

ISLAMIC INSURANCE
A modern approach with particular reference to
Western and Islamic Banking

By

Aly Abdul Rahim Khorshid

Submitted in accordance with the
Requirement for the degree of
PhD

The University of Leeds
Department of Arabic and Middle Eastern Studies
April 2001

The candidate confirm that the work submitted is his own
And that appropriate credit has been given where reference
Has been made to the work of others

Aly Abdul Rahim Khorshid

ISLAMIC INSURANCE

a modern approach with particular reference to
Western and Islamic Banking

April 2001

PhD

ABSTRACT

Muslims are very concerned with the ethics of insurance and most non-Muslims find it difficult to understand the Muslim concern with the moral considerations which influence and restrict its acceptance in Islam. This thesis is concerned with insurance in the Islamic world and with an examination of some of the insurance practices in non-Muslim countries which are acceptable in most Islamic countries. The study considers Islamic law, interpretation and practice regarding insurance.

The theoretical aspects covers the following :

- (1) Islamic religious foundations, which have a spiritual effect on all Muslim decisions
- (2) The examination of the Qurān and *Sunna* which provide the first two sources of Islamic law.
- (3) The prohibition of *Ribá* (usury) as incompatible with economic justice, also the objection by Muslims to *Gharar* (risk) and *Qimar* (gambling), the legitimate grounds for making money, and achieving harmony between the material and the spiritual
- (4) Medieval Christian and Islamic doctrine regarding usury
- (5) The understanding and objectives of insurance within Islam and Islamic law (*Shari'ah*).

The empirical aspect involves examining the following:

- (1) The Prophet Mohammad as a prophet and moral exemplar
- (2) The history and background of insurance in the Muslim world
- (3) Pr-modern and modern jurists views on insurance
- (4) Mutual insurance systems in the West
- (5) Case studies of the Islamic financial system

The main contribution of this thesis is to the debate on Islamic insurance and its origins and to provide the theoretical foundations for an insurance system which reconciles Islamic law with certain forms of insurance services provided in the West. Through promoting the understanding of both systems, it ultimately aims to develop a constructive and profitable collaboration between them.

Through the critical analysis of the principles and practice of insurance the study will address Muslim objections to insurance, even those of the most literal Muslim jurists, and seek to overcome them.

ACKNOWLEDGEMENT

**I should like to express my gratitude to Professor Ian Richard Netton
for his guidance, patience and support
and to Professor Mohammad Abdul Haleem
for the introduction to my supervisor**

**I am also indebted to Miss Hiyam Haddad who typed this work
and managed to read my handwriting
Dr. W. Mowafy for his valuable assistance
and Dr. Noha Mohsen, my wife and to my children for their patience and support**

ISLAMIC INSURANCE
a modern approach with particular reference to
Western and Islamic Banking

ABSTRACT

Muslims are very concerned with the ethics of insurance and most non-Muslims find it difficult to understand the Muslim concern with the moral considerations which influence and restrict its acceptance in Islam. This thesis is concerned with insurance in the Islamic world and with an examination of some of the insurance practices in non-Muslim countries which are acceptable in most Islamic countries. The study considers Islamic law, interpretation and practice regarding insurance.

The theoretical aspects covers the following :

- (1) Islamic religious foundations, which have a spiritual effect on all Muslim decisions
- (2) The examination of the Qurān and *Sunna* which provide the first two sources of Islamic law.
- (3) The prohibition of *Ribá* (usury) as incompatible with economic justice, also the objection by Muslims to *Gharar* (risk) and *Qimar* (gambling), the legitimate grounds for making money, and achieving harmony between the material and the spiritual
- (4) Medieval Christian and Islamic doctrine regarding usury
- (5) The understanding and objectives of insurance within Islam and Islamic law (*Sharīʿa*) .

The empirical aspect involves examining the following:

- (1) The Prophet Mohammad as a prophet and moral exemplar
- (2) The history and background of insurance in the Muslim world
- (3) Pr-modern and modern jurists views on insurance
- (4) Mutual insurance systems in the West
- (5) Case studies of the Islamic financial system

The main contribution of this thesis is to the debate on Islamic insurance and its origins and to provide the theoretical foundations for an insurance system which reconciles Islamic law with certain forms of insurance services provided in the West. Through promoting the understanding of both systems, it ultimately aims to develop a constructive and profitable collaboration between them.

Through the critical analysis of the principles and practice of insurance the study will address Muslim objections to insurance, even those of the most literal Muslim jurists, and seek to overcome them.

ISLAMIC INSURANCE
a modern approach with particular reference to
Western and Islamic Banking

ABSTRACT

TABLE OF CONTENTS

INTRODUCTION	1-5
CHAPTER 1. THE RELIGIOUS FOUNDATIONS	6-15
Introduction	6
1.1 Islamic Revelation	6
1.2 The concept of God in Islam	7
1.3. God's attributes	8
1.4 The Prophet	8
1.5 The Role of the Qurán	9
1.6 The concept of worship in Islam	10
1.7 The gratitude and fear of the Muslim believer	13
1.8 Conclusions	14
CHAPTER 2. USURY AND INSURANCE IN THE <i>QURÁN AND SHARĪ'Ā</i>	16-50
Introduction	16
2.1 Usury (<i>Ribá</i>) in the <i>Shari'a</i>	16
2.2 Quránic injunctions concerning <i>Ribá</i>	17
2.3 The Prophet's sayings on <i>Ribá</i>	19
2.4 The Medieval Christian and Islamic Views of Usury	21
2.5 Insurance in the <i>Shari'a</i>	22

2.6	A history of insurance	22
2.7	The meaning of insurance in Islam	24
2.8	References to <i>Aman</i> in the <i>Qurán</i>	25
2.9	Faith as insurance - <i>Ta'min al-Imani</i>	26
2.9.1	Faith as insurance against fear and sadness	29
2.9.2	Prayer as insurance	30
2.10	Insuring the hereafter (<i>Al-Ta'min al Akhrawi</i>)	32
2.10.1	Assurance of the(<i>Ta'min</i>) higher levels of Heaven	33
2.11	Worldly insurance (<i>Al-Ta'min al-Dunyawi</i>)	34
2.11.1	Insuring livelihood	34
2.11.2	Insuring against fear and poverty	35
2.11.3	Insuring against sadness and grief	36
2.11.5	Insuring against illness (<i>Al-Marad</i>)	37
2.11.6	Insuring protection (<i>Himayah</i>) and asylum	37
2.11.7	Insuring the path (<i>Ta'min al-Tariq</i>)	37
2.11.8	Insuring against God's punishment (<i>al-Dunya</i>)	38
2.11.9	Pilgrim insurance in Mecca(<i>Ta'min Al Bayt al-Haram</i>)	39
2.11.10	Insuring peace and salutation to strangers	40
2.12	The objectives of insurance in Islamic Law(<i>Al-Shari'a</i>)	40
2.12.1	Original objectives	42
2.13	Islam moral system	42
2.14	Consciousness of God	44
2.15	Social responsibilities	44
2.16	Conclusions	45
 CHAPTER 3. AN OVERVIEW OF ISLAMIC BANKING		51-81
	Introduction	51
3.1	The recent history of Islamic banking	51
3.2	Islamic banking in the West	52
3.3	Co-operation and integration	52
3.4	Prospects for the future	54
3.5	Traditional Islamic financial instruments	55
3.5.1	<i>Mudáraba</i> (trust financing)	55

3.5.2	<i>Murábaha</i> (cost plus financing)	55
3.5.3	<i>Musháraka</i> (profit-sharing)	55
3.5.4	<i>Ijara</i> (leasing)	55
3.5.5.	<i>Ijara wa Iktina</i> (lease purchase)	56
3.5.6	<i>Qard Hassan</i> (interest free loan)	56
3.6	Forbidden <i>Ribá</i> and <i>Gharar</i>	56
3.7	Need (<i>Haja</i>) sand Necessity(<i>Darurah</i>)in Islamic Law	60
3.7.1	Summary of financial activities proscribed by Islam	61
3.8	Insurance and the Islamic contractual framework	62
3.8.1	Insurance and <i>Mudáraba</i>	62
3.8.2	Insurance and <i>Waqf</i>	66
3.9	Other Islamic financial instruments	69
3.9.1	Insurance and onerous donation	69
3.9.2	Insurance and <i>Zakát</i>	72
3.10	The evolution of Islamic financial institutions	74
	Conclusion	77

CHAPTER 4. MODERN JURISTS STANDING ON INSURANCE

82-137

	Introduction	82
4.1	Pre-Modern Jurists Standing on Insurance	82
4.1.1	Ibn Abdin's Strictures on Marine	82
4.1.2	Imam Mohammed Abdu's Legitimate Rule for Life Insurance	86
4.2	Al-Maliki School of Law	97
4.2.1	Mustafa Ahmed El-Zarqa views	97
4.2.2	The system of 'Aqila' in Islam	98
4.3	Modern Jurists standing on insurance	101
4.3.1	The Legitimate Bases of Insurance	103
4.3.2	Prohibition of <i>Gharar</i> and the validity of insurance	103
4.4	Invalid bases of insurance	106
4.4.1	Implication of <i>Riba</i> in insurance	106
4.4.2	Gambling versus insurance	107

4.4.3	Other arguments on the invalidity of insurance	107
4.4.4	Other views of insurance	112
4.4.5	Inconsistencies in arguments prohibiting insurance	112
4.4.6	Main reasons for Muslim Jurists Prohibiting Insurance	115
4.4.7	<i>Al-Majma' al-Fikhi</i> (Egypt) view of insurance	119
4.5	Between <i>Shari'a</i> Jurists and insurance	121
4.6	An Opinion in the commercial insurance	123
4.7	Proposal of an insurance system in compliance with Islamic <i>Shari'a</i>	125
	Conclusion	132
 CHAPTER 5 THE DEVELOPMENT OF MUTUAL INSURANCE IN THE WEST		 138-160
	Introduction	138
5.1	The organization of mutual insurance	139
5.2	Mutual value	140
5.3	Mutual stock	141
5.4	Mutual assessment	141
5.5	Other Registered societies and clubs	142
5.6	Risk management	143
5.7	Applications of mutual insurance to risk management	144
5.8	Reinsurance and foreign exchange	147
5.9	Investment of mutual insurance	147
5.10	State regulation of insurance and reinsurance	148
5.11	Mutual insurance in the USA	151
5.12	Mutual insurance: the European approach	155
5.13	Technical personnel and exchange of information	158
	Conclusion	158

CHAPTER 6. THE DEVELOPMENT OF ISLAMIC BANKING AND INSURANCE IN MALAYSIA AND SAUDI ARABIA, TWO CASE STUDIES	161-185
Introduction	161
6.1 The development of Islamic banking in Malaysia	161
6.2 A wide variety of instruments	163
6.3 Malaysia and the <i>Takaful</i> Act	166
6.4 Insurance in Saudi Arabia (Case Study)	174
6.4.1 The National Co-operative Insurance Company	175
6.5 Proposed Islamic insurance organisation	181
Conclusion	183
 CHAPTER 7. BASIC PRINCIPLES OF AN INSURANCE SCHEME ACCEPTABLE TO THE ISLAMIC FAITH	 186-200
Introduction	186
7.1 Indemnity insurance and non-indemnity insurance	186
7.2 Professional insurance	187
7.3 State supervision and control	188
7.4 The insurance contract	191
7.5 Investment policy of insurance companies	193
7.6 Insurance schemes acceptable to Islam	195
Conclusion	199
 CHAPTER 8. CONCLUSIONS	 201-205

	APPENDICES	206-254
Appendix 1	Mudáraba for Investment, Savings and <i>Takaful</i> among Muslims	206
Appendix 2	Arabian Insurance Guide: Islamic Reinsurance Operating Principles	214
Appendix 3	Glossary of Mutual Insurance: from case studies of the USA, Australia, Canada, Japan and Finland	218
Appendix 4	Glossary of Islamic Financial Terms	251
Appendix 5	Glossary and index of some terms included in the theses	255

INTRODUCTION

Insurance in the Islamic world is practised on a much smaller scale than in non-Muslim countries. This is because insurance was imposed on, rather than originated within, the Islamic system.

Muslim countries are part of a global system and have to live and trade within it. It is therefore desirable to have an insurance formula acceptable to Islam, and this has been the aim of several studies in the Islamic economic sector which deal with insurance as part of the wider system.

In the Muslim world, insurance has greater significance and application than in non-Muslim countries, where it is limited to financial insurance (financial compensation in return for a paid premium). In Islam the significance of insurance extends to the everyday acts and decisions a Muslim person makes.

In general, Muslims are not against insurance and there is no serious conflict between financial insurance as practised in non-Muslim countries and the wider application of insurance in Muslim countries. Financial insurance in the Muslim world is only part of a wider interpretation of overall insurance, which addresses the relationships and dealings between people, Muslim and non-Muslim, and between people and God.

The 19th and 20th centuries witnessed the military, and consequently, political triumph of the West over the Muslim world which brought radical changes resulting in a decline in the power of the Islamic social order to control Muslims' lives. A new set of secular norms and Western inspired-cultural, political and socio-economic development programs were imposed as an alternative to the traditions and heritage which had been rooted in the consciousness of Muslim societies throughout their history¹.

The main aim of this study is to engender an understanding of the broader aspects of insurance as exercised in the Muslim world by exploring the Muslim arguments

for and against financial insurance and its legitimacy in the Muslim world. The study also highlights the forms of financial insurance practised by non-Muslim countries which are also acceptable in the Muslim world.

The principal reservation Muslims have about insurance generally concerns *Ribá* (usury). Usury, the practice of lending money at interest, is no longer unacceptable in the West and has an important part in its economic system, whereas *Ribá* is prohibited under Islamic law which forbids it in all dealings. It would nevertheless be wrong to see Islamic finance as nothing more than a negative constraint simply because it contains a number of prohibitions. These constraints are essentially concerned with economic justice and how reward can be morally justified.

Islam is not against making money and there is no inherent conflict between the material and the spiritual. However, what is important is how money is made. Wages, salaries and profits are legitimate rewards as they are a return for risk taking and the anxieties that risk taking often entails. On the other hand, interest is not seen as a justifiable reward since it involves no work or effort. Merely making money from money is regarded as sterile since no wealth creation is involved on the part of the provider of the capital. The borrower may be creating wealth and may be taking considerable risks but these are not shared by the financier, who expects an interest payment unrelated to the returns from the transaction. Interest is seldom related to the return on what is being funded. Islamic economists believe that returns on finance should be determined in accordance with how the funds are used, not as unjustified gains or losses to the lender or borrower².

The rise of *Ribá*--based banks and insurance companies in the Muslim world caused much controversy over the legitimacy and permissibility of interest, as well as other transactions performed by these banks and companies. This controversy absorbed the attention of Muslim scholars and stood as a critical test for Muslims to prove their loyalty to their religion³. Some Muslim scholars insist that the use of interest is *Ribá*, to be prohibited in all forms and in all circumstances. Others consider interest as merely a result of one of many forms

of investment from which the investor has a legitimate right to choose, as the money invested exceeds the person's main needs (food, drink, shelter and medicine) and may therefore be considered as a form of trading where a return is legitimate.⁴

However, for more than half a century the debates among Muslim jurists have concentrated only on the prohibition of *Ribá* and the permissibility of profit via trade - which is allowed according to the Qur'ān and *Sunna*. Consequently, there was no practical and acceptable alternative to the interest-based banks. Some Muslim jurists go so far as to accept this position and admit interest so long as the banks do not fix the interest percentage in advance. Others argue that fixed interest in advance is permissible because the interest calculations are soundly based on established actuarial methods⁵.

A further objection to insurance is *Gharar* (risk) on the basis that only God knows what is unknown to us. Islamic law stipulates that *Qimār* (gambling) is forbidden and all types of speculative activity are regarded as gambling. Forward and futures dealings are prohibited in the Islamic world, whereas *Murābaha* (cost-plus) and *Mushāraka* (profit-sharing) are regarded as more legitimate means of dealing than risk seeking.

Mutual insurance either provided by publicly quoted companies or as a service provided by the community for its people, is one of the acceptable forms of insurance in the Islamic world, as it does not involve profiting from the misfortunes of others. Mutual insurance funds established by the *Umma* (community) which are not involved in *Ribá* transaction or dealings, are referred to as *Takāful* companies.

The Chapter on western insurance is provided for comparative purposes only, since the primary focus of this is Islamic Insurance.

As mutual insurance practices in the west, which are not rejected by the Muslim world, more emphasis has been placed upon. And a chapter has been devoted to this top for comparison bases.

The objectives of this study:

The aim of this thesis is to provide an understanding of insurance through the views of Muslim scholars with argument for and against financial insurance and its legitimacy in the Muslim world. It also focuses on the forms of financial insurance practised by non Muslim countries which are rejected by Muslim world.

The thesis specifically examines the topic under the following points:

1. to examine Islamic doctrine in relation to the issues under investigation
2. to give a brief historical background to insurance in the Islamic faith
3. to examine the prohibition of *Ribá*
4. to examine actual Islamic financial systems in detail
5. to examine the success of mutual insurance in the West
6. to discuss the views of contemporary Muslim jurists on insurance
7. to define forms of insurance which are compatible with Islam and therefore legitimate
8. to reach comprehensive conclusions and make recommendations based on the research findings

The main contribution of this thesis is to the debate on Islamic insurance and its origins and to provide the theoretical foundations for an insurance system which reconciles Islamic law with certain forms of insurance services provided in the West. Through promoting the understanding of both systems, it ultimately aims to develop a constructive and profitable collaboration between them.

Through the critical analysis of the principles and practice of insurance the study will address Muslim objections to insurance, even those of the most literal Muslim jurists, and seek to overcome them.

Methodology and Procedure

The methodology adopted in this study has two main aspects:

The theoretical aspect involves four major steps:

- (1) consideration of Islamic religious precepts underlying all Muslim decisions

- (2) examination of the Qurān and *Sunna* which provide the first two sources of Islamic law.
- (3) examination of the Prophet Mohammad, as the exemplary model of the Islamic moral code
- (4) definition of the constituents of a permissible insurance scheme.

The empirical aspect involves the following :

- (1) analysis of the history and background of insurance in the Muslim world
- (2) examination of Islamic financial systems and insurance
- (3) a case study of Malaysia and the Takāful Act
- (4) a case study of Islamic insurance companies in Saudi Arabia
- (5) examination of Western insurance systems including mutual insurance .
- (6) definition of the Islamic operating principles for reinsurance

Scope and Limitation

The scope and originality of this study is to outline the boundaries acceptable to Islam of an insurance system rather than importing an insurance system which has no foundations in Islamic moral precepts⁵.

¹ Ahmad, Osmān Bakhīt, *The contribution of Islamic Banking to Economic Development: the Case of Sūdān*, 1980, P.12

² Wilson, Rodney; *Islamic Finance*, FT Financial Publication, P. 34

³ Mallat, Chibli, *Islamic Laws and Finance*, 1988.

⁴ Al Dasūqī, Mohammad El Sayed, *Al-Ta'mīn wa Mawkiif al-Sharī'ah Minu*, 1967, P.68

⁵ Ṭantāwī, Mohammad Sāid, *Al-Igtihād fī Aikām al-Sharī'ah*, 1990, P.112

CHAPTER 1

THE RELIGIOUS FOUNDATIONS

Introduction

This chapter will explore the Islamic belief system to show why financial insurance played no role. As Muslims, worship includes not only rituals of praise and gratitude to God but ordinary acts of everyday life lived according to God's guidance. By abiding by their faith through following the teachings of the Prophet, caring for the welfare of their parents, family and the community of believers will bring its own reward in the afterlife, there is no need for financial insurance in this life. Faith and its daily practice insures against disasters and negative experience.

1.1 Islamic Revelation

Muslims believe that what was revealed to Mohammad is the continuation and culmination of all preceding revealed religions and hence stands as valid for all times and all peoples. Judaism and Christianity are seen as doctrines worthy of respect, but superceded. Judaism is considered as the first message, Christianity as the precursor to Islam, and Islam as the final message. Whilst Muslims point to Islam's rapid rise and spread under the Prophet's leadership as the only proof they need that this final message came from Allah himself, early Western commentary was more sceptical. During the Crusades, anti-Islamic propaganda, mobilised for wholly political purposes was really the only response from the West to this religion. However, some 19th and 20th century non-Muslim scholars of Islam began to appreciate its distinctive qualities.

A sense of justice is one of the most wonderful ideals of Islam, because as I read in the Qur'ān, I find these dynamic principles of life not mystical, but practical, ethics for the daily conduct of life suited to the whole world¹.

History makes it clear, however, that the legend of fanatical Muslims sweeping through the world and forcing Islam at the point of the sword upon conquered races is one of the most fantastically absurd myths that historians have ever repeated².

But Islam has a still further service to render to the cause of humanity. It stands, after all, nearer to the real East than Europe does and it possesses a magnificent tradition of inter-racial understanding and cooperation. No other society has such a record of success in uniting in an equality of status, of opportunity, and of endeavors, so many and so various races of mankind. Islam has still the power to reconcile apparently irreconcilable elements of race and tradition. If ever the opposition of the great societies of East and West is to be replaced by cooperation, the mediation of Islam is an indispensable condition. In its hands lies largely the solution to the problems which Europe faces in its relations with the East. If they work together the hope of a peaceful issue is immeasurably enhanced. But if Europe, by rejecting the cooperation of Islam, throws it into the arms of its rivals, the outcome can only be disastrous for both³.

1.2 The Concept of God in Islam

Every language in the world has one or more word to refer to God and to other lesser deities. Muslims maintain that Allah is the sacred and unique name of the one true God. The term has no plural or gender, in contrast to 'gods', or 'goddesses' of mythology. It is interesting to note that Allah is the personal name of God in Aramaic,⁴ the language spoken by the ancient Jews and Jesus, and the sister language of Arabic.

To a Muslim, Allah is the almighty, creator and sustainer of the universe, with whom nothing can compare. The essential monotheism of Islam is summed up by a famous passage from the Qur'ān,

“In the name of God, the Merciful, the Compassionate. Say (O Mohammad) He is God the One God, the everlasting refuge, who has not begotten, nor has been begotten, and equal to Him is not anyone.”⁵

This passage introduces the idea of refuge, which earthly insurance caters for but is here provided forever by God.

1.3. God's Attributes

According to Islam, if the creator is eternal and everlasting, then it follows that his attributes must also be eternal and everlasting. God cannot lose any of these qualities nor acquire new ones.

"God has not taken to Himself any son, nor is there any god with Him: for then each god would have taken off that which he created and some of them would have risen up over others. And why, were there gods in earth and heaven other than god, they (heaven and earth) would surely go to ruin"⁶

In Islam, as in other monotheistic religions the concept of God is constantly equated with his oneness. There are innumerable Qur'anic verses that attest to this attribute refuting the existence of other gods as false:

“For ye do worship idols besides God and ye invent falsehood. The things that ye worship besides God have no power to give you sustenance; then seek ye sustenance from God, serve Him and be grateful to Him: to Him will be your return.”⁷

1.4 The Prophet

Mohammad, the inspired man who founded Islam, was born about AD 570 into an Arabian tribe, the *Quraysh*, who worshipped idols. His father died before he was born and because he was orphaned at birth, he was always particularly sympathetic to the needs of the poor, the widowed and orphaned, the slaves and downtrodden. By his twentieth birthday he was already a successful businessman and soon became a director of camel caravans for a wealthy widow (Khadija). When he reached twenty-five his employer, recognizing his merit, proposed marriage. Despite her older years, he married her, and as long as she lived, remained a devoted husband.⁸ At Mohammad's own death, an attempt was made to deify him by some hysterical Arabs who thought that worshipping Mohammad as worshipping God), but the man who succeeded him (Abū Baker) resisted the hysteria, by claiming the eternity of Allah.

Prophethood is not unknown to revealed religions, such as Judaism and Christianity. In Islām, however, it has a special status and significance. According to Islām, Allah created man for a noble purpose - to worship Him and lead a virtuous life based on His teachings and guidance. The role of the prophet was to let humans know the role and purpose of their existence through clear and practical instructions from Allah. Islām states that Allah has chosen from every nation, a prophet to convey the message to the people.

"We send not a messenger except (to teach) in the language of his (own) people, in order to (make) things clear to them. So Allah leads astray those whom he pleases and he is exalted in power, full of wisdom"⁹

The prophet is the best in his community, morally and intellectually. This is fundamental, as a prophet's life serves as a model for his followers. His personality should attract followers to his message rather than driving them away by an imperfect character. Once he has received the message he is infallible. Minor mistakes are usually corrected by further revelation¹⁰.

The content of the Islāmic prophet's message to mankind not only defines a clear concept of God and His attributes, the Creation, unseen world, Paradise and Hell but also God's purpose for human beings, the rewards for obedience and punishments for disobedience. Furthermore it lays out how to organize society according to God's will - clear instructions and laws that when justly applied will result in a happy and ideal society¹¹.

1.5 The Role of the Qur'ān

Islām asserts that humanity has received divine guidance through only two channels: firstly, the word of Allah and, secondly, the Prophets who were chosen by Allah to communicate his will to human beings. These two concepts of God and Prophet go hand in hand and any attempt to understand one without the other is doomed to failure¹².

In the tradition of major monotheistic world religions Islām is unique in that

its scripture, i.e., the Qurān, was revealed during the lifetime of the last prophet. Mohammad. The Prophet himself was also responsible for its revelation, a divine manifestation, and after his death the task of compiling and preserving the Qurān fell to the companions of the Prophet and, later, the Caliphs. The preservation and maintenance of the original manuscript (*Hāfiẓa*) is well documented. Eventually, once copies were made, the holy work left Arabia to have a huge impact on what were to become Muslim territories beyond Arabia¹³.

Muslims believe that, as the last revealed book of God, the Qurān was preserved as it was to become the book of guidance for all humanity. As evidence of this they point to the universality of its address in that it speaks to all mankind:

"O Man! what has seduced you from the Lord".¹⁴

"O Mankind! Fear your Guardian Lord who created you from a single person, created out of it his mate and from them twain scattered like seeds, countless men and women".¹⁵

1.6 The Concept of Worship in Islām

The concept of worship in Islām is commonly held to mean performing ritualistic acts such as prayers, fasting, charity. This somewhat limited concept of worship is only a small part of its significance in Islam. The traditional definition of worship in Islam is a comprehensive one that includes almost everything in an individual's daily activities. Everything, in fact, that one says or does to please Allah.¹⁶

Islām looks at the individual as a whole. He or she is required to submit completely to Allah, as the Qurān instructed God's prophet Mohammad:

"Say (O Mohammad) my prayer, my sacrifice, my life and my death belong to Allah; He has no partner and I am ordered to be among those who submit, i.e., Muslims"¹⁷

The natural outcome of such submission is that all aspects of life are organized according to the instruction of God. 'Islām, as a way of life, requires that its followers model their life according to its teachings in every aspect, religious or otherwise.

It is worth emphasizing that even performing one's social duties and responsibilities is considered a form of worship. The Prophet deemed that acts done for the benefit of the family are considered acts of charity. Familial duty such as feeding and clothing members of one's family and kin, also constitute worship. Even enjoyable, pleasurable activities, providing they are performed according to the instructions of the prophet, are considered acts of worship.

The watchword here would appear to be conforming to 'Islāmic norms. If an activity conforms to the guidelines laid down by God through his Prophet all actions related to its performance can be considered to be worship.¹⁸ Although the non-ritual aspects of worship are many, and embrace all aspects of life, this should not detract from the importance of ritual worship. Such acts, if performed in true spirit, elevate people morally and spiritually, enabling them to carry on their activities in all aspects of life, according to the guidance of God. The ritual aspects of worship are referred to as the Five Pillars of 'Islām. Among them are: First pillar of 'Islām is testifying that: there is no God but Allah (God) and that Mohammed is the messenger of God. *Ṣalāh* (ritual prayer) which occupies the key position for two reasons. Firstly, it is the distinctive mark of a believer. Secondly, it precludes, in theory, an individual from all sorts of sin and temptation by providing him with chances of direct communion with his Creator five times a day and allowing him access to correct behaviour:

"You alone we worship and You alone we turn to for help. Guide us to the straight path."¹⁹

After *Ṣalāh*, *Zakāt* (poor-dues) is an important pillar of 'Islām. In the Qurān, *Ṣalāh* and *Zakāt* are generally mentioned together. Like *Ṣalāh*, *Zakāt* is a manifestation of faith that affirms that God is the sole owner of everything in the universe, and what men possess is merely entrusted to them. God ultimately makes trustees of his believers. This is illustrated by the verse:

“Believe in Allah and His messenger and spend of that which He made you trustees.”²⁰

In this respect, *Zakāt* is an act of devotion which, like prayer, brings the believer nearer to his Lord.

Aside from its spiritual significance, *Zakāt* is, in practice, a means of redistribution of wealth in a manner that narrows the gap between classes and groups, thereby contributing to social stability. Muslims believe that the practice of giving alms to the poor purges the souls of the rich of selfishness and the souls of the poor of envy and resentment against society. *Zakāt* is often not simply a personal act of worship. Where it is not given freely it can be exacted by force, if necessary.

Ṣeyām (fasting during the day time of the month of *Ramaḍān*) is another pillar of Islām. The main function of fasting is to make the Muslim pure from ‘within’ as the other aspects of the *Sharīʿa* make him pure from ‘without’. Muslims hold that by fasting and engaging in the spiritual purity fasting brings, a Muslim is able to respond to what is true and good and shun what is false and evil. This principle is outlined in the Qurānic verse:

"O you who believe, fasting is prescribed for you as it was prescribed for those before you, that may gain piety."²¹

In a well-authenticated tradition, the Prophet reported Allah as saying:

"He suspends eating, drinking, and gratification of his sexual passion for my sake."²²

Al-Hajj (the annual pilgrimage to the House of God in Mecca). This very important pillar of Islām manifests a unique unity. Muslims from all corners of the world, wearing the same dress, respond to the call of *Hajj* in one voice and language:

“labbaikah allahumma labbaik (Here I am at your service O Lord!)”.

Muslims performing the *Hajj* are required to exercise strict self-discipline and control, not least because Mecca is a holy place where sacred things are revered. Even the life of plants and birds is made inviolable so that all elements are in harmony:

"And he that venerates the sacred things of God, it shall be better for him with his Lord."²³

A discussion of the ritual and non-ritual aspects of Islamic worship reveals that, although the ritual aspect is more clearly defined, Muslims believe that all activities, providing they conform to Islamic norms, promote love of God as He alone is the provider of this code of life.

It is clear that the concept of worship in *Islām* is a comprehensive one that regulates human life on all levels; the individual, social, economic, political and spiritual, providing guidance in every detail. In theory at least, Muslims believe that this complete code of life leaves a believer in no doubt as to how to live and work, encouraging all Muslims to strive to please their God who knows and sees everything.²⁴

1.7 The Gratitude and Fear of the Muslim Believer

Islām requires its followers to surrender themselves to God and to believe in the oneness of God, in the sense of His being the only creator, the only one worthy of worship whom no craven images can replace. In addition to this a Muslim is also required to have faith in God, the evidence and proof of which lie in his actions. The Prophet is quoted as saying:

“None of you (truly) believes until his inclination is in accordance with what I have brought²⁵

The whole concept of Muslim faith is bound up with the idea that a Muslim is grateful to God for the feelings of euphoria his faith gives him. This gratitude is, in fact, the essence of *ibādah* (worship). A non-believer is called *kāfir*' which means 'one who denies a truth' and also 'one who is ungrateful'.²⁶ A believer loves, and is grateful to God for the bounties bestowed upon him, but is aware of the fact that his actions, whether mental or physical, are far from godly. A Muslim, in theory should always be aware that he will have to atone for his sins, either in this life or the hereafter. He therefore fears God, surrenders himself to him and serves him with great humility. Such a mental state means that Muslims should, at all times, be mindful of God. Such awareness of God is therefore the life force of faith, without which it would fade and wither away.²⁷

1.8 Conclusions

God revealed the Qurān to his messenger Mohammad. Mohammad's life and teaching (Sunna) has been donated to Islām according to God's guidance. The Qurān might not be acceptable by a non Muslim. But Muslims believe that the Qurān revealed to Mohammad, is the final message. The Qurān was preserved by God as it become the book of guidance for all humanity. Muslim worship is a gratitude to God in the format testifying to God, praying, pay Zakāt, fasting Ramdan and Pilgrimage. Therefore material insurance to Muslim against misfortune is not justifiable in the spirit of Islam.

-
- 1 Naidu, Sarojini, Lectures on "*The Ideals of Islām*" :see Speeches and Writings of Sarojini Naidu, p.167
 - 2 De Lacy, O'Leary, *Islām at the Crossroads*, p.8.
 - 3 Gibb, H.A.R, *Whither Islām*, p.379.
 - 4 "A branch of the Semitic group of languages spoken in parts of Syria and the Lebanon", Chambers Twentieth Century Dictionary
 - 5 Qurān 112:1,2,3,4
 - 6 Qurān 23:91
 - 7 Qurān 29:17
 - 8 Rehman, Afzalar Mohammad, Mohammad, *Encyclopaedia of Seerah*, p.21
 - 9 Qurān 14 : 4
 - 10 Iqbal, Mohammad Hassan "*Hayāt Mohammad*" p583
 - 11 Rahman, Afzalur, Mohammad, *Encyclopaedia of Seerah*, P. 22
 - 12 Amin, Ahmed, *Fajr el-Islām*, P.22
 - 13 Al -Sharāwī, Mohammad Metwali, *Moa'jezht al-Qurān*, p.109
 - 14 Qurān 4 : 1
 - 15 *Ibid*
 - 16 Al-Sharāwī, Mohammad Metwali, *Moa'jezht al-Qurān*, 2nd book, p.128, 1988

- 17 *Qurān* 6 : 162
- 18 *Al-Ghazālī, Ihyā' Ulūm el-Dīn*, (Revival of Religious Sciences), has devoted one of four volumes to worship. He discusses the knowledge, articles of faith, secrets of purity, prayer, fasting, pilgrimage, the rules of reading the Qurān, invocations and supplications and observation of daily duties according to fixed times.
- 19 *Qurān*
- 20 *Qurān* 57 : 7
- 21 *Qurān*, 2 : 183.
- 22 On the authority of Abū-Hurairah, *Hadith No. 158 of Al Ahādīth al-Muḥḍaḍḍa, Dār al Toras, Cairo, 1980*
- 23 *Qurān* 22 : 30.
- 24 Gazālī, Mohammad, *Al Jānīb al-Āṭifi Min-al-Īslām*, 1990
- 25 On the authority of Abu-Mohammad Abdullah the son of Omar ibn al-Ās, *Forty Hadith no. 41*
- 26 Al-Tabari: Jaffar Mohammad Jarier, *Tafsīr al-Tabari, Jāma'ā al-bayān fī Tafsīr al-Qurān*(unable to find page number
- 27 *ibid*

CHAPTER 2

USURY AND INSURANCE IN THE QUR'ÁN AND SHARĪ'Ā

Introduction

The Qur'án and Shari'á ban usury and other forms of economic transaction which are deemed to be unproductive or to give unfair advantage to one party at the expense of the other. The history of insurance as it developed in the Arab world was thus limited to joint sharing of common risk. The Islamic concept of insurance is not primarily an economic or material concept, but based on faith in God and the daily following of Islamic moral law which under the protection of God, enhances security, wellbeing and prosperity in this life, and a heavenly life hereafter.

2.1 Usury (Ribá) in the Shari'á

The literal translation of the Arabic word *Ribá* is increase and it refers to the practice of lending money at an exorbitant (and therefore unlawfully high) rate of interest.¹ The word is derived from the Arabic root *Rabá*, i.e. to grow or increase. The noun *Ribá* means literally surplus excess. At the root of this is the Islamic objection to *Ribá*, lending at interest. The word *Ribá* is applied where there is a perceived additional increase in an object of transaction over and above its original value, size or amount². As a technical term, *Ribá* means usury and interest, and in general any unjustifiable increase in capital for which no compensation is given.

In the Pre-Islamic era *Ribá* - as it was then practised - was generally held to be the increase of money in consideration for an extension of the term of maturity of a loan. Pre-Islamic Arabs would pay premiums on loans and would receive a certain amount, leaving the principal sum untouched. When the maturity date expired they would claim the principal sum from the debtor. If it was not possible for the debtor to repay this sum they would increase the principal sum and extend the term. It was transactions like these with a fixed time limit and payment of interest, as well as speculation on the part of the lender, that formed an essential element in the trading system of the pre-Islamic era.³

A debtor who could not repay the capital, either in money or goods, with its accumulated interest when it fell due was given an extension of time during which to pay. However, the sum due was then doubled. Such practices are clearly referred to in the Qurʾān.⁴

2.2 *Qurʾānic Injunctions Concerning Ribá*

In the Qurʾān, the first verse which deals with *Ribá* is in *Ṣurat al-Rūm*:

"That which ye do for increase through the property of other people, will have no increase with God: but that which ye lay out for charity, seeking the countenance face of God will increase: It is these who will get a recompense multiplied."⁵

According to Qurʾānic exegesis,⁶ this was revealed in Mecca before the emigration (*Hijra*) to Madina, i.e. before the prohibition of *Ribá* which the verse heralds.

Another verse which mentions *Ribá* prior to its formal prohibition is:

"For the iniquity of the Jews we made unlawful for them certain food goods and wholesome things which had been lawful for them, in that they hindered many from God's way. That they took usury, though they were forbidden, and that they devoured Man's substance wrongfully. We have prepared for those among them who reject a grievous punishment."⁷

The first express prohibition which mentions *Ribá* and bans it for the first time:

" Oh ye who believe! Devour not usury, doubled and multiplied; But fear God; that ye may really prosper."⁸

was the first verse to directly impose a ban on usury. In interpreting this verse, the exegesis agrees that the expression "multiples" does not ban the practice of charging interest in general but rather describes the usury practices of the day. In this they

assume that the concept of multiples of multiples is no more than a description of a state of affairs, which was a precursor to the imposition of the ban.⁹

Later verses however, reveal an intensification of this prohibition:

Those who devour usury will not stand except as stands one whom the Evil one by touch hath driven to madness. That is because, they said, trade is like usury; but God hath permitted trade, and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past, their case is for God to judge; but those who repeat the offence are companions of the fire: they will abide therein for ever.

God will deprive usury of all blessing, but will give increase for deeds of charity: for he loveth not creatures ungrateful and wicked. Those who believe, and do deeds of righteousness and establish regular prayers and regular charity, will have their rewards with their Lord: On them shall be no fear, nor shall they grieve. Ye who believe! Fear God and give up what remains of your demand for usury, if you are indeed believers. If ye do it not, take notice of war from God and his Apostle: but if ye turn back, ye shall have your capital sum; deal not unjustly, and ye shall not be dealt with unjustly.”¹⁰

In these verses *Ribá* is both condemned and prohibited in the strongest possible language, whilst trade or industry which increase the prosperity and stability of individuals and nations is considered legitimate. Dependence on usury is seen as facilitating unproductive activity. The Qurʾān also advocates, (in verse 280 of the same *Sūra*), further concessions on behalf of debtors. Creditors are asked: (1) to relinquish past claims arising out of the practice of usury, (2) to give time for payment of capital if a debtor is in financial difficulty or, (3) to write off the debt altogether as an act of charity. The Qurʾānic verses condemning *Ribá* clearly prohibit any unlawful grasping of wealth at the expense of others. This condemnation is applied to different practices,¹¹ either by individuals or nations, the principle being that any profit that a person acquires should be through his own exertions and not through exploiting others. The Qurʾān regards *Ribá* as a practice of non-believers. It demands, as a test of belief, that it should be abandoned.

However, the Qur'ān does not prohibit all forms of profit derived from business transactions. The usury mentioned in the Qur'ān applies to debts and is not related to sales and purchases. Usury in sales is not subject to the stipulations of the Qur'anic verses.¹² Here the use of the term usury, although a general one, is intended to give a specific meaning; that of the practices of usury in the pre-Islamic era, which involved doubling and multiplying of debt.

2.3 *The Prophet's Sayings on Ribá*

The Prophet's authenticated sayings (*hadīth*) that deal with the subject of *Ribá* are numerous, so it will be sufficient to mention only a few of them. The usury condemned by the Qur'ān is 'debt usury' whereas the *Sunna* mainly deals with the concept of 'sale usury'. Although debt usury is mentioned in *hadīth* literature, the *Sunna's* contribution to the subject confines itself merely to enforcing the Qur'anic injunctions against *Ri·bá* and outlining in detail exactly what is banned.

It is generally understood that *Ribá*, as forbidden in the Qur'ān, refers to interest on loans, anything that goes beyond this is regarded as a later development.¹³

The first example of the Prophet dealing with debt usury was when a tribe, the *Thaqeef* claimed repayment of its debt from another tribe, the *Banī Muqeera*. This was a past debt remaining from the Pre-Islamic usury practice. The Prophet told the *Thaqeef* that the Qur'ān ordered the abandonment of such practices. The second time the Prophet encountered the old problem was when he spoke in his last sermon (on the occasion of the farewell pilgrimage). The Prophet is quoted as condemning usury among members of his family:

Every usury is disparaged, and the first usury I disparage is ours (ʿAbbās Bin ʿAbd Al-Muttalib's usury- that is the prophet's relatives' usury). It is all disparaged¹⁴.

The *Sunna* serves to underline and clarify the prohibition of debt usury as originally outlined in the Qur'ān. This example illustrates the way in which the *Sunna* confirms the prohibition of debt usury and prescribes and bans sale usury. The *hadīth* view on

sale usury is illustrated by a group of traditions. There are a considerable number of *hadīth* which deal with this subject, but the most famous and generally accepted is :

“Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt, the like for the like, hand to hand (*yad-an-bi-yad*, i.e. immediate sale). But if the kinds differ, then sell as you may like it from hand to hand”¹⁵

Another *hadīth* is that narrated by Abū Sa‘īd on the Prophet, who said:

“Do not sell gold unless an equivalent for an equivalent, do not prefer one and not the other.” (i.e., no discrimination between equivalents).
“Do not sell what is available now for what is not available at the place of sale.”¹⁶

Muslim *Fuqahā’* (jurists) interpret these traditions as distinguishing between two types of sales usury:¹⁷

- (i) **Increase Usury** (*Ribá al-fadl*), this occurs when there is a transaction where items of the same kind or commodity capable of *Ribá* (*māl Ribáwī*) are exchanged or where there is an increase in either item over the other, even if they differ in quality. Therefore, when items of the same type are exchanged in sale, if either of them carries an increase over the other, this increase is considered *Ribá*.¹⁸
- (b) **Delayed Payment Usury** (*Ribá an Nasī‘ah*) This form of sale usury occurs if there is a sale where both items are properties subject to usury (*māl Ribáwī*) but only one of the items is received at the time and place of the sale and the other item is received at a later date. Therefore, delayed payment usury occurs when an item, available at the place of sale, is sold for an item which is not available at the place of sale, even if the two items exchanged are equal in quantity in order to avoid increase usury. Equality of exchange of both items does not operate here , owing to the time difference in their exchange.¹⁹

However, this issue is one on which not all Islamic jurists are united. A close examination of all the different views postulated reveals great divergence in both interpretation of the Quránic verses and the Prophet's *hadīth* on the subject of *Ribá*.²⁰ Such divergences are not only classic examples of the ever fluid and ongoing debates in the whole of Islamic jurisprudence, but should be seen as differences of detail rather than major disagreements. It is worth noting that in spite of such differences on the finer detail, the opinion of the majority is united on the Quránic call for cancellation of a debt if the debtor is in financial difficulties. All are agreed that this stipulation follows the verses that prohibit *Ribá*.²¹

“If the debtor is in a difficulty, grant him time till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only know.”²²

The question of interest usury, unlike its precursor medieval Christianity, which allowed the offer of interest as a gift - even though this was regarded as a dangerous exception - *ʿIslām* does not allow even voluntary interest as a gift to the lender. However, the post-Reformation Christian standpoint on this is very different from Islamic thought, as it is now far removed from its origin.²³

2.4 *The Medieval Christian and Islamic Views of Usury*

What we can deduce from the pre-Reformation Christian and Islamic viewpoints on usury is that both prohibited usury outright. The only thing that was clearly permissible was a return from a partnership, provided the partner making the investment genuinely shared the risk. That is, both doctrines called for a share of risk between the lender and the borrower with no one party being allowed to acquire extra advantage at the expense of the other. Both rejected deferment as a justification for the payment of interest, and held that when gain is sought from an activity which is not in itself productive, i.e. which does not require labour, expenditure or risk-taking on the part of lender, it is illegitimate and reprehensible.

According to both doctrines, the essence of usury is that whether the borrower gains or loses, it is certain that the lender always takes his pound of flesh. They call, therefore, for an equitable bargain from which both parties might derive fair

advantage according to the amount of risk they run.

However, in spite of the fact that the positions of the two religions were almost identical on usury, there was a discrepancy over compensation. Classical Christian thought maintained that the borrower who fails to pay his creditor at the appointed date should submit to a penalty,²⁴ and that the creditor who loses an opportunity of gain (by laying out his money) should receive compensation. The Islamic view was and is, that the borrower is not liable for punishment if he fails to pay up on the maturity date. Islam suggests that the lender postpone the date of payment without taking interest from the borrower or, preferably, cancel the whole amount of debt as gratis. In fact it is very emphatic on this point. The discussion on usury has thus far centered on a comparison between Christianity and Islam. There is, however, an extensive economic theory literature which will be examined later.

2.5 Insurance in the Shari'ah

The idea of insurance (*Ta'min*) in Islām is inexorably bound up with, and must be in harmony with, the objectives (*maqṣad*) of the *Shari'ah*, with regard to securing benefit for the Muslim or preventing him harm: not only in this world but also in the hereafter. These objectives are religion, life, intellect, lineage and property.²⁵

It is in this context that we must discuss the idea of insurance and its practice in Islām. To this end, the discussion of insurance will consider both the concept of insurance in Islam and its relationship to the objectives of the *Shari'ah*.

The *Fuqahā'* (*jurists*) tended to neglect the idea of insurance in Islām, principally because they were concerned with the practical daily conduct of the Muslim in society and not with the uncertainties of insecurity and fear, which are very much bound up with the idea of insurance.

2.6 A History of Insurance

The insurance policy is a relatively recent development. The concept, however, is by no means new. The idea of transferring the risk of loss from the individual to a group began thousands of years ago. When a family's hut burned down, for instance, the

entire tribe would rebuild it. Traces of rudimentary insurance practices are still seen among the few primitive tribes that exist today.²⁶

About 2500 BC, Chinese merchants were using primitive forms of marine insurance. When boat operators reached rapids in rivers they waited for other boats to arrive.²⁷ They then redistributed the cargo so that each boat carried some of the contents of the others. If one boat was lost in navigating the rapids, all the operators shared a small loss but no one was wiped out.²⁸

Benevolent societies were developed in Egypt as early as 2500 BC. There is evidence that the ancient Egyptians had writings on the walls of some of the temples in Luxor (upper Egypt) and that they formed committees for burying the dead. They believed that life after death was inevitable and therefore the body should be preserved for the spirit when they were reunited at the time of reincarnation. That led them to spend prodigiously when death occurred and even before that to build tombs suitable for the preservation of the body. Therefore the committee spent the money needed to preserve the body after death, for as long as that person or his relatives paid an annual fee. This annual fee could either be in the form of agricultural produce, or manufactured goods and clothes, sufficient to ensure that the body would be preserved in a well sealed tomb. (These were organized primarily for religious and social purposes in the hereafter). However, members contributed to funds that paid burial expenses and gave aid for those seriously ill or injured by accident.²⁹

By 1500 BC, these societies provided fire insurance. The biblical story of the Prophet Yūsuf (Joseph) is another early illustration of insurance principles. Around 1700-1500 BC, according to the authorities,³⁰ Yūsuf interpreted a dream of the Pharaoh to mean that there would be seven years of plenty and seven years of famine. At Yūsuf's suggestion, the Egyptians set aside grain during the years of plenty to prepare for the years of famine. Today, people set aside a little now to protect themselves against possible future emergency or loss. Although this was cooperative, it is an indication that human societies have been involved in insurance as far back as the ancient Egyptians.³¹

The Phoenicians, Greeks and Indians took another major step in laying

the foundation of today's insurance industry. One of these seafaring peoples developed insurance against a ship sinking. When a group of shipowners financed a commercial voyage, they borrowed money from a lender, using the ship as collateral. If the voyage was successful, the shipowner repaid the loan at a high rate of interest. If the ship was lost, the shipowner was free of the debt.³²

Ancient Romans had both life and health insurance. The Collegia, Roman benevolent societies, provided burial insurance and financial help for the sick and aged. Roman guilds issued life insurance contracts for members and by 200 AD, the Romans had a rough mortality table. The Roman military also had health and disability plans.³³

When guilds arose in Flanders and Holland, among the services they provided were sickness benefits and burial fees. Some guilds made efforts to reimburse members for fire losses. Their methods of operation were unsophisticated by today's standards but they popularised insurance.³⁴

During this period, insurance was underwritten mainly by individuals and guilds. Benefits were relatively low; one person or a small group could have enough capital to conduct insurance business. The person selling insurance was called an underwriter, signing his name and the amounts of liability at the bottom of the page.³⁵

Ibn-Khaldon, in his *Muqaddimma* (Preface) has written about Arab business ventures which were then known as Winter and Summer Voyages. The voyage members indemnified any member of the group against loss of their stock or their profit. All members of the voyage paid a percentage either of their profit or capital as compensation for the loss or damage sustained by any member of the voyage.

