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Author(s): Renat I. Bekkin

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## Islamic Insurance: National Features and Legal Regulation

**Dr. Renat I. Bekkin**

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### Abstract

The present paper studies Islamic insurance (*takaful*) as opposed to conventional one. The first part of the paper covers, among other things, such issues as the nature and historic roots of Islamic insurance and early forms of Islamic insurance and it narrates the disputes among Muslim scholars concerning the compatibility of insurance with Islamic Shariah. The second part deals with the history and emergence of Islamic insurance in the modern financial market, as well as the practice of Islamic insurance in different countries. The third part discusses the feasibility of Islamic insurance in Russia in the current legal framework. The paper contains a comprehensive glossary of related terms.

### Keywords

Islam, Shariah, Islamic law, Islamic finance, Islamic insurance, *takaful*, *riba*, Russia

*I would like to thank my wife, Julia Prudnikova. She served as my first reader and helped me vastly improve this article.*

### § 3. Legal and Other Grounds for Implementing Islamic Insurance in Russia

As the practice of the *takaful* business around the world has shown, its success does not always solely depend on the role played by Islam in a particular country. For example, countries such as Iran, whose economy has been formally islamized, still have no *takaful* companies. At the same time, in South East Asia, where Islam has less influence on social and political life than in Iran, the Islamic insurance business is widely developed.

While studying the characteristics and advantages of *takaful* over conventional insurance, a Russian researcher may consider whether it would make sense to establish *takaful* companies in Russia.

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In the past few years, Russia has been actively trying to build bridges with OIC-member countries. This is due to changes in the priorities of Russia's foreign policy and to normal economic interest in mutually beneficial economic cooperation with potential partners in Islamic countries.

More emphasis is currently being placed on scientific, technical, and financial cooperation. Some Russian banks were trying to find experts in interest-free financing, which shows that they have serious intentions to further develop partnership relations with corresponding Islamic banks abroad. The establishment of Russia's first Islamic bank, Badr-Forte Bank, confirmed this trend. Tanzania, Syria, Yemen, Indonesia, and Bangladesh had stated that they were willing to use debt-repayment schemes developed by Badr-Forte Bank to repay their debts to the Russian Federation.

In the first decade of the year 2006, in the course of inspection conducted by the Central Bank, certain minor mismatches in respect of the Bank were found. Badr-Forte faced a threat of losing a licence. However in September 2006 another inspection followed. In December of the same year the Central Bank of Russia announced the withdrawal of the license from Badr-Forte Bank.

As for the prospects of establishing an Islamic insurance company in Russia, the situation is even more complicated. On the one hand, creating a *takaful* operator in this country appears problematic due to the lack of experience in this kind of operation in the Russian insurance business and a number of other negative factors.

On the other hand, we should not forget that even in Malaysia, where Islam plays a much more prominent role than in Russia, it took almost ten years for the *takaful* business to achieve good results.<sup>1</sup> The level of insurance culture is just as low here as it is in Russia, which is evidenced by a 1997 survey. According to its data, 45 percent of those surveyed had only a vague idea of what life insurance is, with 33 percent saying they needed insurance; however, 45 percent refused to discuss the matter.<sup>2</sup>

In Russia, the development of Islamic insurance will take much more time (at least several decades) and will face all those difficulties that are in

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<sup>1</sup> For more on this matter, see the chapter R.I. Bekkin, 'Development of Islamic Insurance in ASEAN: on the Example of Malaysia' in R.I. Bekkin, *Strakhovanie v musul'manskom prave: teoria i praktika (Insurance under Islamic Law: Theory and Practice)* (Moscow, 2001), 97-112.

<sup>2</sup> R.C. Maysami and W.J. Kwon, 'An Analysis of Islamic Takaful Insurance: a Cooperative Insurance Mechanism', *Journal of Insurance Regulation*, 18:1 (1999), 129.

store for anything new and never tried before.<sup>3</sup> But it would be wrong to regard the appearance of a *takaful* operator in the Russian Federation as a fad or as a dubious economic experiment with unpredictable results. In the opinion of the author, the establishment of a *takaful* company in Russia is desirable for the following reasons:

- 1) Islamic insurance, as opposed to conventional insurance, is fully compliant with Shariah. The potential customers of a *takaful* company in Russia are the 10 million Muslims who live in that country. One may argue that signing a contract with a non-Muslim insurer is not a big sin.<sup>4</sup> One of the principles of Shariah included in *Majallat* teaches that the lesser of two evils should be chosen. However, if it is possible to avoid what is doubtful from the point of view of Shariah, one should choose what is more in line with the Shariah principles: 'Leave what is doubtful for that which is not!';<sup>5</sup>
- 2) Many commercial and financial partners of Russia in the Middle East hesitate to invest in various lucrative projects, fearing economic instability and bad faith on the part of the Russian colleagues. Under such circumstances, it would make sense to establish a *takaful* company that would secure the risks of Muslim investors;<sup>6</sup>
- 3) The Russian insurance market should encourage competition. Offerings from *takaful* companies would help to diversify the market, and that would benefit the development of insurance in Russia;
- 4) *Takaful* companies in Russia will, among other things, invest their funds into projects connected with Islam and Muslims; this will help

<sup>3</sup> The development of Islamic insurance in Russia was pioneered by 'Itil' Insurance Company in Tatarstan. It was supposed to be a joint venture between the local entrepreneurs and foreign investors from the Arab world. However, the project failed.

