

The Framework and Practice of Islamic Insurance in Malaysia

Joni Tamkin Bin Borhan

ملخص

اصبح التأمين ظاهرة اعتيادية في حياتنا اليومية حيث نجده في كل بقعة من بقاع العالم. فقد اعتبرت لجنة الفتاوى بماليزيا بان نظام التأمين التقليدي لا يتفق مع الشريعة الإسلامية لأنه يتضمن عناصر الربا والغرر والميسر. وانطلاقاً من هذا الحقيقة فقد ركز المسلمون اهتمامهم على البحث عن نظام تأمين بديل يتناسب مع تعاليم الإسلام فانشؤوا التأمين الذي يتناسب مع تعاليم الشريعة الإسلام الغراء. فانتشر التأمين الإسلامي أو كما يسمى بـ (التكافل). ورغم انتشار شركات التأمين الإسلامي في ماليزيا إلا أن الكاتب يريد أن يبحث حول شركة برهاد للتكافل الماليزية لأنها تعتبر الشركة الأولى في ماليزيا. وهناك القضايا التي سيتم بحثها من خلال الدراسة لهذه الشركة ومنها كيف بدأ ظهور التأمين وما يحيط به. والنظرة الإسلامية عن التأمين المعاصر وخاصة التجارب التي مرت بها شركات التأمين في ماليزيا. ويركز الباحث على تطبيق منهاج التكافل في الإسلام فهل نظام المضاربة والتبرع هو الأساس المتعامل به في شركة التكافل برهاد الماليزية بصورة خاصة وفي شركات التكافل الأخرى بصورة عامة.

Abstrak

Asuransi telah menjadi fenomena yang jamak di era modern di belahan dunia manapun. Di Malaysia, asuransi konvensional dipandang oleh Komisi Fatwa sebagai tidak Islami karena mengandung beberapa elemen seperti *riba*, *gharar* dan *maysir*. Permasalahan inilah yang akhirnya mengundang perhatian kalangan Muslim sehingga mereka mengupayakan asuransi yang lebih sesuai dengan Syariat Islam. Maraknya bisnis asuransi Islami atau *takaful* inilah yang menarik perhatian saya (penulis) untuk melihat secara dekat wacana dan praktek asuransi Islam di Malaysia. Walaupun banyak bisnis asuransi Islam yang muncul, namun penulis hanya akan membahas salah satunya, yaitu Syarikat Takaful Malaysia Berhad (STMB) yang merupakan asuransi *takaful* pertama di Malaysia. Banyak permasalahan yang bisa dilihat dan didiskusikan dalam artikel ini, diantaranya adalah awal tradisi asuransi, pandangan Islam tentang praktek asuransi modern dan beberapa permasalahan yang berhubungan dengan praktek asuransi di Malaysia. Penulis akan lebih memfokuskan pada bagaimana pelaksanaan konsep *takaful* dalam Islam di dalam pelaksanaan asuransi ini. Apakah konsep *mudharabah* dan *tabarru* menjadi dasar dalam praktek asuransi *takaful* pada Syarikat Takaful Malaysia Berhad (STMB) khususnya dan asuransi *takaful* yang lain pada umumnya.

Introduction

This paper will analyse the framework and its application the operations of Syarikat Takaful Malaysia Berhad (formerly known as Syarikat Takaful Malaysia Sendirian Berhad), the first company granted permission to operate Islamic Insurance (*Takaful*) businesses based on contracts of *mudharabah* and *takaful*. The topics to be discussed include the nature of insurance, an Islamic view on present-day insurance, the establishment of Syarikat Takaful Malaysia Berhad (STMB) and some issues relating to the *takaful* scheme in Malaysia.

Nature of Insurance

The term 'insurance' in its real sense refers to community pooling to alleviate the burden of the individual, which might be ruinous to him. The

simplest and most general conception of insurance is "a provision made by a group of persons, each singly in danger of some loss, the incidence of which cannot be foreseen, that when such loss shall occur to any of them, it shall be distributed over the whole group."¹ Insurance has been described as a device provided by the community or group of people to cover loss,² or an arrangement against risk,³ or against the dangers⁴ which beset human life and dealings, when they occur to the members of that community⁵ or group of people, by creating funds to cover losses or against that risk.

In its modern form, insurance can be described as a contract whereby one person called the "insurer" undertakes, in return for the agreed consideration called the "premium", to pay another person called the "insured",⁶ a sum of money or its equivalent, on the happening of a specified event. The aim of insurance is to make provision against the dangers to which a group of persons are all equally subject. Insurance is thus a mutual coverage of accidental loss by a group of persons subject to a common danger.⁷ In the present form of insurance,⁸ losses are not distributed but funds are created to cover the losses calculated in advance with the aid of past experience.⁹ Thus, it can be seen that insurance involves the spirit of mutuality and co-operation.

The modern contract of conventional insurance seems to have its ori-

¹ Entry on "Insurance" in *Encyclopedia Americana*, Vol. XX, Connecticut, 1984, p. 233; *The New Encyclopaedia Britannica*, Vol. XXI, Chicago, 1985, p. 678.

² Those who describe insurance as "Pooling of losses" is E. Cannan, *A Review of Economic Theory*, London, 1929, p. 424; *Encyclopaedia of Banking and Finance*, p. 385; "Distribution of losses", W. F. Gephart, *Principles of Insurance*, New York, 1911, pp. 4 - 5; "Mitigation of losses", *Ibid.*, pp. 1 - 2; "Indemnifying of losses", L. D. Edie, *Economics: Principles and Problems*, London, 1926, p. 215 and "Meeting of losses", A. H. Silverman, *The Substance of Economics*, London, 193, p. 164.

³ See C. Gide, *Political Economy*, London, 1914, p. 745; S. H. Patterson and K. W. H. Schholz, *Economic Problems of Modern Life*, New York and London, 1931, p. 98; M. Dobb, *Capitalist Enterprise*, London, 1925, pp. 53 and 164; Marks Dordman says that risk can be divided into four categories, i. e. subjective risk, objective risk, pure risk and speculative risk. See *Introduction to Insurance*, Englawood Cliffs, 1982, p. 9.

⁴ T.W. Morgan (ed.), *Porter's Laws of Insurance*, Part I, London, 1933, p. .

⁵ H. Barou, *Cooperative Insurance*, London, 1936, p. 40; See also Adam Smith, *The Wealth of Nations*, Edwin Cannan (ed.), Vol. II, London, 1950, p. 248.

⁶ E. R. Hardy Ivamy, *General Principles of Insurance Law*, London, 1975, p. 3; See an entry "Insurance" in *The New Encyclopaedia Britannica*, Vol. XXI, p. 678.

⁷ T. W. Morgan (ed.), (1933).

⁸ See H. Barou (1936), *op. cit.*, p. 40.

⁹ H. Barou (1936), *op. cit.*, p. 40.

gin in the marine loans of ancient Greeks.¹⁰ As against the ancient Greek marine loan, the idea of mutual insurance finds its expression in the payment of blood money¹¹ (*'aqilah*) which was prevalent in Arab tribes during the pre-Islamic times.¹² This virtue of pre-Islamic times was approved and incorporated into Islam by the Prophet, and later acted upon by Caliph 'Umar.¹³ The nature of blood-money was neither usurious, nor exploitative. It ingrained the spirit of mutuality, co-operation and mutual insurance, and eliminated the danger of wars of revenge which continued in pre-Islamic Arabia for decades.

