Da Afghanistan Bank:
 1. AFs 45,000,000/- for Family Takaful Operator and General Takaful Operator
 2. AFs 600,000/- for Takaful Broking Business.
 3. AFs 250,000/- for Agent.
- (2) In case of multiple licenses, the guarantee amounts as stated in Clause (1) above shall be paid separately for each license.
- (3) The Takaful Authority may modify the above-mentioned guarantee amount and may include other Takaful Practitioners keeping in view the underlying risks.
- (4) Takaful Authority may require the Takaful Practitioners to obtain Takaful or insurance policy to cover professional liability risks for negligence, wrongdoing and dereliction of duties keeping in view the underlying risks.
- (5) The above-mentioned amount shall remain in the designated account until the end of the Takaful business actives. In case of liquidation, this amount shall be paid to the Shareholders:
 1. after deducting all dues of the Takaful Authority by the Takaful Authority; and
 2. after settlement of all liabilities in accordance with the provisions of this Law and other applicable laws.

Article 22. Licensing Fee

- (1) Upon initial approval of the application by the Takaful Authority, the applicant shall deposit the following license fee after issuance of initial approval into the designated account of the Takaful Authority:
 1. AFs. 500,000/- for Family Takaful Operator, General Takaful Operator, and Takaful Window Operator.
 2. AFs. 50,000/- for opening a new branch, General Takaful Operator, and Takaful Window Operator.
 3. AFs. 60,000/- for Takaful Broking Business.
 4. AFs. 40,000/- for Agent.
 5. AFs. 20,000/- For Surveyors, Loss Adjusters, Auditors, and Actuaries.
 6. AFs. 7,000/- For Consultants and Shariah Auditor.
- (2) In case of multiple licenses, the fee as stated in Clause (1) above shall be paid separately for each license.

- (3) At time of renewal, only the renewal fee, which is 10% less than the above-mentioned fee as stated in this Article, shall be paid.
- (4) The Takaful Authority may modify the above-mentioned Licensing Fee from time to time.

Article 23. Issuance of License

- (1) Takaful Authority shall issue the license upon submitting the evidences of depositing the minimum capital, and guarantee amount and payment of the licensing fee by the applicant.
- (2) The License is not transferable.

Article 24. Duration of License and Renewal

- (3) Licenses issued in accordance with this law are valid for one year starting from the date of issuance.
- (4) An application for renewal of a license shall be submitted to the Takaful Authority within (30) days before the expiration of its validity, in case of a legitimate excuse, this period may be extended for another (15) days.
- (5) The Takaful Authority is required to evaluate the activities of the license holders as stipulated in this law in accordance with the risk-based approach, and may renew a license if assured that their activities are effective and in compliance with the provision of this law, international standards, articles of association, regulations, rules of procedures, manuals, and policies issued or approved by the Takaful Authority.
- (6) Any change in the articles of association of a license holder shall be approved by the Takaful Authority.

Article 25. Suspension and Revocation of License

- (1) A license is not valid in the following cases:
 1. if it is suspended in accordance with this law;
 2. It is revoked by Takaful Authority or as per request of the license holder.
 3. the insolvency proceeding of the license holder is initiated.
- (2) In case the Shareholders of a Takaful Operator applied for revocation of its license, the Shareholders and Takaful Operator are required to submit a plan for protecting the interests of the Participants and the claimants for approval of the Takaful Authority.
- (3) In case the proposed plan is approved by the Takaful Authority, it shall commence the official process for the suspension of the license and bar the Takaful Operator and Practitioners from executing new policies.

- (4) The Takaful Authority shall issue license revocation notification if the license is revoked based on the license holder request or by operation of law.
- (5) The Takaful Authority is required to notify the license holder in writing at least (20) working days in advance of suspension or revocation of the license, except in case of bankruptcy or decrease in value of the capital.

Article 26. Re-activation of non-active License

- (1) A Takaful Operator's license shall be considered suspended in case of not starting the Takaful operation within 180 days of its issuance.
- (2) The Takaful Authority reserves the right to reactivate the suspended license as mentioned in Clause 1 of this Article provided the Takaful Operator submit valid reason for non-activation of the Takaful Operation and repay the License Fee as stated in this Law.

Article 27. License Cancellation

The Takaful Authority shall cancel a license in the following cases:

1. A Takaful Operator wilfully violates Shariah compliance or Shariah governance as determined by the Supreme Shariah Council.
2. Takaful Operator did not practice the license within 6 months after issuance, except when the Takaful Authority extends it further for genuine reasons.
3. Takaful Operator halts its Takaful operations without the permission of the Takaful Authority.
4. Takaful Operator has failed to maintain more assets than liabilities in the Takaful Risk Fund continuously for more than 6 months.
5. Takaful Operator has furnished false, misleading or inaccurate information or has concealed or failed to disclose material facts in its application for license.
6. Takaful Operator fails to comply with solvency requirements as stated in this Law.
7. Takaful Operator is conducting its Takaful business in a manner likely to be detrimental to the interests of its Participants.
8. Takaful Operator has failed to conduct adequate Re-Takaful arrangements.
9. License holder has been found in breach of the terms and conditions of the license.
10. It is in the public interest to cancel the licence.
11. Takaful Operator refuses to accept a Participant.
12. Takaful business was contravening the provisions of this Law from inception or it has been proven later that it has contravened the provisions of this Law.
13. Takaful Operator is unable or failed to comply with the provisions of this Law and all other Takaful regulations.

14. In the other circumstances which is stipulated in this law.

Article 28. Licensing Foreign Persons

- (1) A foreign person, in accordance with the provisions of this law, can obtain license of Takaful business from the Takaful Authority.
- (2) The applicant mentioned in Clause (1) of this Article is required to provide certificate and license in the foreign country, which is attested by diplomatic mission of the respective country in Afghanistan or by Afghanistan's mission in that respective country, in addition to the documents and information required according to the law.

Article 29. Agency of a Foreign Takaful Operator

- (1) A foreign Takaful Operator, which has a financial stability certificate approved by the regulator of their country of registration, after receipt of license, may temporarily operate as an agency for a period of one year.
- (2) The entity referred to under Clause 1 of this Article may, after the period of one year, obtain license as a Takaful Operator as per provisions of this law.

Article 30. Branches of Takaful Operator

- (1) A Takaful Operator can establish branch offices in all provinces of Afghanistan as well as out of the country subject to a prior written approval of the Takaful Authority.
- (2) Takaful Operator shall submit the required supporting documents to the Takaful Authority at least 30 days prior to establishing a branch office in accordance with the provision of this Law.
- (3) The Takaful Authority may approve the establishment of a branch within 30 days after evaluating financial standings, stability, and capital of the Takaful Operator in accordance with requirements of this Law.

Article 31. Legal Representative

Every applicant who wants to obtain a license from the Takaful Authority shall introduce a legal advisor for the purpose of processing and obtaining the license.