2.7 *The Meaning of Insurance in 'Islām.*

The noun *Amān* denotes security, peace, safety, protection.³⁶ *Ta'mīn*, the word which one usually associates with insurance in 'Islām, is the *maṣḍar* of the second form, *ammaṇa*, to re-assure, safeguard, guarantee.

The derivative noun, *amīn*, denotes a guard or a secure place. *amīn*, for example,

constitutes one of the designations for Mecca.

²*Imān* is the *maṣḍar* of the fourth form *amana*, to believe, and denotes fidelity, loyalty, confidence, trust. The noun ²*Imān* denotes faith, believe in. The tenth form, *istaʿmanah*, denotes a request for protection or for indemnity. These are some of the derivatives of *Amīna*, all of which combine to produce a common meaning of peace of mind, trust and lack of fear.³⁷

2.8 References to *Amān* in the *Qurʾān*.

There are said to be 879 instances of the word *amān* or its derivatives in the *Qurʾān*,³⁸ the majority in the form of the noun ²*Imān*. In *ṣurat al Nisāʾ* (Qurʾānic chapter) there is the following :

“And if one of you deposits a thing on trust (*Amīna*) with another, let the trustee faithfully discharge his trust (*uʿṭiman . . amānatahu*) and let him fear his Lord.”³⁹

and in *ṣurat Yūsuf* (Qurʾānic chapter) we read that:

“God commands you to render back your trusts (*ammānāt*) to those to whom they are due.”⁴⁰

Furthermore in *ṣurat al Qaṣṣaṣ* (Qurʾānic chapter) one reads:

“He said ‘Shall I trust you (*Amīna*) with him with any result other than when I trusted with his brother's aforetime?’⁴¹”

and finally in *Ṣurat Al Umran* there is a telling homily:

“Among the People of the Book are some who, if entrusted (*Taʾmīn*) with a hoard of gold will readily pay it back(whilst) others, who if entrusted with a single silver coin, will repay only on demand.”⁴²

Peace of mind, absence of fear, protection of the self, protection of one's wealth and one's offspring, protection against the vicissitudes of fate, poverty and disease, protection during travel and protection of one's residence are all encompassed within the Islamic understanding of insurance, under the following three classifications:

- (1) faith as insurance (*al-Ta'mīn al'Imānī*).
- (2) insuring the Hereafter (*al-Ta'mīn al Akharuwi*).
- (3) worldly insurance (*al-Ta'mīn al Dunyawī*)

2.9 Faith as Insurance -*al-Ta'mīn al'Imānī*.

In common with other monotheistic religions, faith is the basis of the Muslim's sense of well being, the source of his peace of mind (*itmānān*). With faith a Muslim is cherished and lives a fulfilled life, without faith he feels lowly and defeated. With faith a Muslim feels contented, without faith Muslim feels uneasy.

With faith, the Muslim feels secure (*amāna*); without faith a Muslim experiences fear, sadness and pain. To be without faith is to experience oppression and loss of guidance, whilst the true Muslim is guided along the right path, and rewarded for his loyalty to God, both in this world and the next.

Whereas the man without faith meets only with indignation and wretchedness and ultimately chastisement from God. Faith, in short, is insurance against the negative values which are attributed to the faithless⁴³.

To this effect God reprimands those who turn away from God's religion:

“If the people of the towns had but believed (*ammānā*) and feared God,⁴⁴ we should indeed have opened out to them all kinds of blessings from heaven and earth, but they rejected the truth and We brought them to book for their misdeeds.”⁴⁵

“Did the people of the town feel secure (*ammānā*) against the coming of our Wrath by night, while they were asleep? Or else did they feel secure against

the plan of God. But no one can feel secure against the plan of God, except those doomed to ruin.”⁴⁶

The above verses chastise those who despite the revelation of Islam and the manifest blessings bestowed upon them refuse to believe in God.⁴⁷

Religion is thus seen as the gift of faith (*imān*) securing the Muslim's happiness in this world and the next:

“Whosoever works righteousness, man or woman, and has faith, verily to him We will give a new life, a life that is good and pure, and We will bestow on such their reward, according to the best of their actions.”⁴⁸

Thus God establishes a contract of religion with the Muslim, whereby the latter, in return for security and a livelihood bestowed on him by God, must perform his religious duties as laid down in the Qurān (and the *Sunnah* of the Prophet). Should he deviate from these duties then in place of God's blessings he will be visited with punishment and afflicted by strife.⁴⁹

As for the believers they will (continue) to receive the blessings and benefaction of God, experiencing unalloyed joy, avoiding evil and degradation, enjoying peace and comfort in this world and recompense in the next.⁵⁰

In an aside to the people of Mecca who spurned the message of God and who abandoned themselves to frivolous pastimes, bringing down upon themselves the chastisement of God⁵¹. God asks if they feel secure with their existence:⁵²

There were those who is able to know the warning's from God and took refuge under His wing and as a consequence received His blessing, and there were those who ignored it and as a consequence were divested for their unbelief.⁵³

Thus, if the Muslim person does not keep to the terms of the contract laid down by God, God will forfeits His protection (insurance) against fear, poverty, sadness and ill health:

“God has promised to those among you who believe and work righteous deeds, that He will, of surety, grant them in the land inheritance of power as He granted it to those before them; that He will establish in authority their religion - the one which He has chosen for them; and that He will change (their state) after the fear in which they lived, to one of security and peace (*am·n*).”⁵⁴

In an address of one of the Prophet's companions to Him on the question of security in exchange for fear, he asked:

“When will the time come when we feel so secure we can lay down our arms?”
And the Prophet replied “Security is now upon us (because God has granted us it) so that all the traveller has to fear now as he guides his sheep from one place to another, is the ravenous wolf”.⁵⁵

Again it is made clear in the Qurʾān that the continuance of this security is conditional on the people (of Mecca) performing good works:

“God sets forth a parable, a city enjoying security (*aminatun*) and quiet, abundantly supplied with sustenance from every place. Yet it was ungrateful for the favours of God, so He made it taste of hunger and terror (closing in on it) like a garment (from every side) because of the evil (its people) wrought.”⁵⁶

This turning away from God by the people of Mecca through the rejection of Mohammad ensured their punishment instead of God's blessings, hunger instead of sustenance, unease instead of security.⁵⁷

“Which of us (two) parties has more right to security (*amān*)? Tell me if you know. It is those who believe and confuse not their beliefs with wrong- that are truly in security, for they are in receipt of the right guidance.”⁵⁸

The above verses highlight the recourse to polytheism at the time of a burgeoning Islām.⁵⁹ Abd Allah Ibn Maṣūd recounted that on learning such verses Muslims trembled, and asked Mohammad for an explanation, and he repeated the words of

Luqman to his son,

“Do not worship false idols for that is the greatest abomination.”⁶⁰

Therefore, in Islamic belief, to worship false idols incurs the wrath of God and disaster, to follow the righteous path leads to deliverance and safety.

2.9.1 Faith as Insurance Against Fear and Sadness.

Pain, sadness and fear are the antithesis of security (*amān*),⁶¹ - an axiom which endures for the Muslim not only in this world but also in the next.

These negative states of mind can only lead to the deterioration of the sinner's stability and henceforth his/her future becomes unbearable and his/her past rendered devoid of happy memories.⁶² Being in a constant state of fear and sadness is to experience deprivation and loss.⁶³

The spectre of sadness and fear is invoked many times in the Qurān, in which it is made clear that the believer, so long as he/she continues to perform good acts and abide by the religious duties of Islām, will avoid such afflictions:

“Those who believe and do deeds of righteousness, and establish regular prayers and regular charity, will have their reward with their Lord. On them shall be no fear, nor shall they grieve.”⁶⁴

Thus, the Muslim, on account of his faith, is protected against loss, fear and sadness, and his obtainment of the good things in life is facilitated by his faith in God.⁶⁵

Likewise, faithful observance of Islām removes fear of the resurrection assuring the protection of the believer. This is insurance (*Ta'mīn*) for the faithful :

Resurrection, the sound of trumpets, is heard by all living on earth and those of other galaxies and sky except those who will be relieved from the trumpet sound and those who died in war for God (the Martyr). The mountains will be flattened, the earth will

shake, the pregnant will deliver prematurely, the children will age, the people will run lost calling each other for direction; only those God will exempt will be relieved from that fear and terror.⁶⁶

those do not fear the resurrection because they are insured against fear⁶⁷.

2.9. 2 *Prayer as Insurance.*

Time and time again in Islamic messages to the people, prayer is presented as a form of insurance, i.e., commitment to prayer is rewarded by God's protection. According to Islamic principles, Man's instinct is to avoid danger and escape from fear and sadness,⁶⁸ which can be alleviated only by taking refuge in God. When God sends down floods, famine, pestilence earthquakes and storms as a warning,⁶⁹ which man is powerless to prevent:

“Say, He has power to send calamities on you from above and below, or cover you with confusion in party strife, giving you a taste of mutual vengeance, each from the other. See how We explain the signs by various (symbols), that they may understand.”⁷⁰

It is in the power of God alone to offer his people protection:⁷¹

“Say: who is it that delivers you from the darkest recesses of land and sea, when you call (*taḍū*) upon Him in humility and silent terror. If He only delivers us from these (dangers) we vow we shall truly show our gratitude. Say It is God that delivers you from these and all (other) distresses, and yet you worship false gods.”⁷²

Thus God is all powerful, providing sustenance and protection where merited, punishment where called for.

The good Muslim who observes his religious duties and who supplicates (*yadū*) himself before God, will in turn receive an answer:

And your Lord says "Call on Me. I will answer your prayers".⁷³

On this point 'Ibn al-Ābbās remarked:

Each Muslim who prays receives an answer from his Lord. If he asks for sustenance he receives it, providing his daily acts are in accordance with the *Shari'ah*.⁷⁴

Thus we note here the link between commitment to prayer on the part of the Muslim and his protection (*Ta'mīn*) under God's wing:

“For who listens to the distressed (soul) when it calls on Him, and who relieves its suffering?”⁷⁵

God answers the calls of distressed travellers and seafarers enabling to reach safe ground:⁷⁶

“He it is who enables you to travel the land and sea, so that you even board ships, then sail with them, with a favourable wind and they rejoice thereat.”⁷⁷

When they think they are being overwhelmed by storms, they cry to God, begging for their deliverance in return for carrying out their duty to Him:

‘If you deliver us from this, we shall truly show our gratitude.’
“But when He delivers them, Behold, they transgress insolently through the earth in defiance of right.”⁷⁸

The Muslim not only prays to God for protection and his livelihood in the present world, but in the next world also, so as to ensure he enters Paradise.

“If any do wish for the Hereafter and strive therefore, with all due striving, and have faith, they are the ones whose striving is acceptable to God.”⁷⁹

Thus to pray to God is to secure the protection (*Ta'mīn*) of God from misery in this world and Hellfire in the next, but the supplication in the material world must be genuine, supported by lawful (*halāl*) conduct befitting a Muslim

“There are men who say "Our Lord, give us your bounties in this world. But they will have no portion in the Hereafter.”⁸⁰

Thus, according to the Muslim faith, prayer is an insurance against fear and sadness on the one hand, and against damnation and suffering in the next life, on the other hand .

In relation to this concept of *Ta'mīn* in 'Islām, on the authority of 'Ā'ishā it is told that the Prophet said, “If the Jews envy the Muslim for anything it is surely for the security and protection he enjoys under Islam.”⁸¹

To sum up the argument about the role of insurance (*Ta'mīn*) in 'Islām, we can see from the Qur'ānic verses and Hadith that the pious Muslim secures his protection of God in the material world against fear, poverty and sadness, and Hellfire in the next, through his good deeds and performance of religious duties, whilst the neglectful Muslim or the unbeliever forfeits this protection.

2.10 Insuring the Hereafter (Al-Ta'mīn al-Akhrāwī)

The origin of the Islamic principle is the belief in life after death and the resurrection of the body and soul. Life after death is , thus, everlasting with the end of death. Human performance during our existing life will determine our fate in the life after death whether in Heaven or in Hell.

The only insurance against going to Hell is living everyday life according to Islamic principles:

"The ultimate aim for man is to avoid hell, those who obeyed God's requests and obeyed God's forbidding are the ones insured not to end up in Hell. The link between man's day to day work and his relationship with others, and his faith in God is the route away from hell.”⁸²

Heaven is visualised as a beautiful and peaceful place where security is

guaranteed:

"The righteous (will be) amid gardens and fountains (of clear-flowing water). (Their greeting will be): enter ye here in peace and security. And we shall remove from their hearts any lurking sense of injury. (They will be) brothers (joyfully) facing each other on thrones (of dignity). There no sense of fatigue shall touch them, nor shall they (ever) be asked to leave".⁸³

However, Heaven is the destination only of:

Those who obeyed God's rules, (having accepted God's blessing and his beneficence, wary of God's revenge, avoided God's prohibitions, are in the light of God's grace, which not only protects them from active wrong but also from straying into paths of temptation or carelessness), who did good things towards each other, those people will receive God's blessings, utmost peace, no fear of death as their judgement will be light (who showed), no hatred nor malice neither malevolent nor ill will towards others, theirs will be love, friendliness, brotherhood, bosom friends, quintessence, sincerity, There will be no illness, tiredness, boredom- all happiness in the everlasting Heaven.⁸⁴

2.10.1. Assurance of the (Ta'mīn) Higher Levels in Heaven

"It is not your wealth nor your sons, that will bring you nearer to us in degree; but only those who believe and work righteousness, these are the ones for whom there is a multiplied reward for their deeds, while secure they (reside) in the dwellings on high"⁸⁵

All worldly goods are but a shadow that will pass away. Their intrinsic and eternal value is small, but those who work righteousness in faith are on the true path of self development, the reward they will get, infinitely more than their merits entitle to them, for they will partake of the boundless bounties of God.⁸⁶

There will be no uncertainty as there is living on earth, no danger of discontinuity, no possibility of their satisfaction being terminated, everything will be open and in social companionship. All the petty feelings of jealousy or exclusiveness will have passed away, the purity, beauty, truth and goodwill, as in the Buddha's doctrine, the highest object of this life is to obtain salvation from sorrow, pain and the other incidents which make of it a constant struggle. Islām teaches that this is not possible by unaided efforts. Certainly, striving is an indispensable condition, but it is the mercy of God which comes to the aid of Muslims and keeps them from the fire of eternal punishment. This is mentioned last as the foundation on which eternal felicity and positive spiritual joys are built.⁸⁷

Therefore, Muslims view good deeds in life as the insurance premium for everlasting life in the hereafter and at a higher level in Heaven. Human beings are in need of this type of insurance to protect themselves at the day of resurrection from its terror, the day of judgement and its humiliations and suffering in Hell.⁸⁸ The real insurance is the grace of God for everlasting life, the only profitable investment human beings can enjoy forever.

2.11 Worldly Insurance (Al-Ta'min al-Dunyawī)

The basis of worldly or material insurance and its principle in Islam is the insurance of faith'. Insuring the Muslim during his life is a constituent of his faith, his work, his good deeds, his relationship with others, his worship of God. To embrace good deeds, God made faith available to human beings to give them peace of mind, and to remove fear of the unknown. This type of insurance is connected to the "insurance for the hereafter" as both lead to the same fate which is Heaven⁸⁹. The need for peace, security and peace of mind in life are universal ambitions.⁹⁰ They are fulfilled in Islām by faith which brings its own rewards and not by financial means of compensation for life's vicissitudes.

2.11.1 Insuring livelihood

The Qurān states:

"God sets forth a parable: a city enjoying security and quiet, abundantly supplied with sustenance from every place, yet was it ungrateful of the favours

of God, so God made it taste of hunger and terror, (in extremes), like a garment (from every side), because of the (evil) which (its people) wrought “⁹¹

The reference may be to any of the cities or populations in ancient or modern times, which were favoured with security and other blessings by God, but which rebelled against God's law and were therefore punished. There are several metaphors: the experience of hunger and terror after abundant supplies and the full security which it had enjoyed, and the complete enfolding of the city as with a garment by the two scourges of hunger and a state of subjective alarm. If the reference is to Mecca shortly before its fall to the Muslims, the hunger was the seven years of severe famine which afflicted it, and the alarm was the constant fear in the pagans' minds that their day was nearing an end. Peace and prosperity were restored only after the re-entry of the prophet.

2.11.2 Insuring Against Fear and Poverty:

The Quraysh, In the *Qur'ān* we read::

"For the covenants (of security enjoyed) by the Quraysh, their covenants (covering) journeys by winter and summer, let them adore the Lord of his house, who provides them with food against hunger, and with security against fear (of danger).”⁹²

The *Quraysh* were an important tribe of Arabia, who had the custody of the *Ka'ba*, the central shrine of Arabia. They had a commanding influence over other tribes. Their central position facilitated trade and profit. The Mecca territory being by Arabian custom inviolable from the ravages of war and private feuds, they had a secure position, free from fear of danger. The honour and advantage from their position as servants of the sacred shrine of the *Ka'ba*, they owed to God. In those days of general insecurity, their prestige as custodians of Mecca enabled them to obtain covenants of security and safeguard from the rulers of neighboring countries on all sides- Syria, Persia, Yemen, and Abyssinia, protecting their trade journeys in all seasons.

Their journeys to the warmth of Yemen in the winter and the cooler regions of Syria

and the North in the summer, made them practised travellers and merchants, who acquired much knowledge of the world and many arts, and perfected their language as a polished medium of literary expression. Those experiences compensated the unfortunate losers for their losses. The Quraysh did not appreciate that God preferred them, particularly as he had chosen his Prophet from amongst them. They witnessed how God protected the *Kāʿba* from invasion by Abrahā⁹³ and his elephants, even though they ran away and did not have the courage to stand up and defend their families, homes or wealth. The Quraysh tribe believed that God was the only insurance they could ever have, but they defied the injunction to worship the one God and continued to worship a man-made god made of stones and clay.⁹⁴

2.11.3. Insuring Against Sadness and Grief

"After (the excitement) of the distress, He sent down calm on a band of you overcome with slumber while another band was stirred to anxiety."⁹⁵

"Remember he covered you with a sort of drowsiness, to give you calm as from himself."⁹⁶

Calm (peace of mind) is essential in battle and in all situations of danger. If the mind is in a state of over-excitement, it cannot carry out a well-considered or concerted plan of action. This spirit of calm confidence on the part of Muslims won against the blustering violence of the Quraysh.⁹⁷

"So We brought thee back to thy mother, that her eye might be cooled and she should not grieve"⁹⁸

The mother's eyes had become scalded with tears at the separation from her baby, now they were "cooled" - her heart comforted. Avoiding sadness and grief is an intention to embrace the logic guided by God.⁹⁹

2.11.5. Insuring Against Illness (Al-Marad)

"And when ye are in peaceful conditions (again) if any one wishes to continue *Umrah* (visit Ka'ba not at time of Hajj) on to the *Hajj*"¹⁰⁰

The peaceful condition is either free from illness or from enemies. The Prophet Mohammad said:

"Cold symptoms are an insurance from Leprosy."¹⁰¹

2.11.6 Insuring Protection (Himāya) and Asylum

The Qurān offers asylum to those who are drawn to religious belief

"If one amongst the pagans ask thee for asylum, so that he may hear the words of God; and then escort him to where he can be secure, that is because they are men without knowledge"¹⁰²

Even those who are in battle with Islamic forces are entitled to seek asylum and to gain protection even if they do not convert and accept the word of Allah:

Even among the enemies of *Islām*, actively fighting against *Islām*, there may be individuals who may be in a position to require protection, full asylum to be given to them and opportunities provided for hearing the words of God. If they accept the words, they become Muslims and brothers, if they do not see their way to accept *Islām*, they will require double protection either from Islamic forces openly fighting against their people, or from their own people, as they detached themselves from them, both kinds of protection should be ensured for them from any harm (*Mo'aman*)¹⁰³.

2.11.7 Insuring the Path (Ta'mīn Al-Tāriq) – free passage

"Between them and the cities on which We had poured Our

blessings, We had placed cities in prominent positions, and between them We had appointed stages of journey in due proportion: travel therein, secure by night and day”¹⁰⁴

The old frankincense route was the great highway between Arabia and Syria.¹⁰⁵ Through Syria it connected with the great and flourishing kingdoms of the Euphrates and Tigris valleys on the one hand, and Egypt on the other - and with the great Roman Empire round the Mediterranean. At the other end, through the Yemen coast, the road connected by sea transport with India, Malaya, and China. The Yemen/Syria road was much frequented. Syria was the land on which God "had poured His blessings", being a rich fertile country where *Ībraḥīm* had lived. It includes the Holy Land of Jerusalem in Palestine. The route was studded in the days of its prosperity with many stations (cities) close to each other, on which merchants could travel with ease and safety by night and by day. The close proximity of stations prevented the encroachment of highwaymen.¹⁰⁶

2.11.8. *Insuring Against God's Punishment (al-Dunya)*

"God has promised, to those among you who believe and work righteous deeds, that He will, of a surety, grant them in the land inheritance of power as He granted it to those before them: that He will establish in authority their religion, the one which He has chosen for them; and that He will change (their state), after the fear in which they (lived), to one of security and peace.”¹⁰⁷

Three things are promised here, to those who have faith and obey God's law: that they will inherit power and authority in the land, not for any selfish purposes of theirs, nor by way of favoritism, but in order that they may maintain God's law: that the religion of right, which God has chosen for them, will be openly established, and will suppress all wrong and oppression; that the righteous will live in peace and security, instead of having to suffer persecution, or leave their homes for the cause of God, or practice the rites of their faith in secret.¹⁰⁸ The verse was revealed about the time of the battle of the Ditch (*Khandaq*), also called the Battle of the Confederates (*Ahzāb*) A.H 4-5. We can imagine the comfort it gave to the Muslims who were besieged in Madina by a

force ten times their number.¹⁰⁹

To those who do not follow Islamic law and are defined as evil – there is not security or peace, but the unpredictable threat of divine punishment, although God is just and merciful:

"Do then those who devise evil feel secure that God will not cause the earth to swallow them up. Or that the wrath will not seize them from directions they little perceive. Or that he may not call them to account in the midst of their goings to and fro, without a chance of their frustrating him.. Or that he may not call them to account by a process of slow wastage. For thy Lord is indeed full of kindness and mercy."¹¹⁰

2.11.9. Pilgrim Insurance in Mecca (Ta'mīn Al Bayt al-Harām)

Islamic writings elaborate on the concepts of insurance or performance of the pilgrimage. It is an Islamic requirement to attempt, if possible, one pilgrimage in a lifetime. The Prophet ʾIbrahīm asked God to make Mecca a secure and peaceful place, God acceded to his request and it is therefore also ʾIbrahīm's shrine.¹¹¹ The verse from the Qurān reminds Muslims of the function of Mecca:¹¹²

"Remember, We made the house a place of assembly for men and a place for safety"¹¹³

"The first house (of worship) appointed for men was that at Mecca: full of blessing and of guidance for all kinds of beings. In it are signs manifest: (for example), the station of Abraham; whoever enters it attains security (*Amn*)."¹¹⁴

It is :

Another form, as *Amn* from God's revenge in the hereafter as Prophet Mohammad said:

"Who went for pilgrimage to Mecca and did not do obscenity nor act unlawfully, returned home as he was just born."¹¹⁵

2.11.10 Insuring Peace and Salutation to Strangers

"Ye who believe! When ye go abroad in the cause of God, investigate carefully, and say not to anyone who offers you a salutation: "Thou are none of a believer."¹¹⁶

"When those come to thee who believe in our signs say: 'Peace be on you'¹¹⁷.

The humble who had sincere faith were not sent away to humour the wealthy, but were honoured and given a special salutation, which has become the characteristic salutation in Islam 'Peace be on you', the word peace (*Salaam*) having special affinity with the word "Islam". In words they are given the salutation, in life they are promised mercy by the special grace of God.¹¹⁸ When a courteous greeting is offered you, it is met with a still more courteous greeting, or at least one of equal courtesy.¹¹⁹ This is considered important as all creatures derive from the one God, and are brought together before him.¹²⁰

The attributes of God, summed up in the human concept of 'Sovereign', imply the one undisputed authority who is entitled to give commands and receive obedience, the power which enforces law and justice. *Salaam* embodies not only the idea of peace as opposed to conflict, but wholeness as opposed to defects, hence the paraphrase 'source of peace and perfection'.¹²¹

2.12 The Objectives of Insurance in Islamic Law (al-Sharīʿa)

The general significance of Islamic insurance outlined so far, pertains to protection in this world and in the hereafter, of a person's needs, beliefs, life, wealth, and descendants from what is unknown. Such protection also involves the provision of the means of subsistence, material and spiritual, livelihood, nourishment, property, wealth, fortune and above all God's blessing during this life, protection from Hell, and the promise of everlasting Heaven.

The important objectives in Islamic law (*Shariʿa*) are to provide advantages that bring about security, ward off evil doings and prevent hardship to all people,

regardless of their faith. Such advantages are essential benefits in the hereafter, and secondary benefits which are operative in the here and now. The performance of good deeds is both a worldly and a “hereafter” benefit.¹²²

The worldly and hereafter benefits are essential to the spirit of life. Without spirituality, life is meaningless, and has no purpose. Human life, conceived as created by God, has meaning whether in the present or in the hereafter. In such a scheme of life one’s necessities are to protect faith, descendants, life itself and wealth. Islam asserts that this is what protects life and people from defection.¹²³

The secondary benefits are mainly worldly ones, essential for life, such as relationships formed around common interests which hold people together, the authorities and laws of the land, the relationships between people, animals and vegetation: indeed the interaction between human beings and their environment.¹²⁴ Islamic law (*Shari‘a*) recognizes the importance of these essential and secondary benefits and gives clear guidance on the way to behave, on how to deal with these issues with respect and acceptance, in an intelligent manner.¹²⁵

Some of the issues on which guidance is given are concerned with the Islamic faith in general (*‘Ibādāt*). Much of this guidance deals with the details of ritual such as the five pillars of *‘Islām*; shortening prayer when travelling, exemption or postponing fasting for the sick - or women at a ritually impure period, - dry wash (*Tayamum*) before prayers, protecting the genitals, women’s adornment (veil etc.) and general women’s issues, respect for the elderly, scholastic traditions. The guides also make pronouncements of a less religious and practical nature: eating the necessary foods; enjoying one’s life and wealth; looking after relations; common laws to promote justice; security; investing and protecting wealth; punishing wrong doers; keeping the peace (*Salaam*); borrowing and lending; forgiveness and forgetting; money exchange; contracts; usury (*Ribá*); negligence; medical care and medicine; caring for the old and young; protecting the wealth of the young till maturity; education and learning; scholars and their responsibilities; duties towards neighbours and the needy; modes of behaviour in private and public and the relationship between man and son.

All this guidance is to benefit human beings and provide them with happiness. As

individuals or collectively it is the people's duty to protect these benefits.¹²⁶

2.12.1. Original Objectives

Because mankind has instincts higher than those of animals it is essential for the good of humanity to define and hold to certain guiding principles and objectives, but because of the frailty of human nature these goals can often become confused. The essential objectives, as perceived and outlined in the *Shari'ah*, are: protecting human life, faith, the cultivation of intellect and the spread of knowledge, protecting one's descendants by keeping them from bad deeds which provoke God's wrath and protecting wealth by avoiding waste.

These are the major requirements not merely for the livelihood and material needs of the people but, more importantly, for their spiritual needs and the life hereafter. A Muslim's life will be disorientated and confused in the absence of any one of those main five elements, (i.e., the protection of human life; mind; dependants and wealth.¹²⁷

2.13. 'Islam's Moral System

'Islam has laid down some universal fundamental rights for humanity as a whole, which act as insurance cover. Such rights, combined with obligations are to be observed and respected in all circumstances. To achieve these rights, 'Islam provides not only legal safeguards but also a moral system. Thus, whatever leads to the welfare of the individual or society is morally justified and promoted. Whatever is injurious to either is morally bad. Islam attaches great importance to the love of God and the love of man but warns against too much familiarity. The Qur'an warns:

"It is not righteousness that ye turn your faces towards East or West; but it is righteousness to believe in God and the last day and the Angels, and the book and the messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayers, and practise regular charity; to fulfil the contracts which ye made and to be firm and patient, in pain (or suffering) and

adversity and throughout all periods of panic. Such are the people of truth, the God-fearing”¹²⁸

This verse provides a Muslim with a picture of a righteous, God-fearing man. Such a man should be firm and adhere to such beneficial regulations, but he should also not neglect love of God or his fellow human beings. This is the standard by which a particular mode of conduct is judged and classified as good or bad. Such guidelines provide the nucleus around which a system of moral conduct should revolve. Before laying down any moral injunctions, Islam seeks to plant firmly in the human heart the conviction that human dealings are with God, who sees everything at all times and in all places. The human being may hide from the whole world but cannot hide from God; he or she may deceive everyone but cannot deceive God; he or she can flee from the clutches of everyone but God. Islam, therefore, makes God's pleasure the objective of human life and by this it has established a system and standards of morality which pave the way for the moral evolution of humanity.

By making divine revelation the primary source of knowledge, Islam gives a permanent anchor to its moral system with some scope for adaptations and innovations. This scope does not, however, allow for moral fluidity. It provides a sanction to morality in the love and fear of God, which impels humanity to obey the moral law even without the external pressure being exerted. Through belief in God and the Day of Judgement it provides a powerful persuasive force for a person to adopt moral conduct.

ʾIslām's moral system lays down a way of life which is based on promoting good and preventing evil. Through this system, conscience and virtue should prevail. Those who respond to this call are gathered together into a community and given the name Muslim. The singular object underlying the formation of this community (*ʾUmma*) is that it is commanded to embrace goodness and eradicate evil. The some basic moral teachings of Islam cover the various aspects of a Muslim's life: the broad spectrum of personal moral conduct as well as social responsibilities.

2.14. *Consciousness of God*

The Qur^{ān} specifically mentions the consciousness of God as the highest level a Muslim should aspire to:

“The most honourable among you in the sight of God is the one who is most God conscious”.¹²⁹

Humility, modesty, control of passions and desires, truthfulness, integrity, patience, steadfastness, and the fulfillment of one's promises are all moral values that are emphasized again and again in the Qur^{ān}, as in the following verse:

“And God loves those who are firm and steadfast”¹³⁰.

“..and vie with one another to attain to your sustainer's forgiveness and to a Paradise as vast as the heavens and earth, which awaits the God-conscious, who spend for charity in time of plenty and in time of hardship and restrain their anger, and pardon their fellow men, for God loves those who do good.”¹³¹

In a way which summarises the moral behaviour of a Muslim, the Prophet said:

“My sustainer has given me nine commands: to remain conscious of God, whether in private or in public; to speak justly, whether angry or pleased; to show moderation both when poor and when rich, to re-unite friendship with those who have broken it off with me; to give to him who refuses me; that my silence should be occupied with thought; that my looking should be an admonition and that I should command what is right.

2. 15. *Social Responsibilities*

Islām's main assertions concerning social responsibilities are based on kindness and consideration of others. Since a broad injunction to be kind is likely to be ignored in specific situations, Islam lays emphasis on specific acts of kindness and defines the responsibilities and rights of various relationships. In relationships, a Muslim's first obligation is to immediate family, parents, husband or wife and children, then to other

relatives, neighbours, friends and acquaintances, orphans and widows, the needy of the community, fellow Muslims, and finally fellow man and animals.

Respect and care of parents is stressed in Islamic teaching and is a very important part of a Muslim's expression of faith.

“Your sustainer has decreed that you worship none but him, and that you be kind to parents, whether one or both of them attain old age in your life-time. Do not say to them a word of contempt nor repel them, but address them in terms of honour. And, out of kindness, lower to them the wing of humility and say:

"My sustainer! Bestow on them your mercy, even as they cherished me in childhood.¹³² And render to the relatives their due rights, as also to those in need, and to the traveller; and do not squander your wealth in the manner of a spendthrift¹³³".

On the subject of neighbours, the Prophet Mohammad is reported to have said:

“He is not a believer who eats his fill when his neighbour beside him is hungry; and does not believe whose neighbours are not safe from his injurious conduct”¹³⁴

According to the Qur'ān and *Sunna* a Muslim has to discharge his moral responsibilities not only to his parents, relatives and neighbours, but to the whole of mankind and animals, trees and plants. So, on the level of essential moral characteristics, Islam builds a comprehensive system of morality which aims to realize the potential of humanity.

2.16 Conclusion

The Qur'ān and Shari'ah prohibit usury. Also pre-reformation Christian, prohibit usury, the only permissible is return from partnership and allow a penalty if the borrower fail to pay the debit in time. Insurance go back to 2500 BC, by the Chinese, ancient Egyptians, Greek and Romans. Insurance to Muslims is not a commitments in financial

insurance, but its every day act and whether at work or at home. Worship is considered as insurance for the ultimate place in heaven , which is the destination for those who obeyed God rules to avoiding God's prohibitions. Muslim believes that Islam provides a legal safeguard, moral system, and love of God. In return, God has promised heaven and peace forever.

- 1 "Usury means the practice of loaning money at an exorbitant rate of interest".
Collins Dictionary
- 2 "An addition to the principal of a loan, usually interpreted as interest payments or receipts for both commercial and private loans" Wilson, Rodney, Islamic Finance, (unable to find page number) 1987
- 3 Wilson, Rodney, Islamic Business, Theory and Practice, revised edition, p.24, 1985
- 4 Al-Tabrī, Tafsir, (unable to find page number) vol. 4
- 5 Kurashi, Anwar Iqbal, Al-Islām wal-Ribā, 1945, p.89
- 6 Qurān: 30 : 39.
- 7 Al-Naysābūrī, Abu Ḥaṣan ʿAlī Ahmad, and Bahamsha, Asab al-Nāzaur of the Qurān
- 8 Qurān 4: 160,161
- 9 Qurān 3 : 130
- 10 Fī Zel Al-Qurān, , Part I, 7th edn, p.130
- 11 Qurān 2 : 275-279
- 12 Yusuf, ʿAlī ʿAbdullah, The Glorious Qurān:, text edited and commentary, 2nd Ed, p.1062
- 13 Al-Masri, Abdel Samyī, Why God Prohibited Ribā, 1987, P. 52
- 14 ʿIssā, ʿAbduh Al-Iktisād al-Islāmī Madkhal wa Manhaj, 1974, states that the study of Economic only began in the 18th century although the idea of economic thought was much earlier.
- 15 Al Najjār, Ahmed, Al Nizariah al-Iktisādia fīl-Islam, also Al-Madkhal al-Iktisaddl al Islami , agrees with ʿIssā Abduh in the differentiation between science and idea.
- 16 Salus, A.A, Current Financial Transactions in View of Islamic Fiqh, 2nd Ed. Hadīth related by Ahmed, Bukhari and Muslim and others, Sahih Muslim, Book no. 9, no. 5854.
- 17 Hadīth related by Abu Sāād Al- Khdry, Al-Bukhārī Book on sale, Hadīth No 1967
- 18 Al-Khadī, Tarīkh al-Tashri' al-Islamī, (unable to find page number)1958.
- 19 Al-Sayoti, Al-Durr al-Manthour vol. 1 p.365
- 20 Al Tabri, Gama' al Bayān, vol. 4 p.63
- 21 ibid, p.66
- 22 ʿIssā, Abduh Al-Iktisad al-Islāmī Madkhal wa Manhaj, 1974
- 23 Qurān 2 : 280
- 24 Taylor, T.W & Evans, J.W., Islamic Banking and the Prohibition of Usury in Western Economic Thought, National Westminster Bank Quarterly Review, p.19, 1987
- 25 Iblid, P 20
- 26 Al-ʿĀr, Abdel Naṣser Tawfiq, Hakm al-Ta'mīn fī al-Sharī'a al-Islamiyya, 1983, P. 68
- 27 Raynes, Harold E, A History of British Insurance, 2nd.ed., p.71
- 28 ibdi p.32
- 29 Abdul Rahmān, Ahmed Gād, Insurance, 1978, P. 32
- ibdi, P. 32

- 30 *Ibid*, P.33
31 *Ibid*, P.35
32 *Al-Hanis, Mokhtār Mohammad, Mabādun al-Taʾmīn, 1979, P.66*
33 *ibid, P.66*
34 *ibid, P.66*
35 *ʿAbdul Raḥmān, Ahmad Gād, Insurance, 1978, P.35*
36 *Lisān al ʿArab, vol 13, p.21, Al Qāmūs al Muḥīṭ, vol 4, p.199, Muḥktār al Ṣiḥāh,*
- 27 *Ibid, P. 26,*
37 *Al Mujaḥ al Wasīṭ, vol. 1, p.38*
38 *Al Bāqī, Mhammad Fuād ʿAbd, al Mujaḥ al Mufahras fi al-Faz al Qurān, p.81-93.*
39 *Qurān 4 : 58*
40 *Qurān 12 : 64*
41 *Qurān 28 : 26.*
42 *Qurān 3*
43 *ʿIbn al ʿArabī, Ahkām al Qurān vol 2,p.917*
44 *This is a contractual idea = Good deeds or faith = God's blessing.*
45 *Qurān 7:96*
46 *Qurān 7 : 96,97,98,99.*
47 *Al Naysābūrī, Tafsīr, vol.9, p.111.*
48 *Qurān 16 : 97*
49 *Al Manār, Tafsīr, vol.6, p.346.*
50 *ibid p.347*
51 *Ibid, vol 9, pp.24-25.*
52 *Al Tabarī, Tafsir, vol 9, p.8.*
53 *Al Manar, vol 17, p.27.*
54 *Qurān 24 : 55.*
55 *Muslim Al Bukhārī, (unable to find page number) Saḥīḥ Muslim,*
56 *Qurān 16 : 112.*
57 *Al Tabarī, vol 4, p.125. Al Jalālīn, Tafsīr, p.231. Ibn Kathīr, Tafsīr, vol 2, p.349*
58 *Qurān 6 : 81,82.*
59 *Al-Tabarī, vol. 4, p.227*
60 *Qurān 31:13*
61 *Al-Saboni, Safwat al-Tafsīr, vol.3, 1981, p.607*
62 *Al Qurṭabī, Tafsir, vol 1, p.329*
63 *Al Manār, Tafsir, vol 1, p.237*
64 *Qurān 2:277*
65 *Al Manar, Tafsīr, vol 1, p.237, p.352. Ṣafwat al Tafsīr, vol 1, p.169.*
66 *Al Qurṭabī, Tafsir, vol.13, p.344*
67 *Al-Ṭabarī, Tafsīr, Vol. 20 P 15*
68 *Al-Qurṭabī, Tafsīr, (unable to find page number)vol. 12*
69 *ibid*
70 *Qurān 6 : 65*
71 *Al-Saboni, Safwat al-Tafsīr, vol.1, 1981, p.397*
72 *Qurān 6 : 63, 64*
73 *Qurān 40 : 60.*
74 *Al Qurṭabī, Tafsīr, vol.2, p.311*
75 *Qurān 27 : 62.*
76 *Al Qurṭabī, Tafsīr vol 13, p.223.*
77 *Qurān 10:22*
78 *Qurān 10 : 22,23.*
79 *Qurān 17 : 18,19.*
80 *Qurān 2 : 200.*

- 81 Al Qurtabī, vol 1, pp.130-131.
- 82 Al Tabrī, vol 24, p.276
- 83 Qurʾān 15 : 45,46,47,48
- 84 Al Tabrī, Tafsīr, vol 14 p.25. Al Qurtabī, Tafsīr vol 10, 32. Şafwat Al-Tafsīr, vol. 2 p.110
- 85 Qurʾān 34 : 37
- 86 Al Qurtabī, Tafsīr vol 14, p.306. Al Tabrī, Tafsīr, vol 22 p.68, Şafwat al Tafsīr vol 2 p.557
- 87 Al Tabrī, Tafsīr, vol 25 p.83
- 88 Al-Qurtabī, Tafsīr, vol.16, p.150
- 89 ibid p.151-155
- 90 ibid p.81-83
- 91 Qurʾān 16 : 112
- 92 Qurʾān 106 : 1,2,3,4
- 93 See Surat El-Fil 105:1,2,3,4,5
- 94 Al Qurtabī, Tafsīr vol 2, p 504 & Al-Tabrī, Tafsīr, vol 3, p.198
- 95 Qurʾān 3 : 154
- 96 Qurʾān 8 : 11
- 97 Al- Qurtabī, Tafsīr, vol, p.242
- 98 Qurʾān 20:40
- 99 Ibn al Arabī, Tafsīr, vol 1, p.125
- 100 Qurʾān 2:196
- 101 Al-Qurtabī, Tafsīr, vol 2, p 372
- 102 Qurʾān 9 : 6
- 103 Al Qurtabī, Tafsīr, vol 8,p 75
- 104 Qurʾān 34 : 18
- 105 Al Tabrī, Tafsīr, vol.22, p.58
- 106 Al-Qurtabī, Tafsīr, vol.14, p.289
- 107 Qurʾān 24 : 55
- 108 Yusuf Allī, The Glorious Qurʾān (translation) P 914
- 109 Iblid, p 914
- 110 Qurʾān 16 : 45,46,47
- 111 Ibn Al-Ārabī, Ahkām Al-Qurʾān, vol 1,p 38 & 39
- 112 Iblid, p.73
- 113 Qurʾān 2 : 127
- 114 Qurʾān 3 : 96, 97
- 115 Ibn Al-Ārabī, Ahkām Al-Qurʾān, vol 1, p.39
- 116 Qurʾān 4 : 94
- 117 Qurʾān 6 : 54
- 118 Al-Manār, Tafsīr, vol 5, p 282
- 119 ibid p.374
- 120 ibid p 374
- 121 Yusuf Ali, The Glorious Qurʾān (Unable to find page number) (translation)
- 122 Al Qubaysī, Mohammad, Ahkām al Waqf fil Shaḥīʿā al Islāmiyya, 1977
- 123 Al Qaradawī, Yusuf, Naẓarāt al Shaḥīʿā al Islāmiya fī al Taʾmīn, 1962
- 124 Al Shāḥibī, Al Mawāfakat, vol.2, p.176
- 125 ibid p.178
- 126 ibid p.178
- 127 ibid p.179
- 128 Qurʾān 2 : 177

As if to emphasize again a warning against deadening familiarism, we are given a beautiful description of the righteous and God-fearing man. He should obey salutary regulations, but he should fix his gaze on the love of God and the love of his fellow-man. We are given four heads:

(1) "Our faith should be true and sincere, (2) We must be prepared to show it in deeds of charity to our fellow man, (3) We must be good citizens, supporting social organization, and (4) our own individual soul must be firm and unshaken in all circumstances. They are interconnected, and yet can be viewed separately. Faith is not merely a matter of words. We must realize the presence and goodness of God. When we do so, the scales fall from our eyes: all the falsified and fleeting nature of the present cease to enslave us, His power (angels), His messengers and His message are no longer remote from us, but come within our experience. Practical deeds of charity are of value when they proceed from love, and from no other motive. In this respect, also our duties take various forms, which are shown in reasonable gradation, our kith and kin, orphans (including any persons who are without support or help), people who are in real need but who never ask (it is our duty to find them out, and they come before those who ask), the stranger, who is entitled to laws of hospitality, the people who ask and are entitled to ask, i.e., not merely lazy beggars, but those who seek our assistance in some form or another (if it is our duty to respond to them), and the slaves (we must do all we can to give or buy their freedom) Slavery has many insidious forms, and all are included. Charity and piety in individual cases do not complete our duties. In prayer and charity we must also look to our organised efforts: where there is a Muslim state, these are made through the state, in facilities for public prayer, and public assistance and for maintenance of contracts and fair dealing in all matters. Then comes the Muslim virtues and patience. They are to preserve the dignity of man". The Glorious Qurān, edited by Yūsuf Āli, pp.69-70

129

Qurān 49 : 13

"This is addressed to all mankind and not only to the Muslim brotherhood, though it is understood that in a perfect world the two would be synonymous. As it is mankind is descended from one pair of parents. Their tribes, races and nations are a convenient label by which we may know certain differing characteristics. Before God they are all one, and he gets most honour who is most righteous." The Glorious Qurān, edited by Yūsuf Āli, pp 1407

130

Qurān 3 : 146

131

Qurān 3 : 133, 134

132

Qurān 17: 23-24

"The spiritual and moral duties are now brought into juxtaposition. We are to worship none but God, because none but God is worthy of worship, not because "the Lord thy God is a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me...." (Exod. 5). Note that the act of worship may be collective as well as individual, hence the plural (ta'budu). The kindness to parents is an individual act of piety, hence the singular (taqul, qul, etc) The metaphor is that of a high-flying bird which lowers her wing out of tenderness to her offspring. There is a double aptness (1) When the parent was strong and the child was helpless, parental affection was showered on the child. When the child grows up and is strong, and the parent is helpless, can he do less than bestow similar tender care on the parent? (2) But more: he must approach the matter with gentle humility: for does not parental love remind him of the great love with which God cherishes his creature? There is something here more than simple human gratitude: it goes up into the highest spiritual region" The Glorious Qurān, edited by Yūsuf Āli, pp 700

133

Qurān 17 : 26

In the Jewish Decalogue, which was given to a primitive and hard-hearted people, this refinement of kindness, to those in want and to wayfarers (i.e. total strangers whom you come across) finds no place. Nor was there much danger of their wasting their substance out of exuberance. Even the command "to honour thy father and mother" comes after the ceremonial observance of the Sabbath. With us the worship of God is linked up with kindness to parents, kindred, those in want, those

who are far from their homes though they may be total strangers to us. It is not mere verbal kindness. They have certain rights which must be fulfilled. The Glorious Qurān, edited by Yusuf Āli.

134

Hadith related by al-Bukhārī (unable to find page reference)

CHAPTER 3

AN OVERVIEW OF ISLAMIC FINANCIAL INSTITUTIONS

Introduction

To Muslims, *Islām* is a complete way of life and aims at constructing the entire fabric of human life and culture in the light of values and principles revealed by God for man's guidance. Muslim economists believe that re-orientation of approach and a reconstruction of the entire framework of economic analysis and policy are needed to service the people.

The Muslim economist starts from the assumption that economics neither is, nor can be, totally value-free, also is not totally value-neutral, and what is more important, this is hardly desirable.

3.1. The Recent History of Islamic Banking

Over the last 20 years, Islamic banking has developed into a multi-billion dollar business. The Western world is realising that, even in its own cities, it is no longer a 'fringe' business. The creation of the Islamic Development Bank (IDB) in Jeddah in 1975, was a landmark for Islamic banking. The IDB was the first development institution dedicated to the financial requirements of Muslim countries. The bank's articles of association stipulate that all its business should be conducted in accordance with Islamic *Shari'ā* law¹. Its success is measured by the Saudi government's decision in 1992 to double the subscribed capital of the IDB to \$5.7bn, making it the largest inter-government agency in the Muslim world².

