



فراخوان ترجمه کتاب



پژوهشکده بیمه، به منظور کمک به گسترش دانش بیمه‌ای، ترجمه کتاب

TAKAFUL Realities & Challenges

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ضریب	امتیازات	معیارهای ارزیابی
۱	میانگین امتیاز ۲ داور (حداکثر ۱۰)	کیفیت ترجمه
۰.۲	سوابق علمی مرتبط با موضوع کتاب: دکتر ۱۰ - ارشد ۸ - کارشناسی ۶ سوابق علمی غیرمرتبط: دکتر ۴ - ارشد ۳ - کارشناسی ۲	سوابق علمی
۰.۴	سوابق مرتبط با موضوع کتاب: حداکثر ۱۰ امتیاز براساس نرمال‌سازی سوابق غیرمرتبط: ۲۰ درصد امتیاز فوق	سوابق تالیف/ترجمه کتاب
۰.۴	حداکثر ۱۰ امتیاز براساس نرمال‌سازی	سابقه فعالیت تخصصی در حوزه بیمه

کاربرگ درخواست ترجمه کتاب

TAKAFUL: Realities & Challenges

عنوان کتاب:

سال نشر: 2012

ناشر: INCEIF

الف - اطلاعات عمومی

نام و نام خانوادگی	
شغل و سمت فعلی	
مرتبه علمی (ویژه اعضای هیات علمی)	
آخرین مدرک تحصیلی و رشته	
آدرس	
شماره تماس ثابت	
شماره تماس همراه	
پست الکترونیک	

ب - سابقه تألیف/ترجمه (حداقل ۳ عنوان از آثار خود را اعلام بفرمائید)

ردیف	عنوان کتاب/ترجمه	سال انتشار	ناشر

ج - سابقه اجرایی

ردیف	محل خدمت	مدت زمان خدمت

The *Shari'ah* Basis of *Takaful*

Hedging against a risk or mitigating a risk is not only accepted, but encouraged in Islam. In fact, since we face all sorts of risks in our daily lives, protecting ourselves against losses by paying a conventional insurance company or *takaful* operator to take on the risks has become a necessity. A well-known *hadith* that was narrated by Amir bin Sa'd bin Abi Waqqas points to the fact that it is better to leave behind wealth that would enable one's loved ones to lead a good life than to leave them with nothing to depend on. In this *hadith*, Amir's father Sa'd bin Abi Waqqas reported that he was taken seriously ill in the year of the Prophet's final and only pilgrimage and the Prophet visited him to enquire about his health. Sa'd told the Prophet about his worries in case he should die, and said, "Oh Allah's Apostle! May I will all my property in charity?" He said, "No". "Then may I will half of it?" He said, "No". I said, "One third?" He said: "Yes, one third, yet even one third is too much. It is better for you to leave your inheritors wealthy than to leave them poor begging others, and whatever you spend for Allah's sake will be considered as a charitable deed, even the handful of food you put in your wife's mouth. Allah may lengthen your age so that some people may benefit by you, and some others be harmed by you." At that time Sa'd had only one daughter.¹⁰

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The above *hadith* instructs Muslims, who have heirs, not to give away to charity more than one-third of their property. This is so the heirs do not face the risk of not having enough to survive on.

Risk is present at all times and in all places, and can cause us harm when it strikes. In addition, we do not know the size or impact of the loss that it will cause us. In other words, there is always the element of ambiguity or the so-called *gharar* that invalidates contracts between two parties or a bilateral contract. One example of such a contract is the sale and purchase contract in conventional insurance. Hence, in Islam, as long as the contract is one of sale and purchase between the *takaful* operator and the participant or the policy holder, it will not be valid because of the presence of the risk or *gharar* element. The question is: why does the presence of

¹⁰ Sahih Bukhari (English), Volume 4, Book 51, Number 5. A similar *hadith* is also reported by Bukhari in the same volume and book, Number 7. Also found in Sahih Muslim (English), *Kitab al-Birr*, *hadith* no. 984.