Chapter 4: TAKAFUL WINDOW

Article 32. Amending Article of Association

A conventional insurance company licensed by the Takaful Authority to operate a Takaful Window must amend its article of association.

Article 33. Takaful Window Specific Requirements

A conventional insurance company licensed by the Takaful Authority to operate a Takaful Window must:

1. Establish a Takaful division to operate Takaful business.
2. Shall appoint a full-time head of Takaful Division with relevant experience and knowledge as specified by the Takaful Authority and shall not be associated with the conventional insurance operations of the company in any manner.
3. Appoint Shariah Board in accordance with provisions of this Law.
4. Ensure segregation between Takaful accounts from conventional accounts (funds and liabilities) in accordance with the provisions of this Law.
5. Ensure that the words “Takaful Window” are prominently displayed in all documents pertaining to Takaful operations and in all branches that offer Takaful services and promotional material.
6. Obtain a separate written approval for activating Takaful services in an existing branch.
7. All affairs related to the Takaful division and segregation of Takaful activities shall be regulated through a policy approved by the Shariah Board of the Takaful Window, and the Takaful Authority.

Chapter 5: GOVERNANCE of TAKAFUL OPERATOR

Article 34. Governance and structure of the Takaful Operator

- (1) A Takaful Operator shall have the following minimum administrative structure:
 1. Shareholders' Assembly
 2. Board of Directors
 3. Management Board
 4. Chief Financial Officer
 5. Compliance Officer
 6. Money Laundering Reporting Officer
 7. External Auditor
 8. Internal audit function
 9. Risk management function
 10. Signing Actuary
 11. Shariah Board
 12. Shariah Compliance Officer
 13. Treasury department
 14. Heads of Management Committees
- (2) Takaful Operator must take prior approval of the above-mentioned personnel stated in this Article from Takaful Authority before appointing.
- (3) The Takaful Authority shall conduct interview with the relevant persons as stated in this Article.
- (4) The Takaful Authority may accept or reject the appointment of above-mentioned personnel as stated in this Article or may request for further information.
- (5) The Takaful Authority shall provide the relevant Takaful Operator reasons of rejection in writing.

Article 35. Chief Executive Officer and Deputies

- (1) Chief Executive Officer who shall be responsible to Takaful Authority in all aspects of the business shall head the Management Board.
- (2) Takaful Operator may appoint one or more deputies to the Chief Executive Officer.

Article 36. External Auditor

- (1) Takaful Operator shall appoint an external auditor who shall audit the operations, and finance of the Takaful Operator in accordance with the provisions of this Law.

- (2) External auditor shall review actuarial reports that present immediate or future risks facing the Takaful Operator or the insurance company in case of Takaful Window, and the Takaful Operator shall be provided with copies of these reports in a timely manner.
- (3) The Takaful Operator shall notify the Takaful Authority as soon as the Takaful Operator intends to remove their auditor with an explanation of its decision, or as soon as the auditor resigns, and a new auditor must be appointed within three months of the previous auditor leaving.
- (4) Takaful Operator must obtain prior written approval from the Takaful Authority before appointing its auditor.
- (5) In considering the proposed appointment of an auditor as stated in this Article, the Takaful Authority shall take into account the expertise, resources and reputation of the auditor in the context of the size and complexity of the Takaful Operator's business as well as the degree of independence of the auditor from the management of the Takaful Operator in its audits.
- (6) The resigning auditor or the auditor terminated must inform in writing the reasons for resignation or termination to the Takaful Authority within 30 days of the event occurring.

Article 37. Signing Actuary

The Takaful Operator shall appoint an Actuary or seek the services of an actuary or an actuarial firm after obtaining a written permission from the Takaful Authority.

Article 38. Hiring and Termination of Employees

- (1) The Takaful Operator and Practitioners must hire or terminate all those persons as instructed by the Takaful Authority from time to time.
- (2) The Takaful Operator and Practitioners must provide sufficient and relevant training to all its staffs.
- (3) The Takaful Authority may prescribe any special training or qualification for any particular designation.

Article 39. Operations of Takaful Operators and Takaful Practitioners

The Takaful Operators and Takaful Practitioners shall manage their operations in compliance with the articles of association, which must be duly drafted in accordance with provisions of this law.

Article 40. Shariah Board

- (1) Shariah Board shall be appointed by a resolution of the Shareholders and shall be approved by the Takaful Authority.

- (2) Shariah Board shall consist of 3 to 5 members appointed in accordance with Article 41 of this Law.
- (3) The member shall elect one of them as the chairman and another as vice chairman.
- (4) Only natural person shall serve as a member of the Shariah Board.
- (5) The Shariah Board reports to the general assembly of the shareholders of the Takaful Operator.

Article 41. Minimum Qualifications of Shariah Board's Member

- (1) Takaful Operator shall ensure that every member of the Shariah Board fulfills the following criteria:
 1. To be Fit and Proper.
 2. Shall be Muslim, enjoying the legal capacity.
 3. Must be graduated from any recognised university in in Shariah or Islamic studies.
 4. Well versed in Fiqh al mua'amalat.
- (2) The Takaful Authority may issue separate rules of procedure, regulating the Shariah Board, its appointment and qualification of its members and may seek additional requirements.

Article 42. Rejection of the Appointment and Termination of Shariah Board Member and Shariah Compliance Officer

- (1) Takaful Authority may refuse appointment or terminate any Shariah Board member or Shariah compliance officer who fails to meet the requirements.
- (2) The Takaful Authority may refuse appointment or terminate an individual from Shariah Board membership or Shariah compliance officer where the individual:
 1. Is not Fit and Proper
 2. Is of unsound mind.
 3. As a result of ill-health is incapable of carrying out his duties.
 4. Is declared bankrupt or incapable of debt payments.
 5. If a Shariah Board member fails to attend 50% of the meetings of Shariah Board in a year without satisfactory reason.
- (3) If the Takaful Authority refuses or terminates appointment of an individual to Shariah Board or Shariah compliance officer, the Takaful Operator must terminate the appointment of that individual immediately.

Article 43. Restrictions on the Membership of Shariah Board

- (1) The following general restrictions shall apply to the membership of a Shariah Board:
1. An individual shall not be a member of more than three Shariah Boards of Takaful Operators at a time in Afghanistan.
 2. A member of a Shariah Board in a Takaful Operator shall not be a member of the Supreme Shariah Board of the Takaful Authority.
 3. A member of a Shariah Board in a Takaful Operator shall not be a director, executive management staff, or a shareholder of the Takaful Operator.

