

# DRAFT

## HABIB INSURANCE COMPANY LIMITED WINDOW TAKAFUL OPERATIONS

### PARTICIPANT TAKAFUL FUND DEED (WAQF DEED)

Know all men through these presents that, **Habib Insurance Company Limited** (hereinafter called "the company") was incorporated in the year 1942 as a Public Limited company under the repealed Company Act 1913 (now the Companies Act, 2017). The Registered Office of the company is situated at Habib Square, M. A. Jinnah Road, Karachi and quoted on the Pakistan Stock Exchange (hereinafter called the Settlor) through its duly authorized attorney, **Mr. Shabbir Gulamali** Son of **Akbar Gulamali** adult, Muslim, holder of Computerized National Identity Card No. **42301-0851284-7** is making this Participant Takaful Fund Deed on \_\_\_\_\_ day of \_\_\_\_\_, 2018 at Karachi.

#### WHEREAS:

- A. The Settlor is competent and legally authorized through its Memorandum of Association and is desirous of establishing a Participant Takaful Fund (PTF) for the purpose of achieving the objectives and functions given herein below;
- B. The Settlor has decided to create and hereby establishes an irrevocable Fund called Habib Insurance Company Limited (Window Takaful Operations) - Participant Takaful Fund-PTF that is a Waqf Fund which shall be capable of having title to ownership of, and possession of assets whether in the form of moneys, movable and immovable properties, and/or in any other tangible or intangible form legally possible and permissibly along with the compliance with the Shariah Principles;
- C. The Settlor has set apart Rupees five hundred thousand only (Rs 500,000) and hereby cede the same to the PTF being the Waqf money; and
- D. The Settlor has also undertaken to accept the responsibility of managing and operating the said PTF on the terms and conditions appearing in the Deed and in any other Supplementary Deed(s) made hereunder, on the basis of a predefined fee ("the Takaful Operator's fee").



E. Whereas Habib Insurance Company Limited (Window Takaful Operations) shall be called as Settlor or Operator, which expression shall, unless repugnant to the context or the meaning thereof, mean and include its survivor(s).

## 1. DEFINITIONS

Following are the definitions of the terminologies used in various clauses of the PTF Deed / Waqf Deed.

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|-------|--|---|
| 1.1   | Accounting Year                        | means financial year of the Operator.   |
| 1.2   | Board of Directors                     | means board of directors of Habib Insurance Company Limited (Window Takaful Operations).  |
| 1.3   | Commission                             | means the Securities and Exchange Commission of Pakistan (SECP).  |
| 1.4   | Contribution                           | means the amount paid/payable by a Participant to an Operator under a Takaful Contract by way of Tabarru/donation to the Waqf Fund/PTF  |
| 1.5   | Companies Ordinance                    | means the Companies Act, 2017   |
| 1.6.  | Deficit                                | means the shortfall in the PTF, that is where the admissible assets are not sufficient to cover its all liabilities.  |
| 1.7.  | Ordinance                              | means the Insurance Ordinance 2000.   |
| 1.8.  | Operator                               | means a Window Takaful Operator authorized under Takaful Rules, 2012 here in this case Habib Insurance Company Limited (Window Takaful Operations) working in its capacity as a Wakeel thereby operating the PTF.       |
| 1.9.  | Participant                            | means a person who participates in a Takaful scheme and/or to whom a Takaful Contract is issued   |
| 1.10. | Participant Membership Documents (PMD) | means the documents detailing the benefits and obligations of the Participant under a Takaful Contract.   |
| 1.11. | Participant Takaful Fund (PTF)         | means a separate fund set up into which the participant's risk related contributions are paid and from which risk related benefits are paid out here in this case it is Habib Insurance Company Limited (Window Takaful |





Operations) - Participant Takaful Fund established under the PTF / Waqf Deed.

