

THE PRINCIPLE OF *AL-TAKĀFUL* (COLLECTIVE RESPONSIBILITY) IN ISLAM AND ITS PRACTICE IN THE OPERATIONS OF SYARIKAT TAKAFUL MALAYSIA BERHAD

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Abstrak

Amalan insurans bukanlah satu perkara yang baru dalam sejarah ketamadunan manusia. Ia telah wujud semenjak zaman Babylon di Mesopotamia lagi yang bertujuan untuk melindungi harta persendirian, hartanah, perdagangan dan hal ehwal keluarga. Begitu juga dengan konsep dan amalan takaful sebagai sistem insurans Islam yang telah diamalkan oleh umat Islam sejak zaman Rasulullah (s.a.w.) lagi. Kemunculan sistem perbankan dan kewangan Islam dalam dunia perbankan dan kewangan konvensional telah memberi ruang kepada sistem takaful yang berasaskan kepada konsep al-takāful, al-muḍārabah dan al-tabarru' dilaksanakan sebagai satu alternatif kepada insurans konvensional yang berasaskan riba, perjudian dan gharar yang dilarang oleh Islam. Tulisan ini menjelaskan konsep al-takāful dalam Islam dan pelaksanaannya dalam amalan takaful di Malaysia, khususnya dalam operasi Syarikat Takaful Malaysia Berhad (STMB), salah sebuah syarikat yang diberi kebenaran untuk melakukan urusan takaful.

INTRODUCTION

This paper will discuss about the principle of *al-takāful* (collective responsibility or mutual co-operation) in Islam and its application in the operations of takaful industry in Malaysia with special reference to the Syarikat Takaful Malaysia Berhad (formerly known as Syarikat Takaful Malaysia Sendirian Berhad), the first company granted

permission to operate Islamic Insurance (Takaful) businesses based on contracts of *al-muḍārabah* and *al-takāful*. The topics to be discussed include the nature of insurance, an Islamic view on present-day insurance and the establishment and operations of Syarikat Takaful Malaysia Berhad (STMB).

THE PRINCIPLES OF AL-TAKĀFUL IN ISLAM

Literally, *Takāful* means collective responsibility, mutual guarantee; joint guarantee and mutual co-operation¹ and these are the hallmarks of this scheme. This concept embodies the principles of mutual co-operation, mutual help and shared responsibility.² The Islamic model of Islamic insurance (takaful) is based on the divine principles of collective responsibility, mutual co-operation and solidarity³ as mentioned in the Qur'ān, which means:

“... and co-operate you one another in righteousness and piety.” [Sūrah al-Mā'idah (5): 2].

There are many verses in al-Qur'ān which urge the Muslim to co-operate with one another and command us to form a virtuous society based on co-operation of one another in good and strictly prohibit the powerful thrashing of the weak. For example Allāh (SWT) says:

“O you who believe! Violate not the sanctity of the symbols of Allāh ... and help one another in righteousness and piety, but help you not one another in sin and rancour.” [Sūrah al-Mā'idah (5): 3].

As regards living together in peace and harmony, Allāh (SWT) says:

“O you who believe! Fear Allāh as He should be feared, and die not except

¹ Ibn Manẓūr, Abū al-Faḍl Jamāl al-Dīn Muḥammad b. Mukarram al-Ansārī (d. 711/1311-12) (n.d.), *Lisān al-'Arab*, Vol. XI, Beirut, pp. 589-590; E.W. Lane (1984), *Arabic-English Lexicon*, Vol. 1, Cambridge, p. 3001; R. Dozy (1927), *Supplement Aux Dictionnaires Arabes*, Vol. II, Leiden and Paris, p. 478; Hans Wehr (1976), *Arabic-English Dictionary*, (ed.) J. M. Cowan, New York: Spoken Language Services Inc., p. 834.

² For example, see Sami A. Hanna (1969). “*Al-Takāful al-Ijtīmā'ī* and Islamic Socialism”, *The Muslim World*, Vol. LIX, pp. 275-286; Nik Ramlah Nik Mahmood (1991) “Takaful: The Islamic System of Mutual Insurance - The Malaysian Insurance”, *Arab Law Quarterly*, February, pp. 286-287.

³ A. B. M. Mahbulul Islam (2000), “Al-Takaful (Collective Responsibility)”, *Al-Nahdah*, Vol. 19 (3), pp. 27-29.

in a state of Islam. And hold fast, all together, by the rope which Allāh (stretches out for you) and be not divided amongst yourselves and remember with gratitude Allāh's favour on you." [Sūrah Āli 'Imrān (3): 102-103].

In another verse, Allāh (SWT) mentions about co-operation or promotion of good:

"You are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong." [Sūrah Āli 'Imrān (3): 110].

"Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidding what is wrong. There are the ones to attain felicity." [Sūrah Āli 'Imrān (3): 104].

Takaful is needed for the greater benefit of the people themselves. This is because man is dependent on one another which begins at his birth, unlike the animals. A newly born baby needs the help of another human being for his movement, feeding, etc. However, a calf soon after birth by itself, is alone able to stand up and find out the mother without the help of another animal. In the case of human being, right from the birth till death, he needs guidance, help and co-operation of other human beings without which he may not survive or may go astray. In this regards, Allāh (SWT) says:

"The believers, men and women, are protectors of one another; They enjoin what is just and forbid what is evil, They observe regular prayers, practise regular charity, and obey Allāh and His Messenger. On them Allāh will pour His mercy". [Sūrah al-Taubah (9): 71].

There are many hadiths from the Holy Prophet Muhammad (s.a.w.) on the important of collective responsibility and mutual co-operation among Muslims. For example, He says:

"The example of the believers in their mutual love, kindness and sympathy is like one body; if one organ of the body complaints sickness the entire body becomes affected by the sleeplessness and fever."

The Holy Prophet Muhammad (s.a.w.) also says:

"The nature of relationship between the believers is like one building in which its stones are strengthening each other."

ORIGIN OF INSURANCE AND DEVELOPMENT OF TAKAFUL

The term 'insurance' in its real sense refers to community pooling to alleviate the burden of the individual, which might be ruinous to him. The simplest and most general conception of insurance is "a provision made by a group of persons, each singly in danger of some loss, the incidence of which cannot be foreseen, that when such loss shall occur to any of them, it shall be distributed over the whole group."⁴ Insurance has been described as a device provided by the community or group of people to cover loss,⁵ or an arrangement against risk,⁶ or against the dangers⁷ which beset human life and dealings, when they occur to the members of that community or group of people, by creating funds to cover losses or against that risk.⁸

In its modern form, insurance can be described as a contract whereby one person called the "insurer" undertakes, in return for the agreed consideration called the "premium", to pay another person called the "insured", a sum of money or its equivalent, on the happening of a specified event.⁹ The aim of insurance is to make provision against the dangers to which a group of persons are all equally subjected. Insurance is thus a mutual coverage of accidental loss by a group of persons subject to a common danger.¹⁰ In the present form of insurance, losses are not distributed

⁴ Entry on "Insurance" in *Encyclopaedia Americana*, Vol. XX, Connecticut, 1984, p. 233; *The New Encyclopaedia Britannica*, Vol. XXI, Chicago; 1985, p. 678.