Costs

The cost to a *takaful* participant is basically the contribution that he has paid to get the cover he needs.

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Shari'ah Governance

When the first Islamic financial institutions were set up in the 1970s, there were very few scholars who were knowledgeable about *Shari'ah* finance and conventional banking. Most financial institutions that intended to operate along Islamic lines had to bring together finance specialists and *Shari'ah* scholars to discuss all matters pertaining to Islamic banking and finance. This was necessary because compliance with *Shari'ah* principles is an integral feature of such an institution. It is the *Shari'ah* principles that underpin all aspects of these institutions.

Thus, it has become a necessity for all credible Islamic financial and banking institutions all over the world to hire competent *Shari'ah* advisers to guide them on *Shari'ah* matters in financial transactions. When the Islamic Banking Act of 1983 was promulgated, Section 3 (5)(b) was inserted to make the establishment of a *Shari'ah* Council a statutory requirement for all banking institutions that intend to operate along Islamic lines. Similarly, Section 8 (3)(a) of the *Takaful* Act 1984 and Section 124 (7) of the Banking and Financial Institution Act 1989 made it mandatory for all *takaful* operators and Islamic banking institutions to establish a *Shari'ah* committee.

The *Shari'ah* committees have certain terms of reference that must be fulfilled. Initially, the most important role of the *Shari'ah* advisers was to ensure that the financial products or services had been designed in accordance with the principles of *Shari'ah*. However, it was soon realised that not only the products and services needed to be *Shari'ah*-compliant, but the whole operations of the Islamic financial and banking institutions had to be completely *Shari'ah*-compliant as well.

With the rapid increase in the number of Islamic financial and banking institutions, there was an increase in demand for *Shari'ah* scholars to sit on the Advisory Boards. Two main problems arose: first, there was a shortage of *Shari'ah* scholars, second, there was a wide variety of decisions made, a few of which were in conflict with the majority of others (conflicting approaches to Islamic banking were adopted). This second problem was considered to be more serious because it caused a lot of confusion among members of the public which could lead to loss of confidence in the Islamic financial and banking institutions.



agent and principal relationship between operator and participants. This brings about the differences in the task of “risk assumption” and “ownership of capital contributions”, which influence and affect both the accounting and reporting aspects of *takaful*. Hence, the accounting profession needs to realise and accept that *takaful* and conventional insurance are not the same although they have the same purpose.

Taxation and *Zakat*

Like any other business entities, *takaful* operations are required to pay taxes. Taxes are levied in almost every country of the world, primarily to raise revenue for government expenditures although they serve other purposes as well. Besides income and other taxes, Islamic financial institutions such as *takaful* companies may be required to pay *zakat*.

Income Tax

Generally, for the purpose of income tax calculations, *takaful* operations are treated as conventional insurance companies in various jurisdictions, including Malaysia. Further, it is not uncommon to treat general *takaful* businesses and family *takaful* businesses differently. The tax arrangements in Malaysia in relation to general *takaful*, are as follows:

- Contributions received by a *takaful* operator from participants are treated as taxable income.
- The expenses incurred by a *takaful* operator for management, marketing, claims and commissions are deductible.
- Any provisions in respect of the same are treated in the same way as expenses. In general *takaful*, reserves are tax allowable as per accounts.
- The deductibility of *retakaful* contributions paid to a *retakaful* company is treated in the same way as reinsurance for a conventional reinsurance arrangement (e.g. reinsurance premiums ceded outside Malaysia are deductible to the extent of 95% of the premium paid).
- As in many jurisdictions, general *takaful* operators are taxed on net income. Tax returns will also be based on the audited annual Insurance Act return.



***Shari'ah*-Compliant Investments and Assets**

In terms of investment according to *Shar'iah*, *takaful* operators have to put in place appropriate procedures to ensure their investment portfolios are *Shari'ah*-compliant, including procedures for dealing with returns from tainted or non-permissible income sources. The roles of the *takaful* operator's *Shari'ah* committee must be clearly spelled out to ensure effective *Shari'ah* governance.

