

Supplement "C" to The Gambia Gazette No. _____ of _____, 2006
Insurance (Amendment) Act, 2006



THE GAMBIA

NO. _____ OF 2006

Assented to by The President,

this _____ day of _____, 2006

YAHYA A. J. J. JAMMEH
President

AN ACT to amend the Insurance Act, 2003 to make provision for takaful insurance in The Gambia and for matters connected therewith.

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ENACTED by the President and National Assembly.

Short title

1. This Act may be cited as the Insurance (Amendment) Act, 2006.

Amendment
of Act No.10
of 2003

2. The Insurance Act, 2003 (in this Act referred to as "the principal Act") is amended as set out in this Act.

Amendment of section 2

Insurance (Amendment) Act, 2006

3. Section 2 of the principal Act is amended by substituting for the definition of "insurance", the following new definition-

"insurance institution" means an insurer, a re-insurer, an insurance broker, a loss adjuster or a takaful operator, registered under this Act;.

Insertion of Part IXA and sections 69A to 69I

4. There is hereby inserted immediately after section 69 of the principal Act, the following new Part and sections-

"PART IXA – TAKAFUL (ISLAMIC INSURANCE)

Interpretation of this Part

69A. In this Part, unless the context otherwise requires-

"contribution" means takaful instalment payable by participants;

"family solidarity" means takaful for the benefit of the individual and his or her family;

"participant" includes, where a certificate has been assigned, the assignee for the time being and, where he or she is entitled as against the takaful operator to the benefit of the certificate, the personal representatives of a deceased participant;

"re-takaful" means an arrangement consistent with sound takaful principles for reinsurance of liabilities in respect of risks written or to be written by the takaful operator in the course of his or her carrying on takaful business;

Insurance (Amendment) Act, 2006

"re-takaful" deposit" means an amount deposited with or retained by a takaful operator by way of security for the performance by the re-takaful (reinsurance) operator of contracts undertaking liabilities incurred by the takaful operator;

"takaful" means a scheme based on brotherhood, solidarity, shared responsibility, joint indemnity and common interest which provides for mutual financial aid and assistance to the participants in case of need whereby the participants in case mutually agree to contribute for that purpose;

"takaful benefits" includes any benefit, whether pecuniary or not, which is secured by a takaful certificate and "pay" and other expressions where used in relation to takaful benefits, shall be construed accordingly;

"takaful business" means the business of takaful whose aims and operations are Sharia compliant;

"takaful certificate" includes any contract of takaful for family solidarity business or general business, whether or not embodied in or evidenced by an instrument in the form of a certificate, and references to-

- (a) issuing a certificate shall be construed accordingly; and
- (b) a certificate of a takaful operator include any certificate in respect of which the operator is under any liability, whether the certificate was issued by the operator or the liability was transferred to the operator from another operator;

"takaful operator" means a company or society which carries on takaful business;

"register" means the register of takaful certificates established by a takaful operator under section 69G of this Act.

69B. For the purpose of this Act-

- (a) takaful business shall be divided into two classes-

- (i) family solidarity business which, in addition to all takaful business concerned with solidarity certificates, include, in the case of any takaful operator, any type of takaful business carried on as incidental only to the operator's other solidarity business, and

- (ii) general business, that is to say, all takaful business which is not family solidarity business;

Classification for takaful business, and construction of references to matters connected with takaful

- (b) the re-takaful of liabilities, under takaful certificates shall be treated as takaful business of the class and type to which the certificates would have belonged if they have been issued by the re-takaful operator;

- (c) references to carrying on takaful business include the carrying on of the business through an agent, or as an agent; and

- (d) the operation, otherwise than for profit, of a scheme or arrangement relating to service in particular offices or employments, and having, for its objects or one of its objects, the making of provision in respect of persons serving therein against future retirement or partial retirement, or against future termination of service through death or disability, or against similar matters, shall not be treated as carrying on the business of takaful.

Requirements for carrying on business as takaful operator

69C. (1) Subject to section 5 of this Act, no person shall commence or carry on takaful business in The Gambia unless that person is registered under this Act.

(2) No person, other than a person mentioned in section 6 of this Act, shall carry on takaful business in The Gambia.

