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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 nature and historic roots of Islamic insurance, early forms of Islamic insurance and narrates the disputes among Muslim scholars concerning the compatibility of insurance with Islamic Shariah. The second part deals with 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 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 who helped me vastly improve the paper.*

## 2. Legal Basis and Framework of Islamic Insurance (*Takaful*)

### § 1. *Essence and Types of Islamic Insurance (Takaful)*

The word “*takaful*” comes from the verb “*kafala*” and is translated from Arabic as “guaranteeing each other”. The Holy Quran says: “... Help ye one another in righteousness and piety, but help ye not one another in sin and rancour: fear Allah: for Allah is strict in punishment” (5:2). This *ayah* is cited in the writings of all scholars dealing with Islamic insurance. It indicates that cooperation among Muslims is desirable (including cooperation in facing risks and calamities, which is the essence of cooperative insurance).

The desire to protect oneself from trouble is inherent to human nature: “And there are men who say: ‘Our Lord! Give us good in this world and good in the Hereafter, and defend us from the torment of the Fire!’” (2: 201). He who protects a victim from the consequences of an adversity deserves Allah’s reward: “As Narrated by Abu Hurayra, the Prophet ﷺ said: ‘He who relieves someone in difficulty will be relieved by Allah in this life and in the Hereafter. And he who protects a Muslim will be protected by Allah in this life and in the Hereafter. Allah helps His slave as long as the slave helps his brother...’”<sup>1</sup>

The Sunnah does not contain a direct mention of *takaful*. In the *hadith* narrated by Bukhari and Muslim we can find that al-Ash’ariyyeen (those who belong to tribe of al-Ash’ari), when they become in hardship bring all their belongings in one pot and distribute it among themselves equally. The Prophet ﷺ praised them for this action.<sup>2</sup> Many contemporary scholars consider this *hadith* the basis for cooperative insurance and *takaful*.

The function of protecting people from various risks in compliance with Shariah principles is the primary goal of Islamic insurance, or *takaful*. This institution of Islamic economy is based on the following principles:

- 1) *Takaful* is free from excessive *gharar* (*al-gharar al-kathir*), as part of the installments paid by each participant<sup>3</sup> is considered as a donation, or voluntary contribution, and is accumulated in a special fund that is used to pay compensation to the insured when a peril occurs. Except for the compensation covering his losses, a participant is also entitled to receive income from another part of his installments based on a profit and loss sharing (PLS) system.<sup>4</sup> Pursuant

<sup>1</sup> Cited by Muslim.

<sup>2</sup> Cited by Bukhari and Muslim.

<sup>3</sup> Many Muslim scholars writing about Islamic insurance distinguish *participants* and *insured* in reference to the parties of a *takaful* contract. Those who pay premiums to the special fund from which they receive their share of the profit are known as *participants*, and those participants who suffered a peril are referred to as the *insured*. The reason is that, unlike in conventional insurance, in *takaful* the insured is entitled not only to a compensation but also to a share of the profit out of the premiums he has paid. Apart from that, it is possible to participate in the profits and losses of the company as a shareholder, without being its customers, i.e., without being entitled to any compensation (or coverage). In this study, the terms “participant” and “insured” are used as synonyms.

<sup>4</sup> In accordance with the rules established by a number of companies, the General *Takaful* contract (dealing with property insurance) stipulates that the insured cannot claim any

to the contract terms, the operator<sup>5</sup> knows its share of profit, as it is specified in advance. The size of revenues depends solely on the results of the company's operations, rather than being determined by a fixed interest rate that does not depend on the actual profit. And, human life, health, and property are in Allah's power, therefore uncertainty as to what may happen to them is natural from Islam's point of view: "Verily the knowledge of the Hour is with Allah (alone). It is He Who sends down rain, and He Who knows what is in the wombs. Nor does any one know what it is that he will earn on the morrow: Nor does any one know in what land he is to die. Verily with God is full knowledge and He is acquainted (with all things)" (31:34);

- 2) the installments paid, or a part thereof, may only be used in operations that are permitted by Shariah. Any operation of a *takaful* company may be found void if it contains elements prohibited by Islam;<sup>6</sup>
- 3) the main goal of Islamic insurance is to secure the risks of participants. The parties under an Islamic insurance (*takaful*) contract may act both as providers and as beneficiaries of a guarantee;<sup>7</sup>
- 4) The *takaful* business is commonly based on a profit sharing mechanism known as *mudharabah*, which allows to avoid interest-based relations that are present in conventional insurance;
- 5) the business of a *takaful* company is supervised by the Shariah Supervisory Council, a specially created body that is called to evaluate the new products and services, and the company's business operations, in terms of their compliance with the principles of Islamic law;
- 6) all parties to an Islamic insurance contract must act in accordance with the principle of *utmost good faith*;<sup>8</sup>

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share of the profit from the premiums he has paid if he received a compensation on the occurrence of the peril.

<sup>5</sup> Traditionally, and in accordance with the current legislation (Malaysian Takaful Act 1984), the insurer in Islamic insurance is called "operator". In this study, the terms "Islamic insurer" and "*takaful* operator" are used as synonyms.

<sup>6</sup> The incorporation documents of virtually every *takaful* operator stipulate that the company's investment operations must comply with the principles of Shariah.

<sup>7</sup> This means that Islamic insurance is declared from the outset to be mutual in nature. More on that, see below.

<sup>8</sup> For more information on the principle of utmost good faith, see below.

- 7) insureds have the right to delegate their representatives to the board of directors of the *takaful* company;
- 8) *takaful*, as opposed to conventional insurance, does not contravene the Shariah law of inheritance (based on the principles of *mirath* and *wasiyah*).<sup>9</sup> According to these, the testator has the right to bequest in his will no more than 1/3 of his property. The beneficiary appointed by the testator (by the insurer), who, according to Muslim scholars, acts as a trustee, must distribute the bequest between the heirs in accordance with the rules of inheritance prescribed by Islamic law. The insured may bequest to the appointed beneficiary up to 1/3 of his entire property (which includes any installments he has paid and any profit these may yield). If the beneficiary is one of the policyholder's heirs-at-law, he is entitled to receive, along with any other lawful heirs, all that will be left after paying the debts of the deceased, the funeral, and other costs, and the bequests according to the will.

