

available modes until the time when better options becomes available, within Pakistan.

### Other Alternates to Insurance

Other alternates to insurance also work on the concept of mutual benefit because the contract of guarantee against a loss is not considered permissible from Shariah perspective. These alternates are generally based on mutual benefit funds, benevolent funds and contributory plans that are established against conventional group insurance, medical and health insurance and life insurance schemes.

The modeling of these funds is not as complex as of a Takaful company and more importantly, these are not subject to strict statutory rules and regulations. In most of the cases, this sort of funds also fetches some tax benefits on the concept of "doctrine of mutuality" particularly, approved benevolent funds are considered to be exempt from taxation.

However, generally no Re-Takaful option is available to these funds and accordingly these are considered to be less stable. As a consequence thereto, generally the benevolent funds established for the benefits of employees are supported by the respective employers against any loss.

# فقہ اسلامی

## کے سات بنیادی اصول

دارالانعمان  
کراچی، فیصل آباد، ساہیوال

مفتی نظام الدین رضوی برکاتی  
صدر مفتی استاد جامعہ اشرفیہ مبارک پور

contracts is concerned, we also take guidance from the above given examples whereby the entire ration was first collected centrally which also included the items for whom it is necessary to make transfer hand by hand and in equal quantities like wheat and barley. Taking support from the same principle, it may be concluded that in case of collective benefits, such transfers do not tantamount to Riba.

Although it is just a brief understanding of the concepts of Takaful, hopefully it would be sufficient to have an understanding of the concept. Anyway, it would not be possible for us to go in further details in this study. Interested readers are recommended to consult a number of commendable works on the concepts and applicability of Takaful written by a number of respectable scholars.

### Takaful business in Pakistan

In Pakistan, Takaful business is now in formation stage just a few Takaful companies have been established with an objective of promotion of such business in Pakistan. Takaful Rules have been finalized and enacted by the SECP providing foundations for formation and functioning of Takaful companies.

A few companies are also waiting to commence business in this field. Similarly, it is also expected that as soon as the Islamic alternate to insurance will start taking a sizable share in the market, the conventional insurance companies will also enter into this field by opening Takaful companies or windows.

The modeling of Takaful business in Pakistan has been performed after due consultation and study of the existing Takaful systems in vogue in different parts of the world. Since, this modeling is taking place at a mature stage, it is being ensured that the mistakes and doubtful options that were included in the earlier models, shall not continue in such model.

It is a sad, but bitter, fact that at present there is no Re-Takaful option available in Pakistan and accordingly, the Shariah consultants have allowed the proposed Takaful companies to use the option of Re-Takaful, from internationally renowned companies under

## Rationale for Permissibility of Takaful

A few people question the permissibility of Takaful on the grounds that the factors that are considered base for prohibition of Insurance from Shariah perspective are also applicable to Takaful in one or another form. This is a very important question and needs clarification for a reader's mind.