(3) No insurer or insurance institution shall carry on takaful business in The Gambia unless it is also registered as a takaful operator under this Act.

(4) The Bank shall be responsible for the registration of takaful operators and, subject to this Act, shall register an applicant with or without conditions in respect of takaful business.

(5) The Bank shall not-

(a) consider an application unless it is made in writing and accompanied by such documents and information as may be prescribed or as it may, in any particular case, require; or

(b) register an applicant unless it is satisfied that the aims and operations of the takaful business which it desires to carry on are Sharia compliant.

Use of word "takaful"

69D. (1) No person, other than an operator registered under this Act, shall use the word "takaful" or any of its derivatives in any language, or any other word indicating that the person carries on takaful business in the name, description or title under which it carries on business in The Gambia, or make any representation to such effect in any bill, letter head, paper, notice or advertisement.

(2) Nothing in this section shall prohibit a takaful association from using the word "takaful" or any of its derivatives in any language as part of its name or description of its activities.

Examination of persons suspected of carrying on takaful business

69E. Where the Bank has reason to suspect or believe that a person is carrying on takaful business without having been registered under this Act, it may, pursuant to the provisions of section 88 of this Act, call for or inspect the books, accounts and records of that person in order to ascertain whether or not that person has contravened or is contravening any provision of this Act.

Conditions of registration

69F. The Bank may, from time to time, as it thinks fit-

(a) impose conditions of registration on an operator; or

(b) add to, vary, or revoke any existing conditions of registration of an operator, who is already registered under this Act in order that it may remain so registered.

Register of takaful certificates

69G. An operator registered under this Act shall establish a register of takaful certificates in such form as may be prescribed and shall, other than any prescribed exceptions, keep the register at its principal place of business in The Gambia.

Establishment and maintenance of takaful funds and allocation of surplus

69H. (1) An operator registered under this Act shall establish and maintain, in accordance with this section, a takaful fund in respect of the class, or each class, of takaful business carried on by the operator in The Gambia so far as that business relates to takaful certificates registered by the operator under this Part.

(2) There shall be paid into the takaful fund all receipts of the operator properly attributable to the business to which the fund relates (including the income of the fund), and the assets comprised in the fund shall be applicable only to meet such part of the operator's liabilities and expenses as is properly so attributable.

(3) In the case of a takaful fund established in respect of family solidarity business, no part of the fund shall be allocated by way of takaful benefits to participants, except with the approval of a qualified actuary and out of a surplus of assets over liabilities as shown on the last statutory valuation of the fund and, on the making on an allocation, that surplus shall be treated for purposes of this section as reduced by the amount allocated.

(4) In a winding up, the assets comprised in the deposit made by an operator under this Part, in respect of the class or each of the classes of

takaful business, shall be treated as assets of the takaful fund established by the operator for business of that class, and subsection (2) shall apply to those assets accordingly.


(5) A takaful fund established by an operator for any class of takaful business shall, notwithstanding that the operator at any time ceases to carry on that class of business in The Gambia, continue to be maintained by the operator so long as the operator is required by this Act to maintain the register for certificates belonging to that class.

Re-takaful

69I. (1) An operator shall have arrangements consistent with sound takaful principles for re-takaful of liabilities in respect of risks undertaken or to be undertaken by the operator in the course of his or her carrying on takaful business.

(2) The Bank may, by giving notice in writing, require an operator to produce for its inspection, within a period specified in the notice, treaties on re-takaful, such other detailed information pertaining thereto and any such other re-takaful arrangements as it may in the particular case require."

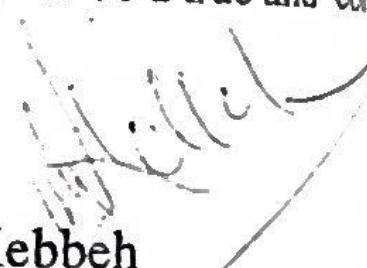
PASSED in the National Assembly this Seventeenth day of August
in the year of Our Lord Two Thousand and Six



D. C. M. Kebbeh

Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill
which has passed in the National Assembly, and found by me to be a true and correct
copy of the said Bill.



D. C. M. Kebbeh

Clerk of the National Assembly.