Apart from compliance with specific provisions of Shariah, a *takaful* agreement relies on principles formulated by Muslim scholars based on an analysis of the injunctions and prohibitions contained in the Holy Quran and the Sunnah:

- 1) principle of due delivery on obligations: "O ye who believe! fulfill (all) obligations..." (5:1);
- 2) principle of *utmost good faith*. The parties must not conceal from each other any facts concerning the defects of the subject matter of the contract. The contract may also be invalidated by fraud, provision of false or willfully misleading information, etc. The Holy Quran says: "O ye who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual good-will..." (4:29);
- 3) principle of humanity. A *takaful* contract, at least presumably, is not made by the parties in search of any material gain, but with the aim of providing assistance to those who suffered a loss: "As narrated by Safwan bin Salim, the Prophet ﷺ said: 'The one who looks after and works for a widow and for a poor person, is like a

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<sup>9</sup> See the Glossary at the end of this study.

warrior fighting for Allah's Cause or like a person who fasts during the day and prays all the night";<sup>10</sup>

- 4) principle of mutual assistance and cooperation. Believers must help each other in the spirit of brotherhood and mutual assistance: "...Help ye one another in righteousness and piety..." (5:2);
- 5) principle of social protection: "As narrated by Sa'd bin Abi Waqqas, the Prophet ﷺ said: 'Verily, it is better for you to leave your offspring wealthy than to leave them poor, asking others for help'".<sup>11</sup> Hence we can conclude: Shariah does not prohibit a person from accumulating a certain amount of money by paying contributions and receiving profit in compliance with Shariah principles, so as not to leave his children without sustenance;
- 6) principle of fair compensation. The operator undertakes to compensate a loss or damage to life, health or property of the insured: "Allah is never unjust in the least degree: if there is any good (done), He doubleth it, and giveth from His Own self a great reward" (4:40);
- 7) principle of proper investment of the money contributed by the insured. Under the terms of an Islamic insurance contract, the participant pays installments to the operator, specifying that the money will be used in Shariah-compliant operations: "If I prohibit you something, eschew it, and if I enjoin you something, do of it what you can!"<sup>12</sup>

The Islamic insurance system is based on the concept of *tabarru'*. *Tabarru'* is translated from Arabic as "gift, donation". Each insured must have a sincere intention to provide assistance to the other *takaful* participants in case of a peril.

Under the *tabarru'* concept, the insured in Family *Takaful* (personal insurance) transfers a portion of his insurance installments as a conditional "donation"<sup>13</sup> to a "special participant account"<sup>14</sup> which the company uses

<sup>10</sup> Cited by Bukhari// www.usc.edu

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Such methods are also used by other Islamic financial and trade institutions, such as Islamic banks. Thus, client's money deposited in a so-called savings account is not supposed to yield interest, but banks usually pay to the client, at their own discretion, a portion of the profit from the successful investment of the client's money.

<sup>14</sup> For more information on the Special Participant Account, see below.

to pay out compensations to the insured, or to his heirs if the insured dies before the termination of the contract. Also, the insured and the operator agree that the company will not invest the installments it has collected into any operations prohibited by Shariah.

*Tabarru'* has common features with such institutions as *sadakah*, *hiba* and *khairat*. What they have in common is that the object in question is transferred to the other party free of charge. Thanks to *tabarru'*, *takaful* is free from *gharar* (uncertainty) and *riba* (usury).

However, it is doubtful whether it is appropriate to define all installments paid by the insured as donations, for, in consideration for the installments, the insured obtains the right for compensation, whereas *tabarru'* is supposed to be given on a *gratis* basis: "As narrated by Ibn 'Abbas, the Prophet ﷺ said: 'He who goes back on his gift is like a dog that eats its vomit'"<sup>15</sup>

The author shares the opinion of Dr. Ma'sum Billah who believes that a more appropriate definition for the installments, or at least for the part that yields revenue to the participant, is the term "musahama" (which translates from Arabic as "contribution, participation").<sup>16</sup> This will allow avoiding ambiguity in terminology, and to clearly define the right of the participant, or his heirs (according to the Shariah law of inheritance), to receive, in consideration of paying the installments, both peril-independent profit and a compensation in case the peril occurs.

In a nutshell, the difference between *tabarru'* and *musahama* can be described as follows:

- 1) *tabarru'* is, in fact, a kind of donation contract, while under *musahama*, the participant reserves the right to earn profit on the installments he has paid;
- 2) after paying installments under *tabarru'*, the participant loses right to them, while in the case of *musahama*, he retains ownership to the installments;
- 3) *tabarru'* is given for the benefit of other people, while *musahama* is aimed at achieving personal goals, in this case, material gain.

<sup>15</sup> Ibn Hajar al-'Askalani. *Bulug al-Maram*// [www.islam.boom.ru](http://www.islam.boom.ru)

<sup>16</sup> Billah Ma'sum. *Takaful (Islamic Insurance): an Economic Paradigm*// [www.islamic-finance.net](http://www.islamic-finance.net)

Thus, *tabarru'* is not analogous to insurance premium, but is a concept underlying the profit-sharing and claim payment mechanism in Islamic insurance (notably, in Family *Takaful*).

As a rule, Islamic insurance companies offer General and Family *Takaful* services.

*General Takaful*, based on the concept of compensation, deals with risks covered by property insurance. Its participants can be both individuals and corporations, and the installments are accumulated in the so-called general *takaful* fund, or simply *takaful* fund, which is used by the insurer to pay compensations to the insured on the occurrence of a peril. The *takaful* operator manages the fund as a trustee. If the installments it has collected are not sufficient to cover the costs, the *takaful* operator may raise the premium rate.

But, if a peril occurs to one of the participants, and he receives the corresponding compensation from the company, he usually loses the right to receive his share of profit from the *takaful* fund. This fund is also used to pay installments to the re-insurer, and to create reserves for unforeseen losses. After deducting these amounts, the profit generated by the investments of the *takaful* fund is shared between the participants and the company on pre-agreed terms (for instance, on a 50-50 % basis). Commonly, the profit is shared upon termination of the policy.

In General *Takaful*, it is common to make short-term contracts that need to be renewed annually. The pricing is the same as in conventional insurance. The main criteria determining premium rates in General *Takaful* are the value of the insurable interest, and the estimate of possible loss. An Islamic insurance contract may provide special benefits to the participant. Thus, in the case of compulsory automobile liability insurance, the participant is offered a discount if he has not had any car accidents during the term of the policy.