<sup>4</sup> Islam requires its believers to follow the teachings of the Holy Quran and the Sunnah not only in religious practice but also in the worldly life. Thus, for example, the prohibition of *riba* (usury) is stated on multiple occasions in the Holy Quran and the Sunnah of the Prophet. Consequently, the conduct of Muslims in trading or when making financial and other deals must be in full compliance with the requirements of Shariah, as the violation of prohibitions imposed by Allah is a sign of disbelief.

<sup>5</sup> Cited by al-Tirmizi and al-Nasai.

<sup>6</sup> Even if the investors are from countries where Islamic insurance is not yet widespread, they will readily use the services of people of their own faith, provided that these have a good name and are financially sound.

to improve the wealth of the Muslim community, which makes up a significant portion of the country's population.<sup>7</sup>

So, taking into account the current situation in Russia, the creation of an Islamic insurance company would be desirable, mainly for the development of competition in the insurance market. And it is much easier to do now, after the implementation of the Federal Law of the Russian Federation 'On the Organization of Insurance Business in the Russian Federation (with the Amendments and Additions of November 20, 1999)'.

In accordance with this Act, foreign insurers were allowed to establish 100 percent foreign owned subsidiaries in Russia. This lifted the 1992 restriction that set a 49 percent limit on the share of foreign capital in Russian insurance companies.

At the same time, the new Act applied certain restrictions on foreign insurers establishing companies or subsidiaries in Russia with a share of foreign participation exceeding 49 percent. Such companies were not allowed to engage in the following operations: life insurance; compulsory insurance; compulsory state insurance; property insurance involving supply of goods or provision of services to the government; and insurance of governmental or municipal property. The new Federal Law of the Russian Federation 'On the Organization of Insurance Business in the Russian Federation (with the Amendments and Additions of December 10, 2003)' canceled such restrictions for the insurance organizations from the EU countries, the members of the Agreement on Partnership and Cooperation of 24 June 1994.

Consequently, once the limit of foreign investments in the authorized capital of Russian organizations set at 25 percent (according to the new Federal Law) is reached, the Insurance Supervision Body will stop issuing licenses to subsidiaries of foreign insurers and to Russian companies with a share of foreign capital exceeding 49 percent. This quota is calculated as the ratio between the total amount of stakes owned by foreign insurers and their subsidiaries in the authorized capitals of insurance companies, and the aggregate authorized capital of all insurance companies.

The new Law also provides a strict specialization of insurance organizations. The division between organizations engaged in life insurance and

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<sup>7</sup> Islam ranks first among Russia's religious denominations in terms of the number of young believers. Thus, the share of young people among Muslims (48.4 percent) is higher than among Orthodox believers (39.2 percent). See <tolerance.ngo.ru>.

ones engaged in non-life insurance is set. There are 23 types of insurance that are allowed to be realized in the practice of insurance organizations in Russia. Among *takaful* operators, there is no strict division between life insurance companies and those specializing in other types of insurance services, and while life insurance (Family *Takaful*) plays an important role in the business of many Islamic insurers, other services offered by *takaful* companies are also popular among Muslim and non-Muslim populations in different countries.

At the same time, the author believes that despite the invaluable experience of foreign Islamic insurers, a more acceptable option for Russia would be establishing a Russian *takaful* company, majority-owned by Russian capital. As was discussed above, in many countries the issue of establishing an Islamic insurance company was considered first of all a political issue, and then only an economic one. We cannot rule out the possibility that the establishment of a *takaful* company in Russia may face problems due to the unwillingness of certain circles to let foreign insurers (especially Islamic ones)<sup>8</sup> enter the domestic market. And establishing a Russian company would eliminate such needless complications. Certainly, the new company will need to use the experience of foreign experts in training qualified staff for the *takaful* business.

When studying the prospects of establishing an Islamic insurance company in Russia, we cannot bypass the issue of a possible collision between the principles of Islamic law and the provisions of the legislation of the Russian Federation.