Article 44. Functions of Shariah Board

- (1) The Shariah Board shall have the following duties and functions:
1. Shariah Board shall be responsible to supervise the overall Shariah compliance of the Takaful Operator.
 2. Shariah Board shall be responsible to review policies, products, manuals and guidelines for operations and management of Takaful business for Shariah compliance.
 3. Shariah Board shall advise the Board of Directors on the matters related to Shariah compliance in the operation of the Takaful business.
 4. Chairman or vice chairman of the Shariah Board shall be allowed to attend the general assembly and Board of Directors meetings to opine on the Shariah compliance of the Takaful Operator or to share the Shariah Board's opinion with them.
 5. Advise the Takaful Operator on Shariah rulings in case of a conflict arising from Shariah Audit of the Takaful Operator's activities.
 6. Advise the Takaful Operator on Shariah rulings for correcting the findings of Shariah Audit.
- (2) The Shariah Board shall provide its opinions and recommendations in written form.
- (3) Members of the Shariah Board shall keep all information received as confidential.

Article 45. Independence of Shariah Board

- (1) No person shall be allowed to dominate and influence the Shariah Board's decision.
- (2) Shariah Board should play a strong and independent oversight role on Shariah-related matters of the Takaful Operator.

- (3) In order to fulfill their responsibilities, Shariah Board should be provided by the Takaful Operator with complete, adequate and timely information prior to all meetings and on an ongoing basis.

Article 46. Shariah Board's Approval

Where a Takaful Operator is required to file a document with Takaful Authority, which requires prior approval of the Shariah Board, Takaful Operator shall along with the requisite documents, annex the approval of the Shariah Board.

Article 47. Shariah Compliance Officer

- (1) Takaful Operator must have a Shariah compliance officer responsible to its Shariah Board regarding implantation of the Shariah Board's Opinion.
- (2) Shariah Compliance Officers shall have sufficient knowledge of Fiqh al Mua'amalat.
- (3) Takaful Authority may ask for more Shariah compliance officers depending upon the business activities of the Takaful Operator.
- (4) Shariah Compliance Officer shall serve as coordinator between the Shariah Board and management of Takaful Operator.
- (5) Shariah Compliance Officer shall serve as secretary of the Shariah Board.
- (6) Shariah Compliance Officer shall minute Shariah Board meetings, keep records of decisions, opinions, guidelines, approvals, and approved documents.

Article 48. Shariah Board Services through Consultancy

- (1) Consultancy may offer the Shariah Board services to Takaful Operators.
- (2) The provisions of Articles 41 to 46 shall apply to the members of the Shariah Board provided by the Consultancy.

Article 49. External Shariah Auditor

- (1) Takaful Operator shall appoint an external Shariah Auditor.
- (2) Shariah Auditor shall conduct Shariah Audit of Takaful Operator for each accounting period within subsequent quarter.
- (3) Shariah Auditor shall review all activities of Takaful Operator and shall prepare its report on the state of Shariah compliance by Takaful Operator in accordance with the provisions of this Law.
- (4) Shariah Auditor shall submit its report on Shariah Audit to Shariah Board and management of Takaful Operator.

- (5) Management of Takaful Operator shall prepare a plan for correcting the findings of Shariah Audit report and submit it to Shariah Board for guidance and to the internal audit function for implementation.
- (6) Takaful Operator shall implement corrective action plan in accordance with the guidelines of the Shariah Board.
- (7) Shariah compliance officer shall report implementation of the corrective action plan to Shariah Board.
- (8) Takaful Operator shall submit Shariah Audit report together with corrective action plan to Takaful Authority within (30) days from the date of receipt of the Shariah Audit report and implementation report upon correcting the findings.

Article 50. Implementation of Shariah Rulings

Chief Executive Officer, management board and relevant committees of Takaful Operator shall be responsible for the implementation Shariah Board's decisions.

Chapter 6: TYPES AND MODELS OF TAKAFUL

Article 51. Types of Takaful

- (1) Takaful Operators may offer Family Takaful and or General Takaful to Participants according to the provisions of this law and other regulations and guidelines.
- (2) Takaful Operators may offer deferent products under Family Takaful and General Takaful including micro and online Takaful after receiving approval of Takaful Authority according to the provisions of this law and other regulations and guidelines.

Article 52. Takaful Operating Models

- (1) Takaful Authority can select one or more Takaful models for Takaful sector.
- (2) Takaful Operator shall obtain prior written approval from Takaful Authority before launching or amending any model.
- (3) Only models selected by Takaful Authority shall be adopted by Takaful Operator and whose rules of procedure have been issued by Takaful Authority.
- (4) Takaful Authority can propose to the government any new Takaful model or amend existing models in accordance with the needs of Takaful sector and after approval of Supreme Shariah Board. New model or amendments shall be regulated in the relevant regulations and shall be enforceable upon approval from the relevant authority.
- (5) The Takaful Operator shall maintain relevant documentation relating to the Operating Model in use including:
 1. Takafulnama
 2. Funds policy
 3. Investment policy
 4. Surplus Policy
 5. Qard-e-hasana policy
 6. Takaful Operator fee policy
 7. Any other relevant information required by Takaful Authority.

Chapter 7: TAKAFUL FUNDS

Article 53. Shareholders' Fund

- (1) A Shareholders' Fund shall be maintained for Takaful business.
- (2) The Shareholders' Fund shall consist of the paid-up capital and undistributed profits to the Shareholders.
- (3) The Shareholders' Fund shall be maintained under the policy approved by its Board of Directors and Takaful Authority and Signing Actuary's recommendations.
- (4) In case a Takaful Operator conducts both Family and General Takaful business as a composite company then the Takaful Operator must ensure that full disclosures are provided in the Shareholders' Fund related income and outflow from each of the General and Family Takaful businesses, including but not limited to fees and investment profits and Qard-e- hasana advancements and repayments.

Article 54. Profit of the Shareholders' Fund

- (1) Profit of Shareholders Fund shall be based on the Takaful model adopted by the Takaful Operator and approved by Takaful Authority, and may consist of:
 1. Takaful Operator's fees
 2. Profit from the investment activities.
 3. Incentive fee.
 4. Any other fee.

Article 55. Expenses of the Shareholders' Fund

Expenses of the Shareholders Fund shall consist of all expenses related to the Takaful Operator including all marketing as well as administrative, and operational expenses.

Article 56. Undertaking to Discharge Liabilities

Shareholders must undertake to discharge unconditionally all claims of the Takaful Risk Fund, but their liability in this regard shall not exceed the Shareholders' Fund.

Article 57. Participants' Takaful Fund

- (1) Takaful Operator shall maintain Participants' Takaful Fund for Contributions received under Family Takaful business and General Takaful business, keeping separate book of accounts for each type of business.
- (2) All Contributions received under the Participants' Takaful Fund shall be divided into the following components, each component being clearly and unambiguously defined in Takafulnama namely:

1. Risk related component;
 2. Takaful Operator's fees component; and.
 3. Saving related component in case of Family Takaful.
- (3) The Takaful Operator shall have a policy for the Participants' Takaful Fund which shall be in accordance with the generally accepted principles and norms of Takaful business suitably modified with guidance by the Shariah Board of the Takaful Operator and Takaful Authority.
- (4) Any subsequent changes to the Participants Takaful Fund rules shall also be approved by the Shariah Board and Takaful Authority.