An important difference between General *Takaful* and conventional non-life insurance is the method used to appraise the property being insured. In conventional property insurance, some services use policies that include an appraisal of the property being insured. This means that, in case of total loss of the insured object, the amount of compensation will be that stated in the policy. And, in case of a partial loss, a conventional insurer may pay more or less than the corresponding amount expected at the time of making the contract, if the actual value of the insured property at the time of the occurrence of the peril declined, or, on the contrary, exceeded the amount of the cover. In Islamic insurance, such methods are

regarded as unacceptable, because they involve *gharar* (uncertainty) and *riba* (usury). Therefore, Islamic insurers practice periodic reappraisal of the insured property in order to avoid what they see as unlawful appropriation on the part of one of the parties. In doing so, the *takaful* operator brings the amount of cover in line with the current market price of the insured property. The premium rate is then changed accordingly.

Family *Takaful* offers various types of policies that usually have their counterparts in conventional insurance. However, given Shariah's mixed attitude toward life insurance, some Muslim scholars insist that Family *Takaful* does not actually involve the insurance of anybody's life,<sup>17</sup> but is, rather, a financial transaction aimed at protecting the dependents of the insured from various risks.<sup>18</sup> This ignores the fact that the same can also be said of conventional life insurance. The author believes that it is important to understand that the difference between conventional life insurance and Family *Takaful* is not in terminology but in the way the profit is shared between the operator and the participants (the insureds).

The installments paid on a regular basis by the participants are accumulated in the Family *Takaful* fund (or simply, *takaful* fund), divided in two parts:

- 1) Participant Account (or Individual Account), where most of the installments are accumulated, and which entitles the participant to a share of the profit;<sup>19</sup> and

<sup>17</sup> In this respect, it is interesting to quote the Soviet expert in insurance law V.P. Kryukov: "Of course, the focus here (in life insurance—*R.B.*) is not on human life *per se* but on the profit derived from insuring it, however, the insured life is closely connected with the profit, these two factors go together, this is why the law should be very strict on such contracts and set certain limits to both insurers and insured so that the interest of third parties in the death of the insured stays within the bounds of morality, otherwise the moral purpose of insurance would turn into the beneficiary's greedy wish for a sooner death of the insured" (Kryukov V.P. Insurance Law. (Studies).—M., 1992.—P. 23).

<sup>18</sup> This terminological cautiousness is the main reason for the division of Islamic insurance into General and Family *Takaful*, rather than "takaful non-life insurance" and "takaful life insurance" respectively, even though the last two terms are sometimes found in the works of researchers of Islamic insurance (see, for example: Maysami R.C., Kwon W.J. An Analysis of Islamic *Takaful* Insurance: a Cooperative Insurance Mechanism// Journal of Insurance Regulation.—1999.—Vol. 18, No. 1.—P. 109-132).

<sup>19</sup> Under the *mudharabah* contract, the risk of investment losses is borne by the participants.

- 2) Special Account (or Collective Account), where the other part of the installments is accumulated, and which is used to pay the agreed amounts to the heirs of the participant, or to the participant himself if he is still alive by the time of the policy's termination.

If the participant dies before the termination of a Family *Takaful* policy, his heirs will receive all the installments he has paid to the Participant Account after he entered into the contract, and until his death, including any accrued profit. The heirs are also entitled to the part of the installments from the Special Account that the participant would have paid out if he had lived till the policy's expiration. This amount is calculated from the date of the death of the participant till the policy's termination.

The compensation, and the share of profit from the Participant Account, are paid out regardless of the cause of death. The insured may die a natural death, or as a result of a suicide, as the life and death of any living creature is in the hands of Allah. Nonetheless, some *takaful* operators do not include the suicide clause in the policy, or do not pay the compensation if the suicide of the insured occurred within a year from the date when the contract was made.<sup>20</sup>

If the participant is still alive by the time of the policy's expiration, he receives the entire amount of the installments he has paid to the Participant Account, and any profit accrued there during the term of the contract. In addition, the participant receives a share of net profit from the Special Account in accordance with the rules set by the company.

If the insured decides to discontinue his participation in the *takaful* contract before the policy's expiration, he can claim only the installments he has paid prior to the contract's termination, and any profit accrued thereon (minus the operator's costs). In this case, the insured receives nothing from the Special Account.

Family *Takaful* is greatly influenced by the rules of inheritance prescribed by Islamic law. In accordance with the principles of *mirath* and *wasiyah*, the appointed beneficiary in Family *Takaful* acts as a trustee (as this institution is understood in Common law) rather than an absolute beneficiary, as in conventional life insurance. Consequently, the insurable interest in conventional life insurance belongs to the insured himself, and consists of staying alive until the policy's expiration. After the death of the

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<sup>20</sup> In Western insurance companies, this period is usually 2 years.

insured, the insurable interest is transferred to his or her spouse, parents, children, business partners, etc. In *takaful*, the insurable interest is transferred after the death of the insured to a limited number of his heirs, in accordance with the inheritance rules of Islamic law.

When studying the characteristics of *takaful*, the question arises if Islamic insurance is commercial or mutual<sup>21</sup> in its nature. The choice between these two forms of insurance should be made on the basis of such criteria as economic efficiency, correspondence to public interests (including complying with religious principles), etc. The above-mentioned rulings of Muslim scholars in Saudi Arabia, as well as in Sudan, designate the mutual (cooperative)<sup>22</sup> form as the basis of Islamic insurance. At the same time, the ASEAN countries have adopted the commercial form of Islamic insurance business.<sup>23</sup>

In the opinion of the author, it would not be quite appropriate to regard mutual insurance solely as a form of cooperation between people, and any commercial insurance as one aimed at material gain that is unlawful from the point of view of Shariah.

The majority of scholars discussing Islamic insurance believe that *takaful* basically serves the same function as conventional insurance, with the only difference that it is compliant with the teachings of Islam.<sup>24</sup> Consequently,

<sup>21</sup> In this case, the term “commercial” refers to any non-mutual insurance.