The experience of *takaful* operators in non-Muslim countries shows that their status can be successfully regulated within the framework of conventional insurance legislation. The principles of Islamic law only apply to the internal relations within the company, without violating the laws of the country where the company is registered or conducts its business. If an Islamic insurance company is established in Russia, its operations will be compliant with the requirements of the Act 'On the Organization of Insurance in the Russian Federation' and other Russian regulatory acts. Passing a special *Takaful* Act in Russia is hardly necessary.

According to the majority of Muslim scholars, Muslims should head an Islamic insurance company. This provision may be considered a violation

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<sup>8</sup> It would be preferable to use the word '*takaful*' rather than 'Islamic insurance' in the name of such a company.

of the principle of publicity of contract (Article 426 of the Civil Code of the Russian Federation). In accordance with the Russian law, a person of any faith is free to engage in any kind of business that does not violate the legislation. This author believes that the problem can be resolved in the following way. After all, only potential customers will decide whether they prefer to use an insurance company that is run by a non-Muslim or a company headed by someone of their own faith. Therefore, an Islamic insurance company established and managed by non-Muslims has the right to exist and compete for the premiums of the insured, provided that its operations are in compliance with the Russian legislation and the principles of Islamic law. In any case, it will be under the oversight of the Shariah Supervisory Council consisting of Muslim experts.<sup>9</sup> As for the Shariah Supervisory Council itself, it will evaluate all transactions in terms of their compliance with Shariah before the contract is made.

Theoretically, the *takaful* business can exist in Russia in the form of both commercial and mutual insurance, depending on the level of economic development of the region where the Islamic insurer will operate on the income level of the local populations, and on their awareness of the various insurance services, etc. However, a number of important principles underlying the operations of *takaful* companies and related primarily to the system of profit and loss sharing and to the investment of premiums are not completely in line with the Russian legislation. As a result, an Islamic insurer conducting its business in Russia will violate either the Russian law or the principles of Shariah.

This author can suggest the following solution to the problem. Obviously, changing the insurance law to accommodate the needs of *takaful* companies would require much more effort than changing the provisions regulating mutual insurance. The task is made even easier by the fact that this legislation is in a stage of development. Therefore, a constructive and

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<sup>9</sup> This problem can also be viewed in a historical context. For example, in the years of the NEP (Lenin's New Economic Policy in the 1920s, marked by a limited economic liberalization), there was a restaurant in Moscow named 'Lurye', which served only kosher food in accordance with the Jewish traditions. However, this did not make Jewish religious laws non-compliant with Soviet law, because the restaurant was established in accordance with the requirements of the Soviet legislation. Both Jews and people of other faiths were allowed to eat Jewish food, but the chef had to be a Jew, otherwise the food would not be kosher. So, why can't an Islamic insurance company, established in accordance with the Russian laws and offering services that are necessary to Muslims, be allowed to exist?

appropriate compromise would be to establish a Russian *takaful* company on the principles of mutual insurance, considering that virtually all Muslim scholars are unanimous in finding mutual insurance to be compliant with Shariah.

According to the federal legislation currently in force, mutual insurance societies in the form of non-commercial organizations that are membership-based can be established as: a) non-commercial partnerships; and b) consumers' co-operatives (consumers' unions). A mutual insurance society in the form of a non-commercial partnership should be set up and should function under the Federal Act 'On the Organization of Insurance in the Russian Federation'. A mutual insurance society in the form of a consumers' co-operative (consumers' union) should be established and should function in conformity with the Civil Code of the Russian Federation, in particular, under Article 116 of the Code.

If a mutual insurance society is set up in the form of a commercial organization then it should obtain a license given by the insurance supervisory board. The above-mentioned Federal Act does not extend to a mutual insurance society set up in the form of a non-commercial organization. Therefore, a mutual insurance society:

- a) is free to determine rules of mutual insurance;
- b) independently determines its tariff policy;
- c) determines types, forms, and rates of insurance;
- d) with regard to the requirements fixed for non-commercial organizations, it determines the content of the forms and accounting on insurance operations.

A mutual insurance society in the form of a non-commercial organization is not subject to insurance supervision.

According to the data of the National Association of Mutual Insurance Societies there are nearly 200 mutual insurance societies in Russia, however many of them still remain on paper.<sup>10</sup> The total amount of their funds does not exceed \$2 m. Approximately three quarters of the total turnover falls on large cities, first of all, on Moscow and St. Petersburg.

<sup>10</sup> Conception of Establishing and Functioning of Mutual Insurance Societies, <[www.ovsk.ru](http://www.ovsk.ru)>.



Practice shows that mutual insurance is in popular demand in Russia, mostly in small business and agricultural sectors, i.e. spheres which are not a matter of interest for big insurance companies. For example, among farmers the demand for mutual insurance services is very high, but defects of legislation cause farmers to use services of conventional joint-stock companies which actually begin to work on mutuality principles. However, such a situation excludes profit orientation but does not give a company any privileges.

