

# Takaful – an alternative to conventional insurance

CONTEMPORARY SHARIAH ADVICE  
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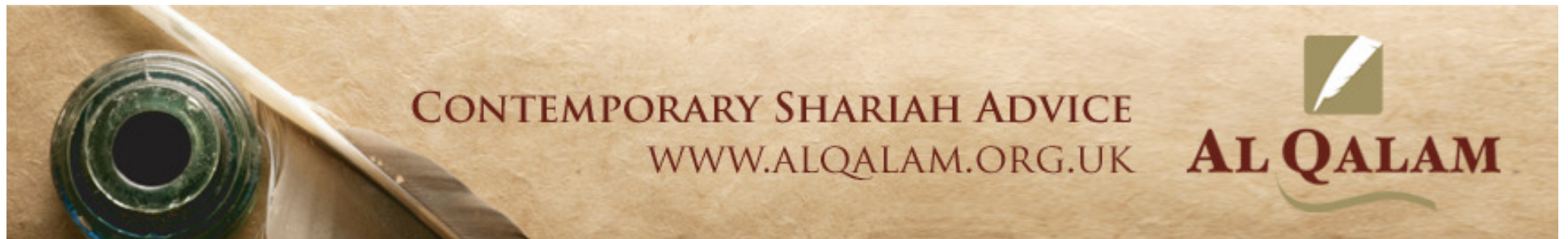
# Why insurance?

- **Definition:** A contract whereby one person, the **insurer**, promises and undertakes, in exchange for consideration of a set or assessed amount of money (called a "**premium**"), to make a payment to either the **insured** or a third-party if a specified event occurs.
  - form of risk management primarily used to hedge against the risk of a contingent loss
  - guaranteed small loss to prevent a large, possibly devastating loss
- Contrary to reliance on the will of Allah swt?
  - Avoiding risk is not contrary to reliance – **قيد وتوكل**



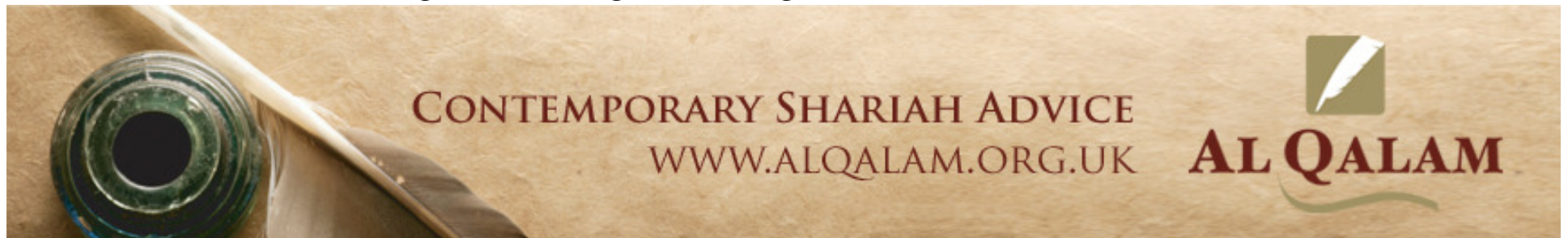
# What is wrong with conventional insurance?

- Commutative contract – عقد معاوضة
  - Does not allow uncertainty and ambiguity
- Riba
- Gharar/khatar
- Qimar/meysir
- Investment in prohibited avenues - incidental