<sup>22</sup> Sometimes, Muslim scholars use the terms “mutual” (“*tabaduli*”) and “cooperative” (“*ta’awuni*”) as synonyms in reference to insurance. In such context, cooperative insurance is opposed to commercial one, aimed at generating profit. However, a number of Muslim scholars distinguish “cooperative” and “mutual” in reference to Islamic insurance. In their opinion, cooperative insurance does not rule out for-profit orientation. In this paper the cooperative insurance is that provided by cooperatives (the organizations of natural persons aimed at providing economic activity or joint consumption of goods and services). The assets of cooperatives are formed from shares and membership dues, and also from the profit received from economic activity. The cooperative insurance may be provided by mutual insurance societies, professional units, industrial associations, etc. So, it is most preferable to use the cooperative organization form for realization of the mutual insurance conception

<sup>23</sup> Though the recommendations of the special committee (Badan Petugas Khas) set up by the Malaysian government to study the possibility of establishing an Islamic insurance company in the country described a *takaful* company operating on the principles of mutual insurance. “Personal interest in material gain should not be present in Islamic insurance”, says the report of the Committee// [www.insurance.com.my](http://www.insurance.com.my)

<sup>24</sup> See for example: Badawi Zaki. A Model for Mutual Insurance// *Islamic Banker*.—1998.—June.—P. 18.

since Islamic insurance is called to provide the same services as the conventional one, it is quite acceptable that it may exist both in commercial and in mutual form, representing, in fact, an independent alternative insurance system.

In other words, Islamic insurance cannot be characterized as an Islamic counterpart of only mutual or of only commercial insurance, as each of these two forms of insurance are reflected in the concept of *takaful*, through the prism of Islamic values.

### § 2. *Development and Current Status of Legal Regulation of Islamic Insurance in some Countries*

The rules regulating the relations in the domain of Islamic insurance may be of three kinds: 1) rules contained directly in the Holy Quran and the Sunnah, 2) rules reiterating or developing provisions contained in the Holy Quran or the Sunnah, and 3) rules that do not contravene the principles of Islamic law. As Islamic insurance in its modern form is a relatively new institution, most rules regulating *takaful* relations belong to the second and third groups.<sup>25</sup> Rules concerning Islamic relations may be contained in various legal acts: laws, governmental decrees, circulars, and decisions of individual ministries and agencies.

The legislation regulating Islamic insurance was developed and fine-tuned with the practice of *takaful* companies, and reflects the merits and shortcomings of its subject matter.

#### *Sudan*

The world's first Islamic insurance company (Islamic Insurance Company of Sudan) was established in 1979. After the creation of Faisal Islamic Bank of Sudan in 1977, the bank's management started to discuss the idea of establishing an Islamic cooperative insurance company. The Memorandum of Association and the Articles of Association of the company were prepared with an active participation of the Bank's Shariah Supervisory Council.<sup>26</sup> In accordance with Sudan's Companies Act of 1925, Islamic

<sup>25</sup> In any case, in order for the legal provisions contained in the Quran and the Sunnah to be legally valid in the modern world, it needs to take on the form of a legal act.

<sup>26</sup> Under Common law, which serves as a model in regulating most private law matters in Sudan, the company's founders must prepare instead of the charter two documents: the Memorandum of Association, and the Articles of Association. The Memorandum regulates the external relations of the company, and the Articles of Association, the internal ones.

Insurance Company of Sudan was registered as a public company in January 1979.

The company was granted certain benefits. For instance, all its assets and profits were exempt from any taxes. The company's assets could not be seized, nationalized, etc. The company's operations were not subject to the country's conventional insurance legislation.

Originally, the Islamic insurance industry was regulated by the Insurance Supervision and Control Act of 1960. Only in 1983 some clauses introducing Islamic insurance were brought into the Civil Code of Sudan.

For almost ten years, Islamic insurance had been developing within the framework of the given law, and also some other laws (in particular, the Companies Act of 1925), until in 1992 a new Insurance Supervision and Control Act was passed.

The adoption of the given Act has marked an intention of the government to carry out a serious policy on the islamization of the economy (including the insurance sector). From the moment of adoption of the Act, all insurance and re-insurance companies were to make appropriate amendments to the Articles of Association and Memorandum. However, as practice has shown, one law devoted to the questions of Islamic insurance is obviously not enough.

It is necessary to adopt other laws and by-laws that would promote realization of the provisions of the basic law on insurance in practice. In particular, the law regulating questions of the conclusion of contracts in the insurance sphere is now being developed in the country. Allegedly the Sudanese experts, the Sudanese insurance market is the only market in the world that is fully islamized.

Besides Sudan, the purposeful policy on the islamization of the economy was carried out in such countries as Pakistan and Iran. Taxes, and the banking sector, have been islamized in the first priority. At the same time, the insurance sector remained untouched by the policy of islamization in both countries for a long time.

### *Pakistan*

In Pakistan, where all forces had been thrown on the creation of an interest-free credit system acceptable from the point of view of Islam, the realization of the idea of establishing an Islamic insurance company started only about years ago.

Pak-Kuwait Investment Company acted as the basic shareholder of the first Pakistan insurance company (First Takaful Insurance Company Ltd).

The given company specializes in banking-related insurance activity aiming at covering the risks connected with trade finance, project finance, and other types of finance. At the same time, life insurance activities had been inconvenient for *takaful* companies in Pakistan until *Takaful* rules 2002 were implemented. A technical support to the new company was promised by other *takaful*-operators from the Gulf countries, Malaysia, Sri-Lanka, etc.

Due to the absence of the appropriate law in Pakistan that would regulate the activity of Islamic insurers, it will be adjusted within the framework of the conventional insurance legislation with special exceptions related to *takaful* (*Takaful* rules).

Despite the course on the islamization of the economy proclaimed by the government, the given process in Pakistan has been moving forward rather slowly. The key question, of overcoming *riba*—that was repeatedly mentioned in the Constitution<sup>27</sup>—almost 30 years later after the formation of the state this could not be realized in practice.

On coming to power, the government of Ziya ul-Haq began to carry out the purposeful state policy on the islamization of the economy. It was planned to transfer the whole banking system to an interest-free basis in the shortest time (primarily, within two years). However, consideration of the prospect of islamization in other sectors of the economy (including insurance) has been postponed for the future.

At the same time, it does not mean that just now have the country's leaders addressed the question of the islamization of the insurance sector. In the decision of the Federal Shariah court of 14.11.1991, among the acts demanding revision due to the presence of the element of *riba* in them, the Insurance Act of 1938 was named. The corresponding amendments aimed at overcoming *riba* related to the calculation and payment of interest have later been made in the Act (in clauses S. 29 (8) b, c III, S. 47 B (1), and S. 81 (2) (d)).

The report of the Council of Islamic Ideology ("Islamic Insurance System") was heard in June 1992 by the government of the country. Thus, we can assert that, together with studying the prospects of the islamization of the banking system, the problem of the islamization of the insurance sector was also discussed.