⁵ Those who describe insurance as "Pooling of losses" is E. Cannan (1929), *A Review of Economic Theory*, London, p. 424; *Encyclopaedia of Banking and Finance*, p. 385; "Distribution of losses", W. F. Gephart (1911), *Principles of Insurance*, New York, pp. 4-5; "Mitigation of losses", *Ibid.*, pp. 1-2; "Indemnifying of losses", L. D. Edie (1926), *Economics: Principles and Problems*, London, p. 215 and "Meeting of losses", A. H. Silverman (1993), *The Substance of Economics*, London, p. 164.

⁶ See C. Gide (1914), *Political Economy*, London, p. 745; S. H. Patterson and K. W. H (1931), Schholz, *Economic Problems of Modern Life*, New York and London, p. 98; M. Dobb (1925), *Capitalist Enterprise*, London, p. 53 and 164; Marks Dordman says that risk can be divided into four categories, i.e. subjective risk, objective risk, pure risk and speculative risk. See *Introduction to Insurance*, Englawood Cliffs (1982), p. 9.

⁷ T.W. Morgan (ed.) (1933), *Porter's Laws of Insurance*, Part I, London, p. 1.

⁸ H. Barou (1936), *Coperative Insurance*, London, p. 40; See also Adam Smith (1950), *The Wealth of Nations*, Edwin Cannan (ed.), Vol. II, London, p. 248.

⁹ E. R. Hardy Ivamy (1975), *General Principles of Insurance Law*, London, p. 3; See an entry "Insurance" in *The New Encyclopaedia Britannica*, Vol. XXI, p. 678.

¹⁰ T. W. Morgan (ed.) (1933), p. 1.

but funds are created to cover the losses calculated in advance with the aid of past experience.¹¹ Thus, it can be seen that insurance involves the spirit of mutuality and co-operation.

The modern contract of conventional insurance seems to have its origin in the marine loans of ancient Greeks.¹² As against the ancient Greek marine loan, the idea of mutual insurance finds its expression in the payment of blood money¹³ (*'āqilah*) which was prevalent in Arab tribes during the pre-Islamic times.¹⁴ This was the common practice of the Ancient Arab tribes that if any member of a tribe was killed by a member of another tribe, the heir of the victim would be paid an amount of blood money as compensation by the close relatives of the killer. Those close relatives of the killer called *al-'āqilah*, were supposed to pay the blood money on behalf of the killer. The nature of blood-money was neither usurious, nor exploitative. It ingrained

¹¹ H. Barou (1936), *op. cit.*, p. 40.

¹² This marine loans of ancient Greeks described by Demosthenes; "Money was advanced on a ship or cargo, to be repaid with large interest if the voyage prospered, but not repaid at all if the ship be lost, the rate of interest being made high enough to pay not only for the use of capital, but for the risk of losing it". (Entry on "Insurance", in *The New Encyclopaedia of Britannica*, Vol. XXI, 1989, p. 678). According to Barou, "The rate of interest includes together with other elements a premium for insurance in order to provide compensation for the loan to the lender, in case of a loss incurred through the bankruptcy of the borrower". (See H. Barou (1936), *Cooperative Insurance*, London, p. 25). Thus it can be said that the modern contract of insurance is basically the same (usurious in nature) as the old marine loan of ancient Greeks. (M. Muslehuddin (1982), *Insurance and Islamic Law*, New Delhi: Adam Publishers & Distributors, pp. 27-28).

¹³ or blood-wite. See Th. W. Juynboll, "'āqila", in *Encyclopaedia Islam* (First Edition) (1913), Vol. I, p. 239.

¹⁴ Muslehuddin, *op. cit.*, p. 10-11; Th. W. Juynboll, "'āqila" pp. 239-240. *'Āqilah* is the name of the man's male relations who according to the precept of the religious law have to pay the penalty (the *'aql*) for him, when unintentionally he has caused the death of a Muslim. This decree was based on a verdict of the Prophet. One day in a quarrel between two women of the Ḥudhayl tribe, one of them who was with child was killed by the other with a stone, which hit her in the womb. When, soon after, the other woman also died, the Prophet decided, that her kin (*'āqilah*, or, according to a different reading her *'aṣabah*, i.e. agnates), in accordance with an old custom, had to pay the penalty to the relatives of the woman who had been killed. (Muslehuddin, *op. cit.*, p. 11; Juynboll, "'āqila", p. 239).

the spirit of mutuality, co-operation and mutual insurance, and eliminated the danger of wars of revenge which continued in pre-Islamic Arabia for decades. Such readiness to make monetary contribution could be similar to the premiums in insurance practices, while the compensation paid under *al-‘āqilah* could be similar to the indemnity in today’s insurance practices, as it is a type of financial protection for the heir against unexpected death of the victim.¹⁵

The above mentioned virtue of pre-Islamic times was approved and incorporated into Islam by the Prophet, and later by the practice of the Companions of the Holy Prophet such as Caliph ‘Umar b. al-Khattāb.¹⁶ The development of takaful practices, among others, can be seen from the acceptance of the practice of ‘*āqilah*’ by the Prophet Muhammad (s.a.w.),¹⁷ the relevant provisions in the first constitution of Madinah in 622 AD¹⁸ and the practices of the Companions of the Holy Prophet Muhammad (s.a.w.). The acceptance of the ancient Arab practices of ‘*āqilah*’ was accepted by the Prophet Muhammad (s.a.w.) in the case of a dispute between two women from the tribe Ḥudhayl as follows:

“Narrated by Abū Hurairah (r.a.), who said that: once two women from the tribe of Ḥudhayl clashed when one of them hit the other with a stone, which killed her and also the foetus in the victim’s womb. The heirs of the victim brought to the court of the Holy Prophet (s.a.w.), who gave a verdict that the compensation for the infanticide is freeing of a male or female slave while the compensation for the killing the women is the blood money (*diyah*), which to be paid by the ‘*āqilah*’ of the accused”.¹⁹

¹⁵ Mohd. Ma’sum Billah (2001), *Principles and Practices of Takaful and Insurances Compared*, KL: IIUM, pp. 3-4; *Idem* (2001), *Shari’ah Model Quantum of Damages in Takaful and Re-Takaful*, KL: IIUM, 35pp.

¹⁶ Muslehuddin, *op. cit.*, p. 23; See also al-Marghinānī (n.d.), *al-Hidāyah*, al-Maktabah al-Islāmiyyah, Vol. IV, p. 642; M. Hamidullah (1981), *The First Written Constitution in the World*, Lahore, pp. 41-42 and 44-45.

¹⁷ Ibn Ḥajar al-‘Asqalānī (1981), *Fath al-Bārī*, Lahore: Alan Nashrul Kutub al-Islamiah, Vol. 12, pp. 296.

¹⁸ The Constitution of Madinah which was prepared by the Holy Prophet Muhammad (s.a.w.) soon after His migration from Makkah to Madinah in 622AD is the first written constitution in the world. The constitution was meant for the people of Madinah, i.e. *Muḥājirūn*, *Anṣār*, the Jews and the Christians.

¹⁹ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, (tr.) Muhammad Muhsin Khan, “*Kitāb al-Diyah*”, Vol. 9, No. 45, p. 34.