Commercial Islamic banking took off in the 1970s when a number of new institutions were established in the Gulf, including the Dubai Islamic Bank (1975), the Kuwait Finance House (1977) and the Bahrain Islamic Bank (1979). However, the most significant developments took place in Saudi Arabia, aided by its huge economic infrastructure. One of the prime movers of such developments was Prince Mohammad Al-Faiṣal, whose ambition was to create a network of Islamic banks

across the Muslim world - a process which saw the founding of the Faiṣal Islamic Bank in Egypt in 1977 and the Faiṣal Islamic Bank in Sudān in 1978. But it was Prince Al Faiṣal's Geneva-based Dār Al Māl Al 'Islāmī, founded in 1981 that brought Islamic banking to the attention of those Western bankers who, previously, had little or no knowledge of 'Islām or Middle Eastern countries. The Geneva office of Dār Al Māl is now the centre of a network of 43 branches in 20 countries with assets under management in excess of \$3bn³.

The assets of Islamic banks incorporated in the Middle East rose from \$4.4 bn in 1985 to \$15.7 bn in 1994, although total assets controlled by Islamic financial institutions, including assets under management and the activities of banks based outside the Middle East, are estimated to be in the order of \$80 bn - \$100 bn⁴. This is a relatively small sum compared with conventional banking, but the overall demand for Islamic banking products is probably far greater than banks have so far been able to tap.

3.2. Islamic Banking in the West

Conventional banks and their regulatory authorities were initially sceptical about a system of banking, whose guiding principles were based on religious values and ethics. But the 1990s have seen several Western banks considering establishing their own Islamic banking units. Attracted by the enormous growth potential, they hope to use their expertise in creating sophisticated deals to generate innovative solutions to the problems facing Islamic investors.

London is already fast becoming a centre for handling Islamic financial instruments, where deals are arranged by established banks such as: ANZ Grindlays, Citibank International, Kleinwort Benson, Saudi International Bank and the Al-Rājhi Banking & Investment Corporation (ARABIC). The Dallah Al Baraka group and the United Bank of Kuwait (UBK) also have a number of investment companies in London⁵.

3.3. Co-operation and Integration

Eddie George, Governor of the Bank of England, speaking at the Arab Bankers

Association (ABA) in London in 1994, said that he welcomed the presence of well-run Arab banks in Europe's largest financial centre, although he recognized the difficulties in finding satisfactory means of accommodating the principles of both Western and Islamic banking within a single regulatory structure. He argued that these problems will have to be solved if institutions are to be permitted to offer more general Islamic banking facilities in the UK:

"One such problem", said George, "is how to classify Islamic funds in terms of the British legal framework. To what extent, and in what precise forms, are funds placed with an Islamic institution 'capital-certain', thus falling within the UK's Banking Act definition of deposits or to what extent are they participating in a collective investment scheme, falling under the Financial Services Act? My understanding is that Islamic funds may fall into either of these categories or indeed others, but we certainly need to deepen our understanding of the developing principles and practices in this area. But whatever form they take, I think it is likely that the concepts will be familiar to the supervisors and regulators here; and that we can find satisfactory answers to these questions, perhaps through the organizational structure"⁶.

With the exception of Denmark, the rest of Europe has, as yet, shown little interest in Islamic banking. But growing EU trade with the Muslim world, and an increasing Muslim population in Europe, mean that there is an untapped demand for Islamic banking services. The real competition tends to be between Western institutions themselves, which have developed strong Islamic trade finance departments. They are structuring deals in cooperation with Islamic investors and banks. Some such banks have their own *Shari'ah* advisers.

At the retail banking level in the Arab world, the major conventional banks have made few developments of their own in offering Islamic banking services. But the growth of private Islamic companies and the subsequent collapse of the largest investment company, Al-Rayān, has encouraged Egypt's big four banks to reconsider. These banks, which include the National Bank of Egypt, now accept deposits for *Mudāraba* profit-sharing and offer Islamic financing for small business clients. With their deposits growing steadily, conventional Arab banks can now offer a secure

environment for Muslim depositors and investors.

3.4. Prospects for the Future

The market place has become increasingly crowded with Islamic institutions in the 1990s. In June this year Saudi Arabia's largest bank, the National Commercial Bank, started its own Islamic banking division and hopes to become the market leader within five years. Kuwait's International Investor, which opened in 1992, has already established itself as one of the most innovative institutions in Islamic capital markets, having negotiated a KD 143 m deal to lease seven Airbuses to Kuwait Airways.

However, Islamic commercial banks in the Gulf and elsewhere have continued to suffer from short-term losses as a result of the difficult financial climate faced by their clients and profits are generally low. The Faiṣal Islamic Bank of Egypt lost \$54 m in 1991 and Al-Baraka lost \$13 m in 1990 in London, although Al-Rājhi has maintained its position as the strongest and most profitable of the Islamic commercial institutions, largely thanks to the stability and resilience of the Saudi economy⁷.

The future lies in the continued development of Islamic banking instruments, by Islamic bankers, economists and *Shari'ah* scholars. Although, the *Shari'ah* sets out key principles to be observed in business, it does not provide a detailed, codified body of financial law. The development of new financial products is therefore a complex issue, as Islamic financiers seek to apply Islamic ideals to transactions, while accommodating contemporary commercial needs and the demands of a sophisticated business environment.

Methods of accounting which currently vary between Islamic banks and countries will need to be harmonized for the better comparison of statistics and the successful development of international banking relationships. Basic monetary management principles will also need to be agreed on and standardised to increase inter-bank cooperation.

The general public, who often think of Islamic banking principles as consisting solely in prohibiting interest on savings, will need to be better informed about the services

available. If Islamic banking is to attain its market potential, small depositors need to be attracted by accurate information about a broad range of financial products. Banks will need to reduce their current dependence on *Ijāra* (leasing) and *Murābaha* (cost-plus) - often popular because of the low risk associated with the practice and, be forced to develop genuine profit-and-loss (PLS) investments⁸.

3.5 Traditional Islamic Financial Instruments

3.5.1. *Muḍāraba* (trust financing)

The principles of *Muḍāraba* are based on the Bank investing its depositor/investor funds in an enterprise, for which the bank provides the necessary working capital. The management of the enterprise remains independent. The managers receive an agreed percentage of any profit from the venture as a fee. The net profits after deduction of bank and managerial fees is then payable to the depositors/investors. This dividend may be fixed or may be a percentage of the profits. If no profit is made, the bank is not entitled to a fee⁹.

3.5.2 *Murābaha* (cost-plus financing)

In a *Murābaha* transaction the bank acts as an agent for its depositors/investors in the purchase of a commodity. The bank then sells on the commodity to the end-user, although the depositors/investors must initially take title to the goods to ensure that they are accepting the risk in the financed commodity. The rate of profit is agreed in advance and represents the difference between the prices at which the bank buys and sells the commodity¹⁰.

3.5.3 *Mushāraka* (profit sharing)

This concept is similar to *Muḍāraba*, except that the managers of the venture are allowed to contribute to part of the capital. Managers and depositors/investors share the profits or losses of the enterprise in direct proportion to their initial capital contribution. The bank then receives its fee from the depositors/investors¹¹.

3.5.4. *Ijāra* (leasing)

The bank uses the funds of its depositors/investors to purchase an asset which is then

leased to a third party for a specified amount. The lease income is then passed on to the depositors/investors after deduction of the management fee. Lease payments may be adjusted from time to time, in order to remain in line with the prevailing market rates. Lease payments, under an *Ijāra* contract, are designed to reflect the cost to the lessor, of funding leased assets and therefore generally approximates payments made under a conventional lease contract¹².

3.5.5 *Ijāra wa Iqtinā'* (lease purchase)

An *Ijāra* contract does not permit the lessee the option of purchasing the leased asset, because the granting of such an option would involve uncertainty, which is prohibited in Islamic finance. Under *Ijāra wa Iqtinā'*, the lessee undertakes to purchase the leased asset, while making payments into an Islamic investment account on top of the regular lease payments. At the end of the lease the investment account funds - together with any accumulated profits - are used to purchase the leased asset¹³.

3.5.6 *Qard Has an* (interest-free loan)

Islamic institutions are often prepared to grant interest-free loans to clients for humanitarian and welfare reasons. Repayments are made over a period agreed by both parties, with the financing institution making no profit from the transaction¹⁴.

3.6 *Forbidden Ribá and Gharar:*

The two main prohibitions contained in the *Sharī'ah* which have a fundamental impact on the entirety of Islamic law of contracts are the prohibition of unjustified increase of capital (*Ribá*)¹⁵ and the prohibition of risk (*Gharar*). The prohibition of *Ribá* is certainly the most burdensome ethical prescription imposed by the *Sharī'ah* on contemporary profit-oriented ventures and enterprises since it prescribes that in all transactions where the exchange of counter-values takes place, no increase must accrue to either party without corresponding compensation¹⁶.

Although the prohibition of *Ribá* is mentioned in different sections of the *Qufān*, the extent of its definition and the scope of its application were not defined. The whole doctrine of the prohibition of *Ribá* was subsequently elaborated by Muslim scholars on the basis of the *hadīth* which dealt with *Ribá*¹⁷. The ensuing doctrine was to form a considerable impediment to the free development of legal transactions.

Of the two forms of *Ribá*: outlined in Chapter 2, the first, *Ribá al-Fadl* occurs when goods of similar kinds are exchanged with a disparity between them. The second, *Ribá al-Nasi'a*, arises when there is a delay in performance. The various schools of law have agreed upon the prohibition of *Ribá* where it concerns six substances mentioned by the Prophet. However each school interpreted the nature of the prohibition inferred from these substances in a different manner. It is with *Ribá al-Fadl* that the traditions have been interpreted differently by each school of law¹⁸. As regards the second, *Ribá al-Nasi'a*, there is no controversy. All schools agree that delay in payment in an onerous contract is forbidden and time alone does not produce money. Consequently, all interest payments are uncompromisingly prohibited, whether in the form of interest granted on money entrusted to the other party as a deposit, or for investment.

The prohibition of *Ribá* is relevant to the subject of insurance because it bars any disparity between sums of money exchanged and bans all sorts of interest.

The Islamic concepts of equity and fraternity which are binding on those belonging to the Islamic *Umma* in essence and by definition abhor any kind of transaction involving a gain which is not justified by a thing remitted or service rendered. All transactions which could result in speculative investment and monopoly¹⁹. are, thus, precluded and rejected. It is such stipulations as these which place stringent and burdensome limits on the freedom of the parties involved in creating contracts.

The prohibition of risk (*Gharar*) is the second major element in the Islamic law of contracts. To avoid unfair dealing resulting from an ambiguous understanding of the rights and duties, not just of the parties involved, but also the object of the contract (which, as it has been seen, must be precisely ascertained and susceptible of immediate delivery), the *Shari'a* requires a clear and certain determination of the rights and obligations of each party to the contract. *Gharar* has been defined by many Muslim jurists. Some definitions are narrower in scope than others.

A general definition was offered by the Hanbalī jurist Ibn Taymiyya who defined *Gharar* as something of unknown outcome or result²⁰. *Gharar* thus resides in the

uncertainty affecting the occurrence of the contract or of one of the obligations under it. This is to be seen as separate from *juḥālā*²¹ - that is ignorance or uncertainty as to the outcome of the contract. This concept of *juḥālā*²² means that the commodity or the price to be paid is unknown, whereas, in the case of *Gharar*, the contract and the obligations of the parties under it are certain to take place but one of the elements of the contract is not defined²¹. An example of a sale involving *juḥālā* is the classical case of a sale of what is hidden in one's sleeve²². Here the uncertainty affects the subject matter of the contract. Scholars have given numerous examples of contracts involving *Gharar* transactions in which the nature or quantity of the commodity and price were unknown²³.

Gharar is not as strongly and as strictly prohibited as *Ribá*. It is not expressly mentioned and forbidden as such in the Qurʾān, but its prohibition is deduced from other verses forbidding all unlawful and unfair transfer of wealth between Muslims²⁴.

However, prohibition of *Gharar* is expressly mentioned in the *Sunna* in a number of sayings attributed to the Prophet where he unequivocally condemns transactions with aspects of *Gharar*²⁵. Owing to this condemnation, it is incumbent upon all Muslims to ensure that the subject of the contract be precisely determined and available for immediate delivery. Conditional contracts, because of the uncertainty that they involve are widely considered invalid²⁶ as the parties do not know if the contract will be concluded or when it will be concluded. This prohibition which initially concerned contracts of sale was extended by analogy to other contracts in differing degrees by the various Schools of Law²⁷.

The prohibition of conditional contracts led *inter alia* to the invalidity of transactions containing two different contracts e.g. if one says "I will sell you my house if you sell me yours". In this case the contract cannot be concluded because it contains two sales. As the first sale is conditional upon the second one, the deal involves uncertainty. The reported sayings of the Prophet do not limit this prohibition to sales only, but mention transactions in general²⁸. Transactions cannot involve more than one proposed contract (as in the case of a sale coupled with a lease). The scope of this rule has been differently construed by the various schools. For some, only contracts which are in contradiction cannot be joined together²⁹.

The four schools of law acknowledge the prohibition of contracts involving *Gharar*, but the scope of *Gharar* varies from one school of law to another and there are various exceptions to its prescription. The majority of these exemptions are specific rather than general in operation. The Mālikī School, alone, stipulates as a general rule that *Gharar* does not affect acts of charity or gratuity. A donation which involves uncertainty or risk is nevertheless valid for it does not lead to prejudice if it fails to take place. The donor has not provided anything in this transaction so that he will not suffer loss by virtue of any contingency affecting the donation³⁰.

The other schools do not uphold such views³¹ and consider that *Gharar* does affect the validity of charitable acts subject to a number of exceptions. One such exception is the validity of wills notwithstanding the undefined nature of their subject matter or their indeterminacy³².

Given the controversy surrounding the issue of *Gharar*, it is remarkable that a number of agricultural tenancies contain elements of *Gharar* but are nonetheless deemed valid. One such contract is that of *muzāriʿ* and *mūswaqāʿ* where one party cultivates the land owned by the other party for a fixed share of the produce and thus for an undetermined remuneration³³.

The concept of *Jiʿāla* is also worthy of mention in this context as it involves considerable uncertainty. It consists of a reward offered for a service to be rendered, such as the recovery of lost property where the effort involved cannot be ascertained beforehand³⁴.

The long list of exceptions to unlawful transaction where *Gharar* is concerned illustrates that *Gharar* is not rejected in the same manner as *ribá* whose prohibition is undeniably related to the potential harmful consequences that it may have. In a contract of sale, for example its prohibition is motivated by the likelihood that one of the parties has struck an unfair bargain if the uncertainty involved leads to his disadvantage. *Gharar* is particularly relevant in such cases as it can lead to an unjust outcome for one of the parties. The position of the Mālikī and Hanbalī jurist, Ibn Taymiyya, illustrates this point. Ibn Taymiyyah expressly said that a sale involving *Gharar* leads to injustice, enmity and hatred³⁵. As a result of his position jurists

acknowledge that *Gharar* not involving potential inequality (as in the case of gifts) is permitted. *Gharar* inherent to the mechanism of a specific contract which does not involve prejudice is also admitted as is the case with *Kafala* (guarantee) and *Ji'ala* (reward).

Need (*hāja*) alone can justify a departure from the general rule prohibiting *Gharar*, as expressed by Ibn Qayyimma in a statement about a contract of *'Ijāra* containing elements of uncertainty: "If you plant this piece of land with wheat, I will lease it to you for one hundred, if you plant it with barley, I will lease it to you for fifty"³⁶.

This opinion is reinforced by the distinction made by scholars between excessive *Gharar* and light *Gharar*. Only excessive *Gharar* can invalidate the act to which the prohibition of *Gharar* applies³⁷. The measure of *Gharar* necessarily varies from one situation to another and it is impossible to fix a precise criterion for it. What is obvious is that the notion of *Gharar* is indeed very relative and does not constitute a general prohibition applicable in all situations quite as *Ribā* does. The prohibition of *Gharar* applies where uncertainty or indeterminacy introduce the possibilities of an unjust outcome.

The concept of Islamic insurance meets a huge stumbling block when it encounters the notion of *Gharar*. However, theoretically the application of *Gharar* to principles of insurance depends on two elements. The first lies in whether the insurance contract amounts to a transaction categorized as *Mu'awada* or whether it corresponds to another class of contracts devised by Islamic law, or indeed whether it can be considered to fall in an Islamic scheme of contracts at all. The second determinant element is whether the uncertainty inherent in insurance can be allowed, either by virtue of necessity, or the fact that it does not lead to unfair prejudice.

3. 7. Need (Hāja) and Necessity (Darūra) in Islamic Law

The *Shari'a* expressly delivers Muslims from hardship as shown by the following verses of the *Qur'an*:

"Allah desireth for you ease;He desireth not hardship for you"³⁸

"Allah would make the burden light for you, for man was created weak"³⁹.

The interests of Muslims are a prime and determinant concern for Islamic law⁴⁰ and it is on this account that the rule of necessity and need has been invoked. According to this rule it is possible to diverge from a prohibition when a person is in a situation of need or necessity. One is considered in need when suffering from hardship. The concept of necessity allows departure from prohibitions when the life or entire property of the person concerned would otherwise be lost⁴¹.

However, these rules of need and necessity cannot be indeterminately and freely applied. The need must be pressing enough and the necessity actual and unavoidable⁴². If relief can be obtained by any means other than breaking the prohibition in question, then the principle is not applicable. The role of need and necessity comes into play when there is a genuine problem for which no Islamic alternative is available. The measure of the allowed departure from the rules of prohibition depends upon the extent of the necessity involved, and once the cause of the derogation has lapsed the prohibitions come into force once again⁴³.

The concepts of need and necessity allow for circumstances to be examined and weighed in every case to ascertain whether a rule is applicable or not. The rule of need and necessity has been qualified as being a proper source of law⁴⁴ although one that should only be invoked when circumstances justify it.

3.7.1 Summary of Financial Activities Proscribed by Islām ***Ribá*** (charging interest)

The charging of interest, associated with the use of money is prohibited. Returns on invested money, should be calculated in proportion to the profits (or loss), generated by the enterprise in which it is invested. A predetermined or guaranteed rate of return is usually prohibited⁴⁵.

Gharar (uncertainty)

An element of uncertainty in contractual transactions is forbidden. A contract cannot

rely on the future occurrence of an event that is uncertain. Thus, instruments which require one party to insure another or grant another an option to buy or sell an asset are not usually permitted.

***Maisir* (gambling)**

Gambling or speculation is prohibited. This means that futures or options transactions may be unacceptable if undertaken for speculative purposes⁴⁶.

3.8 Insurance and the Islamic Contractual Framework

Both the contenders for arguing the validity of insurance, and the advocates of its permissibility, generally try to assimilate the insurance contract into one of the Islamic nominate transactions. The advocates insist on this assimilation in order to provide evidence that insurance is totally in breach of Islamic law, as it does not comply with the regulations of the contract that it is deemed to correspond to. The contenders assert that insurance is equivalent to an Islamic contract, and therefore is valid being within the provisions of the *Shari'ah* and indirectly acknowledged by it⁴⁷.

3.8.1 Insurance and Mudāraba:

Mudāraba, one of the major Islamic concepts is referred to in the context of insurance⁴⁸ and it is often evoked to provide an 'Islamic' insurance scheme⁴⁹. *Mudāraba orgirad* is a major exception to the prohibition of *Gharar*. It is a contract whereby one party (*rabb al-māl*) entrusts a sum of money to another party (*Mudārib*) to trade with for an agreed percentage of the profits.⁵⁰ The latter is deemed to be the agent to the provider of the capital.

It is essential that the respective shares of the profits be fixed on a proportional basis, and do not consist of a lump sum. The profits are allocated after the return of the capital to the investor. There may even be a multiplicity of investors entrusting capital to a *Mudārib*⁵¹. The agent is free to conduct his trading according to commercial practice if no particular restrictions have been stipulated by the investor. He can deduct the expenses that he incurred from the capital handed to him and the contract can be terminated at will, by either party, even if a duration has been fixed for the contract⁵².

A hire contract is considered as an invalid *Mudārabā* (*Ijra*) and in this case the agent is remunerated by a wage and does not share the profits and is entitled to his business expenses only⁵³.

Conventional insurance, as it is practised today, is not a *Mudārabā* contract. Firstly, the intention of the parties to form a *Mudārabā* contract is non-existent⁵⁴. What the insured is seeking is security and an eventual return. The insurer invests the premiums as his own funds and he alone gets the profits⁵⁵. Obviously, in non-life policies, the premiums paid by the insured, which some identify with the capital of the investor in a *Mudārabā* being paid by instalment, are not returned to the policyholder. The payment of the sum insured, if it takes place, is not equivalent to the sum of the premiums paid by the insured plus profits. If it were so, the insured would then only get the sum of his savings invested, and the concepts of distribution of risk and pooling of premiums, which are at the heart of insurance, would be missing.

Therefore, a *Mudārabā* contract in which the capital invested must be returned with any eventual profits, and where there is a possibility of loss which will be subtracted from the invested capital, is not in any respect, close to the established idea of insurance. In relation to with-profit life insurance policies, the intention of the parties to *Mudārabā* is lacking: that the share of the profit allocated to the investor is a proportion of total profits and not a lump sum.

In with-profit policies the returns that the insured benefits from are essentially different from the *Mudārabā* returns. While addendum found in policies which states that "It should be clearly understood that the amounts payable on policies taken out now may be more or less than those shown" does not render the contract a *Mudārabā*.

In fact, under a with-profit policy, the death benefits in case the life insured dies before the due date of his returns under the policy, will usually be equal to a lump sum computed on the basis of the monthly premium (e.g. 250 times the monthly payment).

This is clearly fundamentally in conflict with *Mudārabā* rules, which include, as a requirement of utmost importance, the determination of the profits on a proportional

basis. The sanction of the contradiction of this rule invalidates *Mudāraba*.

If the insured does not die before the policy matures, the returns that s/he will obtain are initially fixed as lump sums, with the clause mentioned above included in the policy and warning the insured that the returns cannot be precisely forecast, since rates of interest and inflation, which affect investments made by the insurer, may vary. Such returns, even if they are not a precise pre-determined lump sum, do not consist of a proportion of the profits made by the insurer on the investment of the total of the premiums paid by the insured, as is the case in a true *Mudāraba* contract.

It is fair to surmise that today's established concepts of insurance are not *Mudāraba* contracts. It may be possible to change such policies in such a way that would put them in the ambit of *Mudāraba* contracts without depriving them of their main function, i.e. providing financial security to the insured. To phrase the question differently, can the mechanism of *Mudāraba* contracts as regulated by the *Shari'ah* be a convenient support for an insurance scheme? There seems to be no argument made in support of this⁵⁶.

The first mechanisms to be excluded are all indemnity policies. Obviously, the sum insured should always be a lump sum, equal to the contingency faced by the insured. Any amendment to this aspect would upset the basic principle underlying such policies. As far as the adaptability of life insurance (with profit) to *Mudāraba* contracts is concerned⁵⁷, the following objections leave little doubt that such an enterprise would be pointless:

- (i) The *Mudārib* or agent is not held liable if the capital handed to him is lost while in his trust if he was not responsible for the loss. This means that in case of unsuccessful investment, an investor could lose all his capital without having any claim against the agent.

Any clause to the contrary would invalidate the *Mudāraba*⁵⁸ and however remote and improbable the chances of actual loss may be, such potentialities which should be stated in the contract, would certainly not be suitable for a person seeking financial security and contemplating a considerable return on precious savings. In this regard

current life policies contain undoubtedly less *Gharar* than the contract of *Mudāraba*⁵⁹.

(ii) The *Mudāraba* is primarily a contract between two parties and not a collective contract. The mixing of capital, provided by various investors at different stages, is subject to a number of restrictions - such as the prerequisite condition that no subsequent *Mudāraba* is valid if it is liable to prejudice the previous one⁶⁰. Such potential prejudice is, in each individual case, inescapable.

(iii) The *Mudāraba* can be terminated at will by any of the parties to it⁶¹, even if duration has been laid down in the contract. Any clause to the contrary would be null and void⁶². Thus the insured, would be able, at any moment, to rescind the contract and insist on having his capital returned to him⁶³.

This permanent facility to rescind, to which the insured is entitled, is yet another major impediment to the use of *Mudāraba* in the creation of an 'Islamic' insurance scheme, since the insurer will not be able to invest in any venture in which money is not available on demand.

(iv) In a *Mudāraba* the agent cannot entrust the capital of the investor to another person or institution for investment without the express authorization of the investor. It is obvious that the insistence of such authorization or any other requisite express authorization, consistent with the rules governing the *Mudāraba*, can easily be made in the contract between the "insured" and "insurer". However, the need for express authorization is yet another confirmation that the *Mudāraba* contract is only intended to be a transaction between two persons whereby an owner of capital can trade with it by retaining the services of an agent, bound to abide by the instructions of the provider of capital, as the agent is working for him even though the agent is not considered an employee.

It is with the concepts of intent and context, that the *Mudāraba* contract is regulated which prevents it being adaptable to a collective project like insurance. The very

nature of *Mudārabā* necessitates the absence of even the most elemental principles of an insurance contract.

(v) It should also be noted that the profits of *Mudārabā* cannot be stipulated for the benefit of a third party⁶⁴. In the case of the death of the investor, the returns under the contract will be distributed to the legal heirs in accordance with the Islamic inheritance rules and cannot be paid specifically to the spouse and/or children of the investor himself whom he may wish to benefit. In the case of a life policy, the sum insured, being paid out of the estate of the insurer, is not subject to the inheritance rules applicable to the distribution of the properties which form the estate of the insured, who as a result can designate any beneficiary he wishes.

While *Mudārabā* may be a useful mechanism for Islamic banking⁶⁵, the situation is markedly different in insurance. Each contract has a different role and is therefore regulated in a dissimilar, and even irreconcilable way, even were it presumed that the investor had relinquished some of his rights - such as the right to impose restrictions on the agent as to the country and field invested in. However, as this concept is one of the most "daring" Islamic contracts, the temptation to try and introduce it as a support for new transactions was great.

The introduction of insurance through *Mudārabā* has been achieved through combining it with other concepts, such as the principles of solidarity and mutual help amongst Muslims which are completely alien to a genuine *Mudārabā* contract. This resulted in the misconstruing and misapplication of *Mudārabā* in many respects⁶⁶. The fact is, that taken out of context, and put into a totally different one, the original *Mudārabā* was undermined.

Capitalism can not be "Islamicized" by introducing *Mudārabā* in all economic transactions⁶⁷.

3.8.2 Insurance and Waqf:

Waqf is the retention⁶⁸ of a property that cannot be sold and assignment of the usufruct,⁶⁹ for the benefit of a charitable or humanitarian objective, or for a specified

group of people, such as the members of the donor's family. The profits and returns produced by the property subject to the *waqf* belong to its beneficiaries and if they are succeeded, it then goes to the closest relatives of the stipulant or, according to another Hanbalī opinion, to the poor⁷⁰.

Waqf is a contract, despite the fact that it is constituted by a unilateral act and does not need the consent of the beneficiaries⁷¹, who in many cases are a category of people such as the poor or destitute.

Waqf must be perpetual and cannot be temporary, as the founder states: "This property is a *waqf* for one year for the benefit of X"⁷². The founder of a *waqf* is motivated by humanitarian considerations. He strives to aid the community and thereby be rewarded, after death, for his charitable act. Although, *waqf* of moveables is not generally prohibited, *waqf* of money is not allowed under Hanbalī law⁷³. Furthermore, a *waqf* dependent upon a contingency is not valid except where such a contingency is the death of the founder of the *waqf*⁷⁴.

Waqf must not contain any stipulation which contradicts its object, for example, the entitlement of the stipulant to revoke the *waqf* at will⁷⁵. The founder cannot designate himself as a sole beneficiary of the *waqf*. He can, however, provide for his right to spend the products of the *waqf* in a manner benefiting others⁷⁶. He can also devote the *waqf* to a category of people to which he belongs⁷⁷.

Waqf is administered and managed by a *Mutawallī* or *Nāzir* for a remuneration. He is appointed by the founder who may appoint himself as a *Mutawallī* when constituting a *waqf*. The *Mutawallī* has the powers to carry out all acts which are advantageous to the *waqf* and its beneficiaries in compliance with the stipulations defined by the founder and recognized by the Shari'ah. The use of the *waqf* mechanism in order to set up a valid insurance scheme has been advocated by Muslim jurists⁷⁸. However, no such scheme seems to have so far materialized for the reason that the feasibility of this sort of project is not promising due to the insurmountable obstacles inherent in the rules regulating *waqf*⁷⁹.

- (i) *Waqf* is a kind of *Ṣadaqa*, i.e. a charitable and pious donation, aimed at obtaining a reward after death. The motive of the founder is to get closer to God

by disposing of a part of his property for the benefit of others, who are in need of it. By contrast, in conventional insurance, the insurer is not motivated by a pious and charitable intention when he insures his property or liability. He is not motivated by a feeling of responsibility towards the community, but on the contrary, only by the wish to preserve his assets. A *waqf*, initiated by any motivation other than piety, is not a true *waqf*. As far as life insurance is concerned, where the beneficiaries entitled to the sum insured at the death of the insured are clearly third parties, the motivation of the founder to provide for his heirs and secure for them a decent life might be seen as a valid basis for constituting a *waqf*⁸⁰. However, other fundamental impediments still exist in relation to the nature of the property which is the subject of the *waqf* and its beneficiaries.

(ii) One of the conditions pertaining to the subject matter of *waqf* is its perpetuity⁸¹ so that any property which cannot be benefited from except by being disposed of or consumed cannot form the subject matter of a valid *waqf*⁸². This means that as far as money is concerned, the sums payable in compensation of a loss sustained by a beneficiary of the *waqf*, must proceed solely from the profits made out of the lawful investment of the money subject of the *waqf*, without deducting any amount from the capital raised and pooled by the founders of the common *waqf*.

Thus, in order to secure the payment of all compensations from the returns obtained on the investment of the capital of the *waqf*, such capital must be substantial and would be beyond the *waqf* of the average person. In addition during the first years the insurers would have to wait until a fund is constituted out of the capital raised and invested in order to provide for the payment of compensation to the prejudiced beneficiaries.

It is evident that such a scheme is not practical, or even feasible, because of the nature of *waqf* as a retention of property and allocation of the returns it produces to designated beneficiaries.

(iii) It might be said that in the context of an insurance scheme, each founder will designate as beneficiaries the group or those insured, participating in the

scheme. The fact is that a number of people will leave the group of beneficiaries when they wish to put an end to their participation in the scheme. On the other hand, new contributors will be taking part in the scheme. The consequence is that the beneficiaries of the common *waqf* will constantly change. This is strictly prohibited by Hanbalī law and leads to the invalidity of the *waqf* itself⁸³.

(iv) It might also be said that it is acknowledged by the *Shari'ah* that the payment of benefits must be dependent upon certain qualifications which would, in this case, be the condition that payment be made only to those who have suffered prejudice due to a loss or damage sustained⁸⁴. While this point of view may be useful in setting up an insurance scheme in the form of *waqf*, it should be pointed out that a stipulation making the payment of benefits conditional upon the happening of an uncertain event⁸⁵ may meet objection stemming from the position of Hanbali law with regard to additional stipulations in a *waqf* and an area in which their interpretation is not very flexible.

Any valid clause must contribute to increasing the charitable and pious nature of the *waqf*. The principle here is not the validity of clauses, in contradiction with the object of the *waqf*, but rather the irrelevance of all clauses inserted by the founder of the *waqf*, if they are not of the essence of the *waqf*.

In addition to the foregoing, other rules governing *waqf* form an obstacle to its introduction into an insurance plan. An example of such obstacles is the requirement that the beneficiaries be determined⁸⁶. In the case of insurance the beneficiaries, i.e. the other insured, are not known to the founder and they change continually.

As a result of these limitations, it is evident that *waqf* cannot serve as a vehicle to set up an insurance scheme in view of its specific nature.

3.9 Other Islamic Financial Instruments

3.9.1 Insurance and Onerous Donation

The onerous donation, *hiba bi shart al-awad*, whereby a recipient commits himself to perform an obligation in return for a gift, is an accepted Islamic principle⁸⁷. It is,

however, considered a sale⁸⁸ and is therefore subject to the provisions applicable to such a contract⁸⁹. Many commentators have argued that a transaction, such as this, is an onerous donation, or at least a rudiment of it⁹⁰. Others argue that it is difficult to agree with this view, as one of the conditions of a valid *hiba bi shart al-awad*, is the determination of compensation to be awarded by the recipient⁹¹. and such a transaction is not possible in insurance, since the sum insured, payable by the insurer (recipient) depends upon the extent of the prejudice suffered by the insured, as is the case of indemnity insurance, and is thus impossible to determine in advance. Moreover, the application of the rules relating to sales renders the contract invalid, because of *Ribá*, caused by the disparities between the sum of the premiums and the sum insured in both life and non-life insurance.

Other comparisons drawn between insurance and Islamic contracts are aimed mainly at legitimating insurance, by demonstrating that similar practices are acknowledged by Islamic law. In the latter case, it is not a question of identifying insurance in terms that appear to validate it in Islamic law, for while this may be an interesting academic exercise, the similarities are purely accidental. Many proscribed transactions appear to have similar principles to insurance but it must be borne in mind that these contracts were designed for completely different contexts.

The principal contractual mechanisms which have been subject to such analogies are the following:

***Kafala* (guarantee):** The validity of *Kafala* which usually involves an undefined subject matter. An example of this would be if one says: "I stand as surety for all debts of X."⁹² This has been seen as a commitment, comparable to the duty of the insurer to pay the sum insured, as is the case of liability insurance⁹³.

The idea of the similarity of *Kafala* to general insurance practices, has been rightly dismissed⁹⁴. Their only common feature, the transfer of liability, cannot alone justify such comparison, as the disparities between the two are too numerous⁹⁵.

***Diyya* (blood money):** Insurance, in general, has also been compared to *Diyya*. A sum of money paid as a compensation, by a group of people (often the tribe) on behalf of a person who unintentionally killed or injured someone, often to prevent any retaliation

on the part of the victim's family. However, such a comparison is flawed, as in this latter case, there is no contract between the group of people paying the *diyya* and the person who committed the unintentional crime.

Ji'āla: This is a contract whereby one person promises to reward another unspecified person in exchange for carrying out a specified task. This contract is deemed exceptionally valid because of the need for it⁹⁶, in spite of the considerable amount of uncertainty involved in it. *Ji'āla* is evidently far from being similar to the insurance contract.

Muwālat: This is the contract whereby one party agrees to bequeath his estate to the latter, on the understanding that the benefactor will pay any *diyya* that may eventually be due by the former. This contract is invalid in Hanbalī law which rejects contractual inheritance⁹⁷. *Muwālat* has often been described as a kind of liability insurance⁹⁸.

It is clear that the insurance contract, *per se*, cannot be reduced to one of the above-mentioned transactions, and therefore cannot be seen as indirectly legitimated by Islamic law.

However, some conclusions can be drawn from the existence of such mechanisms. These are that the *Shari'ah* embodies a number of contracts which, like insurance, are inherently aleatory (e.g. *Kafala*, *Ji'āla*) albeit, in exceptional situations. Such practices were allowed because of the demand for them and because they did not involve potential iniquities leading to unjustified gain and advantage for one party, with corresponding disadvantage and unfair loss for the other. In this manner, *Gharar* should not be seen as a paramount prohibition applicable without regard to its consequences and context. It is not forbidden⁹⁹.

Other considerations come into play where *Gharar* is concerned. Such as the role of the transaction in question, the reasonable need for it, and the eventual causes of unlawful gain that would result from it. These elements are the determinant factor in the validity of the principles of "exceptional contracts", that is contracts which do not fall within the limits of the major transactions, such sale, gift or hire, regulated by Islamic law.

None of these exceptional transactions would apply normally if the principles regulating contracts were applied without consideration to specific situations.

It should also be acknowledged that insurance has often been compared to other Islamic contracts, and as a result, has been held to be invalid. It has been equated, for example, as a contract of *ṣarf* (exchange money) and thus been declared invalid, due to the disparity between the sums paid by each party, (because of the existence of *Ribá* in the contract)¹⁰⁰. This may be fine in theory, but in practice, insurance is certainly much more complex than a contract of *ṣarf* involving a mere exchange of commodities. Firstly, an insurance contract involves payment of the sum insured, which will not be paid out if the event insured against does not occur. The possibility of this is made clear for both parties at the time of the conclusion of the contract. A contract of *ṣarf*, on the other hand, by its very definition, contains an exchange of values which is certain to take place, otherwise it ceases to be a *ṣarf* contract.

Secondly, one cannot disregard the elements inherent in insurance, such as the pooling of premiums, the determination of the sum insured according to the prejudice suffered in indemnity insurance, and other such insurance mechanisms which bear little relation to a simple contract of barter.

To reiterate, it would appear that, methods which merely study the validity of new contracts and attempt to fit them forcibly into nominate Islamic contracts, spring from a prejudiced view of the *Shari'ah* and have been proven to be unwarranted. A more appropriate route to follow is to make use of the contractual freedom afforded by Islamic law, rather than insisting on an obsolete scheme of basic nominate transactions, acknowledged, at the time they were devised and recognized by the *Shari'ah*, as highly sophisticated and able to serve the needs of that time.

As far as insurance is concerned, it is obvious that, as a concept, it does not correspond to any of the nominate contracts of Islamic law, and more importantly, it cannot be adapted to fit these, whatever modifications are devised without being deprived of its major features.

3.9.2 Insurance and Zakāt:

Zakāt is one of the five pillars of *Islām*, which is liable to be a source of gain. It

represents the solidarity of the rich with the needy prescribed by *Islām*. The purpose of *Zakāt* is to provide assistance to those who lack the basic necessities of life.

It is often thought that, in relation to insurance, *Zakāt* could be considered as an Islamic alternative to insurance. The beneficiaries of *Zakāt* are enumerated in the *Qurān*:

"The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free the captives and the debtors, and for the cause of Allah, and (for) the wayfarer"¹⁰¹

It is worth noting that the phrase, "In the way" or "cause of Allah", is a very flexible notion that could be extended to an unlimited number of situations, where there is a justified need for financial help, e.g. medical aid and scholarships¹⁰². *Zakāt* and other such wealth distribution practises sanctioned and demanded by *Islām*¹⁰³, play an important role in alleviating the prejudicial consequences of supervening risks. However, *Zakāt* cannot replace insurance, as in many respects it is a profoundly different concept¹⁰⁴. *Zakāt* is paid in order to please God and is a compulsory Islamic duty. Insurance is, in most cases, voluntary. The payment of *Zakāt* aims at providing for the needy, whereas the insured's intention is to secure for himself financial assistance in case of misfortune. As for social security, risks covered by *Zakāt* are mainly social risks. *Zakāt* is based on the solidarity of the community's members and the duty of the state to promote social justice. *Zakāt* is therefore, akin to social security, as noted earlier¹⁰⁵. and is considered part of the Islamic social security system

It is precisely for this reason that *Zakāt* cannot be considered as providing an alternative to insurance. Insurance mainly covers non-social risks, *Zakāt* has no provision for this. In any case *Zakāt* funds would not be technically applicable to insurance, as *Zakāt* contributions are proportional to taxable property, and bear no relation to the indemnity payable in cases of misfortune. Consequently *Zakāt* funds would not adequately protect against risks other than social risks, and if such a modification was forged it would negate the essence of *Zakāt*, which would be inconceivable, from an Islamic point of view¹⁰⁶.

3.10 *The Evolution of Islamic Financial Institutions*

The practice of many modern Islamic scholars to put forward Islamic alternative economic theories and the ensuing emergence of 'Islamic' financial institutions is a relatively recent phenomenon and is still in a formative phase. The Islamic banks are well known today as the very first 'Islamic' firms to be set up. Over forty-five Islamic banks and other financial institutions¹⁰⁷ currently operate according to the 'Islamic' interest-free profit-and-loss system (PLS).

Four principal legal techniques used by Islamic banks are the contracts of *Mudārabā*, *Mushāraka* (whereby both the customer and the bank contribute to providing capital dedicated to a specific venture), *Ījāra* (lease financing) and *Murābaha* (cost plus trade financing)¹⁰⁸. The achievements of Islamic banks have been judged by many as very successful¹⁰⁹, while other less enthusiastic commentators have expressed more cautious opinions, because, in the end, the success of these institutions depends to a great extent on their competitiveness and their performance in the international markets¹¹⁰.

A problem faced 'Islamic' financial institutions in general, and Islamic banks in particular, has been the lack of an appropriate legislative framework to support their establishment and promote their growth. This problem has, to a considerable extent, been eased by the enactment of special regulations, sensitive and applicable to the nascent 'Islamic' financial structure.

One example of this new legislative trend is the Pakistani *Mudārabā* Ordinance¹¹¹, which arose from the Islamicisation of commercial laws in Pakistan. *Mudārabā* is defined as "business in which one person participates with money, and another with efforts or skills or both his efforts and skills, and shall include Unit Trusts and Mutual Funds." The establishment and the control of the scheme is the duty of a registrar, especially appointed, as well as a tribunal created for this purpose. The *Mudārabā* is either a multipurpose *Mudārabā*, or a specific purpose *Mudārabā* and it can be either for a fixed period or for an indefinite period, *Murābaha* is used to fund trade-related transactions on a cost-plus funding basis¹¹².

What is specific to the Pakistani *Mudārabā* Ordinance, as compared with the

Malaysian Islamic legislation, is that the religious supervisory board charged with checking the lawfulness of the operations conducted, is constituted by the Government, and not by the company concerned, by virtue of a clause in its articles of association. The religious board, which has the power to order modifications, is required to give a certificate in writing, stating that the *Mudārabā* is not contrary to the *Shari'ā*. This certificate is a prerequisite to the authorization which allows the floatation of the *Mudārabā*.

Section 18 of the ordinance requires that the apportionment of the profits between the company and the investor be computed in such a manner that the former's portion does not exceed ten percent of the net annual profits. When ninety per cent or more of the annual profits are distributed to the investors, the income of the *Mudārabā* is exempted from income tax. The final notable point of the *Mudārabā* Ordinance is that, by virtue of section 14, the company is required to circulate to all investors, its annual balance sheet and profit and loss account, the auditors report and a general report on the *Mudārabā's* activities and prospects.

Another example of recent Islamic legislation is the Islamic Banking Act of 1983 and the Takaful Act (1984) of Mālysiā¹¹³. Under the Islamic Banking Act of 1983, Islamic Banking has to be transacted by an Islamic bank specially licensed for that purpose, and which cannot be a foreign bank. The bank's activities must be subject to the control of a religious advisory body in charge of ensuring that the bank is not carrying on its business in a manner contrary to Islamic law¹¹⁴.

The Central Bank of Mālysiā is granted wide supervisory powers over Islamic banks. It can demand that the bank hold a minimum amount of liquid assets at all times¹¹⁵. The Central Bank can also put restrictions on credits granted to a single customer¹¹⁶ and enjoys the conventional investigatory powers of Central Banks under conditions of secrecy. Section 34 - 1 provides for banking secrecy. This ideal is somewhat compromised by a qualification exempting from secrecy, the Central Bank and a competent minister, whose task it is to direct the Central Bank to investigate books, accounts and transactions of the bank if "he has reason to believe the bank is carrying on its business in a manner detrimental to the interests of its depositors", in which case the Central Bank may also assume control of the business of the bank¹¹⁷. Finally,

it should be noted that the implementation of the Islamic Banking Act 1983 led to consequential amendments of a number of other Mālaysian laws¹¹⁸.

Another example of Islamic legislation which is relevant is the Turkish Decree No. 83/7406, dated December 16, 1983, concerning the foundation of Special Financing Institutions allowing Islamic banking in Turkey¹¹⁹. The Decree does not expressly cite Islamic financial institutions and does not mention the *Shari'ah* or any religious supervisory board - as Turkey is a formally secular state - but the Decree established profit-and-loss sharing financial institutions which are services offered by Islamic banks.

These Special Financing Institutions administer current accounts on which no return is paid, as well as participation accounts, whereby the funds are deposited against a "contract to participate in the profit and loss of operations". The Special Institutions, which are submitted to the control of the Central Bank and the Prime Minister's office¹²⁰ may finance commercial and agricultural activities, give letters of guarantee for projects abroad, and procure and sell in installments or lease to firms the relevant equipment to secure investment. The new regulations are laid down in a manner which ensures an advanced and profitable integration in the economy. The Special Financing Institutions are regarded as ventures leading to beneficial financial results for the economy by mobilizing deposits through various investment channels, rather than as an opportunity for Muslims to invest their money in a manner sanctioned by the *Shari'ah*, as is the case with other 'Islamic' commercial legislation, in force in other countries. This is hardly surprising given that, in Turkey, the introduction of the new Islamic regulations provoked opposition from many deeply committed to the secular character of Turkish law. Accounts may be opened by Turkish citizens working abroad in a foreign currency¹²¹ and a special procedure has been established enabling those depositors to transfer abroad the profits earned on their account¹²².

It is evident from this legislation that structures permissible in a *Shari'ah* framework are being transplanted into existing conventional economic systems. Without qualifying, for the moment, the success of such structures, it might be safely said that the concept of an Islamic enterprise has arisen in practice, and efforts are being made to elaborate this concept in legal terms. However, it is still too early today to pass a

definitive judgement on the viability of the new institutions and how competitive and lucrative they are likely to be.

The main feature of an 'Islamic' enterprise is that it must be acceptable to *Islām* and the *Sharīʿa*. Therefore, it has to adhere to a set of rules which embody Islamic restrictions as to the nature of the contracts entered into by the firm, and the investments made, stemming from the prohibition of *Ribá* and prejudicial *Gharar*.

Conclusion

Modern authors are trying to devise an economic system which would be in keeping with *Islām* and differ from capitalist consumer society, whilst acknowledging the principle of private property. One prerequisite of such a system is that contractual and economic public policies must be strictly and precisely framed by positive legislation, so that the supervisory body, in charge of controlling the conformity of transactions with Islamic rules, does not act with full authority. This is particularly relevant in those cases where the supervisory body is appointed and remunerated by the company (and would then tend to be complaisant with its policy), as well as, when this body does not come under the company's remit (where it would then be inclined to follow a restrictive pattern according to each situation. The whole issue depends, in point of fact, upon the consistency of the economic alternative structure proposed by modern jurists, i.e. if practically speaking it proves to be a real alternative, rather than a formal amendment of the capitalist system. This is far from being the norm as 'Islamic' economic methods generally materialize in isolated ventures and not as part of a radical reform of existing models.

The implementation of the concept of 'Islamic' insurance did not coincide with the emergence of Islamic banking. The formation of insurance companies proposing Islamically lawful insurance policies started no earlier than 1983, and, unlike Islamic banking, the field has so far remained unregulated except in rare cases, the most significant being Malaysia. Surprisingly, Saudi Arabia has so far achieved very little in this regard.

¹ Wilson, Rodney, *Islamic Business, Theory and Practice*, 1985, p.39, Economist Publication.

² *Ibid.* 1985, p.40

³ Shīrāzī, Habīb, *Islamic Banking*, London, 1990, p.85.

⁴ Wilson, Rodney, *Islamic Finance*, 1997, p55.

5 ibid 1997, P.56.

6 ibid, 1997, p.57

7 ibid 1997, p61.

8 Siddiqi, Mohammad Nojatullah, *Partnership and Profit Sharing in Islamic Law*, 1985.p.112.

9 ibid 1985, P.112

10 Khan, Mohsin and Mirakar Abbas, *The Financial System and Monetary Policy in an Islamic Economy*, 1989, P.41, King Abdul Aziz University Publication.

11 Ibid, P.43.

12 Siddiqi, Mohammad Nojatullah, *Partnership and Profit Sharing in Islamic Law*, 1985, P.109

13 ibid., p.111

14 Masood, Waqar, *Towards an Islamic Free Islamic Economic System*, 1989, P.223.

15 Moghaizel, F., *Insurance in the Light of Islamic Legal Principles*, 1990,P.131.

16 Qurayshi, A.E., *Islam wa al-Riba*, (unable to find page reference), 1982

17 The Qur'anic Verses forbidding *riba* are:II / 275, 276, 278, 279, III / 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, IV / 161 in addition to the following fundamental *hadith*: "Gold for Gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, measure for measure and hand to hand. If the articles are of different species, exchange them as you wish, the exchange being made had to hand". (Muslim, *Sahih*, *Book of Musaqat*, *hadith* 81).