<sup>27</sup> See, for example, Article 29 (f) of the 1956 Constitution provided that: "The State shall endeavour to... eliminate *riba* as early as possible"; principle 18 in the "Principles of Policy" from Chapter 2 of Part II of the 1962 Constitution stated that: "... *riba* should be eliminated"; Constitution of 1973, "Principles of Policy", Article 38 (f) stated that: "the State shall eliminate *riba* as early as possible".

However, practical steps in the given direction were undertaken only in 2000, when the Insurance Ordinance replaced the old Insurance Act of 1938. The given law reflected the new economic realities connected with the growth of the role of insurance in the national economy.

The new insurance law has the following objectives:

- to correct the existing defects in the insurance market, and strengthen the system of insurance.
- to replace the existing Department of Insurance with a new regulatory authority, i.e., the Commission, with a view to strengthen the role of the regulator in the public as well as private sector for the effective enforcement of insurance laws.
- to improve and strengthen the financial soundness of insurance companies by enhancing their level of minimum paid-up capital and solvency requirements. Also, to bring public sector insurance corporations under the purview of the Insurance Ordinance.
- to introduce market conduct provisions for developing capital market, and establish criteria for sound and prudent management of insurers, as well as protect the rights of policyholders.
- to gradually liberalize and make reinsurance arrangements more effective.
- to establish the institution of Insurance Ombudsman for investigating the complaints of aggrieved persons.<sup>28</sup>

In the new law nothing was said about the islamization of the insurance sector on the whole, and about Islamic insurance in particular. Moreover, the former Insurance Act 1938 provided more opportunities for the realization of the idea of Islamic insurance in the country. The former Act contained provisions on establishing mutual insurance companies. The new law keeps silent on this subject. At the moment of the new Act's adoption there was no Islamic insurance company in Pakistan. The first company of this kind was established in October 2003, with the authorized capital of Rs 100 million. The establishment of the first Islamic insurer in the country had demanded making appropriate amendments to the legislation (including the Ordinance).

Takaful rules 2002 provide three models for developing Islamic insurance business in the country: Mudharabah, Wakalah and Waqf models.

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<sup>28</sup> Regulation of Insurance// [www.paksearch.com](http://www.paksearch.com)

Window operations for Islamic life insurance were allowed. Takaful companies' activity is regulated by Securities and Exchange Commission of Pakistan.

At the same time First Takaful Insurance Company has not had time to achieve visible results in the insurance market yet; therefore, it is still too early to do any forecasts concerning the passing of a special Takaful act devoted to the regulation of Islamic insurance in the country. However, following an experience of the regulation of Islamic banks, it is possible to assume that, in the case of success of the activity of Islamic insurance company(ies), the government will accelerate the acceptance of an appropriate legislation (as Takaful Act in Malaysia) that would more widely regulate the activity of Islamic insurer(s).

In September 2000, the president of the country, Musharraf, solemnly opened "Meezan bank", that has become the first institution of this type in Pakistan. It was established on the basis of the investment bank that has been working since 1997. One of the shareholders of the bank is Pak-Kuwait Investment Company. The special Islamic banking Act has not been implemented yet. Draft Banking Act provides more opportunities for developing Islamic banking in Pakistan<sup>29</sup>.

Analyzing the course of the islamization of the Pakistani economy, one cannot disagree with Abbas Mirakhor, who says there was a typical fundamental mistake made in Pakistan in the process of the islamization of the economy.<sup>30</sup> According to his point of view, the first step that should be made in the countries of the Muslim world is to convert the system of macroeconomic management in accordance with the Islamic principles. Only then it will be possible to take appropriate measures for the islamization of financial management at bank and insurance levels.

Actually, not only the given aspect has been ignored in Pakistan. The realization of the Islamic economic model was entrusted to the Council of Islamic Ideology, the Ministry of Islamic Affairs, and the Federal *Shariah* Court, while the State Bank appeared on a roadside of this process and was content with technical functions. Today, the actions of executive authority give all grounds to consider that it has actually postponed the project of the complex islamization of the banking and insurance sectors, and the economy as a whole. The government has gone on a way of developing a

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<sup>29</sup> [www.sbp.gov.pk/about/act/index.htm](http://www.sbp.gov.pk/about/act/index.htm)

<sup>30</sup> Juravliov A.J. *Teoria i praktika islamskogo bankovskogo dela* (The Theory and Practice of Islamic banking).—M., 2002.—P. 75.

parallel Islamic banking and *takaful* sector coexisting with the conventional banks and insurance companies, as it takes place, for example, in Malaysia, with its dual model of the financial sector.

### *Iran*

As far as Iran is concerned, there has not been any Islamic insurance company established yet. Insurance as a sector of the national economy in its modern form has not existed in the country for a long time. The first Iranian insurance company was established in 1935, by the government, as a state-owned insurance company, while there were already 21 different foreign companies and agents acting in the Iranian insurance market.

Until the nationalization of the insurance sector that followed the Revolution of 1979, Iran Insurance Company was the only state-owned company in Iran. Twelve other privately owned insurance companies were in operation together with the two foreign agencies.

However, the nationalization of the insurance sector in Iran did not automatically lead to its islamization. The government has concentrated its attention on the islamization of the banking sector, fairly believing that the future of the Islamic economy depends, on the whole, on success in this sector. At the same time, the Iranian banking system, apparently, cannot be considered completely free from *riba*. As a matter of fact, interest-bearing transactions are a wide-spread practice in the relations between banks and the government (apart from unlawful, but almost obvious usury in which large businessmen, so-called *bazari*, are engaged).

Existing *modus operandi*, in particular in conditions of increasing inflation, puts lenders and creditors in unequal conditions that do not comply with the basic principles of an Islamic economy. To this day, the problems of extending banking assets, and the prevalence of financial transactions over trading operations, survive in spite of the fact that the banks are prescribed to reduce operations connected with the sector of services, manufacture of luxury goods with a big import component, etc. It is typical that the Chairman of the *Shariah* Appellate Bench of the Supreme Court of Pakistan R. Shaikh expresses skepticism in respect of the Iranian financial system, and does not consider it to be perfectly Islamic.<sup>31</sup>

In confirmation of this, in July 2002, Iran issued the first eurobonds after the Revolution, for a period of 5 years, for the sum of 500 million

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<sup>31</sup> Business Recorder. 15.06.2001.

euros, which, unlike those emitted by Bahrain and Malaysia, are not based on the Islamic model.

The same can also be said about the legislation regulating various aspects of the economy. It is remarkable that the basic laws regulating the insurance industry (the Iran Insurance Act of 1937, the Central Insurance of Iran Establishment and Insurance Operation Act of 1971, etc.) had been accepted before the Revolution. Among recently adopted acts is the Act of Establishment of Non-Government Insurance Companies of 2001. However, there is nothing said about Islamic insurance companies in these laws.

