



UNIVERSITI SAINS ISLAM MALAYSIA

جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

Islamic Banking, Takaful and Al Rahn

LCA4562

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- Takaful

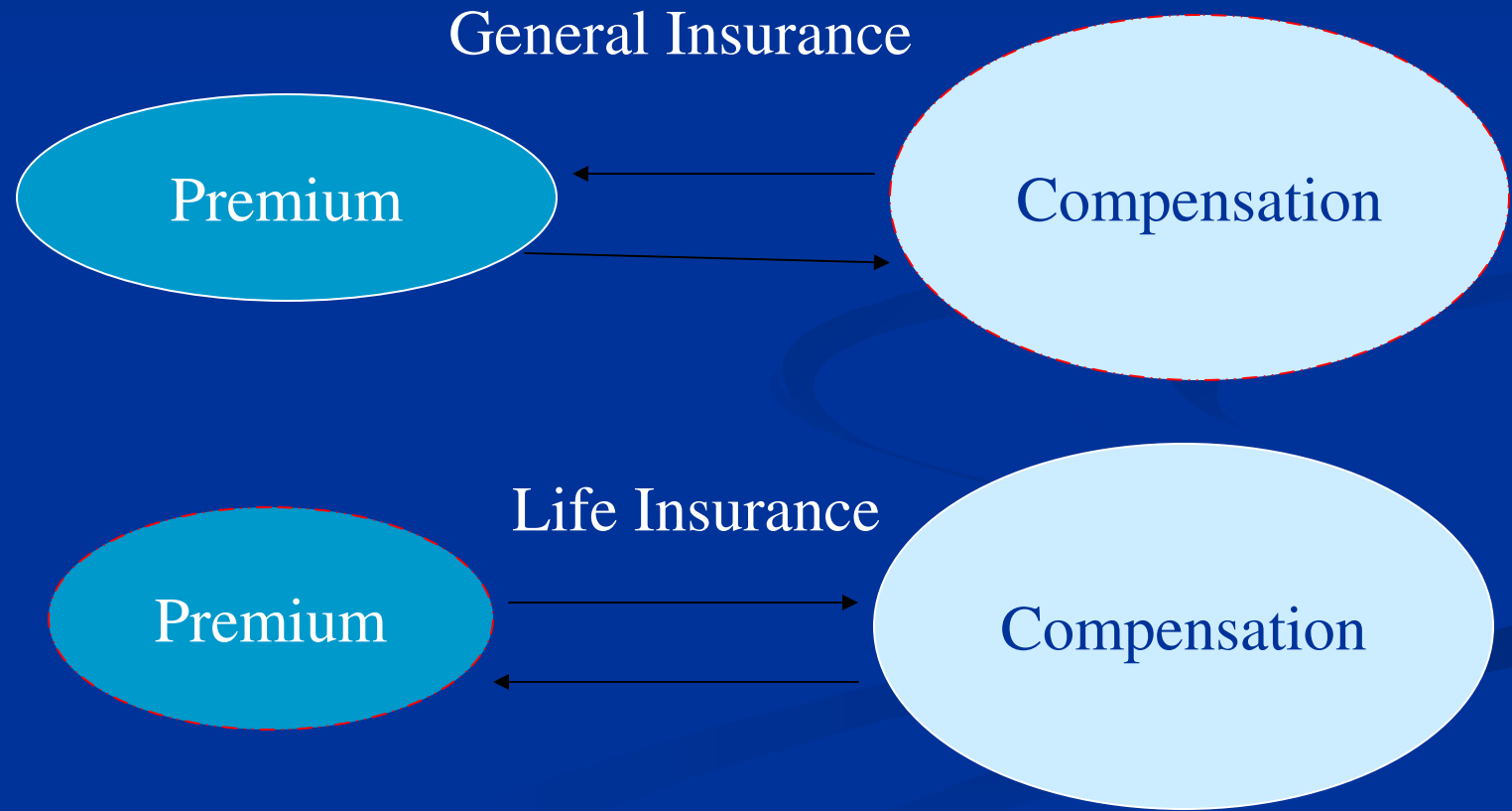
HISTORICAL BACKGROUND OF WESTERN CONCEPT OF INSURANCE

- 1. Ottoman Empire- First introduce western concept of insurance- Maritime Code 1863.
- 2. Ottoman Law of Insurance 1874-only life insurance is haram or unlawful
- Since then, western concept of insurance is practiced almost in all countries in the world

Insurance?

- Financial protection which involves the execution of contracts between the insurer and the insured in which the insurer agrees to underwrite the subject risk of such contracts.

Nature of Insurance Contract



Shariah Position on Insurance

- Three major groups.
 - Those who consider both the concept and practice of commercial insurance un-Islamic.
 - Those who are in agreement with the present insurance and find nothing wrong in it.
 - Those who accept the concept of insurance, but find prohibited elements in its present practice.

