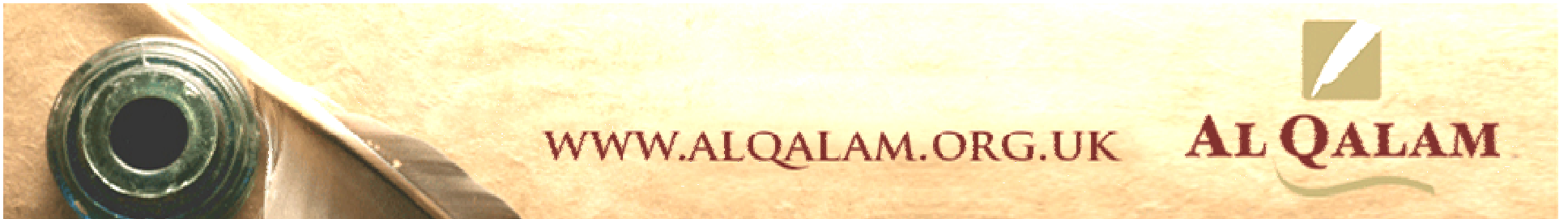


In collaboration with



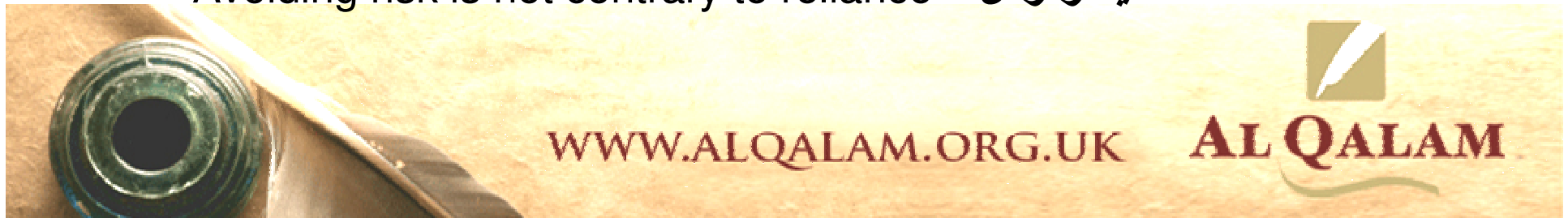
Takāful

an alternative to conventional
insurance – عقد التأمين



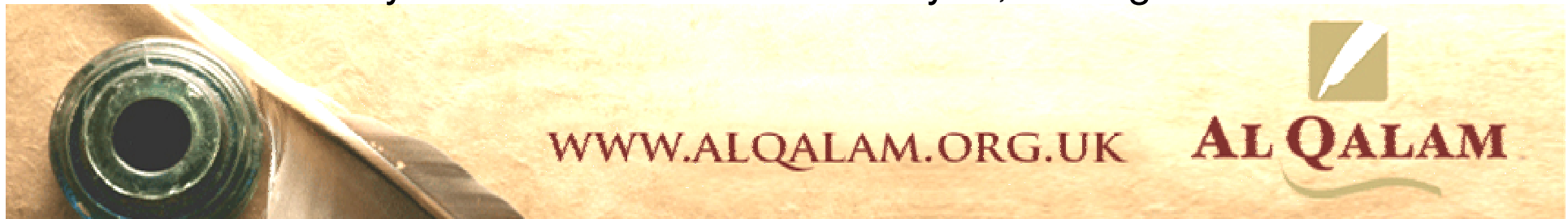
Why insurance?

- **Definition:** A contract whereby one person, the **insurer-** المؤمن, 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** - المؤمن له 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
 - effectively the sale of risk to the insurer in return for a premium
- Contrary to reliance on the will of Allāh swt?
 - Avoiding risk is not contrary to reliance – قيد وتوكل



How insurance works

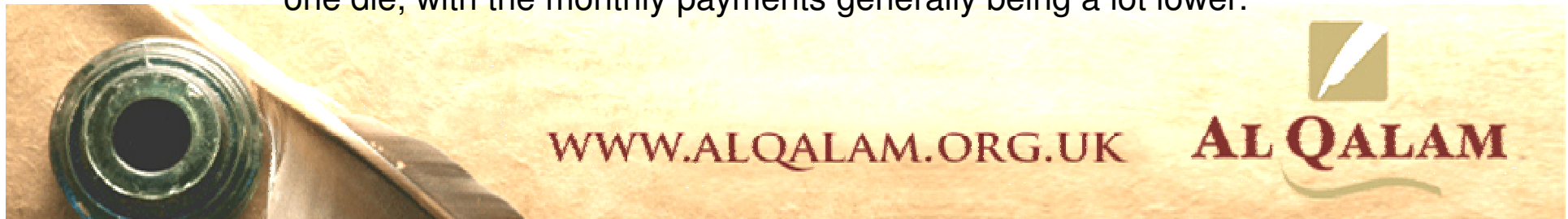
- Cornerstone of the principle of insurance lies in 'law of large numbers'
 - Not possible to predict the exact outcome of any given situation at any one point in time, but possible to predict reasonably accurately the pattern of outcomes over a period of time via a large sample of incidents.
 - Forms the basis of business strategy by working out the average number of accidents per year \times the average cost per accident.
 - Insurer then works out the cost of total premiums to cover the cost of expected claims + admin costs and desired profit
- 'Insurable interest' –
 - one can only take out insurance on an asset if one stands to lose financially should the asset be destroyed, damaged or lost.