An Islamic view on present-day insurance

Insurance has undoubtedly assumed tremendous importance in modern commerce, trade and industry. The contract of insurance has been the subject matter of prolonged and detailed studies, examination and scrutiny by and amongst eminent Islamic scholars, who have come to different conclusions, views and opinions. There at least three standpoints: that it is

¹⁰ This marine loans of ancient Greeks described by Demosthenes; "Money was advanced on a ship or cargo, to be repaid with large interest if the voyage prospered, but not repaid at all if the ship be lost, the rate of interest being made high enough to pay not only for the use of capital, but for the risk of losing it". (Entry on "Insurance", in *The New Encyclopaedia of Britannica*, Vol. XXI, 1989, p. 678). According to Barou, "The rate of interest includes together with other elements a premium for insurance in order to provide compensation for the loan to the lender, in case of a loss incurred through the bankruptcy of the borrower". (See H. Barou, *Cooperative Insurance*, London, 1936, p. 25). Thus it can be said that the modern contract of insurance is basically the same (usurious in nature) as the old marine loan of ancient Greeks. (M. Muslehuddin, *Insurance and Islamic Law*, New Delhi, 1982, pp. 27- 28).

¹¹ or blood-wite. See Juynboll, "'aqila", p. 239.

¹² Muslehuddin, *op. cit.*, pp. 10 - 11; Th. W. Juynboll, "'akila", in *Encyclopaedia Islam (First Edition)*, Vol. I, 1913, pp. 239 - 240. *'akilah* is the name of the man's male relations who according to the precept of the religious law have to pay the penalty (the *'aqil*) for him, when unintentionally he has caused the death of a Muslim. This decree was based on a verdict of the Prophet. One day in a quarrel between two women of the Hudhayl tribe, one of them who was with child was killed by the other with a stone, which hit her in the womb. When, soon after, the other woman also died, the Prophet decided, that her kin (*'aqilah*, or, according to a different reading her *'asabah*, i. e. agnates), in accordance with an old custom, had to pay the penalty to the relatives of the woman who had been killed. (Muslehuddin, *op. cit.*, p. 11; Juynboll, "'akila", p. 239).

¹³ Muslehuddin, *op. cit.*, p. 23; See also al-Marghinani, *al-Hidayah*, Vol. IV, p. 642; M. Hamidullah, *The First Written Constitution in the World*, Lahore, 1981, pp. 41 - 42 and 44 - 45.

permissible (*mubāh*), that it is prohibited (*haram*) and that some forms are allowed others disapproved.¹⁴

The proponents of the permissibility of insurance (*ta'min*)¹⁵ declare that such contract is allowed if it is free from *ribā*. It is considered as a collective undertaking (*'amal ta'awun*) which takes care of the welfare (*masālih*) of individuals and society. In so far as *maslahah* is achieved, it is in compliance with the law. Moreover, originally all contracts are permissible and a such it can be equated by analogy to various permissible contracts.¹⁶ Justification based on public interest and even on the socio-economic survival of the Muslim Ummah has also been put forward.¹⁷

The justifications of *ta'min* advanced by Mustafa Zarqa¹⁸ and 'Al al-Khafif,¹⁹ leading contemporary scholars, have been overwhelmingly accepted. Firstly, it is argued that *ta'min* is a newly known contract not covered by a text (*nash*) whether approving or disapproving of it. It should thus be considered allowed (*ja'iz*) and permissible (*mubāh*). Secondly, since it is a contract based on *maslahah* and since there is no aspect of any harm (*darār*), it complies with the prescribed law. Thirdly, insurance has become a common usage (*'urf 'amm*) necessary for the attainment of private and public interests. *'Urf* is considered to be a source of law, as long as it does not contradict the precepts of the *Shari'ah*.²⁰

The proponents of the prohibition of insurance argue that it contains the elements of *riba* (usury), *gharār* (risk), *jahalah* (uncertainty), *maysir*

¹⁴ Amad al-Sa'd Sharaf al-Din, *'Uqud al-Ta'min wa 'Uqud Daman al-Istithmar*, pp. 88 - 94; M. Muslehuddin, *Insurance and Islamic Law*, New Delhi, 1982, pp. 109 - 125.

¹⁵ *Ta'min* became the Arabic term for insurance in the 20th century. (E. Klingmuller, "The Concept and Development of Insurance in Islamic Countries", *IC*, Vol. XXXIII (1), 1969, pp. 27 - 37). Ibn 'Abidin, however, a Hanaf jurist who is considered the first Muslim to name insurance *sukara* (security), influenced by the Italian term *siguare* and the Turkish *sigorta*. (hash A., Vol. IV, pp. 170 - 173; Vardit Risper-Chaim, "Insurance and Semi-Insurance Transactions in Islamic History Until the 19th Century", *JESHO*, Vol. XXXIV, 1991, pp. 142 - 143).

¹⁶ A. S. Sharaf al-Din, *op. cit.*, p. 90.

¹⁷ Muammad al-Bahī, *'Aqd al-Ta'min*, p. 23.

¹⁸ His finding on this matter was delivered in the *Usbu' al-Fiqh al-Islam* in Damascus (1961) as well as in his deliberation at the Mecca Conference (1976).

¹⁹ His opinions submitted to the second assembly of the *Majma' al-Buhūth al-Islamiyyah* (Islamic Research Academy) of al-Azhar University in which he excluded life insurance from the list of validated insurances.

²⁰ A. S. Sharaf al-Din, *op. cit.*, p. 90.

(gambling and unearned gain), and attempting to supersede the will of God, all of which is said to be diametrically opposed to the ethical standards set by Islamic law.²¹ Muhammad Abu Zahrah has made the qualification that *ta'min* not founded on a collective basis (*al-ta'min ghayr al-ta'awun*) is reprehensible (*makruh*). Such a decision is established on the basis of the classical methodology of *'Ulama' al-salaf* that no prohibition will be pronounced except where there is an explicit evidence (*dalil qat'i*).²²

The third group hold that some forms of *ta'min* are allowed and some are prohibited. Some of them allowed the use of *ta'min* on property but ban life insurance.²³ However, an overwhelming majority of Islamic scholars are now on the opinion that the conventional insurance contract does not, in its present form, conform to the *Shari'ah* because it includes an element of *gharar* (uncertainty), based on the practice of *riba* and a sort of gambling (*maysir*).²⁴

The Establishment of *Syarikat Takaful Malaysia Berhad*²⁵

The need in Malaysia for a scheme of insurance which is in line with Islamic teachings was officially affirmed when the Fatwa Committee de-

²¹ M. Muslehuddin, *op. cit.*, p. 109; A. S. Sharaf al-Din, *op. cit.*, p. 88.