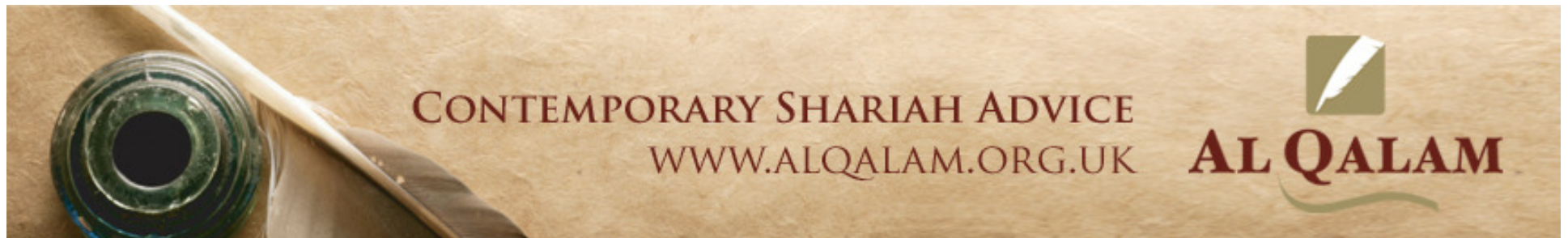
# Riba – excess without consideration

- Direct
  - An excess on one side in the exchange of premiums and the sum insured – riba al-fadhl & riba al-nasi'ah
  - No excess in payout – riba al-nasi'ah
  - No claim made [non-life policies] – insurance co. keeps the whole amount
  - Policy holder cancellation – loss of premiums
  - Termination by insurance co. – proportional refund
- Indirect
  - Investment in interest based activities by the insurer
    - Lending/borrowing/investing at a fixed rate on interest



# Gharar

- Gharar exists when there is uncertainty in the subject matter, consideration and liabilities:
  - Liability of any of the parties to a contract is uncertain or contingent
  - Consideration of one or both parties is not known
  - Delivery of either or both of the countervalues is not in the control of the obligor
  - Payment from one party is certain but is uncertain from the other party
- Benefits to be paid depend on the outcome of future events not known at the time of contract
- Rule of large numbers may remove gharar for the insurer but not the insured – each contract is considered independantly
- Peace of mind/safety - الأمان is the incentive not the object - محل العقد - object is the countervalues
- If safety is considered to be the object the contract is void – باطل – as الأمان cannot be the object of compensation
- Safety provided by a guard is incidental to the compensation of his time and work





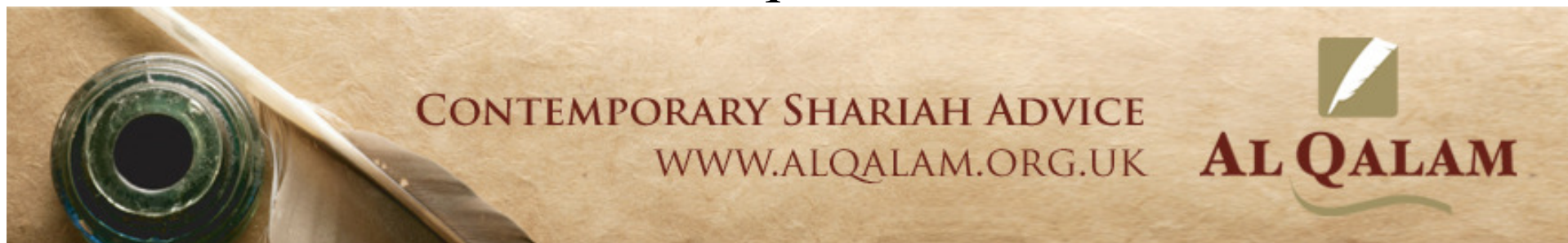
# Qimar & Meysir

- Qimar - Profit of one party is dependent on the loss of the other
- Meysir – monetary gains resulting from mere chance, speculation and conjecture and not from work, taking responsibility or real sector business