Two basic types of insurance

1. Life insurance

- ‘investment type’ – policy holder/owner normally contributes monthly to a policy.
 - Some policies only pay out when policy holder dies.
 - Others pay out a cash amount on a specified date or on death.
 - The amount paid out by investment-type policies depends on how well the investments in the insurance fund have performed.
 - Can be expensive compared with traditional investments
- ‘term’ - policy guarantees to pay out a set amount if policy holder dies within a stated period (the 'term'), but doesn't pay out anything if he survives the term.
 - ‘term’ could be the number of years left on his mortgage or the number of years until his children are financially independent.
 - Usually a cheaper way of providing protection for one's dependants should one die, with the monthly payments generally being a lot lower.



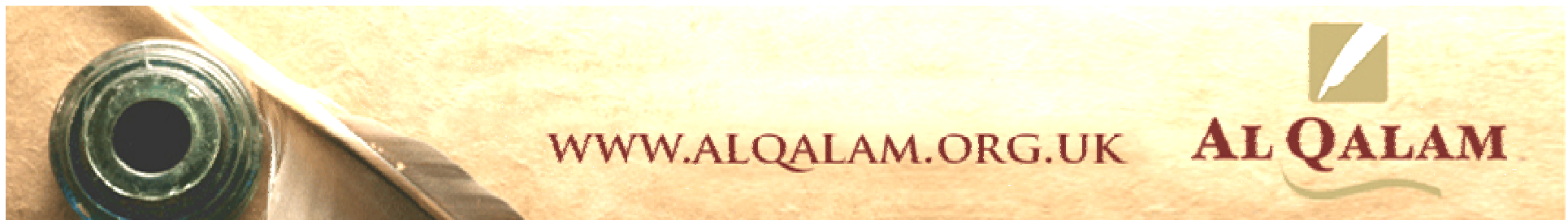
Two basic types of insurance

2. General Insurance

- includes most insurance except life insurance
- only pays out when an insured event occurs and includes:
 - home insurance (contents and/or buildings)
 - car insurance
 - travel insurance
 - private medical insurance
 - pet insurance
 - accident, sickness or unemployment insurance to protect your income, mortgage or loan payments (also called 'Payment protection insurance')
 - critical illness insurance
 - long-term care insurance

http://www.direct.gov.uk/en/MoneyTaxAndBenefits/ManagingMoney/Insurance/DG_10034596

http://www.direct.gov.uk/en/MoneyTaxAndBenefits/ManagingMoney/Insurance/DG_10034587



Conceptual aspect of insurance

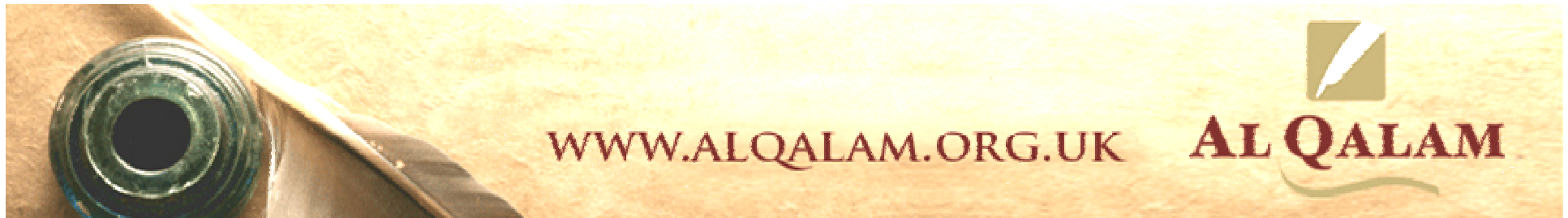
- **Underlying concept**

‘Fortunate many helping the unfortunate few’

... وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ... (2) [المائدة]