²² For details on the polemic between Muhammad Abu Zahrah and Mustafa Amad al-Zarqa', see Zarqa's works *'Aqd al-Ta'min wa mawqif al-Shari'ah al-Islamiyyah minhu* (A lecture delivered during the Usbu' al-Fiqh al-Islam), Damascus, 1962 and a recent work *'Aqd al-Ta'min fa'l-Shari'ah al-Islamiyyah*, 1982.

²³ Siddiqi, *op. cit.*, p. 26.

²⁴ Insurance has been discussed at a number of Islamic conferences, but a favourable verdict on commercial insurance has been withheld in view of the objections of the eminent scholars. This is brought out by the resolutions passed at the 1965 Islamic Research Congress at Cairo and those adopted in 1969 at Kuala Lumpur. See Siddiqi, *Muslim Economic Thinking: A Survey of Contemporary Literature*, Leicester, 1981, p. 27. As recently as

1976 the First International Conference on Islamic Economics held at Mecca resolved that: "The Conference feels that commercial insurance as presently practised does not realise the *Shari'ah* aims of co-operation and solidarity because it does not satisfy the Islamic conditions for it to become acceptable". Furthermore, the conference recommended the establishment of a committee consisting of specialists in *Shari'ah* and economics to recommend a system of insurance which is free from *riba* and speculation, promotes co-operation in accordance with the *Shari'ah*, and helps replace the current form of commercial insurance. See General Recommendations, no. 6, First International Conference on Islamic Economics, Mecca, 1976 cited in Siddiqi, *Muslim Economic Thinking*, p. 27.

²⁵ Hereafter cited to as *Syarikat Takaful*.

clared in 1972 that the conventional concept of life Insurance as practised in Malaysia was unlawful in Islam as it contained the elements of *riba*, *gharar* and *maysir*.²⁶

Gharar

Gharar means obvious indeterminacy, hazard or risk (*khatār* or *mukhatarah*) and ignorance that is likely to cause disputes which, when applied to insurance, means the presence of unknown and uncertain factors in the operation of the contract.²⁷ This element of *gharar* (or uncertain) is found in the operation of conventional insurance, both life and general insurance contracts. In such a contract, the insured or the policy holder agrees to pay a certain sum as a premium and in turn the insurance company guarantees to pay a certain sum of compensation in the event of a catastrophe or disaster. The uncertainty relates to the fact that the insured or the policy holder is not informed, for example, of how the amount of the compensation that the company will pay him is to be derived.²⁸

²⁶ *Report of the Committee on the Setting-up of an Islamic Insurance Company in Malaysia*, Kuala Lumpur, 1984, p. 1.

²⁷ *Lisan al-'Arab*, Vol. V, pp. 13 - 14; Lane, Vol. II, p. 2239; In Islamic terminology, this is a sale of an article of goods which is not present at hand; or the sale of an article of goods, the consequence (*'aqibah*) or outcome of which is not known; or a sale involving risk or hazard where one does not know whether the commodity will later come to be or otherwise. Ibn Qayyim, *A'lam al-Muwaqqi'in*, Vol. I, p. 358; Zurqani, Vol. III, p. 313; al-Ramli, *Nihayat al-Mutaj*, Vol. III, p. 335; The term means that such transactions, which are prohibited in Islam, in form are apparently no different from those prohibited in Islam for deceiving when in reality the nature of the object is not known and therefore risk involved. Several reasons are given for the prohibition of *bay' al-gharar*. Some of them are related to fraudulence since such a sale amounts to obtaining the property of others by selling unavailable goods and the contract may lead to disputes and disagreements between the parties in the contract. Sanun, Vol. IV, p. 207; Zurqani, Vol. III, p. 313; al-San'ani, *Muannaf*, Vol. VIII, pp. 108 - 109; Ibn Hazm, *al-Mualla*, Vol. VIII, pp. 399 - 400; See also al-addq Muammad al-Amin al-Darr, *al-Gharar wa Atharuhu f al-'Uqd fi al-Fiqh al-Islam : Dirasah Muqaranah*, Cairo, 1967, p. 27; Franz Rosenthal, *Gambling in Islam*, Leiden, 1975, p. 139.

²⁸ STMB, *Risalah Perlindungan Takaful*, M. F. Yusuf, "Takaful Insurance Company Malaysia Sdn. Bhd.", *Syariah Law Journal*, (International Islamic University, Petaling Jaya, September, 1991), p. 87; Cf Afzalur Rahman, *Banking and Insurance*, Vol. IV, London, 1979, pp. 133 - 142.

Maysir

Closely related to and justified by Islam's wider prohibition against unearned gains, is the prohibition of all transactions containing an element of *maysir*. *Maysir*, though similar to, is far wider than the concept of gambling, gaming and wagering. Generally, it means unnecessary risk by entering into a transaction with the hope of gain as well as the fear of loss,²⁹ or undertaking a risk in the spirit of speculation.³⁰ Insurance is said to contain the element of *maysir*, when a life policyholder dies before the end of his insurance policy after paying only part of the premium, so that for example, his dependents will receive a certain sum of money which exceeds what the insured paid in premiums. Similarly, in non-life insurance, if the insured event occurs and results in a huge loss, the insured will recover more than which he has paid in premium. On the other hand, if the insured event does not take place, the insured gets nothing tangible in return for his premiums.³¹

Riba

The practice of *riba* and other related practices which contravene the rules of the *Shari'ah* enter into the investment activities of the conventional insurance companies.³²

In 1982, a Committee set up by the Government to study the implementation of the Islamic system of insurance in Malaysia recommended the introduction of the *takaful* scheme of insurance. The Committee also included in its report a draft proposal for the *Takaful Bill 1984* which provided for the setting-up, control and regulation of *takaful* businesses and other related matters. Following the acceptance by the Government of in-

²⁹ M. N. Siddiqi, *Insurance in an Islamic Economy*, Leicester, U. K., 1985, p. 34.

³⁰ S. H. Amin, *Islamic Law In The Contemporary World*, Glasgow, 1985, pp. 71 - 84.

³¹ STMB, *Risalah Perlindungan Takaful*; Idem, *Risalah Pelan Takaful Keluarga (A) and (B)*; M. F. Yusuf (1991), *op. cit.*, p. 88; Nik Ramlah N. Mahmood, "Takaful : The Islamic System of Mutual Insurance - The Malaysian Insurance", *Arab Law Quarterly*, Feb., 1991, p. 285.

