Towards a More Holistic Landscape of Takāful System: A Proposal to Rejuvenate the Spirit of Mutuality through Corporate Waqf Model

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Abstract

Modern takāful concept originally arose from several Islamic and pre-Islamic notions of risk management without any element of commercialism. A study of the doctrines of ‘aqīlah, diyah or tabarru‘ which led to the present modern takāful system, will show that the underpinning philosophies of such concepts centred on the pure spirit of co-operation (taʿāwūn), joined indemnity and mutual responsibility. Yet, the spirit seems to be waning from the contemporary takāful implementation as most takāful operators/providers run as private limited companies owned by shareholders cum investors whose motivation is to make profits. Rather, the original takāful concept is more suited for a mutual company or cooperative society. The experience by the takāful system is similar to that of the conventional insurance which began on a basis of mutuality and cooperative system before gradually changing to profiteering corporation. Amongst the factors attributed to the change was the need to have access to a suitable amount of capital at a reasonable cost, economic and regulatory pressures as well as changes in demographic and

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marketplace. In the quest for a *takāful* model with attributes of mutual company which could withstand business pressures, and most importantly, abide by all Shari’ah requirements, all three concerns need to be harmonised under one business approach. Thus, this article attempts to propose a new *takāful* model which builds upon corporate *waqf* concept. The amalgamation of inherent features of *waqf* (i.e. perpetuity, irrevocability and inalienability) and philosophies of *takāful* (co-operation, joined indemnity and mutual responsibility) may create a holistic *takāful* system that is customer-centric but remains efficient and relevant to modern business requirements.

**Keywords**
*Takāful, waqf, corporate waqf, mutuality, insurance, cooperative society.*

**Introduction**

A mutual company is a member-owned company that operates in the best interest of its members. It exists with the purpose of providing common services to its membership, and as such, does not usually seek to maximise and make large profits or capital gains. On the contrary, a corporation or limited company is a shareholder-owned company whose primary interest is in profits and asset-growth. These two contradicted characteristics of two separate business structures can create a paradox if they co-exist in one corporate entity. This paradox is evident in the present landscape of *takāful* industry.

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In Arabic, the word takāful literally means “joint guarantee” or “guaranteeing each other.” During pre-Islamic times, the tribal Arab embraced this spirit of mutuality through the practice of ʿaqīlah and diyah.\(^3\) When Islam came, it acknowledged the underpinning values of such practices. Nevertheless, they were refined by the Qurʾān before they could be adopted and applied by the Muslims in their daily lives. In modern Islamic finance industry, the term refers to a Sharīʿah-compliant insurance which is founded upon the principles of pure cooperation (taʿāwun), joint-indemnity, and mutual responsibility enshrined by the Qurʾān and the Hadīth.\(^4\)

It is claimed that in a takāful scheme, the notions of mutual help and mutual indemnity are put into motion when a group of people contribute, on the basis of donation (tabarruʿ), a certain amount of money to a common fund which is then used to indemnify any members in the group against any loss or damage he or she may incur during the contractual period.\(^5\)

Arguably, the current implementation of takāful system has failed to fully achieve the underlying objectives of its original establishment. Nevertheless, the present takāful models provide an alternative for Muslims who wish to ensure their insurance needs are in compliance with, or if not, close to the spirit of Sharīʿah.

While most takāful operators claim that their operations are based on the jurists-approved concept of mutual or cooperative insurance, they are basically run as private limited companies owned by shareholders whose motivation is sole pecuniary gains.\(^6\) This has drawn criticism from some Sharīʿah

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\(^3\) The system of ʿaqīlah denotes a group of persons upon whom devolves, as a result of a natural joint liability with a person who has committed homicide or inflicted bodily harm, the payment of compensation in cash or in kind. This compensation is called diyah or blood money. See The Encyclopedia of Islam, vol.1, 337–8.


scholars over the legitimacy of takāful business as it adversely affect Sharī‘ah principles applied to takāful funds. For this, Zainal Azam, Ma’sum Billah and Sabbir Patel suggest that the takāful system is compatible to be run on the platform of mutual or cooperative business model. They argue that by virtue of the concept of mutuality or cooperative society, it could restore the noble objectives of the existence of the takāful concept in Islamic community. In addition, the concept of mutual company or cooperative society is undeniably more appropriate and consistent with the original philosophy of takāful.

