



UNIVERSITI SAINS ISLAM MALAYSIA

جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

Islamic Banking, Takaful and Al Rahn

LCA4562

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- Legal and syariah issues

Legal Position

- S 4 of the TA- takaful operators only
- 1. Company 2. Cooperatives Society.
- In order to carry on takaful business the TO must:-
 - 1. registered under the Act.
 - 2. Maintains a surplus of assets over liabilities of not less than the amount prescribed from time to time.
 - 3. made deposit with the Accountant General a value of not less than the amount prescribed by the minister

- S8- DG responsible for registration S10- DG may impose conditions for registration.
- S 8(5)- Vital Section- DG must be satisfied that the aims and operations –syariah principles.
- The AOA to establish SSC.
- S 16- TO shall establish and maintain a takaful fund in respect of each classes of takaful business.

Maintains a surplus of assets over liabilities

- Takaful (Surplus of Assets over liabilities) Regulations 1985.
- Family Solidarity Business- RM5 million
- Takaful Business- RM10 million.

Made deposit with the Accountant General

- Takaful Statutory Deposits Regulations 1985.
- Not less than RM300,000.00
- TO must pay annual registration fee to BNM.
- FSB or GB- RM2500.00
- FSB and GB- RM5000.00

Takaful Business

- 1. Family Solidarity Business:
 - Long terms mudharabah contract which provide cover mutual aid among participants, expressed in the form of financial benefits paid in family takaful fund should any of its members be inflicted by a tragedy.
- 2. General business .
 - Short term basis. Protection in the form of mutual help to compensate members of any financial loss arising out of material damage to personal property and belongings.

Differences of Family Takaful and Life Insurance

FT	LI
Mudharabah	Loan
Trustee	Nominee
Dividend	Insured money + interest
Share of profit	Payment out of assured premium
Insurable interest- not relevant	Insurable interest is a requirement

Family Solidarity Business

- 1. Individual Plan
- A. Family Takaful Plan- long term fund for the bereaved family's sustenance in the event of policy holder's untimely death or to help the policy holders in case of mishaps such as permanent disability.
- B. FT for education- to finance future higher education in the event of the policy holder's untimely death.

- C. Takaful Mortgage- to redeem the mortgage in the event of policy holder's untimely death.
- D. EPF Takaful Annuity Scheme-takaful contribution from the EPF's account.
- E. Takaful Plan Siswa-
- F-Takaful Waqf Plan-
- G. Takaful Sihat Plan- plan to cover financial aid to critical illness.
- H. Takaful Keyman plan- to cover a firm for loss of earnings brought by the death of a key officer.

- I. Takaful Maasyi Plan- annuity programme.
- J. Takaful Dana Kerja-long term saving.
- K. Takaful Ziarah-saving once in a five years- can withdraw to plan holidays.
- L. Takaful Hawa- financial benefits- cancer.

Group Plan- FSB

- A. Group FT Plan- group of persons under single takaful certificate. Injury and death.
- B. GFT Credit Facility- to protect interest in credit facility in which they grant to their clients in the event of non-payment due to death or permanent disability of their clients.
- C. Group Medical Takaful Plan- to cover medical expenses.

General Business

- Fire Takaful Scheme
- House Owners and Householders' takaful scheme.
- Motor Takaful Scheme
- Accident Takaful Scheme
- Engineering Takaful Scheme.

Legal Documentation

- Subscription Form
- A cover note or a statement of accounting-
- Policy of insurance.
- Ijab and Qabul
- Consideration
- Legal capacity
- Non existence of unlawful element.

Issues

- Takaful contract based on mudharabah. Each terms and conditions must be made known to the participants.
- S 64- below 18 have no capacity to enter into a contract of takaful. Insurance Act- above 10 and below 16-can enter into contract + written consent of parent.
- In Islam 18 is not an age of majority. Need to depart from the strict Islamic concept.

Issues

- There is no requirement of doctrine of utmost good faith under the TA.
- Insurance Contract- There must be “utmost good faith”. Hence impose the same duty of disclosure upon parties to contract.
- In Islam contract of mudharabah requires parties to be truthful, honest and sincere.

Issues

- The TA does not mention the rule on strict application of the law relating to warranties.
- Effect: Takaful contract can be avoided by the takaful co. if a wrong answer is given in the proposal form when the participants believes it to be correct.

Issues

- Insurable risk
- Def: Chance of loss, the possibility of loss or uncertainty concerning the occurrence of a loss.
- Two types of risk Pure Risk and Speculative Risk. Only pure risk is insurable. Reason: would resemble wagering practice.
- Conventional Insurance is concerned with the economic problems created by pure risk. Eg. Accident = may suffer a loss.
- Speculative Risk: where either profit or loss is possible. Eg shares of common stock.

Should the takaful be confined to Pure Risk?

- All types of risks are insurable under takaful contract:-
 - 1. Takaful is based on brotherhood, solidarity and mutual assistance.
 - 2. Al-tabarru concept- all types of risks are acceptable.
 - 3. Speculative risk is not identical to gambling. Eg. Taxi driver who is driving his car with danger of accident. Pure Risk- Accident :Speculative Risk- loss of future gain.

Insurable Interest

- Def: Interest an individual must have in insurance coverage carried by someone else.
- Legal perspective: the party to the insurance contract who is the insured or policy holder must have a particular relationship with the subject matter of the insurance whether that be a life or property or a liability to which he might be exposed.
- The absence of this requirement under conventional insurance will render the contract illegal, void and simply unenforceable.

- The purpose: 1. to determine the motive for purchasing insurance and in the assignment of a beneficiary in a life insurance policy.
- 2. to avoid gambling or wagering practices.
- Eg. “A” pays premium on behalf of his wife and names her as beneficiaries= The insurance co. recognizes it coz in the event of unexpected death, the family would suffer an economic loss.
- Eg. “A” pays premium of insurance for another party let say his best friend, if that person names him as the beneficiaries. The insurance co will not issue the policy.

- S 152 of the Insurance Act 1996- Requirement of Insurable Interest.
- Exception to employer-employee relationship.
- The requirement of II specifies that the insured must lose financially if a loss occurs or must incur some harm if the loss takes place.

Whether the principle of insurable interest is relevant in takaful?

- The requirement of II is not relevant under Takaful not because of to determine the motive for purchasing insurance and in the assignment of a beneficiary in a life insurance policy and to avoid gambling or wagering practices but:-
 - 1. The TA 1984 does not require this principle in family takaful or general takaful.

- 2. The nature of family takaful makes this element irrelevant as a participant participates in this scheme only for the benefit of himself and his family. He cannot do so for the purpose of benefiting or on behalf of the 3rd party.
- 3. Ab initio irrelevant coz the participant cum insured could not have any interest on his life.
- 4. The principle of takaful: takaful contract must be concluded between the participants themselves, a party who is neither insured or insurer is not eligible to participate in the contract.