Article 58. Determination of Takaful Operator's Fee

- (1) Takaful Operator's fee shall be fixed upfront and may be expressed as a percentage of Contributions. Once fixed, it must not be adjusted during the Takafulnama period and must be clearly stated in Takafulnama.
- (2) Takaful Operator's fee must not be determined with reference to or be dependent on the surplus from Takaful Risk Fund.
- (3) Takaful Operator's fee shall cover the total sum of the following components:
 1. Management expenses.
 2. Distribution expenses including intermediary's remuneration and agents' commission.
 3. Other expenses involved in making Takaful products available to the public.
 4. A reasonable and appropriate margin of operational profits.
- (4) Takaful Operator must ensure that the management, distribution and other expenses, referred to in 1 – 3 in section (3) of this Article are paid from the shareholders' fund and not from the Participants' Risk Fund.
- (5) Takaful Operator's fee must be certified by the Takaful Operator's Signing Actuary and must be subsequently approved by the Shariah Board and Takaful Authority.
- (6) Signing Actuary shall ensure that the remaining contributions paid to the Takaful Risk Fund is, in his professional opinion, sufficient to cover the risk.

Article 59. Takaful Risk Fund

Takaful Operator may create a single Takaful Risk Fund or several Takaful Risk Funds for different classes of businesses.

Article 60. Inflow of Takaful Risk Fund

- (1) Inflow to the Takaful Risk Fund shall consist of:

1. Risk components received in Contributions.
2. Compensation from Re-Takaful Operators or re-insurers.
3. Commission from Re-Takaful Operators or re-insurers.
4. Qard-e-hasana in case of deficit.
5. Any donations made by the shareholders.

Article 61. Outflow of Takaful Risk Fund

Outflow from the Takaful Risk Fund shall be for:

1. Claims paid to the Participants.
2. Re-Takaful and reinsurance costs.
3. Return of Qard-e-hasana to the Shareholders' Fund.

Article 62. Technical Reserves

- (1) Takaful Operators shall establish technical reserves in the Takaful Risk Fund on the recommendation of Signing Actuary.
- (2) Technical reserves in the Takaful Risk Fund shall consist of all or any of the following reserves, or any combination of two or more of these or such other reserves as the Signing Actuary may require to be provided:
 1. Outstanding claims reserves.
 2. Unearned contributions reserves.
 3. Incurred but not reported reserves.
 4. Deficiency reserves.
 5. Contingency reserves.
 6. Technical Reserves to meet future liabilities under Family Takaful products.
 7. Reserve for Qard-e-hasana.
 8. Surplus equalization reserves.

Article 63. Assets of Takaful Risk Fund

- (1) The Takaful Operator must ensure that the assets of the Takaful Risk Fund are suitable to back the liabilities and absorb the risks of the Takaful business. Consideration should include the following:
 1. Diversification of assets.
 2. Liquidity of assets.
 3. Marketability of assets.
 4. Match in duration and currency.

Article 64. Takaful Investment Fund

- (1) A Takaful Investment Fund shall be created for the savings component of Participants' Contributions received under the Family Takaful.

- (2) Takaful Operator may create a single Takaful Investment Fund or several Takaful Investment Funds for different classes of businesses.
- (3) The amount in the Takaful Investment funds may be invested with a recognized financial institution or in the financial instruments as approved by Takaful Authority in accordance with principles of Shariah at the option of Takaful Operator pursuant to the approval of Shariah Board.
- (4) A portion of the profit of the investment amount or a fee or combination of both, depending upon the underlying investment model, shall be given to the Takaful Operator, which shall be determined by the Signing Actuary and approved by the Shariah Board.

Chapter 8: DISTRIBUTION OF SURPLUS

Article 65. Surplus Management Policy

- (1) Takaful Operator shall maintain a policy approved by Takaful Authority for the management of surplus in the Takaful Risk Fund with recommendations of the Signing Actuary and advice of the Shariah Board.
- (2) Unless objected to in writing within fifteen days of such filing by the Takaful Authority, the same shall be assumed to be approved and remain in force.
- (3) Takaful Authority may object to any terms of the Surplus management policy in future, then, the objections must be addressed by Takaful Operator to the satisfaction of Takaful Authority.

Article 66. Surplus Distribution Rules

- (1) Takaful Operator shall observe the following rules when distributing the surplus:
 1. Surplus distribution shall be recommended by the Signing Actuary, approved by the Board of Directors and endorsed by the Shariah Board.
 2. Surplus distribution shall be in accordance with the Takaful Risk Fund policy and Takafulnama.
 3. Distribution of surplus shall be based on full valuation of liabilities as certified by the Signing Actuary and full audited report.
 4. Takaful Risk Fund must not be in a deficit after surplus is distributed.
 5. Surplus shall be distributed in a manner which ensures fair treatment of Participants.
 6. All Participants who received Takaful benefits shall not receive surplus for that particular period.

Article 67. Actuary's Opinion

1. Signing Actuary shall not recommend surplus distribution if in his professional judgment, the surplus should remain in the Takaful Risk Fund as a buffer to meet future liabilities.
2. Takaful Operator shall inform Takaful Authority of the Signing Actuary's recommendations about the surplus within 15 days of the receipt of the same. Takaful Authority may accept or reject the recommendations of the Signing Actuary about the surplus.

Chapter 9: QARD-E-HASANA

Article 68. Qard-e-hasana Facility

- (1) A Qard-e-hasana facility must be set up by Takaful Operator to cover the deficit in Takaful Risk Fund.
- (2) The deficit shall be funded by way of actual transfer of funds as Qard-e-hasana from the Shareholders' Fund to the relevant Takaful Risk Fund.
- (3) Takaful Operator shall establish procedures for covering the deficit in the Takaful Risk Fund through Qard-e-hasana. The procedures shall include:
 1. Events for the prompting of Qard-e-hasana.
 2. Distribution of surplus to the Participants while Qard-e-hasana is outstanding.
 3. Time period over which Qard-e-hasana has to be repaid.
 4. Circumstances where Qard-e-hasana may no longer be required to be repaid.
 5. Any impairment thereof, and the impact of Qard-e-hasana on new potential Participants.

Article 69. Conditions of Qard-e-hasana

- (1) Qard-e-hasana facility cannot be removed by Takaful Operator except when the Takaful Risk Fund meets sufficiency requirements independently of the Qard-e-hasana facility.
- (2) In case the Takaful Operator is winding up, any Qard-e-hasana provided to the Takaful Risk Fund shall be treated as donation.

Article 70. Repayment of Qard-e-hasana

- (1) Surplus shall be used first to repay Qard-e-hasana prior to distribution of surplus to Participants.
- (2) Qard-e-hasana is written off if the Takaful Risk Fund is unable to return it for three years due to continuous deficit.