Yet, in present day business environment, the concept of mutual company may not be compatible with the purpose of establishing and operating a takāful model. Many concerns and pressures influence the actions of takāful or insurance companies nowadays. They include economic and regulatory concerns, changing demographics, changes to the takāful / insurance marketplace and the adequacy of distribution channels. The biggest concern, however, is the access to the start-up capital required to build and maintain a business. Furthermore, the notions of takāful do not appear to be comparable with the modus operandi of a corporation or private limited company. In most of the cases, motivation for profits and the pursuit for financial gains supersede all other implications. For a takāful system to fully materialise its original notions and work well for its members, it must first address all Sharī‘ah concerns raised by Muslim jurists. Simultaneously, it has to look for an alternative business structure that can strike a balance between the need to serve in the best interest of members of the takāful fund as well as the need to remain sustainable in today’s volatile marketplace. As such, efforts should be made


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to propose an acceptable alternative that align the suggestions opined by Muslim jurists with current corporate requirements to the current functioning takāful model so that it could more properly reflect the original meaning of takāful concept whose focus is on nourishing the spirit of Islamic brotherhood among members of society, thus improving its chance of long term sustainability. Corporate waqf concept has in this regard been identified as the best business approach for this purpose.

This study thus seeks to propose a new takāful model that would bring the concept to its original spirit. The concept does not only address some Shari‘ah concerns pertaining to present takāful practices, but also ensures sustainability, proper governance as well as accountability of the organisation as it will be managed by a professional management team appointed by the waqf institution or the waqf founder. Technically, the study involves an investigation on two major subjects namely takāful and waqf. There have been numerous studies on cash and corporate waqf implementation. A similar observation also prevails in the case of takāful models. However, to date, no study has explored the possibility of introducing a takāful framework that runs on the basis of corporate waqf. Therefore, the framework is considered a new innovation for both the takāful industry and waqf institution. Built upon the foundation of corporate waqf, it is hoped that the proposed model would result in a new holistic approach to takāful implementation, and at the same time, is capable of braving the exacerbated pressure of change that comes from all sides and directions, be it economics, politics, geography etc. The combination of both concepts would produce a positive synergy in which the proposed model could restore the original goals of takāful systems i.e. to foster the spirit of Islamic brotherhood among takāful members. Eventually, once this objective is materialised, it could enhance the social and economic well-being of the Muslim community in general.

In the process to arrive at the intended objective, it would involve an in-depth analysis on the methodological
issues which require a thorough review on the viability of the model from both Sharīʿah and operational perspectives. The main sources for the analysis are secondary data. To make the data meaningful, they must be evaluated, reorganised and reinterpreted and subsequently represented in a written report. On top of books, the study would also do cross references with prevailing rules and regulations as well as standards and guidelines issued by various regulatory and governing bodies. By having cross references, it would shed some light on the current applied fatwā and the applicable business setting thus enabling precise identification of features and characteristics of the proposed model.

**Analysis of the Concept of Mutuality in the Present Takāful Practice**

According to the resolution of the Islamic Fiqh Academy 1985, Islamic insurance should be founded on the basis of cooperative principles. As a matter of fact, cooperative has a perfect alignment of shareholders and consumer interest as they are one and the same entity. Theoretically, this should result in cheaper cost and better quality of service. However, the resolution does not specify the contract of choice for takāful operation. According to Dawood, this has resulted in variation of takāful models throughout the industry. In spite of these variations, they share a common feature combining cooperative principles for risk protection between participants with a stock holding operator running the takāful business.