18 Al-Jaziri, *Al-Fiqh ala al-Madhahib al-Araba*, vol.2, p 249 et seq.

19 Qaardawi, Yusuf al, *Al Halal wa al Haram fi al Islam*(unable to find page reference)

20 Ibn Taymiyyah, *Al-Fatwa* , vol.29, p.22. A narrower definition is given by Ibn 'Abidin who sees *gharar* as the uncertainty of the existence of the subject matter of a sale. *Hāshiyat Radd al-Muhtār*, vol. 4, p. 147.

21 No differentiation will be made between *Gharar* and *juhalah* in this thesis and it is the broad meaning of *Gharar* comprising *juhalah* which will be considered so that *Gharar* will be contemplated not only as the uncertainty affecting the existence of a contract or an obligation included in it but also the ignorance of one of its essential elements like the nature of the subject matter of the contract or its quantity. See al-Sanhuri, Abd al-Razzāq, *Masadir al-Haq*, vol. 2, p.49.

22 Al-Qarafi, *Al Furūj*, vol.3, p.265.

23 Rushid, Ibn, *Bidayat al Mujtahid wa Nihāyat al Muhtāsib*, vol. 2, p.147. Taymiyyah, Ibn, *Al-Fatwa*, vol. 29, p. 25. Ibn Taymiyyah expressly cites lack of knowledge of the nature or kind or quantity of the subject matter as a sort of *Gharar*.

24 *Qur'ān* 2: 188: "And eat not up your property among yourselves in vanity". The prohibition is repeated in the following *Qur'ān* verses: 4:29,161, also 9:34, See also Ibn Taymiyyah, *Al-Fatwa*, vol. 29, p. 22.

25 "The Prophet peace be upon him has forbidden sales by throwing stones an sales involving uncertainty". Muslim, *Sahih*, Book of Sales, *Hadith* 4 (1513). This saying has also been reported by Abū Dāwūd, see *Sunan Abi Dāwūd*, Book of Sales, *Hadith* 3376. Sales by throwing stones, refer to a pre-Islamic transaction whereby the sale is concluded on the throwing of a stone.

26 Al-Qarafi, *Al Furūj*, vol. 1, pp. 228-229.

27 By application of the following *Hadith*: "The Prophet peace be upon him has prohibited two sales in one". Ibn Hanbal, *Al-Musnad*, vol.2, pp. 174-175.

28 "The Prophet peace be upon him prohibited two deals in one". Ibn Hanbal, *Al-Musnad*, vol. 1, p.398.

29 al-Jawziyya, Ibn Qayyim, *Ilam al-Muwaqqi in*, vol. 3, p. 142.

30 Ibn Rushid, *Bidayat al Mujtahid wa Nihāyat al Mujtasi*, vol. 2, p. 324, and see Al-Qarafi, *op. cit.*, pp. 150-151, and Al-Hattab, *op.cit.*, vol. 6, p.51.

31 Except Ibn Taymiyyah who favors the Maliki position for what concerns *Gharar*. *Al-Fatwa*, vol.29, p.33.

32 Ibn Qudama, *Al-Kafi*, vol. 2, p.481.

- 33 Ibn Qudāma, *Al-Mughnī*, vol.5, pp.382-383 and pp.360-361. Ibn Ābidīn, *Hāshiyat Radd al-Muhtār*, vol.6 pp.274-275.
- 34 Alā' al-Dīn al-Mardawī, *Al-Insāf*, vol.6 pp.389-390.
- 35 Taymiyyah, Ibn, *Al-Fatwa*, vol.29, p.23. an Ra'b al-alamīn
- 36 Al-Jawziyya, Ibn Qayyim, *Ilam al-Muwaqqiin*, vol. 3, p.400.
- 37 Al-Qūrafī, *Al Furūg* vol. 3, pp.365-366.
- 38 *Qur'ān* 2 : 185.
- 39 *Qur'ān* 4 : 28 an Ra'b al-alamīn
- 40 Al-Jawziyya, Ibn Qayyim, *Ilam al-Muwaqqiin*, vol. 3, p. 14.
- 41 Ibn Nujaym, *Al Ashbāh wal Nuzū'ir*, pp. 91-92,94.
- 42 *ibid*, pp. 91-92.
- 43 *Ibid*, p.95.
- 44 Abū Solayman, A.I. and Ālī, M.I., *Dirasāt fī al-Fiqh al-Islami*, p. 25. See also Mohammad Muslehuddin, *Islamic Jurisprudence and the Rule of Necessity and Need*, p.59.
- 45 Wilson, Rodney, *Islamic business: Theory and Practice*, 1985.P.48.
- 46 Nojatullah, Siddiqi Mohammad. *Insurance in an Islamic Economy*, 1985.p.85.
- 47 Moghāizel, F., *Insurance in the Light of Islamic Legal Principles*, 1990.P.162.
- 48 Mohammad al-Bahī saw in the insurance contract a juxtaposition of a solidarity contract and a *Mudāraba* contract. *Al-Īslām fī Hal Mashakel al-Mujtamāāt al-Īslāmiyya al-Muāsirah*, pp.192, 203. See also *supra*, pp. 97-98 concerning the draft of the new Egyptian Civil Code.
- 49 *Mudāraba* contracts issued by *Dār al-Māl al-Īslāmī* Trust-Geneva under which the heirs of the contractant obtain in case of death of this latter before his 60th birthday, the returns that the contractant was entitled to receive and the sum of the contributions that the insured would have paid had he lived to the age of 60. See appendix 1.
- 50 Ibn Qudāma, *Al-Mughnī*, vol. 5, p.22.
- 51 *Ibid* pp. 46-48.
- 52 Only Hanafī and Hanbalī allow the *Mudāraba* with a fixed duration, Al-Kasani, *Badaī al-Sanaī*, vol.6, p.99 and Ibn Qudāma, *Al-Mughnī*, vol. 5, pp. 69-70.
- 53 Al-Shārkhasī, *Al-Mabsūt*, vol.22, pp. 67.
- 54 The contract of *Mudāraba* is concluded by using the word *Mudāraba*, *girad* or the like words, Ibn Qudāma, *Al-Mughnī*, vol. 5, pp. 22.
- 55 Except in mutual insurance and with-profit life policies.
- 56 Uways, Abdul al-Halīm, *Mushkilāt al-Īqtisād al-Īslāmī*, pp.102 - 103, citing the decisions of the *al-Majāāl-Fiqhī* forbidding commercial insurance and stating that insurance cannot be considered as a *Mudāraba* contract. See also Mohammad Bakhit, pp. 4-5 and Seyyed Sabeq, *Fiqh el-Sunna*, pp. 194-196.
- 57 Attempted by a number of "Islamic" insurance schemes (e.g. *Dār al-Māl al-Īslāmī* Trust).
- 58 In Hanbal law, only the clause would be invalid. Ibn Qudāma, *Al-Mughnī*, vol.5, pp. 64-65.
- 59 Ibn Qudāma, *Al Mughnī*, vol 5, p.44
- 60 *Ibid*, p. 46.
- 61 Ibn Rush d, *Bidāyat Al-Mujtahid wa Niḥayat al-Muqtaṣid*, vol. 2, p. 240.
- 62 Art. 19 of the ITC *Mudāraba* deprives the "insured" from his right of contracting out during the first two years of the *Mudāraba*.
- 63 Al-Mardawī, Alā' al-Dīn, *Al-Insāf*, vol. 5, p. 448.
- 64 Ibn Qudāma, *Al-Mughnī*, vol. 5, pp. 64-65.
- 65 Even this has been contested. S.H. Homoud, *Islamic Banking*, pp 214.
- 66 The Malaysian Islamic insurance company (takāful Company), "*Syarikat Takāful Mālayasia Sendrian Berhad*" operating under the Malaysian Takāful Act 1984 aiming at regulating Islamic insurance companies, (see *infra*, p. 236 et seq.) mentions in its

"Family Takāful Plan and Takāful Mortgage Plan" that the "Plan is run on the basis of the principle of *al-Mudāraba*".

One can also read: "I hereby agree that on the basis of the principle of *al-Mudāraba* and other related principles of *Shari'ah* ..." Apart from such allusions to *Mudāraba* the whole contract contains a life insurance policy with the specific feature that the investment of the premiums is done in a manner not contrary to the Shari'a and that the benefits are payable to the heirs of the insured, although one of the incentives for saving under the scheme is to secure a sum of money specifically for the dependents of the insured.

67 Moghazizel, F., Insurance in the light of Islamic legal Principles, 1990, P.172

68 See *Shorter Encyclopedia of Islam*, The English synonym used is endowment

69 Ibn Qudāma, *Al-Mughni*, vol. 5, p. 544.

70 Ibid., p 569.

71 This point is subject to a controversy in Hanbali law where some scholars required such a consent. Ibid., p. 546.

72 Except for the Maliki, see Khalil, *Al-Mukhtasar*, p.397.

73 Ibn Qudāma, *Al-Mughni*, vol. 5, p. 585.

74 Ibid, p. 571.

75 Ibid, pp 551-552.

76 Ibid, pp. 550-552, and Ibn Rhajab, *Al-Qawa'id fi al-Fiqh al-Islami*, p. 131: "If one offers *badana* (i.e. a camel for sacrifice) or something else in Allah's cause he is allowed to benefit from it in the same way as others benefit from it even if he did not stipulate that". Al-Bukhari, *Al-Sahih*, Book of Wills and Testaments, vol. 4, p.13.

77 Ibn Qudāma, *Al-Kafi*, vol 2, p. 463.

78 Opinion of Mohammad Shafi (Jurisconsult, Dar al-Ulum, Karachi) cited in the thesis of Mohammad Muslehuddin, *Insurance and Islamic Law*, pp.163-164.

79 The idea would be to constitute a common *Waqf* administered for a remuneration by a *Mutawalli* (the insurer) responsible for managing the *Waqf* in a profitable way. The beneficiaries designated by each founder (the other insureds) would receive from the *Waqf* an amount of money in compensation of a loss that they eventually suffer.

80 In application of the *Hadith* "It is better for you to leave your inheritors wealthy than to leave them poor begging others".

Al-Bukhari, *Al-Sahih*, Book of Wills and Testaments, vol. 4, p.3, Chapter II, Muslim, *Al-Sahih*, vol. 3, p. 1251, Book 25 *Hadith* 5 (1628) and Ibn Hanbal, *Al-Musnad*, vol. 1, p. 173.

81 Except in Maliki law, *Al Musnad*, p. 173.

82 Ibn Qudāma, *Al-Mughni*, vol. 5, p. 585.

83 ibid p. 552.

84 ibid

The clause enabling the *nazir* (manager) to give from the *Waqf* to the beneficiary that he chooses is valid because this does not constitute an exclusion of a beneficiary from the *Waqf*. It only makes his entitlement to receive from the *Waqf* conditional upon a qualification.

85 In the context of an eventual insurance scheme the *Waqf* is not conditional in itself, which would have rendered it void (according to all Sunni schools except for Maliki). Only the payment of benefits is conditional upon an uncertain event.

86 Except for *Waqf* for charitable purposes. Ibn Qudāma, *Al-Mughni*, vol. 5 p. 587.

87 Ibn Qudāma, *Al-Kafi* vol.2, p.468.

88 Miri bin Yūsuf, *Ghāyat al-Muntaha*, vol. 2 P.330

89 For the *Hanafi* the onerous donation is a donation in respect of its formation and a sale in respect of its effects.

90 Qaradawi, Yūsuf al- *Al-Halāl wa al-Harām fi al-Islām*, p.226, and Izz al-Dīn Bahr al-Ulum, *Buhūth Fighiyya*, pp.37-39.

91 Ibn Qudama, *Al-Kafi*, vol.2, p.468, and Miri bin Yūsuf, vol.2,p.330.

- 92 Ibn Qudāma, *Al-Mughnī*, vol.4, p.536.
- 93 Mustafā al-Zarqā, *Al-Ta'mīn fī al-Sharī'a al-Islāmiyya*, p.57 and 'Abdullah bin Zayd al-Muhmūd, *Uqud al-Ta'mīn*, pp.68-69.
- 94 Mohammad Bakhit, *Risālat* . . . p.4.
- 95 For a detailed discussion see Mohammad Muslehuddin, *Insurance and Islamic Law*, pp.272-274.
- 96 Ibn Qudāma, *Al-Kāfi*, vol.2, pp.332-333 and Ibn Qayyim al-Jawziyya, *I'lam al-Muwaqqi'in*, vol.2, p.5.
- 97 Ibn Qudāma, *al-Mughnī*, vol.6, p.381.
- 98 Mustafā al-Zarqā, *Al-Fiqh al-Islāmī fī Thawbihi al-Jadīd*, vol.1, p.560 and a *contrario*, Mohammad Muslehuddin, *Insurance and Islamic Law*, p.179.
- 99 Ibn Qayyim considers that the aleatory sales prohibited by the Prophet fall either under the head of *Ribā* or gambling. *I' Ibn al-Muwaqqi 'in*, vol.2, p.7.
- 100 Mohammad Muslehuddin, *Insurance and Islamic Law*, p.177.
- 101 Sūrat al-Tawba {Repentance} 9:60
- 102 Mohammad A. al-Sharānī, *Al-Dāman al-Ijtimā'i fī al-Islām*, pp. 49-58.
- 103 A. 'Abd al-Rasūl, *Al-Mabadi' al-Iqtisādiyya fīl-Islām*, pp.115.
- 104 See Yūsuf al-Qaradāwī, *Nazarāt al-Sharī'a ʿila al-Ta'āwun wa al-Ta'mīn fī al-Mu'āmalāt*, *Al-Ba'ih al-Islāmī*, vol.12, no.6. p.51. the author compares *Bayt al-Māl*, i.e. the Islamic public treasury to a national insurance company.
- 105 Ibid, p.49
- 106 Moghaizel, F., *Insurance in the Light of Islamic Legal Principle*, 1990, P.189.
- 107 Wilson, Rodney, *Islamic Finance*, 1997, P.10
- 108 Ahmad, A. Al-Ashkar, *The Islamic Business Enterprise*, pp. 32-35.
- 109 Mushtak, Parker "The Rise and Rise of Islamic Banking", *The Middle East*, October 1987, pp. 23-26.
- 110 Delwin, A. Roy, "Islamic Banking: Rapid Growth and the Moral Dilemma", Middle East Executive Reports, April 1986, pp..8,16-20.
- 111 *Mudāraba* companies and *Mudāraba* (Floatation and Control) Ordinance, 1980-Ordinance No. of 1980. Source: *Islamic Studies*, vol.24, No. 1-1985, pp. 67-85, also in *The Gazette of Pakistan, Extraordinary*,(26.6.1980) pp.388-400.
- 112 Mushtak Parker, *Islamic Trade Finance*, *New Horizon*, 1987, p.14
- 113 Respectively Act No. 276, and Act No. 312. This latter enactment will be discussed at p. 236
- 114 *Malaysian Takāful Act*, S. 3 - 5 (b).
- 115 *ibid*, S. 16 -1.
- 116 *Ibid*, S. 27 -1.
- 117 *Ibid*, S. 37 -1.
- 118 They are the *Banking Act 1973 (Act No. 102)*, the *Companies Act 1965 (Act No. 125)*, and *The Central Bank of Malaysia Ordinance 1958 (No. 61)*.
- 119 *The Official Gazette of Turkey*, December, 1984, pp.58-59.
- 120 *Ibid*, January, 1985, p. 56.
- 121 *Ibid*, December, 1983, p. 19
- 122 The Prime Minister may order that these profits be invested in a specific enterprise and field.

Chapter 4

Pre-Modern and Modern Jurists Standing on Insurance

Introduction

This chapter will discuss the views of pre-modern jurists who had to give an opinion of a type of *Mu'āmalāt* (dealing) which were known at their time as *Sawkara* (insurance). The first scholar gave an opinion was 'Ibn 'Abdīn, then Shiek Mohammed 'Abdu and followed by a number of honourable scholar such as Muṣṭafa Al Zarqa, who was known to approve of all kind of insurance. Modern jurists opinions were built up on the pre Modern jurists in the light of modern *Mu'āmalāt*, and their arguments within the permissibility of the *Sharī'ā* law.

4.1. Pre-Modern Jurists Standing on Insurance

4.1.1. 'Ibn 'Abdīn's Strictures on Marine Insurance

Having completed a survey of Islamic financial instruments in practice, these will now be evaluated in the light of the juristic interpretations of *Sharī'ā* prescriptions on insurance. However, the current system of insurance with its structure and rules is a modern invention, reflecting the absence of any guidelines or provisions for Islamic jurists in the past. It is considered both modern and alien, as part of the influx of foreign laws and rules, brought to Muslims from the West during the latter part of the 19th century. 'Ibn 'Abdīn¹. was the pioneer jurist who wrote about insurance, followed by many modern Islamic jurists and scholars in this field. This chapter will review, analyze and contest their views.

'Ibn 'Abdīn wrote about marine insurance, only because it was the first of its kind that came into existance in Islamic countries. The reason for that was the extensive commercial activity between East and West during the booming industrial revolution in Europe, as the foreign traders who used to visit Muslim countries required that kind of insurance to guarantee their import deals².

'Ibn 'Abdīn referred to the issue of marine insurance in his treaties entitled "Scrutinized Answers for Dispersed Questions" and in a chapter titled "The Trust of the

Unbeliever" in the section on "Al j̄ihād" (The Holy War) in a postscript. There he wrote: "It was customary that if traders wanted to hire a boat from a non-Muslim owner, they made their payment of rent to that man, as well as depositing a certain amount of money with another non-Muslim agent who lived elsewhere on Islamic territory. They used to call that deposit 'sowkra ' which was proposed against all kinds of risks that might occur to the boat or its contents during the journey, such as fire, sinking or piracy. etc. The agent was paid for his services as a warrantor, and, his appointed proxy, who lived in the coastal area of Islamic territory, collected the Sawkara from the traders, with permission from the Sulṭān, and accordingly repaid them the equivalent of the damage done to their goods at sea, if any." Having given that vivid account, Ibn ʿAbdīn added, " It seems to me that the traders have no right for any money to be returned to them in lieu of their perished goods, as that would be a commitment to offer something non-committable". Hence, he believed that such kind of insurance was illegal from the point of view of the Sharīʿa. It would be a void and groundless contract as it was based on the guarantee of an uncontrollable event. Ultimately, no Muslim living on Islamic territory could be allowed to have a contract with an insurer in an Islamic region, unless the contract was totally compatible with the revelation and teachings of Islām. Under such a financial deal, from an Islamic point of view, it would not be compulsory for the insurer to repay the insured any money for any unforeseen risk. The trader also should only be involved in the payment of the necessary minimum such as normal fees and charges collected from visitors to Jerusalem³

Ibn ʿAbdīn, in defending his viewpoint against any possible disputation that might arise, referred to the depositor who would charge the depositor for keeping the deposit. In such a case, the element of guarantee had to be intact, as the depositor was responsible for the safekeeping of the deposit whilst in his possession. That is unlike the case of insurance where the money was not in the possession of the Sawkara payer, but always in the possession of the boat owner. But, if the Sawkara payer were the same boat owner, then he would be a hireling responsible for both labouring and safekeeping. However, neither party could guarantee the avoidance of natural risks such as death or drowning.

He also referred to some other kinds of pledge that differ from insurance. If a

guarantor pledged the safety of somebody by tempting him to travel a certain route for his own security, then any money taken against that pledge should not be in the form of insurance. In that case, the guarantor, owing to ignorance of the real degree of danger, would not actually be in a position to guarantee the real safety of the traveller. But, if he were able to ascertain how dangerous the travel paths were, then he would be legally entitled to a commission, just as the deposittee was. However, the rule would be: "The tempter should not guarantee unless he is in firm knowledge of the danger ahead".

Therefore, Ibn Ābdīn was trying to clarify the difference between insurance in the case of a boat sinking, and in the case of highway robbery. Both cases appear to be incompatible with 'the rule of guarantee.' However, in the case of the recipient of Sawkara, there is no intention to tempt traders while being ignorant of the potential dangers. The condition for the guarantee is that the danger has to be known to the tempter but not the tempted. On the other hand, in the case of robbery, both parties have to know the volume of danger to the same degree, otherwise the condition of guarantee would not be fulfilled.

The goal Ibn Ābdīn wanted to achieve was to highlight the conflict between insurance and a pledge. He wanted to prove, at one and the same time, the absence of temptation on the part of the 'insurer', and the ignorance on the part of the 'insured' of the expected danger. Thus, any commitment by the insurer would be illegitimate, and the insurance could never be a legal pledge, as in the case of the deposit.

Ibn Ābdīn differentiated between the insurance contract concluded in a non-Islamic territory, and that concluded in an Islamic territory. He suggested the following views:

(1) If a Muslim trader, having a non-Muslim partner, had an insurance contract with a 'Sawkara' recipient in an Islamic land, who collected the insurance deposit in lieu of the perishable goods, it would be legal for the trader to regain the money, as the contract was conducted between two non-Muslim parties on Islamic territory, if the money was restored to the trader with their consent.

(2) If that trader was living in a non-Muslim territory, where he had made the

insurance contract, it would be legal for him to collect the insurance money in the Muslim territory because of the imperfection of a contract issued in a non-Muslim territory. It would be allowed as he would be in receipt of money from a non-Muslim, although insurance is illegitimate and unjust if it rewards unforeseeable risks, but the injustice is being done to non Muslims with his consent

(3) If the contract was signed in an Islamic region, but the settlement of the contract occurred in a non-Islamic region, the trader would not be allowed to receive any insurance money in lieu of the perished goods even with the consent of the non-Muslim party. That is because the void contract was issued in an Islamic region.

From this set of arguments, we can conclude firstly, that marine insurance, which used to exist in Ibn Ābdīn's time, was taboo as it entailed a commitment in relation to the unforeseeable on the part of the non-Muslim insurer. Nor was it a legitimate form of pledge based on the specialist knowledge imparted to the traveller or trader to enhance his security in return for a commission, As such it had to be an illegal contract to be avoided in Islamic territories. Secondly, Ibn Ābdīn makes clear that Islamic rules and provisions should only be implemented in Islamic territories. According to Abū Hanīfa school of Islamic law, Muslims should not be liable for their deeds outside Islamic territories, even if they are responsible for the same deeds inside Islamic territory. The justification for this is that the Imam of Islam would not be capable of executing the restrictions that God has placed on man's freedom of action, outside of his jurisdiction.

However, Ibn Ābdīn also argued: "A Muslim is allowed to commit in the non-Islamic region only what he is allowed to commit in the Islamic region.". In the same way, the Imams: Shāfi, Mālik and Ibn Hanbal decided that Muslims should be liable and loyal to Islamic regulations wherever they are. Eventually the matter was decided by the interpretation and application of the 'Ulamā (the ruling of Islamic Jurists). The predominant trend calls for Muslims' thorough devotion and commitment to the restrictions imposed by Allah, and the principles and values of Islām at all times and in all places. Nonetheless, Abū Hanīfa school of Islamic law consider the power of

Islām which enables the Imams to apply Islamic provisions as conditional in the circumstances of war, especially for Muslim prisoners in non-Muslim countries. However, it is not credible that Imām Abū Hanīfa intended to appeal to Muslims who move to non-Islamic countries to renounce the religious rules and conduct of the Shariʿa.

4.1.2. Imām Mohammed ʿAbdu's Legitimate Rule for Life Insurance:

There was a *Fatwa* (formal legal prescription) attributed to Imām Mohammed ʿAbdu which allegedly proclaimed the admissibility of life insurance⁴.

According to the *Fatwa*, life insurance is admissible, as an agreement entered into between the insured and the insurance company, which is considered a legal '*Mudārabā*'. The US Mutual Life Company general manager posed the question of the legality of a deal between a contracting party who agreed to give a company a certain amount of money, paid in installments over a certain period of time, for the purposes of investment. Under the terms of such an agreement, if he remained alive at the end of the period, he would regain his money with any interest accruing from the investment, but if he died before the end of the proposed term of the contract, the money and any interest would go to his successors.

The answer to this question in the *Fatwa* was as follows:

the agreement between the man and the company would be a kind of "*Mudārabā*" which is legal. The man had every right to collect his money at the end of the period with any interest produced by that investment. In the case of the man dying during the term of the deal, his successors would be entitled to receiving the benefit of that money in his place.

Another *Fatwa* published in the magazine of "*Nūr-el-Islām* " by Sheikh ʿIbrahīm Elgabbālī and attributed to Sheikh Mohammed ʿAbdu dealt with the question of the legality of someone entering into a contract with a group of people to finance them out of his own resources to trade for a certain period of time, on condition that at the end of that period, if he remained alive, he would have the right for his money to be repaid with an agreed rate of interest added. This raised the question of whether, if he

died before the end of the term of the contract, his successors were fully entitled to his stake from the deal. The *Fatwa* declared that such a contract was a thoroughly legal act. The man would be fully entitled to collect his money at the end of the contract with the agreed rate of interest. If he had died, then his successors would be fully entitled to inherit the capital and proceeds in his place.

It is noteworthy that what was published in "*Nūr-el-Islām*" magazine about a *Mudāraba* ' differs from that in "*Almuḥamah*" magazine in the following aspects:

"*Almuḥamah*" magazine stated that life insurance companies would act legally as though they were '*Mudāraba* s' which are legal. In accordance with that premise, the life insurance system was considered to be legal as well. However, that contradicted the position which "*Nūr-el-Islām*" put forward:

"The successors or whomsoever authorised, have the ultimate right to benefit from the whole sum of that money, including the interest resulting from the deal". That means that, if the insured party died before the end of the payment of instalments he owed to the insurer, the successors would be allowed to collect the total sum of money agreed on, with any interest accruing from the installments paid by the insured during his lifetime.

In the magazine of "*Nūr al-Islām* " the position outlined was different. It said: " If the insured died before the end of the proposed term, the successors or whomsoever authorised to benefit from that money after his death, are allowed to collect only the instalments he had paid in practice with the interest resulting from the deal ".

What was published in "*Nūr-el-Islām*" does not comply with the modern system of insurance. It was a kind of '*Mudāraba* ' in which the distribution of profit and loss was unclear. What "*Almuḥamah* " magazine published was just the bare outline of insurance in the sense of how to regain the sum of money agreed on, even if the installments had not been paid in full.

However, there was no clear evidence in the published material of either magazine of the legitimacy of the current insurance system. What was published in "*Nūr-el-Islām* " had no connection with insurance. It was just a '*Mudāraba* ' which has no similarity

with life insurance, as we shall clarify that later. On the other hand what "Almuḥamah" showed, could be used as evidence of the legitimacy of life insurance as it was proven to be a legal kind of *Mudāraba*. Yet, saying that life insurance is a kind of *Mudāraba* would not be true because the jurists have identified it as a profit-sharing contract, provided the capital is provided by one of the parties and the effort is provided by the other and both parties can be clearly identified. The most important condition is the determination of the percentage of profit for both parties. In the case of loss, unless proven to be the result of speculator incompetence, the owner of the capital has to be held individually responsible⁶.

Following this argument then, could the insurance system thus outlined not be a true kind of ' *Mudāraba* '? Should the owner of capital pay the installments to the speculator to invest, provided they share the profits while bearing the burden of any unforeseen loss separately? It is acknowledged that the company (Capital Owner) would provide the speculator with the required money to invest in the way they would like. That speculator, in return should accept all the consequences of any prospected danger might affect the capital owner's future. If the later collapsed after the payment of one installment, then the speculator might be able to keep the rest of installments for himself. It could be possible as well that the capital owner might pay all installments to the speculator without any damage. That would not give a clear picture of the Islamic *Mudāraba* which calls for to the co-operation and offers the decent honourable life by the exchange of benefits between people.

It seems that 'Imām Mohammed 'Abdu was the pioneer, or, at least, was attributed as being the first to acknowledge that life insurance could be a contract of *Mudāraba*. In fact the word 'insurance' was never referred to in the *Fatwa*, nor was it mentioned in the inquiry by the questioner. However, some modernists have already accepted that viewpoint.

'Abdel-Wahāb Khallaf' has described the life insurance contract as compliant with the terms of *Mudāraba* . He added that if there is an objection that the interest in a *Mudāraba* contract is unlimited, while that in an insurance contract is limited, or that the speculator might invest the money illegally through usury or other unlawful methods, there is an answer to that. There has never been a common judgement that

the interest in a ' *Mudārabā* ' should not be fixed in advance and would be proportionally divided between the parties. In that case, he has conflicted some diligent . However, borrowing with interest remained outlawed to eliminate any doubts, but the jurists admitted that what was forbidden to keep suspicions at bay, may be admissible in cases of necessity. So long as insurance can be shown to have become a necessity of daily life, rather than having established co-operation and created savings for the benefit of the community, and does not actively harm anybody, it could be considered legitimate.

Mohammed Kāmil el-Banna, Sheikh Abdelhalīm Bassiōnī, Mustāfa Zeid and Sheikh Mohammed Abu Zahra⁸ made their disagreement clear to treating that insurance contract is not equivalent to the ' *Mudārabā* '. They continued to consider insurance as a thoroughly illegitimate act.

Mohammed Kāmil el-Banna wrote:

"The obvious difference that makes it impossible for juristic reasoning to accept the insurance contract as the equivalent of a *Mudārabā* concerns the burden of loss which would be assumed by the owner of capital individually in a ' *Mudārabā* ', while the matter would be different in the case of an insurance contract. Furthermore, if the owner of capital died in the case of a ' *Mudārabā* ', his successors would regain only what their testator had paid, without any excess, while in the case of insurance, if the insurer died, the insured would collect a lot of money, which makes it an absolutely inadmissible risk, as the outcome would depend purely on accident or chance, without reasonable control measures⁹".

Sheikh Abdelhalīm Bassiōnī mentions thought that the non-determination of the percentage of interest in a *Mudārabā* derived from the nature of the deal itself as a purely commercial relationship, based on profit and loss. The jurists did not determine the ratio of interest, simply because they wanted to enhance the nature of *Mudārabā*. Therefore, the insurance contract could not be the same as the ' *Mudārabā* ' contract. For that reason, it would not be acceptable to ignore the opinions of the jurists in favour of the opinion of Sheikh Mohammed Ābdu.

Mustāfa Zeid stated that had it not been for two reasons, the insurance contract could

have been a form of *Mudārabā* contract. The first concerns the nature of the '*Mudārabā*' that requires the sharing of both parties in both profit and loss, while the insurance contract does not mention anything about the loss. The second reason demonstrates why the profit in a *Mudārabā* should be proportional and not fixed rated. He then declared that the insurance companies normally take the necessary precautions to protect their interests. That is why they rarely experience any loss or damage. At the same time, the insured suffer because of biased laws regarding payment of instalments.

Sheikh Mohammed Abū Zahra adamantly denied any connection between insurance and *Mudārabā*. In his opinion, the benefits of insurance should not be considered as the fruits of usury, but as a kind of deferred or postponed usury. It is referred to as *Riba Al-Nasīaa* or *Riba al-Jāhiliya* credit (of the pre-Islamic era). It is absolutely taboo under the 'unanimous consensus of ²Ulamā'. Thus, the conclusion had to be that life insurance is totally different from the legal *Mudārabā*.

In his *Fatwa*, ³Imām Mohammed Ābdu determined the legality of taking all the insurance money including the interest produced during the term of the contract. What evidence did he give? Was it a kind of donation or voluntary contribution of alms? Or the fulfilment of a personal legal commitment? This commitment could not definitely be considered a donation, as insurance companies acted on commercial grounds, aimed only at achieving high profits for their shareholders, without much consideration for the insured, other than keeping to the legal terms of the contract. Then what these companies paid for their customers could not be considered as a form of contribution or donation, or any other kind of help for the needy and disabled, as these good causes did not form part of the company objectives. Moreover, as long as the insurance contract could be described as a 'commutative contract', in which each party ultimately regained an amount of money equal to the effort they had put in, there was no chance of calling what they paid to the insured a donation or co-operation. Hence, if the money paid to the insured were not a donation, then the commitment of repaying the whole premium at the end of the term - despite non-payment of all installments, was not only illegal, but a form of gambling. That is because the collection of all the money – without being paid in installments – would be suspended on the occurrence of an unforeseen incident for both parties, which

makes the element of gambling.

The *Fatwa* issued by ʾImām Mohammed ʿAbdu has been used by the foreign non-Muslim insurance companies to attract Muslim customers on the grounds that life insurance was legal. However, this *Fatwa* with the approval of its perfection, did not provide evidence for the legitimacy of life insurance, which was wrongly considered in the *Fatwa* as legal on the same basis as a ' *Mudārabā* '. Although modern insurance is totally different from the *Mudārabā*, some jurists have supported ʾImām Mohammed ʿAbdu in his call for approving life insurance, owing to acknowledgment of its benefits and advantages in confronting the complexity of life in future.

Sheikh Mohammed Bakheit Elmuteiay¹⁰ answered a question from the ʾUlamā living in Slanik about how legal it was for a Muslim to deposit his money with an investment company for a fixed commission for a certain period of time, after which he would receive back the capital sum and any interest accruing. Sheikh Elmuteiay answered that "the only legal paths for a money guarantee are either by pledge, or by voluntary agreement. Otherwise they would be illegal. The only condition that had to be met, was that the money had to be deposited as a proper loan to be returned in full in any case, or it would become a gambling-like action.

In 1917, the *Sh. arīʿa* High Court issued a verdict against an heir who claimed the right to obtain a prescribed amount of money from an insurance company, after the pledge of the company manager for a lump sum payment in the case of the insured's death, provided his heir would settle the monthly installments against the lump sum.

The High Court justified that, by saying the claim had contained what should not be claimable, as the insurance money should not counts a part of the deceased's estate. Sheikh ʿAbdel Rahmān *Qūraa*¹¹ was requested to give a Formal Legal Opinion on how fire insurance companies should perform. He replied that they were not doing their job in compliance with Islamic Shariʿa. He meticulously discussed the task of these companies compared to the methods of legal guarantee outlined in the opinion of Sheikh El-Mutaiey, before he finally came to the same conclusion about how unforeseen their action would be. Accordingly, the whole task could not get away from the taboo of gambling¹²

Sheikh Ahmed Ībrāhīm¹³ expressed his own opinion about life insurance, summarized as follows. No comparison could be drawn between the life insurance contract and the legitimate *Mudārabā*. The insurance contract is illegal because it is open to usury. Furthermore, if the successors received the insurance money before the full settlement of the instalments, it would be risky and a sort of gambling. In such a case there would be no return on what the company had, rather than both parties to the deal being able to predict future prospects. They would be dealing with each other on an unknown basis, which would contradict the customary and fixed system of dealing.¹⁴

Sheik Mohammad El-Molky¹⁵ in the opinion of the investment of money is not gambling according to the Qurān, The Gambling that is forbidden, is the well-known game in which two parties play against each other, with a certain stake in the pot from each of them, and the winner takes all. That is not the way investment works. Insurance cannot be, by any means, compared with gambling, particularly when it is taken as a collective co-operative effort, of social use to humanity in confronting natural catastrophes. However, the obscurity of gambling would only be evident if it were viewed as a mere commercial contract between two parties.

Ahmed Ṭaḥa el-Sanousī¹⁶ has done comparative research on "The Insurance Contract in Islamic Legitimacy"¹⁷ in which he made a comparison between insurance contract from the angle of liability and 'the fidelity. He came to the conclusion that there was no reason why that kind of insurance should not exist. The components of it resembled 'the fidelity of contract. So, are they really alike? If so, we would be able to depend on that similarity for the legitimization of insurance.

The fidelity of contract forms a link between two parties to an optional contract, provided that each party divulges to the other any previous offences regarding money, and the first one to die leaves his estate to the other. One of them may be more influential and powerful than the other and should accordingly be responsible for all the other affairs of the weaker party, including the payment of *Diyya* (blood money) in the case of committing murder. Eventually, the stronger party would have the right to inherit from the weaker party in the case where there is no other heir to be found.

This fidelity in *Jahilia* (pre-Islamic era) was one of the fundamental reasons to inherit

from someone to whom you were not related. The harsh and hazardous conditions of life during that era facilitated this kind of alliance . When Islam emerged, this situation was acknowledged and allowed to continue for some time until the religion was refined. As a great religion, it outlawed unjust support of one person by another, and called for equality and justice in relationships between all people as revealed in the Qurʾān

"O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: For Allah can best protect both. Follow not the lusts (Of your hearts)."

The Jurists and Imāms hold very diverse opinions about the 'fidelity of contract for the clientèle', and whether it was a reason to inherit or not. The Qurʾān stated that the next-of-kin should have the highest priority to inherit over other relatives:

" ...But kindred by blood have prior rights against each other in the Book of Allah. Verily Allah is well acquainted with all things."

Also the Prophet Mohammed instructed mankind clearly that: "Fidelity should be for the one who free a human being from slavery."

Insurance of liability is a contract in which the insurer pledges to guarantee indemnity for any loss that might occur to the insured, in the case of any mistake made in his business dealings, incurred at another's expense. Such a guarantee would only be applicable to civil liability, and has nothing to do with criminal responsibility, even with regard to consequences such as fines.

It does seem, from the formal point of view, that the components of 'fidelity of the contract for the clientèle' comply with insurance of liability, or at least may resemble it. On the other hand, the deep and genuine basis of comparison lies in the difference between these two contracts:

- (1) 'Fidelity of the Contract of Clientèle' is a contract between two parties. If the Insurance of Responsibility is considered as a dual contract, it would be

a form of illegal gambling. Jurists have commonly agreed that the transfer of dangerous liabilities from one individual to another would lead to the erosion of the social fabric. At the same time, the 'fidelity of contract of the clientèle' would not be like gambling, even if it were between two parties, because it is based on the links between relatives as well as on moral support. Thus, the financial outcome of this contract would be derived from those values.

(2) No connection exists between the two contracts; while the 'fidelity of contract for the clientèle' has been based mainly on defending and supporting the weak and oppressed fellow members of a tribe, 'insurance of liability' has been based mainly on the notion of the reciprocal financial exchange on grounds of probabilities, for commercial purposes.

Sheikh ʿAbdel Raḥmān ʿĪssa,¹⁸ he is in the opinion of divided insurance into two parts : On the one hand, he considered reciprocal insurance to be legal and desirable, being co-operative in nature and useful in confronting social problems and natural disasters. He saw the value of this kind of insurance as a contract between two parties, in which the owner of capital paid a wage or commission to the other party. He explained that Mālikī school of Islamic law ideology contested his argument, supporting the conception of a contract from which the contractor would not gain. However, he eventually came to the conclusion that it would be legal if both parties to reciprocal insurance took commission in the case of a disaster, even if it affected a third party .

On the other hand, commercial insurance against risks to property and civil liability, he judged as legally admissible, as it would provide many benefits to the public, by saving people's financial resources, protecting them from damaging financial ruin, and more importantly, it would bring enormous profits to the insurance company. He treated it as an economic transaction for the benefit of the two parties who voluntarily agreed to contract with one another.¹⁹

However, we can see that the issuing of such an unqualified judgement is not acceptable, as it ignores (or omits) a number of important facts about this kind of insurance. The judgement was made on the basis of non-equality between the contracting parties in a contract based on submission, in which the stronger party dictated the terms and conditions to the weaker party. It would also be a contract

based on tempting the insured, which is not permissible, as it would be a potential contract.

Finally, the insurance company would collect the funds from all the insured parties, to invest them in different ways which would produce large profits for the company. This attitude would definitely count- in the opinion of the economic Jurists – as the defence of a monopolistic position and economic risk which could cause a lot of damage to the community. Then, what is the nature of the commitment to commercial insurance? Would it comply with Shari'ah rules and general principles? Would the consent of the two parties always be sufficient evidence to judge whether their position was legal? Sheikh Issa also recognised the benefits that would accrue from social and co-operative forms of insurance, as well as showing the disadvantages of being a merely commercial activity.

Mohammed Yūsuf Mūsā²⁰ acknowledged that insurance of all kinds is based on a co-operative enterprise from which society benefits. It would be legal if it were free from usury. In his opinion, if the insured lived for the whole term of the life insurance contract, he should be entitled to regain only what he has already paid, without any interest. But, if the insured died before the term of the contract was up, his successors should receive the full amount of insurance, as that would be absolutely legitimate.²¹

It is understandable that insurance as a co-operative enterprise applies to reciprocal insurance. Thus, the illegitimacy of usury should not be an issue, In the case of the death of the insured, Musa cites no evidence as to how the full collection of the insurance premiums would be assured and legal.

He also wrote about life insurance in his book *Al-Īslām Wal Hayāt* (Islam and Life), where he maintained that insurance in general is legitimate if conducted by ethical companies, free of usury both in their own investments and in reimbursing the premiums to the insured at the end of the term of the contract.²² Hence, the conclusion he came to about the illegality of insurance referred only to the relationship between insurance to usury. What is the evidence for the legality of insurance, when it is free of usury?

Mūsa refuted this point by giving the example of insurance which, in some of its particulars, resembled the Co-operative Pilgrimage Society law which imposes 240 point per annual installment on each member. If the member died before it was his turn to travel, then his successors would regain nothing from the installments he had paid. If he discontinued payment of his prescribed installments, he could regain only what he had already paid. Eventually, if he had the chance to travel on a pilgrimage, he would be paid around 40 points by the Society, provided he was responsible for the settlement of the remaining installments. If he died before fulfilling this commitment, nobody after his death would be obliged to take legal action²³.

The comparison between commercial insurance and the Co-operative Pilgrimage Society is not valid as they differ in essence as well as in details. Such subscriptions to non-profit societies are purely benevolent with the main aim of helping their members and the community. They run an ideal financial system which does not aim to make any sort of profit, or gain from usury. Insurance, on the other hand, is a bare-faced commercial activity, for the express purpose of making profits from customers. The characteristics of the insurance contract are totally different from that of a charitable organisation. It is a co-operative contract, rather than one based on obligation, probability and temptation. As long as it gives wide scope to deceiving and misleading customers²⁴, the insurance Jurist admitted that it could not form a part of the group of 'good faith contracts.' Because of this, there is no way of comparing commercial insurance with the operation of the Co-operative Pilgrimage Society.

It is true that insurance, if it were of a co-operative nature, would be different from any kind of gambling or mortgaging, but if it were not, it would be risky, tainted and outlawed. That is mainly because of lack of equality and proportionality between profit and loss, with the total absence of fairness in the division of profits. The allegation that the only act of gambling is playing cards is ingenuous. The ancient Arabs used to hold raffles (like the Lottery) with their arrows, using them as a source of good fortune in a way that controlled their daily lives. Later with the spread of enlightenment from Islam, that came to be considered gambling and with other bad practices such as drinking, was banned. The Qurān stated:

".Forbidden also is the division of meat by raffling with arrows: that is impiety²⁵" and

"O ye who believe! Intoxicants and gambling, sacrificing to stones, and (divination by) arrows, are an abomination - of Satan's handiwork: eschew such (abomination), that ye may prosper²⁶".

The assessment of compensation in life insurance is based on a forecast of how long the insured will live. It differs in this respect from the assessment of perished goods. Therefore, as long as it is utterly predictable it would be very hard to achieve justice that would give insurance the nature of gambling. Insurance also contains some kind of temptation, which is prohibited, as well as ignorance about how to insure somebody's life. That ignorance is the main reason that makes the contract imperfect. Inevitably that leads to legal disputes and the wasting of people's resources.

It is understandable that life insurance companies normally invest their reserves for usurious purposes. From this angle, it is hard to separate the rules and regulations of the insurance system which govern the treatment of their customers, from the illegal pay-out at the end of the term to the insured of tainted money

4.2. Al- Mālikī School of Law

4.2.1. Mustafa Ahmed El-Zarqa Views

Mustafa Ahmed El-Zarqa came to the conclusion that the rule of commitment operated if somebody promised another party a loan or took on any financial burden on their behalf – which did not form part of their duty – but the jurists of the Mālikī school of Islamic law held different conceptions of how obligatory the maintenance of the original promise was) Some of them supported the fulfillment of the promise unequivocally, irrespective of its nature. Others held the opposite view. One group put forward the idea that the lender was obliged by his promise when the purpose for which the money was required was specifically defined, even if the person to whom the promise was made, did not achieve his goal. However, some jurists did not agree with this latter point, and made it conditional on the person to whom the money had been promised achieving their set task²⁷.

El-Zarqa continued to maintain that the insurance contract should be an obligation on

the insurer towards the insured, bearing, on his behalf, all the harmful consequences of a dangerous accident to which the insured might be subject. That obligation was inherent in the promise, whatever the possible outcome.

The difference between the jurists of the *Mālikī* school of Islamic law on this issue, leads us to the core of the dispute about the implementation of obligatory promises. According to the *Mālikī* school of Islamic law, the opinion closest to reality is the one that is called for. Thus, the promise should not be obligatory unless there is a reason to let the person who has been promised be involved. The lender who makes the promise should not make any promise before being fully confident that he is capable of carrying it out.

The idea of treating the insurance contract – even without a return - as an obligatory promise is not valid as the nature of the contract conflicts with obligatory promises. It would not be possible as well to accept that idea as evidence for the issue of an insurance contract, as this contract is not just a promise, but also a formal commitment by the insured to pay the proposed instalments, in return for repayment of the insurance premiums at the end of the term of the contract. If the insured failed to fulfill his commitment, then the insurer would naturally be absolved of any responsibility towards him

4.2.2. The System of 'Aqīla ' in 'Islām

The 'Aqīla ' is a clan committed by an unwritten law of the bedouins originating in the early stages of 'Islām, to pay blood money for each of its members. If somebody has committed a murder unintentionally, of which the blood money would be the final verdict, then that blood money would be spread across his 'Aqīla (the supportive clan).

The 'Imāms and Jurists have different ideas as to who the members of 'Aqīla should be. 'Imām Abu Hanīfa suggested they should be the administrators in his area, while 'Imām Mālik argued they should be the killer's clan, who normally live with him in the urban centre and not those who live in the rural area, while 'Imām Shafī stated that they should be the next-of-kin on the father's side²⁸. 'Imām 'Ibn Hazm backed 'Imām Shafī's opinion. The blood money should be collected by the clan members in a co-

operative way, to maintain good ties with the killer, provided the killing itself happened unintentionally. The jurists justified that as a kind of punishment of the clan members for their deficiencies in neglecting their kinsman to the point where he was pushed to kill someone, albeit by accident²⁹.

Then, what are the points of similarity between the insurance system, and the 'Aqīla' system that was basically established on firm foundations of co-operation and mutual support. The delinquent would gain no personal benefit in complying with the Shaṛī'a, on grounds of co-operation and family solidarity.³⁰ It is totally different, when comparing 'Aqīla' with commercial insurance. The latter is a purely commercial activity, based on a bilateral commitment between an investor (the company) and a customer (the insured). These commitments represent the payment of prescribed monthly or annual installments by the insured, against the return of a financial benefit to him at the end of the contractual term. Although, El-Zarqa insisted that the systems are acceptable, (i.e. collaboration in accepting dual responsibility), the jurists refuted that by pointing to the lack of this characteristic in commercial insurance.

The 'Aqīla' system is similar to the pensions scheme for state employees which is founded on co-operation between the state and its employees for their ultimate benefit. Under this system, the state deducts from employees' salaries regular monthly amounts which are given as pension payments at the end of their working life. These payments should continue for the rest of their lives and then are passed on to their dependant successors after death until they become independent. The process looks similar to the commercial insurance system in respect of paying monthly installments. However, there is a genuine difference between them. The commercial insurance system is based on certain financial rules, the ultimate goal is the profit. While the State has designed the pension scheme for the sole benefit of its employees. The State, by so doing, aims to express its appreciation of its employees' lifetime of public service and show their care and responsibility towards all civil servants, irrespective of their religion or gender, ensuring that they and their families can live a decent and honourable life after retirement. The small percentage, deducted from employees' monthly salaries while in service, is not equivalent to an insurance premium but rather a form of tax designed to provide good administration, and an appropriate standard of public welfare.

Despite some abuses of the pension scheme, it does not signify that a commercial insurance system could act as a legal counterpart³¹. There is a big difference between a co-operative and benevolent social security system under the direct supervision and control of the State, and a private system, designed by the private sector, which aims to exploit the financial resources of the public with a lot of suspicions. Muslims believe that Islam as a broad-minded and final religion has been revealed to all mankind and has proven useful for every generation everywhere. As a tolerant religion, it would not reject a foreign or modern system because of its origin, unless it contradicted the provisions of Shari'a and the general principles of Islām. However, El-Zarqa's opinion, giving formal approval to commercial insurance by comparing it to 'fidelity of contract for clientèle', 'obligatory promise' for the Mālki school of Islamic law, the 'Aqila' system, or the public employees' pension scheme, is not valid, nor is his opinion about the legality of commercial insurance.

