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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 *ʿaqīlah*, *diyah* or *tabarruʿ* 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 Sharīʿah 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.[1] On the contrary, a corporation or limited company is a shareholder-owned company whose primary interest is in profits and asset-growth.[2] 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.

1. Wikipedia, "Mutual Organization", available at http://en.wikipedia.org/wiki/Mutual_organization (accessed 23 April 2012).
2. Johnston Birchall, "The future of co-operative and mutual businesses," (1998), available at http://nz.coop/docs/johnston.php (accessed 23 April 2013).

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 Ḥadīth.[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

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.
4. Ahmad Mohamed Ibrahim, "Philosophy of Islamic Insurance: Shariah Concepts and Principles," *IKIM Law Journal* 2, no 1 (1998): 1–18.
5. Syed Othman Alhabshi et al, *Takaful: Realities & Challenges* (Kuala Lumpur: INCEIF).
6. Zainal Azam Abd. Rahman, "Modern Takaful, Commercial and Mutual Insurance: A Short Analysis," *IKIM Law Journal* 4, no.1 (2000): 65.

scholars over the legitimacy of *takāful* business as it adversely affect Sharīʿah 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.[7] 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.[8] 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 Sharīʿah 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

7. Ma'sum Billah & Sabbir Patel, "An Opportunity for ICMIF Members to Provide Islamic Insurance (Takaful) Products," (2003), available at http://www.takaful.coop/images/stories/TakafulProposal-ENG.pdf (accessed 24 April 2012).
8. Society of Actuaries, "Is the Mutual Life Insurance Company an Endangered Species?," *RECORD* 25, no. 2 (2000).

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 Sharīʿah 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.[9] 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.[10] 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.[11]

9. Jeffrey Jameson, "Self study: Library research skill," available at http://www.doc88.com/p-891907105930.html (accessed 29 August 2014).
10. Zainal Abidin Mohd Kassim, "Are Commercial Pressures Taking Takaful away from Mutuality," (2009), available at http://www.assaif.org/content/download/3915/22857/file/1600%20Kassim.pdf (accessed 5 November 2012).
11. Dawood Yousef Taylor, "Developing a Family Takaful Operation in the Kingdom of Saudi Arabia. Bank Aljazira's Takaful Ta'awuni—a Modern Day Success Story," (2008), available at http://www.assaif.org/content/download/1227/8612/file/ITS2008%20%20Dawood%20Yousef%20Taylor.pdf (accessed 5 November 2012).

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.[12] Among Sharīʿah issues that draw the

12. Sabbir Patel, "Delivering The Difference: The Cooperative Experience," (2009), available at www.takaful.coop (accessed 23 April 2012); Volker Nienhaus, "The Growth Imperative," (2008), available at www.iif.com (accessed 11 May 2012); Iqbal Asaria, "The Spirit and Models of Takaful: Meeting of Minds or Parting of Ways?," *New Horizon*, July–September 2009, 38–40; Simon Archer, Rifaat Ahmed Abdel Karim, & Volker Nienhaus, eds., *Takaful Islamic Insurance: Concept Regulatory Issues* (Singapore: John Wiley & Sons [Asia] Pte. Ltd., 2009).

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

Unlike Muhammad Imran who looks at the ownership of *takāful* fund from Sharīʿah point of view, Zainal Azam analyses the subject matter from both the legal and Islamic perspectives. In *muḍārabah*, capital belongs to investors (*rab al-māl*). However, in *takāful*, funds legally belong to the company which positions as a trustee of the *takāful* members. Nevertheless, in the *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 *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 *takāful* fund.[14] When a *takāful* operator puts a strong emphasis on profits, it effectively takes the concept of *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.[15]

13. Muhammad Imran Usmani, "Takaful," a paper presented in SECP Takaful Conference March 14, 2007.
14. Zainal Azam, "Modern Takaful," 53–7.
15. Jamaal al-Din M. Zarabozo, "The Question of Insurance Outside of the 'Lands of Islam'," 2003, available at http://l.b5z.net/i/u/6103974/f/insurance.pdf (accessed 14 May 2012).

