

## The Originality and Development of Islamic Insurance (Takaful)

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**Abstract:** The article deals with the organizational and legal foundations of the Islamic model of insurance. The Muslim legal institutions used as a legal basis for the implementation of the principles of tactful are analyzed.

**Key words:** Islamic insurance (takaful), gharar, riba, development, economy.

Some researchers put an equal sign between the concepts of “Islamic insurance” and “takaful”. In a sense, this statement is true: in the modern world, both of these terms are used as synonyms. However, this was not always the case. Initially, the term “Islamic insurance” began to use to refer to those types of property insurance that were practiced by the first Islamic insurer in the world - the Islamic Insurance Company (Sharika at-ta’amin al-Islamiya). The emergence of the Malaysian Takaful Law of 1984 and the development of Islamic insurance in that country made the term “takaful” commonly used. At the same time, in Sudan, the birthplace of Islamic insurance, the legislator continues to distinguish between both concepts: Islamic insurance in the Law on Insurance and Takaful of 2003 refers to property types of insurance, and “takaful” refers to personal insurance. (Шарика ат-та’амин ал-исламийа).

The proposed changes to Uzbekistan's insurance legislation also include "Islamic insurance." The term “takaful” is not used in the bill. Differentiating between “takaful” and “Islamic insurance” may be based on various reasons, for example, political and legal ones: in Uzbekistan, the project initiators decided not to use foreign words (takaful) so as not to raise unnecessary questions from the regulator.

On the other hand, those who prefer to use the term “takaful” base their argument on the fact that this is not about insurance, that is, not about risk trading, but about some kind of partnership, the purpose of which is mutual assistance between its participants, and not commercial activity. In such a situation, the word “insurance”, even if combined with the adjective “Islamic”, does not seem quite appropriate<sup>1</sup>.

In this tutorial, the terms “Islamic insurance” and “takaful” are used as synonyms, regardless of whether we are talking about commercial or mutual insurance.

The word takaful itself comes from the verb kafala and in Arabic means “mutual guarantee to each other”. The Qur’an says: “... and help one another in piety and fear of God, but do not help in sin and enmity. And fear Allah: verily, Allah is Mighty in Punishment” (5:2). This ayat is given in the works of all jurists who write about Islamic insurance. According to the concept of mutual aid outlined in the above verse, believers should help each other, including if any of them befalls misfortune.

The desire to protect oneself from various troubles is inherent in human nature: “And among them there are those who say: “Our Lord! Grant us good in the present life and in the last, and protect us from the punishment of fire” (2: 201). The one who protects the victim from the consequences of

<sup>1</sup>Critics of the concept of Islamic banking make similar arguments.

the disaster that has befallen him deserves a reward from Allah: “According to the testimony of Abu Hurairah, who conveyed the words of the Prophet: “Whoever relieves the one who is in difficulty, Allah will make relief in this life and in the next. In addition, whoever protects a Muslim; Allah will protect him in this life and in the Hereafter. Allah helps His slave as long as that slave helps his brother...””.

The function of protecting people from various kinds of risks in accordance with the norms and principles of Sharia is precisely what Islamic insurance, or *takaful*, is intended to perform. This institution of Islamic economics is based on the following main provisions:

- 1) Islamic insurance company (*takaful* operator) does not accept payment from participants (insureds) for covering the risk, but acts as a manager of a *takaful* fund, where the contributions paid by the insured (insurance premium) are received<sup>2</sup>. Therefore, insurers are usually referred to in Islamic insurance as participants (acting as partners in a *takaful* fund)<sup>3</sup> while at the same time the company (*takaful* operator) acts as the manager of this fund. In other words, policyholders (participants) simultaneously act as an insurer in relation to other participants.
- 2) The *takaful* operator is not the owner of the funds of the participants received by the *takaful* fund. He is only a trustee of this fund, for which he receives (depending on the chosen model) either a fixed remuneration, or a certain share of the profit from investing the contributions of participants, or both. The owners of the funds in the *takaful* fund are only the participants themselves.
- 3) In *takaful*, there is no excess *gharar* (*al-ghararalkasir*) due to the fact that all contributions or part of them are considered as a gift or voluntary donation and are sent to a special fund, from which, in the event of an insured event, compensation is provided to the affected participants. In addition to paying the amount necessary to cover the damage, the participant can count on income from investing the contributions paid by him (based on the *Mudaraba* mechanism);
- 4) The contributions paid or part of them may be invested by the *takaful* operator only in accordance with the requirements of Shariah. It is forbidden to direct these funds to finance activities characterized as *haram*. The financial instruments used for investment should also not contradict the Sharia prohibition of *riba* (interest on loans);
- 5) In case of a shortage in the *takaful* fund, the company must provide the missing funds on an interest-free basis (*qardhasan* mechanism). After the receipt of funds from participants in the *takaful* fund or because of successful investments, the loan provided (without paying interest) returned to the Islamic insurer.
- 6) A specially created Sharia (supervisory) board is called upon to monitor the business activity of *takaful* companies, whose tasks include assessing the products (services) of the company, as well as its operations in terms of their compliance with the norms and principles of Islamic law;

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<sup>2</sup>By tradition, and in accordance with the current legislation (the Malaysian *Takaful* Law of 1984), the insurer in Islamic insurance is called the operator. In this paper, the terms “Islamic insurer”, “Islamic insurance company” and “*takaful* operator” used as synonyms.

<sup>3</sup>In the works of a number of Muslim scholars writing about Islamic insurance, the participant and the insured are separately distinguished among the parties to the *takaful* agreement. Those who pay premiums to a special fund, from which they then profit, are known as participants, and those of the participants for whom an insured event occurs, are called insurers. This is explained by the fact that, unlike traditional insurance in *takaful*, the insured has the right not only to receive compensation, but also to a certain profit from a part of the funds invested by him, regardless of the occurrence of the insured event. In this work, the terms “participant” and “insured” are used as synonyms.