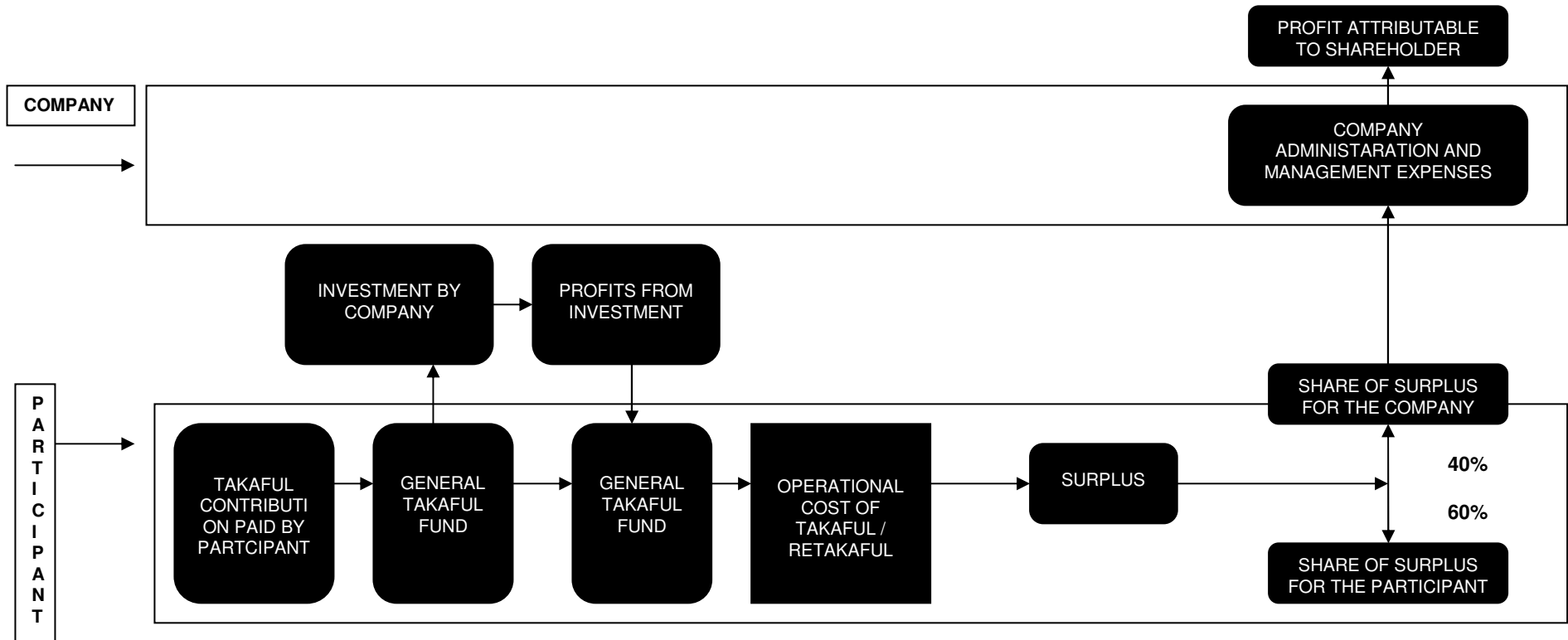


# The alternative?

- Takaful – mutual guarantee
- Based on mutual co-operation – تعاون and gratuitous offering – تبرع
- Risk is shared voluntarily by members of the takaful pool
- 3 prevalent models
  - Mudarabah
  - Wakalah – (wakalah and mudarabah)
  - Wakalah based on waqf