One of the significant opinions about insurance was put forward by Mohammed Abu Zāhira. His opinion can be summed up in three main points³²:

(1) Abū Zāhira argued that the jurists should not be rigid in trying to interpret modern contracts in the light of the Shaṛī'a. That means more flexibility and understanding are required, unless those contracts conflict with the basic rules of Islām.

Some understand that the insurance contract has become acceptable according to the beneficence which taken in some Islamic countries as a considerable argument (particularly in the Hanafi school of Islamic law) regarding issues which used to be proven by discovery and not by the general text. Abū Zāhira would agree that the genuine and true beneficence could be an argument. Then he made an inquiry as to whether commercial insurance has become a public or private beneficence, and the answer for his inquiry would be; only a very little portion of people currently use that sort of insurance. At the same time the alleged beneficence would normally confront some issues being derived from the texts.

(2) The insurance contract has come to be accepted in some Islamic countries on the basis of its beneficial effects which are considered a substantive argument in its favour, particularly by the Hanafi school of Islamic law. Prof. Abū Zāhira would

agree that the genuine and true beneficence could be an argument in its favour. He then inquired into whether commercial insurance is of public or private benefit, and the answer he came up with is that only a very few people currently benefit from that sort of insurance. At the same time, any alleged benefit would normally have to be measured by its conformity to the texts.

(3) ʿAbdel Rahmān ʿĪssa has raised the point of a real benefit from the insurance contract. This benefit can be considered an independent jurisprudential origin. More importantly, the insurance contract has now become an economic necessity and a fact of daily life. However, it is pertinent to ask whether commercial insurance is the only option. Whatever necessity there might be, the doors of co-operative insurance are wide open. If it did not exist, it would have to be invented.

Eventually, he concluded that a co-operative, social insurance scheme is completely legitimate and that non co-operative insurance is unacceptable because it contains the taint of gambling, temptation that would nullify the contract and usury. It represented a waste of financial resources through payment of money against future receipts and therefore, such kind of insurance³³ should not be considered an economic necessity.

The importance and impact of insurance upon current daily life, in terms of economy and social welfare, quite apart from the commercial aspects. It has become a daily fact of life as well as a reality affecting everybody. By and large, this effect on daily life has been due to colonial domination of the Islamic world's, political and economic affairs, dictating Western laws and rules over our countries and leaving the doors wide open to their companies to come in and exploit the human and natural resources of Islamic countries. However, it is now high time to reorganise Islamic life with the heritage we have acquired. We need to sort out what is compatible with the Shari'a, and reject what is not. Insurance is definitely be one of the legacies we should adjust to, in accordance with Islamic culture and religion.

4.3 MODERN JURISTS STANDING ON INSURANCE

Introduction

Modern Islamic jurists have expressed their views of insurance, either individually in

their own publications, or collectively during conferences on the subject, or in papers presented, in them. Examining their views adds to the long-standing confusion and difficulties of interpretation. There are several reasons for this confusion but the main one is the lack of any reference to insurance in the Qurʾān and *Sunna*. This precluded initiatives by respected scholars and explains the absence of classical Islamic law treatises on the subject³⁴. This has led to opinions being given by scholars who lack understanding of the nature of the insurance contract and its terms and to not being objective in assessment of the core mechanisms of insurance.

Several opinions have been expressed on the validity and permissibility of insurance and these can be grouped in the following way:

- (1) A group that prohibits all kinds of insurance without exception³⁵.
- (2) A group that only approves of commercial insurance organized on a mutual or co-operative basis³⁶.
- (3) A group that approves all kinds of insurance³⁷.
- (4) A group that prohibits only life insurance with a commercial or mutual contract³⁸.
- (5) A group that stress that insurance *per se* is unlawful, although necessity makes it permissible³⁹.
- (6) A group that allows only some indemnity insurance, such as motor insurance⁴⁰.

It must be noted that these groups often overlap, as some Jurists approve of certain aspects of insurance, but disapprove of certain practices in the present time. An attempt to harmonize and reconcile these views is being made in the thesis.

The first group's opinion is based on moral, political, religious and economic arguments. The second group's views derive from the legal standpoint of traditional teachings on *Gharar* and *Ribá*. Some of the jurists insist on non-legal arguments, whilst others insist on the contractual basis of insurance.

Both views are indiscriminately employed and expressed fairly, as far as insurance is concerned. The view of the majority of contemporary Muslim jurists and scholars has been stated by the Committee of *Ulama' Al-Majmā' al-Fiqhī al-Islāmi*,⁴¹ that insurance

is prohibited when persons or organizations profit from the misfortune of others, while insurance is acceptable if conducted on a mutual or co-operative basis.

4.3.1. The Legitimate Bases of Insurance

The application of a number of prohibitions in Islamic law differs according to whether the contract is an onerous one, (*mu'awada*), or one without consideration, (*Tabarru*). This distinction is essentially relevant in Maliki law, where the prohibition of *Riba* and *Gharar* applies only to *mu'awada*, but, as noted earlier⁴², similar positions in Hanbali school of Islamic law were developed by Ibn Taymiyyah.

Insurance falls within the category of *mu'awada*, as both the insurer and insured conclude the contract knowing that it involves mutual obligations and is subject to the conditions contained in the policy, i.e., the insurer is not bound to pay the sum insured if the insured fails to pay the due premiums⁴³.

4.3.2. Prohibition of Gharar and the Validity of Insurance

The prohibition of *Gharar* in Islamic law has been the major argument put forward against the validity of insurance. Those who argue that insurance cannot be accepted under Islamic Law, argue that uncertainty is a prominent feature of insurance.

Firstly, these proponents argue that there is uncertainty as to the payment of the sum insured. The insured pays periodical premiums without knowing whether he will ever receive the sum insured, as its payment is dependent upon the occurrence of a contingent event⁴⁴.

Secondly, when payment is made, there is uncertainty as to the amount payable to the insured as such payment is measured according to loss sustained, at least as far as indemnity insurance is concerned. Therefore insurance manifestly involves uncertainty, and this uncertainty is equivalent to the element of *Gharar* expressly prohibited in sales contracts in Islamic law⁴⁵, and, by analogy, other contracts. Thus, insurance in Islamic terms cannot be permissible⁴⁶.

The position of the *Shari'a* towards conditional and uncertain sales is that risk, where it is involved, is forbidden because of the likelihood that it will result in disadvantage to some party⁴⁷. However, such an interpretation of the *Shari'a* is far from being an

accurate reflection of its position in this regard. There are various elements which form the basis of different views. One view considers the existence in Islamic law of a category of contract which involves uncertainty, such as wills, guarantees, and other similar contracts. Another viewpoint accepts the *Mālikī* doctrine⁴⁸, supported by Ibn Taymiyyah, which confines *Gharar* to circumstances where uncertainty may have prejudicial effects and upset the balance between the mutual rights and duties of the contracting parties⁴⁹.

Apart from this, there is the fact that *Gharar* is, itself, applicable to contracts involving an actual exchange of counter values and is subject to the requirement of equivalence rather than a transaction containing a binding promise of financial assistance, through a contribution to a fund created for the purpose.

For this reason the sale of unripe fruit was forbidden by the Prophet. If the fruit did not ripen, the calculated equivalence would be upset and the result would be an unjustified increase of capital to the benefit of the seller⁵⁰. The insurance contract has been incorrectly compared to sale contract, but it is not a conventional contract, whereby goods or services are exchanged for money, in which case the comparison would have been well founded.

Each insurance transaction containing risk has to be considered fully to evaluate the eventual prejudice it entails. As for insurance, it has been specifically designed in order to counter the effects of risk and this function cannot be set aside when studying its legitimacy within Islamic law. It must be the determinant in this respect.

Uncertainty is inherent to insurance. It aims to provide financial security in exchange for a premium which is appropriately justified, as no-one would expect to receive financial assistance from a fund without contributing to it⁵¹. Insurance without uncertainty is inconceivable, as is the case with other such contracts containing a functional contingency, such as wills, guarantees and *Mudāraba*. The performance of the obligation of a surety is necessarily uncertain, as it is precisely deemed to materialize only in case of default of the principal debtor, which is a contingent event.

The same principle occurs in insurance where the uncertainty is fully justified and

legitimate. It should be noted that the concepts of state pension schemes and mutual insurance, are not refuted when commercial insurance is rejected, because of the existence of *Gharar*, as the same principle of functional contingency applies.

Uncertainty is present in mutual and state insurance schemes as much as in commercial insurance and the argument that *Gharar* does not invalidate mutual and state schemes because the premium is deemed to be a donation, is unconvincing⁵². In fact the Islamic opinion supporting such an argument implicitly admits that *Gharar* is not prohibited *per se* by itself, and is only deemed to invalidate insurance when there is a possibility of unjust advantage, as is the case in commercial insurance. Therefore insurance contains *Gharar*, because its aim is to cater for prejudicial uncertainty. It is not, as is the case with some Islamic contracts, rendered invalid by it. As required by the Shari'a, the rights and obligations of the parties are, to a great extent, precisely determined. The contract stipulates exactly what each party is enjoined to do or abstain from. What remains undetermined in indemnity insurance is the sum insured, as it will be measured according to the loss sustained and covered under the policy's terms.

This factor (along with the indeterminacy of the date of payment of the indemnity) is dependent upon the occurrence of the risk covered and does not fall within the arena of the prohibition of *Gharar*, which forbids functional uncertainties pertaining to the essence and role of the contract. It is considered by Mr. Muṣṭafa Al Zarqa that insurance does not fall within the scope of the application of the prohibition of *Gharar* by *Shari'a* but of the kind which is acceptable and for those who said that peace (*Ammn*) has no value, I say (Muṣṭafa al-Zarqa) that peace (*Ammn*) is the greatest life gain as that peace God has gifted *Quraysh* with it "let them adore the Lord of this house"⁵³(House indicate the *Ka'ba*) all people work hard, collect wealth, build houses or palaces, invest and trade all these for gaining peace and security for them and their families for their present and future, there is no evidence in the *Ṣurat* that obtaining peace does not have a price, and if any claim that peace does not have a price, that an interference in God's principles.⁵⁴ It is that insurance does not fall within the scope of the application of the prohibition of *Gharar*.

It is a collective scheme which cannot be reduced to a one-off bilateral contract.

Gharar invalidates a contract when it results in unfair profit to the one party, as in the case of the sale of unripened fruit. The prohibition of *Gharar* is either founded on *Ribá* or on gambling, as expressed by Ibn Qayyim⁵⁵:

Similarly in the surat contract of hiring guards, is a contract of employing a guard to protect one's own properties or goods of any kind. The guard employed is paid wages for the service provided, similarly of paying fees for peace of mind⁵⁶.

Insurance contract has no such unjust profit as, with the exception of life insurance, if the event insured against occurs, the insured will not make a profit but will simply be indemnified from the collective fund set up and administered by the insuring body. If the event insured against does not take place, the premiums do not become the property of the insured. The transfer of the premium occurs only once they have been paid, and is independent of the occurrence of an uncertain event. Therefore *Gharar* does not arise in this case. In addition to this it should be specified again that insurance lessens social and economic risks⁵⁷.

4.4. Invalid Bases of Insurance

4.4.1. Implication of Ribá in Insurance

Under a conventional insurance contract the insured pays to the insurer a sum, usually by installment, in exchange for the insurer undertaking to pay, on the occurrence of a specific event defined in the policy, a sum which is normally largely superior to the premiums paid. The insured (or the beneficiary) may consequently obtain a sum much higher than the one he has paid. This difference has been seen by Muslim jurists as amounting to an unjustified increase of capital, resulting in *Ribá*. *Ribá* would also be involved when the risk insured against does not take place, but this time to the benefit of the insurer. The premiums paid are seen as a "mere loss" to the insured and an unqualified profit for the insurer, which amounts to an unjustified increase of capital prohibited by the *Shari'á*⁵⁸.

This concept of *Ribá* has been introduced into the argument on the invalidity of Islamic insurance, as a result of an unfounded analogy made between insurance and a number of contracts sanctioned by Islamic law. One such example is the analogy

made between insurance and *sarf*⁵⁹.

When the insurance contract is seen as *sarf*, the difference between the premiums paid and the sum insured cannot but be described as *Ribá* as the insured receives a sum exceeding by far the installments that he paid⁶⁰.

The insurance contract cannot be reduced to, or made to fit into, one of the Islamic nominate contracts, when its lawfulness is examined. The sum insured paid to the policyholder is not the repayment or refund of the premiums paid by him increased by a certain amount, as is alleged by those who oppose insurance⁶¹. It is true that the premium paid by the insured varies with the amount and extent of the cover required by him. This is necessary for the common fund to provide sufficient cover for the risks transferred from the insured to the insurer. Insurance is the participation in a common scheme, aimed at providing financial assistance according to the terms of the contract entered into between the insured and the body to which the risk is transferred. The premium paid represents the necessary contribution to the common fund, without which no reserves could be formed to provide assistance, and no remuneration for the service provided by the insuring body could be made⁶².

4.4.2. Gambling Versus Insurance

It has been claimed, by many, that insurance should be rejected because it is a form of gambling. The payment of the sum insured depends upon pure chance, as is the case with gambling profits⁶³. But as we have already established in detail⁶⁴, the requirement of insurable interest removes insurance from the gambit of gambling and the argument disqualifying insurance on this ground is invalid.

Bidding is another kind of risk which is not a necessary part of every day living and working, on the contrary, they are as a result of voluntary choice, either initiated by man or with which he voluntarily associates. Such risks entail both loss and gain. The hope of gain motivates the taking of risk which is a game involving money stakes. This is considered gambling. Insurance does not differ from this⁶⁵.

4.4.3. Other Arguments on the Invalidity of Insurance

In addition to the arguments citing the existence of *Gharar* and *Ribá*, other grounds have been put forward for the rejection of insurance by those who argue its invalidity.

(1) The insurance contract is not recognized by the *Shari'a*. According to this argument, insurance should be rejected because it does not correspond with the nominated contracts regulated and expressly validated by the *Shari'a*. The counter argument is that Islamic law does not reject all contracts that do not comply with established nominate contracts. It recognizes the concept of contractual freedom and allows the introduction of new transactions, provided that they do not violate Islamic contractual public policy.

(2) Inheritance rules and insurance - this argument concerns life insurance, where the sum insured is paid to a beneficiary designated by the insured, and is not passed on at the death of the insured to his legal heirs. It is said that this constitutes a breach of Islamic inheritance rules concerning the distribution of the deceased's estate among his legal heirs.

This argument has its origin in a distorted view of the insurance contract, as the sum insured paid to the beneficiary does not originate from the estate of the life insured, but from the fund constituted and administered by the insurer. As a result it is not subject to the inheritance rules applicable to the estate of the life insured. It might be argued that by its means life insurance allows the life insured to defraud the inheritance rules and takes advantage of heirs to the detriment of the others. In fact, according to the *Shari'a*, a Muslim may donate freely during his lifetime to any person he wishes,⁶⁶ so he does not need to resort to life insurance for this purpose.

(3) Third party contract is unlawful in Islamic law. Contracts for the benefit of third parties would not be allowed in Islamic law, because the clause, stipulating that the benefit from the contract is to be given to a third party, would amount to an additional clause in the contract prohibited by the *Shari'a*.⁶⁷ As a result, given that insurance is often a contract for the benefit of a third party,⁶⁸ it should be rejected.

While this statement might be pertinent in Hanafi law, the position of Hanbali law in this respect is very different. This latter doctrine allows additional stipulations to the contract, provided that they do not contravene the provisions of the *Shari'a*, so that contracts for the benefit of third parties are valid, and do not constitute an impediment

for the permissibility of insurance under the *Shari'ah*.

(4) The will of God and life insurance contract - according to this view, insurance would upset the course of man's destiny as decided by God, because it aims at changing the natural consequences of adverse events. This extra-legal argument was refuted very early on⁶⁹. It is obvious that the *Shari'ah*, which has Muslim interests in mind at all times, is not violated by measures of precaution and security which are aimed at providing financial assistance in the event of prejudicial events.

(5) Reinvesting the insurance premium - the investment policy of the insurer is important for while it is not properly part of the insurance contract, it has a consistent bearing on it, as it brings in forbidden elements like *Ribá*. It is evident that insurance companies invest the funds raised in ventures involving interest in violation of the *Shari'ah*, but the invalidity is due to the investment behaviour of the insurer, not to an inherent defect in the insurance contract. It disqualifies the insurance contract, only as much as it is inconsistent with Islamic law, and there is a considerable latitude for manoeuvre in this respect.

(6) Insurance is not based on genuine co-operation: The supporters of the validity of insurance quote in its favour the verse of the Qur'an calling for mutual help and co-operation among Muslims:

"And the believers, men and women, are protecting friends one of another; they enjoin the right and forbid the wrong, and they pay the poor-due and they obey Allah and His messenger"⁷⁰.

Such arguments must be refuted on the grounds that there is no intention of co-operation and mutual help among the group of the insured. Whether the intention of mutual help exists or not among those insured in commercial insurance, the fact is that the loss sustained by one of them is borne by the others collectively, since the sum insured is paid from a fund constituted by the collection of premiums from all those insured.

Consequently, the mutual help enjoined by the Qurʾān is *de facto* in force, but, as will be submitted later, mutual insurance does not embody genuine cooperation among the insured any more than commercial insurance does. However, even if the insurance contract is not a realization of the principles prescribed by the *Shariʿa*, it is, nevertheless, valid so long as it does not contravene the rules of Islamic law.

(7) Besides the arguments rejecting commercial insurance cited above, there are many other arguments that fall into two main categories:

The first concerns stipulations in the insurance contract, often seen as draconian clauses towards the insured, such as charging interest for a delay in payment of the premium⁷¹. Here the blame is directed at the stipulations, which are in themselves too burdensome and contrary to the *Shariʿa*. It is not the insurance contract *per se* that is subject to controversy, but certain terms contained within it which are judged unfair. The issue here is how these clauses can be modified to make them acceptable to Islamic law.

The second category of positions includes extra-legal arguments which are entirely subjective and unfounded. Amongst such arguments are allegations that insurance leads to negligence, as insurance companies strive solely to make profits at the expense of the community⁷², and to exert control of governments⁷³.

This undermines all legal reasoning as it demonstrates a preconceived hostility towards insurance, which proceeds from a profound misconception and limited understanding of its mechanisms. These arguments reveal the underlying reasons for the rejection of insurance by the majority of its proponents which will be explained later. One remarkable example is the allegation that insurance leads to negligence because the insured, knowing that he will be indemnified by the insurer in case of damage to or loss of his property or in case of liability incurred, will act recklessly and without prudence. It is also said that the insured will intentionally commit acts causing him to be indemnified under the insurance contract⁷⁴.

While insurance is subject to abuses and fraud, as any other contract, effective

measures have been taken to counter this. Insurance policies generally contain a deductible or excess clause making the insured liable to contribute a certain proportion of the loss sustained. In addition, policies often impose on the insured the adoption of preventive measures to minimize the occurrence of an insured risk. These are promissory warranties to maintain alarms or sprinkler systems in commercial fire policies or to install new locks or maintain new brakes in motor policies⁷⁵.

As far as intentional acts committed by the insured are concerned, there is a standard practice whereby policies do not cover losses intentionally caused by the insured.

This is a genuine conclusion. It is widely agreed among Islamic scholars and jurists that the insurance contract can never be free of gambling, temptation and usury. As long as there is no compelling economic necessity, it should be replaced by a lawful, co-operative insurance system, which is free of usury and any other taint. With regard to the criticism that the insurance contract is a waste of resources, it is important to qualify this. It is not always the case, as the insured party sometimes may not receive the full insurance entitlement owing to the non-occurrence of the accident covered by the transaction. In such a case, the insured party might pay their money without any return. In very many cases, the insurance companies may also prefer to repair the damage without paying the insured any actual money. That mostly happens in cases of insured objects which are repaired or replaced.

Sheikh Abdullah El-Galgeily's *The Mufti of Jordan* already set out his judgement of all kinds of insurance as illegal according to *Shari'ah*, for the following reasons, that insurance is

- (1) incompatible with natural and familiar methods of earning money, such as buying and selling
- (2) is not free of the taint of gambling
- (3) is not free of temptation and cheating
- (4) involves an element of usury

In addition, the insurance companies issue the terms and conditions in their contracts

in an ambiguous, unclear way that protects only their interests while ignoring those of their customers and leads to corruption

Siddiq̄ Mohammed El-Amin̄ El-Dareir,⁷⁶ concluded his opinion in his presentation that he did not approve the current insurance system as legal, as it was not appropriate to decide on the basis of necessity unless there were no other alternatives. In the case of insurance, it would be possible to take the essence of the insurance contract and make the best of it, while firmly upholding the doctrines of Islamic jurisprudence. That could be achieved by moving away from commutative to contributory insurance contracts. It would be possible to remove the intermediaries who solely make profits from insurance, and convert to a co-operative insurance system. That kind of insurance could be run by the participants themselves or under government supervision. El-Dareir came to his conclusions mainly because the current insurance contract contains an element of temptation which is utterly unlawful.

4.4.4. Other Views of Insurance

It is now clear that a distinction has to be made between life and non-life insurance. Life insurance contracts do not have the indemnity character of other policies, and are not considered as compensation for a loss suffered. The sum insured is paid without reference to any financial prejudice sustained, although the idea of compensation may be inferred if the sum insured is paid to the breadwinner's dependent on his death. This is not the case when the sum insured is paid to the insured himself at the maturity date of an endowment policy. In the latter, and in spite of the insurable interest requirement, it remains from an Islamic point of view, immoral gambling. This is why positions towards life insurance generally differ and are extremely restrictive. Therefore, life insurance must be considered separately in any insurance scheme as *not* being in harmony with the *Shari'ah*.

4.4.5. Inconsistencies in Arguments Prohibiting Insurance

Insurance is criticised for involving elements forbidden by Islamic law, such as *Ribá* and *Gharar*. Other non-legal considerations are cited incidentally⁷⁷. On the other hand, the insurance schemes accepted by Islamic opinion, such as mutual insurance, do not necessarily eliminate the forbidden elements that exist in commercial insurance. A contract, which, on the one hand, is rejected for contravening the Islamic law of contracts, is accepted, on the other hand, in a different context while

still containing the principal causes of its rejection.

This contradiction weakens the reasoning of the arguments against commercial insurance. There is almost unanimity amongst those opposing the validity of commercial insurance that mutual insurance is the only acceptable insurance scheme under the *Shari'ah*, with the exception of state insurance. The argument is that the mutual structure does not involve forbidden elements⁷⁸, and that mutual insurance embodies the Islamic conception of solidarity and mutual help, as premiums paid are donated by the insured who are free of any profit - making intention⁷⁹.

According to this view, the only aim of the participants in the scheme is to provide relief for the other members, in the event of financial loss. The premiums and the sum insured are seen as gifts and therefore exempted from the prohibitions of *Ribá* and *Gharar* as there is no exchange of counter values⁸⁰.

Therefore the mutual scheme is considered valid for the following reasons⁸¹:

- (i) the intention of the members is to help each other and to bear one another's burdens
- (ii) the intention of the members is to donate the premium and not to pay a contribution in return for financial cover
- (iii) the insuring body is owned by all those insured
- (iv) the company is managed by the insured and not by a distinct entity.
- (v) the profits are distributed to the members and not to shareholders owning the business.

It should be pointed out that the members of a mutual insurance company do not have to know each other, and deal solely with the business of the company in matters relating to their policy.

In commercial insurance the intention of the policyholders cannot be guessed at, and would not affect the judgement of the promoters of and participants in the scheme. It is more than evident that the incentives of the insured are to seek the best financial cover with the most favourable terms available. All policyholders pay a premium in exchange for cover. That is the promise of the insurer, to secure them financial

assistance according to the conditions of the policy. There is no doubt that in the mind of the insured, were his intentions revealed, the idea of interdependent and mutual obligations between him and the insuring body would always be manifest.

We conclude that if *Ribá*, prejudicial *Gharar* and gambling exist in commercial insurance, they will not be present in mutual insurance, because mutual insurance eradicates the alleged causes of the forbidden elements, according to the reasoning of the opinion which invalidates insurance on the grounds of *Gharar*. Therefore, mutual insurance should be strongly recommended and the insured may, at least theoretically, be asked to pay an additional premium to enable the company to meet its financial obligations towards members entitled to an indemnity. This additional premium cannot be pre-determined, so that excessive uncertainty is involved in this operation. The advocates of mutual insurance fail to mention this point. As far as ownership and management of the mutual insurance company is concerned, actual practice demonstrates that the policyholders own and manage the company, only in formal terms. Evidence of this is that in a case of insolvency, the policyholder will lose only his premium as would any other insured person who had contracted with a commercial insurer.

The control of the directors by the members is practically fictitious, due *inter alia* to the extremely low rate of participation in the election of directors and owing to the quorum requirement and proxy system⁸².

The policyholder in a mutual insurance company is buying a service like any other insured person. He does not play the role of owner, even were he given the opportunity to do so. The main feature of mutual insurance is that policyholders have a proprietary right to profits. The insured have, in this case, a proportional interest in the surpluses while, in commercial insurance, the surpluses go to the owners of the enterprise who are the shareholders. This is the only relevant difference between commercial and mutual insurance.

In commercial insurance, a mutual company might contravene the *Shari'ah* by adopting an investment plan involving forbidden elements. On the other hand, a proprietary company may be following an investment programme in compliance with Islamic law.

Many large proprietary companies compete successfully with mutual companies in that they pay benefits to policyholders and still pay dividends to their shareholders⁸³. The large volume of business transacted by some proprietary companies results in considerable savings in administrative costs to policyholders and the larger investment income generated from greater reserves allows them to pay out part of those benefits to policyholders. In reality, the issue is determined by how equitable the company's policy and practices are rather than in the form the company takes, or in the supposed altruistic intentions of the insured.

If the insurance market were not subject to restriction and regulation, it would certainly be open to abuse and wrongful practices, whatever form the insurance companies took, whether proprietary or mutual, if the management were unprofessional. The attitude and expectations of the insured are the same in each case. A commercial insurer might act more advantageously to the insured than a mutual entity or vice versa, depending upon the company's policy, the terms of the contracts issued and other considerations such as state supervision and investment strategy⁸⁴. Even if mutual insurance were to prove more profitable for the insured, in terms of lower premiums or higher bonuses, this does not imply that commercial insurance is invalid under Islamic law⁸⁵.

This prospective advantage which might render the bargain struck with a mutual insurance company more profitable and rewarding to the policyholder does not invalidate commercial insurance as a lawful business activity from an Islamic point of view. The fact that the persons who set up and run an insurance enterprise make gains out of the service rendered does not invalidate insurance. Other criteria than the company's structure determine whether it is permissible or not under Islamic law.

4.4.6. Main Reasons for Muslim Jurists Prohibiting Insurance

The mutual structure does not eliminate from insurance the elements that were advanced as reasons for disallowing commercial insurance. It does not transform the contract into a gratuitous act (*Tabarru⁵*) as has been claimed. It is claimed that the contract of insurance was rejected because its subject matter and constitutive elements were unlawful, whereas mutual insurance is allowed because it is based on genuine solidarity⁸⁶.

The only difference between mutual and commercial insurance is in the structure of the insuring body, as a consequence of which surpluses, if any, are apportioned among policyholders instead of shareholders. This might be more advantageous to the insured and appears more equitable since the mutual structure does not present itself as an exploitative entity. The contractual obstacles put forward against the validity of insurance, in fact constitute a means to support and strengthen the real causes for the commercial insurance, and the decisive evidence in this concern is precisely the acceptance of mutual insurance and state insurance. Those real causes are the alien origin of the concept of insurance to Islam and the Islamically unlawful practices of insurers.

The insurance concept was originally an alien idea introduced by foreign companies⁸⁷. Seen as such, it aroused the mistrust of Muslim jurists, especially at a time when no legislation existed which could regulate the practice of insurers to guarantee a fair transaction to the insured⁸⁸. The insurer appeared to be a foreign capitalistic entity exploiting Muslims by selling them a then unknown, and somewhat elusive, service. The fact that the majority of insurance business was effected by foreign companies, had, and still has, a substantial influence on the prohibition of commercial insurance, as insurance has been perceived as a means to extract money unjustly from Muslims for the benefit of Western exploitative interests.

The opposition to insurance was a reaction to the introduction of a foreign concept which was totally new. Maxime Rodinson describes the reluctance of Muslim entrepreneurs to engage in modern industrial undertakings as a “normal reaction at that period of transition towards the sudden introduction by foreigners of an economic behaviour which was radically new and heterogeneous to the network of traditional social relations and to the attitudes and behaviour which were correlative to them⁸⁹”.

Another fundamental consideration which led to the prohibition of commercial insurance is the investment of funds by insurance entities in interest-bearing activities. Such considerations have always been associated with commercial insurance despite the fact that they are unrelated to the proprietary or mutual structure of the insuring body.

In addition to this, the terms of insurance policies have frequently been judged as unfair towards the insured, even in Western jurisdictions where contractual public policy is less stringent than that laid down in the *Shari'ah* and where the legislation is less paternalistic and protective of the individual's interests. Such would be the case, for example, of ambiguous exclusions which can be construed in different ways, thus allowing the insurer to adopt the most convenient interpretation in order to avoid payment⁹⁰. Another example of a clause which could be seen as unfair is the stipulation, under which interest is charged for delay in the remittance of the premium. As a result, Muslim jurists regard commercial insurance as an enterprise which aims to exploit people in need of security and out of this need to maximize profits without reference to the interests of the insured⁹¹. It is viewed as a tool in the hands of the rich who get richer by making those in need of financial security poorer⁹².

These positions obviously do not reflect reality and betray their proponents' philosophical stances, since they normally lead to the conclusion that any insurance scheme, even if commercial, would be acceptable if subjected to adequate safeguards to free it from forbidden elements. That is why mutual insurance was advocated by Muslim jurists.

Another factor which fuelled opposition to insurance is that Muslim jurists wrongly viewed insurance as a charitable institution designed to help the needy⁹³. While this might be the case of social security and *Zakāt*, it is not the case for insurance. Insurance was initially devised to meet the requirements of international commerce and, as David M. Walter maintains that insurance "it developed first as a means of spreading the huge risks attendant on early maritime enterprises⁹⁴".

Principally, insurance is linked to business activity and to view insurance companies as relief organizations, as a number of Muslim jurists did, is a fundamental misconception. The result will inevitably be the rejection of insurance because it fails to satisfy the conditions required from a charitable establishment. This groundless view contributed to the rejection of insurance by those who held that insurance was used as a profit-oriented activity .

It should be emphasized that the majority of arguments submitted against the validity of insurance are based on a misapprehension of its nature and mechanisms, as well as on a restrictive construction placed on Islamic contractual freedom. The opinion condemning commercial insurance puts forward two sets of impediments. The first pertains to the contractual mechanism itself, and the second to accompanying terms and practices. Insurance is purportedly dismissed because it radically offends the Islamic law of contracts, although other forms of insurance are endorsed and even recommended.

In the second conference of the Islamic Research Forum, held in Cairo at *Muharram* 1385 *Hijri*, (1961) Sheikh *Ālī el-Khafīf* launched a detailed research on insurance. He stressed the need for the establishment of an Islamic insurance scheme based on Shari'a. He mentioned the differing opinions of the *ʿUlamā'* and jurists about its validity. Eventually, he concluded his opinion by defending commercial insurance as a humane co-operative system, describing it as one of the fundamental components of current social life which produces and stability. Moreover, he argued it was a modern contract, unaffected by any text, either banning or permitting it, and was devoid of any sort of temptation or usury. It would bring benefits to both parties. It would establish a tradition supporting the public interest that would help it acquire the power of necessity so that everybody would get used to it. It produces a stronger commitment than the obligatory promise which the Malki school of Islamic Law defined as a duty to fulfil.

Later, the conference members who held different views, the majority of whom were lawyers, discussed the research. They acknowledged that commercial insurance was a lawful process as a precautionary necessity based on co-operation. Others did not agree with that view. They stood firmly by the view that *ʿIslām* would not admit such transactions that are based on temptation and usury. However, the conference did not come to a definite decision, but advised that :

- (1) co-operative insurance run by benevolent societies and groups, for the provision of social and financial services to their members, was a lawful form of insurance.
- (2) the pension scheme and other social security systems established in some countries under government control were lawful and desirable.
- (3) other kinds of commercial insurance should be subject to further study and

extensive discussion by a committee comprised of the *Shari'a 'Ulamā'*, lawyers and economic and social experts. It was recommended that the committee should study the different opinions and views of economists, lawyers and social security specialists to reach an understanding and as far as possible, enlighten the Shari'a 'Ulamā' worldwide⁹⁵.

4.4.7. *Al-Majma' al-Fiqhī (Egypt) View of Insurance*

In addition to the various structures put in place to provide an insurance scheme in compliance with Islamic law, many other projects have been suggested. One of them is outlined in the decision *Al-Majma' al-Fiqhī*, which rejected commercial insurance and presented mutual insurance (co-operative insurance) as the only acceptable scheme under the *Shari'a*, on the basis that this latter form constitutes a gratuitous act, free from *Gharar* and *Ribā*.⁹⁶ While on one hand, important points are stressed by al-Majma' al-Fiqhī, (part of *Rab'at 'Ulamā' al-Islāmyah*, Headquarter is in Mecca, Saudi Arabia) such as the investment of the premiums in activities Islamically permissible, as well as the necessity of the establishment of a supervisory body in the company; on the other hand, the scheme presented raises serious doubts about its feasibility, as it recommends the application of elusive requirements such as "the true co-operative insurance doctrine by virtue of which the participants alone manage the whole scheme" and "the training of people to engage in co-operative insurance"⁹⁷.

In addition to the fact that, practically speaking, such dispositions have no real significance, the non-feasibility of such projects has been best illustrated by the dual structure of the Saudi National Co-operative Insurance Company,⁹⁸ which was supposed to embody the view advocated by al-Majma' al-Fiqhī and others, who see in mutual or co-operative insurance, as a solution to the problem of insurance under Islamic law. As demonstrated earlier, the co-operative character remains purely formal in this insurance company, which contains, in reality, just a single mutual insurance principle - the eventual redistribution of surpluses to the insured - and which neither operates fully as a co-operative entity, nor as a mutual insurance company.

Another practical scheme regulating reinsurance companies is worthy of mention as, unlike many other schemes, it consists of operative principles of 'Islamic' reinsurance

devised by a committee of experts and considered as being functional and in conformity with the *Shari'ah*

As in 'Islamic' insurance schemes, the drafters applied mutual insurance principles (distribution of surpluses to the insured) to an entity with a proprietary structure (a joint stock company). Again, the same device, which consists of setting up two different funds, is used. The first one, called the Participating Companies Fund is used for the running of the reinsurance business proper and the expenses related to it⁹⁹. Premiums paid by participating companies are allocated to that fund and claims paid to them come from it. The second fund, called the Shareholders Fund, comprises the paid-up capital, in addition to profits made on its investment, plus a proportion of the profits generated by the investment of the first fund. This last operation is designated as *Mudāraba*, whereby the reinsurance company is deemed to be the agent and the ceding companies, the investors.

As in the case of insurance, *Mudāraba* mechanisms are not appropriate as a vehicle for a reinsurance agreement and, although the same arguments apply in this regard, an important point as to the ownership of the Participating Companies Fund should be stressed here. According to conventional reinsurance principles¹⁰⁰, such a fund should be the re-insurer's property. But under the project in question, and by application of *Mudāraba* principles, invoked by the drafters, this fund is supposedly owned by the ceding companies acting as investor and the fund is deemed to represent the capital entrusted to the agent (*Mudārib*) to trade with. Leaving aside the 'enigmatic' status of indemnities received by the re-insurer from the retrocessionaire and allocated to the Participating Companies Fund, the right of the investors (here the ceding companies) to terminate the contract and recover their funds when they wish is excluded from the reinsurance scheme since, if put into effect, it would undermine the whole system.

As a result, the *Mudāraba* contract is simply formulated to legitimize the proportion of profits on investments of the Participating Companies Fund given to the shareholders. Without it, there would be no incentive for those shareholders to form a reinsurance company, if the only returns to which they were entitled, were profits generated by the investment of capital.

The contention that the assets of the Participating Companies Fund are the property of the re-insurer and thus cannot be invested in the context of a *Mudāraba* is strengthened by clause 1 of paragraph III of the draft which stipulates, (applying conventional reinsurance practices relating to premium reserve deposits), that part of the premiums payable to the re-insurer may be retained by the ceding companies and are then considered as free loans made to them by the re-insurer. This clause indicates that the premiums payable are the property of the re-insurer, especially since the same provision, clause 1 (ii), states that the retained sums are, in their turn, invested by the ceding companies acting as agent on the basis of *Mudāraba*. Thus it is irrefutable that the premiums paid cannot be considered as the capital of a *Mudāraba* contract whereby the ceding company is the investor and the re-insurer is the agent (*Mudārib*) as it is provided by clause 8 (b) of paragraph IV.

As for the distribution of surpluses meant to render the scheme 'co-operative', it should be noted that these distributions are made at the discretion of the reinsurance company's Board of Directors and General Assembly which is entitled to allocate the surplus to reserve funds "as may be deemed necessary in the interest of the participating companies." This eventual and much qualified distribution of surpluses is not, in reality, any more Islamic than the commonly used profit commission stipulated in reinsurance treatises, whereby a percentage of the profit made by the re-insurer out of the treaty is refunded to the reinsured at the end of each treaty year, and which can as well be termed *Mudāraba* if one applies the ill-founded and modern opinions seeing a *Mudāraba* in all operations involving a proportional profit-sharing arrangement.

When considering all the evidence, one is justified in stating that the truly relevant issue in insurance, from the Islamic point of view, is the question of the existence of interest-bearing operations, as the main differences between the proposed scheme and the conventional one relate to points where interest is involved (e.g. investment of funds in sources Islamically, no interest on retained premiums).

4.5 Between Shari'ah Jurists and Insurance

this section of the thesis deals with an elaboration of the position taken by Muslim Jurists on insurance in general, and on commercial insurance in particular. It will also

outline a proposal for the development of an insurance system that will function in compliance with Islamic law.

It does seem from the argument reviewed earlier that the Insurance Jurists consider the Commercial Insurance as a Human Cooperative System that would achieve security and peace of mind of the Public, rather than offering a lot of services in the field of Economy, without being suspected by any sort of gambling. Insurance has become an essential matter in view of the current development and complication of life. Thus, it has imposed itself as a daily life issue that could not be avoidable by any developing nation.

The *Shari'ah* Jurists have got diversified conceptions about Insurance. They would not take it as a humane, cooperative and social idea, but as a Commercial Business and a modern kind of contract. Some of them have agreed about such a business as a cooperative deal, as Islam encourages this sorts of activities producing a lot of benefits to individuals as well as to the society. Wherever there is a benefit, it should be sustained by *Shari'ah*. Others denied that conception. They just consider Insurance as an illegitimate dealing, on the understanding that it is based on something unknown, which is against *Shari'ah's* provisions that admit any dealing should be depending on a specific well known matter. Moreover, it contains a lot of suspicions that would make it risky and unpredictable. It was narrated that Prophet Mohammed [may peace and blessing be upon him] as saying: "Leave that which cause you to doubt, and betake yourself to that which will not cause you to doubt"¹⁰¹

Although the *Shari'ah* Jurists have disagreed about The Commercial Insurance, they would virtually agree that this kind of insurance has been wrapped by a lot of suspects and doubts, as well as other deeds, which were considered taboo by *Shari'ah*. Those who support the legitimacy of insurance, admit their denial to the systems the insurance companies would invest their funds and how they pay the insurance money to their customers. Other jurists see no economic emergency that would necessitate that kind of insurance, but the majority of them would agree that insurance has currently become one of the most important requirements of life. That naturally would need an in depth consideration, but on different new bases and rules derived from the spirit and overall principles of *Shari'ah*.

4.6 An Opinion in the Commercial Insurance

Confirming that the Commercial Insurance Contract has been based on the cooperative idea, and talking about the benefits and characterization of the insurance contract to the society, the insurance jurists actually would contradict themselves; they claim that if the contract was profitable for the insurer, it would be of loss to the insured, and vice versa. They also confirm it is a financial competitive contract in which every installment is like the monthly rent in the normal rent contract, or it would look like the direct selling and buying deal. Then eventually, they call it a cooperative humane contract. How very contradicting taking both notions at the same time in the same contract. It is becoming obvious that the insurance contract has nothing to do with the cooperation. Another evidence for that is shown by in the legislative interference of some countries for the protection of the insured interests (The Submissive Party) against the exploitation of the insurer (the stronger party).

As Islamic *Shari'ah* does encourage and call for cooperation of all kinds, the jurists in general would naturally believe in every ultimate cooperative work. It is revealed in the Holy Qur'an: "Help ye one another in righteousness and piety, but help ye not another in sin and rancour¹⁰²". Nu'man Bin Bashir narrated that Allah's messenger (may peace and blessing be upon him) as saying: "The similitude of believers in regard to mutual love, affection and fellow feeling is that of one body; when any limb of it aches, the whole body aches, because of sleeplessness and fever¹⁰³".

Despite of the Divine call for cooperation in general, it would seem that both the insurance jurists and the *Shari'ah* scholars have differently understood that meaning. According to the Conventional Law Cogitation¹⁰⁴, cooperation is the reciprocal of assistance between members of the Society, without exploitation by an individual to another, or a group of another. To review the history of the cooperative movements in the world, it would be noticeable that all leaders of those movements were highly concerned about the exploitation within Mankind. Hence they adopted the necessary campaigns for freeing human being from any type of abuse, blackmailing or exploitation. However, the conception of the cooperation in Islam is even deeper, and comprehensively honourable. It is based on the understanding of brotherhood in the Faith. It is revealed in the Holy Qur'an: "The believers are but a single Brotherhood: so make peace and reconciliation between your two (contending) brothers..."¹⁰⁵. The

declaration of brotherhood between members of any society is just an assurance of the solidarity and collaboration between the members of that society in the daily life routine; in the feelings, the needs, the social status and dignity¹⁰⁶. Co-operation in ²Islām is material as well as spiritual, as the Muslim individual is supposed to be not only linked with his Muslim brother by a material tie and interest, but by the bond of faith which is stronger and more exalted than the family relationship.

The Muslim individuals in their society believe beyond doubt that what they would possess in their hands does not morally belong to them, and eventually it should be Allah's money. Relying on this understanding, they just consider themselves as trustees to take care of that money. Thus they do not know avarice, greed or any kind of money loving. They live in self-content situation. They would spend their wealth and money for the help of the needy and poor in obedience of what they have been instructed in the Holy Qurān and *Sunna*. These are the real features of solidarity, collaboration and support that should characterize the Muslim society.

The insurance jurists have not taken the right sense of cooperation in the Foreign Conventional Beneficence when they claim that Insurance is a cooperative work. This beneficence would totally contradict the idea of the cooperative nature of insurance, as the insurance companies normally utilize and invest the insured money from which they would make a lot of profits, without giving the insured any significant portion of profits.

The insurance jurists consider the insured as a group of people seeking the cooperation of the insurers to keep them away from risks and dangers they might be subject to. Unfortunately that is not a precise understanding for the meaning of cooperation, or may be a mere controversy, as the condition for any task to become cooperative, is that the business itself should be owned by the group to which all the benefits and revenues would return. In case of the Commercial Insurance, which is a profit-making business, the revenues go to the real beneficiary (the insurers) and the services go to the group of insured. That would never be a cooperative project. It is known that insurance had started as a cooperative service, and then converted to a commercial system by the Jewish traders and the currency merchants. It is very likely that the Jewish propaganda and international Capitalism have widely publicised

through the media for the promotion of the commercial insurance as a cooperative and humanitarian work. With the passing time, that fake idea has been well established in people's minds supported by the elaboration from the Law experts before being imported in to Muslim countries amongst the waves of the foreign rule and systems earlier last century.

On the other hand, the *Shari'ah* Jurists have got their understanding of cooperation from the Holy Qur'an and the "Sunna" of the prophet Mohammed (may peace and blessing be upon him). However, if some of them have supported the insurance jurists in their allegation about the cooperative nature of the commercial insurance, that might be attributed to their incompetence in understanding of the hidden reality of the commercial insurance. Having previously referred to the fact of Muslim insurance jurists being affected by foreign thoughts, I should declare that our Jurists when they write about insurance, they only differ in quantity rather than quality. Another point, that I have noticed is their collective agreement about specific cases prohibited by the *Shari'ah*, such as "The insurance for the benefit of a girl friend". This would confirm that our Insurance jurisprudence could not be the same as the foreign one, particularly the French system. It should not be a blame to get use of other experience and knowledge, provided that we would be in desperate need for what we take, and without any conflict with our Islamic *Shari'ah*. I have also noticed that the Jurists of Law and Economy -including the insurance jurists- may believe in the foreign economic systems more than they should in the Islamic *Shari'ah*. They would think that the *Shari'ah*, should ¹⁰⁷ be more flexible for the compatibility of the current recency, as if they wanted to yield the *Shari'ah*, for the imported modern notions.

Any development of life should take place under the power of the Holy Qur'an and *Sunna*, as the Islamic *Shari'ah*, is the real overlord of the system, and should never be submissive to any other power. Therefore, the economists and the Law Jurists should do their utmost to surrender every modern imported issue to the *Shari'ah*, instead of trying to implement otherwise. It would be a shame within a Muslim nation to undermine the *Shari'ah*, by applying some conventional or man-made laws.

4.7. Proposal of an Insurance System in Compliance with Islamic Shari'ah,

All Islamic Jurists, no matter who is in favour or against commercial insurance, are

naturally abiding by the provisions of the *Shari'ah*. Nonetheless, it would be admissible to adopt different opinions and conceptions about the modern issues as long as they were not stipulated, which would make them a subject to theoretical research and independent judgement in a legal or theological question. Each jurist has got his own view to believe in, according to his own sufficient evidence. However, the main point which has been abandoned by the jurists in their assessment of insurance legitimacy, was the economic point of view and how much effect would it have on the general economy of the State. The insurance system from this viewpoint would cause a greater economic danger to the general economy, as a group of individuals control huge amounts of money, and then utilize and invest that money in a uneconomic way which might damage the public interest. That is exactly what the economic jurists have confirmed. Hence, some provident countries would go for the nationalization of the banking system and the major influential companies that have a direct impact upon the financial and productive systems of the State.

Many of the *Shari'ah*, jurists, in favour or against the insurance contract, have been trying to take the insurance back to the examples of financial dealings that appeared in the Islamic Jurisprudence. Those who admitted the legality of the insurance contract have relied on its similarity to the Islamic contract of "*Mudārabah*" or may be to the contract of "Fidelity Contract of Clientage", and so on. This is an indirect judgement that no modern dealing would be accepted unless a counterpart was found in the Islamic *Shari'ah*, that would lead to a hazardous consequences, as if we should have to stick only within the limits of our *Shari'ah*, contents, without giving ourselves any chance of flexibility to manoeuvre. This would brand us with rigidity and petrification. Yet, by any means, it would never mean, that our juridical heritage, in terms of financial dealings, has been rigidly confined to a specific period of time. It is a great Scripture highly enriched with statutory theories and unparalleled legislative provisions and principles, some of which have been guiding the modern legislator for the making of their conventional laws.

Some *Shari'ah*, Jurists have stated their opinions that represent a specific historical era, but could not be applicable to the current system of commercial insurance with its modern applications, such as Ibn 'Abdīn who declared his opinion about insurance at a time the colonizers were dominating our lands, when there were no specific rules for

running in insurance system. Ibn ʿAbdīn has lodged his opinion in the chapter of “The Insured” in his book “*Aljihād*”. He wrote about the rights and duties of the insured in the Islamic countries at that ancient time, which could not be executed today.