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,[16] Sabbir Patel,[17] Ma'sum Billah,[18] and Dawood Yousef.[19] 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.[20]

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.[21] 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.[22] 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."
18. See his (and Patel), "An Opportunity."
19. See his "Developing a Family Takaful Operation."
20. Society of Actuaries, "Is the Mutual Life Insurance Company an Endangered Species?"
21. Ibid.
22. Ma'sum & Patel, "An Opportunity."

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 scholars[25] on the financial statement of the National Cooperative Insurance Company (*al-Sharīkah al-Waṭaniyyah li'l-Tảmīn 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

23. Mohammad Muslehuddin, *Insurance and Islamic Law* (New Delhi: Adam Publisher, 1982).
24. See "Law On Supervision Of Cooperative Insurance Companies," Saudi Arabian Monetary Agency, available at http://www.sama.gov.sa/sites/samaen/Insurance/InssuranceLib/4600_C_InsuraLaw_En_2005_08_17_V1.pdf (accessed 13 May 2012?)
25. They are Dr. Muhammad ibn Saʿūd al-ʿUsaymi, General-Director, Sharʿi Council of the National Bank; Dr. Yusuf ʿAbdallāh al-Shubayli, Faculty Member, Higher Institute of Judicial Matters, Imām Muḥammad ibn Saʿūd Islamic University; Prof. Dr. Sulaymān ibn Fahd al-ʿIsā, Professor of Graduate Studies, Imām Muḥammad ibn Saʿūd Islamic University; Prof. Dr. Ṣālih ibn Muḥammad al-Sattān, Professor of Fiqh, University of al-Qāsim; Dr. ʿAbd al-ʿAzīz ibn Fawzān al-Fawzān, Assistant Professor, Imām Muḥammad ibn Saʿūd Islamic University; and Dr. ʿAbdallāh ibn Mūsa al-ʿAmmār, Assistant Professor, Imam Muḥammad ibn Saʿūd Islamic University.

to dish out a meagre percentage of profits is nothing than an attempt to give an air of Sharīʿah legitimacy to the contract.[26]

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 Sharīʿa 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.[27] 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[28] opines that the requested total mutuality cannot be achieved without readiness

26. See two related articles: "Drawback of Takaful," available at www.li.aleemkhanfalaki.com/chapters/drawbacks-of-takaful/(accessed 13 May 2012); and "What is the ruling on buying shares in the cooperative insurance company that is offering shares on the Saudi stock market?," available at www.islam-qa.com/en/ref/36955/national%20cooperative%20insurance (accessed 13 May 2012).
27. Osama Noor, "Sudan: A Model Takaful Industry," 2007, available at http://www.meinsurancereview.com/Magazine/ReadMagazineArticle? aid=3097 (accessed 13 May 2012).
28. See Mohammad Akram Laldin, "Root of takaful and linkage to mutuality," presented in ICMIF Takaful Network Meeting, 28 October 2010, Kuala Lumpur.

and commitment to initiate cooperative or mutual *takāful* from all *takāful* stakeholders. On the other hand, Madzlan[29] 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.[30] 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.[31] 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.[32] Agreeing with Green is Birchall who opines

29. Madzlan Mohamad Hussain, "Legal Issues in Takaful," in *Takaful Islamic Insurance: Concept Regulatory Issues*, ed. Simon Archer, Rifaat Ahmed Abdel Karim, & Volker Nienhaus (Singapore: John Wiley & Sons [Asia] Pte. Ltd., 2009)
30. Johnston Birchall, "Co-operatives in the twenty-first century," *Journal of Co-operative Studies* 33, no.3 (December 2000): 217–227, available at http://www.co-opstudies.org/pdf/Journal%20100/S02-Birchall-100.pdf (accessed 22 April 2012).
31. See Society of Actuaries, "Is the Mutual Life Insurance an Endangered Species?"
32. David G. Green, "Modern mutualism and the historic friendly societies," *Journal of Co-operative Studies* 32, no.3 (December 1999): 197–207, available at http://www.co-opstudies.org/pdf/Journal%2097/S04-Green-097.pdf (accessed 22 April 2012).

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.[33] 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*.