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Indeed, such a type of feature is not a wholly mutual concept as originally envisioned. Zainal Abidin concurs with Dawood and lists out several reasons how takāful could lose its mutuality. Among others, he illustrates his arguments with a comparison between pure risk and speculative risk. As generally known, the insured participates in takāful to protect against any peril that can cause damage or loss to oneself or one’s property (pure risk). The insurer, on the other hand, takes on the risk in exchange for a contribution with the expectation that the insured may or may not have to make any claim at the end of the term of takāful. At the same time, in the event of any untoward occurrence, the insured is guaranteed a payout as per the schedule of the takāful contract. Zainal Abidin then concludes that when takāful products are guaranteed by the insurer, it loses its mutuality. Furthermore, the insurer requires capital to finance such guarantee and he may resort to purchase matching bonds to ensure payment of claims. When the insurer invests in a guaranteed returns investment programme, it again loses its mutuality.

Another issue concerning the present takāful practice is the shareholder-policyholder conflict. Conflict emerges when the hybrid nature of takāful results in the separation of ownership and control between policyholders and shareholders. For instance, Sabir Pattel, Nienhaus, Azman, Iqbal, as well as Archer and others, discuss the problems that arise from such a conflict, ranging from corporate governance matters to Sharīʿah issues that could prove to be major hindrances to takāful industry in the long run if they are not properly addressed. Among Sharīʿah issues that draw the

attention of researchers include the application of the concept of \textit{muḍārabah} and \textit{tabarruʿ} to \textit{takāful} contract. Muhammad Imran criticises the application of \textit{muḍārabah} as the actual relation between participants is that of \textit{tabarruʿ} which cannot simultaneously be \textit{muḍārabah} capital.\textsuperscript{13} In actual fact, in any profit generated from \textit{muḍārabah}, investment must be distributed and it is not the same as an excess of premium over claims, reserves and expenses as applied to \textit{takāful}. Another erroneous aspect Muhammad Imran finds is the requirement to provide \textit{qard ḥasan} which violates the principle of \textit{muḍārabah} concept because the \textit{muḍārib} (i.e. the \textit{takāful} operator) cannot be a guarantor to the financiers (i.e. the policyholders) or else it would become a contract of \textit{qarḍ} (loan).

Unlike Muhammad Imran who looks at the ownership of \textit{takāful} fund from \textsuperscript{14}Sharīʿah point of view, Zainal Azam analyses the subject matter from both the legal and Islamic perspectives. In \textit{muḍārabah}, capital belongs to investors (\textit{rab al-māl}). However, in \textit{takāful}, funds legally belong to the company which positions as a trustee of the \textit{takāful} members. Nevertheless, in the \textit{muḍārabah} contract, any stipulation which entitles either party or both a certain amount of guaranteed proceeds or benefits in kind or money other than the pre-agreed profit sharing ratio is deemed unlawful. Interestingly, Zainal Azam remarks that in \textit{takāful}, the operator agrees with the unfair term for it is already known by means of actual calculations (as normally used in conventional insurance) that under normal circumstances, there will be surplus to the account in the \textit{takāful} fund. When a \textit{takāful} operator puts a strong emphasis on profits, it effectively takes the concept of \textit{takāful} away from mutuality. Furthermore, it must be realised that a contract being beneficial to both parties does not imply that it is charitable contract or one of mutual support.\textsuperscript{15}


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Disadvantages of Mutual Company and Cooperative Society Structure

Indeed, an apparent fact the takāful concept imbues is the virtue of mutuality. This could be the reason for the strong call made for the idea of establishing true mutual or cooperative societies that provide insurance or takāful coverage to their members. Among proponents of the idea are Zainal Azam, Sabbir Patel, Ma’sum Billah, and Dawood Yousef. In their original setup, takāful and mutual insurance are social institutions established to mitigate the burden of the individual by dividing it among its members. All members are themselves both the insured and the insurers who come together to enable risk sharing for a particular event by contributing to a common pool. Thus the control of the institution is not subject to the influence of a powerful few.

