

Takaful

Can the UK experience be rolled out in Europe and beyond?

Susan Dingwall

Partner

15 July 2008

Growth of takaful

- Predicted global growth of takaful market to be worth in the region of US\$15bn
- The traditional markets have been Malaysia and the GCC
- Recent trends show the industry expanding beyond its home markets

Takaful in Europe?

- Expected high growth of takaful in Europe given the population of approximately 15 million Muslims on the continent
 - Growth factors: resources (skills and experience); consumer education; regulation
 - Largest markets: UK, France and Germany
- 

Takaful

- Subject to ‘double regulation’:
 - Shariah law
 - EU regulatory regime for insurers

EU passporting

- Based on the Treaty freedoms to provide a common market in goods and services
- Takaful operators can carry out business across the EU on the basis of a single authorisation
- Authorised by the home state regulator
- Right to operate in a host state through “passporting”

EU passporting

- Difference between establishing a branch and providing services (“cross-border” selling)
- Branch - establishment conditions
 - “consent notice” from home state regulator in correct form
 - One of the following must occur:
 - (i) branch state informs Takaful operator and home state regulator of any state rules with which they must comply; or
 - (ii) two months elapsed since the date of the consent form

EU passporting

- Cross border - service conditions
 - “notice of intention” to home state regulator and regulator’s notice from home state regulator to host state regulator (where services will be carried out)
 - Takaful operator/home state regulator informed of provisions

EU passporting

- Primacy of home state regulator
- Takaful operator notifies home state regulator that it wants to set up a branch or provide services overseas
- Home state regulator's responsibility to ensure compliance with prudential requirements (capital adequacy, solvency requirements, risk concentration, admissibility limits, reserve calculations etc)
- Home state regulator liaises with host state regulator

EU passporting

- Host state regulator receives certificate from home state regulator stating that Takaful operator
 - has satisfied solvency requirements
 - is authorised for relevant class of business
- Host state regulator can only impose additional requirements on the basis of “the general good”
- If no additional requirements imposed, Takaful operator can establish branch or provide services in the host state

Additional host state impositions

The rules applied by a host state to an incoming insurer/ Takaful operator must serve the "general good"

- allows a host state to apply its normal customer protection rules
- must not have been the subject of prior harmonisation within the European Union
- must not be discriminatory
- must be justified for imperative reasons relating to the general good (e.g. consumer protection)
- must be objectively necessary
- must not duplicate home country rules
- must be proportionate to the objective pursued
- Examples: prior notification of insurance policy conditions, capital redemption operations of insurance undertakings, uniform no-claims bonus systems, professional codes of conduct

Passporting: Issues for consideration

- Choice of home state regulator
 - Regulatory hurdles
 - Administrative burden in seeking authorisation
 - Capital / reserving requirements
 - Attitudes to Re-takaful
 - Ongoing management and supervision obligations
 - Costs of authorisation
 - Knowledge and attitude of the regulator to Takaful

Disclaimer

The materials in this pack have been prepared to provide a general outline of the issues covered. They should not be regarded as a comprehensive statement of the law and practice relating to this area. Readers should take specific legal advice on any particular matter which concerns them. If you require any advice or information, please speak to your usual contact at Norton Rose.

These materials contain information confidential to Norton Rose. Copyright in the materials is owned and retained by Norton Rose and the materials should not be copied or disclosed to any other person without the express authorisation of Norton Rose.

The logo consists of a stylized, upward-pointing chevron shape in a light orange color, positioned above the letter 'N' of the word 'NORTON'.

NORTON ROSE

