

However, from the point of view of most Muslim jurists, the cooperative insurance system that exists in some countries can be a basis of Islamic insurance. This was answered during one of the questions raised by an Islamic bank regarding its intention to set up an insurance subsidiary to compliment its business. I quote, "cooperative insurance is not only permissible by the Shari'ah but also encouraged especially when looked at from the aspect of co-operation towards welfare. As such it is permissible for a bank to set up a co-operative insurance company to function for the benefit of many activities but there is a need to state as clearly as possible in the contract of insurance that the amount of money to be paid by the participant is on the basis of Tabarru' (donation) to the said company which can be used for the purpose of assisting fellow participants who require assistance according to the terms agreed as long as these terms are not in conflict with the Shari'ah". If cooperative insurance is allowed and the contract can be modified to conform to Islamic law, then how is the model?

#### **Mudharabah models**

Suppose we agree that the commercial model is better and Takaful companies whose operations are based on it is more competitive (at least for certain situations like in ASEAN), what kind of contract should we adopt? All the ASEAN countries adopt the Mudharabah or modified Mudharabah models. Currently there are three different types of models being adopted. The first model is the pure Mudharabah model where the Takaful company and the participant share direct investment income only and the participant is entitled to a hundred percent of the surplus. No deduction for operational expenses is made prior to the distribution of the investment income. (See diagram 1).

This model was chosen for family Takaful because it is basically life insurance coverage provided to the participants. The concept is that the fund is solely attributable to the participants.

The second model is a modified Mudharabah model where the investment income is ploughed back into the Takaful fund and the Takaful company share with the participant the surplus from the Takaful fund. One company deducts operational expenses and the other does not prior to the distribution of the surplus. (See diagram 2).

scholars. However, it is generally agreed that interest whether on principal or late payment is Riba. Other forms of Riba established by the Sunnah of the Prophet (s.a.w.) is the exchange of Ribawi elements where there is a difference in time and/or quantity. The Ribawi elements mentioned by the Prophet (s.a.w.) are gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt. By making an analogy, money is similar to gold and silver where it is a medium of exchange. Therefore, it is a Ribawi element and in the contract of exchange between the insurer and the insured there is difference both in quantity and amount. Furthermore, the scholars argued that insurance companies give out loans and charge interest and this is Riba.

Now that it is generally agreed that insurance is Haram, what can be done about it? Is there such a thing as insurance that conforms to Shari'ah?

Our scholars gave some thoughts and suggest that the principle of Takaful can be a basis of "Islamic" insurance. Takaful comes from the word Kafala meaning guarantee. So Takaful means mutual guarantee. Under this principle, the participants to the scheme would give their money to the company on the basis of Tabarru' with the stipulation that the company would compensate them with an amount should he be struck by an calamity. They further stipulated that the company must not be involved in Haram activities like Riba, gambling, liquor and the like.

#### Takaful: A Practical Alternative

In the previous article, we saw that our scholars have differences in opinion regarding insurance. Some are of the opinion that it is Haram while others are of the opinion that it is Mubah. However, many Muslims who have Islamic consciousness or are involved in Islamic Jama'ah in general take the view that it is Haram.

If we take the view that the current insurance system is Haram, and since insurance permeates every level of society, what can be done? If we agree that the function of insurance is important, then something should be done about it; either to get rid of it or to study and see if we get rid of elements that render it Haram in the first place. Can the insurance system be replaced or modified to conform to Islamic law? It is easy to declare something to be Haram but that does not solve our predicament.

### Uncertainty in the Outcome

When the contract is made, neither the insurer nor the insured knows the outcome of the contract. The insured does not clearly know whether he will get compensation or not as an exchange to the premium that he has paid. Similarly, the insurer does not know the outcome.

### Uncertainty in the Existence

In the insurance contract the insured does not know the existence of the compensation since it depends on the outcome that may or may not happen.

### Uncertainty in the Results of the Exchange

When the contract is made, neither the insurer nor the insured knows the outcome of the exchange. The insured does not know whether he or she will get the compensation as exchange to the premium that he pays. Similarly, the insurer does not know how much premium it gets. Sometimes he will receive the premium only once or a few times, but has to indemnify an amount that does not commensurate with the premium.

### Uncertainty in Contract Period

According to the principle of the Islamic Mu'amalah, when a contract is deferred, the period must be made known. If not, the contract is considered void. The same situation arises in the insurance contract whereby compensation is based on a time frame that is not known and cannot be known, especially in life insurance.

### Maisir

Maisir is akin to gambling. The insurance contract is equated with gambling where if the peril happened, the insurer will lose. On the other hand, if the peril does not occur, the insured will lose. Furthermore, some scholars argued that the source of the money that is being paid as compensation is not determined.

### Riba

There are many verses that prohibit Riba. What exactly constitute Riba has always been a disagreement among

علم و فن میں حضرت امام احمد بن حنبل رحمہ اللہ علیہ کا کوئی ثانی نہیں : (محدث ابو زرعہ)

wad-dalalah).