33. See Zvi Galor, "Demutualization of cooperatives: Reasons and perspectives," 2008, available at www.coopgalor.com (accessed 23 April 2012).

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.[34] 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[35] 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

34. Murat Cizakca, *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present* (Istanbul: Bogazici University Press, 2000).
35. Idem, "Incorporated Cash Waqfs: Islamic Non-Bank Financial Instruments from the Past to the Future?," presented for the INCEIF-Lofsa Workshop "The Emerging Islamic Finance Horizon," 14 February 2007, in Labuan.

with the co-operative concept of *takāful* as it is created for the very purpose of cooperation.[36] The motivation behind the development of *waqf* model could be traced back to the effort of Sharīʿah scholars of Dārul ʿUlūm Karachi. Issues regarding surplus sharing in *muḍārabah* and modified *muḍārabah* 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.[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.[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 Sharīʿah-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.[39]

36. Shakun Ashoka Raj, "Models of Takaful," *Middle East Insurance Review*, August 2007, 86–7.
37. Waheed Akhter, "Takaful models and global practices," *Journal of Islamic Banking and Finance* (Jan–March 2010): 30–44.
38. Muhammad Imran, "Takaful."
39. Tobias Frenz, *Takaful and Retakaful: Principles and Practices* (Kuala Lumpur: Munich RE Retakaful, 2009).

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*ʿ 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]

40. See his "Are Takaful Models Converging," a paper presented in the 2nd International Takaful Summit, 15 July 2008, in London.
41. See his "The Spirit and Models of Takaful."
42. See his "Legal Issues in Takaful."
43. Dahlia Binti Ibrahim & Haslindar Binti Ibrahim, "Revitalization of Islamic Trust Institutions through Corporate Waqf," 4th International Conference on Business and Economic Research Proceedings, Bandung, 2012, p.199.

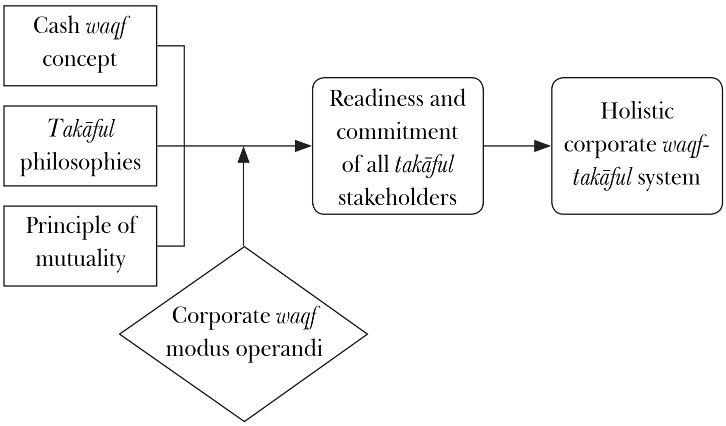
Even though the proposed study does not attempt to confirm any theory which requires testing of hypotheses, two pre-suppositional premises would be established as follows:

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.

Figure 1: Theoretical framework



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.

Figure 2: Basic Model

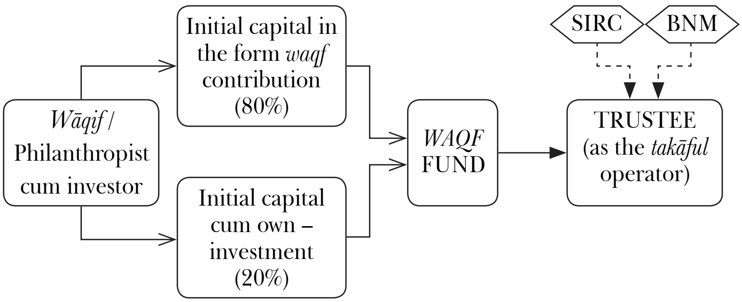


Figure 3 further explains the process flow of the model. Following are some important details of the above operational flow:

1. All participants at the outset of the *takāful* contract agree that their contribution in the scheme is considered as *tabarru*ʿ. 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 *tabarru*ʿ 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 *tabarru*ʿ 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 *tabarru*ʿ 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 *tabarru*ʿ 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 *tabarru*ʿ 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 ḥasan* from investors, donations from policyholders and government assistance/grant.

