



Perbadanan Insurans Deposit Malaysia
Protecting Your Insurance And Deposits In Malaysia

**NOTE OF
PERBADANAN INSURANS DEPOSIT MALAYSIA ON
TAKAFUL BENEFITS PROTECTION SYSTEM**

ISSUE DATE : 20 FEBRUARY 2012



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Ref No	TIPS/NT2/2012(TBPS)	Issued on	20 February 2012
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1.0 LEGAL AUTHORITY

- 1.1 This Note relates to the operations of takaful benefits protection system (“TBPS”) in Malaysia and the relationship between Perbadanan Insurans Deposit Malaysia (“PIDM”) and its insurer members that are takaful operators (“TOs”).
- 1.2 This Note is issued by PIDM in exercise of its powers conferred by paragraph 209(1)(b) of the Malaysia Deposit Insurance Corporation Act 2011 (“MDIC Act 2011”).

2.0 BACKGROUND ON TAKAFUL BENEFITS PROTECTION SYSTEM

- 2.1 In May 2010, a package of legislative initiatives aimed at enhancing financial consumer protection for Malaysians was announced by the Government. This includes, among other things, the introduction of an explicit takaful and insurance benefits protection system for takaful certificate and insurance policy owners. The Government’s intention was to ensure that this group of consumers also enjoy similar protection provided by PIDM to depositors of Islamic and conventional banks. This would contribute to the enhancement of financial consumer confidence which would in turn promote consumer demand for takaful and insurance products.
- 2.2 Following the announcement, the takaful and insurance benefits protection system was brought into effect on 31 December 2010 with the enactment of the MDIC Act 2011, which repealed the Malaysia Deposit Insurance Corporation Act 2005. TBPS provides protection to takaful beneficiaries against loss of part or all of their protected takaful benefits in the unlikely event of a TO failure. It operates separately but in parallel with the insurance benefits protection system, and both systems are administered by PIDM.

3.0 CONTRACTUAL RELATIONSHIP BETWEEN TAKAFUL OPERATORS AND PIDM

- 3.0 In implementing TBPS, PIDM developed a mechanism that meets Shariah requirements. Extensive research was conducted and presented to the Shariah Advisory Council (“SAC”) of Bank Negara Malaysia. The SAC agreed that *ujr wal kafalah* (fee and guarantee)¹ is an acceptable and practicable Shariah arrangement that provides the foundation of TBPS in Malaysia.
- 3.1 *Ujr* is a fee paid by a party who receives services rendered by a service provider. *Kafalah* is a contractual guarantee given by a guarantor to assume the responsibilities and obligations of the party being guaranteed should a claim arise.

¹ Please refer to Appendix.



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3.2 Under the *ujr* arrangement, PIDM is the service provider and TOs are the parties receiving the services. The services rendered by PIDM to TOs are as follows:

- (a) promote public confidence in the industry by protecting against loss of takaful benefits in the event of a TO failure; and
- (b) assess and monitor the TOs' risk profiles on a continuous basis as well as taking intervention measures in a distressed TO, if necessary.

Under the *kafalah* arrangement, PIDM guarantees the takaful funds' financial obligations to certificate owners in the event of a TO failure. In this regard, PIDM assumes the liability in respect of the financial obligation of the takaful fund by making payments to the protected takaful certificate owners in accordance with the agreed terms and conditions.

4.0 OPERATIONS OF TAKAFUL BENEFITS PROTECTION SYSTEM IN MALAYSIA

4.1 Under TBPS, all TOs pay annual levies to PIDM from their shareholders' funds. The levies are owned by PIDM and maintained in either the General Takaful Protection Fund or Family Solidarity Takaful Protection Fund ("the Funds").

4.2 The Funds are to be used to meet ongoing operational requirements as well as any future obligations that may arise due to intervention or resolution activities. Direct expenses, costs or losses are charged to the relevant Funds whilst indirect or common expenses, costs or losses are allocated to the relevant Funds in proportion to the amount of levies collected for the respective Funds in the immediate preceding assessment year². Accumulated surpluses from the Funds are invested in Shariah-compliant investment securities.

4.3 In the unlikely event of a TO failure, PIDM will utilise the Funds to resolve such failure and protect takaful benefits including, if necessary, by making the appropriate payments to the protected takaful certificate owners of the failed TO.

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² Please refer to subsection 28(2) of the MDIC Act 2011 and the Malaysia Deposit Insurance Corporation (Allocation of Expenses, Costs or Losses) Order 2011.

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Ujr

Ujr is a kind of payment or fee that is paid by someone as a counter value for a service rendered by the other party. It also includes wages or remunerations as well as rental payments under lease contracts of tangible assets.

One of the direct sources to show the permissibility of taking or paying wages or fees is from the Quran in *Surah al-Talaq* verse 6 which explains that wages are to be paid to mothers who suckle their children. The verse reads as follows:

“...Then if they give suck to the children for you, give them their due payment.”

This verse indicates the obligation of the father to provide adequate wages to the women who suckle his child. The paid wages are a consideration for the hired services.

In a *hadith*, the Prophet (pbuh) was reported to have said:

“He who hires a person should inform him of his fee.”

Ujr is being applied by Islamic financial institutions in *wakalah* (agency), *ijarah* (hired services) and *kafalah* (guarantee) based products.

Kafalah

Kafalah literally means guarantee. It is defined as a contract which combines one’s liability with another person’s liability. It is a contractual guarantee given by the guarantor to assume the responsibilities and obligations of the party being guaranteed on any claims arising.

The permissibility of *kafalah* can be derived from provisions of the Quran, for instance, in the following verse Allah (swt) says:

Meaning: *Some of the ministers reply: “We have missed the royal bowl and for him who produces it is a camel load, I will be bound by it”. (Surah Yusuf: Verse 72)*

Another proof that indicates the permissibility of *kafalah* is the following *hadith*:

Meaning: *“Narrated from Salamah bin al-Akwa’, he says: “Once we were with the Prophet (pbuh), then a group of people came with a funeral procession and said: O Prophet, please conduct the funeral rites for this corpse, He asked: Has he left anything? They replied: None.”*

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Then he asked: Has he left any debt? They replied: Yes, three dinar, then the Prophet (pbuh) said: You should pray for him. Then Abu Qatadah said: O Prophet, please pray for him, I bear the liability of the debt, then the Prophet (pbuh) pray for the corpse. In another narration, it is said "I will guarantee for the settlement of the debt". (Al-Bukhari, Al-Nasai, Ibn Majah and Al-Baihaqi)

In general, *kafalah* contract may be classified into two categories:

- (1) *Kafalah bi al-nafs* is a guarantee for one's self; and
- (2) *Kafalah bi al-mal* is a guarantee for property or finance.

Kafalah bi al-mal may be divided into three main categories as follows:

- (1) *Kafalah bi al-dayn* is a guarantee for a debt owed by a party. It is meant to guarantee the settlement of a debt by the guarantor should the guaranteed party be in default;
- (2) *Kafalah bi al-`ayn* or *kafalah bi al-taslim* is a guarantee for a tangible property or for the delivery of an object of a contract. In a contract of sale for instance, a guarantor may need to guarantee the delivery of the object of the contract to the purchaser. If the seller fails to perform his contractual obligation as stipulated by the terms of the agreement, the guarantor is liable to furnish the delivery; and
- (3) *Kafalah bi al-darak* is a guarantee for a property to be free from any encumbrance or claim. This guarantee is meant to guarantee an object of a contract to be free from any claim that could hinder the transfer of ownership of the property in a particular contract. If there is any claim against the property, the guarantor is liable to bear the loss suffered by the beneficiary.