The general idea of a mutual company is that every year members get premium and investment cash flow coming to the company. Earnings generated will then be either added to surplus to provide safety to policyholders or used to finance company growth. What remains is the profit which will be returned to the company owners. Therefore, they are able to get policy at cost. Technically, this corresponds with the meaning of takāful as explained by Ma’sum and Sabbir Patel who refer the term to a mutual and cooperative guarantee provided by a group of people living in the same society against a defined-risk befalling unexpectedly against one’s life or property. Unlike other forms of insurance, in a strict mutual insurance institution, the division of losses is motivated by

16. See his “Modern Takaful.”
17. See his “Delivering The Difference.”
19. See his “Developing a Family Takaful Operation.”
21. Ibid.
humanitarianism and the principles of bearing one another’s burden. Losses are, therefore, calculated in advance but are distributed when they actually occur. This marks a difference between mutual and non-mutual insurance company in which losses in the latter are not distributed but transferred using the fund created to cover them which are calculated in advance using historical data.²³

Today, the concept of cooperative is widely practised in Saudi Arabia and Sudan. In Saudi Arabia, all insurance takāful activities must be carried out in a cooperative manner (or takāful taʿāwunī as promulgated by the Royal Decree M/5 dated 17/5/1405H).²⁴ However, contrary to the concept applied, the operation of takāful must be run by a joint stock company with a paid up capital of SR100,000,000. This means the contract is, in fact, not cooperative but commercial. In one classic example, an analysis by six Sharīʿah scholars²⁵ on the financial statement of the National Cooperative Insurance Company (al-Sharīkah al-Waṭaniyyah liʾl-Tāmīn al-Taʿāwunī) from 1999 to 2003 reveals that the system of insurance practised by the company is nothing more than commercial insurance which is in total contradiction to what its name implies. It has also been subjected to their criticism as only 10% of the profit is distributed among the policyholders whereas the rest of it goes to the shareholders. The scholars conclude that the move

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²³ Mohammad Muslehuddin, *Insurance and Islamic Law* (New Delhi: Adam Publisher, 1982).


²⁵ They are Dr. Muhammad ibn Saʿūd al-ʿUsaymi, General-Director, Sharʿi Council of the National Bank; Dr. Yūsuf ʿAbdallāh al-Shubayli, Faculty Member, Higher Institute of Judicial Matters, Imām Muḥammad ibn Saʿūd Islamic University; Prof. Dr. Sulaymān ibn Fāhd al-Isā, Professor of Graduate Studies, Imām Muḥammad ibn Saʿūd Islamic University; Prof. Dr. Sālih ibn Muhammad al-Sattān, Professor of Fiqh, University of al-Qāsim; Dr. ʿAbd al-ʿAzīz ibn Fawzān al-Fawzān, Assistant Professor, Imām Muhammad ibn Saʿūd Islamic University; and Dr. ʿAbdallāh ibn Mūsa al-ʿAmmār, Assistant Professor, Imam Muḥammad ibn Saʿūd Islamic University.
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to dish out a meagre percentage of profits is nothing than an attempt to give an air of Sharīʿah legitimacy to the contract.  

In Sudan, the cooperative Islamic insurance is similar to that of Saudi Arabia’s. The Sudan’s Companies’ Law 1925 stipulates that there should be shareholders to establish an insurance company i.e. takāful company must be founded as a shareholding company. However, there are several special characteristics that make the Sudan model better suited for the spirit of cooperation. Among those features, and perhaps one of the most notable, is policyholders have their own representative body on the company’s Board of Directors. Others include Sudan’s High Shari’a Supervisory Board (HSSB) regulation which states that surpluses exclusively belong to policyholders. However, surplus will be distributed to them only when and until free reserves are sufficient in their account. By the same token, shareholders in Sudan’s cooperative insurance model have no rights to the surplus. What they only have is the right to receive their returns on invested capital besides the remuneration received for running the company. Thus, unlike its Saudi cousin which is too profit-oriented, the Sudan model gives a strong emphasis on the welfare of the policyholders.

Even though takāful is well suited as a mutual company or cooperative society and run on such types of operating platform, there is no assurance that the essence of mutuality will be totally realised. Mohammad Akram opines that the requested total mutuality cannot be achieved without readiness.


and commitment to initiate cooperative or mutual *takāful* from all *takāful* stakeholders. On the other hand, Madzlan raises some legal issues that could hamper the process of setting up *takāful* undertaking as a mutual entity. One of those is the absence of appropriate legal framework that can accommodate the establishment of mutual and cooperative and their recognition as legal entities. He points out a valid argument as most regulators in countries only issue licence to *takāful* operators on the basis of its form as a proprietor with proper identified share capital and shareholders.