The relevant provisions contained in the constitution of Madinah were of three kinds²⁰ as follows:

a. The Practice of *al-Diyah*

Al-Diyah or blood money was supposed to be paid by the *al-‘āqilah* of the killer to the heirs of the victim in order to rescue the killer from legal burden. This is provided at article 3 of the Medinan Constitution: “The *al-Muḥājirūn* among the Quraish shall be responsible for their word and shall pay the blood money in mutual collaboration”.²¹ Similarly, Other tribes living in Madinah at that time were also obliged to pay blood money in mutual collaboration relying on the doctrine *al-‘āqilah* as mentioned by the constitution.²²

b. The Practice of *al-Fidyah*

The Holy Prophet Muhammad (s.a.w.) also enacted a provision in the constitution of Madinah concerning rescuing the lives of prisoners which stated that should any person be made a prisoner of war by the enemy, the *al-‘āqilah* of the prisoner shall contribute ransom (*diyah*) to be paid to the enemy in order to enable the captive to be freed.²³ Such contribution could be considered as another form of social insurance. The constitution of Madinah provided that, “The *Muḥājirūn* among the Quraish shall be responsible for releasing the prisoners by way of paying their ransom, so that the mutual collaboration among the believers be in according with the principles of goodness and justice”.²⁴ The above provision was also applicable to other tribes such as the Banu Ḥārith, Banu Najjār, Banu Jusham and others who are living in Madinah at that time.²⁵

c. Social Insurance

Article 4-20a of the constitution of Madinah provided that the social insurance shall be responsible to establish a joint venture with a mutual understanding towards necessary aid and help for the needy, ill and poor.²⁶

²⁰ Mohd. Ma’sum Billah, *op. cit.*, pp. 5-6.

²¹ Muhammad Hamidullah, *The First Written Constitution in the World*, Art. 3, p. 55.

²² *Ibid.*, Arts. 4-12, p. 42ff.

²³ Muhammad Hamidullah (1983), *Introduction to Islam*, Lahore: Sh. Muhammad Ashraf, p. 146; Mohd. Ma’sum Billah, *op. cit.*, p. 6.

²⁴ Muhammad Hamidullah, *The First Written Constitution in the World*, Art. 3, p. 55.

²⁵ *Ibid.*, Arts. 4-12a, p. 42ff.

²⁶ Mohd. Ma’sum Billah, *op. cit.*, p. 6.

The development of the practice of *al-takafūl* can also be seen from the period of the second Caliph, Sayyidina 'Umar b. al-Khattāb (r.a.) where people were encouraged to practice *al-'āqilah* system nation wide. A *Dīwān of Mujāhidīn* was established by the state in the various districts and whose names were recorded and contained in the *Dīwān* owed each other mutual co-operation or collective responsibility to contribute the blood money for manslaughter committed by someone from their own tribe.²⁷

AN ISLAMIC VIEW ON PRESENT-DAY INSURANCE

Insurance has undoubtedly assumed tremendous importance in modern commerce, trade and industry. The contract of insurance has been the subject matter of prolonged and detailed studies, examination and scrutiny by and amongst eminent Islamic scholars, who have come to different conclusions, views and opinions. There are at least three standpoints: That it is permissible (*mubāḥ*), That it is prohibited (*ḥaram*) and that some forms are allowed others disapproved.²⁸

The proponents of the permissibility of insurance (*ta'mīn*)²⁹ declare that such contract is allowed if it is free from *ribā*. It is considered as a collective undertaking (*'amal ta'āwun*) which takes care of the welfare (*maṣāliḥ*) of individuals and society. In so far as *maṣlahah* is achieved, it is in compliance with the law. Moreover, originally all contracts are permissible and as such it can be equated by analogy to various permissible contracts.³⁰ Justification based on public interest and even on the socio-economic survival of the Muslim Ummah has also been put forward.³¹

²⁷ See "*Āqila*" in *Encyclopaedia of Islam*, p. 29ff.

²⁸ Aḥmad al-Sa'd Sharaf al-Dīn, *'Uqūd al-Ta'mīn wa 'Uqūd Damān al-Istithmār*, pp. 88-94; M. Muslehuddin, *Insurance and Islamic Law*, pp. 109-125.

²⁹ *Ta'mīn* became the Arabic term for insurance in the 20th century. (E. Klingmuller (1969), "The Concept and Development of Insurance in Islamic Countries", *Islamic Culture*, Vol. XXXXIII (1), (Hyderabad), pp. 27-37. Ibn 'Abidin, however, a anaf jurist who is considered the first Muslim to name insurance *sukara* (security), influenced by the Italian term *siguare* and the Turkish *sigorta*. (Hāshiyah Ibn 'Abidin., Vol. IV, pp. 170-173 Vardit Risper-Chaim (1991), "Insurance and Semi-Insurance Transactions in Islamic History Until the 19th Century", *Journal of Economic and Social History of The Orient*, Vol. XXXIV, (Leiden), pp. 142-143.

³⁰ A. S. Sharaf al-Dīn, *op. cit.*, p. 90.

³¹ Muḥammad al-Bāhī, *'Aqd al-Ta'mīn*, p. 23.

The justifications of *ta'mīn* advanced by Muṣṭafā Zarqā³² and 'Alī al-Khafīf,³³ leading contemporary scholars, have been overwhelmingly accepted. Firstly, it is argued that *ta'mīn* is a newly known contract not covered by a text (*nass*) whether approving or disapproving of it. It should thus be considered allowed (*jā'iz*) and permissible (*mubāh*). Secondly, since it is a contract based on *maṣlahah* and since there is no aspect of any harm (*darar*), it complies with the prescribed law. Thirdly, insurance has become a common usage ('*urf 'āmm*) necessary for the attainment of private and public interests. '*Urf* is considered to be a source of law, as long as it does not contradict the precepts of the *Shari'ah*.³⁴

The proponents of the prohibition of insurance argue that it contains the elements of *ribā* (usury), *gharar* (risk), *jahālah* (uncertainty), *maysir* (gambling and unearned gain), and attempting to supersede the will of God, all of which is said to be diametrically opposed to the ethical standards set by Islamic law.³⁵ Muḥammad Abū Zahrah has made the qualification that *ta'mīn* not founded on a collective basis (*al-ta'mīn ghayr al-ta'āwun*) is reprehensible (*makruh*). Such a decision is established on the basis of the classical methodology of '*Ulama' al-salaf* that no prohibition will be pronounced except where there is an explicit evidence (*dalīl qat'i*).³⁶

The third group holds that some forms of *ta'mīn* are allowed and some are prohibited. Some of them allowed the use of *ta'mīn* on property but ban life insurance.³⁷ However, an overwhelming majority of Islamic scholars are now of the opinion that the conventional insurance contract does not, in its present form, conform to the

³² His finding on this matter was delivered in the *Usbu' al-Fiqh al-Islāmī* in Damascus (1961) as well as in his deliberation at the Mecca Conference (1976).

³³ His opinions submitted to the second assembly of the *Majma' al-Buhūth al-Islāmiyyah* (Islamic Research Academy) of al-Azhar University in which he excluded life insurance from the list of validated insurances.

³⁴ A. S. Sharaf al-Dīn, *op. cit.*, p. 90.

³⁵ M. Muslehuddin, *op. cit.*, p. 109; A. S. Sharaf al-Dīn, *op. cit.*, p. 88.