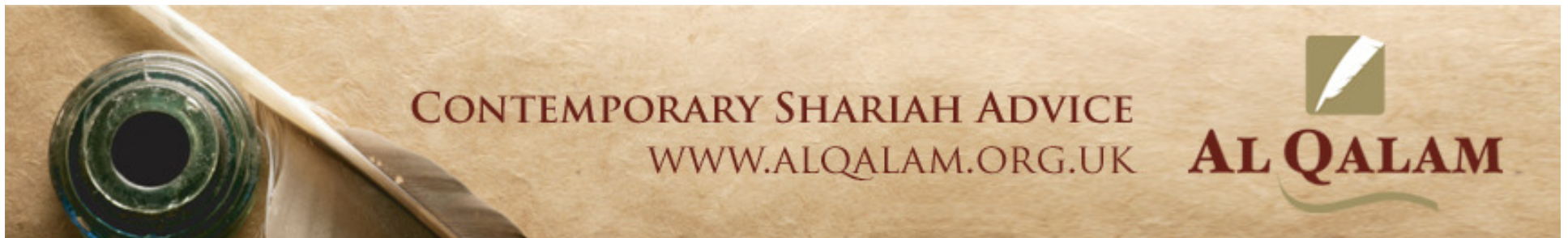
# Mudhaarabah (Malasian) Model



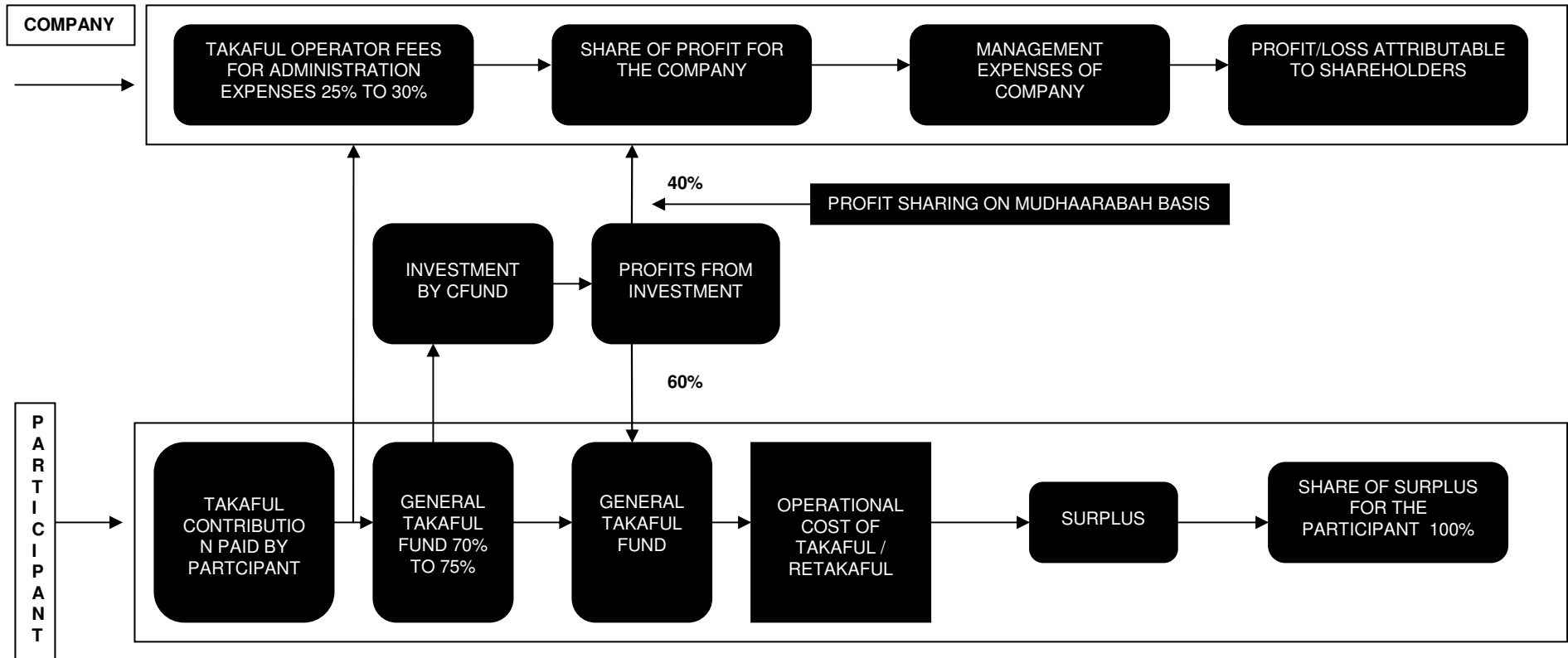


# Shariah related concerns

- By definition - takaful should be based on tabarru' and not profit sharing
  - Donation or mudhaarabah capital?
- Profit has to be generated to be distributed
  - 'Profit' is not same as 'surplus' (premium residual after claims, reserves and expenses)
- Shareholders become 'risk takers' as opposed to 'risk managers'
  - SHs bear risk and return of the underwriting results, or even worse in UWS and not UWL
  - Should be a contract of mutual assistance with an operator fee
- Qardh hasan requirement in case of deficit – mudhaarib cannot be guarantor
  - Repaid at a future date by other than those which incurred the deficit