If insurance is a new system or a modern kind of contract, then the *Shariʿa* has never determined to limit the contraction between people in specific committing issues, as there is nothing in its provisions and conditions to do with the limitation of contracts or the confinement of their subjects, unless there is a clear contradiction to the *Shariʿa* provisions and rules.¹⁰⁸

The Islamic *Shariʿa*, is considered final revelation, which is valid and useful anywhere, and for every generation. It is also designed to exist suitably and compatibly with any further human development that might occur for life. It will remain qualified to provide Mankind with any more legislation that would help all people to live in peace and prosperity. That has been acknowledged and confirmed by the “The International Conference for the Comparative Law of Islamic *Shariʿa*,” held in Paris on 17 July 1951.

The *Shariʿa*, has enjoined solidarity between Muslim individuals as a duty for every one. It should be applied within the small family, and within the region as well as within the whole Islamic nation. In the family arena, the *Shariʿa*, has decreed the Statutory Portion for the wife and children. It is also a responsibility for, every financially able, person to offer his or her help to the disabled and needy.¹⁰⁹ The *Shariʿa*, has also decreed the system of “Aqila”. Also, “The Will” that has to be issued by the testator should not be accepted for one inheritor without the approval and consent of the rest of the inheritors, and the Will should not cover more than a third of the estate inheritance.

As far as the region is concerned, the *Shariʿa*, declare that it is the duty of every body to care for others who would need it within the network of the whole area. It is narrated that: Allah’s Messenger (may peace and blessing be upon Him) as saying: “.. and any residents of a quarter have among them a hungry person (by reason of poverty, Allah is quit of any obligation towards them.”¹¹⁰ This Hadith is a clear order

for every Muslim to be helpful to his or her fellow member of the nation to the extent that the entire region should be like one unit.

Solidarity within the whole nation is dealt with through the system of “*Zakāt*” that has to be taken at the rate of 2,5% annually from:

- (One) The saved funds in the country.
- (Two) The circulated commercial capital.
- (Three) The agricultural production at 5% OR 10%
- (Four) The mining production at the rate of 20%.
- (Five) The cattle at a special percentage in special conditions.

This *Zakāt* is not an individual benevolence according to their discretionary payment, but it is the right of the State that should collect it by the power of law, provided the State should in turn distribute the proceeds to the needy in accordance with the *Sharīʿa*, rules. It is only one Base of many Social Solidarity Bases .¹¹¹ The ʾImām (Head of State) has every right- through the “Shoura” (Consultative Council) to impose the levy of a specific share of money from the rich to support the poor and needy, in terms of feeding, clothing and shelter. It is revealed in the Holy Qurān: “And render to the kindred their due rights, as (also) to those in want, and to the wayfarer¹¹²”, also revealed: “.. and do good to parents, kinsfolk, orphans, those in need, neighbours who are strangers, the companion by your side, the way-farer (ye meet)...”¹¹³

The Islamic Economy has shown a great concern about the welfare of children in general and the illegitimate babies as well. Islam has established a pioneering Social Security System fourteen centuries ago, when Caliph Omar Bin El-Khattab (the second successor of prophet Mohammed decided the payment of one hundred “Dirḥam” (the currency unit in early ʾIslām) for every newly born child, and if he grew up, the money would be doubled. Also, every illegitimate babies had to be paid one hundred “Dirḥam” as well, with a monthly income support for his guardian. If he grew up, then he would be made equal to his contemporaries. ʾIslām has also offered the Orphan a considerable deal of care, as it is revealed in the Holy Qurān: “Seest thou one who denies the judgment (to come)? Then such is the one who repulses the orphan, and encourages not the feeding of the indigent.”,¹¹⁴ And: “Those who unjustly

eat up the property of orphans, eat up a fire into their own bodies: they will soon be enduring a blazing fire”,¹¹⁵ and there are more verses which care about the orphan.

Islam has never excluded the other categories of the society from offering them the chances to live a good life, irrespective of their status or religion. It is no doubt that Islam has arranged every possible facility to offer all the citizens an honourable life with a full peace of mind. The presence of the fair ²Imām and the availability of all causes of the perfect solidarity would create a life of top quality. That remains to be one of the fundamental principles, and a genuine base of *Shari'ā*,

A number of the Islamic economists call for the current commercial insurance to be under the control of a government. The insurance company should be structured according to ²Islāmic principals. These insurance companies should practice and offer service to the people for a period of time, to establish credibility, to provide jobs and prosperity and to help the economy. Until the economy is flourished. Then, the experience of commercial insurance should be implemented nation-wide. Such insurance business should be regulated according the experience gained.

Although this opinion seems genuine and acceptable, with considering the fact that application of Islamic laws would lead to the perfect and healthy society with a lot of solidarity and cooperative features, we still believe in the establishment of insurance companies on new bases, with an Islamic foundation system. These Islamic companies would definitely be a part of the means to achieve the complete social solidarity in the Islamic Society. Moreover, the current social conditions make the establishment of such companies inevitable.

Having said that, we would see the conclusions of the arguments for commercial insurance as follows:

- 1/ Unlike the allegation of the insurance jurists supported by a few of *Shari'ā*'s jurists, the commercial insurance has never been established on cooperative bases.
- 2/ The commercial insurance contract is one of the impermissible temptation contracts, and that would accordingly make it an illegitimate potential contract.
- 3/ The doubt of gambling and risk would be available in this contract, as meeting the commitment would be indefinite rather than unpredictable for both parts.

4/ The illegal Usury is a main element in the insurance contract; either in the settlement of the insured installments, or in the way the insurance companies would normally invest their money.

5/ Some of the economists believe that commercial insurance would represent an economic hazard upon the State, as a few people possess the wealth in their hands, and naturally would dominate all means of production means in the State. That is why necessary laws and rules, which could limit the power of such companies, need to be set. Despite every effort the governments take for the protection of their economy, the major companies are still practicing a lot of tricks to avoid any penalization. For that reason, some States opted for the Nationalization plan against the insurance companies and other similar companies for the sake of the welfare of the society and to protect the economy.

6/ In commercial insurance, the insurance companies do not consider the equality between the insurer and the insured. They have set their rules for their own favour, with little care for the insured. These companies make enormous amount of profits at the expense of the insured. That mean usury, rather than taking money from people illegally.

Apart from the commercial insurance, there are other kinds of insurance such as The Social Security and the Reciprocal Insurance. They are not only legal but also highly desirable and required. It is not true the idea calls for the non-split between the individual insurance and the Social Security, allegedly they have been established the same base and similar conditions, with the exception that the State would play the role of the insurer in case of the Social Security. However, the Social Security is not a normal contract as the commercial insurance; it is a system set by the State for the help of certain categories whose financial resources are not sufficient for the confrontation of daily life risks. The beneficiary of this type of insurance would not normally pay the installments themselves, and sometimes they pay nothing. Thus, how very wide the gap would be between such a social collaborative system, and that commercial profit-making system with its oppressive conditions.

In view of that, we believe beyond doubt that the cooperative system should replace the commercial system, as the cooperative system is the one that complies with the Muslim religion teachings, as well as it would achieve the genuine purpose of

Insurance, as it should be. Some researchers have tried to set a new system for insurance replacing the current system, which complies with the spirit and principles of Islamic *Shari'ah*. One of those scholars was Zakī M. Shibana, Professor of Agricultural Economies in Alexandria University, in his article: "Fundamental Islamic Economic Features to Encounter the Current Economic Problems".¹¹⁶ He suggested the establishment of a proper governmental insurance company to be funded by the "Zakāt", and then takes the responsibility of every aspect of the general social Solidarity for the whole nation. Such a company, if established, with the decentralization of its activities would achieve the right aim of social solidarity, provided that it functions to secure the living of those mentioned as beneficiary in the verses of "Zakāt".

Another suggestion from Sheikh Mohib El-Dīn El-Khatīb¹¹⁷, who called for the formation of the Insurance Cooperative Societies on similar bases by the working groups and other categories in their place of work. Every society should be collecting monthly contributions from each member according to his or her salary, and the sum has to be invested in the legal ways prescribed by Islamic law and kept for the help of each member in case of disability or sickness or death, or even to help in cases of bearing the costs children's marriage. That could be the right provident idea for the cooperative insurance if it was well controlled by an official body in the State.

In the light of the above arguments and proposal, we would want to lodge the following suggestion that we believe is compatible with the overall spirit of Islamic *Shari'ah*:

Firstly:

A Public Institution for "Zakāt", with different branches nationwide, has to be established. Every branch should be responsible for the collection of the "Zakāt" within its jurisdiction, and then, the distribution of the proceeds to those who are entitled in the same area. The mother-Institution has to control the collection, the distribution and investment process. Also, it should be responsible for saving the surplus funds for emergency. A part of these funds will be used for insurance.

Secondly:

A Public Institution for the Cooperative Insurance has to be established with

the main function of overseeing the cooperative societies activities around the country. Those societies had to be established according to a binding Law, made and enforced by the government.

Thirdly:

A public institution for the insurance of the government utilities should be established, in a way that every department has to pay a monthly or annual contribution in instalments. The main institution should be in charge of investing these funds, and saving them for any risks or damage that might happen to the government departments.

Some insurance jurists still have the conception of keeping the insurance companies even after the nationalization, on grounds that we may benefit from the Re-Insurance¹¹⁸ in terms of hard currency revenues from the foreign companies, and for over-staffing of employees, and the availability of the well maintained technical equipments. However, we still see that these justifications are not sufficient for the existence of the commercial insurance, as the staff could be recruited in the cooperative insurance system as well as the technical equipments. As far as the hard currency is concerned, it would be very risky that we might not be sure of earning the expected revenue in the light of bilateral business forecast and the currency exchange fluctuations.

Conclusion

Apart from the commercial insurance, there are other kinds of insurance such as “The Social Security”; it has been established by the State and would play the role of the insurer in case of the Social Security. However, the Social Security is not a normal contract as the commercial insurance; it is a system set by the State for the help of certain categories whose financial resources are not sufficient for the confrontation of daily life risks.

Many of the *Shari'a* jurists are in favour of insurance contract as long as it is free from *Ribá*, gambling and *Gharar*. Their opinion is in favour of co-operative insurance or mutual insurance. In view of that, it is believed beyond doubt that the cooperative system should replace the commercial system, as the cooperative system is the one that complies with the Islamic teachings, as well as it would achieve the genuine purpose of Insurance

- 1 Abdeen, Mohammed Amīn Bin Omer Bin A'Azīz Aldemashqy. Born and dled In Damascus
1784-1836. He was the most Influential JurIs In hls time.
- 2 See *Hadarāt al-Islām Magazine*, vol. 2 1st Issue p.37
- 3 *Postscript, part 3, Line 273- published by Dār el-Kutub Al-Ārabīa al-Kubrā*
- 4 *This Fatwa was issued in Safar of 1319 Hijri, and published in the magazine*
of Almuhamah , volume 5, issue No. 460, page 563.)
- 5 Al Muhamah, vol 5 Issue 460 p563
- 6 *Al Khaff, Ali, Muktaser al-Muāmalāt al-Sharī'ah*, 2nd edt. p.252
- 7 Distinguished Scholar, one well known for hls views In Islamic muamalat.
- 9 See *Al Dasuql, Mohammad Said, al-Ta'mīn wa Mawkiif al-Sharī'a al-*
Islamiya menhu p.79
- 10 *Sheikh Mohammed Bakeit bin Hussein el-Muteīay el-Hanafī, The Grand*
Mufīl of Egypt and one of the greatest jurists, Lived 1854-1935. an author of many Important
books.
- 11 *An Egyptian Erudite, graduate of al-Azhar. The Grand Mufīl of Egypt 1925*
- 12 See "Almuhamah" Magazine, vol.5, Issue 394, p.466
- 13 *An Egyptian scholar born 1874. Studled In al-Azhar and Dār el-Ulūm, used*
to be a member of the LIngulstlc Academy. Author of many books.
- 14 "Al-Shubbān al-Muslmoon " Magazine (Muslim Youth), vol.13, Issue 3, 7
(unable to find pagr refrance) November 1941.
- 15 *Sheik Mohammad el-Molky, Islamlst scholar, one of hls books "al-Ārowat al-*
Wosqāh" died In 1956
- 16 *A contemporary Islamic scholar*
- 17 *thls research has been published In "Al-Azhar" Magazine, vol.25, par 2, p.23*
- 18 *An Egyptian Erudlt, graduate of al-Azhar, used to be a manager of Arabic*
and Religion Inspectlon Dept. of al-Azhar.
- 19 *Sheik Abdel El Rahmān Ēssa , The Moden Dealings and their Provlslons, p.90*
- 20 *Egyptlan Jurist, 1899-1963, graduate of al-Azhar. He has Ph.D. In*
Phillosophy from France.
- 21 See "Alahram allqī'Isādī", Issue 132, P.20
- 22 "Al-Islām Wal Hayat", p.216
- 23 See "Al-Islam wal Hayat" P.217
- 24 Abdel Rahmān, Ahmed, *Insurance* , P.24
- 25 Qurān , 4:3
- 26 Qurān , 4:90
- 27 El-Zarqa, Mustafa Ahmad, a lecturer In Islamic Jury and CIVIL Law In the
Faculty of Law, at Damascus UnIverslty, reglstered hls research " *The Insurance Contract In*
the Islamic Sharī'a's OpInlon" as part of the actlvltles of "The Week of Islamic Jury", April,
1961
- 28 *Ibn Hazm, "Al-Mahly" part 11, P.47*
- 29 *Ibn Abdīn, Manuscript, part 5, P.47*
- 30 *Abu Zahra, Mohammad, The Islamic Jury, P.517*
- 31 *Section 11 of the Pension Scheme specifies that the Insurance money should*
be sent to the legal Inheritors, unless the beneficlary has appointed other benefical before
his death to whom the money should be sent. That would conflict with the Inheritance system
of Sharī'a. If they employee were allowed to do that, he would be depriving the legal
Inheritors from their rlghts, and accordingly hindering the Impementation of Sharī'a.
- 32 See "The Islamic JurIsprudent Week" , (unable to find Vol number and year refrance) P.511
- 34 *Sh.Khalaf, Abdul Wahab, Lewaa el-Islam,(unable to find page refrance) vol.11, 1974.*
- 35 *Al-Dasuql, Mohammad Said, Al Ta'min wa Mawkiif al Sharī'a al Islamiyya,*
p.83, surveyed the scholars who prohibit all kinds of insurance
- (i) *Al Motayy, Mohammad Bakhit, Mufti of Egypt, 1910*
- (ii) *Qūraa, Abdul Rahman, Mufti of Egypt, 1925*
- (iii) *Ibrāhīm Ahmed Ibrāhīm, Al-Shaban al Muslmoon, vol. 3, p.8, 1941*
- (iv) *Egyptian High Islamic (Sharī'a) Court, Judgement date 28/12/07*

see *Issa Adduh*, al-Ta'min bin al-hal wa tahreem, p.125.

See *Abdul Razak Al-Sanhuri*, *Al Nazariya al ama lel-el-Tizamat vol.1, p.158*

- (v) *Tagg, Abdul Rahman*, Sharikat al Ta'min min Waghat nazar al Shari'a al Islamiyya
- (vi) *Al-Qulall, Abdul Rahman*, Mufti of Jordan, *Akd al-Ta'min*, 110
- (vii) Makhloof, Mohammad Abdel Hadi
- (viii) *Alyan, Shawkat Mohammad*, al Ta'min fi al-Shari'a wa al-Quran, 1987
- (ix) *Gamal*, Ahmed Mohammad, *Aqd al-Ta'min baynal-Itirad wal-Ta'ayeed*, 1930.
- (x) *Issa Abdu*, al-Ta'min bayna al-hal wal Haram, 1978
- (xi) *Prince AL-SAUD, Mohammad Al Fisul*, Chairman of Dar al Hal al-Islami
- (xii) *Shlrāwl, Mohammad Metwali*, Qadayah Islamiyya
- (xiii) *Al-Khall, Mohammad al-Bahi*, al-Thorwah fi zal al-Islam, 1987.
- (xiv) *Ali, Mohammad*, BONA, Lewaa al-Islam, issue 11, 1974.
- (xv) *Al-Naqar, R. Ahmed Abdul Aziz*, al-Madkhal ela al-Nazariah al Asksadiyah, fi al Manhaz al-Islami, 1973
- (xvi) *Commitee of Fatwa, Al Azhar*, Egypt, Fatwa date 24.4.58
- (xvii) *Al-Zarqa, Mustafa*, Aqd al Ta'min wa Mawkif al-Shari'a al Islamiyya, 1961
- (i) *Abu Zahra, Mohammad*, Aqd al Ta'min, 1982
- (ii) *Al-DarIr*, A Sadiq Al-Amin.
- (iii) *KASSEEM, Yousef*, Al Taamal al Tojuri fi mizan al Shari'a
- (iv) *Hasan, Hussein Hammed*, Hukm al Sha'a al Islamiyya fi Aqd al Ta'min, 1976
- (v) *Al-Dasuqi, Mohammad Said*, Al Ta'min wa mukif al shovian al Islamih, 1967
- (vi) *Al-Najd, Ahmed, Abdul Sattar Zohow*, Aqd al Ta'min baynal Sha'ah a wal Qanon, 1972
- (vii) *Saad, Mohammad Meki, al-Jrf*, Al Ta'min al Tabadoly fi al Shrian al Islamiyya, 1983
- (viii) *Majm'a al Abahath al Islamiyya, Committee for Islamic Research Conference, June 1965*
- (ix) *Al-Gharib, Gharib*, Al Ta'min fi al Shari'a al Islamiyya wal Qanon, 1979
- (x) *Al-FanjarI, Mohammad Shawki*, Al Islam wa al Ta'min, 1984
- (xi) *Lasheen, Fajithi Al Said*, Sharikat al Ta'min wa Al Badeel al Islamiya, 1981
- (xii) *NASSER, Abdul Tawfiq al Atar*, Ahkam al Ta'min, 1974
- (xiii) *SHARAF AL DIN, Ahmed*, Akd al Ta'min wa Akd Daman, 1982
- (xiv) *Nadyat al Tashiaa*, Conference for Legislation's, Libya, 1972
- (xv) *AL-ALMI, Al Toatomar*, Ill iktisad al Islami, International Conference for Islamic Economics, Mecca, 1976
- (xvi) *Hayat Kabar al Olmaa, Saudi Arabia*, The Association for Prominent Jurists in Saudi Arabia, 1977, see Appx 1.

Magmaa Al Fiqhi al Islami wa Rabatad al Alam al Islami, Islamic League 1978.

37 Mejalat Al Fikr al Islami, March 1988, p.16, surveyed the following scholars who approve all kinds of insurance

- (i) *Al-Mohammad, Abdullah Sayam*, 1932
(he was the first scholar to allow all kinds of insurance)
- (ii) *AL-Zaqa, Mustafa Ahmed*, Aqd al Ta'min wa Mawkif al Shari'a Menho, 1962
- (iii) *Khalf, Ali*, his opinion was presented in international conference for Islamic Economics, Mecca, 1967
- (iv) *Al-Sayeh, Abdel Hamid*, President of the Jordanian Court His opinion was sent to *Majma al Bohuth al Islamiyya*
- (v) *Al-BahI Mohammad*, Al Fikh Al Islami wal Mojtamaa al Moaser, 1967
- (vi) *Al-Sanhuri, Abdul Razak*, Al Wasit, vol 7.
- (vii) *Awad, Ali Gamal El Din*, Al Ta'min fi itar al Shari'a al Islamiyya.

- 38 (i) *Al-Thaalby, Mohammad Bistr Al Hassan*
- (ii) *Al-Hllar, Taki al Din*
- (iii) *Mallk, Ramzi, Mufti Lebanon*
- (iv) *Mabrook, Mohammad*

(v) *AL-Sanhurī, Mohammad Faraq*

39 Khalaf, *Abdul Wahab, Lewaa' al-Islām* vol.II(unable to find page refrance) 1974

Al-Nadwa, mohammad *Ishāq*, reported on: *Ala al Islami*, vol 10, No.7, pp.61-66. *Resolution of the Lucknow Conference*, 15-16 December,

41 Position of Mohammad Abū Zahra reported by S A Mesrati in *The Principle of Indemnity and Marine Insurance, a Comparative Study*.

42 As noted earlier, the four Schools of Law acknowledge the prohibition of contracts involving *gharar*.

43 The only exception to this principle are *ex gratia* payments made by the insurer, which are a matter of company policy and do not have any impact on the nature of the insurance contract from a legal point of view.

44 Al- Masrī, Abdel Samyī' Rafiq, *Al Ta'mīn al Islāmī baynal Nazariah wal Tatbiq*, 1987

45 As noted earlier the prohibition of *Gharar* is expressly mentioned in the *Sunna* and in *Qurān* 2:188.

Al-Hafiz, Qadi Subhi Abd, Qadaya Musira fi al Hadarah al Islamiyya, vol 2, p.426-431, 1984.

47 *Khater, Mohammad, Athr Totbiq al Hodood fi al Mojtamaa*, 1985

48

49 Shalaby, Mohammad Mustafa, *Al Madkhat fi al Taareet be al fiqh al Islami wa Kawaid al Malkyah wa al Aqood*,(unable to find page refrance) 1960

50 *Prophet Mohammad said "Do not sell the fruit until their good condition becomes evident", Hadith 3675, book 9, Sahih Muslim*

51 *Ibdi jssue 9, 1980*

52 *EL-Atar, Abdul Nasser, Hokm, al Shari'a al Islamiyya fi al-Ta'min*, page 112,1978

53 *Qurān 106:3*

54 *Al Zarqa, Mustafa, Nizam al-Ta'min p47*

55 *Al Jawazlyyah, Ibn Qayyim, Al Tariq al hukmya fi al Syasa al Ta-Shri'lya*, vol 2. p.7.

56 *Ibid Aqd al-Ta'min p48*

57 *Shouki, Mohammad, Al Fanjari wa al Ta'min* 1984

58 *Al-Hafiz Subhi Abd, Qadaya MaasirIyaa fi al Hadara al Islamiyya*, vol 2, p.499

59 *MuslehuddIn,Mohammad, Insurance and Islamic Law*, p.177

60 *Al Dasuqi, Mohammad Sa'id, Al Ta'min wa Mawakif al Shari'a al Islamiyya Menhu*, p.177 .

61 *Al-Hafiz, Subhi Abd, Qadaya Muasira fi al Hadara al Islamiyya*, vol. 2, pp.499

62 *Fadl, Moghaizel, Insurance in the Light of Islamic Legal Principal*, 1990. Mr. Moghaizel states that *Ribā* is not applicable to the insurance contract, (p.202). *Such a conclusion is not quite right. Although Ribā was prohibited without insurance in mind, we cannot be certain that an insurance contract is free from the element of Ribā, as in most insurance the premium is reinvested and the difference between the premium paid and claims (if made) has an element of Ribā.*

63 *Uways, Abd al Halim, Mushkilat al Iqtisad al Islami*, p.98

64 *Uthman, Mohammad, Al Fikr al Islami wal Tatawur*, 1969

65 *Nejatullah, Siddiqi Mohammad, Insurance In an Islamic economy* p15

66 *With the exception of gift made during the death or sickness (marad) of the donor which are treated as a will. See Al Kasani, Bada'i al-Sunna fil Tartib al Sharaii* vol. 7, p.98

67 *Al-Sanhurī, Abdel al-Razzāq Ahmed, Masadir al-Haq fi al-Fiqh al Islami*, vol. 2, pp.159-161

68 *Issa, Abdul, Al -Ta'min baynal Halal wal Haram*, 1978

69 *Uthman Mohammad, p.478, and Mahmoud Ahmad, Economics of Islam*, p.159

70 *Qurān 9:71*

71 *Al-Mammal, Mohammad, Mawsu'at al Iqtisad al Islam*, pp.354

72 *Khorshid, Aly, Insurance and Islam. The Challenge to Western Firms*, 1994

73 *Issa, Abdu, Al Ta'min baynal -Halal wal Haram*, pp.118-119

74 *IBDI* p.12

- 75 *Breach of a promissory warranty entitles the insurer to repudiate the contract from the date of the breach. Birds John, p.107. Section 38-1 of the Marine Insurance Act 1906 states: "In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insure". Section 55-2-a of the Marine Insurance Act 1906 provides "The insurer is not liable for any loss attributable to the willful misconduct of the issued".*
- 76 *El-Darir, Siddiq Mohammad El-Amīn, Muslim Jurist, Author of "Hokm*
 77 *‘Aqd Al-Ta‘mīn fī al-Sharī‘a al-Islāmīya"*
 78 *Hafiz, Subhi Abd , Qadāya Muasīra fī al Hadāra al’Islāmīyya vol 2, pp.365-366*
Sha‘ban, Zaki , al Din p.13.
Malawi, Faisal, pp.136-137
Hafiz, Subhi Abd , Qadāya Muasīra fī al Hadāra al’Islāmīyya vol 2, pp.508-509 and Afzalur
Rahmān, Banking and Insurance, p.228
- 79 *Malawi, Faisal, pp.136-137, and Mohammad AL DARIR, Al Gharar, p.646*
 80 *Hafiz , Subhi Abd , Qadāya Muasīra fī al Hadāra al’Islāmīyya vol. 2, p.504, The author adds that the intention of the policyholders to donate the premium must be expressed in the articles of association of the insurance company.*
- 81 *See Majmā‘ al Buhūth al’Islāmīyya, 1965, Conference of Islamic Economics, the conference covered Cooperative and particularly Mutual Insurance. Contributors to the conference and researchers following the conference supported their views, such as:*
- | | | |
|----|--------------------------------------|------|
| 1. | Al-Dasuqī Mohammad | 1966 |
| 2. | Al-Gorff, Mohammad Makky Sadi | 1973 |
| 3 | Al-Kamal, Cahoreb | 1977 |
| 4 | Hassn, Mohammad Deltogī | 1988 |
| 5 | Hassān Hāmed | 1967 |
| 6 | Yousef Kassem | 1986 |
| 7 | Mohammad Shawki Al-Fanjarī | 1984 |
| 8 | Fathy Al Sāid Lasheen | 1981 |
| 9 | ‘Abdul Nāsser Tawfiq Al‘Atar | 1974 |
| 10 | The Conference of Islamic Economics, | 1980 |
- Researchers concluded and the conference recommended Cooperative, including Mutual, Insurance.
- 82 *Officers and staff of the company can often secure the required quorum. See J A C Hetherington, Who Owns Mutual Insurance Companies 1969, Wisconsin Law Review, p.1068. The author reaches the conclusion that "The practice in both property-liability and life companies plainly rejects the almost total non participation of policyholders in the selection of management". (at p.1083).*
Scandinavian life offices of making ex gratia payments in situations where the life insured died before the risk attached. Such payments purport to repair injustice by having their sources in the terms of the contract. Knut S Sellmer, Gratuitous Deviation from the Terms of Form Contracts, UCLR, vol. 33, p.502-520.
 CARTER, R L, *Study on the use of the word 'Mutual' in the Insurance Industry*, 1993.
- 85 *Al-Fanjarī Mohammad Shawki, Al-Islam wal Ta‘mīn, p55 1984*
 86 *Sha‘ban, Zaki al Din , Al Ta‘mīn min wujhat Nazar al Sharī‘a al Islāmīyah, p.13*
 87 *Al-Fanjarī, Mohammad Shawi, Al Islam wal-Ta‘mīn, 1984*
 88 *see Mohammad Bakhit, Risalatan, and opinion of Mohammad ‘Abdu quoted and discussed Rashid rida in Al Manār, vol. 27, 1926, pp.344-346. The Lucknow Conference classified insurance under the head of foreign transactions, foreign in the sense of non-Islamic.*
- 89 *Rodlson, Maxine, p.181. Writing about the history of the insurance contract, E. Bensa indicated that in Europe during the Middle Ages, every innovation was suspect due to the absolute supremacy of tradition. Acknowledged operations were used as shields for new contracts. The insurance contracts were hidden under the cover of a charter agreement.*
 90 *Al-Dasuqi, Mohammad El Sayed, Al Ta‘mīn wa Mawkif al Sharī‘a, 1976*
 91 *Mogheazel, F., Insurance in the Light of Islamic Legal Principals, London, 1990*
 92 *Akhafif, ‘Ali, Al Ta‘mīn wa Hukum Al Sharī‘a al-Islāmīya minhu, 1967*

- 93 *Al Jammal, Mohammad A, Muwsuāt al-Iqtisād al-Islāmi, p.343. The author states "Insurance was initially a favour".*
- 94 *Walter David, M, Oxford Companion to Law and Insurance.(unable to find page reference)*
- 95 *"Al-Azhar" Magazine, Muharram 1385 Hijri, P.125*
- 96 *All members of Al Majmā al Fiqhi, except Sh. Mustafa Al Zarqa, (Dean of Law and Islamic Shar'iah, University of Damascus), one of the scholars who have strong views in favour of insurance, and have strong arguments, but not all his views are accepted by other jurists.*
- 97 *See Appendix 1 of this thesis*
- 98 *Lāsheen, Fat-hey, Sharikat al Ta'mīn wal Bada'el al Iktisādiya 1981.*
- 99 *Al-Hakim Ahmed Shakri, Al Ta'mīn wa iktisādiāt al Duwal al-Namiah, p.79, 1969.*
- 100 *Wilson, Rodney, Islamic Finance, P. 49, 1987*
- 101 *Musnad El-Imam Ahmad Bin Hanbal, part 3, P.153*
- 102 *Qurān, 5:2*
- 103 *Sahih Muslim, part 4, P.1999*
- 104 *Murād, Mohammad Hilmi, The Cooperation from the Denominational and Legislative Views, P112*
- 105 *Qurān, 49:10*
- 106 *Al-SibaaI, Mustafa, Socialism of Islam, P.109 2nd ed.*
- 107 *Liwa' Al-Islām, Magazine, vol.8 Issue 11, P.720*
- 108 *The Islamic Jurisprudence, (In Its new shape), part 1, P584, 7th ed. Damascus University.*
- 109 *Musa, Mohammad Yūsuf, The Pedigree and Its Effects, P.126*
- 110 *Bin Hanbal, Imam Ahmad, Al-Musnad, part 2, P.33*
- 111 *Al-SibaaI, Mustafa, The Socialism of Islam, P.126*
- 112 *Qurān, 17:26*
- 113 *Qurān, 4:36*
- 114 *Ibid, 107:1,2,3,*
- 115 *Ibid, 4:10*
- 116 *Al-Shubban al-Muslimeen, Magazine, Issues 2-6, vol.3*
- 117 *A jurist of a Syrian origin. He lived in Egypt as an author and translator. He established the magazine of "Al-Zahar".*
- 118 *It is a contract upon which the insurance company should be obliged to share the burden of risks insured by another company*

CHAPTER 5

THE DEVELOPMENT OF MUTUAL INSURANCE IN THE WEST

Introduction

Insurance has a crucial role to play in social and economic development in Muslim countries, that is why it is necessary to study the relevant insurance scheme, has been developed and practiced and has a history of success. Mutual insurance is the most successful insurance in the West and it is acceptable to most Muslim scholar's, discussed in earlier chapters. Application will be suitable to be implemented in the Muslim countries.

This chapter outlines the mutual insurance structure and practice, in several Western countries, all of which has deferent structure, approach, and legislation. From all of those Western countries compared in this chapter, We are able to achieve an acceptable form of mutual insurance.

It will be noted that in all Muslim countries are also developing countries and suffer from an excessive growth of population relative to economic capacity, As a result, national income dose not rise at rate commensurate with growth. Also capital formation is very slow process, and developing markets are usually small, being based on a relatively undiversified economy and lacking in both financial and technical experience, particularly in mutual insurance activity.

As insurance expands with industrial and economic growth, the problem of insurance will differ from one country to anther, according to each country economic, stage of development, and political environment.

Its known that establishing an mutual insurance market in developing countries often lack a sufficient number of similar risks, and it require longer time to develop the mutual insurance market.

5. 1 The Organization of Mutual Insurance

The concept of mutual insurance can be traced back in history to the eighteenth century when the dissatisfaction of the shipowners with the terms available from the underwriters at Lloyds led them to form mutual insurance associations to meet their needs at lower cost. 'Mutual' appears in the names of those associations, now known as Protecting and Indemnity Clubs. Since then, it has been steadily developed in all countries, whether industrial or agricultural, and in all social and economic strata whether – urban or rural¹. Mutual insurance is organised by very big companies and international organisations, or very small firms. It groups policyholders from one or several countries, or even in a single region or town. There are also mutual insurance companies, which cater solely for members of a single profession².

Mutual insurance occupies a strong position and even dominates the market of some countries, often grouped at a national level into a specific professional organisation³.

Insurance is by its nature a mutual activity. It serves to compensate a group of persons organized in accordance with statistical laws, from a hazard. So it is in no way surprising to find that people who incur the same risks create mutual insurance companies in order to be able to control the organization and functioning of their group. Members of such a company compose the social body and determine its powers. They constitute the General Meeting of the company, appointing from amongst themselves the directors. A mutual insurance company is a company, which belongs to its insured members and is owned by its policyholders, or their representatives - professionals or trade associations. An example of such a group at a national level is the national association⁴ established in the UK. This comprises a group of mutual insurance companies, together some nine company members and eight company associate members.

At an international level, another example is the International Association of Mutual Insurance Companies – AISAM - which includes over 220 companies from 26 countries with its principal office in Amsterdam. The corporate purposes of the AISAM are defined in its by-law:

(1) To establish relations and links of confraternity between its members and to watch over the general interests of private insurance organisations based on the mutual principle of non-profit making.

(2) To facilitate the exchange of information and experience between members, in matters of legal, fiscal, economic, political or other problems affecting mutual insurance in the different countries.

(3) To draw its members' attention to problems of a general nature which arise in one or more countries and which seem to warrant study in the general interest of mutual insurance companies.

(4) To study the origins of mutuality and investigate future possibilities of disseminating its principles.

(5) To obtain recognition as a representative of insurance institutions based on the mutual principle in all international organizations.

(6) To maintain regular contact with the national federations of mutual insurance companies⁵.

5.2 *Mutual Value*

The value of insurance is implicitly acknowledged but rarely made explicit. In practice, insurance eliminates uncertainty and risk and so allows commercial risk-taking. It helps place small groups on a more competitive footing with larger rivals, so stimulating new growth. Insurance develops financial security and reduces economic wastage.

The value of non-life insurance premiums rose throughout the OECD (Organisation for Economic Co-operation and Development) countries from some US\$38.5 billion in 1965, to some US\$265.1 billion in 1985⁶ matching the growth in GNP over the same period. The insurance industry was thus able to consolidate its overall economic position worldwide, and occupy a position of growth.

But like all commercial markets, the non-life insurance industry is not perfect. It suffers from alternate oversupply of its capacity, and volatility in current risk creates disequilibrium in pricing. When premiums become almost as unpredictable as losses, the insurance buyer is forced to turn to risk-financing solutions that are not based on conventional insurance. Thus, today no organisation can depend solely on commercial insurance and the development of mutual dependence and indemnification, by means of a private pooling of risks, is also a growth sector, receiving encouragement from national and world trade authorities.

Some US\$10 billion of annual premiums have been identified in the insurance organisations, which are the subject of this study. This sum received a considerable boost in 1986, of some \$1 billion from mainly major US corporations seeking liability insurance capacity, the subject of cyclical withdrawal by established American and European insurers and re-insurers⁷.

5.3 *Mutual stock*

Mutual stock insurance organisations operate on an advance premium basis and are generally capitalised on the lines of a stock corporation. The stockholders or shareholders enjoy a return on their investment represented by the capital stock. Some of these mutual may issue assessable or non-assessable contracts, (i.e. have a system of 'calls' for premium post loss), but the assessment liability is typically limited⁸. These mutual practices have, in the past, been designed to serve the requirements of a particular class of insured persons in the same trade or profession, and frequently under the aegis of a trade or professional body. More recently hybrid mutual operations have emerged as a matter of necessity, to replace insurance capacity vacated by commercial insurers, after a buyers' market in the insurance trade cycle.

5.4. *Mutual assessment*

There are mutual insurance organisations, which operate on an assessment basis. For the smaller mutual of this class, contributions may be sought from the policyholders, in most cases, after a loss has occurred. Frequently for the larger and more

established mutual, sufficient funds and expertise will have been accumulated to make advance calls that will generally be sufficient to cater for all losses in that financial year. These mutual are usually non-profit making, without share capital, and are used by insurers of a particular class, with or without the involvement of the trade or professional body concerned⁹.

An example of this kind of mutual is the 'Protection and Indemnity Club'¹⁰. This largely owes its origin to the reluctance of London underwriters to associate themselves with the liability risks that emerged in shipping around the turn of the 19th century. The clubs, as they became known¹¹, also provided advice and services. Some have become involved in physical damage insurance to the hulls, others in war and strike risks. More recently, they have been used to solve professional liability problems.

5.5 Other Registered Societies and Clubs

Called 'fraternal' in the US, these organisations provide mutual aid and self-help¹².

Examples are:

(I) Friendly societies, which began over 200 years ago, performing functions largely taken over by the welfare state, but which still provide for those areas where the services of the state or other agencies are either non-existent, inadequate or need supplementing. In addition to relief or maintenance during sickness, unemployment (and retirement and life assurance), friendly societies are able to provide other insurance that is of a more personal nature.

(ii) Non-profit making organisations providing private health care and hospitalisation.

(iii) The insurance co-operative which is most frequently used for agricultural insurance.

(iv) Finally in Third World countries, there are the 'reciprocals'. Reciprocal exchanges operate in the areas of property damage and liability protection. They are unincorporated associations of the insured; each insured person, in effect, being a part owner of the enterprise and assuming a definitely established underwriting liability, which is shared. Reciprocal exchanges have also been used in the US as a way of

providing insurance capacity where commercial insurance may not exist, e.g., malpractice insurance for physicians.

By pooling risk through a mutual, the members of these organisations obtain considerable advantages in their attempts to finance their fortuitous risks. Principally, they will be able to achieve the ability to insure and manage risks in circumstances and at times when commercial insurance is neither available nor affordable¹³.

The use of a wide and homogeneous database enables such organisations to arrive at a more accurate rating structure than might otherwise have been the case. Also, the element of self-interest enables the members to discipline themselves in a way that is not provided by the commercial insurance market. This, in turn, will allow reductions in loss costs to be made and broader covers to be granted. Smaller members may also enjoy the possibility of purchasing insurance at the same kind of discount as larger companies enjoy in the commercial market. Thus all the values of insurance are further enhanced.

The ultimate purpose of mutual insurance companies is to serve the objectives of risk management, by providing a mechanism to reduce losses¹⁴. The opportunities for reductions in the cost of financing insurable losses, through the mutual are considerable and, in some instances, this route is the only one available. However, in seeking to minimise the overall risk for the organisation looking to establish a mutual, the insurance, legal and tax implications are considerable.

5.6 Risk management

Organisations today undertake such a wide variety of tasks that their corporate objectives differ greatly. For a commercial organisation the financial objectives can be simple, expressed as¹⁵:

Revenue - Costs = Profit or Loss

This equation states the obvious, but it helps to emphasise that any decision, which affects one variable, must affect at least one of the other variables too. Thus, if a corporation wishes to improve its profits¹⁶, it can do so by increasing its revenue, or

reducing its costs, or by doing both. Some organisations do not have the freedom to alter every one of these variables.

The cost of risk to any organisation must represent a significant part of the total costs and it varies wildly from year to year. The object of risk management is to plan, organise and control to bring down the cost of risk to the lowest possible level tempered only by other corporate objectives voluntarily adopted or imposed by legislation.

5. 7 Applications of mutual insurance to risk management

Many insurable risks are difficult to insure. This is particularly true of the kind of risks emerging from today's economic and political uncertainties. For example, negligence has become a wholly abstract and uncertain concept. Judgement is frequently based on the insurance principle - which can pay? As a result, in some cases and at certain times, conventional insurance is very restricted and may disappear completely at short notice. Conventional insurance for professional indemnity, in particular, is becoming increasingly expensive. However, the commercial insurance market is not to blame for this unsatisfactory situation. Fundamentally any risk is insurable¹⁷ and at stable premiums, if it is static, clearly identified, precisely defined and quantified in terms of probability of incidence and severity of costs.

There are other requirements, which enable the insurer to apply the law of 'large numbers'. Namely, there must be a sufficient 'spread' of risk, over which to make a 'book' of underwriting probabilities, and thus secure the average and expected result. Apart from the unpredictability of many of today's risks, the insurance market is also faced with unpredictability of demand from their customers from year to year¹⁸.

It becomes very difficult for an insurance underwriter to obtain the broad spread of risk he needs, both in terms of good and bad risks, as well as in terms of geographical spread, without some kind of group scheme which members voluntarily commit themselves to, for a reasonable period of time.

How can the insurance industry succeed in the quantification of probability and severity? So much uncertainty produces volatility, in terms of insurance and many of the risks that threaten the trade or the current insurance market does not cater for professional association members. So, as soon as *volatility* enters the scene, insurability disappears in the eyes of the insurers¹⁹. Volatile risk comes to be equated with business risk.

Insurance can therefore only perform with the greatest difficulty, as insurance premiums will always be volatile. Much of the volatility described can be controlled, if not entirely eliminated, by measures that recognize the problems encountered. Many trade and professional associations have attempted to reward their members for the cost. To a large extent such schemes can help to establish the acceptance of uniformity and make the cost of risk reduction worthwhile.

There is also the problem that commercial underwriters can never know as much about the risks of any given group of organisations, as the people within those organisations.

Outside life assurance, insurance is a trading market and, in common with other commodity markets, is subject to trade cycles. The fluctuations in the insurance trade cycle are of a similar nature. Capital flows into the industry in times of profitability, pushing down insurance rates. This leads to some forms of insurance, particularly the more volatile risks, (at any time), becoming affordable or unavailable, or only available at inadequate levels of indemnity, as investors leave the market.

After a period of shortage, the rates rise, tempting capital back into the industry. This eventually leads to competition for market share, and the whole process repeats itself. Over recent years the fluctuations have become more acute. In the last ten-year cycle, the down turn in the market was delayed by high interest rates and in the previous cycle, it was precipitated by a 'bear' market, which depressed insurance funds. Thus, interaction with general economic developments may distort the insurance cycle further²⁰.

An example of how self-interest and self-help can operate in mutual trading in insurance is the lawyers' mutual for professional negligence risks.²¹ This is one of the most volatile of risks to insure against. Often, and depending on the state of the insurance cycle, this form of cover is difficult to buy, or unavailable, and there are massive price fluctuations. Yet the members of this mutual have enjoyed consistent cover at reasonable premiums for many years. Furthermore, if one is paying for one's own claims, the essential elements of risk management are reinforced, through the principle of mutuality. There is a very strong incentive to make sure that claims are kept to a minimum.

There is also a systematic method of dealing with all circumstances that might lead to a claim. Once these are notified, and the services of a full-time lawyer are retained, the lawyer constantly monitors individual members' claims experience and suggests remedial action. In such situations, a return to the more primitive forms of mutual protection may not only be a better alternative to conventional insurance; it may be the only form of insurance available.

In the case of difficult risks, and when the commercial insurance market (which is cyclical like all markets) is not able to provide affordable protection²², the ability of an organisation adversely affected to manage its risks better, is the key to regaining the advantages of protection by combination. A return to the original principle of sharing the risk, inherent in the mutual form, is the key to improved risk management.

Thus, at present, there are over 500 mutual in the USA and their number is growing²³. The members, certainly of the most successful operations, will find it beneficial to draw up their own 'rules of the club', in the form of a members' agreement²⁴. The agreement spells out the terms of acceptance into, and continuing membership of, the 'club'. Incorporation of codes of conduct, risk management procedures, loss reduction, pre- and post-claim, disciplinary codes, as well as the methods of transacting business, policy terms and rates, reinsurance procedures and requirements, method of cost, premium and surplus allocation, quickly restore the vital element of self-interest and consequent insurability at affordable terms.

5.8 Reinsurance and foreign Exchange

Insurance market in developing market often lacks a sufficient number of similar risks. The risks insured are generally few, but they are larger relative to the total exposure and cannot be balanced in the same market, therefore it will need for reinsurance in another market or foreign country, leaving relatively small and manageable risk for the local market. Hence the outflow of reinsurance remittance constitutes a substantial amount in the foreign exchange, and may have an effect on the cash flow and balance of payment.

In addition the technical reserve funds, which are savings by insurance for the policyholders, can be affected and immediate payment of these fund represents a farther drain of its cash flow.

The excessive dependence of the developing countries on foreign reinsurance facilities is likely to be conditions to unfavourable terms and conditions.

The establishment of national and regional reinsurance schemes, which embrace a number of mutual insurance companies, as the case in the Great Britain²⁵. National Insurance institutions are beneficial to the mutual insurance companies in local and national market, as well as the economy of the country, particularly in the area of foreign exchange requirements.

5.9 Investment of mutual insurance

Investment of mutual insurance funds constitutes an important issue of paramount importance; such funds need spread in range of investments as well as an adequate of safety and yield. Stock exchange investments combine these advantages and accordingly, a large portion of mutual insurance reserve funds is usually invested in stock exchange bonds.

The situation in the developing countries is a particular sensitive issue, to obtaining a maximum economic progress, particularly when the market is restricted. Another area of investment is real estate, can also be restricted if an imposition of rent control by the government is enforceable.

However difficult the investment problems seems, their will always be a determination on the part of the mutual insurance company to provide an adequate formulation to help growth.

5.10 State regulation of insurance and reinsurance

The British regulatory philosophy was voluntary disclosure, under which successive governments relied very much on the publication by insurance companies of accounting information to assist in the operation of the self-regulatory pressures of a competitive market.

Conversely, the European tradition, followed by the Americans, is highly regulated and codified by statute. It extends beyond concerns that the insurance company can pay its claims, to other consumer protection matters, such as policy wordings and the control of premium rates.

In 1977 the United Nations Conference on Trade and Development encouraged developing countries²⁶ to establish insurance co-operatives in order to provide better insurance protection. In at least twenty developing countries, and most developed countries implemented the same.

The EU also introduced the concept of the minimum guarantee fund, in place of earlier minimum capital requirements. This provides a new inner benchmark of solvency. This fund must be maintained at a specified amount, depending on the class of business transacted, or one-third of the calculated solvency margin, whichever is greater.

The EU's approach to the calculation of the non-life solvency margin is as follows: two calculations are, in fact, required, the first on a premium basis, and the second on a claims basis, whereas traditionally only the premiums were used. Sole use of premiums as a means to calculate the solvency margin can result in the margin being reduced by inadequate premium levels. A second calculation using the claims results overcomes this potential flaw, by substituting the claims basis for the premiums, if the

claims ratio exceeds 69.6 per cent. An insurance organisation's current growth in written premiums would, on the other hand, be overlooked if the claims result were the only method used²⁷.

Another innovation is that the amount by which gross premiums in the calculation are reduced to the net retained is measured by the relationship of reinsurance losses recovered to total losses suffered. This compares with the traditional method that uses amounts of reinsurance premiums paid out, which may not reflect the end result. Moreover, the calculation gives a maximum credit for reinsurance of 50 per cent, which materially affects the smaller organisation that may reinsure a substantial proportion of its risks.

In the case of mutual or mutual-type associations, which may seek to assess premium contributions from members after the loss is incurred, i.e., with variable contributions, there are two important concessions under the EU regulations that are being used as models elsewhere²⁸.

First, it is possible to reduce the appropriate minimum guarantee fund by 25 per cent, thereby allowing relatively low initial funding. Secondly, it is possible to include in the solvency margin calculation up to 50 per cent as an 'unmade call'. Any claim, which the mutual has against its members by way of a call for supplementary contribution, within the financial year, can be allowed. This can be up to one-half of the difference between the maximum contributions and the contributions actually called in, provided that the limits of liability are kept to a reasonable level. But, whilst the EU regulations pertaining to mutual are held to be an improvement on the more traditional methods of control for mutual organizations, defects remain.

The solvency margin calculation treats all re-insurers alike, and does not discriminate against the less fortunate²⁹. Neither does the solvency margin guard against potential ruin from investment depreciation: foreign exchange and claims are somewhat arbitrary, and no evaluation is made of the profitability of any given line of business, or adequacy of loss reserves.

The EU regulations provide the manager of a mutual with a better set of 'ground rules' than previously existed in law. The EU has yet to harmonise accounting standards within the Community and relies upon the existing accounting standards of the individual member states.

Whilst this remains a weakness in the Community, it has recognised the need for special accounting rules for insurance enterprises, and is preparing a separate insurance accounting directive.