### *Saudi Arabia*

In the same year as in Sudan, Islamic Arab Insurance Company was established in Saudi Arabia. Earlier, the Standing Committee on Scientific Research and Fatwas<sup>32</sup> had approved the so-called Cooperative Insurance Concept that widely influenced the development of both Islamic and conventional insurance in the country.<sup>33</sup>

In 1984, a royal decree approved the establishment of the National Company for Cooperative Insurance as a limited liability company, with an authorized capital of USD 133 mln (paid capital of USD 66 mln).

The company's charter states that its objective is to "conduct cooperative insurance and related operations, such as reinsurance or agency operations, providing that such operations are in compliance with the Islamic *Shariah*" (section 3).<sup>34</sup>

However, a study of the documents and operations of the National Company for Cooperative Insurance, and other cooperative insurance companies in the country (Islamic Insurance and Reinsurance Company, Saudi Insurance Company (Methaq) and others), shows that their operations are not based on the principles of Islamic law, and are not using the mechanisms and tools of Islamic economy, but are simply in compliance with *Shariah*, which, in the opinion of the author, is not the same thing.

<sup>32</sup> Standing Committee on Islamic Research and Fatwas: a board of the leading Ulama' headed by the Supreme Mufti.

<sup>33</sup> As for conventional insurance, it was effectively legalized in Saudi Arabia in the early 1930s. In the Commercial Court Regulations approved by a royal decree on 15.1.1350 of Hijra, an entire section was dedicated to the regulation of maritime insurance.

<sup>34</sup> Al-Ghadyan A.A. Insurance: the Islamic Perspective and Its Development in Saudi Arabia// Arab Law Quarterly.—1999.—Vol. 14, No. 4.—P. 336.

As it appears from the decisions made by Saudi scholars, they were guided by the principle that is known not only in Islamic law: “all that is not expressly prohibited by law (in this case, by *Shariah*) is allowed”. Obviously, this position has both strong and weak sides. On the one hand, such legal liberalism opens a wide scope for Muslim scholars in developing Islamic law. On the other hand, as the experience of Saudi Arabia shows, certain civil law provisions that are formally in line with *Shariah* may contravene some of its principles.<sup>35</sup> Saudi private law expert Thabet Koraytem justly notes that the “Westernized aspects of Saudi law do not contravene Islamic law, without being actually Islamic”.<sup>36</sup> This point of view seems to be disputable; however, we can’t deny the fact that, unlike in Sudan, Saudi legislators did not set Islamic insurance apart as a separate insurance system, believing that the operations of the newly established companies are compatible with the country’s Europeanized insurance legislation. And, the business of Islamic Insurance Companies of Sudan, just as in Saudi Arabia, was in compliance with Islamic law, rather than regulated by its principles.

The establishment of the first *takaful* company (*Takaful Ta’awuni*) in the country cause *sui generis* a dual situation. Conventionally speaking, both cooperative (mutual) and *takaful* companies act according to *Shariah*. However, *takaful* companies more actively use various mechanisms accepted by Islamic financial institutions in the world.

The new Supervision on Cooperative Insurance Companies Act of 2003 reflects this unique situation. It regulates the activity of both cooperative (mutual) and *takaful* companies. The main condition for all regulated insurers is the full compliance of their activity with *Shariah* (Article 1 of the Act). This Law was named a ‘hybrid’ by experts: they describe it as unsuccessful attempt to bridge the gap between the *Takaful* model and the mutual model.

Later, all legislation in the world regulating the business of Islamic insurers followed one of the above ways: legislators either excluded Islamic insurance companies from the scope of conventional insurance legislation,

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<sup>35</sup> For example, in so-called capital companies, under the existing procedure, future partners may never meet, which violates a fundamental principle of *Shariah* requiring the unity of time and place when making a contract// Koraytem T. The Islamic Nature of the Saudi Regulations for Companies// Arab Law Quarterly.—2000.—Vol. 15, No. 1.—P. 68.

<sup>36</sup> Ibid.—P. 68.

or considered their status within the framework of conventional insurance law.<sup>37</sup> The situation changed when the *Takaful* Act of 1984 was passed in Malaysia.

### Malaysia

The government provided comprehensive support to the nascent business. The Central Bank of Malaysia was called upon to regulate the business of Islamic insurance companies, and monitor the compliance of their operations with *Shariah*.

Even today, the Malaysian government encourages those who make a contact with *takaful* operators. They are granted tax breaks of up to 5,000 ringgits for installments paid on General *Takaful* policies, and 7,000 ringgits for installments paid on health or education policies. Obviously, such protectionist policies help the development of the Islamic insurance business in the country.

The unique position of Islamic insurers in the country, and the special attention on the part of the government, is reflected in the current legislation. The world's first dedicated legislative act on Islamic insurance was passed in Malaysia. This is the *Takaful* Act of 1984. The adoption of this law was preceded by thorough analytical work conducted by an *ad hoc* committee, Badan Petugas Khas. This committee was established by the Malaysian government, in 1982, to study the possibility of creating an Islamic insurance company in the country, and to evaluate the potential for the development of *takaful*. The committee worked for two years, and studied, among other things, the experience of Islamic insurance companies that existed by that time in the world. Based on the results of its work, Badan Petugas Khas recommended the following: 1) to use the term "*takaful*" instead of "Islamic insurance",<sup>38</sup> 2) to conduct the *takaful* business on the basis of the *mudharabah* model, 3) to establish a *takaful* company as a government agency, 4) to enable the *takaful* company to act independently from conventional insurance companies, and 5) to adopt a special act regulating the operations of the *takaful* company, etc.

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<sup>37</sup> Before 1984, Islamic insurance companies were established in the Bahamas, Luxembourg, and other countries. Later, Islamic insurers appeared in the U.K., the U.S.A., Australia, Sri Lanka, and others. Their status is generally regulated within the framework of conventional insurance legislation.

<sup>38</sup> Since then, most Islamic insurance companies contain the word "*takaful*" in their name.

The Takaful Act of 1984 consists of 4 chapters (sections) and 68 articles. The act regulates such matters as: conditions of registration for persons wishing to engage in the *takaful* business, procedures for the establishment and replenishment of *takaful* funds, licensing requirements for agent and broker operations, procedure for opening a branch of a *takaful* company, procedure for government monitoring of the business of a *takaful* company, liability of operators violating the provisions of the Act, etc. Article 2 of the Act contains a short glossary explaining the meanings of a number of terms related to Islamic insurance (as they shall be understood in the Act): *takaful*, *takaful* business, *re-takaful*, adjuster,<sup>39</sup> and others.