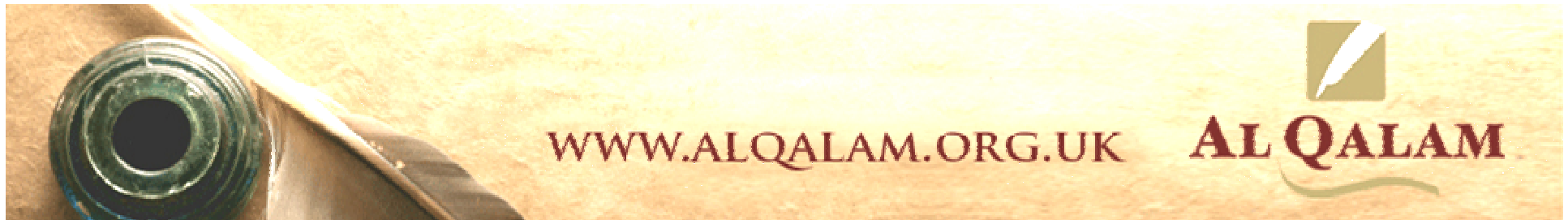
“Help one another in righteousness and piety, but help not one another in sin and rancour.” [5:2]

- Practices of *muwālāt*, *ma‘āqil*, *kafālah*, *waqf*, *tabrru* ‘ and the establishment of the Islamic welfare state by the Holy Prophet (SAW) are all manifestations of this concept.



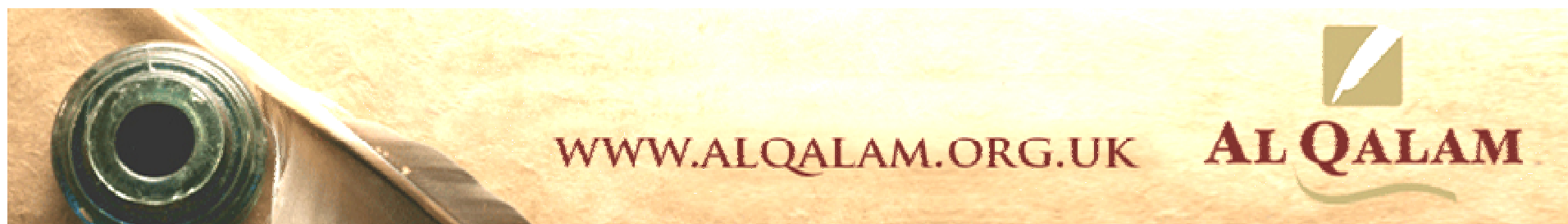
Then why not conventional insurance?

- Commutative contract – عقد معاوضة
 - Does not allow uncertainty and ambiguity
- Ribā
- Gharar/khaṭar
- Qimār/meysir
- Sale of mutually deferred countervalues – بيع الكالئ بالكالئ
- Investment in ribā and prohibited avenues - incidental



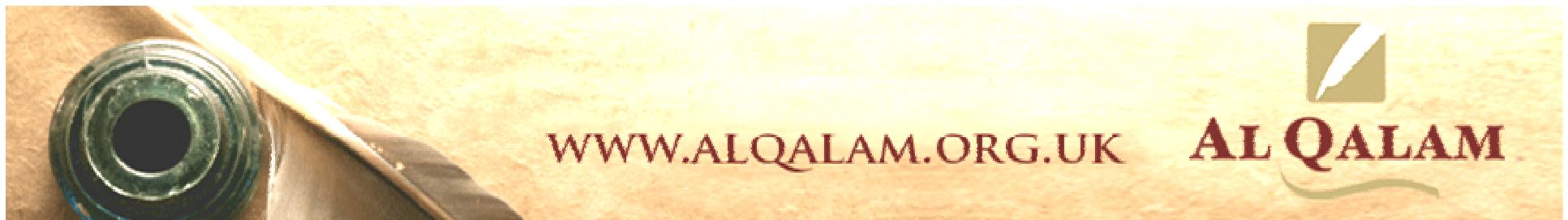
Ribā – excess without consideration

- Direct
 - An excess on one side in the exchange of premiums and the sum insured – ribā al-faḍl & ribā al-nasī'ah
 - No excess in payout – ribā al-nasī'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



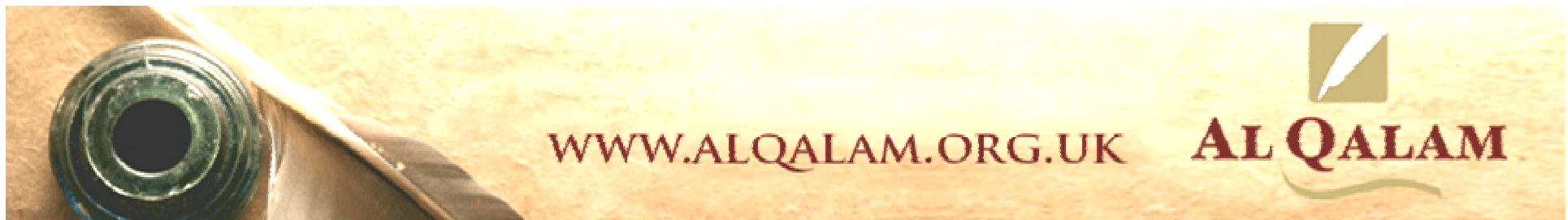
Gharar

- Gharar exists when there is uncertainty in the subject matter, consideration or 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
- It is not known whether the specified event will occur.
- Benefits to be paid depend on the outcome of future events not known at the time of contract – similar to gharar in ضربة القانس