The scholars further claimed that insurance is a contract that brings Maslahah to the insured. Without insurance, for example, one's next of kin will suffer a huge burden after his death. Also, the scholars said that custom ('uruf) establishes insurance to protect public and individual interests and custom is accepted as a source of Islamic law. According to them, the insurance contract is not a contract of exchange but falls under the concept of Tabarru' and as assistance and guarantee by the insurer to the insured, compensation. In this respect the insurer's position is that of a middleman that collects money from the insured and collectively arrange a form of assistance to them in facing collective losses. Other scholars claimed that the premium the insured pays to the insurer is a fee for looking after his (insured's) property.

On the other hand, many scholars deemed insurance to be prohibited (Haram). They could not unanimously agree on the reasons for its prohibition. However, in 1972, the Malaysian National Fatwa Council decreed that "insurance", especially life insurance, is a Fasid practice because it contains the elements of Gharar, Maisir and Riba, therefore, it is Haram.

According to scholars, Gharar is defined as a contract where the results are not known or hidden, or one of two possibilities where the frequent occurrence is the one that is more feared. The insurance contract is a contract of exchange whereby the insured pays the price (premium) and the insurer provides compensation. In a contract of exchange, the Gharar element that can nullify the validity of the sale is consent. The Qur'an [4:29] says:  
 "O who you believe, do not eat property among you in a false way, except through trade by mutual consent."

However, knowing the subject matter in a contract is required in determining consent because it is not logical to say that one gives consent to something that he does not know. The scholars further said that in the insurance contract there are four types of Gharar present. These are:

کسی سر زمین پر ایک حد کے نفاذ کی برکت وہاں چالیس روز نازل ہونے والی بارش کی برکت سے بہتر ہے

insurance. The bus that we board has insurance. Insurance is all around us whether we like it or not. However, what is the status of insurance in Islam?

### Islamic Rule Concerning Insurance

Our scholars are not in agreement whether insurance is permissible (Halal) or prohibited (Haram). Since insurance as it is being practised now did not exist during the Prophet's time, Ijtihad is used to determine whether it is permissible or otherwise. As the scholars are not in agreement as to whether insurance is permissible or prohibited, they are also not in agreement as to reasons for its prohibition.

The scholars who opined that insurance is permissible said that insurance is a modern contract and there is no injunction (Nass) regarding it. If there is no injunction, then it is allowed (Mubah). They based their argument on the established legal maxim that "the original legal position on any matter is permissibility until there is evidence prohibiting it." This legal maxim is based on the Qur'an of which some of the related verses are as follows:-

"We have subjugated to you all that is in the heavens and the earth" [45:13]

According to the scholars this implies that, in principle, we are permitted to use the resources of the universe. This implies that all acts that are necessary to facilitate this usage, including transactions, are permissible. To reinforce this, the Qur'an lays down the principle that Allah (swt) has clearly explained His prohibitions. Allah swt says in the Qur'an:

"He has explained to you that which is forbidden to you, unless you are compelled thereto" [6:19]

Furthermore, the universe is described as an adornment of Allah. This is stated in the Qur'an [7:32]:

"Who has forbidden the adornment of Allah which He has brought forth for His bondsmen, and the good things of His providing?"

Therefore, a mere presumption is not enough to declare something unlawful. Muslim scholars have held that any injunction that overrules this principle of permissibility must be decisive in meaning and transmission (Nasson qati'ul thubut

حضرت امام شافعی رحمۃ اللہ علیہ فرمایا کرتے کہ: امام مالک اور سفیان بن عیینہ نہ ہوتے تو حجاز سے علم رخصت ہو جاتا

# Takaful in Islam.

By Azman Ismail

The writer, brother Azman Ismail, is an expert in setting up Takaful companies in Malaysia and other countries. He is currently working as a consultant for the Malaysian Insurance Institute in Kuala Lumpur, Malaysia.

It is a Muslim's belief that everything that happens in this world is by the will of Allah. Similarly any accident or misfortune that befall us, that results in the loss of life or belongings, is by the will of Allah (swt). If that is the case, some people might ask, why should there be Takaful? Should we then not leave it to Allah and accept whatever accident, misfortune or catastrophe that befall us?

Whilst it is true that we should accept whatever "misfortune" that befall us, we are also taught to avoid or reduce the possibility of these "misfortunes" by taking positive steps. One day the Prophet (s.a.w.) saw a bedouin leaving a camel and he asked the bedouin, "why don't you tie down you camel?" The Bedouin answered, "I put my trust in Allah." The Prophet said, "**Tie your camel first, then put your trust in Allah.**" What the Prophet (s.a.w.) has done here is teaching the bedouin to reduce the risk of losing his camel. Similarly in many actions of the Prophet (s.a.w.), we saw that he took steps to reduce risks although he could have done otherwise if he wanted to. For example, during the Hijrah, he went to hide in the cave first instead of going straight to Madinah. He commanded the companions to migrate to Madinah by batches instead of in one big group. Again this is to reduce risks. When he went to war, he put on his armour instead of wearing light clothes.

In this modern world, one of the ways that can be done to reduce the risk of loss due to accident or misfortune is through insurance. In fact it is almost impossible to live without being affected by insurance. The house that we buy or rent has got insurance cover. The car that we buy or rent has to have

کیا آپ کو معلوم ہے کہ: ☆ قانون شریعت ہی کا دوسرا نام فقہ اسلامی ہے ☆