A number of provisions in the Takaful Act merely provide a general legal framework. Reading it, one can conclude that its authors kept in mind that the more detailed is a law, the more it will be difficult to amend it in the future to accommodate changes in the country's economic situation. Also, when the provisions of a law are too detailed, any unintentional gaps risk being recognized as deliberate omissions.

Nevertheless, many experts believe that the Takaful Act needs to be amended.<sup>40</sup> After the Takaful Act was passed, the role of Islamic insurance in Malaysia and other ASEAN countries has greatly increased. Even though the number of *takaful* operators in the country changed only slightly,<sup>41</sup> important qualitative changes have occurred, changing the face of the Malaysian insurance market. For example, the premiums paid in Islamic insurance rose by 30% by the end of June 1998,<sup>42</sup> compared to 19% in the conventional sector, while the total amount of premiums in Islamic insurance was then equal to 3% of the premiums paid in the conventional sector.<sup>43</sup>

<sup>39</sup> Adjuster—the person who investigates and settles claims on behalf of the insurance company, assessor of insurance claims (insurance losses)

<sup>40</sup> Significant amendments to the Takaful Act were made in 1985, 1988 and 1989. The last significant amendment is the Takaful (Amendment) Bill of 2003 which was made to consolidate the Shariah mechanism to allow Shariah advisories be dispensed through the Shariah Advisory Council. The Bill contained provisions that the existing Shariah Monitoring Board be renamed Shariah Advisory Council with the body placed under the Central Bank (Bank Negara). The Council functions as an advisory body, among others, for *takaful* agents, brokers, and adjusters.

<sup>41</sup> Currently, Malaysia has seven *takaful* operators: Syarikat Takaful Malaysia Bhd, Takaful National Sdn Bhd, Takaful Ikhlas Sdn Bhd, and Maybank Takaful.

<sup>42</sup> The fiscal year in Malaysia ends on June 30.

<sup>43</sup> Premium Growth Despite Economic Slowdown// Islamic Banker.—1998.—December.—P. 13. In general, Islamic financial institutions in SEA countries were not much

The Takaful Act is also questioned by Muslim scholars, who believe that it needs to be revised to bring it in stricter compliance with the *Shariah* principles. It is no secret that the business of *takaful* operators in Malaysia largely relies on the provisions and institutions of Common law, ignoring the possibilities offered by Islamic law to regulate similar situations. As Ma'sum Billah rightfully notes, the problem lies not so much in the inevitable influence of Common law as in the lack of acceptable solutions on the part of Muslim scholars.<sup>44</sup>

Proposals to revise the Act in order to further "islamize" or, more exactly, "shariatize" it, appear more and more often in scientific and political publications. For instance, it is being proposed to replace the system of loss valuation currently used in Islamic insurance, and based on Common law, with the institutions of *diyah* and *daman*.<sup>45</sup>

An important problem faced by Islamic insurance is that of *Shariah*-compliant investment.

Under the legislation that is currently in force in most of the countries, all insurance companies, including Islamic ones, are required to invest their funds, which is in violation of the *Shariah* principles. For example, investments in government securities, commonly practiced by conventional insurance companies in accordance with the legislation in force in various countries, are unacceptable to Islamic insurers, as profits on such investments are interest-based.

To be able to invest their funds in compliance with *Shariah*, Islamic insurers must significantly raise their premium rate as compared to conventional insurance companies. Obviously, this is bound to adversely affect their competitiveness, since a company's position in the insurance market is determined by the price and the quality of the services provided.

The most acceptable investment methods for Islamic insurers from the point of view of Islamic law are the following:

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affected by the Asian financial crisis in 1997-98. Some Muslim economists cite as one of the reasons the advantages of an Islamic economy

<sup>44</sup> Billah Ma'sum. Sources of Law Affecting Takaful (Islamic Insurance)//www.islamic-finance.net

<sup>45</sup> See for example: Billah Ma'sum. Quantum of Damages in Takaful (Islamic Insurance): a Reappraisal of the Possibility of the Adopting the Doctrines of al-Diyah and al-Daman// Arab Law Quarterly.—1999.—Vol. 14, No. 4.—Pp. 339-360.

- 1) deposits at Islamic banks,
- 2) investments based on the *mudharabah* model,
- 3) investments based on the *musharakah* model,
- 4) investments in real estate,
- 5) Islamic securities.

However, virtually all countries where *takaful* operators are present lack extensive opportunities for such investments, one of the reasons being the lack of development of the appropriate mechanisms and institutions of an Islamic economy.

The most favorable situation for *Shariah*-compliant investments is in Malaysia. Islamic insurance companies currently can invest their funds in approximately 480 corporate securities quoted on the Kuala Lumpur Stock Exchange. Apart from that, Islamic insurers can use other investment methods in compliance with the requirements of Islamic law. Thus, Syarikat Takaful Malaysia may invest funds from Participant Accounts into Bank Islam Malaysia for a period of between 1 and 60 months. This bank also helps the company to invest funds from its Special Accounts.<sup>46</sup> In addition, investment in government investment certificates issued by the Central bank of Malaysia under the Government Investment Act of 1983 and structured on a *Shariah* compatible principle of *qard hasan*, is also one of the ways of keeping funds in agreement with *Shariah*.

Another important problem faced by Islamic insurers is the lack of development of a system of Islamic reinsurance (*re-takaful*). In percentage, the number of Islamic re-insurers (*re-takaful* operators) in the world is far below the needs of the Islamic insurance market. In practice, this means that Islamic insurers are compelled to deal with conventional re-insurers. Another aspect of the problem is the lack of legislation regulating the status and the operations of Islamic re-insurers.<sup>47</sup>

The Malaysian experience of Islamic insurance was used in other South-East Asian countries. During the 1990s, 3 *takaful* companies were established in Singapore, and 4 in Indonesia and Brunei. However, no special

<sup>46</sup> Maysami R.C., Kwon W.J. An Analysis of Islamic Takaful Insurance: a Cooperative Insurance Mechanism// Journal of Insurance Regulation.—1999.—Vol. 18, No. 1.—P. 126.