Chapter 10: TAKAFUL PRODUCTS

Article 71. New Products

- (1) Takaful Operators are required to obtain written approval of Takaful Authority prior to introduction of a new product.
- (2) Takaful Operator shall ensure that the following requirements are met prior to offering any new Takaful product:
 1. New product falls within the ambit of Takaful business as approved by Takaful Authority.
 2. Takaful Operator has capacity to adequately manage and control risks associated with new product, including financial capacity to support existing and new product lines.
- (3) Every Takaful Operator that meets the requirements stipulated herein shall submit to Takaful Authority the new Takaful product with product specification, Shariah structure, study covering technical, financial, accounting, market, Shariah and legal feasibility, Signing Actuary's certification that product is technically sound, approval of the Shariah Board and Board of Directors of the Takaful Operator, and other relevant information for review and approval.
- (4) Products policies and procedures must be approved by Takaful Authority.
- (5) Without approval of Takaful Authority, contracts between Takaful Operators or its branches and brokers concerning new products are deemed void and the violator shall be subject to penal provisions included in this Law and other applicable laws.

Article 72. Takaful Operator's Responsibility for New Products

- (1) Board of Directors and Chief Executive Officer of Takaful Operator are responsible for ensuring that anticipated risks of Takaful products are well managed and that needs and rights of Participants are appropriately addressed.
- (2) Board of Directors and Chief Executive Officer of Takaful Operator may delegate powers to another person, however, they will remain responsible.
- (3) In case of authority delegation, the delegating authority must be clearly documented and must set out the scope of authority given, and to whom the authority is given.

Article 73. Products Risk Management

- (1) Takaful Operators must have in place appropriate policies and procedures to prudently manage risks associated with Takaful products it offers and to manage its responsibilities to Participants.

- (2) Takaful Operators must ensure that policies and procedures are appropriate to the complexity of risks associated with the Takaful products offered by the Takaful Operator and are designed to identify and control Takaful products' risks across the value chain, including the stages of Takaful product development, approval, pricing, marketing, sale, distribution, portfolio management, accounting, and ongoing service and maintenance.
- (3) Policies and procedures for managing Takaful product risks for new Takaful product as well as re-pricing or effecting changes to the terms and conditions of existing Takaful products shall officially be implementable after it is approved by the Takaful Operators' Board of Directors and Takaful Authority.
- (4) Takaful Operators must ensure that the management of Takaful product risks is well integrated within the Takaful Operators' overall governance framework and risk management system.
- (5) All Risk management policies and procedures must be communicated by the Takaful Operator in a timely manner to all relevant parts and levels within the Takaful Operator's organization and must be periodically reviewed by risk management function of the Takaful Operator.

Article 74. Security and Adequacy of Systems

- (1) Takaful Operator shall have adequate information technology systems for Takaful business.
- (2) Takaful Operators must ensure the adequacy and security of information technology systems and infrastructure to support their product suites by performing proper and regular assessments on the information technology related risks.
- (3) Takaful Operators shall have a policy for the security and adequacy of systems.

Article 75. Monitoring Procedures

Takaful Operators must ensure that adequate policies and procedures are in place for effective monitoring and control of Takaful products' risks on an ongoing basis.

Chapter 11: TAKAFULNAMA

Article 76. Takafulnama Contract

- (1) Takafulnama shall be prepared and signed in two copies where one copy, along with its annexes and supporting documents should be maintained by Takaful Operator both in hard and soft copies, and the other copy shall be handed over to the Participant.
- (2) Takaful Operator, agents and brokers may inspect subject of Takafulnama prior to concluding the Takafulnama.
- (3) Takaful Operator, agents and brokers as well as Participants shall obtain consent of the other party in writing shall they insert terms and conditions that leads to increase or decrease in liability of any party.

Article 77. Takafulnama Proceeds

Takafulnama is signed in the name of Participant or third party, and the benefit under Takafulnama is paid to the Beneficiary.

Article 78. Takafulnama Renewal and Extension

- (1) Participant shall submit his written request for renewal or extension of Takafulnama to Takaful Operator.
- (2) Takaful Operator shall evaluate the renewal or extension of Takafulnama keeping in view the underlying risk and may amend the pricing accordingly.
- (3) Takaful Operator may not link the payment of benefit or part thereof to renewal of the Takafulnama.

Article 79. Contents of Takafulnama

- (1) Takafulnama shall include all terms and conditions agreed between the parties.
- (2) Parties and other beneficiaries are not authorized to change the Takafulnama contents without prior consent of the other party.
- (3) Takafulnama shall have the following contents:
 1. Full name and address of the parties.
 2. Title and code of Takafulnama.
 3. Contribution and the payment method.
 4. Maximum Takaful benefit amount and the method of compensating the loss.
 5. Subject matter of Takafulnama and its location.
 6. Risks of Takaful subjects.
 7. Duration of Takafulnama.
 8. Address and contact number for complaints at the Takaful Authority.
 9. Complete address and contact number of the claim department at the Takaful Operator.

10. circumstances and basis of surrendering Takafulnama and refund calculation to the Participant.
11. Any other Takaful Terms and Conditions agreed between the parties.
- (4) Takaful Authority can unify the contents of Takafulnama for any product or any specific sector and make it compulsory for Takaful Operators.

Article 80. Language of Takafulnama

- (1) Takaful Operators shall issue the Takafulnama and relevant documents in Pashto or Dari and English language.
- (2) In case it is deemed necessary by the Takaful Operator or the Takaful Authority, Takafulnama and relevant documents may be prepared in any local language.

Article 81. Joint Takafulnama

Two or more Takaful Operators may jointly issue a Takafulnama, in which case the risk will be covered jointly by the Takaful Operators in accordance with the terms of Takafulnama.

Article 82. Short-Term Takafulnama

- (1) Takaful Operator may issue short-term Takafulnama for less than a year.
- (2) Short term Takafulnama shall, in addition to the specific conditions of short-term Takafulnama, contain the contents of Takafulnama stated in this law.

Article 83. Multiple Coverage of Same Risk

A person cannot obtain multiple Takaful covers for same risk from the same or different Takaful Operators.

Article 84. Compulsory Takaful

- (1) Takaful Authority and other government departments may make Takaful coverage compulsory for any specific sector or persons in accordance with the provisions of this Law.
- (2) Matters related to the types of compulsory Takaful mentioned in Clause (1) of this Article shall be governed by separate regulations.

Article 85. Contribution

- (1) Participant shall be liable to pay the Contributions as per terms and conditions of the Takafulnama in the manner determined therein.
- (2) All contributions shall be paid directly to the Takaful Operator or to the bank account of the Takaful Operator.
- (3) Takaful Operator's liability towards the Participant shall commence when the Contribution is paid, unless otherwise agreed by the parties.