In addition to insurance services intended solely for Muslims (insurance of mosques, Islamic educational institutions, Islamic business centers, etc.), it would make sense for a Russian *takaful* operator to enter sectors where the competition of conventional insurers is less strong.

Apart from the general problems faced by any foreign insurer in the Russian market, *takaful* operators will have to deal with additional difficulties. These are due to the total lack of public awareness of what Islamic insurance is. *Takaful* companies will need to invest heavily into promotion and market education, and an explanation of the nature of the services they provide in order for potential customers to understand the difference between *takaful* and conventional insurance.

Below, the results of surveys conducted in Canada and the USA are shown, where the Muslim population is lower than it is in Russia.<sup>11</sup>

Sixty-one point eleven percent of Muslims surveyed in Canada showed interest in the services of *takaful* companies, though a large majority (72.58 percent) did not know how the system of Islamic insurance actually works.

A more detailed survey showed that 43.86 percent of those surveyed did not know the difference between conventional (commercial) insurance and Islamic insurance. Nineteen point three percent of those polled were convinced that conventional insurance is allowed under Islamic law, and less than 15 percent believed that conventional life insurance is compliant with the principles of Shariah.

According to different calculations, Russia's Muslim population stands at between 10 and 15 million. After decades of information hunger, there is now heightened interest in Islam among those who describe themselves as Muslims, or at least those who are considered so-called 'ethnic Muslims'. This circumstance will help the successful development of Islamic insurance in Russia.

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<sup>11</sup> About 8 m. Muslims live in the USA; in Canada, there are about 300,000.

It is possible that *takaful* will be even more successful in Russia than it is in the USA, even though the financial means of American and Russian Muslims are incomparable.

Statistical data on this subject does not exist in Russia, but it is obvious that Russian Muslims do not possess such assets. However, Russia has enough wealthy Muslims that are ready to support various Islam-related projects, such as sponsoring the construction of a mosque or providing assistance in financing educational projects. For such people, these acts of charity mean fulfilling their duty before Allah. Support from these people will be forthcoming once they understand that the *takaful* business will be lucrative not only for themselves but also for other Muslims who, if Islamic insurance becomes successful in Russia, will choose to enter in a *takaful* contract.

Apart from recruiting qualified personnel with a good knowledge of the technical issues of the Islamic insurance business, a *takaful* company would need to pay much attention to the training of insurance agents. These will be central to the success of *takaful* in Russia. The help of clerics would also be required. In Russia, Muslims know very little of their religion, what is allowed, and what is prohibited by Shariah. Therefore, if the clerics explain when speaking to believers that Islamic insurance, as opposed to conventional insurance, is fully compliant with the teachings of Islam, this will help Muslims to understand and embrace *takaful*.<sup>12</sup>

The business of *takaful* operators in a non-Muslim environment has both positive and negative aspects. The latter are due to the popular distrust among non-Muslim Russians toward Islam and everything that appears to be related to it, especially in the light of such events as the war in Chechnya and the rise of extremism around the world under Islamic slogans.

One can't treat the withdrawal of a license from the only Islamic bank in Russia, Badr-Forte Bank, as the cause for optimism. However the first problem is the lack of demand for Islamic financial services and the second is the government's attitude toward Islamic finance.

If people become aware of the benefits and advantages of Islamic finance and Islamic insurance in particular, it is possible that the concept of *takaful*

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<sup>12</sup> Today, Russia has no authoritative Muslim scholars who could issue rulings (*fatwas*) on the legal aspects of Shariah, which will pose serious problems when forming Shariah supervisory councils.

will also be successful not only among Muslims but the followers of other religions: '...Allah will rise up, to (suitable) ranks (and degrees), those of you who believe and who have been granted Knowledge...' (58:11).

## Appendices

### Glossary

**Amanah** (Arabic 'reliability', 'trustworthiness'): contract under which one party (the Trustor) transfers property to the other party (the Trustee) for a certain period of time under trust management in the interest of the Trustor or of the beneficiaries he has appointed. If the trust property is damaged, the Trustee is not financially liable to the Trustor. The relations between the parties under an *Amanah* contract may be express or implied. In Islamic banking, *Amanah* means custody. The bank does not have the right to dispose of the property in custody and carries out the owner's instructions regarding such property in consideration of a fee. Apart from that, the bank has the right to cover the costs related to the execution of the owner's instructions at the owner's expense.

**Bai'** (Arabic 'sale'): contract of sale. Under the contract, one party (the Seller) undertakes to transfer the goods and the ownership thereof to the other party (the Buyer). The Buyer undertakes to pay the agreed price and to accept the purchased object.