³² Afzalur Rahman, *op. cit.*, pp. 108 - 114; Muhammad Samiullah, "Prohibition of Ribā (Interest) and Insurance In The Light of Islam", *IS*, Vol. XXI (2), (1982), pp. 53 - 76; M. A. Choudhury, "Insurance and Investment in Islamic Perspective", *International Journal of Social Economics*, Vol. X 95), Fresno, 1983, pp. 16 - 17.

roducing *takaful*/businesses in Malaysia, the Parliament gazetted the *Takaful Act* in 1984,³³ and finally a *Takaful* Company was incorporated as a private limited company under the Companies Act 1965³⁴ on 29th November 1984, taking the name of *Syarikat Takaful Malaysia Sendirian Berhad (STMSB)*, with its registered office situated in Malaysia. The Company started its business on 2nd August 1984.³⁵

To underline the importance of its Islamic character, the *Takaful* Company's Memorandum of Association prefaces that "all businesses of the Company will be transacted in accordance with Islamic principles, rules and practices,"³⁶ The Company has an authorized capital of RM 100 million, divided into 100 million ordinary shares of RM 1 each. The initial paid-up capital of the Company is RM 10 million, 51 per cent of which is held by *BIMB*, and the other shareholders are the State Religious Councils and the State Religious Agencies of Malaysia.³⁷ This ownership of shares makes *Syarikat Takaful* a subsidiary of *BIMB*. In 1996 the company was incorporated as a public company and listed on KLSE, taking the name of *Syarikat Takaful Malaysia Berhad. (STMB)*

The Concept of *Takaful* (Mutual insurance) and *Muarabah*

Literally, *takaful* means mutual guarantee; joint guarantee and co-operation³⁸ and these are the hallmarks of this scheme. This concept em-

³³The Act seeks to provide for the licensing and regulating of *takaful*/business in Malaysia. See S. (1), *Takaful Act* 1984. It has been modelled on Malaysia's existing *Insurance Act 1963* with modifications and amendments as are necessary to conform with the *takaful*/business practices. However, according to the provisions of the *Takaful Act* 1984, for example S. 67 (2), *Takaful Act* 1984 provides that the supervisory authority responsible for the supervision of all regulations over the *Takaful* Company is vested in the Ministry of Finance through the Director-General of *Syarikat Takaful*.

³⁴S. 4 (1) (a), *Takaful Act* 1984 provides "Subject to this Act, *takaful*/business shall not be carried on in Malaysia by any person as *Takaful* operator except by a Company as defined in the Companies Act 1965".

³⁵STMSB, *Annual Report 1986*, pp. 5 - 6.

³⁶STMSB, *Annual Report 1986*, p. 5; Mohd. Fadzli Yusuf, "Takaful Insurance Company Malaysia Sdn. Bhd. : Islamic Alternative to Insurance" in *International Islamic University Syariah Law Journal*, September 1991, p. 92.

³⁷STMSB, *Annual Report 1986*, p. 5; BIMB, *Annual Report 1986*, p. 7; See also S. W. Ahmad, "Islamic Insurance in Malaysia" in Mohamed Ariff (ed.), *The Muslim Private Sector in Southeast Asia*, Singapore, 1991, pp. 197 - 198;

³⁸Lane, Vol.

bodies the principles of co-operation, mutual help and shared responsibility.³⁹ The *Takaful Act 1984* of Malaysia defines *takaful* as a 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.⁴⁰

Takaful is characterised by three aspects of mutuality, namely, mutual help, mutual responsibility and mutual protection from losses. The "insurance" that is provided is not dispensed by one party (the insurer) to another (the insured). The person seeking protection participates in a scheme of co-operation with another.⁴¹ The *Syarikat Takaful* (*Takaful* company) that runs the scheme is not the insurer but is merely an institution which provides the entrepreneurial and administrative skills required to bring the participants together, to collect and invest the contribution and to process the claims. Therefore, this scheme can be seen as a method of joint guarantee among a group of members, that is, participants in any scheme against loss or damage that may fall 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 a certain sum of money to help him meet the loss or damage. This means that participants pledge mutual help amongst the group and each member of the group pools effort to support the needy.⁴²

In the practice of *Syarikat Takaful Malaysia Berhad (STMB)*, the concept of *takaful* has been developed as a form of business and the principle of *mudarabah* has been applied in the contract between *Syarikat Takaful* and the participants. Under the contract of *takaful* based on the principle of *muarabah*, *Syarikat Takaful* acts as an entrepreneur or investor (*mudharib*) and accepts *takaful* contributions or payment of the *takaful* instalments

³⁹ For example, see Sami A. Hanna, "Al-Takaful al-Ijtima' and Islamic Socialism", *The Muslim World*, Vol. LIX, 1969, pp. 275 - 286; Nik Ramlah N. Mahmood, *op. cit.*, pp. 286 - 287.

⁴⁰ *Takaful Act*, 1984, s. 2.

⁴¹ Syed Waseem Ahmad, "Islamic Insurance In Malaysia", in Mohamed Ariff (ed.), *The Muslim private Sector in Southeast Asia*, Singapore, 1991, pp. 191 - 192.

⁴² *Report of the Committee on the Setting-up of an Islamic Insurance Company in Malaysia*, Kuala Lumpur, 1984, p. 8; Mohd. Fadzli Yusuf, "The Operation of Syarikat Takaful Malaysia Sendirian Berhad", p. 5. A Paper Presented at *Seminar on Insurance in Malaysia for Journalist*, Kuala Lumpur, 1985; Idem, "The Principles of Islamic Insurance", p. 5. A Paper Presented at *Seminar on Issues in Economics*, 27 - 29 December 1985, Petaling Jaya, Malaysia.

termed as *ra's al-mal* (capital) from participants, who are treated as investors or providers of capital (*sahib al-mal*).⁴³

The *takaful* contract which is made in accordance with the principle of *muarabah* specifies how the profit (surplus) from the operations of *takaful* managed by *Syarikat Takaful*⁴⁴ is to be shared between the participants as the providers of the capital and *Syarikat Takaful* (company) as the entrepreneur (investor). The sharing of such profit may be in a ratio of, for example, 5 : 5, 6 : 4, 7 : 3, et cetera as mutually agreed between the contracting parties. The contract also clearly states the rights and obligations of both the participants and the *Syarikat Takaful*.⁴⁵

The Concept of *Tabarru'*

Another special feature of *takaful* contract is the concept of *tabarru'* which means to donate, to contribute. Under the *takaful* contract, the participants agree to relinquish as donations, in accordance with the concept of *tabarru'*, a certain proportion of their *takaful* contributions of mutual help as embodied in the concept of *takaful*. Therefore, the purpose of *tabarru'* as stipulated in the contract is to enable the participants to perform their obligations in assisting and helping fellow participants who might suffer a loss or damage due to death or disasters. The sharing of the profits or surplus from the operations of *takaful*, according to the principle of *mudarabah*, is made only after the obligations of assisting fellow participants have been fulfilled. *Syarikat Takaful* has to meet these obligations as well as generate a reasonable level of profits by maintaining adequate assets in its *takaful* funds, whilst at the same time striving prudently to protect the funds against undue exposure.⁴⁶

⁴³STMSB, *Risalah Perlindungan Takaful*, n. d.; Mohd. Fadzli Yusof, "Takaful Insurance Company Malaysia Sdn. Bhd. : Islamic Alternative to Insurance", in *Syariah Law Journal*, Petaling Jaya, Selangor, September 1991, p. 88; Tajuddin Saman, "Takaful Berasaskan Mudarabah" in *Berita Harian*, 22 May 1992, p. 9; Johari Jaafar, "Skim Takaful Bantu Masyarakat Islam" in *Berita Minggu*, 5 July 1992, p. 10.