³⁶ For details on the polemic between Muḥammad Abū Zahrah and Muṣṭafā Aḥmad al-Zarqā', see Zarqā's works '*Aqd al-Ta'mīn wa Mawqif al-Shari'ah al-Islāmiyyah minhu* (A lecture delivered during the *Usbu' al-Fiqh al-Islām*), Damascus, 1962 and a recent work '*Aqd al-Ta'mīn fī al-Shari'ah al-Islāmiyyah*, 1982.

³⁷ Muhammad Nejatullah Siddiqi (1985), *Insurance in an Islamic Economy*, Leicester: The Islamic Foundation, p. 26.

Shari'ah because it includes an element of *gharar* (uncertainty), based on the practice of *ribā* and a sort of gambling (*maysir*).³⁸

THE ESTABLISHMENT OF SYARIKAT TAKAFUL MALAYSIA BERHAD³⁹

The need for a scheme of insurance in Malaysia which is in line with Islamic teachings was officially affirmed when the Fatwa Committee declared in 1972 that the conventional concept of life Insurance as practised in Malaysia was unlawful in Islam as it contained the elements of *ribā*, *gharar* and *maysir*.⁴⁰

Gharar

Gharar means obvious indeterminacy, hazard or risk (*khaṭar* or *mukhāṭarah*) and ignorance that is likely to cause disputes which, when applied to insurance, means the presence of unknown and uncertain factors in the operation of the contract.⁴¹

³⁸ Insurance has been discussed at a number of Islamic conferences, but a favourable verdict on commercial insurance has been withheld in view of the objections of the eminent scholars. This is brought out by the resolutions passed at the 1965 Islamic Research Congress at Cairo and those adopted in 1969 at Kuala Lumpur. See Muhammad Nejatullah Siddiqi (1981), *Muslim Economic Thinking: A Survey of Contemporary Literature*, Leicester: The Islamic Foundation, p. 27. As recently as 1976 the First International Conference on Islamic Economics held at Mecca resolved that: "The Conference feels that commercial insurance as presently practised does not realise the *Shari'ah* aims of co-operation and solidarity because it does not satisfy the Islamic conditions for it to become acceptable". Furthermore, the conference recommended the establishment of a committee consisting of specialists in *Shari'ah* and economics to recommend a system of insurance which is free from *ribā* and speculation, promotes co-operation in accordance with the *Shari'ah*, and helps replace the current form of commercial insurance. See General Recommendations, no. 6, First International Conference on Islamic Economics, Mecca, 1976 cited in Siddiqi, *Muslim Economic Thinking*, p. 27.

³⁹ Hereafter cited to as *Syarikat Takaful*.

⁴⁰ *Report of the Committee on the Setting-up of an Islamic Insurance Company in Malaysia*, Kuala Lumpur, 1984, p. 1.

⁴¹ *Lisān al-'Arab*, Vol.V, pp. 13-14; Lane, Vol. II, p. 2239; In Islamic terminology, this is a sale of an article of goods which is not present at hand; or the sale of an article of goods, the consequence (*'aqibah*) or outcome of which is not known; or a sale involving risk or hazard where one does not know whether the commodity will later come to be or otherwise. Ibn Qayyim al-Jawziyyah (d. 751/1350) (1973), *A'lām al-Muwaqqi'īn 'An Rabb al-'Ālamīn*, (ed.) Tāhā 'Abd al-Ra'ūf Sa'd, Beirut, Vol. I, p. 358; al-Zurqānī

This element of *gharar* (or uncertainty) is found in the operation of conventional insurance, both life and general insurance contracts. In such a contract, the insured or the policy holder agrees to pay a certain sum as a premium and in turn the insurance company guarantees to pay a certain sum of compensation in the event of a catastrophe or disaster. The uncertainty relates to the fact that the insured or the policy holder is not informed, for example, of how the amount of the compensation that the company will pay him is to be derived.⁴²

Maysir

Closely related to and justified by Islam's wider prohibition against unearned gains, is the prohibition of all transactions containing an element of *maysir*. *Maysir*, though similar to, is far wider than the concept of gambling, gaming and wagering. Generally, it means unnecessary risk by entering into a transaction with the hope of gain as well as the fear of loss,⁴³ or undertaking a risk in the spirit of speculation.⁴⁴ Insurance is said to contain the element of *maysir*, when a life policyholder dies before the end of his insurance policy after paying only part of the premium, so that for example, his dependents will receive a certain sum of money which exceeds what the

(d. 1122 AD) (1981), *Sharḥ al-Zurqānī 'Alā al-Muwatta' al-Imām Mālik*, Beirut, Vol. III, p. 313; al-Ramli (d. 1004H.) (1967), *Nihāyat al-Muḥtaj ilā Sharḥ al-Minhaj*, Cairo: Syarikah Maktabah wa Matba'ah Muṣtafā al-Bābi al-Ḥalābi wa Awlādūh, Vol. III, p. 335; The term means that such transactions, which are prohibited in Islam, in form are apparently no different from those prohibited in Islam for deceiving when in reality the nature of the object is not known and therefore risk involved. Several reasons are given for the prohibition of *bay' al-gharar*. Some of them are related to fraudulence since such a sale amounts to obtaining the property of others by selling unavailable goods and the contract may lead to disputes and disagreements between the parties in the contract. Al-Zurqānī, Vol. III, p. 313; Abū Bakr 'Abd al-Razzāq b. Hammām al-San'ānī (1972), *al-Muṣannaf*, (ed.) Ḥabīb al-Raḥmān al-A'zamī, Beirut, Vol. VIII, pp. 108-109; Ibn Ḥazm (d. 456/1064) (1926-1928), *al-Muḥallā*, (ed.) Aḥmad Muḥammad Shakir, Cairo, Vol. VIII, pp. 399-400; See also al-Ṣaddīq Muḥammad al-Amin al-Ḍarīr (1967), *al-Gharar wa Atharūhu fī al-'Uqūd fī al-Fiqh al-Islāmi: Dirāsah Muqāranah*, Cairo, p. 27; Franz Rosenthal (1975), *Gambling in Islam*, Leiden, p. 139.

⁴² STMB, *Risalah Perlindungan Takaful*; M. F. Yusuf, "Takaful Insurance Company Malaysia Sdn. Bhd.," *Syariah Law Journal*, (International Islamic University, Petaling Jaya, September, 1991), p. 87; Cf Afzalur Rahman (1979), *Banking and Insurance*, Vol. IV, London: The Muslim Schools Trust, pp. 133-142.

⁴³ M. N. Siddiqi, *Insurance in an Islamic Economy*, p. 34.