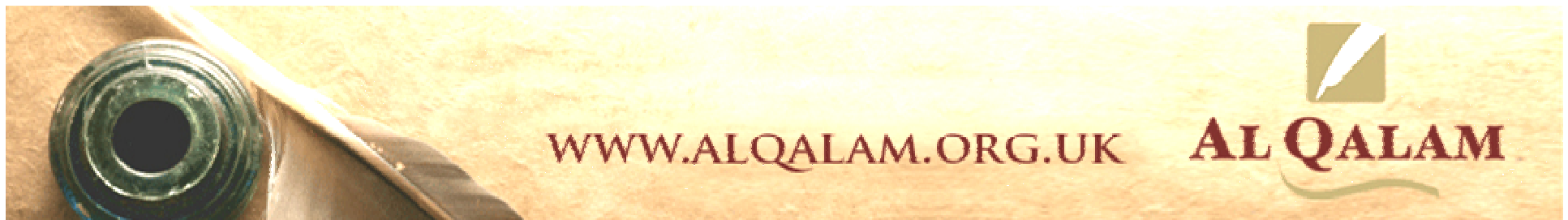
Objections to incidence of Gharar

- **Conventional insurance is a tabarru' contract**
 - **Answer:** Tabarru' would require the policy holders to mutually indemnify each other with the company as mere facilitator, whilst in reality the contract is between each policyholder and the company
- **Gharar is minor as it does not lead to dispute due to the prevalence of the practice**
 - **Answer:** Conventional insurance entails uncertainty :
 - in the existence of the insured event,
 - in payment of insurance,
 - extent of payment, and
 - period - all of which are forms of gross uncertainty



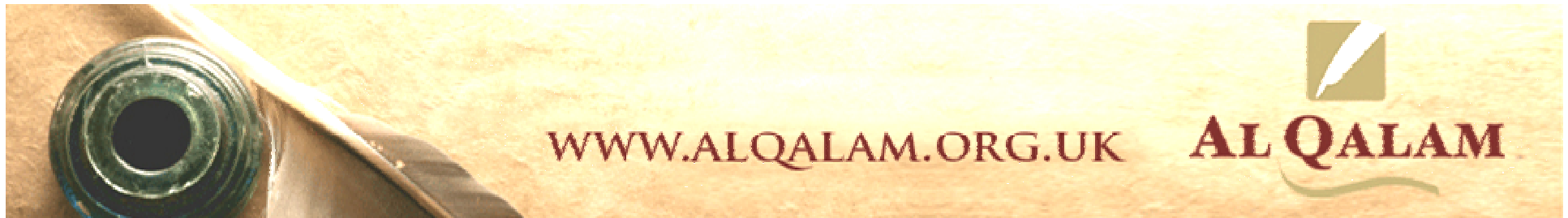
Objections to incidence of Gharar

- **Rule of large numbers removes gharar**
 - **Answer:** Rule of large numbers may remove gharar for the insurer but not the insured – each contract is considered independently
- **The insured receives his return in the form of peace of mind/safety - الأمان similar to that provided by a guard**
 - **Answer:** Peace of mind/safety - الأمان is the incentive not the object - محل العقد – objects are the countervalues
 - If safety is considered to be the object the contract is void – باطل – as الأمان cannot be the object of compensation.



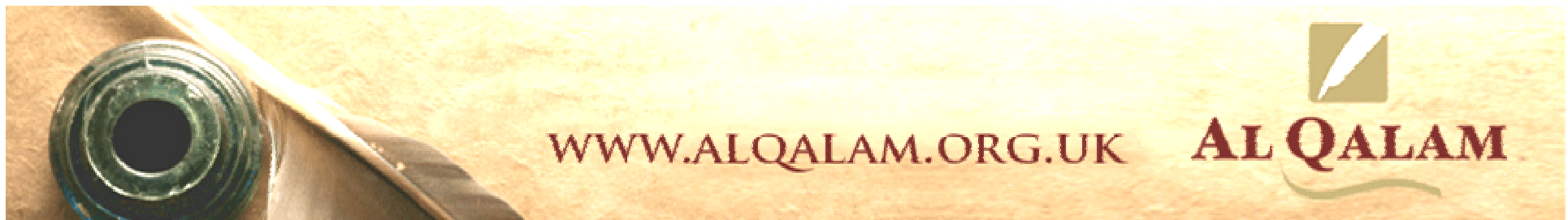
Objections to incidence of Gharar

- Safety provided by a guard is incidental to the compensation of his time and work . In fact, in cases of theft, etc without any negligence by the guard, he is still paid. Conversely, if he is absent despite no loss he is not entitled to payment.
- If the analogy with a guard is conceded then, in the absence of any negligence on behalf of the insurer, the insurer should not be liable as is the case of the guard!
- **The Gharar here is similar to that which exists in muḍārabah, mushārah and muzārah**
 - **Answer:** Gharar exists where one party receives one of the agreed countervalues whilst the other counter value remains uncertain for the other party. E.g., sale of a bird in the air
 - In muḍārabah, mushārah and muzārah the gain of both parties is related to the same outcome – if profitable, both gain, and in the case of loss both lose.



