



فراخوان ترجمه کتاب



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

Basic Takaful Broking Handbook

Course Manual for Basic Certification Course in Takaful Braking (BCCTB)

را در دستور کار خود قرار داده است. لذا از کلیه اساتید، پژوهشگران، صاحب‌نظران و کارشناسان دعوت می‌شود که در صورت تمایل به ترجمه کتاب مذکور، کاربرگ درخواست ترجمه پیوست را به همراه سوابق علمی و اجرایی خود و ترجمه صفحات ذکر شده با ذکر عنوان کتاب، حداکثر تا تاریخ ۱۴۰۲/۰۵/۱۰ به آدرس ایمیل nashr@irc.ac.ir ارسال فرمایند.



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کاربرگ درخواست ترجمه کتاب

Basic Takaful Broking Handbook

Course Manual for Basic Certification Course in Takaful Braking (BCCTB)

عنوان کتاب:

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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

SECTION 5

INSURANCE PRINCIPLES USED IN TAKAFUL

Insurance contracts are not only subjected to the general principles of the law of contract, but also certain special legal principles that are embodied in insurance contracts. In this context, these principles are also applicable for Takaful contracts:

1. Utmost Good Faith
2. Insurable Interest
3. Indemnity
4. Subrogation
5. Contribution
6. Proximate Cause

5.1 UTMOST OF GOOD FAITH

Utmost good faith is an obligation of the insured to disclose material facts. A material fact is a fact that would influence the judgment of a prudent underwriter in deciding whether to accept a risk for insurance and on what terms. The proposer has a duty to disclose material facts at the inception, renewal and in respect of mid-term alterations where there has been a change in risk.

Example: A person's health history is a material fact for a life insurance policy. However, the information is not a material fact for a fire policy.

Though the company must reciprocate, in practice the duty weighs more heavily on the insured. A breach by the insured makes the contract *voidable ab initio* at the company's option. Breaches may be through concealment; non-disclosure; fraudulent misrepresentation

and innocent misrepresentation. The duty is pre-contractual but revives at the renewal stage and to certain mid-term alterations affecting the risk.

Concealment is defined as the willful failure to disclose a material fact before the insurance contract is concluded. It is a breach of utmost good faith rendering the contract *void ab initio* and entitling the company to sue for damages because of deceit. If fraud is proved, the insured is not entitled to a return of premium.

Non-disclosure by the proposer before the insurance contract has been concluded may render *voidable ab initio* but the option of doing so lies with the company. If the company exercises the option, then, the full premium will be returned. Fraudulent misrepresentation is also a breach of the duty of utmost good faith and it occurs when the person knowingly makes a false statement relating to a material fact, does not believe it to be true or makes it recklessly without due regard to its accuracy.

Sometimes, the proposer may unintentionally supply misleading information relating to a material fact and this can be in breach of the duty of utmost good faith. Where the company exercises the right of avoidance *ab initio*, the risk does not exist and the full premium must be returned. Under the industrial code of practice of some developed countries, companies have agreed not to avoid policies issued to private individuals where the innocent misrepresentation is due to the nature of a technical error.

This is in line with the two-step test that was laid down by the House of Lords in *Pan Atlantic vs Pine Top* (1995). The two-step test enables the companies to have a right to treat the certificate/policy as avoided if the facts misstated or withheld are material in the objective sense that they would have been of interest to a prudent underwriter in the market at the time; and had the subjective effect of inducing the actual companies to enter into the certificate/policy on the terms finally agreed.

However, in this case, the House of Lords is of the opinion that the insured are not required to disclose facts:

- Which he did not know and could not have known in the ordinary course of his business;
- Which diminish the risk;
- Which were known or ought to have been known by the companies;
- Which were waived by the companies; or
- Which are covered by an expressed term in the certificate/policy.

From the Shariah viewpoint, the principle of utmost good faith is in line with Islamic teachings as contained in a *hadith* related by Hakim ibn Hazim who reported that the Prophet (s.a.w.) as saying: “*Both parties in a business transaction have the right to annul it so long as they have not separated; and if they speak the truth and make everything clear, they will be blessed in their transaction; but if they tell a lie and conceal anything, the blessing on their transaction will be blotted out*”.

In another *hadith* related by ‘Abdullah ibn Dinar who narrated that he heard Ibn ‘Umar as saying: “*A man mentioned to the Prophet (s.a.w.) that he was deceived in a business transaction, whereupon the Prophet (s.a.w.) said: ‘When you enter into a transaction, say: There should be no attempt to deceive’*”.

5.2 INSURABLE INTEREST

Insurable interest is the legal right to insure a legitimate financial interest which can be insured. An individual with insurance interest on a subject matter must stand to lose financially if the subject of insurance is damaged or destroyed or lost.

Legitimate financial interest refers to a financial interest which is recognized by law. If a person’s financial interest in a subject matter

of insurance is not legally recognized, he/she lacks the required insurance interest to affect a valid insurance.

Example: We have an insurable interest in our car because we stand to lose financially if it is damaged in a road accident.

The rationale for insurable interest i.e. to avoid gambling and is in line with Shariah requirements. However, its replacement with Section 335 of the Gambling Act 2005 should prompt takaful operators to address this issue in line with Shariah considerations. The new section treats all gambling contracts as valid. Generally, an insurable interest must exist when the certificate/policy is issued and at the time of loss except in the case of marine insurance, when interest is required only at the time of loss, and in life insurance when interest is required only at the inception.

There has been a gradual expansion in the concept of “insurable interest” as decided by the Court of Appeal in *Feasey vs Sun Life Assurance Corporation of Canada* (2003). The Court approved a line of cases, to the effect that a subcontractor has an insurable interest in the entirety of the works project even though he is contributing to only a small part of the project, on the basis that in the event of any casualty, the subcontractor could be deprived of the benefit of his contract.

5.3 INDEMNITY

Indemnity is defined as security against financial loss. This is an insurance principle designed to place an insured in the same financial position after a loss that existed immediately before the loss. An ‘exact financial compensation’ may be denied by an inadequate sum insured, indemnity limit, excess or franchise. The principle cannot be applied to life insurance and personal accident, termed ‘benefit policies’, as the payments are based on specific benefits not indemnity.

The leading case on indemnity is *Castellain vs Preston* (1883). In that case, the defendant contracted to sell property but, before completion, the property sustained fire damage (£330), which the defendant recovered from his company. On completion, the defendant received the full purchase price from the purchaser despite not having repaired the damage. The company recovered the £330 payment as the defendant, having received the full price, had suffered no loss and the fire certificate/policy was one of indemnity.

Like insurable interest, the purpose of the principle of indemnity is to avoid gambling, otherwise, the insured would be able to claim more than what he lost. The indemnity principle should not be strictly interpreted by takaful companies as this may result in not making good the financial loss of the participant. In this respect, takaful companies should include the Reinstatement Value Clause or the Replacement Value Clause, at least in fire takaful certificate/policy.

5.4 SUBROGATION

This is the right of the company who has granted an indemnity to take over any recovery rights that the insured may have against third parties which are liable for the same loss. A subrogation condition in the certificate/policy enables the company to take action in the insured's name before paying the claim. Subrogation may arise under contract, tort or statute (Riot (Damages) Act 1886).

Example: A company paying for a car damaged by a third party's negligence can pursue the third party.

According to Professor Merkin, subrogation is the right of companies, having indemnified the insured, to exercise the insured's rights against any third party responsible for the insured's loss. The action must be brought in the name of the insured. A subrogation action cannot put the companies in any different position to the insured, so if the insured for some reason does not have a cause of action, then, nor do the companies. Further, there is an implied term in the

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