⁴⁴ S. H. Amin (1985), *Islamic Law In The Contemporary World*, Glasgow, pp. 71-84.

insured paid in premiums. Similarly, in non-life insurance, if the insured event occurs and results in a huge loss, the insured will recover more than which he has paid in premium. On the other hand, if the insured event does not take place, the insured gets nothing tangible in return for his premiums.⁴⁵

Ribā

The practice of *ribā* and other related practices which contraven the rules of the *Shari'ah* enter into the investment activities of the conventional insurance companies.⁴⁶

In 1982, a Committee set up by the Government to study the implementation of the Islamic system of insurance in Malaysia recommended the introduction of the *takaful* scheme of insurance. The Committee also included in its report a draft proposal for the *Takaful Bill 1984* which provided for the setting-up, control and regulation of *takaful* businesses and other related matters. Following the acceptance by the Government of introducing *takaful* businesses in Malaysia, the Parliament gazetted the *Takaful Act* in 1984,⁴⁷ and finally a *Takaful Company* was incorporated as a private limited company under the Companies Act 1965⁴⁸ on 29th November 1984, taking the name of *Syarikat Takaful Malaysia Sendirian Berhad (STMSB)*, with its registered office situated in Malaysia. The Company started its business on

⁴⁵ STMB, *Risalah Perlindungan Takaful*; *Idem*, *Risalah Pelan Takaful Keluarga*; M. F. Yusuf (1991), *op. cit.*, p. 88; Nik Ramlah N. Mahmood, "Takaful: The Islamic System of Mutual Insurance - The Malaysian Insurance", p. 285.

⁴⁶ Afzalur Rahman, *op. cit.*, pp. 108-114; Muhammad Samiullah (1982), "Prohibition of Riba (Interest) and Insurance In The Light of Islam", *Islamic Studies*, Vol. XXI (2), pp. 53-76; M.A. Choudhury (1983), "Insurance and Investment in Islamic Perspective", *International Journal of Social Economics*, Vol. X (5), (Fresno), pp. 16-17.

⁴⁷ The Act seeks to provide for the licensing and regulating of *takaful* business in Malaysia. See S. (1), *Takaful Act 1984*. It has been modelled on Malaysia's existing *Insurance Act 1963* with modifications and amendments as are necessary to conform with the *takaful* business practices. However, according to the provisions of the *Takaful Act 1984*, for example S. 67 (2), *Takaful Act 1984* provides that the supervisory authority responsible for the supervision of all regulations over the *Takaful Company* is vested in the Ministry of Finance through the Director-General of *Syarikat Takaful*.

⁴⁸ S. 4 (1) (a), *Takaful Act 1984* provides "Subject to this Act, *takaful* business shall not be carried on in Malaysia by any person as *Takaful* operator except by a Company as defined in the Companies Act 1965".

2nd August 1984.⁴⁹ The Corporate Objective of Its Establishment is to provide takaful services (Islamic Insurance) at the highest standard of efficiency and professionalism to all Muslims and the population in the country.⁵⁰

To underline the importance of its Islamic character, the *Takaful* Company's Memorandum of Association prefaces that "all businesses of the Company will be transacted in accordance with Islamic principles, rules and practices,"⁵¹ Initially, the Company has an authorized capital of RM100 million, divided into 100 million ordinary shares of RM1 each. The initial paid-up capital of the Company is RM10 million, 51 per cent of which is held by *BIMB*; and the other shareholders are the State Religious Councils and the State Religious Agencies of Malaysia.⁵² This ownership of shares makes *Syarikat Takaful* a subsidiary of *BIMB*. The Company has been converted into a public quoted company with the listing of its shares on the Main Board of the Kuala Lumpur Stock Exchange (KLSE) since 31 July 1996, taking the name of *Syarikat Takaful Malaysia Berhad*. (STMB). Since then, 74.25% of its equity is held by the *BIMB Holdings Berhad*. The other major shareholders are the State Islamic Religious Councils, *Baitulmals* of Terengganu, Pahang and Negeri Sembilan, and *Amanah Saham Bank Islam* (ASBI).⁵³

THE PRACTICE OF *AL-TAKĀFUL*, *AL-MUDĀRABAH* AND *AL-TABARRU'*

Al-Takāful which means collective responsibility, mutual guarantee; joint guarantee and mutual co-operation⁵⁴ are the hallmarks of this scheme. This concept embodies the principles of mutual co-operation, mutual help and shared responsibility.⁵⁵ The

⁴⁹ STMSB, *Annual Report 1986*, pp. 5-6.

⁵⁰ STMB, *Annual Report 2001*.

⁵¹ STMSB, *Annual Report 1986*, p. 5; Mohd. Fadzli Yusuf, "Takaful Insurance Company Malaysia Sdn. Bhd.: Islamic Alternative to Insurance" in *International Islamic University Syariah Law Journal*, September 1991, p. 92.

⁵² STMSB, *Annual Report 1986*, p. 5; *BIMB, Annual Report 1986*, p. 7; See also S. W. Ahmad (1991), "Islamic Insurance in Malaysia" in Mohamed Ariff (ed.), *The Muslim Private Sector in Southeast Asia*, Singapore: Institute of Southeast Asian Studies, pp. 197-198;

⁵³ [Http://www.takaful-malaysia.com/profile.htm](http://www.takaful-malaysia.com/profile.htm). 26 May 2003.

⁵⁴ See footnote no. 3 above.

⁵⁵ For example, see Sami A. Hanna (1969), "*Al-Takaful al-Ijtima'* and Islamic Socialism", *The Muslim World*, Vol. LIX, p. 275-286; Nik Ramlah N. Mahmood, *op. cit.*, pp. 286-287.

Islamic model of Islamic insurance (takaful) is based on the divine principles of mutual co-operation and solidarity as mentioned in the Qur'ān, which means:

“..and co-operate you one another in righteousness and piety”. [Sūrah al-Mā'idah (5): 2].

A Shari'ah based takaful business does not involved the unlawful element of *ribā* (usury), *gharar* and *maysir*, but based on *al-mudārabah* (the profit-sharing contract), takaful and *tabarru'*. The *Takaful Act 1984* of Malaysia defines takaful as a scheme based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need, whereby the participants mutually agree to contribute for that purpose.⁵⁶

Takāful is characterised by three aspects of collectivity or mutuality, namely, mutual help, mutual responsibility and mutual protection from losses. The “insurance” that is provided is not dispensed by one party (the insurer) to another (the insured). The person seeking protection participates in a scheme of co-operation with another.⁵⁷ The *Syarikat Takaful (Takaful company)* that runs the scheme is not the insurer but is merely an institution which provides the entrepreneurial and administrative skills required to bring the participants together, to collect and invest the contribution and to process the claims. Therefore, this scheme can be seen as a method of joint guarantee among a group of members, that is, participants in any scheme against loss or damage that may fall upon any of them. The members of the group agree to guarantee jointly that should any of them suffer a catastrophe or disaster, he would receive a certain some of money to help him meet the loss or damage. This means that participants pledge mutual help amongst the group and each member of the group pools effort to support the needy.⁵⁸

In the practice of *Syarikat Takaful Malaysia Berhad (STMB)*, the concept of *takāful* has been developed as a form of business and the principle of *mudārabah* has been applied in the contract between *Syarikat Takaful* and the participants. Under the contract of *takāful* based on the principle of *mudārabah*, *Syarikat Takaful* acts as an

⁵⁶ Takaful Act, 1984, s. 2.

⁵⁷ Syed Waseem Ahmad (1991), “Islamic Insurance In Malaysia”, pp. 191-192.