In addition to legal and regulatory framework, there are a number of pressures influencing the actions of insurance (and *takāful*) companies worldwide. These include economic concerns, changing demographics, changes to the insurance marketplace and the adequacy of current distribution channels. Campbell and Broatch argue that to be successful and profitable in a present volatile atmosphere, a company needs to have access to a suitable amount of capital at a reasonable cost. Mutual companies will find it hard to meet this requirement due to the constraint refraining them from accessing to capital markets. Some are sceptical with the concept of mutual companies or cooperative societies. Green, for example, contends the arguments that mutual principle has a future as unrealistic to the point of romanticism because, in reality, mutual organisations are captured by their managers and run in purely commercial spirit where members are seen as profit centres. Agreeing with Green is Birchall who opines


31. See Society of Actuaries, “Is the Mutual Life Insurance an Endangered Species?”

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that rather than an answer to world problems, cooperatives only make up a part of it. He elaborates by creating a scenario where cooperatives do not exist and millions suffer from poverty and uncertainties of the global market economy. To take control over their own lives, men realise they need to work together. In other words, if cooperatives had not existed, it would have to be invented. Yet, it has already been invented and does not need to be reinvented.

In the western countries, issues, constraints and pressures faced by mutual organisations have become the reasons for the demutualisation or conversion of mutual and cooperative institutions to shareholder companies. Nadeau and Nilsestuen in their study find that seldom is demutualisation an outcome of pressure made by the members themselves. In most of the cases, the actual pressure comes from those who may benefit from demutualisation such as senior staff of the cooperative, members of the management board and external advisers.

Advantages of Waqf and Corporate Waqf Concept and Its Application in the Proposed Takāful Model

Waqf is a unique voluntary financial mechanism for charity in Islam. If correctly managed and executed, waqf would not only generate a continuous reward for the wāqif even after his death, but also contribute to social and economic well-being of the Muslim community. Ever since the early days of Islam, waqf has undergone various changes in terms of its implementation and modus operandi. In the yesteryears, it was common for Muslims to endow physical assets such as land. Later, they started with liquid assets, such as, cash, and presently, the modus operandi has become more sophisticated than ever before with the introduction of waqf shares, sukūk waqf, cash waqf, corporate waqf and takāful waqf.

Many researchers have interest in *waqf* studies. However, their focus varies based on their inclination and education background. In spite of the differences, it can be surmised that generally they have one common objective i.e. to revive and uphold the potential *waqf* roles in uplifting the quality of life of the *ummah* individually and collectively. In the present study, focus of the literature is on cash and corporate *waqf* as well as the potential of applicability of the concept to *takāful* modus operandi. One of the experts on cash *waqf* is Cizakca. As an economic historian who focuses on cash *waqf* from historical aspects, Cizakca has a plethora of works on the subject matter. His masterpiece on cash *waqf* explains in very great detail the cash *waqf* history from the early days of Islam to modern times in various parts of the Muslim countries across the world.  

Historical evidences shown that during the Ottoman era between the 15th and 19th century, cash *waqf* institutions had successfully eased the burden of the government in providing public amenities such as education, health, municipality etc to the public. The success story of the Turkish conglomerate Koc Foundation in charitable activities and the innovativeness of corporate *waqf* pioneered by the Malaysian Johor Corporation are proofs that *waqf* is a dynamic economic instrument of Islam whose practicality remains valid regardless of time frame and where the concept is applied or who applies it.

The application of *waqf* concept as the platform for operating *takāful* business is nothing new as it has been practised in Pakistan and South Africa. A renowned Sharīʿah scholar, Muhammad Taqi Usmani believes strongly in the *takāful waqf* model. He feels that *waqf* is more compatible

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with the co-operative concept of takāful as it is created for the very purpose of cooperation.\textsuperscript{36} The motivation behind the development of waqf model could be traced back to the effort of Šarḥi‘ah scholars of Dārul ‘Ulūm Karachi. Issues regarding surplus sharing in mudārabah and modified mudārabah model as well as their legal status have made the scholars felt the need to develop a model that could work towards building the credibility of takāful operator as a welfare institution rather than a profit-oriented entity.\textsuperscript{37}