Qimār & Meysir

- **“A mutual undertaking between two or more parties in which each party wagers his property on an event with an uncertain outcome in a manner that the wagered property of one party transfers without consideration to the other party or the property of the other party transfers without consideration to the first party.”** [‘Adālatī Fayşlay, 2:243]
- Undertaking must be between two or more parties – if only one party wagers his property it is not qimār
- Parties to the mutual undertaking wager their own wealth – if a third party who is not a party to the mutual undertaking wagers his wealth it is not qimār
- Acquiring the wealth of another is made conditional on an event with an uncertain outcome – if the outcome is certain it is not qimār e.g. sun rising from the east or west
- The wagered property transfers without proper consideration – if a party receives proper consideration and then a prize in addition it is not qimār e.g. prizes in promotional packs of crisps without any consequential increase in the price of the crisps.



Qimār & Meysir

- **2 fundamental types of qimār:**

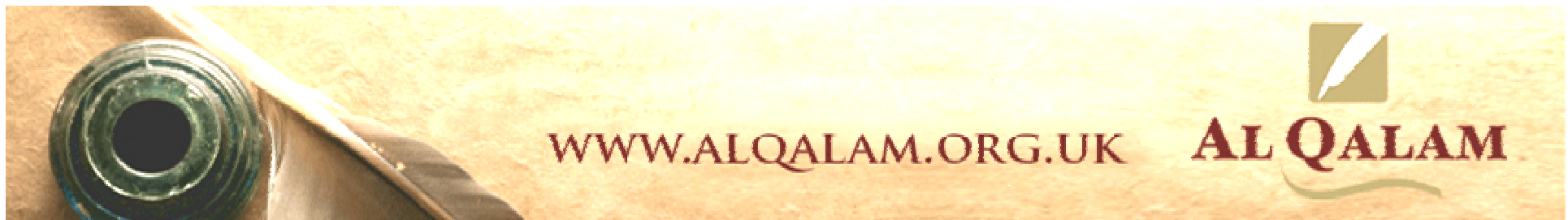
1. No particular party to the mutual undertaking is required to pay; rather, payment for each party is made conditional on an event with an uncertain outcome

- Loser of a combative game undertakes to pay the winner
- Marbles for keeps, etc

2. Payment from one party is certain whilst payment from the other party is uncertain

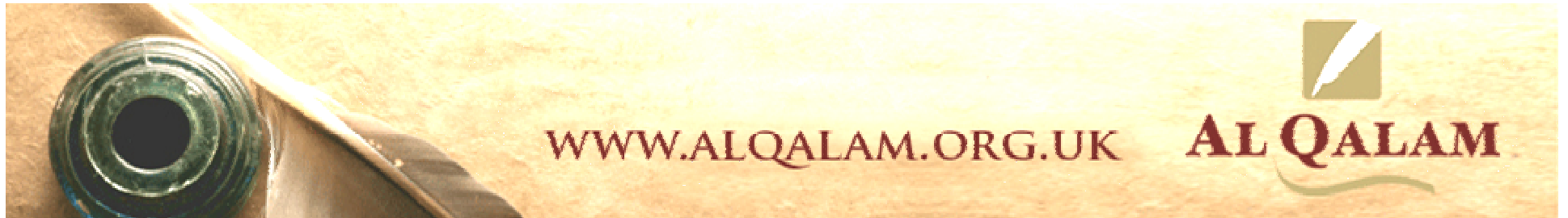
- National Lottery, scratch cards, raffles, fruit machines, and

CONVENTIONAL INSURANCE



بيع الكالى بالكالى – Sale of mutually deferred countervalues

- Policyholder pays premiums in instalments whilst payment from the insurer is delayed until the occurrence of the insured event.
- Prohibition of double deferment is based on the ḥadīth:
- عن نافع عن ابن عمر رضى الله عنهما : أن النبي صلى الله عليه و سلم نهى عن بيع الكالى بالكالى. [رواه الحام والداقطنى والبيهقى]
- Although the ḥadīth has a weakness in its chain the rule established thereby has found acceptance within the ummah.