- 1.12. Qard-e-Hasna means an interest-free loan to the PTF from the Operator's Fund, when the PTF is in deficit and insufficient to meet their all liabilities.
- 1.13. Re-Takaful means arrangement for re-Takaful of liabilities in respect of risks accepted by the Operator in the course of carrying on Takaful business and includes ceding risks from Participant Takaful Funds to Re-Takaful Operator(s).
- 1.14. Settlor means Habib Insurance Company Limited (Window Takaful Operations) in its capacity as Settlor or Waqif of Waqf money through initial ceding. The term Settlor or Operator may be used interchangeably.
- 1.15. Shariah Advisor means Shariah Advisor (SA) of the Operator or a committee or Board comprising more than one Shariah Advisors working in such capacity appointed by the Habib Insurance Company Limited (Window Takaful Operations) under Rule 26 of the Takaful Rules, 2012 as approved by the SECP.
- 1.16. Window Takaful Operator's Fund means a Fund setup by a Window Takaful Operator which shall undertake all transactions which the Operator undertakes other than those which pertains to Participants Takaful Fund setup for the Window Takaful Operations.
- 1.17. Supplementary Deeds means any Supplementary Deed of the PTF/Waqf Deed created under clause 11.4 of this Deed.
- 1.18. Takaful Rules means Takaful Rules, 2012, issued by SECP (or any successor for the time being in force).
- 1.19. Waqf Fund see Participant Takaful Fund.
- 1.20. Waqif see Settlor.

Unless the context otherwise requires, words or expressions contained in this Deed shall have the same meaning as in the Companies Act, 2017, Insurance Ordinance, 2000 and Takaful Rules 2012; and words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include feminine, and words importing persons shall include corporate entities.

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## **2. OBJECTIVES AND PURPOSES OF PARTICIPANT TAKAFUL FUND**

- 2.1. To receive contributions, donations, gifts, charities, subscriptions etc., from the Participants and others;
- 2.2. To provide relief to the Participants against benefits defined as per the PTF Policies & Participants Membership Documents (PMD);
- 2.3. To give charities on approval of the Shariah Advisor (SA);
- 2.4. To invest monies of the PTF in and subscribe for, take, acquire, trade or deal in, instruments approved by the SA such as shares, stocks, Sukuks, bonds, securities or instruments of redeemable capital of any other company, institution, mutual fund, corporation or body corporate or any other manner;
- 2.5. To do all such other things/acts/objects as are incidental or conducive to the attainment of the above objects or any of them with the due approval of SA in so far these are not repugnant to any of the provisions of the Takaful Rules.

## **3. CEDE/WAQF MONEY**

The ceded amount donated by the settler will be considered as Waqf which will always remain invested in Shariah compliant instruments. The profits on the ceding amount after deduction of Mudarib share of profit will be the ownership of the PTF and can be used to pay benefits to the Participants or defray the PTF expenses.

## **4. ASSETS OF THE PTF**

- 4.1. The assets of the PTF shall primarily comprise of:
  - a) The cede amount donated from the Operator's Fund to the PTF;
  - b) The contributions received from the participants by way of subscriptions, contributions, donations, gifts, etc.; and
  - c) Income or incomes derived from investments etc. made by the PTF.
- 4.2. Except for the ceding amount (referred to as above) all the balance amounts may be utilized for offsetting the PTF's liabilities including liabilities in respect of payments of benefits to the participants of the Fund.

## **5. ELIGIBILITY CRITERIA FOR THE BENEFITS**

- 5.1 All members who participate in Takaful scheme and/or to whom a Takaful contract is issued or guaranteed;