⁵⁸ *Report of the Committee on the Setting-up of an Islamic Insurance Company in Malaysia*, Kuala Lumpur, 1984, p. 8; Mohd. Fadzli Yusuf, “The Operation of Syarikat Takaful Malaysia Sendirian Berhad”, p. 5. A Paper Presented at *Seminar on Insurance in Malaysia for Journalist*, Kuala Lumpur, 1985; Idem, “The Principles of Islamic Insurance”, p. 5. A Paper Presented at *Seminar on Issues in Economics*, 27-29 December 1985, Petaling Jaya, Malaysia.

entrepreneur or investor (*mudārib*) and accepts *takāful* contributions or payment of the *takāful* instalments termed as *ra's al-māl* (capital) from participants, who are treated as investors or providers of capital (*ṣāhib al-māl*).⁵⁹

The *takāful* contract which is made in accordance with the principle of *mudārabah* specifies how the profit (surplus) from the operations of *takāful* managed by *Syarikat Takaful*⁶⁰ is to be shared between the participants as the providers of the capital and *Syarikat Takaful* (company) as the entrepreneur (investor). The sharing of such profit may be in a ratio of, for example, 5 : 5, 6 : 4, 7 : 3, et cetera as mutually agreed between the contracting parties. The contract also clearly states the rights and obligations of both the participants and the *Syarikat Takaful*.⁶¹

THE CONCEPT OF *TABARRU'*

Another special feature of *takāful* contract is the concept of *tabarru'* which means to donate, to contribute. Under the *takāful* contract, the participants agree to relinquish as donations, in accordance with the concept of *tabarru'*, a certain proportion of their *takāful* contributions of mutual help as embodied in the concept of *takāful*. Therefore, the purpose of *tabarru'* as stipulated in the contract is to enable the participants to perform their obligations in assisting and helping fellow participants who might suffer a loss or damage due to death or disasters. The sharing of the profits or surplus from the operations of *takāful*, according to the principle of *mudārabah*, is made only after the obligations of assisting fellow participants have been fulfilled. *Syarikat Takaful* has to meet these obligations as well as generate a reasonable level of profits by maintaining adequate assets in its *takāful* funds, whilst at the same time striving prudently to protect the funds against undue exposure.⁶²

⁵⁹ STMSB, *Risalah Perlindungan Takaful*, n.d.; Mohd. Fadzli Yusof, "Takaful Insurance Company Malaysia Sdn. Bhd.: Islamic Alternative to Insurance", in *Syariah Law Journal*, Petaling Jaya, Selangor, September 1991, p. 88; Tajuddin Saman, "Takaful Berasaskan Mudarabah" in *Berita Harian*, 22 May 1992, p. 9; Johari Jaafar, "Skim Takaful Bantu Masyarakat Islam" in *Berita Minggu*, 5 July 1992, p. 10.

⁶⁰ STMB, *Risalah Perlindungan Takaful*.

⁶¹ STMB, *Risalah Perlindungan Takaful*.

⁶² *Risalah Perlindungan Takaful*; Mohd. Fadzli Yusof (1985.b), "The Principles of Islamic Insurance", p. 7; *Idem*, "Sumbangan Takaful Kepada Usahawan", p. 7. A Paper Presented at the *Seminar Keusahawanan dan Perniagaan Islam*, 28-29 November 1987, Petaling Jaya, Malaysia; *Idem*, "Berbakti Kepada Rakan Melalui Tabarru'" in *Berita Harian*, 7 October 1994, p. 3; Johari Jaafar (1992), *op cit.*, p. 10.

TYPES OF TAKAFUL BUSINESS

There are two types of *takāful* business offered by *Syarikat Takaful*, namely, Family *Takaful* Business (Plans) and General *Takaful* Business (Schemes).⁶³ In the context of ordinary insurance, the Family *Takaful* Business and the General *Takaful* Business can be compared with life and non-life insurances respectively.⁶⁴

The Family *Takaful* Plans provide various family *takāful* plans based on a *mudārabah* contract. The plans provide cover of mutual financial aid and assistance from the *takāful* benefits, in case of the untimely death of a participant.⁶⁵ The General *Takaful* Scheme provides various general *takāful* schemes as a form of protection for an individual or a body corporate against material loss or damage arising from catastrophes, disasters or mishap inflicted upon properties or assets belonging to participants such as buildings, houses, vehicles, stock in trade, et cetera.⁶⁶

Although the Act introduces a new scheme which is supposed to comply with Islamic principles, the Act itself has a few provisions as to how the scheme should operate, except that it must be in accordance with the *Shari'ah*. The general operation of the scheme is a matter of practice and it was recommended that the practices of existing insurers, as long as they comply the *Shari'ah* principles, ought to be followed.

a) Family *Takaful* Plans

A Family *Takaful* Plan, which is essentially an investment programme, provides investment returns to a participant as well as mutual financial aid. Any individual or a corporate body may participate in this *takāful* plan so that he will be able to save regularly a sum of money as a measure to relieve the financial burden that his dependents may face should he die prematurely or should any of its members be inflicted

⁶³ The *Takaful Act 1984* divides the *takaful* business into the Family Solidarity Business or Family *Takaful* Plans and the General *Takaful* Business (Scheme). (*Takaful Act 1984*, s. 3). The former is defined as *Takaful* for the benefit of individual and his family, while the latter is defined as all *takaful* business which is not Family Solidarity Business. (*Takaful Act 1984*, s. 3. a(i) and (ii); STMB, *Annual Report 2001*, pp. 42-46.

⁶⁴ See S. 3 (2) Insurance Act 1963.

⁶⁵ STMSB, *Risalah Pelan Takaful Keluarga*; STMSB, *Annual Report 1986*, p. 6; Mohd. Fadzli Yusuf (1987), "Sumbangan *Takaful* Kepada Usahawan", p. 12; Barjoyai Bardai, "Skim *Takaful* Keluarga dan Operasinya" in *Berita Minggu*, 3 Jan. 1992, p. 8.

⁶⁶ STMSB, *Risalah Perlindungan Takaful*; STMSB, *Annual Report 1986*, p. 7.

by a tragedy as a form of contingency should he survive the term of the plan.⁶⁷ In other words, the Family Takaful Plans are a long term *al-mudārabah* contract. Therefore, the objectives of the Family *Takaful* Plans have been described to enable a person:

1. to save regularly
2. to invest this saving with a view to earning profits in accordance with the rules and requirement of the *Shari'ah*
3. to provide cover in the form of a payment of *takaful* benefits to an heir or heirs should a participant die before the maturity date of his *takaful* plan.⁶⁸

Syarikat Takaful offers to an individual or a corporate body the following Family *Takaful* Plans.⁶⁹

1. Family *Takaful* Plans with a maturity of 10, 15, 20 and up to 40 years, which must mature before the participant reaches the age of 60 years
2. Mortgage Takaful Plan
3. Family Takaful Plans for Education
4. Group Family *Takaful* Plans; Group Medical Takaful Plan, Group Family Takaful Plan (Credit)
5. Takaful Ma'asyi
6. Key-Man Takaful
7. Takaful Rawat,
8. Takaful Siswa
9. Waqf Takaful
10. Annuity Scheme EPF Takaful
11. Wiladah Takaful
12. Hawa Takaful
13. Ziarah Takaful
14. Workers Fund Takafuland, and etc.

⁶⁷ *Risalah Perlindungan Takaful*; Mohd. Fadzli Yusuf (1987), "Sumbangan Takaful Kepada Usahawan", p. 12.

⁶⁸ STMB, *Pelan Takaful Keluarga*.