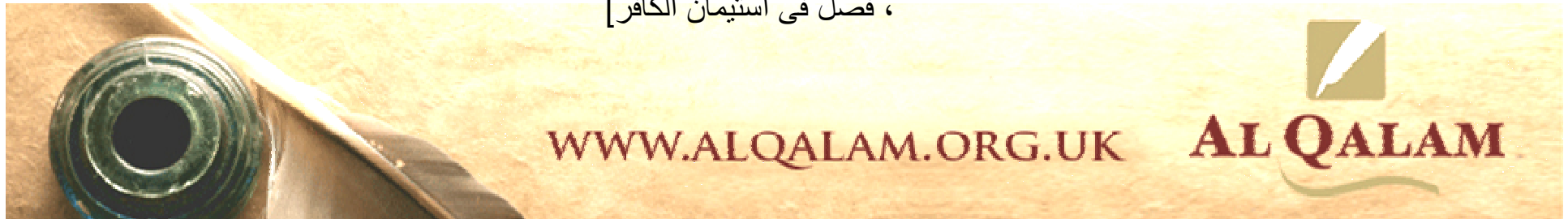


Precedents in juristic texts

- Ibn 'Ābidīn was possibly the first jurist to comment on a form of marine insurance known as the 'Sawkarah'.

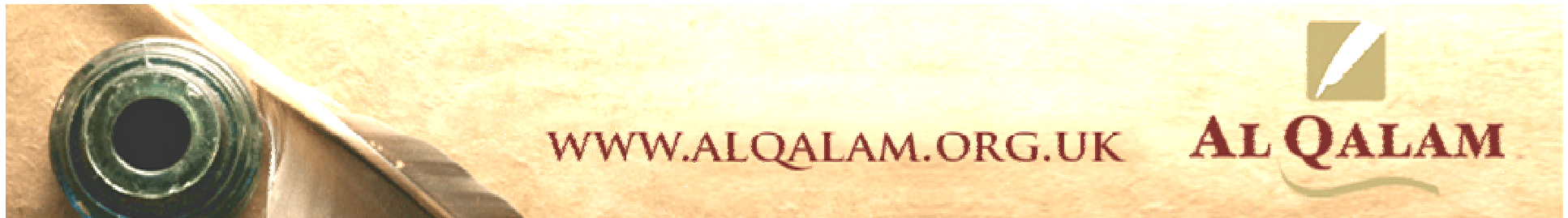
جرت العادة أن التجار إذا استأجروا مركبا من حربى يدفعون له أجرته ، ويدفعون أيضا مالا معلوما لرجل حربى مقيم فى بلاده ، يسمى ذلك المال : سوكرة على أنه مهما هلك من المال الذى فى المركب بحرق أو غرق أو نهب أو غيره ، فذلك الرجل ضامن له بمقابلة ما يأخذه منهم ، وله وكيل عنه مستأمن فى دارنا يقيم فى بلاد السواحل الإسلامية بإذن السلطان يقبض من التجار مال السوكرة وإذا هلك من مالهم فى البحر شئ يؤدى ذلك المستأمن للتجار بدله تماما ، والذى يظهر لى: أنه لا يحل للتاجر أخذ بدل الهالك من ماله لأن هذا التزام ما لا يلزم. [رد المحتار

، فصل فى استيمان الكافر]