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- 7.7 The Operator shall underwrite prudently and in accordance with the Shariah guidelines as may be provided from time to time. In case any loss is incurred in the PTF due to deliberate default or misconduct on the part of the operator, the PTF shall be entitled for compensation from the Operator.
- 7.8 The operator shall be responsible to keep and maintain the participant's record. For this purpose the operator shall maintain a Register of Participants of PTF and inform the commission of the address where the Register is kept.
- 7.9 The operator shall maintain at its principle office, proper accounts and records to enable a complete and accurate view to be formed of the assets and liabilities and the income and expenditure of PTF, all transactions for the account of PTF and contribution received by PTF and withdrawals by the participants, including detail of tax deductions.
- 7.10 The operator shall arrange infrastructure and other facilities for the Takaful operations and therefore acquire fixed and other assets and incur such other expenditures.
- 7.11. At least at the end of each accounting year, the Operator shall evaluate the assets and liabilities of the PTF either on an overall basis or for each sub-fund created as per clause 7.1 and determine whether the operations for that particular period had produced a surplus for sharing amongst the Participants under advice of the SA. The mechanism of surplus determination, as well as, surplus distribution would be defined in the PTF Policies, as well as, in the PMD.
- 7.12. In case there is a deficit in any PTF, the Operator may donate an interest-free loan to be called Qard-e-Hasna to make good the shortfall in that Fund. The loan shall be repaid from the future surpluses generated in the PTF without any excess on the actual amount given to the PTF.
- 7.13. The Operator shall invest the available funds in the PTF in the modes and products that adhere to the principles established by the SA and all such modes and products shall be approved by the SA of the Operator.
- 7.14. Subject to the provisions of the Ordinance, the Operator shall maintain statutory reserves in the PTF and any additional reserves as may be maintained under the PTF Policies with the approval of the SA, subject however, to the conditions that any such measure should not be maintained in contravention of the Takaful Rules.
- 7.15. The Operator shall ensure that the re-Takaful arrangements are consistent with the sound Takaful principles and are as per the guidelines provided by its SA.



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- 7.16. The operator shall underwrite any risk under Co-takaful basis as per the Shariah Guideline provided by the SA;
- 7.17. The Operator shall appoint a Shariah Advisor (SA) who shall be responsible for the approval of products, documentation, as well as, approval of all operational practices and investment of funds. At its sole discretion, the Operator may decide to appoint a board or committee comprising more than one Shariah Advisor. In such situation the roles and responsibilities of the Shariah Advisor shall be performed by the Shariah board / committee.
- 7.18. The Operator shall appoint a Principal Officer in consultation with the SA, who will be responsible for managing the affairs of the Takaful Operations.
- 7.19. The Operator shall appoint Shariah Compliance Officer in consultation with the SA to ensure compliance of Shariah guidelines formulated and approved by the Shariah Advisor or issued by any other relevant authority;
- 7.20. The Operator shall appoint Shariah Compliance Auditor in consultation with the SA as defined under sub-section (V) of Section 2 of the ordinance, having adequate resources;
- 7.21. The PTF, established for any class of business shall, notwithstanding that the Operator at any time ceases to carry on that class of business in Pakistan, continue to be maintained by the Operator so long as it is required to maintain proper books and records for schemes belonging to the class under the law for the time being in force and applicable to the PTF.

## **8. OPERATOR'S RIGHTS**

- 8.1. The Operator shall be entitled to receive a stipulated proportion of the gross contributions to the PTF by way of Operator Fee. The Operator shall have the right to make such adjustments in the Takaful Operator Fee as may be appropriate. This right shall be subject to a presumption that the Operator shall never utilize such right knowingly, in a manner that the decision made becomes detrimental to the interest of the PTF or its Participants.
- 8.2. The Operator, in the capacity of Mudarib or Wakeel, shall be entitled to set the profit sharing ratio or Wakala fee on the investment management of the PTF based on the advice of the SA. The Operator might choose to keep different profit sharing ratios or set different Wakala fee for different sub-funds after approval from the SA.
- 8.3. The Operator shall be entitled to make such PMDs for each class of Takaful operation as may be deemed necessary. The same shall be approved by its SA.



- 8.4. The Operator shall have a first right of return in respect of the amount provided as Qard-e-Hasna to the PTF and the same shall be returned to the Operator as soon as the available funds in the PTF may permit.
- 8.5. The Operator shall have a right to make deductions from the PTF as are enunciated in the clause 9.2 of this Deed, subject to the provisions of the Takaful Rules.
- 8.6. Notwithstanding the irrevocability of this Waqf, the Operator shall be empowered to execute supplementary deeds deemed necessary for legal and operational reasons. However, all such deed(s) shall be executed with the approval of the SA.
- 8.7. The Operator shall be entitled to appoint intermediaries for business acquisition and to perform any or all functions related thereto
- 8.8. Notwithstanding anything contained herein, the Operator shall have such rights as may be deemed necessary, under the applicable laws for the time being in force, in accordance with Shariah guidelines.