Certain authorities such as the *Shari'ah* Advisory Council (SAC) of the Securities Commission of Malaysia and the *Shari'ah* Supervisory Board of the Dow Jones Islamic Market Index issue guidelines on *Shari'ah*-compliant securities and other financial instruments from time to time. Companies (and even individuals) such as the *takaful* operators who wish to invest in *Shari'ah*-compliant securities must often refer to the list issued by them.

The SAC has classified the companies whose activities are not contrary to *Shari'ah* principles as *Shari'ah*-compliant. On the other hand, companies will be classified as a non-*Shari'ah*-compliant business if they are involved in the following core activities:

- 1 Financial services based on *riba* (interest).
- 2 Gambling and gaming.
- 3 Manufacture or sale of non-*halal* (non-permissible) products, or related products.
- 4 Conventional insurance.
- 5 Entertainment activities that are non-permissible according to *Shari'ah*.
- 6 Manufacture or sale of tobacco-based or related products.

The SAC considers two additional criteria for companies with activities comprising both permissible and non-permissible elements:

- 1 The public perception or image of the company must be good.
- 2 The core activities of the company are important and considered *maslahah* (of public interest) to the Muslim *ummah* (community) and the country, and the non-permissible element is very small and involves matters such as *'umum balwa* (prohibited element affecting most people and difficult to avoid), *'uruf* (customary practices) and the rights of the non-Muslim community which are accepted by Islam.



***Shari'ah* View on Brokers and Agents**

Takaful companies can use agents and brokers as the *Shari'ah* is not against this. The concept of *wakalah* is affirmed by the Prophet's traditions whereby Imam Bukhari related that the Prophet (p.b.u.h.) gave a dinar to 'Urwah to buy a goat. 'Urwah bought two goats with the dinar and then sold one of the goats. He then brought back a goat and a dinar. The Prophet (p.b.u.h.) then supplicated so that he would be blessed in his trade. The Prophet (p.b.u.h.) also appointed agents to collect *zakat*. For example, the Prophet (p.b.u.h.) appointed Ibn Lutbiyah of the Asd clan as collector of *zakat* from the tribe of Sulaim.

Indeed, the tradition of appointing agents continued during the time of the righteous Caliphs to this day. In this respect, both Imam Bukhari and Imam Muslim related from the *hadith* of Busr bin Sa'id that Ibn Sa'di al Maliki said, "Umar asked me to collect *zakat* and after I handed it over to him, he ordered that I be paid a fee. I said, 'I work for the sake of God'. He answered, 'Take it. I used to work like you during the Prophet's time and he paid me a fee and I told him exactly what you said to me.' Then he said to me, 'When you are given something without asking, take it and give charity.'" While explaining the above tradition, Imam Shaukani said, "The *hadith* of Busr bin Sa'id showed that a person doing something with the intention of *tabarru'* (in this case as an agent) may receive a fee." Another scholar by the name of Ibn Qudamah said, "The contract of *taukil* (*wakalah*) can be performed either with a fee or without. This is so because the Prophet (p.b.u.h.) did appoint Unais to carry out a ruling, 'Urwah to buy a goat and Abu Rafi' to accept marriage without any fee. The Prophet (p.b.u.h.) also appointed his officers to collect *zakat* and he paid them fees." All scholars, including contemporary ones, share this opinion.

On the issue of agents, how far is it true to say that agents represent the *takaful* companies that hire them? Many legal frameworks view agents as fully representing the *takaful* companies, and as an agent of the company, the *takaful* agent's knowledge and actions may be deemed to be the knowledge and actions of the company. Therefore, a responsible *takaful* agent must disclose relevant information with regard to underwriting and risk selection to the company he represents as it is the company that will ultimately decide whether to accept or reject the application to buy its products, or charge appropriate loadings. It is also the responsibility of the agent to provide information to the operator even if the operator does not require it.

A responsible *takaful* agent must disclose relevant information with regard to underwriting and risk selection to the company he represents as it is the company that will ultimately decide whether to accept or reject the application to buy its products, or charge appropriate loadings.



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