ii. In a *mudarabah* contract, the *mudarib’s* remuneration is his portion as agreed in the profit sharing ratio with the *rabbul mal*. Thus, the *mudarib* is not entitled to charge any management fee on the takaful participants’ contributions.

### 52. Distribution of Surplus from Participants' Risk Fund

Surplus from participants’ risk fund (based on *tabarru’*) refers to surplus derived after taking into account the provision of certain amount for payment of claims, retakaful, reserves and investment profits. The surplus from participants’ risk fund belongs to the takaful participants collectively. However, in view of the role played by the takaful company as the manager of takaful fund, there was a proposal to allow sharing of the surplus from participants’ risk fund between the participants and the takaful company, depending on the contract between the participants and the takaful company.

In this regard, the SAC was referred to on the issue as to whether the surplus from participants’ risk fund may be distributed amongst the participants and the takaful company.

**Resolution**

The SAC, in its 42nd meeting dated 25 March 2004 and 59th meeting dated 25 May 2006, has resolved that surplus from participants’ risk fund (for family takaful and general takaful plan) may be distributed amongst the participants and the takaful company. However, the method of distribution shall be clearly mentioned and agreed upon by the takaful participants during conclusion of the takaful contract.

The SAC, in its 62nd meeting dated 4 October 2006, has further resolved that:

i. For takaful model based on *wakalah* concept, the risk fund surplus may be taken by the takaful fund manager as a performance fee based on an agreed percentage; and

ii. For takaful model based on *mudarabah* concept, the surplus from participants’ risk fund may be shared between the participants and takaful company based on percentage or profit sharing ratio as agreed by all contracting parties.
Basis of the Ruling

The SAC’s resolution that allows the distribution of the surplus from the participants’ risk fund between the participants and takaful company is based on the fact that the takaful contract generally is formed based on tabarru` and ta`awun, as well as the mutual agreement between the contracting parties. The tabarru` principle is the main underlying principle of the takaful product whereas contracts such as wakalah and mudarabah are applied in the management of takaful operations.

The SAC’s resolution that allows the distribution of the surplus from the participants’ risk fund between the participants and takaful company for wakalah takaful model, has considered that the distribution is done as performance fee that may be received by the takaful company. This is in line with the following fiqh maxim:

الأصل رضى المتعاقدين ونتيجه هي ما انزلما بالتعاقد

“The original ruling for a contract is the consent of the contracting parties and its effect is based on what have become the rights and duties as agreed in the contract.” 80

In addition, takaful companies are different from insurance companies since takaful companies are not insurers but rather managers of takaful funds. Thus, the takaful participants’ consent to share the risk fund surplus with the takaful company as the fund manager does not contradict Shariah principles.

53. Distribution of Investment Profit from Participants’ Investment Fund and Participants’ Risk Fund

The SAC was referred to on the issue as to whether a takaful company is allowed to share in or impose a fee or performance fee on the investment profits from participants’ investment fund and participants’ risk fund.

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