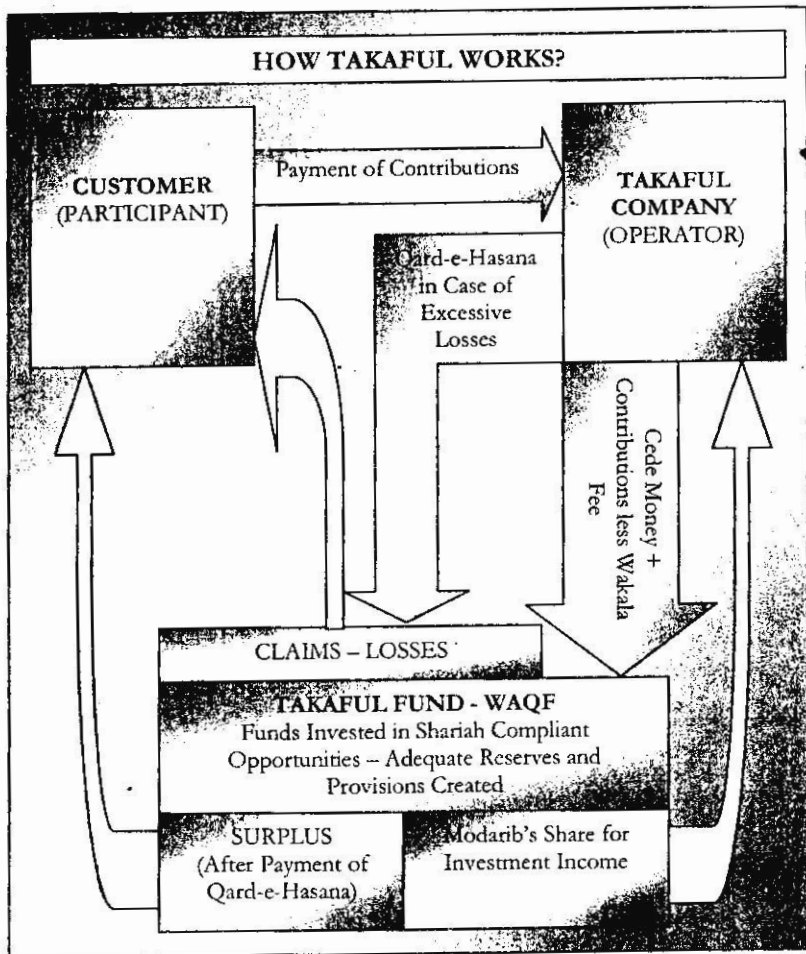
Actually, in a Takaful arrangement, all the participants collectively agree to bear losses against risks faced by each other in an agreed proportion. The rationale for collective benefit is taken from a few instances from the life of the Holy Prophet SAAWS and his Sahaba. In such instances, at the time of any emergency, all of the Muslims were asked to submit their entire available food and then these were mixed up and then eaten collectively. These instances are a raw example for a Takaful fund's operations.

The first factor making insurance Haram i.e. Gharar also exists in a Takaful contract but the same is not limited to an individual and instead the same is now spread over the fund as a whole with the mutual consent of all the partners. Accordingly, it is not a contract between two persons out of whom one is guaranteeing the other that he will make payment in case of loss and instead, all of them are collectively agreeing that in case of a loss to any one of them, all of them will bear the loss proportionately. The second factor i.e. Maisar is also eliminated in the same manner. Moreover, in a Takaful fund, the surplus relates to the participants and theoretically speaking, if there is no loss to any participant, all the money will be returned to the participants along with any proportionate profit earned thereon.

The third factor i.e. Riba is also eliminated in this concept. As far as investments of the funds are concerned, these are all made in Shariah compliant ways. Similarly, no annuities are built in a Takaful contract, however, in a family Takaful scheme, participants' investment funds are separately maintained and invested under Shariah compliant options.

As regards to the other aspect of Riba applicable to insurance

☆ اولئک کانہم بل ہم اضل گاوان وخران باربردار..... بزد آد میان مردم آزار ☆



Re-Takaful concept entails partnership and Takaful agreement amongst various Takaful funds through a Re-Takaful operator who maintains a Re-Takaful pool under Shariah principles. Under these contracts, all the Takaful funds become partner to each other in a similar manner and the losses of the participants taken as a whole are covered in the agreed proportions by the Re-Takaful pool.

☆ بالملاح يصلح ما ينحسب، تغيره فكيف بالملاح ان حلت به الغير

Against the services provided in respect of administration and marketing of the Fund, the Takaful Company is entitled to an upfront a Wakala fee i.e. the agent's commission which constitutes reimbursement of its expenses, as well as, its profit margin / fee for providing such services. This Wakala fee is worked out as a proportion of total contributions earned. In addition, management fee i.e. Modarib share is paid to the Takaful Company out of the profits of the Takaful pool in line with the rates and proportions agreed. In addition, in certain models, the Takaful company is also a partner i.e. Musharik in the Takaful pool and accordingly, its share of profit is also paid in respect of its amount of capital involved. All the remaining profits are attributable to the Takaful pool.

All the losses reported (claims made) are paid out of the fund and adequate provisions and reserves are made in the fund in line with industry practices. If after payment of all losses, and after making all adequate provisions and reserves, there arises a surplus, that surplus may be refunded to the contributors through a pre-agreed mechanism.