<sup>47</sup> For more on *re-takaful*-related matters, see: Arbouna Mohammed Burhan. The Operation on Retakaful (Islamic Reinsurance) Protection// Arab Law Quarterly.—2000.—Vol. 15, No. 4.—P. 335-362.

legislation regulating the status of Islamic insurance was passed in these countries.

It is important to note that the Malaysian legislation contains provisions for a situation when a Muslim, due to some reason, is insured by a conventional insurance company. Taking into account the specific inheritance rules under Islamic law, the legislators restricted the application of some of the provisions of the Act to Muslims only. Thus, in Malaysia's 1996 Insurance Act regulating conventional insurance relations, Article 166 concerns non-Muslim insurance customers and stipulates that the nominee shall be regarded as an absolute beneficiary. He must be a close relative of the insured. Any profit on the policy cannot be used to repay the beneficiary's debts.

The next, Article 167, applies to Muslims only, and does not contain any restrictions on the choice of the beneficiary, who is regarded as a trustee, and not as an absolute beneficiary. Any profit on the installments paid forms part of the policyholder's property, and can be used to repay his debts.

Thus, the same Act may contain articles regulating the same type of relations but applying to different categories of citizens. Naturally, the Insurance Act of 1996 does not provide for all the possible cases of non-compliance of its articles and individual provisions with *Shariah*, but the above example is a good model for countries where the rights and interests of Muslims still have not been reflected in the law.<sup>48</sup> In any case, such separate provisions applicable to Muslims appears to be more acceptable for many legislators, as the economic and political situation in many cases does not favor the passage of special Acts regulating the status of institutions of an Islamic economy.

The answer to the question whether it is necessary to pass a special legislative act regulating the relations in the domain of Islamic insurance depends primarily on the role played by *takaful* in each particular state. The example of Malaysia, Pakistan, and other countries, clearly shows that this role is not determined by the number of *takaful* operators in the country, or even by the scale of their operations, but rather by their importance to the economy, from the government's point of view. As was said earlier,

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<sup>48</sup> This is not to suggest that the legislator must accommodate each and every principle of Islamic law. But those contained in the Holy Quran and concerning not only the Muslim religious practice but also family law, inheritance, prohibition of usury, etc., should be taken into account where possible by the legislator in the law-making process.

in the case of Malaysia, the promotion and legislative confirmation of *takaful*'s status was helped by the interest of the country's government in the development of Islamic financial institutions. The government strives to take into account the interests of Muslims, who make up more than half of the population. At the outset, this found its expression in the creation of committees such as Badan Petugas Khas, serious analytical research into the possibility of implementing elements of an Islamic economy in the country, and, finally, in the adoption of the Takaful Act.

After the Takaful Act was passed, the government continues to assist Islamic insurers in the country. Many experts note the fact that, even though Islamic insurers are effectively in the same competitive conditions in the market as their conventional insurance counterparts, the government continues to take care of them where it can. For example, some time ago, the Central bank of Malaysia established an *ad hoc* committee to prepare a five-year strategic development plan for the *takaful* business, aimed at boosting the growth of assets in Islamic insurance. And, in order to unify the practices and standards of Islamic banks and *takaful* operators, and "to avoid instability in the society", the National *Shariah* Advisory Council on Banking and Takaful (SAC) was established as a supervisory body on May 1 1997.

Encouraging the slow but efficient development of Islamic insurance in the country, the government is not rushing to issue licenses to every applicant, preferring instead to help establish special divisions (so-called "windows") within the existing insurance companies that specialize in *takaful* business. At the same time, the number of companies applying for *takaful* licenses is growing.

The author believes that, in the domain of Islamic insurance regulation in countries where Muslims form a confessional majority, it makes sense to pass subsidiary legislation and other legislative acts that would elaborate on the provisions contained in the main Takaful act, if one exists.<sup>49</sup> If no special Takaful act has been passed, *takaful*-related matters should be addressed in detail by government and ministerial decrees, rather than being stipulated separately in the insurance law. Since such decrees can be easily amended, they can play a central role in regulating and detailing the

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<sup>49</sup> For more information on the regulation of the status and operation of Islamic insurers in non-Muslim countries, see the section "Legal and Other Grounds for Implementing Islamic Insurance in Russia".

relations in the domain of Islamic insurance, which in turn should benefit the development of *takaful* business.

Among the countries where *takaful* companies are operating, Malaysia is the leader in terms of the number of regulatory acts concerning Islamic insurance. More than 15 legal acts are currently in force in the country, regulating such important insurance-related matters as: procedure for the registration of *takaful* operators, amount and payment method of annual registration fees, rules regulating the payment of installments, status of brokers and adjusters, procedures related to insurance reserves, etc.

This does not, however, mean that internal methods of regulating the relations in the domain of Islamic insurance, relying on Islamic business ethics, are excluded.

To summarize, it is important to note that today Islamic insurance is mainly regulated by laws passed by the parliament, or by decrees issued by the executive power, which either develop the provisions contained in the Holy Quran and the Sunnah, or do not contravene them.<sup>50</sup>

The first act specially dedicated to Islamic insurance is the 1984 Takaful Act (Malaysia). Special legislation regulating Islamic insurance was promulgated in Sudan. Meanwhile, in the rest of the countries, the business of *takaful* operators is regulated within the framework of conventional insurance legislation.

The current legislation indicates the ups and downs of the islamization of the insurance sector in the considered countries. Actually, we can conclude that no country in the world (except Sudan) went the way of the total islamization of the insurance sector. The dual model predominated in the majority of countries where non-Islamic and Islamic insurers co-exist in the market, and the activity of the latter is regulated within the framework of special legislation.

When developing Islamic insurance laws, the governments of the countries where *takaful* operators are currently present will need not only to analyze the economic basis of a special *takaful* act, but also to take into account the religious expectations and demands of their citizens. The issue of establishing Islamic insurance companies, and passing the corresponding legislation, is first of all a political one. The majority of Islamic insurance

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<sup>50</sup> In countries, such as Malaysia, that have adopted (completely or partly) English law, precedent plays an important role. For more on that, see for example: Joseph J.M., Ismail M.A., Teoh P., Satkunabalan. *Malaysian Precedents and Forms—Insurance* (Vol. C).—Kuala-Lumpur, 2001.

companies around the world were established in 1980-90-s less with a view to earning profit than to putting Islamic economic views into practice.

However, even if, theoretically, Islamic insurance companies are most comfortable in a *Shariah*-based economic system, the actual state of affairs compels them to operate in, and stay competitive in, non-Muslim economies, which is reflected in the current legislation.