The mutual structure is, in fact, intended to contain substantial elements of equity having regard to the members of each policy-year³⁰, although the directors of the mutual retain the power to move reserves or parts of reserves from one year to the next. Thus, a mutual can involve capital, although it may not have to provide immediate paid-up capital at the commencement of trading. In such cases the capital is, in effect, with the members of the mutual to be provided where necessary. Most supervisory authorities on-shore and offshore, will control a mutual in a most flexible manner

The form of incorporation may be on the purest mutual basis, where claims are apportioned and collected from members, without any deposit or advance payment (although this is rare), or may go to the other extreme whereby advance deposits are unlikely to be exceeded, or a ceiling is placed on supplementary calls. Alternatively, for budgeting purposes, a supplementary possible call may be indicated at the beginning of the policy year, to be called or not as circumstances dictate with the progress of the year. Initial funding may consist of gifts, loans, bank guarantees, premiums in advance (i.e. more than one year's premium is paid in at the start), or part equity. On-going funding can be supplied by drawing on accumulated reserves, advance calls, supplementary calls, and equity raising or loan capital. Whilst unusual, it has been found possible to mitigate supplementary calls for new, non-marine mutual, by the use of reinsurance.

For the modern mutual, flexibility of cover can be given to pay claims not covered or excluded, or to provide for additional insurance to be underwritten beyond that contemplated at the inception of the mutual.

Equity is achieved by matching calls against claims payments and the cost of providing services, over a period of years. That is, there is self-insurance at cost. Service to members has always been a strong feature of mutual operations with the provision of claims mitigation and loss prevention, as well as risk management generally.

Whilst the operation of the mutual has followed a specialised path, recently this structure has been used, successfully, to solve risk financing problems in such diverse areas as professional indemnity insurance, workmen's compensation, social security, employee benefits, and space satellite insurance.

5.11 Mutual insurance in USA

All insurance companies in the 50 states of the United States are subject to the General Corporation and insurance laws of the states in which they are authorised to operate. With limited exceptions, all companies writing property, a Department of Insurance regulates casualty, life and marine insurance in each state.

Unlike a stock company, a mutual insurance company is a corporation owned and operated by its policyholders³¹. It is a form of insurance whereby each insured person, by payment of a specified amount into a common fund, engages collectively with other insured persons in indemnifying all others against loss. An insured person is entitled to attend policyholders' meetings, and to vote on all questions, which arise including the election of members of the company's Board of Directors.

The first successful mutual insurance Company in the USA was a fire insurance company organised in Philadelphia, Pennsylvania, in 1752. It continues in operation to this day as an exceptionally strong institution³². At that time insurance premiums were paid by insured persons in the form of periodic assessments, calculated to cover the actual amount of losses and expenses incurred by the company. Some of the small mutual companies continue to operate today on the assessment basis. Most mutual companies in the country, however, now charge a fixed premium, usually payable in advance. Rates are classified by type of structure, construction, protection and occupancy, or use.

Each mutual insurance company is authorised, under a charter issued by the state in which it is domiciled, to provide insurance against various and specific hazards as set out in the company's Articles of Incorporation. Mutual life insurance companies are limited to classes of cover they can underwrite, namely: life, medical and hospital insurance. They cannot issue policies covering property³³.

Likewise mutual property and casualty insurance companies cannot issue life insurance policies, but are specifically limited by their Articles to underwriting insurance against damage from such perils as fire, lightning, windstorm, hail, etc. Additional perils insured against are explosion, riot or civil commotion, aircraft, vehicles, vandalism or malicious mischief, theft and numerous extensions of such basic coverage.

As a mutual insurance company improves its financial position, it may be authorised to underwrite additional lines of insurance. Many of these companies have now become 'multiple line' writers although there are still 'speciality' companies underwriting insurance against such single hazards as hail damage, growing crops, or damage to property caused solely by hurricane, tornado, cyclone, windstorm or hail.³⁴

Regulation by a State Department of Insurance can be extensive. Insurance departments approve rates, forms and policy wordings that are filed by each company. They license agents and supervise their activities; they supervise mandatory deposits of assets by companies operating within the state's boundaries, holding such deposits as a protection for the policyholders in the state. Each department maintains a staff of qualified accountants who periodically examine all records of companies doing business in its jurisdiction. The laws governing insurance company operations are established by the legislature of each state and are administered by the Insurance Department³⁵. Although this procedure may result in variations from state to state, little difficulty is experienced by the companies.

Almost all mutual insurance companies are required to file an annual statement each year-end with the Department of Insurance in each state where they are authorised to issue policies³⁶. While certain small companies submit simple forms containing

limited information, most insurance companies, mutual and stock are required to file an annual statement form designed and approved by the National Association of Insurance Commissioners. NAIC, which is made up of the Commissioners of Insurance from each state.

The NAIC is a powerful organisation, which strives for uniformity in regulatory decisions and forms, as well as in laws governing the insurance industry in the United States. The 'convention form' annual statement is a complex 55 page document requiring detailed information relative to a company's premium income, losses, expenses, investments, reserves and assets during the year for which it is filed³⁷. The annual statement is useful in determining the success or failure of a company and its financial condition and forms the basis for the periodically scheduled examinations conducted by the Insurance Departments.

Currently the United States government does little in the way of regulating the insurance industry. Instead, federal guidelines governing many areas of the insurance business have been established. It is ordinarily up to the various state governments to follow these guidelines. In order to maintain state control and regulation of insurance, each legislature establishes procedures in accordance with federal directives³⁸.

Feeling that its insurance is unable to provide adequate facilities, the federal government does not offer insurance cover in catastrophic areas such as: all risk damage to crops, flood, crime, medical protection for the aged, or life insurance for members of the armed services. In addition, all insurance companies are subject to the rules and regulations of the Internal Revenue Service, which has certain specific procedures applicable to the payment of federal income by mutual insurance companies.

The 'farm mutual' comprises an important segment of the mutual insurance industry in the United States today. These companies were organised by groups of farmers striving to protect themselves in their rural environment, mostly during the latter part of the nineteenth century. Such companies usually operate in the limited area of a

political sub-division, such as a township (36 square miles). They originally provided insurance against the hazards of fire and lightning only, to farm dwellings and out-buildings, rural churches and meeting halls and, later on, to chattels. In many states insurance departments, but rather received authority did not regulate such companies under corporate laws of the state. They operated strictly upon an assessment basis with the number and amount of assessments being limited only by the amount of loss suffered by company members.³⁹

Many farm mutuals still operate on this same basis. Thus limitations have been established, and they continue to insure only against the hazards of fire, lightning and limited extended coverage. These companies, through arrangements with larger mutual, underwriting windstorm and hail, third party liability and other extensions, are able to continue serving their rural policyholders.

Over the years, however, other mutual companies, once classified as 'farm mutual' and providing insurance in rural areas only, have grown and now underwrite most property and casualty lines. The insurance laws of many states are still quite limited in regard to regulation of the small, rural underwriters.⁴⁰ As a mutual company's assets increased it became necessary for it to operate under a different chapter of the insurance law and then submit to departmental regulation.

All mutual insurance companies operating in the United States, with some definite exceptions, produce business under the system of independent agents or 'captive' agents.⁴¹ The exceptions are:

Direct underwriters which sell insurance through their employees direct to the public and not therefore through independent agents or brokers; Those farm mutual companies, which depend upon the members of their Boards of Directors for the production and service of the business; and in those cases where the manager underwrites all the policies for the company. As the various states enact laws requiring licensing of agents, however, these exceptions become fewer and fewer resulting in more knowledgeable professional agents.

As the needs of the insuring public become greater it becomes more difficult for the smaller mutual insurance Company to provide the necessary coverage. In some areas the powers of the regulatory agencies, the insurance departments, have waned, but in other areas of the business they are more extensive. Through mergers, reinsurance and assurance of combination policies, mutual insurance has maintained a strong position in the United States. Currently there are approximately 1800 mutual insurance companies operating in the United States, many are more than 100 years old⁴².

5.12 Mutual Insurance: The European approach

In the UK and in Europe generally, the conventional market and the insurance brokers are less conversant with the concept of 'self-insurance', and less obliged to seek that route.

Thus other criteria for mutual insurance success can be examined namely the ability to launch the mutual or association captive, without upsetting the conventional insurers or the brokers⁴³. A typical approach in the difficult market of professional indemnity insurance, for example, might be as follows⁴⁴.

- (1) To exert influence against current market trends to narrow cover
 - By imposing aggregate limits and excluding broader elements of
 - Cover currently available
- (2) To improve negligence defence techniques by involvement in
 - 'Underwriting' and 'risk bearing' (with profit potential) – pre- and post-loss
- (3) To become involved in claims settlement
- (4) To 'capture' any excess profits that might be made by the conventional Insurance market
- (5) To provide a smoothing mechanism to even out the peak and troughs
 - Of the traditional insurance trade cycle

A purely funding approach may be made that relies on actuarial projections, and does not seek any support from the conventional insurance industry. Such an approach

would be based on a company limited by guarantee and the fund would be structured so as not to constitute an insurance contract requiring statutory approval.

The mechanics of such an approach are demonstrated by the first proposals of the Law Society, in the Law Society's Gazette, and Bacon and Woodrow Consulting Actuaries, who made the projections. These proposals were made possible by the following special features⁴⁵:

(I) Under the Solicitors Act 1974, lawyers can establish a fund and grant statutory indemnity to solicitors, employees etc. (past and present) and oblige solicitors to make contributions to the fund.

Thus obligations to make payments into the fund and rights to recover from that fund are established without any contract of insurance ever being in force.

(ii) Claimants against a solicitor would have statutory rights (under the Solicitors Act) to be compensated by the fund for any claim sustainable against a solicitor

To give the Council some idea of the financial consequences of self-insurance, a limited number of products are set out below⁴⁶. When considering them a number of facts must be borne in mind:

(1) Actuaries have assumed that the Department of Trade and Industry would not demand that the fund meet the EU solvency margin. Even if it is desired that the fund should be able to operate within the EU solvency margin in the longer term, that margin could be built up over a number of years and, moreover, any incidental losses could be recovered over a period.

(2) The projections take into account a 15 per cent year-on-year increase in premiums and claims settlement. The figures take into account increases in the size of the number of claims and the amount of claims, which tend to run ahead of the general level of inflation in the economy.

(3) Tax is allowed at a rate of 35 per cent and interest at 10 per cent shown at a net rate of 6.5 per cent.

(4) Reserves are discounted to a figure which, including the additional interest credited thereto, would amount to the sum necessary on settlement, at the projected time that the settlement would be made.

(5) Claims incurred are claims reserved.

(6) Management expenses are the costs of setting up the venture. Costs of defence are included in the claims and claims reserve figures. Costs of underwriting, claims handling, etc. would be met, from a sum equal to current brokerage.

(7) The total net investment income is split between net discounted reserves and the profit and loss account.

(8) The results of each projection can most readily be seen from the balance sheet. The liabilities are made up as follows:

(a) Insurance funds - the total of discounted reserves carried forward for prior years and the current year;

(b) accumulated profits - the profit carried each year to the profit and loss account accumulated to the end of the balance sheet year;

total liabilities - the sum of insurance funds and accumulated profits.

Under total liabilities is shown the solvency of the fund. The minimum EU solvency margin is compared with the net assets available to cover that margin. 'Net Assets' are equal to 'accumulated profits' since no capital contribution is required.

The Law Society Council has recently approved the Solicitors Indemnity Rules 1987⁴⁷ which will bring into effect a statutory fund providing the same indemnity as previously given by the master policies, placed earlier in the insurance market.

5.13 Technical Personnel and exchange of Information

Established mutual insurance has adequate trained personnel, which are of utmost importance in the managing a successful mutual insurance. Recruitment of knowledgeable staff in new mutual insurance can be difficult task, as the experience of recruiting experienced staff will need help from larger insurance company and co-operation between other mutual insurance, as in the case of AISM, the aim is: To establish relations links between members, and to watch over the general interests of private insurance organisations based on mutual principle of non –profit making. Facilitating the exchange of information in legal, fiscal, economic, political matters affecting mutual insurance in deferent countries. Drawing member's attention to problems of general nature, which rise, in one or more countries, for other member's interests. Obtaining recognition as a representative of insurance institutions in all international organisations, to update its members of changes, and information's around the globe.

Conclusion

Mutual insurance practised in the West, has been going for long time, it operate within the framework of the insurance industry. Insurance is based on statistical experience, the Maine deference between mutual insurance and commercial insurance, is the owner of the mutual insurance is the policyholder, in commercial insurance, the owners are normally the shareholders, are not necessarily a policy holders, The management loyalty in mutual insurance is to the policyholders, which is not profit making organisation. And in commercial insurance, the management loyalty is to the shareholders, which is profit making organisation.

Taking into account the highly technical and complex nature of insurance, mutual insurance requires to be in co-operation with other similar mutual insurance either in the same country or in different countries, This co-operation brings the law of large numbers into small company, information's, problems, and up to date knowledge become available to small mutual organisation. Also international corporations provides practical opportunities for developments of insurance growth in emerging countries where the volume of insurance transactions is still small.

National reinsurance in the emerging countries or international reinsurance business is an important backup to the mutual insurance, it is a good sign that the efficient service is provided to the mutual insurance organisation. The traditional good will that is usually associated with insurance, mutual insurance benefits from security, and prosperity.

-
- 1 Raynes, H E , *A History of British Insurance*, 2nd ed. p.71
2 Carter, R L *Study on the use of the word "Mutual" in the Insurance Industry*,
p.11
3 *Insurance Annual Report*, 1991, Apndx 1.
4 Mutual Insurance Companies Association (UK).
5 International Association of Mutual Insurance Companies, "AISAM" with
groups of 220 companies from 26 countries, with the principle office in
Amsterdam.
6 Sanders, G.T, *Mutual Association Captives*, p. 3
7 *ibid.*, p. 3
8 Klock, D R, *Perspective on Insurance*, p. 379, Prentice Hall Inc., USA.
9 *Ibid*
10 Kluwer, *Handbook of Insurance*, p. 59
11 *The National Mutual Life with Profits Guide*, p.5, Aug.93
12 Pdfeffer, Irving, *Perspective on Insurance*, p.411
13 Klock, D R. *Perspectives on Insurance*, p. 379
14 Housell, D S, *Elements of Insurance*, p. 4, M & E Handbooks.
15 Sanders, G T , *Longman Intelligence Reports*,(unable to find page) 1987
16 Lalley, Edward P, *Corporate Uncertainty and Risk Management, Risk
anagement
Society Publication* , New York, 1982, p.37
17 Handsel, D S. *Elements of Insurance*, 1987, p. 7
18 Wise, D J, *CIS Chairman's Report*, April 1993, p.4
19 Lalley, Edward P, *Corporate Uncertainty and Risk Management, Risk
Management
Society publication*, p. 42, New York, 1992
20 Volkswagebwerk AGV, *International Mutual Strike AD, Lloyds Report*, 1972,
p. 12
21 Yorrow, George, *Social Security and Friendly Societies*, Oxford publication,
p.37
22 *Ibid* p.48.
23 *American Insurance Association (AIA) Publication* 1992, vol. 2, p.33.
24 *Ibid*, p. 33
25 *Ibid*, p. 35
26 *European Union Publications*, ref. no. 92/49/EEC
27 *Ibid*, ref. 92/99/EEC.
28 *Ibid* " " "
29 Anderson, J, and Thompson, Howard E, *Financial Implication of over
reserving in
Non-life Insurance Companies*, *The Journal of Risk and Insurance*, 1921,
p.333.
30 Cooper, R L European, *Union Publication* , no. 92/49/EEC, p.35
31 Mason, Kenneth R, *United Estate International Trade Commissioners*, 1992
32 Noniewicz, Helen T, *Life Insurance Monetary and Research Association*, 1956

-
- 33 National Association of Independent Insurers, 1993, *Annual Report*
34 Ho Tom, R B., *Underwriting Principles and Practices*, The National
underwriting ,(unable to find page refrance) USA 1993
35 Shilberg, David, *Export Systems in the Insurance Industry* 1987
36 Noniewicz, Helen T, *Life Insurance Marketing and Research Association* 1986
37 Kenneth, R Mason, United Estate International Trade Commissioners, 1992
38 National Association of Insurance Commissioners, 1992, *Annual Report*
39 Noniewicz, Helen T *Life Insurance Marketing and Research Association*, 1986
40 Kenneth, R Mason, *United Estate International Trade Commissioners*, 1992
41 Shiplberg, David *Export Systems in the Insurance Industry* 1987
42 Noniewicz, Helen T, *Life Insurance Marketing and Research Association* 1986
43 Britten, Leon Vice President of EU, *speech to European Committee of*
Insurance 27 Nov, 1989
44 Ron Akhurst and R Watson, *European Insurance Opportunities*,(unable to
find page refrance) 1990
45 EC Commission, *Panorama of EC Industry*, p.29-9, 1989 issue
46 Phillips and Drew, *European Insurance Review*, June 1990
47 Laheac, Francis, *Insurance Contract Law in the EU*, 1993

CHAPTER 6

THE DEVELOPMENT OF ISLAMIC BANKING AND INSURANCE IN MALAYSIA AND SAUDI ARABIA: TWO CASE STUDIES

Introduction

Malaysia is relatively small country in the Southeast Asia, majority is Muslims. Natural resources such as crude Oil, and Gas are the main Government income, The economy is dependent on private investments, and foreign investment. The Government with Takaful act 984, Malaysia considered to be one of the first countries to adopt Islamic banking and insurance system parallel to a conventional banking and insurance system.

6.1 The Development of Islamic Banking in Malaysia

Since the 1970s, Islamic banking has emerged as a new reality on the international financial scene. Its philosophy and principles are, however, not new, having been outlined in the Qurʾān and the *Sunna* of the Prophet Mohammad. The emergence of Islamic banking is often related to the revival of Islām and the desire of Muslims to live all aspects of their lives in accordance with the teachings of Islām.

In Malaysia, separate Islamic legal provisions and banking regulations exist side by side with those for the conventional banking system. The legal basis for introduction of banking products along Islamic principles was the Islamic Banking Act, 1983, which came into effect on April 7, 1987. The Act provides the Central Bank with powers to supervise and regulate Islamic banks, similar to the case of other licensed banks. The Government Investment Act, 1983, was also enacted at the same time to empower the Government to issue Government Investment Certificates, (GICs) which are Government bonds issued on an Islamic basis. As the Certificates are regarded as liquid assets, the Islamic banks could invest in the Certificates to comply with the prescribed liquidity requirements as well as to park their temporary idle funds. Malaysia was the first country in the world to issue Government bonds of an Islamic character.

The first Islamic bank established in the country, namely, Bank *Islām* Malaysia Berhard commenced operations on July 1, 1983, with a branch in Kuala Lumpur. At the end of 1993, bank Islam has a network of 52 branches. The bank was listed on the Main Board of the Kuala Lumpur Stock Exchange on January 17, 1992. In line with its aims, the activities of the bank are based on Islamic principles of banking and credit conforming to the *Shari'ah*. On the basis of these principles, Bank *Islām* offers all the conventional banking services such as accepting deposits, granting credit facilities, providing safe-keeping facilities and fund transfers. The bank accepts savings and demand deposits from members of the public under the principles of *Wadi'ah (Deposits)*. It also accepts term deposits in the form of general investment deposits and special investment deposits under the principles of *Mudā'araba*. General investment deposits and special investment deposits are similar to the fixed deposits commonly accepted by the commercial banks, merchant banks and finance companies. However, the special investment deposits allow the depositors to specify the manner in which the deposits are to be utilized by the bank.

Service charges are levied on demand deposits, which do not bring any return to the depositors. Savings account holders are not entitled to a share of any return to the depositors. Savings account holders are not entitled to a share of the bank's profits, but the bank, at its absolute discretion, may reward such savers as a token of its appreciation for the deposit of money with the bank. Profits are paid to the general investment account holders out of the bank's revenue from its financing and investment activities, while the special investment account holders are paid profits or made to bear losses from the manner in which their deposits are utilized.

The bank grants financing facilities such as project finance under the principles of *Mudā'araba* and *Mushāraka*, lease financing under the principles of *Al 'Ijāra* and *Tatinaa*, hire purchase financing under the principles of *Al Bai' Bithaman Ājil*, trade financing (including bill financing and letter of credit) under such principles as *Murābaha*, *Mushāraka* and *Wakālah*, guarantees under the principles of *Al-Kafāla* and benevolent loans under the principles of *Qard Hassan*. In 1991, two new Islamic instruments were introduced, namely Islamic Accepted Bills and Islamic Export Credit Refinancing. Another important development in the evolution of Islamic

banking is the securitisation of debts and the trading of such debt instruments. After more than a decade in operation, Bank ^ʾIslām Malaysia Berhad has proved to be a viable banking institution with its activity expanding rapidly throughout the country.

On the prudential front, Bank ^ʾIslām has to adhere to the same regulatory rules as other banks offering conventional banking products. It is also required to maintain a statutory reserve account with the Central Bank.

The long term objective of the Central Bank has been to create an Islamic banking system which would function on a parallel basis with the conventional system. A single Islamic bank does not constitute a system. A banking system, whether Islamic or conventional, requires three vital ingredients to qualify as a system. These are:

(i) a large number of players

There must be an adequate number of different types of institutions participating in the system. This is required to provide depth to the system.

(ii) a broad variety of instruments

A large variety and range of different types of instruments must be available to meet the various needs of the financial institutions and the customer.

(iii) an Islamic inter-bank market

There must be an efficient and effective inter-bank money market to link the players (institutions) and the instruments.

In addition to the above requirements, which apply to all systems, it must be Islamic in substance and not merely in name ¹.

6.2 A wide variety of instruments

By the beginning of 1993, a total of 21 Islamic banking products were successfully developed by the Central Bank and, therefore, one of the three requirements for a fully-fledged Islamic financial system was achieved, namely the requirement for a large number and wide variety of Islamic financial instruments to meet the various needs of the financial institutions and the customers.

Al Wadi'ah Yad Dhamanah (safekeeping with guarantee)

the concept of *Al-Wadi'ah Yad Dhamanah* refers to deposits which have been deposited with another person, who is not the owner, for safe-keeping. As *wadi'ah* is a trust, the depositee becomes the guarantor and, therefore, guarantees repayment of the whole amount of deposits, or any part thereof, outstanding in the account of the depositors, when demanded. The depositors are not entitled to any share of the profits but the depositee may provide returns as a gift (*Al-Hiba*) to the depositors as a token of appreciation.

Al Mudaraba (profit-sharing)

The concept of *Al-Mudaraba* refers to an agreement made between two parties: one who provides the capital and the other the entrepreneur, to enable him to effect business projects on a profit-sharing basis, according to pre-determined ratios agreed upon earlier. In the case of losses, these are borne by the provider of the funds.

Al-Musharaka (joint venture)

The concept of *Al-Musharaka* refers to a partnership or joint venture for a specific business with a profit motive, whereby the distribution of profits will be apportioned according to an agreed ratio. In the event of losses, both parties will share the losses on the basis of their equity participation.

Al Murabaha (cost-plus financing)

The concept of *Al-Murabaha* refers to the sale of goods at a price which includes a profit margin as agreed by both parties. In *Al-Murabaha* contracts, the price, other costs and the profit margin of the seller must be stated at the time of the agreement of sale.

Bai' Bithaman Ajil (deferred payment sale)

The concept of *Bai' Bithaman Ajil* is similar to the concept of *Al-Murabaha*, except that in this case the sale of goods is on a deferred payment basis.

Bai^ḥ Al-Dáyn (debt-trading)

The concept of *Bai^ḥ Al-Dáyn* refers to debt financing, i.e., the provision of financial resources required for production, commerce and services by way of sale/purchase of trade documents and papers. It is a short-term facility with a maturity of not more than a year. Only documents evidencing debts arising from *bona fide* commercial transactions can be traded.

Al-Ījāra (leasing)

The concept of *Al-Ījāra* refers to an arrangement under which the lessor leases equipment, building or other facilities to a client at an agreed rental.

Al-Ījāra Thumma Al-Bai^ḥ (hiring followed by sale and purchase)

The concept of *Al-Ījāra Thumma Al-Bai^ḥ* refers to two contracts undertaken separately and consequentially as follows:

- (i) *Al-Ījāra* contract (hiring/renting)
- (ii) *Al Bai^ḥ* contract (sale and purchase)

Under the first contract, the hirer hires the goods from the owner at an agreed rental over a specified period. Upon expiry of the hiring period, the hirer enters into a second contract to purchase the goods from the owner at an agreed price. This concept is applicable to financing the purchase of consumer goods and durables.

Al Qarḍ al-Hassan (benevolent loan)

The concept of *Al-Qarḍ al-Hassan* refers to an interest-free loan given mainly for welfare purposes. The borrower is only required to repay the principal sum borrowed, but he may pay an extra amount as a gift (*Al-Hiba*) at his absolute discretion, as a token of appreciation.

Al-Wakāla (agency)

The concept of *Al-Wakāla* refers to a situation where a person nominates another person to act on his behalf.

Al Kafāla (guarantee)

The concept of *Al-Kafāla* refers to the guarantee provided by a person to the owner of goods, who had placed or deposited his goods with a third party, whereby any subsequent claim by the owner with regard to his goods must be met by the guarantor, if it is not met by the third party.

Al-Ráhn (borrowing with collateral)

The concept of *Al-Ráhn* refers to an arrangement whereby a valuable asset is placed as a collateral for a debt. The collateral may be disposed in the event of default.

Al-Hiwāla (remittance)

The concept of *Al-Hiwāla* refers to a transfer-of-funds debt from the depositor/debtor's account to the receiver/creditor's account where a commission or fee (*Al-Ujr*) may be charged for such service.

Al Ujr (fee)

The concept of *Al-Ujr* refers to commissions or fees charged for services.

6.3 Malaysia and the Takāful Act

The Malaysian Takāful Act (1984)² is certainly one of the most (if not the most) developed and comprehensive legislative framework aimed at establishing an insurance scheme in compliance with the *Shari'ah*. The Act does not prejudice conventional insurance legislation, in that commercial insurance is still allowed and governed by its own regulations. The Takāful Act exists concurrently with conventional insurance laws and offers an insurance scheme in which Muslims can take part.

Takāful³ is defined in section 2 of the Act as meaning "a scheme based on brotherhood, solidarity and mutual assistance, providing for mutual financial aid and assistance to the participants, in cases of need, where the participants mutually agree to contribute for that purpose".

The same section states that the aims and operations of Takāful "do not involve elements which are not approved by the *Shari'ah*."

The Malaysian Takāful system can be summarized as follows. Takāful business which includes life insurance ('family solidarity business') and non-life insurance ('general business'), can be undertaken by a Malaysian company as defined by the Companies Act 1965, or by a society constituted under the Co-operative Societies Act. There is, therefore, no specific company form devised or required to undertake Takāful business. Premiums are called contributions in order to imply the notion of

gratuitous payment made in order to contribute towards a mutual help scheme. The premium is, therefore, legally speaking, a donation, which is supposed to be to a certain extent disinterested and directed to other insured persons (called participants).

Life insurance companies offer three main types of policy:

(1) whole life policy, which involves payment of a fixed sum by the insurance company on death or permanent disability of the policyholder. The premium charged is based on the age and health of the policyholder. On death a lump sum equivalent to the sum insured plus the profits or bonuses accrued is paid to the beneficiary of the policyholder.

(2) endowment policy which, in addition to its function of providing death coverage within stipulated periods, also acts as a means of savings for the policyholder. The policy involves the purchase of a policy with a fixed lump sum, or annuity, payable on maturity or death of the policyholder. Part of the premium on this policy constitutes the payment for protection, while the balance constitutes savings.

(3) 'term assurance', where the sum insured of the term policy is payable only in the event of the death or permanent disability of the life insured within the stipulated term. This type of policy does not have surrender value. The premium payable is relatively lower as compared with whole life, or endowment assurance.

The office of the Director General for implementing Takāful Act was established. The latter, who is appointed by the competent minister, enjoys very extensive powers and is attached to the general administration of the Takāful Act⁴. In particular, he is responsible for whether the operator is carrying out business in a manner 'which is not approved' by the *Shari'ah*. The powers of the Director General include the right to refuse to register an operator, or to cancel his registration - thus putting him out of the business, where there is evidence of breaches of the *Shari'ah*⁵.

Two of the thirteen grounds available to the Director General to cancel the registration of an operator are very broad indeed. Because of the very nature of his authority he is given great power of discretion. There are cases where the Director

General concludes that the Takāful activities of the operator are possibly detrimental to the interests of its participants and where public interest requires the cancellation of the registration⁶. The Director General exercises control on the forms of proposals, policies and brochures (issued by the operator) and he may order that a form be discontinued if he considers it is contravening the Takāful Act, or if it appears to him to be misleading.

In Sections 33, 46 (1) (g) and 47, all books, accounts, other documents and information held by the operator, may be inspected or investigated at will by the Director General who can also issue directions to the operator if he estimates that the latter is carrying out his business "in a manner likely to be detrimental to the public interest, the interests of the participants or the interests of the operator". In this respect the operator may be asked by the director to cease the category of business conducted.

The Director General is the licensing authority for Takāful brokers and adjusters⁷. The Takāful Act also imposes the establishment of a *Shari'ah* supervisory council, to control the legality of the business conducted by the operator⁸. Such control would affect the business on many levels, be it investment⁹, or the terms of the policies, or other levels. Such supervisory organs have already been set up by the 'Islamic' insurance companies, operating at the time of the enactment of the Takāful Act. They represent the only guarantee of the legality of the operations effected by the insuring body.

The Act enjoins the operator to make a deposit, determined by the Minister, with the Accountant General of Malaysia. What is of importance here, is that such deposits are to be invested in compliance with Islamic law. The importance of this point highlights the fact, expressed earlier, that in countries where no appropriate legislation is enacted for 'Islamic' institutions, the latter may be obliged to contravene the *Shari'ah* in order to comply with the legal prescriptions applicable to them, which are intended to regulate conventional commercial entities. The above mentioned prescription constitutes an example of remedy in this respect.

Section 18 of the Act places restrictions on the payment of dividends to the shareholders. No dividend shall be paid until all the capitalized expenditure of the

operator has been written off. Capitalized expenditure, according to the Act, is meant to include "preliminary expenses, organizational expenses, share selling commission, brokerage, amounts of losses incurred and any other items of expenditure not represented by tangible assets". From this section it appears that the insuring body, under the Takāful Act, is normally a company with shareholders, and thus the mutual concept is not adopted. As will be argued later, in practice insurance remains, under the Act, an activity promoted and conducted for profit, but being a form of commercial insurance does not mean that the scheme is unlawful in the light of Islamic law.

The Takāful, or indemnity fund, is maintained by operators, in respect of each of the classes of business engaged in¹⁰. Takāful guarantee scheme funds are established by the Director General, by means of levies paid by the operator¹¹. Such funds, if available for investment, must be fully in compliance with Islamic law. Reinsurance, named Re-Takāful is compulsory, by virtue of section 23 of the Act.

The insurance industry is regulated by way of analysing periodic returns as well as on-site inspection. The primary objectives of on-site inspections are to ensure that insurance companies and insurance intermediaries are solvent, operate in accordance with the requirements of the Insurance Act 1963 and other relevant regulations, adopt sound business practices and are managed by competent persons.

The Takāful Act is a set of protective measures to benefit those insured. The rules in this regard are not new or particular to Takāful, such as the deposit requirement, the lodging of statements of accounts with the relevant authority¹², licensing of brokers¹³, actuarial investigation¹⁴ and other such measures aimed at regulating the business and safeguarding, as efficiently as possible, the interests of those in weaker bargaining positions.

It should be emphasized that the Takāful Act has, in many respects, been inspired by, and framed according to the Malaysian Insurance Act 1963¹⁵ and the UK Insurance Companies Act of 1982¹⁶. A significant part of the protective measures adopted by

the Takāful Act has been adapted from the above. For example, the powers and prerogatives of the Minister in charge of Takāful supervision and of the Director General of Takāful, which borrowed from the UK Insurance Companies Act 1982, as regards the duties of the Secretary of State.

From those powers are:

- the duty of the insurer to deposit accounts and other statements with the Director General/Secretary of State¹⁷.
- the power to obtain information and require production of documents¹⁸.
- the power of the Minister/Secretary of State to require an insurer not to make investments of a specified class or description and to realize the whole or a specified proportion of investments of a specified class or description¹⁹.
- the entitlement of the Director General/ Secretary of State to petition to wind up the company²⁰.
- the duty to notify change of director, controller or manager to the Director General/Secretary of State²¹.

Such safeguards for the protection of policyholders are more extensive in the case of the Director General under the Takāful Act. For example, the power to direct the insurance company, restricting its freedom to dispose of its assets, is much wider in the Takāful Act than in the UK Insurance Companies Act 1982²². There are other similar prescriptions in the two Acts, such as the right of policyholders to receive copies of documents and statements deposited with the Director General/Secretary of State, periodic actuarial investigation for life insurance business and establishment of a separate insurance fund for assets and liabilities attributable to long term business, or to industrial assurance business under the 1982 Act and to all classes of business according to the Takāful Act²³.

The margin of solvency condition placed on payment of dividends in section 18 of the Takāful Act, is restricted to long term business in the 1982 Act²⁴, but in all cases there is a requirement of permanent solvency margin in both acts²⁵. Finally, two identical provisions, which should be underlined, are the prescriptions pertaining to misleading statements and to intermediaries.

Section 28 of the Takāful Act, which adopts exactly the same wording as section 73 of the 1982 Act, renders any person who misleadingly induces persons to enter into a contract of insurance, guilty of an offence. Section 36 - 1 of the Takaful Act, also similar to section 74 of the 1982 Act²⁶, requires any person connected with an insurer, to "give the prescribed information with respect to his connection with the operator insurer to the person to whom the invitation is issued". A comparison of the two acts demonstrates that the Takāful Act contains major provisions which are similar to other legislation dealing mainly with commercial insurance.

The safeguards introduced by the Takāful Act, in order to afford protection to the insured, are not native to 'Islamic' insurance. Indeed, there are many regulations in force in the context of commercial insurance, which are interventionist in favour of the insured, where commercial insurance presents no more likelihood of inequality than the Takāful system²⁷. It remains, therefore, to question the rationale behind rendering the Takāful Islamically permissible, whilst rejecting conventional insurance unacceptable under the *Shari'ah*. It is particularly remarkable that the Takāful Act has no special structure imposed on the insuring body. Moreover, there has been no attempt to introduce the mutual concept, much acclaimed, by those opposing conventional insurance, as the only lawful structure. This cannot but be approved, since as it was concluded earlier.

The mutual form does not, by itself, validate insurance since it has no bearing on the forbidden elements supposedly involved in commercial insurance. The Takāful Act, by allowing Takāful to be conducted by "a company, as defined in the Companies Act 1965, or by a society registered under the Co-operative Societies Act"²⁸ acknowledges the commercial character of Takāful. Takaful is viewed as a commercial activity operated by the insuring body as a business, i.e. as an activity generating profit. Yet, despite the fact that this source of profit is implicitly viewed as such, the Takāful Act presents Takāful as a scheme based on brotherhood, solidarity and other disinterested, moral values²⁹, and it colours its terminology in that vein, using words and expressions such as 'family solidarity' for life insurance and 'contribution' for premiums.

The Act presumes that the insured persons are animated by a will to assist each other

financially and also that, by virtue of the Takāful scheme, financial aid and assistance will be available "to the participants in case of need"³⁰. This feature, which is meant to be the basis of the distinction between Takaful and conventional insurance, is more a supposition, than a fact.

The reality is that the participant usually has the same motivations as any other insured contracting conventional insurance. The sum insured is payable in compliance with the conditions contained in the policy, (Takāful certificate) when the event insured against occurs without regard to the need of the participant. As a result, there is an evident contradiction between the intrinsically commercial nature of the scheme and the charitable and benevolent aspect of it.

This inconsistency stems from the desire to give to the scheme a humanitarian character which it is thought would bring it in line with the requirements of the *Shari'ah*. The fact is that this dressing up of the scheme carries no real significance, since it lacks a genuine basis. In addition to this, the majority of protective measures contained in the Act are, as it has been demonstrated, common to all kinds of insurance. However, there are no grounds to infer that Takāful is identical to commercial insurance, due to the specific requirement that Takāful operations be in compliance with the *Shari'ah*. Consequently there are provisions in the Act which require that the investment of deposits and Takaful guarantee scheme funds be carried out in a way not contrary to the *Shari'ah*³¹.

This characteristic is the distinction between Takāful and other insurance schemes. The rest is a matter of terminology and theoretical assumptions, so that in reality the Takāful Act, in view of its similarities with commercial insurance, is an implied acknowledgment of the validity of this latter provided that the investment policies adopted are not in breach of Islamic law³².

This latter issue falls within the competence of the Islamic supervisory board appointed by the insuring body. The Islamic and moral nature of the Act is also apparent in the proposal forms and policies circulated by Takāful companies. One example is the following explanatory paragraph contained in the 'Proposal for

Participation in the Family Takāful Plan and Takāful Mortgage Plan³³.

"In essence therefore the operation of Takāful can be summarized as a venture which embodies the virtues of co-operation, mutual help and shared responsibility among the participants . The embodiment of the principles among members of the community is in line with the injunction of the religion of 'Islām"

While such an interpretation may be applicable to most insurance operations, it contradicts other clauses of the same document, serving to negate the presumed disinterested and charitable elements in the scheme. One example of such clauses is that fixing the maximum maturity date for any participant to their 60th birthday which would normally be found in a conventional life insurance policy, but not in a scheme aimed at supporting humanitarian considerations. These, and other contradictions, are caused by an attempt to find in the *Shari'ah* positive justification for insurance, whilst, in reality, the contractual freedom afforded by Islamic law is sufficient to validate insurance and renders this unrealistic exercise superfluous.

The use of *Mudāraba* comes as a striking illustration of the endeavour to 'Islamicise' the insurance contract at the expense of applying *Mudāraba* rules incorrectly. In the proposal cited above, *Mudāraba* is reduced to a mere method of apportioning profits. The surplus remaining in the indemnity funds after payment of compensation and deduction of operational and reinsurance costs is shared between the participants and the company, provided the participants have not incurred any claims and no Takāful benefits have been paid to them. This sharing of the surplus will be in a ratio agreed to, in accordance with the principle of *Al Mudāraba* .

Despite the inconsistencies cited above, the Takāful system set up in Malaysia has the merit of being both comprehensive and properly regulated by law. It constitutes an undeniable step towards freeing insurance from elements contravening Islamic law pertaining to the investment policies followed by insurance companies.

With the introduction of the Islamic inter-bank money market on 3 January 1994, all

the three vital ingredients that are required for a comprehensive, vigorous and vibrant Islamic banking system were set in place which enabled the Islamic banking system in Malaysia to take off on a path of sustained growth.

6.4 INSURANCE IN SAUDI ARABIA

CASE STUDY 2

As the stronghold of Islam where the *Shari'ah* is the supreme law of the land, Saudi Arabia would have been expected to tackle the problem of insurance, following in the footsteps of Islamic countries like Malaysia, by establishing a scheme of what is called "Islamic" insurance. In actual fact, commercial insurance companies cannot be set up and registered in Saudi Arabia, and no insurance regulations have been enacted - except certain provisions concerning marine insurance in the Commercial Court Regulations³⁴ from which the validity of insurance transactions in the Kingdom are inferred.

The case remains that in Saudi Arabia insurance market has not officially recognized by the State³⁵, although in practice it is largely composed of similar segments similar to those constituting the insurance market in The States of The Gulf Cooperative Council. However, in Saudi Arabia all the insurance business is transacted under the umbrella of commercial firms³⁶. Being not yet officially legalised, the insurance companies are not practically accepted or licensed to perform in isolation from other commercial activities of the agent, who is usually a merchant or a trader. This wide gap between legal theory and practice is a common feature of many of the States of The Gulf Cooperative Council. In the last two decades very many new insurance companies with a majority of Saudi interests have been established and registered outside Saudi Arabia³⁷, though almost all of their operations are within the territories of Saudi Arabia. These companies are subsequently referred to as "national" companies. Foreign insurance companies are still operating side by side with the newly formed "The National Insurance Companies".

Due to the absence of any official statistical data in connection with the Saudi Insurance Market, as well as the absence of any official record for the number of

insurance companies in Saudi Arabia, and due to the fact that various foreign insurance offices accustomed to enter and leave the market without any governmental supervision, the real size of the insurance activity within the Saudi economy would still be unknown. Judged, however, by the whole structure of the economic scope therein, it is estimated to be the largest market not only in the States of The Gulf Cooperative Council, but also in the whole Arab world.

While the *Shari'ah* is proclaimed constitutionally to be the supreme and unquestionable source of legislation, the practice diverges in many respects from this governing principle, as various pieces of legislation contain dispositions that are contrary to Islamic law. This contradiction reflects the failure to harmonize a capitalistic economic structure and environment with the *Shari'ah* as the majority of the actual religious authorities conventionally interpret it.

Saudi Arabian draft decree regulating insurance, still being modified at the time of writing³⁸, widens the gap between theory and practice. This stipulates that no insurance company may be allowed to be constituted in Saudi Arabia, and all insurance business will have to be transacted through an agent, whose position is regulated in detail by the draft decree. Provisions are made concerning the form and minimum capital of the insurance company to be represented by the agent. The insurance company must be a joint-stock company with a paid up capital of a sum equivalent to ten million Saudi Riyals (emphasis added)³⁹.

Once adopted, this decree will further substantiate the contradiction that insurance companies may not be constituted in Saudi Arabia, because of the controversy concerning the validity of insurance and the opposition of the majority of religious authorities to it. Then the commercial insurance may be freely undertaken from other countries through Saudi agents. This situation illustrates perfectly the dictum that there is a confrontation between an irresistible force (the economic and social necessity) and an immovable object (the *Shari'ah*)⁴⁰. The acceptance of insurance is imposed by economic reality and restrictions put to it are dictated by considerations pertaining to the *Shari'ah*.

6.4.1 The National Co-operative Insurance Company

In Saudi Arabia the pessimist prevailed in the sixties and the seventies with regard to

the official recognition of insurance activities, have currently lost a lot of ground and support. It has been superseded by a lot of optimism due to many reasons. In practice, the country's economy has shown a considerable booming during the past twenty years. Almost all government, and private sector, projects should be currently insured in compliance with the requirements of the contract conditions between the owner and the contractor, to insure the works, constructional plants and the liabilities. However, it should be noted that the situation in Saudi Arabia regarding insurance is not restricted to the case outlined above. One more tangible and effective turning point in the official attitude towards insurance was the announcement made by the government early in 1985 resulted in the Royal Decree sanctioned the licensing and the establishment of a state-owned insurance company with an authorised capital of SR. 500,000,000 (US\$ 143,000,000 approx.). The "National Co-operative Insurance Company"⁴¹ commenced operation during 1986⁴². Whatever the future of that newly established company would be, it has been a clear indication of a remarkable change in the official concern towards the encouragement of insurance activities in the future of the State economy.

The possibility of allowing other co-operative insurance companies to be established and operate in the Kingdom was also acknowledged by a decision of the Council of Ministers, but at the time of writing, no other insurance company has been formed in pursuance of this decision.

The duty of adherence to the Islamic *Shari'ah* is mentioned in various sections of the articles of association of the National Co-operative Insurance Company. What is particularly interesting is the mechanism adopted by the company in order to confer a co-operative character. First, it must be pointed out that the company is not mutual, because the insured do not become members of it. It is a company with capital and with shareholders. However, what is in the spirit of the articles, beside the duty of adherence to the *Shari'ah*, is that the surplus held by the company, if any, is distributed to the insured if not reinvested or added to the provisional reserves; after making the customary deductions and deduction of a certain percentage (not exceeding 10% of net profit of investments) for the company and its staff. This last deduction operates similarly to *Mud'araba* contracts, whereby the profits are realized on the investment of

the capital and the investor. The returns on the investment of shareholders funds are distributed to them after the deduction of customary expenses.

The main feature of this company is that it embodies certain mutual insurance rules (such as the redistribution of surpluses) and it applies them to a company structure designed to carry out commercial insurance. Such a company would have been a real co-operative but for the following:

- The customers of a co-operative company are usually shareholders in it and even when cooperatives offer services to non-shareholders, they do not lose their co-operative nature as they were initially constituted by a group of people in application of co-operative principles.
- The National Co-operative Insurance Company (NCIC) was not formed as a genuine co-operative one. Its legal structure is in the form of a joint stock company constituted between three government agencies. There is no condition that the insured be a shareholder in the company and no such condition has been imposed even at the inception of the company's activities, so that the fundamental principle of co-operative entities - that the customer be a shareholder - is lacking.

Another basic co-operative principle that is deficient is the rule that each shareholder be entitled to one vote at company meetings whatever the number of shares held by him. In the National Co-operative Insurance Company, a shareholder must have twenty shares to obtain one vote and every block of additional twenty shares means an additional vote.

It might be said that the term co-operative used for the NCIC is more an attribute designating the eventual redistribution of surpluses, if any, among the insured (provided such surpluses are not allocated to the provisional reserves). This difference between the NCIC and conventional commercial insurance companies has justified, in the mind of the draftsman, the use of the term co-operative, thus rendering the scheme Islamically permissible, since it is considered by many modern Muslim

authors that the co-operative or mutual structure validates insurance.

A question that one may ask is what is the likelihood of a surplus being distributed to the insured, after the deductions prescribed in the articles of association. In the absence of the right of the insuring body to make supplementary calls for premiums - to address an eventual deficit - there will be a need for significant annual reserve allocations, thus rendering remote the likelihood of any substantial apportionment of profits among the insured.

As a result of the absence of a genuine and significant co-operative or mutual structure, the only truly relevant feature of this scheme is the general requirement of abidance to the *Shari'a* for investments made by the insurance company. In practice, investment of the collected premiums is the major issue regarding the validity of the scheme- in addition to the fairness of the company policy. The lawful investment of premiums and the equity of an insurance scheme are not functions chosen for the insuring body and it is in those fields that the NCIC or other companies aiming to abide by the *Shari'a* will have to perform successfully.

On the other hand, it is interesting to note that Saudi Arabian law contains the legal framework required for the establishment of mutual insurance companies. This could be achieved by resorting to the co-operative companies regulations embodied in the Saudi Companies Law which provide for the constitution of co-operative companies with a variable capital in the sense that the increase or writing down of capital is not subject to the strict formalities usually imposed for such operations in conventional joint-stock companies. As a result, this may enable a co-operative company to have shareholders coming into and leaving the company: this would allow the introduction of a membership scheme for all policyholders so that each insured is allocated a certain number of shares. Mutual insurance could be brought in through this medium. However, it seems that there are no practical prospects for such a scheme in the near future and the only insurance company registered in Saudi Arabia is the NCIC, where policyholders are not integrated into the company, as a genuine mutual body would have required.

The following table shows the number of foreign and national insurance companies in the States of The Gulf Cooperative Council as at 31/12/1985:

Table 4.1 The Number of National and Foreign Insurance Companies in the States of The Gulf Cooperative Council as at 31/12/1985

The State	No. of National Ins. Companies.	No. of Foreign Ins. Companies	Total
Kuwait	4*	15*	19
UAE	8	139	147
Bahrain**	5	11	16
Saudi Arabia***	34	Unknown	Unknown
Oman	1	16	17
Qatar	3	4	7

* Not including a national reinsurance Company.

** Not including offshore companies.

*** All insurance companies operating in Saudi Arabia are registered in foreign countries. Companies with a majority of Saudi interest in their capital are referred to as National Companies. Due to the lack of official record of the number of foreign insurance companies operating in the country, the exact number of these offices is unknown. Estimates place the number over 100.