⁴⁵STMB, *Risalah Perlindungan Takaful*;

⁴⁶*Risalah Perlindungan Takaful*; Mohd. Fadzli Yusof (1985.b), "The Principles of Islamic Insurance", p. 7; *Idem*, "Sumbangan Takaful Kepada Usahawan", p. 7. A Paper Presented at the *Seminar Keusahawanan dan Perniagaan Islam*, 28 - 29 November 1987, Petaling Jaya, Malaysia; *Idem*, "Berbakti Kepada Rakan Melalui Tabarru'" in *Berita Harian*, 7 October 1994, p. 3; Johari Jaafar (1992), *op cit.*, p. 10;

Types of *Takaful* Business

There are two types of *takaful* business offered by *Syarikat Takaful*, namely, Family *Takaful* Plans and General *Takaful* Schemes.⁴⁷ In the context of ordinary insurance, the Family *Takaful* Plans and the General *Takaful* Scheme can be compared with life and non-life insurances respectively.⁴⁸

The Family *Takaful* Plans provide various family *takaful* plans based on a *mudarah* contract. The plans provide cover of mutual financial aid and assistance from the *takaful* benefits, in case of the untimely death of a participant.⁴⁹ The General *Takaful* Scheme provides various general *takaful* schemes as a form of a protection for an individual or a body corporate against material loss or damage arising from catastrophes, disasters or mishap inflicted upon properties or assets belonging to participants such as buildings, houses, vehicles, stock in trade, et cetera.⁵⁰

Although the Act introduces a new scheme which is supposed to comply with Islamic principles, the Act itself has a few provisions as to how the scheme should operate, except that it must be in accordance with the *Shari'ah*. The general operation of the scheme is a matter of practice and it was recommended that the practices of existing insurers, as long as they comply the *Shari'ah* principles, ought to be followed.

a) Family *Takaful* Plans

A Family *Takaful* Plan, which is essentially an investment programme, provides investment returns to a participant as well as mutual financial aid. Any individual or a corporate body may participate in this *takaful* plan so that he will be able to save regularly a sum of money as a measure to relieve the financial burden that his dependents may face should he die

⁴⁷ The *Takaful Act 1984* divides the *takaful* business into the Family Solidarity Business or Family *Takaful* Plans and the General *Takaful* Business (Scheme). (*Takaful Act 1984*, s. 3). The former is defined as *Takaful* for the benefit of individual and his family, while the latter is defined as all *takaful* business which is not Family Solidarity Business. (*Takaful Act 1984*, s. 3, a(i) and (ii)).

⁴⁸ See S. 3 (2) Insurance Act 1963.

⁴⁹ STMSB, *Risalah Pelan Takaful Keluarga (a) and (b)*, STMSB, *Annual Report 1986*, p. 6; Mohd. Fadzli Yusuf (1987), "Sumbangan Takaful Kepada Usahawan", p. 12; Barjoiyai Bardai, "Skim Takaful Keluarga dan Operasinya" in *Berita Minggu*, 3 January 1992, p. 8.

⁵⁰ STMB, *Risalah Perlindungan Takaful*, STMSB, *Annual Report 1986*, p. 7.

prematurely or as a form of contingency should he survive the term of the plan.⁵¹ Therefore, the objectives of the Family *Takaful*/Plans have been described to enable a person:

1. to save regularly
2. to invest this saving with a view to earning profits in accordance with the rules and requirement of the *Shari'ah*
3. to provide cover in the form of a payment of *takaful*/benefits to an heir or heirs should a participant die before the maturity date of his *takaful* plan.⁵²

Syarikat Takaful offers to an individual or a corporate body the following Family *Takaful*/Plans:

1. Family *Takaful*/Plans with a maturity of 10, 15, 20 and up to 40 years, which must mature before the participant reaches the age of 60 years⁵³
2. Family *Takaful*/Plans for Mortgage⁵⁴
3. Family *Takaful*/Plans for Education
4. Group Family *Takaful* Plans⁵⁵ and etc.

A person who wishes to participate in the Family *Takaful*/Plans, who is then called a participant,⁵⁶ may choose any one of the types of plans offered by *Syarikat Takaful* (or the operator)⁵⁷ as mentioned above. Any plan has a defined period of participation such as 10, 15 or 20 year terms. The age groups covered under any Family *Takaful*/Plan with various maturity periods range from 18 to 50 years. The participants and the *Syarikat Takaful* enter a *takaful* contract based on the principle of *mudarabah* and the participants agree to pay regularly to the *Syarikat Takaful* the *takaful*

⁵¹ *Risalah Perlindungan Takaful*, Mohd. Fadzli Yusuf 1987), "Sumbangan Takaful Kepada Usahawan", p. 12.

⁵² *STMB, Pelan Takaful Keluarga (A) and (B)*.

⁵³ *STMSB, Annual Report 1986*, p. 6; *Risalah Pelan Takaful Keluarga (a) and (b)*.

⁵⁴ *STMSB, Annual Report 1986*, p. 6; *Risalah Perlindungan Takaful*.

⁵⁵ *STMSB, Annual Report 1988*, p. 7; *Annual Report 1989*, p. 6; *Annual Report 1990*, p. 5; *Annual Report 1991*, p. 5.

⁵⁶ S. 2 *Takaful* Act 1984 provides that "Participants" includes, where a certificate has been assigned, the assignee for the time being and, where they are entitled as against the *takaful* operator to the benefit of the certificate, the personal representatives of a deceased participant.

⁵⁷ S. 2 *Takaful* Act 1984 provides that "operator" means a company or a society which carries on *takaful* business.

contributions (instalments) (premium), monthly, quarterly or annually which are then credited into a fund (Family *Takaful* Fund).⁵⁸ The contract spells out clearly the rights and obligations of the contracting parties.

Each *takaful* instalment (contribution) paid by the participant and credited into the Family *Takaful* Fund shall in turn be divided and credited by the *Syarikat Takaful* into two separate accounts, namely:

1. The Participant's Account (PA), and
2. The Participant's Special Account (PSA).

A substantial proportion of the instalments is credited into the PA solely for the purpose of savings and investment. The balance of the instalment is credited into the PSA as *tabarru'* which depends on the age group and maturity period of the participants. As shown in table 4.1, the *tabarru'* proportion varies from two per cent to twelve and a half per cent. The remaining proportion of the instalment is credited into the participant's account. It is out of the PSA that *Syarikat Takaful* is to pay the *takaful* benefits to the heir(s) of a participant who may die before the maturity of his Family *Takaful* Plan. In other words, money paid into the PSA is paid by the participant in the spirit of *tabarru'*.⁵⁹

The *tabarru'* proportion increases with the length of maturity of the Family *Takaful* Plan as well as with the age of the participant at entry. The factors determining the *tabarru'* proportion in the Family *Takaful* Plans are the age at entry and the timeframe of the contract.⁶⁰ In this regard, the instalment (contribution) remains the same but the *tabarru'* proportion rises.⁶¹ It can be said that the purpose of the *tabarru'* proportion that goes into the PSA account is to create a form of mutual fund, whilst that the PA serves to accumulate savings.

⁵⁸ The amount of *takaful* instalment to be paid during the term of the plan is determined by the participants themselves. Such amount, however, should be within the financial means of the participants and also subject to the minimum sum fixed by the *Syarikat Takaful* which at present is RM 15.00 per month payable on a monthly, quarterly or annually basis. See *Risalah Pelan Takaful Keluarga (a) and (b)*, *Risalah Perlindungan Takaful*.