It is a modified form of wakālah model where a waqf fund is created by initial donation of shareholders and certain portion of participants’ contribution. In this model, the takāful company—which is the wakīl appointed by waqf fund to manage the fund—is assuming two simultaneous roles: operator/manager and muḍārib. As for the first role which requires the company to perform day-to-day functions, it is entitled to wakālah fee which is deducted from the contribution of the participants. In the second role, the company will manage the takāful fund and for this task, it is allowed to share the profit arises from investment activities (in which it will be shared with participants) based on their mutual terms of agreement.\textsuperscript{38} If there is surplus of underwriting, it belongs to participants and takāful operator may retain a portion of it as a contingency reserve to meet any unexpected future cost. It is said that the introduction of waqf model eliminates the Šarḥi‘ah-related/juristic issue pertaining to the ownership of the fund between the shareholders and the participants. With waqf concept the ownership of the fund is placed under waqf entity and thus it become the full proprietor of the funds handed over by the shareholders and the participants.\textsuperscript{39}


\textsuperscript{37} Waheed Akhter, “Takaful models and global practices,” Journal of Islamic Banking and Finance (Jan–March 2010): 30–44.

\textsuperscript{38} Muhammad Imran, “Takaful.”

As aforementioned, the application of *waqf* to *takāful* concept has been accepted in Pakistan and South Africa. This demonstrates another feasible use of *waqf* concept to support the social well-being of the Muslims through the spirit of mutuality and cooperation. A few researchers such as Zainal Abidin,\(^{40}\) Iqbal,\(^{41}\) and Madzlan\(^{42}\) are of the opinion that the application of *waqf* concept to *takāful* operation is an innovative way to provide enabling environment for the industry to start and grow without undue reliance on shareholders. Besides establishing a recognised legal entity of *waqf* fund (by removing ambiguity to the legal status of the *tabarru* fund), the *takāful waqf* framework can allow members to moderate the demands of the operators as well as their shareholders, and ultimately propel the industry towards achieving the spirit of mutuality and cooperation in their true.

However, the issue of efficiency in the *waqf* administration in Malaysia which is under the purview of State Islamic Religious Councils (SIRC) could become the biggest concern among the public, especially to potential *takāful* prospects. Nevertheless, the success story of the implementation of Waqaf Annur of JCorp could help the concept to regain public confidence and change their negative mindset about *waqf* administration in Malaysia. Unlike the SIRC-managed *waqf* under the set up of corporate *waqf*, the operation of the institution is run by professional staff who have experience in their respective fields. In the structure, the SIRC appoints the corporate body as the trustee of the *waqf* fund and is responsible in managing all *waqf* assets as per *waqf* deed.\(^{43}\)

\(^{41}\) See his “The Spirit and Models of Takaful.”
\(^{42}\) See his “Legal Issues in Takaful.”
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Even though the proposed study does not attempt to confirm any theory which requires testing of hypotheses, two pre-suppositional premises would be established as follows:

1. The amalgamation of inherent features of *waqf* (i.e. perpetuity, irrevocability and inalienability) and philosophies of *takāful* (cooperation, joined indemnity and mutual responsibility) will create a holistic *takāful* system that is customer-centric but remains efficient and relevant to modern business requirements.

2. The application of *waqf* concept to the proposed model will eliminate concerns that some Muslim jurists have brought forth regarding breaches of some *Sharīʿah* rules employed in the existing *takāful* models especially with regard to surplus distribution.