- (4) Contribution paid to the Takaful Operator shall remain subject to the taxation laws.
- (5) In case subject matter of Takafulnama or the underlying risk change, the Contribution may be amended consequent to agreement of the other party.
- (6) In case the parties do not agree to changes mentioned in Clause (4) of this Article, the Takafulnama will stand terminated.

Chapter 12: TAKAFUL OPERATORS AND PRACTITIONERS OBLIGATIONS

Article 86. Investments Principles

- (1) Takaful Operator shall observe the following principles when investing the assets:
 1. Investments shall be Shariah compliant in accordance with the guidelines of Shariah Board and Takaful Authority.
 2. Shall have a professional and effective treasury department through which it shall make all its investments.
 3. Assets are invested carefully and professionally in the best interest of Participants and Shareholders that is appropriate to the nature of its liabilities.
 4. The treasury function of the Takaful Operator and management shall ensure the interest of Participants and Shareholders in case of any conflict of interest.
 5. Shall invest in assets where it can explore, manage, and control their risks clearly and are liquid-able in accordance with needs of Takaful operator.
 6. Shall not investment in prohibited and illegal activities.

Article 87. Public Disclosure

- (1) Takaful Operators must publish details of its operational model together with its underlying Shariah principles along with Shariah certificate duly signed by the Shariah Board.
- (2) Takaful Operators must publish details of its Shariah Board on its website and brochures and shall make it available to the Participants.
- (3) Information published shall be accurate, adequate and up-to-date and shall be in a clear and understandable language together with the translation in Pashto and Dari languages with minimum technical jargon.
- (4) Takaful Operators shall ensure consistency in information disclosed in different documents and the information given to Participants shall be consistent with the information submitted to Takaful Authority.
- (5) Takaful Operators shall within seven days inform Participants and take their consent of any modifications or changes to its operational model or to the terms and conditions of the products and the impact of such changes.
- (6) Where the impact of the changes is material and financially significant, such disclosure shall be sufficiently detailed to be reasonably understood by the Participants.

- (7) Takaful Authority may prescribe specific reporting requirements for Takaful Operators regarding disclosure and publishing details to the public.

Article 88. Forbidden Activities

- (1) Takaful Practitioners are required to avoid doing the following:
1. Use of fraudulent and illegal commercially methods.
 2. Performing money laundering and financing terrorism using financial resources arising from Takaful services.
 3. Issuing dummy Takafulnama.
 4. Provide false information and report about the financial conditions to Takaful Authority, Participants and the public.
 5. Entering in an agreement or activity that leads to the creation of barriers to Takaful sector or monopoly of Takaful services.
- (2) Issues concerning the money laundering shall be regulated through the relevant law.

Article 89. Denial of Peril

Takaful Operator shall not deny claims related to a risk or unexpected risk that is the basic cause to a loss without proper investigation.

Article 90. Cessation Takaful Services

- (1) Takaful Operator, agent and Broker cannot cease their operation without a written approval from the Takaful Authority.
- (2) Takaful Operator, agent and Broker shall not refuse to provide Takaful services to any person. Every refusal shall be reported to the Takaful Authorities together with reasons for non-providence of services.

Article 91. Capital Adequacy

- (1) Takaful Operator shall maintain adequate capital to carry out the business activities to cover the required expenses and obligations mentioned in this Law.
- (2) Takaful Authority shall supervise and apply the capital requirements and accounting methods of Takaful Operators, in accordance with international standards implemented in the country.
- (3) Takaful Operators shall increase their capital above the level of the risks faced by the related business, in accordance with the Takaful Authority instructions.
- (4) Takaful Authority shall value the assets and liabilities of Takaful Operator in accordance with provisions of this law and subject to Takaful Authority supervision schedule.

- (5) Issues concerning to valuations of assets and liabilities of Takaful Operators shall be regulated in a separate rule of procedures.
- (6) Takaful Authority may value the assets and liabilities of the Takaful Operators or may outsource to contractors at the cost of Takaful Operators.

Article 92. Re-Takaful

- (1) A Takaful Operator is required to obtain Re-Takaful from a Re-Takaful Operator in Afghanistan or abroad as per the approval of the Takaful Authority.
- (2) The Takaful Operator is required to submit a certificate of existence and financial stability of the Re-Takaful Operator, issued by the relevant regulator, to the Takaful Authority.
- (3) In case Re-Takaful is not feasible, the Takaful Operator with the approval of its Shariah Board shall provide reasonable justification in writing to the Takaful Authority to obtain an exceptional approval. The Takaful Authority with the approval of the Supreme Shariah Board may give an exceptional approval for reinsurance.

Article 93. Record Keeping

- (1) Takaful Operators and Takaful Practitioners are required to maintain relevant Takaful documents, after expiration date, at least for five years.
- (2) Takaful Operators and Takaful Practitioners are required to maintain soft copy and complete documents of assets, transactions and affairs in accordance with the usual and appropriate methods and systems.
- (3) Takaful Authority in order to ensure certainty, may examine and assess the Takaful documents kept by the Takaful Operators and Practitioners.

Article 94. Inspection Charges

Takaful Operators shall bear the cost of external auditor required by the Takaful Authority to inspect and audit the financial or other books of Takaful Operators.

Article 95. Surrender Certificate

- (1) Takaful Operator shall outline in Takafulnama the circumstances and basis of surrendering Takafulnama and refund calculation to the Participant which shall be Shariah Board.
- (2) Takaful Operator shall take into consideration the following when determining the surrender value:
 1. Where relevant, in accordance with generally accepted actuarial principles;
 2. In a manner ensuring fair treatment of Participants; and
 3. In compliance with standards on market conduct.

- (3) Takaful Operator shall ensure that the amounts payable to the Participant on surrender are withdrawn from the Takaful Risk Fund and Takaful Investment Fund to the extent applicable.
- (4) Takaful Operator shall only apply a surrender charge where the basis of calculating the surrender charges is clearly specified in the Takafulnama representing the cost of processing the surrender request.

Chapter 13: DEFICIENCY AND LOSS RECTIFICATION

Article 96. Claim

- (1) Beneficiary shall submit its claim in accordance with the terms of the Takafulnama to the Takaful Operator.
- (2) Takaful Operators shall pay the Takaful benefits to the Beneficiary subject to the terms of Takafulnama and in accordance with the losses occurred within 30 business days, starting from the claim's date.
- (3) Takaful Operator shall, on the basis of set rules and producers of the Takaful Risk Fund and in the Takafulnama, pay the losses to the Beneficiary relevant fund.
- (4) Takaful Operator shall not reject the claim except on the basis of clear and reasonable evidences and also must provide to the Beneficiary reasons of the rejection of the claim in writing.
- (5) Takaful Operator must report the rejected claim to Takaful Authority within 7 business days.
- (6) The Beneficiary has the right to file a complaint to Takaful Authority against the rejection of the claim, and has the right to file lawsuit. Takaful Authority shall reply to the Beneficiary within 15 business days of the receipt of the complaint.
- (7) The claim period is one calendar year starting from the date of the incident.