⁵⁹ STMB, *Risalah Perlindungan Takaful*, Mohd. Fadzli Yusuf (1991), "Takaful Insurance Company Malaysia Sdn. Bhd.", p. 90; Nik Ramlah N. Mahmood, *op. cit.*, p. 288.

⁶⁰ These factors are the same as those determining for the annual cost of a term assurance policy in conventional insurance. In Conventional Insurance, the premium rate rises both with age at entry and the length of the maturity period.

⁶¹ Mohd. Fadzli Yusuf (1991), p. 90; See also Nik Ramlah N. Mahmood, *op. cit.*, p. 288.

Table I: Syarikat Takaful Malaysia Berhad : Ratios of *tabarru'* proportion credited into PSA accounts

Age Group (Years) Maturity Period (Years)

Age Group (Years)	10	15	20	25	30	35	40
18 – 25	2.0%	3.5%	5.0%	5.5%	7.5%	9.5%	12.5%
26 – 30	2.0%	3.5%	5.0%	6.5%	9.0%	12.5%	
31 – 35	2.5%	4.5%	6.5%	9.0%	12.5%		
36 – 40	3.5%	6.0%	9.0%	12.5%			
41 – 45	5.0%	8.5%	12.5%				
46 – 50	7.0%	12.5%					

Source : *STMB, Risalah Pelan Takaful Keluarga* (a) and (b).

One of the functions of the *Syarikat Takaful* in managing the Family *Takaful* business is the investment of the *takaful* instalments in line with the principle of *mudarabah* or profit and loss sharing. The instalments credited into the two accounts, i.e. PA and PSA accounts, are pooled as a single fund as shown in figure 4.1. Therefore, money from both the accounts are invested by *Syarikat Takaful* on a profit and loss sharing basis in enterprise which are not contrary to Islamic Law either in their operations or in nature of their business. The profits generated from the investment are shared between the participants and *Syarikat Takaful* in a ratio mutually agreed between them. For example, a participant in the age group of 18 - 25 taking up a 10 years plan under Family *Takaful*/Plan might have 2.0 per cent in PSA and 98 per cent in PA. The distribution of profits realized from investment by *Syarikat Takaful* is first divided according to the profit-sharing agreement, for example 70 : 30, between the participant and *Syarikat Takaful* respectively. The proportion (30 per cent) of the profits allocated to *Syarikat Takaful* goes into the profit and loss sharing account of *Syarikat Takaful*, while the profit accruing to the participant (70 per cent) is then distributed

proportionately between his PA and PSA⁶². In other words, 2.0 per cent of the profits will go into his PSA and the remaining 98 per cent will go into PA

In the case of loss of the investments of the Family Takaful Fund, however, it was recommended by the Report of the Committee⁶³ that it should be borne by the *Syarikat Takaful* alone as part of its operating costs, to be paid from the following year's profits. This departure from the Islamic principle of *mudarabah* contract which requires both the participants and *Syarikat Takaful* to share not only the profits of the investments, but also in its losses, was thought to be necessary because the prospect, however minimal, of losing all or part of their investments might deter people from participating in this scheme.

Family *Takaful* Benefits⁶⁴

Under the Family *Takaful* Plan, the *takaful* benefits shall be paid to the participants or their heir(s) upon the occurrence of any of the following cases:

Case one (1) : the participant survives the maturity of his *takaful* plan.

Case two (2) : the participant dies before the maturity of his *takaful* plan.

In the first case, he shall be paid the total amount of *takaful* instalments paid by the participant during the period of his participation and all the profits, if any, from the investment of the *takaful* instalments credited into his PA.⁶⁵

In the second case, the *takaful* benefits to be paid to the heir(s) or proper claimant⁶⁶ is all the money in the participant's PA as at the time of his death⁶⁷. This includes all his contributions until the time of his death

⁶² *Risalah Pelan Takaful Keluarga (b)*.

⁶³ *Report of the Committee on the Setting-up of an Islamic Insurance Company in Malaysia*.

⁶⁴ According to S. 2 *Takaful* Act 1984, *takaful* benefits includes any benefit, pecuniary or not which is secured by a *takaful* certificate, and "pay" and other expressions, where used in relation to *takaful* benefits, shall be construed accordingly.

⁶⁵ STMB, *Pelan Takaful Keluarga (a) and (b)*.

⁶⁶ S. 65 (4) *Takaful* Act 1984 provides : "Proper claimant means a person who claims to be entitled to the sum in question as executor of the deceased, or who claims to be entitled to that sum under the relevant law".

⁶⁷ The *takaful* benefit is to be paid to a proper claimant without the need for the production of any probate or letters of administration. See S. 65 (1) *Takaful* Act 1984.

and all the profits that his contributions have earned and credited into his PA over the same period. This amount, however, will inevitably be less than the amount which the participant would have expected to get if he survived until the maturity of his plan. The difference between these two cases is that his heir(s) will be paid the outstanding *takaful* amounts which would have been paid by the deceased into his PSA should he have survived. This amount is calculated from the date of death to the date of maturity of his Family *Takaful* Plan. Through the instrumentality of the PSA, therefore, a participant in the Family *Takaful* is able to determine the amount (subject only to variations of profits) that either he or his heir(s) would get as *takaful* benefits.⁶⁸

If the participant decides to withdraw his participation before the maturity date of his Family *Takaful* Plan, he shall be able to surrender benefits,⁶⁹ that is all his *takaful* instalments which have been credited into his PA with the profits which those instalments have earned so far. His contribution to the PSA is a form of donation which he has agreed to make and it is not returned.⁷⁰

b) General *Takaful* Schemes⁷¹

The General *Takaful* is a scheme which provides cover for an individual or a body corporate against losses or damage consequent upon a catastrophe or disaster such as fire, flood and accident, usually inflicted upon properties or assets. The main types of the General *Takaful* schemes are, among others, General *Takaful* Schemes for motor vehicles, fire and theft, accidents and marine.⁷²

A participant in this scheme also enters in a *mudarabah* contract with *Syarikat Takaful*. The contract stipulates the amount which the participant

⁶⁸ STMB, *Pelan Takaful Keluarga (a) and (b)*.

⁶⁹ There is no minimum period of payment of *takaful* instalments after which the participant is entitled to surrender benefits, while in the conventional insurance, the insured becomes entitled to surrender benefits only if he has paid his premium instalments for a minimum period, for example three years. There is no forfeiture in the Family *Takaful* Plan. Syed Waseem Ahmad, *op. cit.*, p. 196.

⁷⁰ M. F. Yusuf, "Takaful Insurance Company Malaysia Sdn. Bhd.", p. 91; See also N. R. Mahmood, *op. cit.*, pp. 289 - 290.

⁷¹ See s. 3 (1) (ii), Takaful Act 1984.