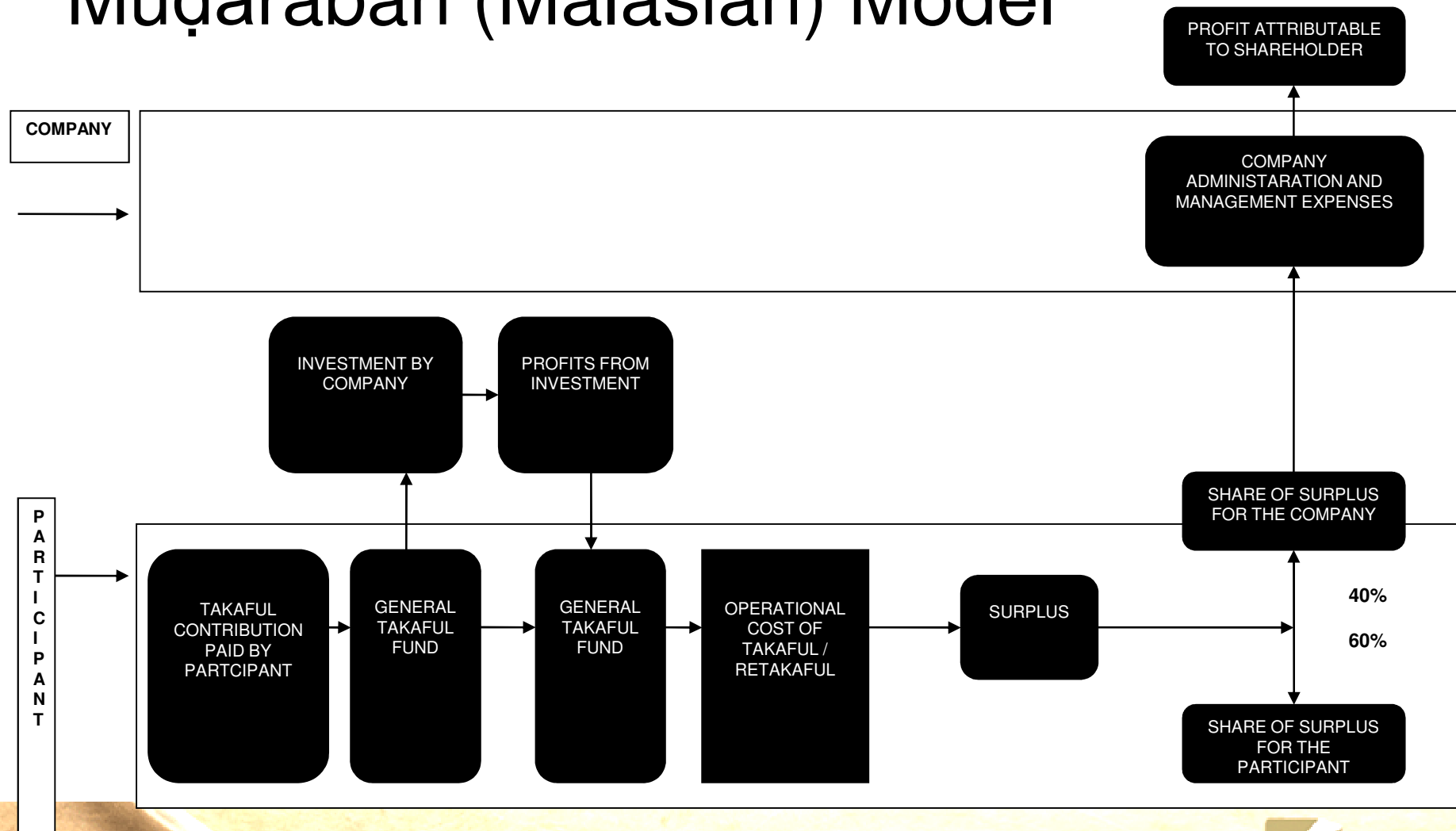


The alternative?

- Takāful – mutual guarantee
- Based on mutual co-operation – تعاون and gratuitous offering – تبرع
- Risk is shared voluntarily by members of the takāful pool
- 3 prevalent models
 - Muḍārabah
 - Wakālah – (wakālah and muḍārabah)
 - Wakālah based on waqf