⁶⁹ STMSB, *Annual Report 1986*, p. 6; *Annual Report 1988*, p. 7; *Annual Report 1989*, p. 6; *Annual Report 1990*, p. 5; *Annual Report 1991*, p. 5; STMB, *Risalah Pelan Takaful Keluarga*; *Risalah Perlindungan Takaful*; <http://www.takaful-malaysia.com>. 26 May 2003.

A person who wishes to participate in the Family *Takaful* Plans, who is then called a participant,⁷⁰ may choose any one of the types of plans offered by *Syarikat Takaful* (or the operator)⁷¹ as mentioned above. Any plan has a defined period of participation such as 10, 15 or 20 year terms. The age groups covered under any Family *Takaful* Plan with various maturity periods range from 18 to 50 years. The participants and the *Syarikat Takaful* enter a *takaful* contract based on the principle of *muḍārabah* and the participants agree to pay regularly to the *Syarikat Takaful* the *takaful* contributions (instalments) (premium), monthly, quarterly or annually which are then credited into a fund (Family *Takaful* Fund).⁷² The contract spells out clearly the rights and obligations of the contracting parties.

Each *takaful* instalment (contribution) paid by the participant and credited into the Family *Takaful* Fund shall in turn be divided and credited by the *Syarikat Takaful* into two separate accounts, namely:

1. The Participant's Account (PA), and
2. The Participant's Special Account (PSA).

A substantial proportion of the instalments is credited into the PA solely for the purpose of savings and investment. The balance of the instalment is credited into the PSA as *tabarru'* which depends on the age group and maturity period of the participants. As shown in Table 1, the *tabarru'* proportion varies from two per cent to twelve and a half per cent. The remaining proportion of the instalment is credited into the participant's account. It is out of the PSA that *Syarikat Takaful* is to pay the *takaful* benefits to the heir(s) of a participant who may die before the maturity of his

⁷⁰ S. 2 *Takaful* Act 1984 Provides that "Participants" includes, where a certificate has been assigned, the assignee for the time being and, where they are entitled as against the *takaful* operator to the benefit of the certificate, the personal representatives of a deceased participant.

⁷¹ S. 2 *Takaful* Act 1984 provides that "operator" means a company or a society which carries on *takaful* business.

⁷² The amount of *takaful* instalment to be paid during the term of the plan is determined by the participants themselves. Such amount, however, should be within the financial means of the participants and also subject to the minimum sum fixed by the *Syarikat Takaful* which at present is RM15.00 per month payable on a monthly, quarterly or annually basis. See STMB, *Risalah Pelan Takaful Keluarga*; *Idem*, *Risalah Perlindungan Takaful*.

Family *Takaful* Plan. In other words, money paid into the PSA is paid by the participant in the spirit of *tabarru'*.⁷³

The *tabarru'* proportion increases with the length of maturity of the Family *Takaful* Plan as well as with the age of the participant at entry. The factors determining the *tabarru'* proportion in the Family *Takaful* Plans are the age at entry and the timeframe of the contract.⁷⁴ In this regard, the instalment (contribution) remains the same but the *tabarru'* proportion rises.⁷⁵ It can be said that the purpose of the *tabarru'* proportion that goes into the PSA account is to create a form of mutual fund, whilst that the PA serves to accumulate savings.

Table I: Syarikat Takaful Malaysia Berhad
Ratios of *tabarru'* proportion credited into PSA accounts

Age Group (Years)	Maturity Period (Years)						
Age Group (Years)	10	15	20	25	30	35	40
18 – 25	2.0%	3.5%	5.0%	5.5%	7.5%	9.5%	12.5%
26 – 30	2.0%	3.5%	5.0%	6.5%	9.0%	12.5%	
31 – 35	2.5%	4.5%	6.5%	9.0%	12.5%		
36 – 40	3.5%	6.0%	9.0%	12.5%			
41 – 45	5.0%	8.5%	12.5%				
46 – 50	7.0%	12.5%					

Source: STMSB, *Risalah Pelan Takaful Keluarga*

One of the functions of the *Syarikat Takaful* in managing the Family *Takaful* business is the investment of the *takaful* instalments in line with the principle of

⁷³ STMB, *Risalah Perlindungan Takaful*; Mohd. Fadzli Yusuf (1991), "Takaful Insurance Company Malaysia Sdn. Bhd.", p. 90; Nik Ramlah N. Mahmood, *op. cit.*, p. 288.

⁷⁴ These factors are the same as those determining for the annual cost of a term assurance policy in conventional insurance. In Conventional Insurance, the premium rate rises both with age at entry and the length of the maturity period.

⁷⁵ Mohd. Fadzli Yusuf (1991), p. 90; See also Nik Ramlah N. Mahmood, *op. cit.*, p. 288.

mudārabah or profit and loss sharing. The instalments credited into the two accounts, i.e. PA and PSA accounts, are pooled as a single fund as shown in figure 4.1. Therefore, money from both the accounts are invested by *Syarikat Takaful* on a profit and loss sharing basis in enterprise which are not contrary to Islamic Law either in their operations or in nature of their business. The profits generated from the investment are shared between the participants and *Syarikat Takaful* in a ratio mutually agreed between them. For example, a participant in the age group of 18-25 taking up a 10 years plan under Family *Takaful* Plan might have 2.0 per cent in PSA and 98 per cent in PA. The distribution of profits realized from investment by *Syarikat Takaful* is first divided according to the profit-sharing agreement, for example 70 : 30, between the participant and *Syarikat Takaful* respectively. The proportion (30 per cent) of the profits allocated to *Syarikat Takaful* goes into the profit and loss sharing account of *Syarikat Takaful*, while the profit accruing to the participant (70 per cent) is then distributed proportionately between his PA and PSA.⁷⁶ In other words, 2.0 per cent of the profits will go into his PSA and the remaining 98 per cent will go into PA

In the case of loss of the investments of the Family Takaful Fund, however, it was recommended by the Report of the Committee⁷⁷ that it should be borne by the *Syarikat Takaful* alone as part of its operating costs, to be paid from the following year's profits. This departure from the Islamic principle of *mudārabah* contract which requires both the participants and *Syarikat Takaful* to share not only the profits of the investments, but also in its losses, was thought to be necessary because the prospect, however minimal, of losing all or part of their investments might deter people from participating in this scheme.

Family *Takaful* Benefits⁷⁸

Under the Family *Takaful* Plan, the *takaful* benefits shall be paid to the participants or their heir(s) upon the occurrence of any of the following cases:

Case one (1): the participant survives the maturity of his *takaful* plan.

Case two (2): the participant dies before the maturity of his *takaful* plan.