Article 97. False Claims and Documents

- (1) Participant shall not provide false information or reports intentionally for obtaining money or benefits through fake manifestation file claims and arrange false documents for compensation.
- (2) Takaful Operators are required to establish effective mechanisms to determine and combat fraud, and Takaful Authority may supervise the implementation of this mechanism.

Article 98. Mandatory Measures for Deficit in the Takaful Risk Fund

- (1) Takaful Operators must rectify the deficit through Qard-e-hasana where the assets of the Takaful Risk Fund are insufficient to meet the liabilities.
- (2) The Takaful Operators shall take all measures as may be directed by the Takaful Authority in this respect.

Chapter 14: REPORTING TO TAKAFUL AUTHORITY

Article 99. Financial Reporting to Takaful Authority

Financial reporting of Takaful Operators, Practitioners, and holding companies of Takaful Operators shall take place in accordance with the provisions of financial reporting in the Insurance law.

Article 100. Takaful Specific Reporting

(1) In addition to the requirements in Article 99 of this law, the financial report of the Takaful Operator shall also include the followings:

1. Separate revenue account for each class of Takaful business (Family and General).
2. Takaful transactions for each Takaful product.
3. Financial details of Takaful funds.
4. Details of Qard-e-hasana.
5. Detail of Surplus and its distribution
6. Details of Shariah compliance.
7. Amendments in Shariah Board and Shariah department.
8. Findings of the Shariah Audit
9. Any other reporting required by Takaful Authority.

Chapter 15: AUDITING AND SIGNING ACTUARY

Article 101. Audit Report

- (1) Takaful Operator, Practitioners, and holding companies of Takaful Operators shall prepare annual Audit Report for the operation in accordance with accounting standards approved by Takaful Authority in accordance with the provisions of audit reporting in the in the Insurance law.
- (2) In addition to requirements in clause (1) of this article, Takaful Operator shall include in the audit report the Takaful specific activities as stated in Article 100 of this law.

Article 102. Role of Signing Actuary

- (1) The Takaful Operator's Signing Actuary shall undertake the following duties:
 1. Obtain all required information and particulars from the previous Signing Actuary.
 2. Examine the Takaful Operator's financial position.
 3. Evaluate the Takaful Operator's ability to meet its future obligations.
 4. Evaluate the conditions of Takaful Risk Fund and Qard-e-hasana.
 5. Price the Takaful Operator's products and certify that the price is adequate.
 6. Determine and approve the Takaful funds' technical provisions.
 7. Provide advice and recommendations related to the Takaful Operator's investment policy.
 8. Determine and recommend to the Shariah Board Takaful surplus that may be made available for distribution to the Participants.
 9. Any other actuarial recommendations.
- (2) The Signing Actuary shall be professionally liable for his advice and technical services provided to the Takaful Operator, and shall upon the Takaful Operator's request, furnish the Takaful Operator's or insurance company (in case of Takaful Window) management with the following particulars and documents:
 1. Sound actuarial information and statements about the Takaful Operator's or insurance company's (in case of Takaful Window) present and future financial position.
 2. Annual report, within sixty days from the expiry date of the Takaful Operator's or insurance company's financial year reflecting the adequacy of the Takaful Operator's Technical Provisions.
 3. Annual report, within sixty days from the expiry date of the Takaful Operator's financial year reflecting the pricing adequacy of the Takaful products in particular the adequacy of the contributions into the Participants' Risk Fund.

4. Takaful Operator's investment returns analysis.
 5. Takaful portfolio development analysis.
 6. Cost Analysis.
 7. Report reflecting the adequacy or otherwise of matching assets with liabilities.
 8. Underwriting policy development.
- (3) The Takaful Operator shall ensure compliance with all required actuarial duties and reports. Otherwise, the Takaful Authority shall appoint an actuary at the Takaful Operator's expense to undertake these actuarial duties.
- (4) The Takaful Operator's Signing Actuary shall, in the presence of immediate or future risks facing the Takaful Operator, submit a report on an urgent basis, but no later than seven normal days, directly to the Takaful Operator's management. The management shall examine the report and recommend corrective actions, and forward all related information to Takaful Authority within fifteen days from receiving the report.
- (5) The Takaful Operator's Signing Actuary shall provide a financial condition report at least on an annual basis or specifically whenever required by the Takaful Authority.
- (6) The financial condition report mentioned in clause (5) of this Article must provide an objective assessment of the overall financial condition of Takaful Operator complying with the Takaful guidelines issued by the Takaful Authority.
- (7) Takaful Operator shall have an inclusive enterprise risk management policy for managing its risks, the risks of Takaful funds, and to clarify the role of Signing Actuary, the risk management function, Shariah Compliance Officer, and others in this regard.

Chapter 16: SOLVENCY REQUIREMENTS

Article 103. Total Balance-sheet Approach

Takaful Operator must adopt a total balance-sheet approach for each of Family and General Takaful Business with a clear separation between Participants' Takaful fund and Shareholders' fund.

Article 104. Solvency Provisions

(1) Takaful Operator shall ensure:

1. Adequate solvency provisions are made in the Takaful Risk Funds to ensure that Participants' claims can be met.
2. It has adequate capital resources to meet its own expenses and obligations including need to provide Qard-e-hasana to Takaful Risk Fund in the event of deficit in Takaful Risk Funds.

(2) Takaful Operator shall identify its own capital that is available for Qard-e-hasana to the Takaful Risk Fund in addition to the Minimum Capital Requirement.

Article 105. Solvency Parameters

Takaful Authority shall set parameters and target criteria for Takaful Operator's solvency requirements.

Chapter 17: PENALTIES

Article 106. Unlicensed Activity

(1) The following fines shall be imposed for conducting Takaful business and/or offering Takaful business without obtaining the requisite license from the Takaful Authority or indulges in activities in contravention with the terms of the license issued by the Takaful Authority as per provisions of this Law:

1. Takaful Operator: AFs 500,000.
2. Broker, Auditor, Surveyor, and Signing Actuary: AFs 300,000.
3. Agent, Loss Adjuster and Consultant: AFs 150,000.

(2) In case a person repeats the unlicensed activity once again, the fines mentioned in this Article shall be charged double of the rate mentioned above.

Article 107. Delay in Renewal of License

In case a Takaful Operator or Takaful Practitioner commits delay in renewing the relevant license, it shall be subject to a fine of AFs 5,000 for each day of delay.

Article 108. Violation of Licensing Requirements

In case, where identified, during the evaluation process, that the application form for license stipulated of this law contains false and untrue information, the accused shall be prosecuted and sentenced for (AFs 100,000) a Hundred Thousand Afghani fine.

Article 109. Offering Takaful Product without Permission of Takaful Authority

Any Takaful product not approved by Takaful Authority offered by a Takaful Operator, Broker, or Agent shall not be valid and the Takaful Authority shall pay AFs 300,000 fine per Product.