Generally the modeling of a Takaful company, particularly, the determination of sharing ratios, contribution rates and Takaful limits are determined with the help of an actuary. Similarly, the determination of adequacy of different types of reserves and provisions needs involvement of actuaries or insurance experts. Generally these rates, limits etc. are kept in line with the general insurance practices prevailing in the market, in order to ensure that the product remains compatible to the market. In certain cases, a Takaful company may establish more than one Takaful Funds to cater different types of businesses.

## علامہ اقبال، یہودیت و جمہوریت IQBAL & JEWISH DEMOCRACY

مؤلف: جناب آزاد بن حیدر ایڈووکیٹ سپریم کورٹ  
بزرگ مفکر محترم آزاد بن حیدر نے اس کتاب میں علامہ اقبال کے افکار کی  
روشنی میں یہودی جمہوریت کو بے نقاب کر دیا ہے۔ (ڈاکٹر عبدالقدیر خان)

ہر چہ بگندہ نمٹائش می زندہ .....☆..... وای بہ روزی کہ بگندہ نمٹک

The history declares that the first form of Insurance that was practically applied in the business world was the marine insurance scheme initiated by Muslim merchants. This scheme was based on the concept of Takaful which implies mutual cooperation and security.

In modern Islamic finance, Takaful has emerged as an alternate to conventional insurance business. Takaful companies are now operating in most of the parts of this world, particularly the Islamic world. In addition, to cater with the concept of re-insurance which plays a vital role in stability of insurance business throughout the world, the concept of Re-Takaful has also been introduced.

### How Takaful works?

Takaful business works on the concept of mutual benefit. In conventional insurance, the insurance company guarantees to make good any loss being sustained by the customer against the insured sum. Contrary thereto, in Takaful, the customers mutually agree to form a Takaful fund for mutual benefit and the Takaful company acts merely as the fund manager. Takaful company earns its management fee in different forms and in certain models, also become a partner in the Takaful pool.

All the contributions of the customers (i.e. the premiums, if we call them conventionally) are deposited in the Takaful pool which is then invested in various Shariah compliant investment avenues. These avenues include real estate, permissible securities including shares, certificates and Sukuks and if law of the land permits, in Islamic financing options also.

At the time of commencement of business, the Takaful company provides funds to the Takaful fund. Under the model used in Pakistan, these funds are provided as cede money. In other models, times, these funds are provided in form of Musharaka. Similarly, in case of model used in Pakistan, in case of losses in the fund and cash shortfalls, the Takaful company provides Qard-e-Hasana to the Fund, while in some models; the Takaful company provides capital on Musharaka basis.

involved but the core activities of the investor are not in compliance with the injunctions of Shariah.

The third factor is specific to certain types of insurance contracts, particularly life insurance contracts, which include the concept of annuity. According to such schemes, in case the insured person does not make any claim upto the date of expiry of policy or another pre-agreed date, he is paid an amount equivalent to the annuity of his premium payments worked out on the basis of a pre-agreed rate. The relevant details of such computation depend upon the scheme of such pooling.

All of these forms of involvement of interest are not permissible from the Shariah perspective and accordingly render the insurance contracts void and impermissible.

### Lack of Reliance on Taqdeer

Besides, the foregoing three “legal” issues involved in insurance, another issue is raised by a number of Shariah scholars on “spiritual” and “religious” grounds that relates to the faith (ایمان) of a Muslim on Taqdeer (تقدیر). Needless to mention, faith on Taqdeer is considered to be a prime facet of faith in Allah SWT. According to these scholars, insurance lead to lack of a person’s reliance on Taqdeer and accordingly, it is an indication of weakness in one’s faith.

Based on this concept, coupled with an assumption that Gharar and Maisar can never be completely eliminated from an insurance contract or any alternate thereto, there is a relatively small school of thought of Muslim jurists that strongly upholds that any insurance contract or any alternate thereto is never permissible. Nevertheless, such school of thought allows such contracts only in the case of compulsion or Iztirar (اضطرار), which denotes the condition whereby the necessity is of such significance in which every Haram becomes Halal for the time being.

### Alternate of Conventional Insurance System – Takaful

ازپدرش چه تیری دیدی .....☆..... کہ ازپسرش ببینی؟

hence, considered void from Shariah perspective.