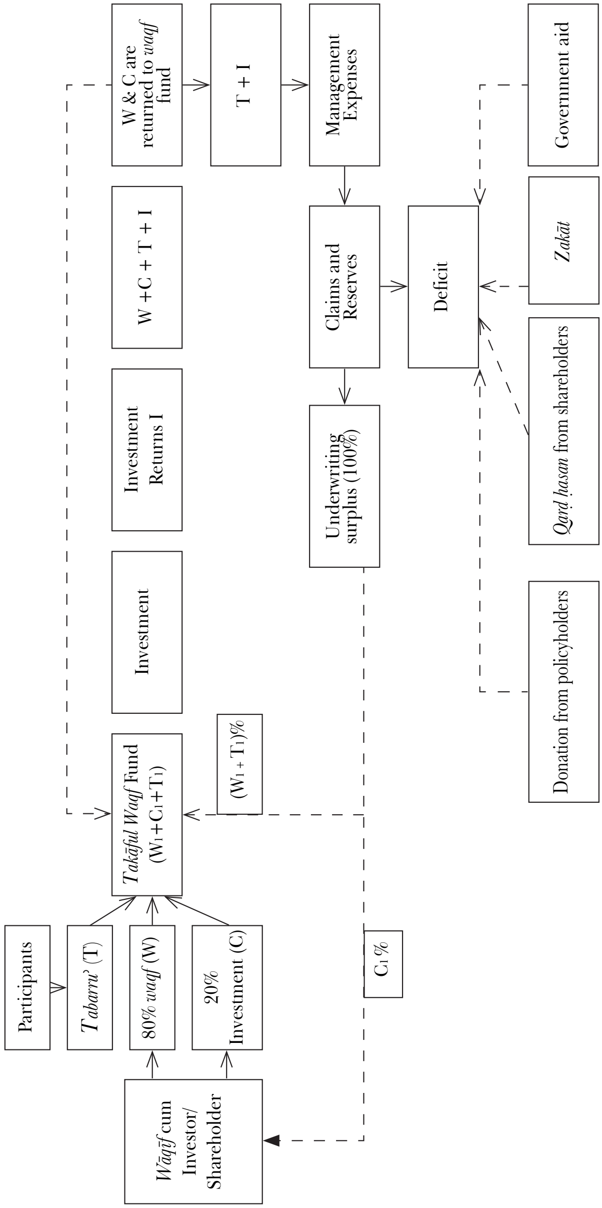


Figure 3: Operation Model

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

	Proposed Model	Existing *Wakālah Waqf* Model
Underlying Concept	*Waqf* + mutual company + trustee	*Waqf* + shareholding company
Type of Company	Trustee	Shareholding company
Composition of *Takāful* Fund	80% *waqf* + 20% investment (A *waqf* 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)	100% *waqf* – all contributions come from shareholders
Purpose of *Waqf*	To create a *waqf* fund so that all *waqf* beneficiaries will benefit from its establishment	To create legal entity to assume ownership of all contributions and manage the fund as a normal commercial *takāful* operator
Role of Company	As *takāful* operator. It will be compensated accordingly for the service rendered from the *waqf* fund.	As *takāful* operator and *Muḍārib*. As an operator, company will receive *wakālah* fee deducted from participants' contri-bution; and as a *Muḍārib*, it will share the profit generated from fund's investment
Participant's Contribution	All contributions are considered as *tabarru*ʿ	Participants to relinquish part of their contributions to *waqf* fund
Wakālah Fee	No upfront *wakālah* fee	Taken upfront from participant's contribution
Operating Expenses	Taken from *waqf* fund	Taken from *waqf* fund

Investment Result	Not shared; (and original capital would be returned to *waqf* fund)	Shared between the operator and participants
Underwriting Surplus	Shared between *waqf* fund and investor according to pre-agreed ratio	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
Fund Deficit	Sources to cover deficit: *zakāt* (taken from *aṣnāf* of *ghārimīn*, donation from policyholders, *qarḍ ḥasan* from shareholders and government aid.	Shareholders to give *qarḍ ḥasan*

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 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.