Article 110. Shariah None-Compliance

(1) In the event, Takaful Operator deliberately violates Shariah principles or does take corrective measures to correct Shariah none-compliance, shall be fine with (AFs 300,000).

(2) In the event of the violation continues, then, Takaful Authority has the right to suspend the license.

Article 111. Participation in Foreign Takaful

In case a person violates Article 5 of this Law, it shall be subject to fine of not more than the Contribution set in the Takaful Contract.

Article 112. Delay in Providing Information

- (1) In the event that Takaful Operator or Takaful Practitioner fails to comply with the reporting requirements enunciated by this Law, a fine of not less than AFs 3,000 shall be imposed on them.
- (2) In case, the delay exceeds 10 working days, the Takaful Operator or Takaful Practitioner, as the case may be, shall be fined AFs 5000/ per day for the entire period of delay, while fine of AFs 7,000 per day shall be charged for a delay of up to 90 days.
- (3) In case, the Takaful Operator or Takaful Practitioner do not comply with Clauses (1) and (2) of this Article, the Takaful Authority may suspend the license for a period it deems fit after serving a written notice on the license holder.

Article 113. False Statements

In case a person provides false and inaccurate information related to Takaful business to the Takaful Authority, the Takaful Operator, or any other entity, shall be punished with a fine between AFs 10,000 and AFs 100,000.

Article 114. Repetition of Violations

In the event that Takaful Operator or Takaful Practitioners repeated violations of the terms of this law and other regulatory documents, the Takaful Authority may in its discretion suspend the license and/or deny extension of the same in the future.

Article 115. Violation of Laws and Regulations

Whenever a Takaful Practitioner does not comply with provisions of this law, rules of procedures, instructions, circulars, manuals or other substantive documents issued by the Takaful Authority, the license of the Takaful Practitioner may be suspended or cancelled keeping in view the nature and severity of violation.

Article 116. Disclosure of Confidential Information

In the event that a public servant, member of Supreme Shariah Board, member of Shariah Board or an employee of a Takaful Operator or Takaful Practitioner, discloses secrets and confidential information or documents related to Takaful Operators, Takaful Practitioners, or Takaful business generally, he or she shall be fined for AFs 10,000 and shall be referred to legal and judicial authorities for further proceedings.

Article 117. Providing False Information

In the event that Participant or Beneficiary commits fraud by submitting false information for the purpose of obtaining compensation, or the incident covered by Takaful Contract has happened due to their mala fide intention, the Participant and Beneficiary shall not only lose the right of compensation, the matter shall be referred to legal and judicial authorities for further investigation and prosecution.

Article 118. Violations by Public Servant

Whenever a public servant assists in preparation of, or prepares, and/or approves false and baseless claims, documents related to such claims or financial and audit documents and reports, or reports related to an incident, he or she shall be suspended from his post, fined with an amount between AFs 10,000 and AFs 200,000 and referred to legal and judicial authorities for prosecution.

Article 119. False Reporting

In case the Auditor, Actuary, loss adjuster or other practitioners have submitted inaccurate and false reports to the Takaful Authority, they shall be fined for an amount not less than AFs 100,000 in addition to recovery of the losses suffered.

Article 120. Application of other Laws

- (1) The Penal Code, Banking Laws, Bankruptcy Law, Law on Prohibition of Money Laundering, Law on Prohibition of Terrorism Financing and others shall remain applicable in all cases of violations of this Law.
- (2) Notwithstanding the violations referred to above, cases of violators may be investigated by other entities and the penalties imposed herein shall not be considered to be exclusive.

Article 121. Violations Not Mentioned in the Law

- (1) In case the Takaful Operator or Takaful Practitioner has violated any terms and conditions of this Law, the Laws for the time being in force, Rules of Procedure, Policies adopted, manuals, guidelines and circulars issues, and the approved articles of association, nonetheless, this Law or other Laws in force have not prescribed any penalty for such a violation, the Takaful Authority may take any or more of the following disciplinary actions:
 1. Advice in writing to improve performance
 2. Warning in writing
 3. Suspension of License for a period up to 45 days
 4. Cancellation of License and referral of the case to the legal and courts for further investigation.
- (2) The Takaful Authority shall consider the nature, severity and the number of violations committed by the Takaful Operator or Takaful Practitioner.
- (3) Save in the situation of item 4, Clause 1 above, the Takaful Operator or Takaful Practitioner reserves the right to lodge a formal complaint against the decision taken by the Takaful Operator.

Chapter 18: MISCELLANEOUS PROVISIONS

Article 122. References to the Insurance Law

Provisions related to shareholding, mergers and assignment, appointment of receiver, recapitalization, dissolution, and corrective measures in the Insurance Law shall apply to Takaful Operators subject to necessary changes for to be made for Takaful Operators.

Article 123. Conversion of Insurance Company to Takaful Operator

- (1) An insurance company may after fulfilling the requisite criteria laid down in this law and approval of the Takaful Authority convert to a full-fledged Takaful Operator.
- (2) The insurance company shall submit a detailed plan of conversion and its impact on the business of the insurance company.
- (3) All requirements and specifications of Takaful Operator as stated in this law shall be met by the insurance company.
- (4) The Takaful Authority may approve the conversion after it is satisfied that it is in the best interest of the insurance company, public interest, Takaful sector and after it obtains the approval of the Supreme Shariah Board.
- (5) The insurance company shall pay a processing fee as stated in this law for processing its conversion application.

Article 124. Mandatory Takaful Window

Every insurance company shall open a Takaful Window within 1 year after this law is enacted, unless this period is extended by the Takaful Authority or if an international insurance company operating in Afghanistan is exempted in writing from this condition.

Article 125. Non-Transferability of the Issued License

Licenses issues under this Law shall remain strictly non-transferable and cannot be assigned to persons other than the license holders.

Article 126. Financing Agreement

- (6) A Takaful Operator may enter into a Shariah compliant financing agreement with other financial institutions.
- (7) Financial institutions referred to in Clause (1) of this Article are not eligible to obtain licenses as Agent and/or Brokers from the Takaful Authority.

Article 127. Conflict of Interest

General Director/Director, Deputies, Auditors and officials of the Takaful Authority may not establish a Takaful Operator and/or act as Takaful Practitioners but can avail Takaful products.

Article 128. Establishment of Associations and Other Entities

Interested persons may establish Takaful associations, unions and Takaful training institutions in accordance with this law and other laws for the time being enforce provided that they do not undermine the Takaful sector in any manner whatsoever.

Article 129. Regulations, Rules of Procedure and Circulars

- (1) The Takaful Authority may for the purpose of proper implementation of this law, propose regulations and adopt circulars, rules of procedures, manuals and guidelines.
- (2) The Takaful Authority shall publish all the documents issued under Clause (1) of this Article and review and update them from time to time.

Article 130. Entry Into Force

This law shall enter into force from the date of publication in the Official Gazette.