## **9. THE RECEIPT AND PAYMENT OF THE PTF**

9.1. The receipt of the PTF shall consist of the following, namely:

- a) Risk Contributions received from the Participants and the Takaful Operator's Fee;
- b) Claims received from the re-Takaful Operators
- c) Investment profits generated by the investment of funds and other reserves attributable to the Participants in the PTF;
- d) Salvages and recoveries;
- e) Qard-e-Hasna by the Operator's Fund to the PTF (in case of deficit);
- f) Commission received from re-Takaful Operators;
- g) Any donation made by the Operator or any other person/entity; and
- h) Any Surplus distributed by the re-Takaful Operators.

9.2. The payment from the PTF shall consist of the following, namely:

- a) claims paid related to risks covered under the Participant Takaful Fund and expenses directly related to settlement of claims such as surveyors' and investigators' fees, etc;
- b) Any third party costs directly associated with underwriting (specifically medical examination, pre-cover inspection/surveys, costs of installing tracking systems or any consulting costs related with assessing or reducing the risks being covered), if it has been earlier credited to the Participant Takaful Fund;
- c) Contributions paid to re-Takaful Operator/ re-insurer;
- d) Takaful Operator's fees;
- e) Takaful Operator's share in investment income of the PTF approved by the Shariah Advisor;
- f) Premature cancellation benefit paid to the participants;
- g) Surplus distributed to the Participants; and

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- h) Return of Qard-e-Hasna to the Operators' Fund.

## 10. DISSOLUTION

- 10.1. In case of discontinuation of the Window Takaful Operation of the Habib Insurance Company Limited, the Participant Takaful Fund may be transferred to other authorized Takaful Operator / Window Takaful Operator under the Takaful Rules, 2012.
- 10.2. If PTF is transferred to another authorized Operator, then balance of surplus including all the assets and liabilities shall be transferred.
- 10.3. If in case it is required to discharge all the existing liabilities before the transfer of such fund than firstly shall pay the entire liabilities including Participant's liability (within PTF) and then if there is a surplus, it would be used to repay any remaining payment of Qard-e-Hasna. If the surplus is not sufficient to repay the entire Qard-e-Hasna, it would be repaid to the extent that there is a surplus in the PTF. If there is a surplus even after paying the liabilities and Qard-e-Hasna, it would be distributed to the participants in the manner as advised by the SA.
- 10.4. However, in the above clause, if the Operator has created sub-funds, the surplus (before Qard-e-Hasna) in any sub-fund would first be used to offset deficit in any other sub-fund, if any.
- 10.5. If it shows that the PTF is not sufficient to pay the entire liabilities including the Participants' liabilities, the deficit would be funded by the Operator from the deposit made by the Operator in form of a donation for which the Operator hereby undertakes. In case the deficit is still there, the remaining amount would be funded by the Takaful Operator from its paid-up capital and reserves, in form of a donation for which the Operator hereby undertakes.
- 10.6. The cede amount would be transferred, with the approval of the SA, to another PTF, formed for similar or any other purpose. However, the shareholders of the Operator shall not be entitled to any of the aforesaid amounts.
- 10.7. The Habib Insurance Company Limited (Window Takaful Operation) shall comply with the requirement that may be prescribed by the Commission for the purpose of dissolution of the PTF.

## 11. GENERAL

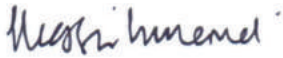
- 11.1. This Deed shall be governed by the laws in Pakistan applicable from time to time on the Operator and the PTF.
- 11.2. Notwithstanding anything contained herein, the Operator shall ensure due compliance with all applicable laws for the time in force and Shariah Principles.

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- 11.3. This Deed shall be irrevocable and shall not be altered or amended in any manner, whatsoever.
- 11.4. Notwithstanding the irrevocability of this Deed, the Settlor shall be empowered to execute such number of Supplementary Deeds as are Deemed necessary for legal and operational reasons. However, all such deeds shall be executed with the prior approval of the SA.

## DRAFT APPROVED BY



Chief Executive Officer  
Mr. Shabbir Gulamali



Shariah Advisor  
Mufti Imtiaz Alam