The Proposal

Figure 1 below depicts the theoretical framework of the proposed corporate *waqf* *takāful* model. It is postulated that to create a holistic corporate *waqf* *takāful* system, the model needs to have three inherent features namely cash *waqf* concept, *takāful* philosophies and principle of mutuality (which is commonly found in mutual company). Studies have shown that the success of cash *waqf* implementation is subject to good corporate management practice. In the above framework, corporate *waqf* modus operandi has been identified as the moderating variable as it has strong causal contingency effect between the independent variable and the dependant variable. In most cases, good infrastructures do not guarantee the success of any project. As a matter of fact, it also requires strong will power and firm determination from all stakeholders. Only then the success of the project is possible. This proposed study assumes that the readiness and commitment of all *takāful* stakeholders is the intervening variable and it is expected to have a role in mediating other variables.
The following figure 2 depicts the basic model of the proposal. In this model, the wāqif holds 20% shares, instead of contributing 100% seed waqf capital to enable him or his wakīl/proxy to take part in managing day-to-day takāful operation. This 80:20 structure is based on mushārakah contract i.e. the wāqif's investment is subject to profit loss sharing and he may not take his profit and channel it back to the waqf fund. In Malaysia, all waqf entities are under the purview of State Islamic Religious Council (SIRC). For the present proposal, however, the SIRC will entrust an independent professional trustee to manage takāful operations with the wāqif as one of the management team members; while, the BNM simultaneously remains as the supervisory body for takāful industry.
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Figure 2: Basic Model

Figure 3 further explains the process flow of the model. Following are some important details of the above operational flow:

1. All participants at the outset of the takāful contract agree that their contribution in the scheme is considered as tabarruʿ. Any underwriting surplus arising from the contract will be considered as waqf and will be ploughed back into waqf fund. This also means that upon entering into the contract, they are aware and consent to relinquish the ownership of their money to takāful fund established under the concept of waqf.

2. By using the tabarruʿ and waqf platform, a more meaningful concept of mutuality and Islamic brotherhood will be materialised as the motive of the concepts applied to the takāful scheme are purely noble and altruistic. The concepts also eliminate some inherent weaknesses of wakālah and muḍārabah model which draw criticisms from Sharīʿah scholars such as the issue of surplus and the application of the concept of muḍārabah and tabarruʿ to takāful contract.

3. In this proposed model, no upfront wakālah fee will be charged on the participants’ contributions. This will expedite the growth of the waqf fund and at the same
time, participants or takāful beneficiaries can expect better takāful coverage at lower contribution rates.

4. The tabarruʿ will be combined with the 80% of waqf seed capital and the 20% of the investment capital to constitute the takāful waqf fund. The fund will be invested in Sharīʿah-compliant investment instruments. Only investment profit generated from waqf fund will be used for takāful operation purposes. This is to maintain the corpus of waqf as decreed in the fatwā of Imām Zufar and other Muslim scholars.

5. In the proposed model, the fund will be managed by a takāful company which assumes two roles, that of a manager/operator and a trustee. As a manager and a trustee, the company is considered as a legal entity with the right to manage the fund as per takāful waqf deed especially with regard to investment and claims administration.

6. Only the tabarruʿ portion and profits generated from investment will be used to finance management expenses and pay claims to participants.

7. The donor who endows his money and also holds 20% of the takāful share will receive remuneration fee for his role in day-to-day takāful operation. On top of the remuneration fee, he is also entitled to profit sharing for his shares in the company. However, the portion of the profit will be based on his shares in the consolidated waqf fund (which also includes the amount of tabarruʿ contributed by takāful participants) and not his initial investment amount. In the event of loss, his liability is up to the amount he contributed to the consolidated fund.

8. In case of deficit or inability of the takāful fund to meet current liabilities, it is expected that the deficit will be covered using the instruments of zakāt, qard hasan from investors, donations from policyholders and government assistance/grant.
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Figure 3: Operation Model
As mentioned, the *waqf* concept has been used as an operating platform for *takāful* models in Pakistan and South Africa (refer to “Advantages of *waqf* and corporate *waqf* concept”). Table 1 highlights the differences between the proposed model and the one which the present industry has been offering to the public.