**Bai' al-Salam** or **Salam**: contract of sale with deferred delivery, under which the price of the goods is paid in advance and the goods are delivered after a period of time agreed upon between the Seller and the Buyer. *Bai' al-salam* constitutes, in fact, advance financing and is close in terms of its legal nature to a contracting agreement. The quantity and quality of the goods being transferred and the duration of their transfer to the Buyer must be specified. Usually, the subject matter of a *bai' al-salam* contract are movables that can be valued in terms of quality, quantity, and the amount of work involved in its production, with the exclusion of gold, silver, and other goods that can replace money.

**Bai' [Bithaman] Ajil** (Arabic 'deferred payment sale'): contract of deferred payment sale. Under the terms of this contract, one party (the Seller) purchases the goods and resells them to the other party (the Buyer) at the agreed price, which includes the costs incurred by the Seller. The money for the goods will be paid in the future, either in a single sum or in install-

ments. In Islamic banking, this contract is used in transactions between the bank and the Buyer where the bank purchases the goods and then resells them to the Buyer at a markup price, which is paid in installments during the period agreed upon between the parties. This contract is allowed under Islamic law because it represents a type of sale contract, rather than a loan contract. Therefore, the transaction made under such a contract is a commercial one rather than a financial one.

**Bayt al-Mal** (Arabic 'house of property'): initially, a room in a cathedral mosque or in the house of the governor-general in the countries conquered by the Muslims where money or other valuables of the Muslim community (*Ummah*) were stored, and such valuables themselves, which were considered as common property of all Muslims. The sources of *bayt al-mal*: tax on Muslims (see **Zakah**); capitation from the infidel (*jizya*); land tax (see **Kharaj**); one-time voluntary contributions (see **Sadakah**); one fifth of the war trophy (*ghanima*); ownerless property; share of the yield of mines; share of trade taxes and customs duties, fines, ransoms for prisoners paid to the *Ummah*; etc. Also, *bayt al-mal* included revenues from *waqf* property and all accidental revenues and property that under Shariah cannot be made private property. With time, *bayt al-mal* became a purely religious institution.

**Diyyah** (Arabic 'ransom'; Turkish '*diyet*', Persian '*diye*'): blood money, compensation for a murder or injury. It was widespread in pre-Islamic times and was subsequently approved by the Prophet ﷺ. According to a number of Muslim scholars, the institution of *diyyah* represents an early form of insurance in the Muslim world.

**Fatwa** (Arabic 'clarification'; synonyms: *futya*, *ifta'*; Persian and Turkish '*fetwa*'): ruling of religious and legal scholars clarifying a particular matter through interpreting the principles of Shariah, with the aim of subsequent application of their conclusions in the practical life of the Muslim community. A *fatwa* may be issued orally or in writing. In the first century of *hijra*, the term *fatwa* referred to clarifications on legal matters and to the legal ruling of the Four Righteous Caliphs and other companions of Prophet ﷺ. *Fatwa* is recognized to a smaller or larger extent by all **madhhabs** (see above) as an additional source of Islamic law.

**Fiqh** (Arabic 'profound understanding, knowledge'): in this context, the Islamic doctrine of rules of conduct and the set of Islamic social rules (Islamic law in the broader sense). Apart from that, *fiqh* means knowledge derived not only from the study of all known sources, but also from the effort required to extract the information they contain.

**Gharar** (Arabic 'danger'): in this context, element of uncertainty in the subject matter of a contract or as regard to the price of the goods, or any speculative risk. For instance, *gharar* is present when the Seller sells goods that he does not currently possess (fish in water etc.), or if the performance of obligations under an agreement is conditional on the occurrence or non-occurrence of a certain event (fall in currency exchange rate etc.). The presence of *gharar* in a commercial transaction or in the related contract enables one party to earn material gain at the expense of the other party. There is no agreement among scholars as to the degree of *gharar* that renders the contract void. Scholars distinguish: a) trifling *gharar* (*al-gharar al-yasir*), element of uncertainty that is acceptable from the point of view of Shariah; b) average *gharar* (*al-gharar al-mutawassit*), the contract can be valid if certain conditions are met; and c) excessive *gharar* (*al-gharar al-kathir*), the presence of which invalidates the contract.

**Gharim** (Arabic 'debtor'): borrower who is unable to repay the amount of the debt with his own money.

**Halal** (Arabic 'free, unbound'): in this context, actions permissible or acceptable from the point of view of Shariah, categorized as *fard*, *mandūb*, and *mubah*.

**Haram** (Arabic 'prohibited'): conduct and actions prohibited from the point of view of Shariah. Categorization of a particular action as haram largely depends on the *faqih* interpreter who can use three degrees (categories) of prohibited actions: a) *batil*: strictly prohibited actions involving violations of laws or religious duties; b) *fasid*: so-called 'vicious' actions whose consequences may be found legally valid if the violations are eliminated (for example, seizure of property which is then bought out from the owner upon his consent); c) *Shariah*: actions that are technically lawful but essentially immoral (for example, cheating one's partner in a deal by using language that invalidates the contract).