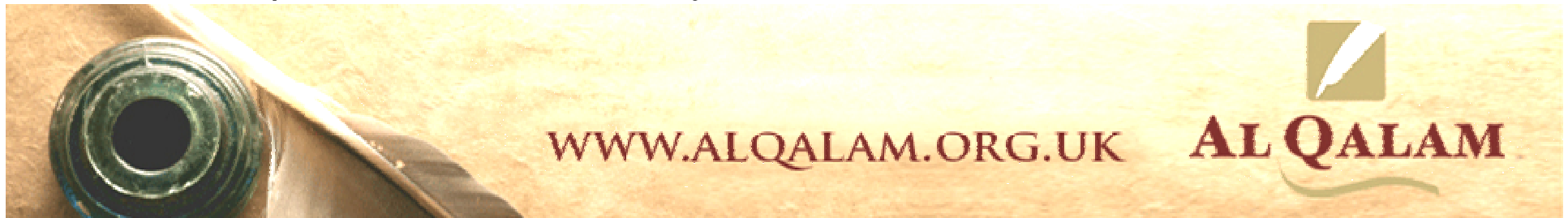


Muḍārabah (Malasian) Model

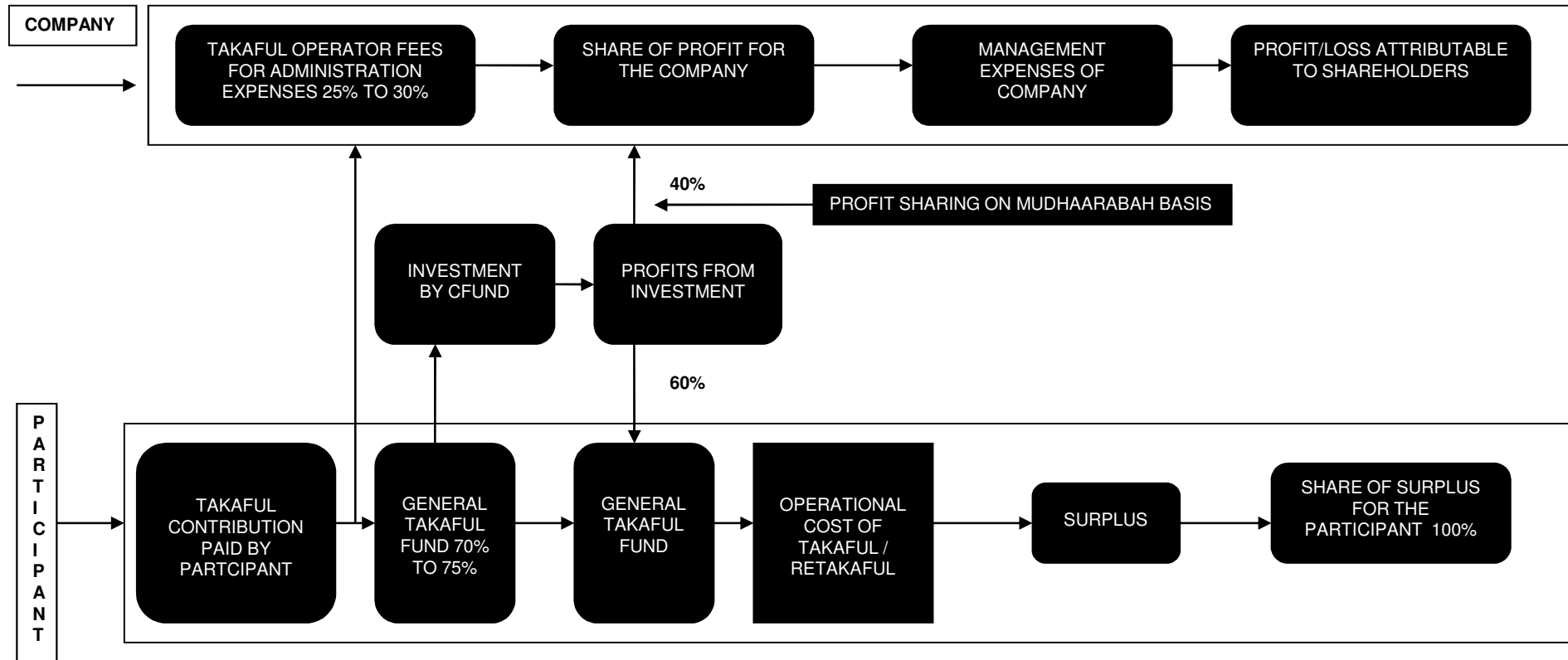


Shariah related concerns

- By definition - takāful should be based on tabarru' and not profit sharing
 - Donation or muḍārabah 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
- Qarḍ ḥasan requirement in case of deficit – muḍārib cannot be guarantor
 - Repaid at a future date by other than those which incurred the deficit

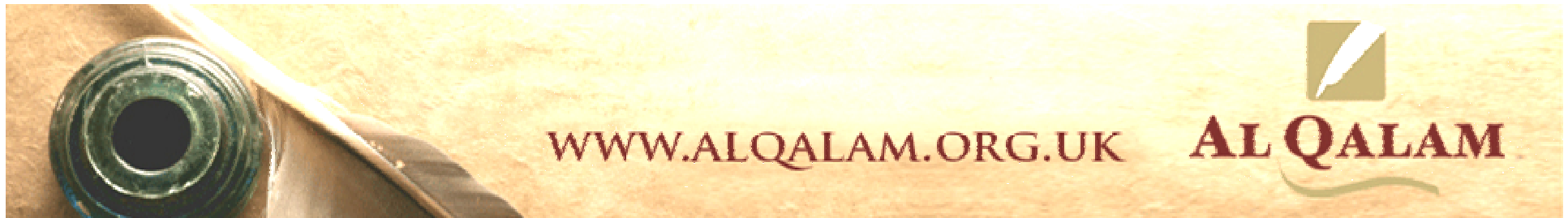


Wakālah (Middle Eastern) Model



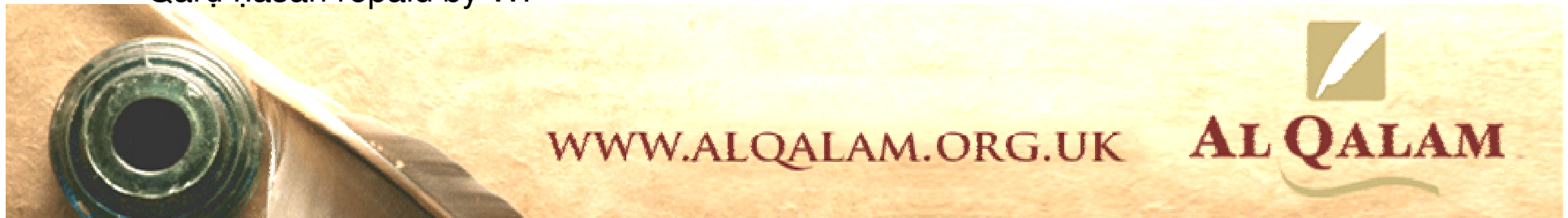
Shariah related concerns

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



Concept of Wakālah with Waqf

- Shareholders establish the Waqf Fund with an initial donation
- Shareholders do not own the WF but as wakīls 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 muḍāribs (separate contract) – WF is rabbul māl
- Profits generated are distributed between SHs and WF
- Surplus distribution at the discretion of the WF
- Qarḍ ḥasan (in the case of deficit) provided by shareholders to WF through unilateral undertaking and not to participants
- Qarḍ ḥasan repaid by WF



Wakālah with Waqf Model