Table 1: Comparisons between the Proposed Model and the Existing *Takāful Waqf* Model

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<th>Proposed Model</th>
<th>Existing <em>Wakālah Waqf</em> Model</th>
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<tr>
<td><strong>Underlying Concept</strong></td>
<td><em>Waqf</em> + mutual company + trustee</td>
<td><em>Waqf</em> + shareholding company</td>
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<tr>
<td><strong>Type of Company</strong></td>
<td>Trustee</td>
<td>Shareholding company</td>
</tr>
<tr>
<td><strong>Composition of Takāful Fund</strong></td>
<td><strong>80% <em>waqf</em> + 20% investment</strong> (A <em>waqf</em> institution in Malaysia faced with perception problem is perceived as inefficient and ineffective. By having 20% external investment in the proposed model, there will be representative from shareholder in the BOD to oversee the operational activity of the company)</td>
<td><strong>100% <em>waqf</em> – all contributions come from shareholders</strong></td>
</tr>
<tr>
<td><strong>Purpose of <em>Waqf</em></strong></td>
<td>To create a <em>waqf</em> fund so that all <em>waqf</em> beneficiaries will benefit from its establishment</td>
<td>To create legal entity to assume ownership of all contributions and manage the fund as a normal commercial <em>takāful</em> operator</td>
</tr>
<tr>
<td><strong>Role of Company</strong></td>
<td>As <em>takāful</em> operator. It will be compensated accordingly for the service rendered from the <em>waqf</em> fund.</td>
<td>As <em>takāful</em> operator and <em>Mudārib</em>. As an operator, company will receive <em>wakālah</em> fee deducted from participants’ contribution; and as a <em>Mudārib</em>, it will share the profit generated from fund’s investment</td>
</tr>
<tr>
<td><strong>Participant’s Contribution</strong></td>
<td>All contributions are considered as <em>tabarruʿ</em></td>
<td>Participants to relinquish part of their contributions to <em>waqf</em> fund</td>
</tr>
<tr>
<td><strong>Wakālah Fee</strong></td>
<td>No upfront <em>wakālah</em> fee</td>
<td>Taken upfront from participant’s contribution</td>
</tr>
<tr>
<td><strong>Operating Expenses</strong></td>
<td>Taken from <em>waqf</em> fund</td>
<td>Taken from <em>waqf</em> fund</td>
</tr>
</tbody>
</table>
Towards a More Holistic Landscape of Takāful System

Conclusion

Most takāful companies claim their operation is based on the concept of mutuality advocating the spirit of co-operation (taʿāwūn), joined indemnity and mutual responsibility. However, their corporate structures coupled with the pressure of commercialism, require further investigation into their claims. This study thus has attempted to analyse the present state of affairs of the industry and subsequently made a suggestion of a new approach to a more holistic takāful framework built upon the concept of corporate waqf. The author is positive in this proposed framework as the concept of waqf—in which the wāqif/donor voluntarily relinquishes his ownership of the waqf corpus (in this case cash) and transfers it to the ownership of Allāh—would erode the element of commercialism which seems to have had a firm grasp on the various sectors of Islamic finance, and eventually—in the case of takāful—brings back the true spirit of mutuality into the takāful industry landscape. Being a preliminary proposal, imperfections are inevitable. The author believes that the proposal would be more meaningful and conclusive if views of takāful industry players and Sharīʿah scholars could be incorporated into this article. Owing to time constraints, the

<table>
<thead>
<tr>
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<th>Not shared; (and original capital would be returned to waqf fund)</th>
<th>Shared between the operator and participants</th>
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</thead>
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<tr>
<td>Underwriting Surplus</td>
<td>Shared between waqf fund and investor according to pre-agreed ratio</td>
<td>Surplus will be divided into 3 portions: 1. A portion will be kept as reserve to mitigate future losses 2. A portion will be distributed to the participants 3. A portion will be utilised for charitable purpose</td>
</tr>
<tr>
<td>Fund Deficit</td>
<td>Sources to cover deficit: zakāt (taken from aṣnāf of ghārimīn, donation from policyholders, qard ḥasan from shareholders and government aid.</td>
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Investment Result

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Shared between the operator and participants

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Shared between waqf fund and investor according to pre-agreed ratio

Surplus will be divided into 3 portions:
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Sources to cover deficit: zakāt (taken from aṣnāf of ghārimīn, donation from policyholders, qard ḥasan from shareholders and government aid. Shareholders to give qard ḥasan
interviews and the surveys which could be used to gauge views of the target respondents on the subject matter could not be conducted. Therefore, it is hoped that a more in-depth analysis which integrates both primary and secondary sources could be undertaken in the future so that a more conclusive proposal could be recommended for implementation.