**Hawala** (Arabic 'money transfer, check'): transfer of debt. Contract under which one party undertakes to pay the debt of the debtor to the creditor. *Hawala* can also refer to the document confirming the transfer of debt. *Hawala* as a simple and affordable money transfer system is now common in many developing countries.

**Hiba** (Arabic 'gift'): donation contract. It involves the transfer of any property (movable or immovable) from one party (the donor) to the other party (the recipient) without any compensation on the latter's part. Property being donated must exist at the moment of donation. Donated property cannot be claimed back, except in special cases. The right to recover a

donation is known as *raj*<sup>6</sup>. To recover donated property, a court ruling is required.

***Hiyal*** (Arabic 'trick, ploy'): legal method or system of legal techniques used to bypass certain Shariah prohibitions without violating the principles of Islamic faith. Actions legalized through *hiyal* mainly fall in the category of *sahih* (see **Haram**).

***Kharaj*** (Arabic 'land tax'): in the broader sense, any taxation of the infidel, including capitation and land tax. In the stricter and more common sense, *Kharaj* refers to the proportional tax levied by Muslims on lands obtained under a peace treaty. Former landowners retained the right to use their land plots provided that they paid the tax.

***Khums*** (Arabic 'one fifth'; syn. *Khumus*): initially, one fifth of the war trophy (*ghanimah*) destined to the Prophet ﷺ and his relatives. These funds could also be used for various governmental purposes (including social assistance). Some scholars maintain that *khums* was first introduced by the Prophet's grandfather, 'Abd al-Muttalib, who found a treasure near the *Zamzam* well. According to the tradition, he dedicated 1/5 of the treasure to the Almighty and kept the remaining 4/5. Later, the notion of *khums* came to include a number of taxes, charges, and duties (such as the tax on extracted natural resources; duty levied on a Muslim who sells his land to an infidel; etc.).

***Ijarah*** (Arabic 'lease'): in a broad sense, a contract of hire. In Islamic banking, it is similar to a leasing transaction. Under the terms of a contract made between the bank and the customer, the bank purchases equipment at the customer's request etc., which the customer leases. The term of lease and the fee are agreed upon in advance. The equipment remains in the ownership of the bank.

***Ijarah wa Iqtina'***: contract very similar to *Ijarah* (see above). The main difference between *Ijarah wa iqtina'* and *Ijarah* (see above) is that the bank's customer undertakes to buy out the building, equipment etc. by the end of the lease period (i.e. when the total amount of payments will reach the selling price agreed upon between the parties).

***Ijtihad*** (Arabic 'striving, great effort'): generic name for all types of work of a scholar when studying and making judgments on legal and religious matters, and the system of principles, arguments, methods, and techniques he uses in the course of his studies.

***Istisna'***: type of contract of sale where the subject matter does not exist when the contract is made. The manufacturer of the product manufactures them at the specific request of the Customer (for example, a house is built

to the Buyer's order). For an *istisna'* contract to be valid, the price of the goods being manufactured and their essential characteristics must be specified in advance. An important difference between *istisna'* and **Bai' al-salam** (see above) is that the goods are not paid for in a single payment before they are delivered, but in several installments while the supplier manufactures the goods.

**Ju'alah** (Arabic 'payment, reward'): unilateral deal where one party (*ja'il*) declares that he will reward anyone who will provide him with the required service, such as when the owner of a lost object advertises a reward for any one who will return the lost thing to him. The person who provides such a service has the right to be remunerated for his work. In banking, the bank undertakes a *ju'alah* contract to pay a certain amount to the other party if the latter provides the required service to the bank in accordance with the terms of the contract.

**Madhhab** (Arabic 'path'): in this context, a religious and legal school or creed. Currently, Sunnism has four legal madhabs: *Hanafi*, *Maliki*, *Shafi'i*, and *Hanbali*. In the eighteenth century, *Ja'fari* Shiites were granted their own place for prayer in the precinct of the Ka'ba, which marked the official recognition of the *Ja'fari* madhhab by the Sunnites.

**Maisir** (Arabic 'gambling'): initially, a game of chance that was common in pre-Islamic times among the Arabs. In the broad sense: any action aimed at an easy material gain (without investing work or capital). See also: *Qimar*.

**Mu'amalat** (Arabic 'business, trade'): rules regulating the relations between people, the relations between the Muslim ruler and his subjects (both Muslim and non-Muslim), and with other nations. In a stricter sense, subject matter of private law (*fiqh al-mu'amalat*).