⁷² STMB, *Risalah Perlindungan Takaful*.

has to contribute under the scheme. Like the amount of premium in general insurance, this amount is determined by *Syarikat Takaful* which takes into account factors such as the value of the property and the risk involved⁷³. The term of participation or the period of *takaful* in respect of the General *Takaful* Schemes is usually for a span of one year. On expiry of the period of *takaful*, the term may be renewed for another one-year period.⁷⁴

Unlike the Family *Takaful* Plans, the General *Takaful* Schemes are not structured to function as a means of savings, although the participants are entitled to some form of profit sharing as expressed in the principle of *mudarabah*. However, under the General *Takaful* Schemes, the entire contributions are paid as *tabarru'* for the purpose of creating defined assets or funds (General *Takaful* Fund) to pay against a defined loss. Part of the *tabarru'* funds are used to cover the expenses of the scheme. The remainder is invested by *Syarikat Takaful* in the same way, subject to the same restriction as the investment of funds from the Family *Takaful*. All the profits from such investments are returned to the Fund.

In line with the virtue of solidarity, mutual help, shared responsibility and joint guarantee as embodied in the concept of *Takaful*, *Syarikat Takaful* (Company) as the manager (operator) or trustee of the Fund, shall pay from this Fund any benefits, compensation or indemnity to any participant who suffers a defined loss or damage consequent upon the occurrence of a catastrophe or disaster. All operational costs for managing the General *Takaful* business such as the cost of re-*takaful* (re-insurance) and setting-up of reserves shall be borne by the Fund. If, at the end of the financial year, there is a surplus, it is shared between *Syarikat Takaful* and the participants who have not made any claims under their respective plans. The sharing of the surplus will be made according to a ratio agreed to in advance in accordance with the principle of *mudarabah* such as 6 : 4, 5 : 3, 5 : 5, etc⁷⁵. This provides a form of incentive to the participants along the line provided by the No Claims Bonus (NCB) in motor insurance.

⁷³ In the determination of General *Takaful* contributions, the same principle, methods and technique apply as in the case of conventional insurance. The difference from conventional insurance lies in sharing the surplus (profits) after deducting all operational costs such as re-*takaful*. See Syed Waseem Ahmad, *op. cit.*, p. 197.

⁷⁴ STMB, *Risalah Perlindungan Takaful*.

⁷⁵ *Risalah Perlindungan Takaful*, N. R. Mahmood, *op. cit.*, p. 290; Syed Waseem Ahmad, *op. cit.*, p. 197; M. F. Yusuf (1991), *op. cit.*, pp. 91 - 92.

Some issues relating to the *Takaful* Scheme

a) The *Takaful* Act 1984

The *Takaful* Act was intended to be only a regulatory piece of legislation and not a statutory source of the substantive law relating to an Islamic scheme of mutual insurance. It was recommended that the *takaful* operators should be regulated in the same way as commercial insurers. However, as the *takaful* business had to be operated along Islamic lines, it was felt that it was inappropriate to extend the Insurance Act 1963 to cover such operators. It was for this reason that the *Takaful* Act 1984 was passed. The Act not only enables the Government of Malaysia to regulate and control *takaful* operators like all other insurers but also to ensure that the operation of the scheme does not depart from the teachings of Islam.

Notwithstanding, the application of the principles of Islamic law in the operation of the scheme is only implied in a few provisions of the *Takaful* Act. As such even the scope and application of those principles is unclear. According to the Act, a *takaful* business is defined as a business of *takaful* whose aims and operations do not involve elements opposed by the *Syariah*.⁷⁶ Moreover, in relation to the registration of *takaful* businesses, the Act provides that the Director General of *Takaful* shall refuse to register an applicant unless he is satisfied, inter alia, that the aim and operation of the proposed *takaful* business will not involve any element which is "not approved" by *Syariah*.⁷⁷ The Act does not define *Shari'ah* nor does it explain what is meant by an element "approved" or "not approved" by *Shari'ah*. This is a serious omission as "approved by *Shari'ah*" may have a meaning far wider than "being permitted in Islam". This is because in Islam, apart from elements which are strictly prohibited (*haram*), there are also elements which are discouraged or frowned upon (*makruh*) and those that are greatly encouraged (*sunnah*). While the presence of elements which are *haram* will clearly not be approved by the *Shari'ah*, it is not clear whether the presence of *makruh* elements will be approved or disapproved by the *Shari'ah*.

⁷⁶S. 2, *Takaful* Act, 1984.

⁷⁷S. 8 (5) (a), *Takaful* Act, 1984.

b) The *Syariah* Supervisory Council.

The *Takaful* Act makes it a condition for the registration of a *Takaful* Company that its articles of association has a provision for the establishment of a *Syariah* Supervisory Council whose function is to advise the company on matters pertaining to the *Syariah*.⁷⁸ The report of the Committee also recommended that members of the Council should be persons with expertise in areas like the *Syariah* and Islamic Economics.⁷⁹ It was also recommended that all decisions of the Council be made on the basis of the Islamic concept of *Shura* or consensus. The Council's function is strictly supervisory; it does not participate in the daily affairs of the company. Both the Act and the Report are silent on the status of the Council's advice. Perhaps a company that fails to act upon such advice can be regarded as pursuing aims contrary to the *Shari'ah*, thus allowing the Director General of *Takaful* to cancel the company's registration.

c) The *Takaful* Contract

The *Takaful* contract is a contract based on the Islamic concept of *mudarabah* between Syarikat Takaful as the entrepreneur (*mudarib*) and the participant as the provider of capital (*sahib al-mal*). In consideration for his participation in the scheme, the latter agrees to provide the former with the capital in the form of *Takaful* contributions. The entrepreneur in return agrees to provide the participant with a scheme for investment and protection.

The *Takaful* contract clearly spells out the rights and obligations of both parties, such as the way in which the contributions will be used and the ratio in which the profits, if any, will be shared. The Family *Takaful* contract also clearly spells out what proportions of the participant's contributions will be paid into the Participant Special Account (PSA) and the Participant Account (PA) respectively. It also declares that the proportion that is paid into the former is a donation made by the participant to help fellow participants. Thus everything there is to know about the contract is made known to the participant in the contract itself.

⁷⁸S. 8 (5) (b), *Takaful* Act, 1984.

⁷⁹Report of Committee, *op. cit.*

The *Takaful* Act provides that a person under eighteen shall not have the capacity to enter into a *takaful* contract.⁸⁰ This differs from the Insurance Act 1963, which provides that a person above ten years of age can enter into a contract of insurance provided that if he is below sixteen, he must have the written consent of his parents or guardian. Under the Age of Majority Act 1971,⁸¹ a person attains the age of majority on his eighteenth birthday, but this is not the age of majority in Islam. In Islam, a person's legal capacity depends, among others, on whether he is *baligh* (mature; legally major) and there is no definite age for this. Rather, it is determined by physical indications or by the declaration of the youth in question, or failing these, by reaching the age of fifteen years.⁸²

Admittedly, problems may arise if no specific age of majority is stipulated and the subjective test of *bulugh* is used. The *Takaful* scheme is not exclusively for Muslims and such a test cannot be applied to others. Even amongst Muslims, the determination of *bulugh* may give rise to problems. Hence, while the departure from the strict Islamic concept of majority is understandable, it is unclear why in this of all respects, the *Takaful* Act differs from the Insurance Act 1963.