Rulings of Collective Fiqhi Bodies

- Islamic Research Institute of Al-Azhar Uni: 1965
- Council of Grand Ulama of Saudi Arabia
- Majlis Tahqiqat-e-Shari'yah Lucknow, India
- Islamic Fiqh Academy of Rabita al-Aa'lam-e-Islami
- Al Majma' Al-Fiqhi Al-Islami of OIC: 1975
- Council of Islamic Ideology, Pakistan
- International conference on islamic economic 1976
- European Council for Fatwa.
- According to these Fiqhi bodies Conventional Insurance is unlawful because of involvement of prohibited elements

Fatwa on Conventional Insurance

- In 1972 the Fatwa Committee declared the western concept of insurance was unlawful because of gharar, riba and maisir
- In 1982- a committee set up by the govt to study the implementation of takaful.
- Fiqh Academy of the Organization of Islamic Conference (OIC) at its gathering in Jeddah in December 1985 resolved that no form of insurance, be it life or general, had conformed to the Islamic principle

Fuqaha Views on Life Insurance

- 1. Opponents:- Sheikh Shaukat, Abu Zaharah and others.
- Reason:-
 - i. Insuring one's life
 - Ii. Betting
 - Iii. Element of riba, maisir, gharar.
 - Iv. Supersede the will of Allah
 - V. against the principle of mirath
 - Vi No direct authority to justify it

Fuqaha Views on Life Insurance

- 2. Justification of life insurance but in different form namely Family Takaful.
- i. mere financial transaction through mutual cooperation.
- Ii. No unlawful element.
- Iii. Implied model of takaful-aqilah and mudharabah.
- Iv. Mutual cooperation to protect the necessities.
- V. Securing the offspring it does not supersede the will of Allah.

2. Justification of life insurance but in different form namely Family Takaful

- **Vi. Security for poor.**
- **Vii. Protection of unexpected difficulties.**
- **Viii. Self reliant society.**

OBJECTION TO THE WESTERN CONCEPT OF INSURANCE

- 1. Riba.
- Life insurance- insurer undertakes to pay the insured. The sum is in excess of the total premium paid. Premium = Loan
- Non-Life insurance- The insurance companies invested the premium paid in fixed interest earnings investment.

2. Gharar

- Uncertainty= Risk, hazard or peril
- Neither the insurer nor the insured knows the nature and extent of their rights and obligation until after the occurrence of the insured event.
- Any transaction must free from excessive uncertainty
- The insured is ignorant of the terms of the insurance.- Unacceptable reason.

How To Free From Excessive Gharar

- 1. Mutual and Cooperative basis
- 2. The takaful coverage must be genuinely required in order to safeguard interest collectively
- 3. such coverage can only be safeguarded through the insurance mechanism.
- 4. Type of contract is Unilateral Contract- Al-Tabarruat.

3. Juhala

- **Uncertainty per se-** all particulars of the contract must be known to the parties at the time of the contract. Otherwise- invalid
- **Life insurance-** The insured does not know – how long he will be paying the premiums.
- **Non life insurance-** does not know how much the insurer will pay him in the case of insured event takes place

4. Maisir

- Prohibition of unearned gains.
- To court unnecessary risk by entering into a transaction with a hope of gain as well as fear of loss.
- Undertaking a risk in the spirit of speculation
- Life insurance- If dies early-Lucky= Policy money will be paid.
- Non life insurance- if the insured event occurs- Lucky. If no- gets nothing

5. Violation of Islamic Law of Inheritance

- Law on Nomination- insurer can nominate to any person as beneficiaries.
- S 23- Hock Hoe's Policy. Nominee enjoys full benefit of the insurance policy.
- This objection is not relevant anymore. Amendment to the Insurance Act and introduction of the Takaful Act 1984.
- In Islam- nomination is just a trustee. The policy money must be distributed –faraid.

6. Contravention of the Conception of Pre-Destination

- Concept of *Qada* and *Qadar*- The ultimate destiny is in the hands of Allah.
- Irrelevant- Failure to appreciate the real function of insurance.
- The insurance does not prevent pre-destined events. It only reduces the pain and suffering resulting from the insured events.
- This is in fact in line with the Islamic principle.

7. Objection to forfeiture of Premiums

- Insurer may forfeit the premiums that have been paid in certain circumstances.
- May forfeit in the event of avoiding non-disclosure or breach of warranty by the insured.
- Islam does not allow the forfeiture of the capital.

Development of takaful

- Takaful started some 30 years ago in Sudan and Middle East in 1979 :
 - The Islamic Arab Insurance Co. (IAIC) in the UAE and
 - The Islamic Insurance Co. of Sudan
- Later in 1984, Malaysia played a pioneering role in setting the first Legal framework specific to Takaful (Takaful Act Malaysia).
- This was instrumental in the successful launching of the Takaful movement in Malaysia and in other countries of South East Asia.