**Mudharabah** (modern Arabic 'speculation'): contract under which the owner of surplus cash (see **Rab al-Mal**) entrusts it to a person (see **Mudharib**) who has the ability and business experience to put it to efficient use. Revenues from the invested funds are shared between *rab al-mal* and *mudharib* in accordance with previously made profit-sharing agreements. Losses are borne by the provider of capital, in which case the *mudharib* does not receive any compensation for his efforts. In a classical *mudharabah* contract, *rab al-mal* has no operational control over the project.

**Mudharib**: party to a **Mudharabah** (see above) contract who is responsible for the management of the capital provided by *rab al-mal* (see below) with the aim of earning profit for all the parties to the contract. More than one *mudharib* may participate in a *mudharabah* contract.



**Mujtahid** (Persian 'Mujtehid', Turkish 'Müjtehid'): religious scholar who is qualified by virtue of his knowledge and experience to make independent judgments on important issues of Islamic law. A *mujtahid* must be fluent in Arabic and memorize the Holy Quran and its *tafsir* (interpretations), and no less than 3,000 *hadith* with full commentary.

In the Imamite creed (Shiism), *mujtahid* is the supreme religious authority whose high duty is to lead the community along the right path during the Occultation of the Imam. *Mujtahidun* who are most respected for their knowledge can not only make judgments and issue rulings on legal matters but can also interpret the tenets of religion and the principles of Shariah.

**Murabahah** (Arabic 'resale'): contract of sale at a price agreed upon between the Seller and the Buyer and comprising a profit margin. The Seller (for instance, a bank) buys commodities or equipment on behalf of the Buyer (Customer) and then resells it to him at a markup. The difference in price must be agreed upon in advance. The Buyer pays the required amount either in a lump sum or in installments. The Seller bears any costs related to the sale of the goods and any risks until the goods are delivered to the Buyer.

**Musharakah** (Arabic 'partnership, participation'): in the broader sense, a partnership contract. In banking, a special agreement made between the bank and the customer on a *musharakah* basis, under which profit is shared between the parties as specified in the agreement. Losses are shared in proportion to each party's participation in the capital. Project management may be performed by all the parties or by one of the parties. However, management is commonly assumed by the client for an additional fee. Any party may waive its participation in management to a third party.

**Muzara'ah** (Arabic 'sharecropping'): contract under which one party works the land owned by the other party in consideration of a share of the crops.

**Nisab** (Arabic 'basis'): minimum property subject to **Zakah** (see below).

**Qard Hasan** (Arabic 'good loan'): interest-free loan provided either as a charity or for short-term financing of potentially lucrative projects. The Borrower simply has to repay the borrowed sum at the specified time. If the Lender is aware that the Borrower is unable to repay the debt, the means provided as *qard hasan* can be considered as a voluntary or compulsory donation (see **Zakah, Sadakah**). In Islamic banking, *qard hasan*, along with *Amanah* (see above), are used as a means to attract the customers' funds.



**Qimar** (Arabic 'game of chance'): in this context, contract under which one of the two parties, depending on the occurrence of a certain event specified in the contract, will earn a profit whereas the other party will suffer a loss.

**Ra's al-mal** (Arabic 'principal money'): initially, any funds (in cash or in kind) invested in commerce or manufacturing. *Ra's al-mal* also referred to the cost of the product, as opposed to the selling price which comprises the profit margin (*riba*). Today, *ra's al-mal* has only one meaning: capital.

**Rab al-Mal** (Arabic 'owner of capital'; syn. *sahib al-mal*): in a **Mudharabah** (see above) contract, investor providing the capital that will be managed by the **Mudharib** (see above). More than one *rab al-mal* can be a party to a **Mudharabah** (see above) contract.

**Rahn** (Arabic 'pledge, gage'): property (movable or immovable) pledged as a guarantee of the repayment of the debt by the debtor. Such property can be sold by the Pledgee if the Pledger defaults on its obligations. In pre-Islamic times, *rahn* represented a kind of deposit, in cash or in kind, provided by one of the parties (the Buyer) when making the contract (mainly a contract of sale) as a guarantee of the performance of his obligations and as a confirmation of the seriousness of his intentions regarding the purchase of the goods. The Islamic law doctrine reserved only the function of pledge (collateral security) for *rahn*.

**Riba** (Arabic 'increase, accretion'): in a loan contract, interest on the principal charged by the lender when providing funds to the borrower. In the broader sense: any interest in commercial and financial transactions enabling one of the parties to achieve material gain at the expense of the other party, without providing adequate compensation.

In the writings of Muslim scholars, two types of *riba* are distinguished:

- 1) *riba al-fadl* is present when a shipment of goods is bartered for another shipment of the same goods but which are of a lower quality and in an unequal proportion. Such goods, according to *hadith*, include: gold, silver, wheat, barley, dates, and salt. Subsequently, *riba al-fadl* is any discrepancy in quantity and quality in an exchange of goods of the same kind;
- 2) *riba al-nasi'ah* is similar to loan interest. *Riba al-nasi'ah* is present in the loan contract and refers to any addition to the amount of principal charged by the lender as a condition for providing the loan for the specified period of time. Bank deposits and interest thereon, as well as the use of bank loans with subsequent payment of interest constitute *riba al-nasi'ah*.