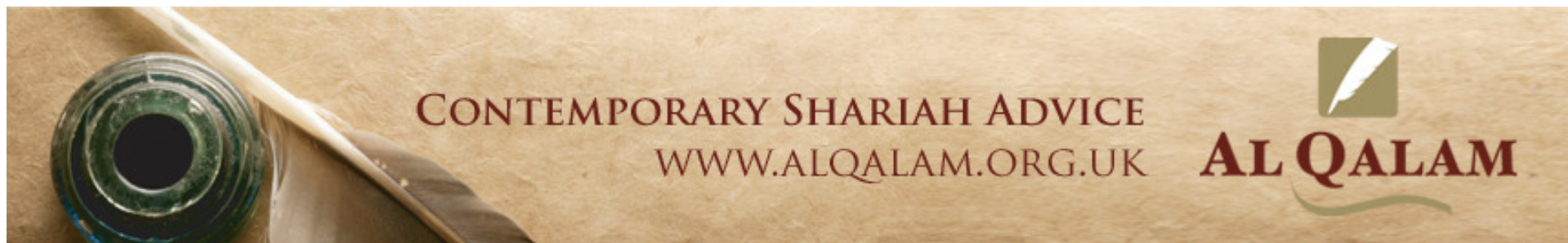


# Wakaalah (Middle Eastern) Model



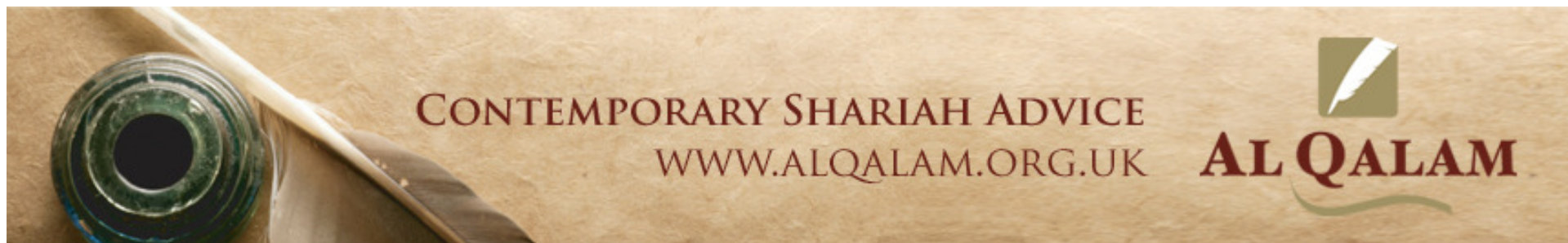
# Shariah related concerns

- Premiums remain the property of the premium holders unless consumed
  - Taburru' does not truly exist as right to receive surplus is retained
  - Inheritance and zakat related issues arise – method to measure share of surplus/deficit
- Qardh hasan requirement in case of deficit – wakil cannot be guarantor
  - Repaid at a future date by other than those which incurred the deficit
- Performance incentive as share of UWS



# Concept of Wakaalah with Waqf

- Shareholders establish the Waqf Fund with an initial donation
- Shareholders do not own the WF but as wakils of the WF have the right of administration
- Original donation should be invested in 'safe' ventures for the benefit of the participants
- Participants pay donation to the Waqf Fund and become members
  - Tabarru' is complete
  - Rate of donation is according to risk profile
  - Entitlement to compensation is on the basis of being a beneficiary and not in consideration of their donation
- SHs are also mudhaaribs (separate contract) – WF is rabbul maal
- Profits generated are distributed between SHs and WF
- Surplus distribution at the discretion of the WF
- Qardh hasan (in the case of deficit) provided by shareholders to WF through unilateral undertaking and not to participants
- Qardh hasan repaid by WF





# Wakaalah with Waqf Model