Takaful Operators

- AIA AFG Takaful Bhd.
- AmFamily Takaful Berhad
- CIMB Aviva Takaful Berhad
- Etika Takaful Berhad
- Great Eastern Takaful Sdn Bhd
- Hong Leong MSIG Takaful Berhad
- HSBC Amanah Takaful (Malaysia) Sdn Bhd
- ING PUBLIC Takaful Ehsan Berhad
- MAA Takaful Berhad
- Prudential BSN Takaful Berhad

Origin of Takaful

- 1. Aqilah- Blood money
- The tribe had to be ready to compensate the heir of the victim.
- Compensation likes indemnity in insurance policy
- 2. S.Umar- Al-Dawawin System- Ministry to contribute money for emergency or in need.
- 3. Khairat Kematian-

Sources of Law Affecting Takaful

- 1. Al-Quran- elements of mutual cooperation=
Almaidah: 5:2. Alleviation of hardship= 2:201
- 2. Sunnah= Prophet said: Tie the camel first and then leave it to Allah
- 3. Practices of the companion- Al-Dawawin System by S. Umar.
- 4. Fatwa or Ijtihad: Ibnu Abidin=Permissible insurance in trade for merchant known as Sukra.
- Muhammad Abduh, Zarqa- agreed to the validity of Islamic insurance

Sources of Law Affecting Takaful

- 5. Masalih Mursalah= Life, necessity. A way of providing material security.
- 6. Urf- Tribal Custom practice known as Aqilah.
- 7. Unanimous Decision of Muslim Scholars-
- Islamic Fiqh Week Syria 1961, Muslim Scholars Conference 1965 Egypt and Islamic Economic Conference Mecca 1976- Validity of insurance business except life insurance.
- International Islamic Insurance Dubai 1996 and Labuan 1997- Validity of Takaful.

Takaful and Maqasid al Shariah

- Protection of property and Protection of life: hajiyyat and daruriyyat
- Legal maxim: darar must be removed.
- To spread the risks of losses around the large number of participants
- Dr mohd daud bakar: making takaful mandatory to muslims.
- Compulsary to protect the essential needs of the society.

Takaful

- Kafala: responsibility, guarantee or suretyship
- Mutual Guarantee, shared responsibility, joint guarantee, collective assurance and mutual undertaking= mutuality and cooperation.
- method of joint guarantee among a group of members or participants against loss or damage that may inflict upon any of them. The members of the group agree to guarantee jointly that should any of them suffer a catastrophe or disaster, he would receive certain sum of money to meet the loss or damage. All members of the group pool together their efforts to support the needy.

Takaful Act 1984

- S 2: Scheme based on brotherhood, solidarity, and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose.

Takaful Act 1984

- “takaful business” means business of takaful whose aims and operations do not involve any element which is not approved by the Syariah;

Classification of Takaful

- General takaful
- Short term policy
- Contribution goes to GTF which is then invested and the profits are paid back to the fund
- Contributions go to a common pool to compensate participants in the event of a loss.
- No saving and investment elements. TO will distribute any underwriting surplus to the participants.
- Eg motor vehicle, marine, personal accident, health.

Family takaful

- Long term policy (children education, pension, compensation in the event of death) 10-30 years.
- PA: saving accounts
- PSA: tabarru accounts
- In the event of a loss the participants will be compensated.
- TO: fees or profit sharing

Underlying contracts

- **Takaful Business is based on the concepts of Mudarabah, wakalah, waqf, jualah and Tabarru.**
- **Involvement of these two Islamic forms of business eliminates the elements of Riba from insurance contract and convert Gharar into tolerable form.**

Contract among takaful participants

- Tabarru: gift or donation, which given by one in favor of someone without seeking any consideration.
- A *tabarru*' made based on the general principles of contract in which the person binds himself unilaterally by offering something valuable for the noble cause of welfare of others
- Issue: outright gift (hibah) or endowment?
- AAOIFI: iltizam bit tabarru or nihd

Concept of Al-Tabarru'

- participants' contributions credited mainly into two accounts; participant's account (PA) and participants' special account (PSA).
- PA- To be invested based on mudharabah
- The amount credited into the PSA is regarded as *tabarru'*, which is managed by the takaful operator to provide a security for others who deserve

Contracts b/n participants and TO

- 1. mudharabah: profit sharing
- 2. wakalah: fees
- 3. jualah: commission. Commitment to pay for the performance.
- 4. waqf: TO as trustee.

Characteristics of Takaful

- 1. Mutual Help
- 2. Mutual Responsibility
- 3. Mutual Protection
- Mutual insure one another.
- Relationship- not as an insurer and insured but participants and manager of the contribution money.
- 4. Free from any element of riba, maisir, juhala, excessive gharar.

Takaful Conditions (Mutual Assistance and Cooperation)

- 1. Speciality Condition
- Compliance with the Islamic cooperative principles
- 2. Partnership Condition=
- Participants- right t entitlement of surplus profit and render liable to cover losses.
- Surplus may be paid= pro rata basis.

Takaful Conditions (Mutual Assistance and Cooperation)

- 3. Investment Condition=
- To invest in halal sectors.
- 4. Management Condition=
- Policy to have adequate representation on the board of directors of the company to scrutinize its accounts

Thank You

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