**Ruqba** (Arabic 'waiting'): contract under which one party transfers to the other party the right to use certain property, the ownership of which will be transferred to the surviving party after the death of one of the parties.

**Sadakah** (Arabic 'alms'): voluntary contribution for various charitable purposes (mainly to the needy). In the first centuries of Islam, *sadakah* and **Zakah** (see below) were often used as synonyms. *Sadakah* has no prescribed form (it can be given as alms or as a contribution to a public fund created to finance a socially important project). Muslims who are unable to pay **Zakah** (see below) temporarily or permanently, and non-Muslims in a Muslim country who do not have sustenance are entitled to *sadakah*.

**Shariah** (*al-Shari'ah*) (Arabic 'straight, right path'): in this context, injunctions contained in the Holy Quran and the Sunnah that form the main source of specific provisions in the Islamic law.

**Tabarru'** (Arabic 'gift, donation'): in this context, any voluntary provision of funds upon mutual consent of the parties; type of donation contract. Voluntary payment to the lender in addition to the amount of the principal, made of the debtor's own accord, is also referred to as *tabarru'*. *Tabarru'* is the basis of the **Takaful** (see below) contract.

**Takaful** (Arabic 'mutual provision of guarantees'): Islamic insurance. System based on the principles of solidarity and mutual assistance, under which the parties to the contract support each other when any of them suffers a loss (which means primarily a monetary compensation). According to Muslim scholars, the Islamic insurance (*takaful*) contract, as opposed to the conventional insurance contract, does not contain the elements of *gharar* and *riba*. A classical *takaful* contract must comprise of:

- a special mechanism of mutual risk sharing and provision of mutual guarantees;
- contract terms under which policy holders act as co-owners of *takaful* funds;
- management terms entitling policy holders to participate in the operations and control the accounts;
- terms of investment under which the premiums paid by the participants may only be used in operations that are not prohibited by Islam;
- terms of sharing the financial results between the participants.

**Waqf** (plural *awqaf* and *wuqūf*; synonym *hubs*): property, the ownership of which is limited, by will of the settler of *waqf*, known as *waqif*, to *usufruct*

(total or partial). The property declared as *waqf* (*mawqūf*) ceases to be property of the donor but does not become property of the recipient; the ownership is effectively suspended. Any concrete object (*ʿayn*, plural *ʿaynan*) can be declared as *waqf* if it cannot be destroyed by usage and cannot lose its value with time. Such an object is considered to be property (*milk*) of Allah, while the recipient of *waqf* (person or institution) has *usu-fruct* rights to it. The *waqf* contract is terminated when the *waqf* property is destroyed or loses the qualities that are required for using it for its intended purpose. In the latter case, the purpose of *waqf* must be considered; for instance, if the building is destroyed, the land plot still remains and can yield profit. Therefore, the contract remains in force. However, if the mosque for which the *waqf* was intended is destroyed, the *waqf* property must be returned to its former owner or his heirs. Nowadays, a number of Islamic countries have special ministries dealing with *awqaf*.

**Wasiyah** (Arabic 'will, testament'): unilateral deal under which the testator bequeaths to the person(s) indicated in the will no more than 1/3 of his property (both movable and immovable). The subject matter under *wasiyah* may be any kind of property, business instructions, requests, and anything that can be categorized as 'will'. According to a *hadith* narrated by *al-Bukhari*, heirs-at-law cannot receive the share bequeathed by will by the testator. But if, for some reason, the testator decides to grant to his heirs-at-law the share of property he can bequeath by will, the bequest and the legacy in law can only be received upon consent of the main heirs. A will can be made and canceled at any time during the entire life of the testator.

**Zakah:** tax for the benefit of needy members of the Muslim community. The payment of *zakah*, one of the five pillars of Islam, is prescribed to all Muslim householders (fathers of families) who possess the required minimum of means. The institution of *zakah* existed in pre-Islamic times and was connected with the custom of sharing the booty, part of which was placed in a sort of tribal mutual assistance fund. *Zakah* is paid by legally capable Muslims from: 1) goods, 2) gold and silver (but not from household adornments or household items made from these metals), 3) cattle, 4) crops, 5) vineyards, 6) date palms, etc.

The Holy Quran (9:60) lists the persons who are entitled to receive assistance from the *zakah* fund: the poor, needy, collectors of *zakah*, travelers who are broke, new converts to Islam, etc. If the country where Muslims live has no appropriate mechanism for collecting and distributing *zakah*, believers must distribute the funds intended for paying *zakah* among the needy.