Analyzing a typical insurance contract from this perspective, we find that an insurance contract is between an insurer and the insured containing contingent and uncertain provisions regarding the outcome of the contract in various different conditions and accordingly, it explicitly contains the Gharar factor hence is not permissible at all, from the Shariah perspective.

### Maisar – Gambling

A conventional insurance contract may be termed as a civilized form of gambling also if perceived from an independent perspective. In this contract, you may realize, that the insured party make fixed premium payments which are either lost at all or might return in form of much higher amounts. Accordingly, you may find that in the western societies the insurance has also become a gambling game and theoretical and unrealistic assumed risks are also insured as a part of business. However, there is a group of jurists who are of the view that an insurance contract does not involve the Maisar element because it always caters to a real financial risk.

### Riba – Interest

In normal insurance contracts, interest is included in three forms. The first factor is in the very nature of the contract i.e. the amount paid as premium is either less than the amount received against claims or is, as generally the case is, higher than the amount of claims received. In Shariah perspective, in any contract other than a trade or service transaction, the amount received should always be equivalent to the amount paid. Otherwise, any excess or deficit shall be considered as a kind of Riba. Notwithstanding this general view of the jurists, there are a few scholars who do not consider it to be Riba from this perspective.

The second factor is that the insurance companies generally invest their savings in various securities and investments which bear interest either directly or indirectly. These investments also might include certain investments, whereby although the interest is not



burglary, thefts etc.. Similarly, the performance of fire fighting departments and traffic system may also be categorically termed as below the anticipated level. More importantly, if someone dies, leaving widow and children and often including other dependants also, what is the support that his family may expect from the society to compensate the loss suffered by them? And being practicable we should realize that the loss suffered by such dependants duly includes the financial issues that arise just after the death of a person.

The most common forms of insurance include life insurance, medical / health insurance, education insurance, business loss insurance, marine insurance, theft and burglary insurance, automobile insurance, fire insurance and group insurance for life, health and disablement which generally cater to the most of the human needs in case of losses.

### Why Insurance is Considered Haram

For a layman, particularly, the one with a very little knowledge of the Islamic financial system and knowing a little about the practical benefits of insurance, this question is very crucial which is very well addressed by a number of scholars. In the ensuing paragraphs we wish to have a brief discussion on this issue.

Conventional insurance system includes three basic Shariah non-compliance issues that cause this to be impermissible under Shariah. These three issues are relating to involvement of:

- \* Gharar (غرر) i.e. uncertainty;
- \* Maisar (میسر) i.e. gambling; and
- \* Riba (ربوا) i.e. interest.

### Gharar – Uncertainty

Gharar literally means uncertainty. In Islamic contract law, this term is used whereby any of the terms of the contract are not fixed and certain and includes uncertain and contingent factors. It is a consensus amongst Muslim jurists that any financial contract containing uncertainty shall not be considered permissible and is,

جرح اللسان اشد من جرح السنان.....☆..... زخم زبان برنده تر از زخم شمشیر است

## INSURANCE AND TAKAFUL

Omar Mustafa Ansari

Insurance is an essential feature of business in the modern economic culture. The concept of insurance emerges from the concept of risks hedging on the first part and risk buying on the other hand. Conceptually the insurance may be performed for literally each and every risk which the businesses, individuals, families and society may face. A person having a basic knowledge about the insurance system feels that this is a real benefit for the humanity because the insurance company hedges each individual's risks and supports him in case of extra-ordinary losses.

We all know that in a civilized society, particularly in an Islamic society, it is the duty of the society in general and the government in particular to ensure to avoid losses for its citizens and in case of any extra-ordinary loss, to try to compensate the aggrieved one.

Now considering the situation particularly for an environment whereby the government's attitude is practically pathetic regarding efforts for saving the peoples lives, properties and other assets, a number of people are of the view that it is a situation of compulsion to obtain insurance policies to ensure that remedies are available in case of losses or potential losses. In order to better understand this issue we should take a few examples.

In Pakistan, we do not have enough hospitals available at government level, capable enough to cater the needs of the citizens of Pakistan and, not only this, the quality of service rendered by these institutions is hopeless. Similarly, the functionality of police and other law enforcing agencies is very much questionable, when the question arises of saving the lives, properties and other assets from killings,