In the first case, he shall be paid the total amount of *takaful* instalments paid by the participant during the period of his participation and all the profits, if any, from

⁷⁶ *Risalah Pelan Takaful Keluarga.*

⁷⁷ *Report of the Committee on the Setting-up of an Islamic Insurance Comp. in Malaysia.*

⁷⁸ According to S. 2 *Takaful* Act 1984, *takaful* benefits includes any benefit, 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.

the investment of the *takaful* instalments credited into his PA.⁷⁹

In the second case, the *takaful* benefits to be paid to the heir(s) or proper claimant⁸⁰ is all the money in the participant's PA as at the time of his death.⁸¹ This includes all his contributions until the time of his death and all the profits that his contributions have earned and credited into his PA over the same period. This amount, however, will inevitably be less than the amount which the participant would have expected to get if he survived until the maturity of his plan. The difference between these two cases is that his heir(s) will be paid the outstanding *takaful* amounts which would have been paid by the deceased into his PSA should he have survived. This amount is calculated from the date of death to the date of maturity of his Family *Takaful* Plan. Through the instrumentality of the PSA, therefore, a participant in the Family *Takaful* is able to determine the amount (subject only to variations of profits) that either he or his heir(s) would get as *takaful* benefits.⁸²

If the participant decides to withdraw his participation before the maturity date of his Family *Takaful* Plan, he shall be able to surrender benefits,⁸³ that is all his *takaful* instalments which have been credited into his PA with the profits which those instalments have earned so far. His contribution to the PSA is a form of donation which he has agreed to make and it is not returned.⁸⁴

b) General *Takaful* Schemes⁸⁵

The General *Takaful* Business of STMB manages various types of *takaful* product

⁷⁹ STMB, *Pelan Takaful Keluarga*.

⁸⁰ S. 65 (4) *Takaful* Act 1984 provides: "Proper claimant means a person who claims to be entitled to the sum in question as executor of the deceased, or who claims to be entitled to that sum under the relevant law".

⁸¹ The *takaful* benefit is to be paid to a proper claimant without the need for the production of any probate or letters of administration. See S. 65 (1) *Takaful* Act 1984.

⁸² STMB, *Pelan Takaful Keluarga*.

⁸³ There is no minimum period of payment of *takaful* instalments after which the participant is entitled to surrender benefits, while in the conventional insurance, the insured becomes entitled to surrender benefits only if he has paid his premium instalments for a minimum period, for example three years. There is no forfeiture in the Family *Takaful* Plan. Syed Waseem Ahmad, *op. cit.*, p. 196.

⁸⁴ M. F. Yusuf, "*Takaful* Insurance Company Malaysia Sdn. Bhd.", p. 91; See also N. R. Mahmood, *op. cit.*, pp. 289-290.

⁸⁵ See s. 3 (1) (ii), *Takaful* Act 1984.

known as General Takafulis Schemes, usually on a short-term basis. These schemes which provides cover for an individual or a body corporate against losses or damage consequent upon a catastrophe or disaster such as fire, flood and accident, usually inflicted upon properties or assets. The main types of the General *Takaful* schemes are, among others, General *Takaful* Schemes for Motor Vehicles, Fire and Theft, Accidents, Liability, Engineering, Marine, Houseowner's and Householder's, Baitul Sa'adah Takaful Schemes, etc.⁸⁶

A participant in this scheme also enters in a *mudārabah* contract with *Syarikat Takaful*. The contract stipulates the amount which the participant has to contribute under the scheme. Like the amount of premium in general insurance, this amount is determined by *Syarikat Takaful* which takes into account factors such as the value of the property and the risk involved.⁸⁷ The term of participation or the period of *takaful* in respect of the General *Takaful* Schemes is usually for a span of one year. On expiry of the period of *takaful*, the term may be renewed for another one-year period.⁸⁸

Unlike the Family *Takaful* Plans, the General *Takaful* Schemes are not structured to function as a means of savings, although the participants are entitled to some form of profit sharing as expressed in the principle of *mudārabah*. However, under the General *Takaful* Schemes, the entire contributions are paid as *tabarru'* for the purpose of creating defined assets or funds (General *Takaful* Fund) to pay against a defined loss. Part of the *tabarru'* funds are used to cover the expenses of the scheme. The remainder is invested by *Syarikat Takaful* in the same way, subject to the same restriction as the investment of funds from the Family *Takaful*. All the profits from such investments are returned to the Fund.

In line with the virtue of solidarity, mutual help, shared responsibility and joint guarantee as embodied in the concept of *Takaful*, *Syarikat Takaful* (Company) as the manager (operator) or trustee of the Fund, shall pay from this Fund any benefits, compensation or indemnity to any participant who suffers a defined loss or damage

⁸⁶ STMB, *Risalah Perlindungan Takaful*; <http://www.takaful-malaysia.com>. 26 May 2003.

⁸⁷ In the determination of General *Takaful* contributions, the same principle, methods and technique apply as in the case of conventional insurance. The difference from conventional insurance lies in sharing the surplus (profits) after deducting all operational costs such as re-*takaful*. See Syed Waseem Ahmad, *op. cit.*, p. 197; See also Mohd. Ma'sum Billah, "The Prospect of Islamisation of Life Insurance", *Al-Nahdah*, Vol. 13 (1-2), 1993, p. 13-17.

⁸⁸ STMB, *Risalah Perlindungan Takaful*.

consequent upon the occurrence of a catastrophe or disaster. All operational costs for managing the General *Takaful* business such as the cost of *re-takaful* (re-insurance) and setting-up of reserves shall be borne by the Fund. If, at the end of the financial year, there is a surplus, it is shared between *Syarikat Takaful* and the participants who have not made any claims under their respective plans. The sharing of the surplus will be made according to a ratio agreed to in advance in accordance with the principle of *mudārabah* such as 6 : 4, 5 : 3, 5 : 5, etc.⁸⁹ This provides a form of incentive to the participants along the line provided by the No Claims Bonus (NCB) in motor insurance.

FINANCIAL RESULTS AND PERFORMANCE OF SYARIKAT TAKAFUL MALAYSIA BERHAD

Syarikat Takaful Malaysia Berhad has been successful in running its two takaful business since 1984. For the financial year ended 30 June 2002, the Company posted a profit of RM14,103,430 before zakat and taxation as compared with a total profit of RM6,735,334 previously, making an increase of 109 per cent. After deducting zakat and taxation, the net profit for Takaful Malaysia stood at RM11,988,316 compared with a corresponding profit of RM3,696,279 in the previous year. The total net assets of the Company rose to RM1,435,346,429 or a gain of 20 per cent from previous year figure of RM1,200,750,815. However after accounting for the balance of the provision for diminution in the value of quoted shares and unit trusts, the total net assets depreciated to RM1,378,360,163 but still posted an increase of 23 per cent in comparison with the previous figure of RM1,121,633,108. In line with the cash accounting policy, the total takaful contribution collected, excluding the Takaful Annuity Scheme by Takaful Malaysia (STMB) for the year ended 30 June 2002 was RM477,105,449 or an increase of 36 per cent from the figure of RM350,021,439 previously. In this regard, Family Takaful Business constituted 58 per cent of the total collection.⁹⁰

⁸⁹ *Risalah Perlindungan Takaful*; N. R. Mahmood, *op. cit.*, p. 290; Syed Waseem Ahmad, *op. cit.*, p. 197; M. F. Yusuf (1991), *op. cit.*, pp. 91-92.

⁹⁰ STMB, *Annual Report 2001*; <http://www.takaful-malaysia.com>. 26 May 2003.

CONCLUSION

The above discussion clearly shows that the Islamic Insurance (Takaful) business which is based on collective responsibility, mutual co-operation, *mudārabah* and *tabarru'* is both theoretically feasible and practically possible. The fact that the Takaful business in Malaysia is, so far, functioning successfully side-by-side with the other conventional Insurance companies.