In Islam as under the Common Law, a person continues to have the capacity to enter into a legal relationship for as long as he remains sane and fully responsible for his actions. Rightly therefore, the *Takaful* Act does not provide any maximum age for a participant to enter a *Takaful* contract. In practice, however, the *Takaful* Company of Malaysia requires participants in the Family *Takaful* to be between the ages of eighteen and fifty years at the time they enter the contract. Thus, while someone who is over fifty legally has the capacity to enter into any contract, he cannot, in fact, enter a Family *Takaful* contract.

Conclusion

The above discussion clearly shows that the Islamic Insurance (*Takaful*) business is both theoretically feasible and practically possible. The fact that the *Takaful* business in Malaysia is, so far, functioning successfully side-by-side with the other conventional insurance companies.

⁸⁰ S. 64, *Takaful* Act, 1984.

⁸¹ S. 2.

⁸² Schacht, *An Introduction to Islamic Law*, p. 124.

BIBLIOGRAPHY

- A. H. Silverman, *The Substance of Economics*, London, 193?.
- Adam Smith, *The Wealth of Nations*, Edwin Cannan (ed.), Vol. II, London, 1950.
- Afzalur Rahman, *Banking and Insurance*, Vol. IV, London, 1979.
- al-Addq Muammad al-Amin al-Darr, *al-Gharar wa Atharuhu f al-'Uqd fi al-Fiqh al-Islam: Dirasah Muqaranah*, Cairo, 1967.
- al-Marghinani, *al-Hidayah*, Vol. IV.
- al-Ramli, *Nihayat al-Mutaj*, Vol. III.
- Amad al-Sa'd Sharaf al-Din, *'Uqud al-Ta'min wa 'Uqud Daman al-Istithmar*.
- C. Gide, *Political Economy*, London, 1914.
- E. Cannan, *A Review of Economic Theory*, London, 1929.
- E. Klingmuller, "The Concept and Development of Insurance in Islamic Countries", *IC*, Vol. XXXIII (1), 1969.
- E. R. Hardy Ivamy, *General Principles of Insurance Law*, London, 1975.
- Encyclopaedia Islam (First Edition)*, Vol. I, 1913.
- Encyclopedia Americana*, Vol. XX, Connecticut, 1984.
- Franz Rosenthal, *Gambling in Islam*, Leiden, 1975.
- H. Barou, *Cooperative Insurance*, London, 1936.
- Ibn Qayyim, *A'lam al-Muwaqqi'in*, Vol. I.
- Introduction to Insurance*, Englawood Cliffs, 1982.
- Johari Jaafar, "Skim Takaful Bantu Masyarakat Islam" in *Berita Minggu*, 5 July 1992.
- L. D. Edie, *Economics : Principles and Problems*, London, 1926.
- Lisan al-'Arab*, Vol. V.
- M. A. Choudhury, "Insurance and Investment in Islamic Perspective", *International Journal of Social Economics*, Vol. X 95), Fresno, 1983.
- M. Dobb, *Capitalist Enterprise*, London, 1925.
- M. Hamidullah, *The First Written Constitution in the World*, Lahore, 1981.
- M. Muslehuddin, *Insurance and Islamic Law*, New Delhi, 1982.
- M. N. Siddiqi, *Insurance in an Islamic Economy*, Leicester, U. K., 1985
- Mohd. Fadzli Yusuf (1985.b), "The Principles of Islamic Insurance"
- _____, "Berbakti Kepada Rakan Melalui Tabarru'" in *Berita Harian*, 7 October 1994.
- _____, "Sumbangan Takaful Kepada Usahawan, A Paper Presented at the

- Seminar Keusahawanan dan Perniagaan Islam*, 28 - 29 November 1987, Petaling Jaya, Malaysia.
- _____, "Takaful Insurance Company Malaysia Sdn. Bhd.: Islamic Alternative to Insurance", in *Syariah Law Journal*, Petaling Jaya, Selangor, September 1991.
- _____, "Takaful Insurance Company Malaysia Sdn. Bhd.: Islamic Alternative to Insurance" in *International Islamic University Syariah Law Journal*, September 1991.
- Mohd. Fadzli Yusuf, "The Operation of Syarikat Takaful Malaysia Sendirian Berhad A Paper Presented at *Seminar on Insurance in Malaysia for Journalist*, Kuala Lumpur, 1985.
- _____, "The Principles of Islamic Insurance", A Paper Presented at *Seminar on Issues in Economics*, 27-29 December 1985, Petaling Jaya, Malaysia.
- Nik Ramlah N. Mahmood, "Takaful: The Islamic System of Mutual Insurance - The Malaysian Insurance", *Arab Law Quarterly*, Feb., 1991.
- Report of the Committee on the Setting-up of an Islamic Insurance Company in Malaysia*, Kuala Lumpur, 1984.
- S. H. Amin, *Islamic Law In The Contemporary World*, Glasgow, 1985
- S. H. Patterson and K. W. H. Schholz, *Economic Problems of Modern Life*, New York and London, 1931.
- S. W. Ahmad, "Islamic Insurance in Malaysia" in Mohamed Ariff (ed.), *The Muslim Private Sector in Southeast Asia*, Singapore, 1991.
- Sami A. Hanna, "Al-Takaful al-Ijtima' and Islamic Socialism", *The Muslim World*, Vol. LIX, 1969.
- Schacht, *An Introduction to Islamic Law*.
- Siddiqi, *Muslim Economic Thinking: A Survey of Contemporary Literature*, Leicester, 1981.
- STMB, *Risalah Perlindungan Takaful*, M. F. Yusuf, "Takaful Insurance Company Malaysia Sdn. Bhd.", *Syariah Law Journal*, International Islamic University, Petaling Jaya, September, 1991.
- STMSB, *Annual Report 1986*.
- STMSB, *Annual Report 1988*.
- STMSB, *Annual Report 1989*.
- STMSB, *Annual Report 1990*.
- STMSB, *Annual Report 1991*.
- Syed Waseem Ahmad, "Islamic Insurance In Malaysia", in Mohamed Ariff (ed.), *The Muslim private Sector in Southeast Asia*, Singapore, 1991.

T.W. Morgan (ed.), *Porter's Laws of Insurance*, Part I, London, 1933.

Tajuddin Saman, "Takaful Berasaskan Mudarabah" in *Berita Harian*, 22 May 1992.

Takaful Act 1984.

The New Encyclopaedia Britannica, Vol. XXI, Chicago, 1985.

Vardit Risper-Chaim, "Insurance and Semi-Insurance Transactions in Islamic History Until the 19th Century", *JESHO*, Vol. XXXIV, 1991.

W. F. Gephart, *Principles of Insurance*, New York.

Zarqa, *'Aqd al-Ta'min f al-Shari'ah al-Islamiyyah*, 1982.

Zarqa, *'Aqd al-Ta'min wa mawqif al-Shari'ah al-Islamiyyah minhu* (A lecture delivered during the Usubu' al-Fiqh al-Islam), Damascus, 1962.

Joni Tamkin bin Borhan is a Lecturer in the Dept. of Syariah and Economics and Head of the Dept. of Syariah and Management, Academy of Islamic Studies, University of Malaya, KL.