- 7) policyholders have the right to nominate their representatives to the board of directors of a takaful operator<sup>4</sup>;
- 8) Intakaful, unlike commercial insurance, the principles of inheritance according to Sharia (in accordance with the principles of miras<sup>5</sup> and wasiy<sup>6</sup>) are not violated. According to the latter, part of the profit from the contributions paid by him, if he received compensation upon the occurrence of an insured event, the testator in his will has the right to dispose of no more than 1/3 of his own funds. The beneficiary appointed by the testator (insured) who, according to Muslim jurists, acts as a trustee, must distribute the bequeathed property among the heirs in accordance with the principles of inheritance in Islamic law. The insured may bequeath to the designated beneficiary up to 1/3 of all his property (which includes paid insurance premiums and profits on them). If the beneficiary is included in the circle of heirs of the owner of the policy by law, he can receive everything that remains after paying the debts of the deceased, funeral and other expenses, as well as payments under the will, along with other legal heirs).
- 9) In Islamic insurance, only pure risk, not speculative risk, can be insured. Pure risk implies that in the event of an insured event, the insured may suffer damage or the current state of affairs will be preserved. With regard to speculative risk, it arises because of certain actions of the insured, with the aim of obtaining benefits.

One of the key provisions in the theory of takaful, often causing misunderstanding is the concept of tabarru'. Translated from Arabic, tabarru' means, "gift, donation". Everyone who has entered into an Islamic insurance contract must have a sincere intention (niyat) to help other participants if they face certain risks.

Under the concept of tabarru', the participant provides contributions as a "gift" to a takaful fund managed by an insurer. In other words, we are talking about the gratuitous provision of funds, that is, about donation. However, the correctness of the definition of all contributions paid by the insured as a gift raises some doubts, since because of the payment of contributions; the insured acquires the right to compensation (reimbursement). While donation does not imply any obligations on the part of the takaful operator and other participants: "According to the certificate Ibn 'Abbas. Who narrated the words of the Prophet: "Whoever takes back a gift given to him, he is likened to a dog that first vomits and then returns to its vomit".

From the takaful fund, not only compensation is paid in the event of an insured event, but also a part of the income received by the Islamic insurance company from investing the contributions of participants.

It is also important to emphasize that such a concept as intention (niyat) in this case is not of a legal nature, but is a moral and ethical imperative. In any case, a person who does not intend to donate his contributions, subject to other conditions, without any restrictions, may act as a participant and purchase a policy from a takaful operator.

In this context, the concept of donation as a legal basis for the formation of a takaful fund does not seem entirely appropriate. The "donation" of contributions by a participant thus resembles a legal fiction. The philanthropic nature of this act raises the question: how soon the participant (insured) is counting on compensation in the event of an insured event, as well as on some investment income, even if it was received without violating the Sharia prohibition of riba.

<sup>4</sup>There are other ways to replenish the takaful fund when there is a shortage of funds. For example, in Sudan, a special Policyholder Protection Fund has been established under the Ministry of Finance and National Economy. Companies pay contributions to this fund, and in the event of a shortage of funds in the takaful fund, the necessary amount is provided from the Policyholder Protection Fund.

<sup>5</sup>Miras (Arabic - inheritance; irs, virasa, virs, tariqa, turas) - inheritance. The concept of miras, in addition to directly receiving the property of the testator, includes the payment of his debts, the fulfillment of the remaining unfulfilled obligations of the deceased, the execution of orders under the will, guardianship of the family of the deceased, etc.

<sup>6</sup>This practice is prevalent mainly in Sudan. As a rule, a specialized body is created in the form of a meeting of policyholders, which elects one representative to the Board of Directors of the company. However, this condition is not always observed, especially in those companies where there are a large number of participants (insured).

Here is what, in particular, Yusuf al-Qaradawi writes about this: “A member of cooperation should not make donations on the condition that he receives a fixed monetary compensation in case of an accident. Non-fixed compensation can be paid from the funds of the cooperation, which will fully or partially cover the incurred damage, depending on the financial condition of the cooperation... Donations are a gift offering. The demand for their return is recognized as illegal (haram) ...”

Further, the scientist, pointing out “insurers never make contributions in the form of charity”, offers his vision of an ideal Islamic insurance system - this is a contract “on donation with the condition of compensation”. The insurer contributes funds in a charitable form with the condition that in case of accidents receives a monetary compensation that will help him and alleviate his lot.

Other researchers believe that it is quite acceptable to draw parallels between the tabarru’ in Islamic insurance and the donation contract known to Muslim law. In their opinion, tabarru’ combines the properties of gratuitous and compensated contracts. This is a kind of gift agreement with a suspensive condition.

In our opinion, in the context of Islamic insurance, it is more correct to speak of contributions that are unconditionally voluntary, but are not a gift like sadaka.

#### **REFERENCE**

1. Maysami R.C., Kwon W.J. An Analysis of Islamic Takaful Insurance: a Cooperative Insurance Mechanism // Journal of Insurance Regulation. 2019. Vol. 18, №. 1. P. 109-132.
2. Mohammad BurhanArbouna. The Contractual Features and Mechanisms of Takaful (Islamic Insurance) Operation // first Saudi International Takaful Forum. Forum Papers //www.baj.com.sa/sitf.htm
3. Siddiqi M.N. Evolution of Islamic Banking and Insurance as Systems Rooted in Ethics // www.soundvision.com/Info/money/islamicbanking. asp