Source: Basim A. Faris, *Insurance & Re-insurance in the Arab World*, P.113

During the last 13 years of its existence, the NCCI has managed to perform in the range of total gross revenue to SR 339.5 million in 1999 (from SR 289.2 million in 1998).⁵³⁰ The company's activities include all sectors of economy that would affect people in their daily life. The following table shows the financial situation of the company in the last six years:

{In Million SR}

	1993	1994	1995	1996	1997	1998	1999
Total Assets	747.5	800.9	932.1	896.5	1025.3	1190.2	1252.1
Technical Reserves	227	266	303.5	345	419.4	485	562
Written Premiums	619.3	752.3	771.7	664.8	672.7	683.7	628.7
Net Premiums Earned	127.8	127.9	124.4	137.7	186.6	196.4	204.1

Source: NCCI annual report, 1999

The gross premium written in the Saudi Insurance Market grew by 4.1% from SR 2852 million in 1997 to SR 2968 million in 1998 despite the international market trend to a continuous softening in insurance rates. The growth in the Saudi Insurance market reflects the remarkable growth witnessed by medical, motor and engineering sectors. The growth was evenly distributed among the different types according to the following table:

				(In million SR)
Insurance Class	Premiums 1998	Premiums 1997	Growth Rate (%)	
Medical	665.1	510.4	30.3	
Engineering	268.7	245.5	09.5	
Motor	718.9	662.9	08.5	
	Fire	391.0	410.8	(04.8)
	Misc. Accidents	142.7	152.8	(06.6)
	Aviation	059.2	064.2	(07.8)
Marine (Cargo)	349.6	381.1	(08.3)	
	Marine (Hull)	079.2	087.8	(09.8)
	Energy		208.8	240.8 (13.3)
Other	084.8	095.7	-----	
Total	2968	2852	4.1	

Source: NCCI Annual Report, 1999

6.5 Proposed Islamic insurance organisation

Two types of "Islamic" Insurance Company can presently be found. They form either a division, or an organ, of an Islamic bank, or constitute independent legal entities with a separate juristic personality, whilst, at the same time, being subsidiaries of an Islamic bank. There are more than fifteen insurance organizations claiming to be "Islamic"⁴³. The term, widely used by these companies to designate the Islamic substitute to insurance, is *Takāful* (as in the case in the Malaysian legislation). This term is an Arabic word means "guaranteeing each other". It does express the idea of mutual assistance and solidarity between Muslim people and implies an objective body interested in establishing a scheme of mutual financial support. The concept introduced by *Takāful* is similar to the conventional commercial insurance. Basically both systems are financial instruments that assist the unfortunate who have been confronted with financial predicaments. Despite the basic similarity, Islamic (*Ulamā'*) Scholars have agreed that the commercial insurance is not permissible in Islam, as we have mentioned before, because it contains the elements of *Gharar* (temptation), *Maisar* (gambling) and *Ribā* (usury), which are contradictory to Islamic Shari'a.

Such a theoretical ideal is, to a great extent, at variance with the prevailing practice, as has been shown in the context of the Malaysian *Takāful* system. Among the existing "Islamic" insurance schemes, the one that attracted particular attention is the service launched by *Dār al-Mal al-Īslāmī* Trust, the "Mudāraba for Investment, Savings and *Takāful* Among Moslems". Under this scheme, the participant enters into a *Mudāraba* contract with the company, whereby his installments are split in two parts.

The first goes to an investment fund, and the second to a *Takāful* fund. Both funds are supposed to yield profits in accordance with *Mudāraba* principles. After deducting management expenses, one fifth of monthly profits is allocated to the company and the remaining four fifths are reinvested in the respective funds from which they originate. On the maturity date the participant receives his portion from the investment funds expressed in units, plus profits, in addition to his portion of any existing surplus from the *Takāful* fund. In the event of death of a participant before the maturity date, the company will pay to his heirs, the unpaid installments that

correspond to the sum insured in a conventional insurance policy, plus the value of the installments paid by the deceased and the profits accrued to him.

The supervision of this plan is the responsibility of the Religious Supervisory Board of *Dār al-Māl al-ʾIslāmī* Trust. What appears obvious is that this scheme is not a mutual one. The participants transact with a joint-stock company and do not become members of the insuring entity. Thus the ideal of mutual or co-operative insurance, as the only acceptable alternative to commercial insurance, appears to have been discarded. In order to "Islamise" the plan, the insurance operation is joined to *Mudārabā*⁴⁴ and is presented as being an application of Islamic principles embodied in the Qurʾān and Sunna and calling for solidarity between Muslims. It is called "Silent Partnership" in the Islamic Law, putting aside the investment aspect and the wording of the contract, which does not in practice affect its substance. The fact remains that the elements put forward to disqualify commercial insurance are clearly present in the contract issued by *Dār al-Māl al-ʾIslāmī* subsidiaries. The participant's heirs receive *Takāful* benefits on the occurrence⁴⁵ of a future and uncertain event⁴⁶ (the death of the participant) and the amount that they receive is greater than the sum of the installments paid by the participants. Therefore, according to Islamic opinion forbidding commercial insurance, this scheme should be considered invalid, as it involves both *Gharar* and *ribá*. In addition, many terms of the contract, which could have been tempered in accordance with the assumed charitable basis of the assistance scheme, have been inserted, as they figure in commercial insurance policies. For example, the non-payment of the duly paid installment, would forfeit the right to gain *Takāful* benefits and leads to the termination of the contract.

Another example is the clause, which invokes the force of warranties in the event of untrue or incorrect statements, and releases the company from the obligation to pay the *Takāful* benefits.

There are also limitations on the age of participants of the sort one would find in any life insurance plan. The major significant feature of the plan launched by *Dār al-Māl al-ʾIslāmī* Trust is that the installments paid by the participants are invested in non-interest bearing activities in compliance with the *Shari'a*.

Conclusion

Malaysia has emerged as the first country to implement a dual banking system, i.e. an Islamic banking system on a parallel basis with the conventional system among countries with a free market economic system. It has thus emerged as the first country to have a fully fledged Islamic banking system. The Malaysian model has been recognized by many Islamic countries as the model of the future and they have shown keen interest in studying it in order to implement a similar system in their respective countries.

The "*Mudārabā*" Contract for Investment, Savings and *Takāful* among Moslems" might be seen as a valuable and Islamic valid investment opportunity, coupled with life cover, its adequacy in non-life insurance is doubtful. In a non-life insurance policy, one cannot be expected to enter into a *Mudārabā* contract each time he needs to insure some form of property and if the insurance aspect alone is applied the scheme becomes a variation of with-profit policies and not an Islamic alternative to commercial insurance as is intended.

1 Lin See You, *The Conduct of Monetary Policy in Malaysia*, Bank Negara Malaysia
Quarterly Bulletin, vol. 6, No. 1,
2 Law of Malaysia, Act 312, as amended by the Economics Department, *Money and
Banking in Malaysia*, Bank Negara Malaysia, 1994
3 *Takāful* means mutual guarantee in Arabic.
4 Malaysian Takāful (Amendment) Act A620, 1985⁸⁵Section 54-1.
5 Ibid. Section. 8 and Section. 11-1 (a).
6 ibid. , Section. 11-1 (g) and Section. 11-1 (m).
7 ibid. Section. 37 and Section. 38.
8 Ibid. Section. 8-5.
9 The investment policy of the operator is also subject to the control of the competent
Minister who may require an operator to abstain from a specified kind of investment
(S.17-6).
10 Malaysian Takāful (Amendment) Act, Section. 17 - 1 requires that takāful funds be
kept separate from all other assets of the operator.
11 Ibid. Section. 21.
12 Ibid. A. 41.
13 Ibid. Section. 37.
14 Ibid. Section. 42.
15 *Laws of Malaysia Act 89* (revised 1972) and subsequently subjected to various
amendments.
16 1982 C 50.
17 *The Takāful Act*, Section. 41 of and Section. 22 of the 1982 Act.
18 Ibid. Section. 33 and 44 of the 1982 Act.
19 in this respect Section. 38 of the 1982 *Insurance Companies Act* and S. 17 - 4 of the
Takāful Act are similar except for a slight difference of terminology,
20 *The Takāful Act*, Section. 48 - 1 and S.54 of the 1982 Act.
21 Ibid. Section. 32 of the Takāful Act and S. 62 of the 1982 Act.
22 Respectively Section. 47 -1 (b) and S. 45.
23 *The Takāful Act*, Section. 16, 17, and S. 28 of the 1982 Act. By virtue of Schedule 1
of the 1982 Act, long term business comprises life and annuity, marriage and birth,
linked long term, permanent health, and tontines, capital redemption and pension
fund management.
24 Ibid. Section. 29 - 7.
25 Ibid. Section. 4 - 2 (b) and 32.
26 Applied by regulation 68 of the Insurance Companies Regulations 1981 (SI 1981 No.
1654).
27 e.g.: *The policyholders Protection Act 1975* (1975 C.75). "An Act to make provision
for indemnifying (in whole or in part) or otherwise assisting or protecting
policyholders and others who have been or may be prejudiced in consequence of the
inability of Kingdom to meet their liabilities..." See infra, p.280 et seq. for
developments.
28 *The Takāful Act*, Section 4 - 1.
29 Ibid. Section 2, interpretation of the word "Takāful".
30 ibid.
31 ibid. section 13 - 2 and section 21 - 7.
32 Ibid. In that context the definition of Takāful business given by S.2 of the Act seems
most appropriate: "Takāful business means business of Takāful whose aims and
operations do not involve any element which is not approved by the Syrah".
33 Issued by the Malaysian Takāful Company, *Syarikat Takāful Malaysia Sendirian
Berhad*.
35 *Issued* by Royal Order No. 32 of 15/1/1350 A.H. (1930) (Articles 324-389)
36 Basim.A.Faris(1983). *Insurance and Re-Insurance in the Arab World*, GB
Kuler Publishing,p.114

- 36 Ibid., p.113
- 37 ibid., p.114
- See "Saudi Arabia Draft Insurance law", I Middle East Executive Reports, April, 1988, P. 6 and May 1988, P.7
- 40 Shehāb El-Dīn, Muhammad Ahmed, *Al Ta'mīn wa Tadbiqah fī al-Nizām al-Sāūdi*, 1990
- 41 W.M Ballantyne, legal Development in Arabia, P. 121
- 42 Royal Decree No M/5, Dated 17/4/1405 (8-1-1985).
- 43 National Company for Co-operative Insurance, Saudi Arabia, Annual Accounts, 1999.
- 44 The *NCCI Annual Report*, 1999
- 45 Arab "Islamic" insurance companies are listed in the annual *Arabian Insurance Guide*.
- 46 Arab "Islamic" Insurance Companies are listed in the annual *Arabian Insurance Guide*.
- 47 See advertising of The Scheme in *Arabia* February 1985, p.68. Clause 22 of the contract starts: "As the Glorious Islamic *Shari'a*.
- Encourages unity and co-operation among Muslims, the Participants have agreed among themselves"
- 48 Thomson v. Weems, *The relevant case in English Law is (1984) 9 App Cas 671, HL.*

CHAPTER 7

BASIC PRINCIPLES FOR AN INSURANCE SCHEME ACCEPTABLE TO THE ISLAMIC FAITH

Introduction

This study has shown that insurance is not completely forbidden by the *Shari'ah*. Islamic finance is becoming a major force in the Islamic world and beginning to play a significant role in the West which will increase in extent and influence. Islamic contracts, as construed and expounded by the *Shari'ah*, are neither understood but nor ignored by Western scholars. Modern Islamic authors and legislators have endeavoured to build a systematic Islamic law of contract, similar to Western law, but benefiting from the flexibility of the general principles contained in the *Shari'ah*. In addition to this, and as part of the same trend, efforts have been made to establish an all-embracing 'Islamic' economic doctrine, comprising modern concepts and practices like insurance, presented as an alternative to available economic systems. As far as the concept of insurance is concerned, the existence of an economic system, based on the *Shari'ah*, is tangible and specialist in nature.

7.1 Indemnity and non-Indemnity Insurance

Life insurance and non-indemnity insurance are generally regarded by Muslim jurists with more caution than other forms of insurance; the reason is that the sum insured is paid independently of the injury suffered. Therefore insurance is not seen as a contract aimed at compensation. The payment of the sum insured is a conditional obligation, and the compensation is considered inequitable, in gaining unjustified financial rewards.

The life insurance contract is open for criticism from an Islamic point of view, as the concept of insurance is not free from the prohibition of *Ribá* and *Gharar*. Therefore, non-indemnity insurance is regarded by a number of Islamic financial institutions as both justified and well-founded. One such example is the *Mudárabah* contract of the *Dār al-Māl al-Islāmī* Trust. Leaving aside the misapplication of *Mudárabah*

principles² as discussed earlier, whilst it might be considered that the more conventional life insurance industry favours introducing investment devices in most life insurance schemes and that the insurance aspect is becoming secondary³, a particular feature of the Islamic form is that all non-indemnity insurance can be incorporated into an investment contract whereby the sum insured consists of the amount paid by the insured in installments, along with any profits made out of its investment in accordance with the stipulations of the contract in question.

The beneficiary would be entitled to the returns, which, by virtue of the 'life insurance contract' complying with the *Shari'ah*, cannot freely be designated by the insured/investor, as the money entrusted to the insurer is simply invested on behalf of the contracting party, and thus remains his property and part of his estate, to be distributed on death to his legal heirs in conformity with Islamic inheritance rules⁴.

7.2 Professional Insurance

There are two different types of insurance scheme in keeping with Islamic law. I would agree with Moghaizel Fadi in his argument regarding professional insurance, he, together with others researchers, are of the opinion that professional insured have no option, but to accept the terms of the contract that is imposed on them.

The first concerns professional groups, such as engineers, contractors, physicians, without knowledge of insurance.

The second relates to groups or companies with knowledge of insurance. The first, professional insured persons, comprise those who are in a weak bargaining position and who have no choice but to accept all the conditions imposed by the insurer, being both in need of financial cover and lacking a full awareness of the importance of, and legal niceties involved in the contract. The second category of insured persons, includes those who, by virtue of their standing and profession, are expected to be in a better position to evaluate and comprehend the terms of the insurance contract and its legal significance.

The above distinctions are relevant in Islamic law in order to apply a different system

for each category, so affording adequate protection for those in need of it. The relation between insurer and well-advised persons and entities would not be subject to stringent regulation as it would be unlikely for the insured to be misled in this case.

The scope and content of the protection for persons who fall victim to an unequal bargaining position would still have to be determined, but the guiding principle would be a dual system, of the aforementioned kind, which would accord with the Shari'a⁵, whereas, the current policies and practice of insurance companies do not and this has been the prime reason for their rejection in Islamic economic practice.

A dual system - such as this - applied to an Islamically acceptable insurance scheme, would not be a system specifically designed to meet the requirements of the *Shari'a*, as such, but would make a valuable contribution to all insurance schemes. Regulations that take into account the personal position of the insured have already been considered in Western legal systems, most notably in the United Kingdom by the Law Commission⁶.

Thus a distinction between the 'professional' and 'non-professional' insured - or between individual insured persons and companies, in respect of unfair or unfavourable practices on the part of the insurers has already been made as far as conventional insurance is concerned. If such a system were adopted as part of an Islamically permissible system it would constitute a special feature.

7.3 State Supervision and Control

Without interfering with the freedom of the individual, one of the state's obligations to its citizens is to protect the economy and to maintain a balance between the state economy and the private market economy, where private individuals and companies enjoy the greatest freedom in their dealings.

In an Islamic state, where the majority are Muslims, the intervention of the Government varies, from simple and unobtrusive control to more paternalistic and close supervision of insurance business, coupled with power to impose regulations and restrictions considered appropriate by the Government to guarantee a sound insurance sector.

As far as Islamic law is concerned, some argue that if insurance is undertaken by the State, it will be clear of all forbidden elements⁷. But the role the State should play in economic activities has not been sufficiently defined by the classical Islamic authorities. It is, however, acknowledged by modern authorities, as expressed by *al-Majma' al-Fiqhī*, that 'Islamic economic doctrine' admits the principle of private initiative and enterprise in all economic fields and projects and that the State intervenes only to ensure the success of economic ventures and the soundness of their operations⁸.

In the USA, where state control is limited to the mutual insurance organizations, regulation by the State Department of Insurance can be extensive. The department approves rates, forms of policy wordings, management of mutual companies, mandatory deposits of assets and the handling of deposits of policyholders. The laws governing insurance company operations are established by the legislature of each state and administered by the Insurance Department. Regulations may differ from one state to another but little difficulty is experienced⁹.

In Europe the EU regulations on insurance, including conventional insurance and mutual insurance, are a comprehensive control for all EU countries. The regulations are updated regularly for the benefit of policyholders. The regulations go as far as giving the Council of Regulators the right to inspect the financial consequences of self-insurance in relation to conventional insurance and mutual insurance, to assess the benefits to the insurer and policyholders, whether financial or of another kind, to enable the Council to report to the EU countries' members, who in turn report back to the insurers and policyholders, giving them the freedom to select the most appropriate form for their business.¹⁰

In Australia, the government appoints an insurance commissioner who co-operates with the Commonwealth Commissioner of Insurance in all matters relating to life and non-life insurance. The Commissioner receives advice from individual official bodies, such as the Institute of Actuaries and the Institute of Chartered Insurers. There are regular consultations and meetings between the Commissioner and mutual organizations, which includes attendance at Annual General Meetings.

In Canada, which was under the rule and supervision of the United Kingdom, and Quebec, under the influence of France, the Federal Government abrogated insurance legislation and enacted three laws for extra-state control of the insurance business, in conventional and mutual insurance. These were a law relating to the Department of Insurance; a law relating to foreign insurance companies; and a law relating to Canadian and British insurance companies.

In the case of Quebec it has not adopted this standard law. The insurance legislation of that province set out its own insurance law. The civil code and law relating to husbands and parents are being modified and amended in a continuous process and the federal laws of Canada are gradually becoming effective in the Quebec province¹¹. The experience of Canada indicates that even where there are differences in loyalties within one country, State control is essential and a formula can be negotiated to the satisfaction of all sects and groups.

In Japan, the Minister of Finance and his office is the direct controller of the mutual insurance business. All mutual insurance companies without exception or delay must produce for the Minister of Finance an inventory, balance sheet, business report, profit and loss account and minute of resolutions, relating to the amortisation of the federal fund, and payment of interest thereon, the reserve and the distribution of profits or surplus. These documents are presented to the Minister of Finance, policyholders and insured persons or beneficiaries, within three months of the end of the financial year¹².

Both Finland and Sweden have always been closely associated with mutuality. In fact in Sweden some banks are experimenting and succeeding in adopting the principles of Islamic banking in light of *Mudāraba* and *Mushāraka*, under the initiative of economic support to industry.

Finland which introduced insurance legislation in 1933, amended in 1952, particularly protected mutual insurance companies against loss or damage. The supervisory authority is vested in the Department of Health and Social Welfare. The mutual companies are granted concessions to be able to meet their liabilities, if in difficulties. These grants are made by the government.

Mutual insurance companies are limited either to life or property business, for the ministry regulators to be able to supervise and control mutual insurance on a yearly basis. The law regulates the amount of capital, fixing the premium rate, election of management, mergers with other mutuals and changes from mutual to stock companies¹³.

The above examples illustrate that supervision of insurance by the governments, and its agents can keep a good balance between insurance companies and insured, it contribute to a steady economic environment, and reduces the legal claims between insurer and insurance companies, in turn saves governments time and resources to a minimum. In view of the state control in order to have insurance scheme, which is islamically acceptable, The scheme closes must be fair between the insurance companies and insurer, to avoid the advantage which insurance companies are able to impose on insurer and policyholders.

7.4 The insurance Contract

As far as an insurance policy is concerned, the main issue for consideration is the failure to uphold the policy by the insurer, that is non-payment of the sum insured, on the grounds that the insured has committed some breach of duty, or on the grounds that the event which took place was excluded as a risk from the cover of the policy by virtue of its wording.

I would agree with Moghaizel Fadi in his argument regarding insurance contracts, he, together with others researchers, are of the opinion that insurance contract must be Islamically acceptable to Muslim jurists. Insurance has been rejected by many Muslim jurists by reason of this avoidance of payment by the insurer. Many opinions expressed on this subject describe insurers as dishonist tradesman who, once in receipt of their premiums, will try, by any means, to discharge themselves from the liability to pay the sum insured.

Although, the holders of these opinions lacked the legal rigour required when criticising repudiation of liability, it is necessary to investigate in some detail the actual grounds on which insurers most commonly repudiate liability in order to assess

whether they really enjoy substantial arbitrary power to this effect. From the Islamic point of view, the legality of the company's investment policy demonstrated by its marketing and handling of claims, is the main issue. This principally concerns the limiting provisions and the insurer's repudiation for breach of warranty or for non-disclosure or concealment. Thus an "insurer will not be permitted an unconscionable advantage in an insurance transaction, even though the policyholder or other person whose interests are affected, has manifested fully informed consent"¹⁴.

One of the main purposes of state control has been to ensure that the insurer will be able to fulfil his obligations when the sum insured is due. The other paramount concern has been that the insurer does not knowingly avoid payment by relying on the provisions that it has carefully drafted and that the insured seldom reads entirely or fully complies with his obligations.

Unethical activity is another concern of Muslim jurists, whereby insurers once they have collected their premiums can arbitrarily avoid payment of the sum insured. This is unfounded. Insurers do not enjoy an unrestricted power to disavow their engagements and victimize helpless individual policyholders.

The law regulating insurance contracts puts important limits on the insurer's freedom in this respect and even though additional reform is still required to increase the protective measures established in favour of the insured, any future change will protect the insured further. Regulations adopted in this respect will obviously vary from one system to another but not so fundamentally as to justify the characterization of a system as 'Islamic' or 'non Islamic', for the basic mechanisms of insurance are universally the same and the concern of averting an unfair advantage to the insurer is present in all systems¹⁵.

As In Maysia, the *Takāful* Act 1984 constitutes that apart from some particular points the system is not essentially innovative, and it is interesting to note that even the most daring protective clauses of the Takaful Act are not proper to it. For example, section 26 of the Act stating that a Takaful certificate shall not be called in question by reason only of a mis-statement of the age of the participant, in the case of the family solidarity business ...can be found in equivalent terms in the Australian Insurance

Contracts Act 1984. By virtue of S.30 of this Act the insurer may not avoid the contract, even if the mis-statement of the age of the insured was fraudulent..

It must be acknowledged, however, that insurance as it is practised today cannot be considered as totally free from essential elements which definitely contravene Islamic law. If this was the case, it would be due to the investment policy the company engages.

7.5 Investment Policy of Insurance Companies

A major challenge confronting the world of Islām is that of constructing its economy and investment in a way commensurate with its world role in ideological, political and economic relations, and above all, in its dealing with other countries, whether the underdeveloped countries or those in the developed West. This demands economic development to “catch up” with the industrialized countries in the West, whilst at the same time keeping the Islamic ideology and framework intact.

The type of investment available to insurance companies is limited, especially where the *Ribá* element is involved. From an Islamic angle what must be determined is the validity of investment policies followed by insurance companies and the bearing of the prohibition of interest on such policies. The prohibition of interest leads to the invalidity of numerous investment outlets. Government and corporate bonds are not permissible because they bear interest; the same applies to debentures, loans, interest-bearing mortgages and all fixed interest securities all interest-bearing deposits would also be unlawful.

The result is that the remaining valid investment opportunities consist of shares and real estate. The need of non-life insurance companies for liquid assets renders real estate an unattractive investment, so that the only significant and valid investment outlet are company shares. In developing Islamic countries, these do not represent an appropriate market opportunity because of the lack of advanced organization of capital markets in such countries.

In non-life insurance, the transactions are short-term contracts. They do combine

savings and insurance, as is the case with life policies.

High liquidity is necessary in order to meet claim requirements, often unpredictably heavy. The marketability requirement for securities in general business explains the high proportion of government and other public authority securities. Corporate bonds and debentures are also favoured because they offer a relatively safe investment opportunity from the repayment point of view. Other major investment outlets in non-life insurance companies are stocks and shares, short term investments, cash and bank deposits¹⁶.

In life insurance, liquidity is not a major concern since maturity of claims is long-term, and more or less predictable. It is a question of finding adequate investment channels for the large funds constituted by life offices. Investment is more directed towards non-liquid assets, such as real estate and mortgages¹⁷, so that the main assets of life insurance companies are channelled into long-term investments and only a small proportion is kept in liquid form¹⁸. If liquidity is unexpectedly needed, it can be obtained on the security of long-term investments.

Investment in company shares may be Islamically restricted for other reasons. If the company whose shares are bought engages in unlawful trade, such as transactions relating to pork, alcohol, or other prohibited goods, or if the company itself engages in interest-bearing activities, then it might be said that the participation in such a company is contrary to Islamic law. In view of these restrictions, the range of conventional investments is considerably reduced.

Other forms of lawful profit-orientated activities are *Mudāraba* and *Mushāraka* contracts, so long as interest is not involved. Other forms of investment have also been suggested as an Islamic alternative¹⁹, but it still remains to be seen whether they can offer an adequate field for insurance companies' investment strategies and in particular for non-life insurance companies which, as has already been observed, have a requirement of high liquidity in assets.

7.6 Insurance Schemes Acceptable to Islam

Investment is the main concern of the Islamic *Shari'a*. When it is related to insurance, the assets should be invested lawfully, to the benefit of the insured, by participating in projects and organizations acceptable to Islam, which are not involved in prohibited activities.

Distinction between lawful and unlawful business conduct is rather difficult, requiring knowledge, skill and experience. Some jurists go so far as to invalidate an insurance contract if the fund is invested in unlawful activities, on the grounds that *Ribá* is not eliminated. Other jurists insist that insurance companies should not invest in shares in companies which engage in dealings contrary to the *Shari'a* or which own shares in other companies involved in unlawful activities or dealing in goods such as alcohol, distilling, or pig-farming, which are forbidden by Islam.

Islamic economic structures have gradually implemented Islamic law, and progressively substituted conventional institutions. This gradualist approach of 'stages' is seen as appropriate as it is essentially Islamic, and was adopted by Islam in its early days to eradicate highly reprehensible practices. The Quránic method proceeded stage by stage until complete proscription was achieved²⁰, rather than by issuing an abrupt decree for total prohibition. This is particularly true in relation to the banning of alcohol and interest. As far as the alcohol prohibition is concerned, the following verses illustrate the 'stages' approach resorted to in the Qurán:

"And of the fruits of the date-palm, and grapes, whence ye derive strong drink and (also) good nourishment. Lo! therein is indeed a portent for people who have sense"²¹.

"They question thee about strong drink and games of chance. Say: In both is great sin, and (some) utility for men; but the sin of them is greater than their usefulness" ²².

"O ye who believe! Draw not near unto prayer when ye are drunken, till ye know that which ye utter" ²³.

Islamic Banks and Co-operative insurance, and other Islamic financial institutions, have been popular with depositors in their Islamic investment activities, Their investments in *Mudāraba* basis with depositors sharing in the Bank's profits. The profit sharing ratio is related to the minimum notice required for withdraw, Deposits with Islamic banks tend to be more stable than those with conventional Banks, with most holders of investment accounts making few and infrequent withdrawals²⁴.

Islamic investment institutions, particularly the larger retailer, are represented in the West, such as *Dār al-Māl al Islami* in Geneva, Al Baraka and Al Rajhi investment having offices in London. The Islamic banks and other Islamic financial institutions and upon the significance of the returns obtained on Islamic investment operations designed to replace conventional interest, opposed by Muslim jurists.

Today, interest rates constitute an international basis for placing capital on the free market. As a reflection of the availability of such capital, they equilibrate supply and demand and facilitate the integration of divergent international monetary policies. It is well known that interest is considered the price of money and that a considerable number of rules applicable to the determination of value of goods and services apply to money. Clearly, money has an important role.

Closed economic systems cannot be of advantage of an adopted Islamic system. If a banking or insurance company intends to be isolated from the international monetary economy, it can in theory achieve this isolation by adopting a closed economic system. Such a system can't be of advantage, however, as an Islamic institution in some cases, until the market recognise the Islamic institutions, it may be unable to give a return on deposits competitive with conventional institutions, and if the return is higher or lower than that offered by a conventional institution.

The Islamic investment may result in loss, either from lack of liquidity or lack of investment. The survival of an Islamic system cannot be ensured if it is not maintained by a continuous flow of funds, constantly renewed which guarantee the financing of losses until the re-emergence of more favourable conditions enabling profit-making to resume. The skill and experience of managers are critical to keeping

this balance.

Insurance is not in itself invalid under Islamic law, as the activities involved which do not conform to Islamic law is unlawful and its operation are forbidden. These operations are indirect practice. On the other hand, this does not mean that insurance is invalid. The invalidity of investment patterns results from unlawful practice, which are a common practice in capitalist economy, where interest plays a fundamental role at all levels. This invalidity is not the essence of insurance. It results from insurance mechanisms. When permissible means of investment are available, and workable from the insurance angle, insurance will be totally free from forbidden elements.

Therefore, insurance is valid under Islamic law. The invalidity of certain investments does not invalidate insurance itself, as it is not specific to the nature of insurance, but rather the prevailing economic environment. Al-Sharkhasi in the context of *Mudārabah*²⁵. Did not invalidate the dealings between Muslim and non-Muslim in any contractual transaction.

“Even though it is judicially permissible, it is reprehensible for a Muslim to entrust capital as a command (*Mudārabah*) to a Christian, just as it is reprehensible for a Muslim to mandate a Christian to work with his capital. This is so, because, in the latter case, the person directly overseeing the transaction is the Christian who will not guard against usury, nor will he be aware of the factors which invalidate the contract, nor will he, because of his faith, guard against them. Similarly, he will deal in wine and pork and it is reprehensible for a Muslim to deputize another person to deal in these commodities. However, this disapproval does not affect the essence of the command or of the mandate, nor does it obviate its judicial validity”²⁶.

This *Hanafi* principle to be applied to insurance, it would conclude that the invalidity involved in investment operations, operated by the insurance company, and would not necessarily affect the validity of an insurance contract itself. The contract would not be declared null and void under Islamic Law.

Management skill on the part of the lending or controlling body should ensure appropriate levels of service are delivered when basic principles are met, such as long-term commitment to the organization, prudent reinsurance funding, protection of investment, sound actuary loss and pay-out forecast.

Experience of underwriting policies, an acceptable level of organization remuneration and expenses, risk-sharing between all members, risk-management, risk-assessment and control, profit-allocation policy, attitudes towards problem solving, ability to analyse technical data, sound investment programme complying with the *Shari'ah*, political prudence (e.g. avoiding influential leaders who favour a particular political party which could have an adverse effects when the political environment changed), and compliance with legal regulations.

Successful management of an insurance scheme calls for experience and knowledge of basic Islamic prohibitions. It is essential to have direct access to advice quickly on Islamic matters. Management of funds requires exceptional skill and experience and conformity with a number of basic principles in order to ensure the successful management of a financing entity. It should be stressed that taking into account the highly technical and complex nature of insurance operations, Islamic and developing countries are the first to acknowledge the real benefits of international co-operation.

International co-operation brings the law of large numbers into play in the developing market, despite its limited size. It also helps to make reinsurance available to these markets on advantageous terms. Besides, international co-operation provides practical opportunities for insurance growth in emerging countries where the volume of insurance transactions is still small and the ratio of insurance premium receipts to national income is generally low²⁷.

The international market can also contribute to the insurance business in the way it organizes economic development and growth in the capacity of the world market, either acting individually or regionally or in groups. Such contributions continue to press against the limits to the capacity of the world market, a fact that adds to the present problem of the contracted reinsurance market.

Conclusion

Interest rate constitute an international basis for placing capital in the free market. Interest considered the price of money as money has an important role in the market. Insurance is valid under Islamic Law. The invalidity of certain investment does not invalidate the insurance itself as it is not specific to the nature of the insurance, but it is prevailing economic environment.

- 1 Moghaizel, Fādi "Insurance in the light of Islamic Legal Principles. p.270
2 Ibid p 271-272
3 ibid, p 39-40
4 Al-Bahī, Mohammad, *Niẓām al Ta'mīn fi Ḥadyi al-Islām wa Darurat al-Mujtama'*, p 89 1965
5 Al- Fanjarī, Mohammad Shawqī, *al-Islam wal-Ta'mīn*, 1984
6 ClarkK, Malcolm, *The Reasonable Expectation of the Insured in England, The Journal of the Business Law*, Sep 89, pp.389-404/
7 Muslehuddin, Mohammad, *Insurance and Islamic Law*, p.165
8 Moghaizel, Fādi "Insurance in the light of Islamic Legal Principles. p.279
9 See chapter 5 (of this thesis) Mutual Insurance in the USA
10 Ibid, *Insurance in Europe*
11 See Appendix 3, *Mutual Insurance in Canada*.
12 See Appendix 3, *Mutual Insurance in Japan*.
13 See Appendix 3, *Mutual Insurance in Finland*.
14 Keeton, Robert E., "Insurance Law Rights at Variance with Policy Provisions",
15 Harvard Law Review, Vol.83, No.5, pp.961-985 and No.6, pp.1281-1322.
16 The Malaysian Takāful Act 1984
17 Moghaizel, Fādi "Insurance in the light of Islamic Legal Principles. p.291
18 Faris Basim A. *Insurance and re-insurance in the Arab world* P 118
19 Ibid, p.118
20 Siddiqi Muhammed Nejatullah, *Insurance in an Islamic economy*, p55
21 Al- Khafif, Āli, *Ahkam al Mu'amalat al Shari'a*, 1941,
22 Quran 16:67
23 Quran 2:219
24 Quran 4:43
25 Wilson Rodney *Islamic finance* P2, 1990
26 Al- Sharkhasi, *Kitāb al Mabsut*, 1913
27 ibid, Vol.22, p.125. Translation by Abraham Udovitch, *Partnership and Profit in Medieval Islam*, p.228., 1913
Al-Hakīm, Ahmed Shakri, *Al-Ta'mīn wa E-ādāt al Ta'mīn fi Iqtisādiyat al Duwal al Nāmia*, p12, 1971

CHAPTER 8

CONCLUSIONS

In our rapidly changing world, developments in computer technology, satellites, the Internet, and the immense speed of communication between nations means that the globe has become one large country. Growing international trade has increased the need for forms of commercial insurance which are acceptable internationally. The principle of insurance and its permissibility in *Islām* has become a pressing problem. A comprehensive, thorough understanding of the relevant Islamic principles and of the *Shari'ah* is essential if this problem is to be resolved.

The forms of insurance developed in Islam have never been precisely regulated by Islamic law and, as already noted, were practised for wider purposes than financial gain. Legislative and contractual developments have occurred which cannot be reconciled with the restrictive classical conceptions of the Islamic *Shari'ah*. The confusion has been compounded by allowing for a legislative contractual framework for all.

The articulation of insurance to Muslims is not in antithesis with the principles of Islam. It is an axiom which endures for Muslims not only in this worldly life, but also in the hereafter. Prayers and good deeds associated with worldly life which are categorized in the *Qur'an* and *Sunna*, are the premium Muslims pay for ensuring peace and salutation, in both worldly life and the hereafter.

Prohibition of *Ribá* does not constitute negative constraint on investment. It is mainly concerned with economic justice and moral justification. The Islamic *Shari'ah* encourages making money, as long as it is legitimate and not at the expense of the poor. Making money from money is regarded as wealth created by the lender without any effort or work. Since interest rates are the main tool of monetary policy, adopted by Western institutions –it is not welcomed by the Islamic *Shari'ah*. The borrower alone is the one creating the wealth and taking considerable risk. This is regarded as unjust under the *Shari'ah*.

Muslim jurists have debated the issue of insurance only in the last five decades. There has been much confusion and contradiction, as the majority of those who have expressed opinions on the *Shari'ah* and Islamic *Mu'amalat* have lacked knowledge of insurance principles and practice and those who have expressed opinions on insurance have been ignorant of Islamic principles and *Mu'amalat*. . There has, therefore, been a gap of understanding between the Jurists of Islam and insurance. This has created confusion in the mind of the average Muslim over the permissibility of insurance. This study seeks to address these problems and to give precise answers to the questions raised.

One of the reasons Islamic scholars did not consider the issue of insurance to be a priority is that insurance was not developed by Muslims within Islamic law, because of its innovative and foreign nature. Several attempts were made to disqualify insurance on legal grounds by attempting to fit it into a contractual system not devised for the purpose. Although, since the birth of Islam, Islamic principles have approved of much wider forms of insurance than the merely financial, some scholars have remained sceptical.

Islamic law is not restricted only to the roles mentioned in the Qur'an and Sunna. Islamic principles encourage initiatives (*Ijtihad*) on the part of qualified scholars of Islam, to the benefit and comfort of the people. Some objectors and literalists take a very restrictive approach to Islamic law, insisting that all rules must be expressly mentioned or fully governed by the *Shari'ah*. Such an unrealistic view can lead to great distress to Muslims who wish to abide by Islamic rulings, and who will inevitably be compelled under the pressure of the legitimate necessities of their daily activities to depart from the strict application of the *Shari'ah*. Above all, these pedantic attitudes lead to misrepresentation of Islamic principles to the non-Muslim world.

Islamic banking started in the 1970s and has since grown considerably. The depositors expected the banks to manage their deposits according to the Islamic *Shari'ah* and to develop financial products parallel to Western fund management. Conforming with *Shari'ah* law, and at the same time providing a service comparable with conventional institutions, was helped by the Muslim clients' willingness to

accept lower returns than conventional institutions would award, at least during the initial development of the Islamic services. The challenge to Islamic banks is from clients comparing rates with those of conventional institutions dealing in *Ribá* , when long-term investment is involved, or to new small business or farmers. The basic principle of Islamic finance is co-operation under the *Mudārahā* contract, where the bank purchases the goods and retains responsibility for them until they are sold on behalf of the client, and the profit is then shared between the bank and the client. The ownership responsibility borne by the bank justifies the mark-up on resale of the goods. Other forms of Islamic finance includes *Mudārahā* , *Mushārka*, *Ijāra*, and *Qard al-Hasan*.

Mutual insurance was established in 1752 in the Western industrialized countries including the USA. It developed solidly and now has a considerable share of the insurance market. Mutual organizations operate profitably and successfully for the benefit of the policyholders not the shareholders. In all the countries included in this study which operate mutual insurance schemes, the basic principles are the same:

- all mutual insurance possesses its own specific identity
- mutual ownership of policyholders,
- investment of assets to the benefit of policyholders,
- long-term commitment to policyholders
- profit allocation to policyholders
- transparency of all dealings with policyholders
- election of management and key officers
- careful underwriting,
- regular actuaries statistical update
- annual accounting
- high standards of risk control
- reinsurance is available with other mutual or non-mutual organization to share the risks.
- government regulation to ensure the protection of policyholders.

Policyholders in a mutual insurance are the shareholders, therefore the benefits, decision-making, management of assets and profits are shared by the policyholders.

The surplus resulting from premium income exceeding claims can be paid out to policyholders, but policyholders also have responsibilities for any losses.

As we have seen, The principles of mutual insurance harmonize with the Islamic principle, *Mu'āmalāt*. The issue is how Islamic insurance companies should be organized and controlled according to the above principles. These matters were agreed at the first international conference on Islamic economics held in Mecca in 1396 AH.(1976), and confirmed by a *Fatwa* issued by the higher council of Saudi Arabian *Ulamā'* in 1397 AH-(1977), as well as by an international *Fatwa* of the *Fiqh* Council of the World Muslim League in the following year and by a *Fatwa* issued by the Organization of Islamic Conferences in 1405 AH.(1985).

In Saudi Arabia, co-operative insurance (NCCI) operates as a major mutual company and as an indigenous insurance operation. Most Islamic scholars approve of co-operative and mutual insurance principles. Islamic insurance companies are often offshoots of Islamic banks, provided as an additional service for the banks' clients and some cross- subsidy may occur, particularly in the early days of setting it up, but the banks, in practice, are able to underwrite losses as part of the overall services.

Malaysia has emerged as the first country to implement a dual banking system, Islamic and conventional at the same time, operating parallel to each other. Although the Islamic Banking Act of 1983 enabled the Central Bank to issue and control the new Islamic banks, the Finance Minister has the ultimate power of decision-making. Bank Islam Malaysia has become the sixth largest bank and appeals to Muslims as it deducts tax and *Zakāt* at source, and pays an acceptable dividend to its shareholders. The Malaysian model has been recognized by many Islamic countries as the model of the future and they are keen to learn to implement a similar system in their countries. As insurance is relatively new, Islamic insurance companies are small, and at the development stage. In relatively advanced Islamic countries such as Malaysia, insurance runs on conventional rather than Islamic lines.

It is now clear that Islamic insurance would be able to develop growth in an equity market, as an Islamic insurance company cannot hold bonds but can hold equity products because of the lack of the *Ribá* element. Another advantage of Islamic

insurance, affiliated with Islamic banks, is to ensure availability of liquidity and it can also contract in *Murābaha* with Islamic banks rather than on the open market.

Life business is relatively small in Islamic countries. Government employees enjoy some degree of protection, with compensation in the event of workplace accidents, and retirement-linked financial rewards plus a continuance pension. These benefits are now spreading to the private sector, which will inevitably result in the growth of life and pension-linked policies.

Reinsurance is also new. At present Islamic insurance companies insure with conventional providers, in the absence of reinsurance provided by Islamic insurance companies. Currently, aircraft, shipping, oil production, and large institutions under the ownership of the Muslim private sector or Islamic governments, are insured with Western insurance companies. Islamic principles have no objection to reinsurance in the same way as with mutual companies, on a profit-sharing basis, but the difference is the number and scale of operations.

This thesis has sought to evaluate and discuss the position of Islamic Insurance in a new light. Its originality lies in its discussion of the theoretical foundation from an Islamic system, and its conclusion that, Islamic Insurance particularly mutual insurance is, after all a concept which Islam can permit and reconcile with the general framework of modern Islamic law and Mutual Insurance.

The Prophet Mohammad said:

“There should be neither harming nor reciprocating harm¹”.

¹ Hadith related by Ibn Mājid, included in the *40 Hadith* 1977

APPENDICES

Appendix 1

***Mudāraba* for Investment, Savings and *Takāful* among Muslims¹**

Islamic Mudāraba

This contract is a *Mudāraba* or *Qirād* contract constituted pursuant to the rulings of Islamic *Shari'a* among subscribers to *Mudāraba* certificates as beneficial owners of *Mudāraba* Assets (as Rabb Al Maal) ("Participant") on the one hand, and Islamic *Takaful* Company (I.T.C.) Société anonyme (Luxembourg), (as *Mudārib*) (the "Manager") on the other

Section I: Objectives and Legal Form

(1) The objectives of this *Mudāraba* are:

- a) the collective investment of private savings over the participation period specified on the face of *Mudāraba* certificate in accordance with the rulings of Islamic *Shari'a*.
- b) systematic saving throughout the participation period with investment of the savings in accordance with the rulings of Islamic *Shari'a*.
- c) Islamic solidarity among participants in case of death of any participant prior to the end of his participation period as specified in the following conditions.

(2) The annual installment appearing on the face of the *Mudāraba* certificate of each participant is divided into the following two portions:

- a) an amount allocated for the purchase of investment units in the managed fund for the account of the participant. No *Takaful* benefits are deducted from this amount or the profits generated therefrom.
- b) an amount specified in the contract is paid for the purpose of investment in the *Takaful* fund. Each participant has accepted in good faith and consents to relinquish a portion or all of his profits on this amount for payment of *Takaful* benefits to its

recipients in a similar type of *Takaful*. The participant also has to donate, if such profits are insufficient, part or all of the amount specified in this paragraph to the *Takaful* Account, if necessary. The participant who continues until maturity of the contract would receive whatever remains to him from this account and its profits. However, the participant whose heirs have received *Takaful* payments, and/or the participant who withdraws or is considered to have withdrawn, has donated whatever may be his credit to support the *Takaful* fund, referred to in the declarations and donations attested to on the application form, duly signed by the participant.

(3) All the effective expenses necessary for the management and investment of the *Mudáraba* will be deducted from the two portions (a) and (b) above-mentioned of the *Mudáraba* assets.

(4) The participant shall pay at the time of subscription the issue fee determined by the Manager.

(5) The Manager deals exclusively with the management and investment of the assets of the *Mudáraba* and the profits generated therefrom. The Manager undertakes to invest these assets separately from his own assets and free from any lien with his own creditors.

(6) The Manager shall respect, in all his dealings, the rulings of the Islamic *Shari'a*. The participant and the manager shall, while interpreting Islamic *Shari'a*, abide by the decision of the Religious Supervisory Board of *Dar Al-Maal Al-Islami* Trust (Religious Supervisory Board).

Section II Guarantee of Performance

(7) In conformity with the *Shari'a*, the Manager is liable for any proven loss to the assets of the *Mudáraba* if such loss is due to his failure to respect the conditions of this *Mudáraba* contract or negligence in the discharge of his functions. Payment of such proven loss is guaranteed by *Dar Al-Maal Al-Islami* Trust.

Section III Participation in the Mudáraba

(8) An individual can become a participant by completing an application form and remitting the first installment subject to the following:

a) participation is effective upon acceptance of the application by the Manager and collection of the remittance at the date on the 'commencement date'.

b) participation is limited to Muslims who have attained their twentieth birthday but not their fiftieth on the commencement date, provided the age at the maturity date does not exceed sixty five.

c) payment of any installment is effective only on the date of collection by the Manager.

d) the participation period is indicated on the face of the certificate and commences for each participant from the commencement date shown on the face of the certificate to the date of maturity.

Section IV: Investment of Mudáraba Assets

(9) The Manager shall invest the *Mudáraba* assets - representing the amounts paid by participants pursuant to paragraph (a), article 2 - and what Allah bestows as profit for the benefit of participants in the managed fund, in conformity with the Islamic *Shari'a*, under the supervision of the Religious Supervisory Board.

(10) The Manager shall also invest the assets of the *Takaful* fund referred to in paragraph (b) of article 2. All, or a portion of such amounts may be transferred to *Takaful al Umma Mudáraba* (*Takaful* fund).

Section V Mudáraba Units

(11) The share of each participant in *Mudáraba* assets is represented, at any time, by the number of *Mudáraba* units or fractions thereof, owned by the participant. The Manager shall continue allocating *Mudáraba* units to the incoming participants.

(12) The initial value of a unit on the participation date and the number of the units acquired by the first installment are shown on the face of the certificate. The participant shall be notified of the number of units credited for each subsequent installment.

(13) The number of units acquired by the participant is determined by the division of the invested amount under paragraph (a) article 2, by the value of the unit on the valuation date preceding collection of the investment.

(14) The value of the unit is determined by dividing the value of *Mudáraba* assets as of the last valuation date by the number of existing units. Units will be valued on the last day of each calendar month (valuation day).

(15) The Manager shall maintain a register of the names and addresses of participants and the number of *Mudáraba* units owned.

Section VI Valuation of Mudáraba Assets and Profit Allocation

(16) *Mudáraba* assets shall be valued by the Manager at each valuation date in the same currency appearing on the face of the certificate. The *Mudáraba* profit in connection with paragraph (a) of article 2, if any, increases the value of units owned by the participant according to the results shown by the valuation. The Manager shall publish the annual balance sheet and profit and loss account. These should be audited by an independent auditor appointed by the Manager.

(17) What Allah bestows as investment income (profit) during each month on the *Mudáraba* assets, mentioned in paragraph (a) article 2, shall be allocated as follows:

- (a) one-fifth of the profit to the Manager.
- (b) four-fifths of the profit to be reinvested for the benefit of all participants as assets of the *Mudáraba* or the *Takaful* Fund.

(18) What Allah bestows as investment income (profit) with respect to the amounts specified in paragraph (b) article 2 shall be allocated as follows:

- (a) one-fifth of the profit to the Manager,
- (b) four-fifths to be reinvested for the benefit of the *Takaful* Fund.

Section VII Withdrawal from Mudáraba

Participant Deemed to Have Withdrawn and Termination of Participation

(19) The Participant may elect to withdraw from the *Mudáraba*, provided at least

two years have elapsed from the commencement date stated on the face of the certificate. The withdrawing participant has consented to relinquish as a donation to the *Takaful* Fund the amount paid in accordance with paragraph (b) of article 2, together with the profit thereto in order to enable the *Mudáraba* to fulfil its obligations with respect to the *Takaful* benefits between Muslims in accordance with the undertaking made by the participant in the application form signed by him.

In such case the withdrawing participant is entitled to the value of units owned by him according to the last valuation preceding withdrawal. Withdrawal shall be effected on completion of forms provided by the Manager. After processing, payment is made by cheque payable to the participant within 30 days.

(20) The value of all *Mudáraba* units owned by the participant shall be paid to him on the date of maturity, according to the last valuation preceding the maturity date, and in addition, the participant's share in the surplus, if any, of the *Takaful* Fund as referred to in paragraph (b), article 2 and article 10. This sum shall be paid to the participant by cheque which will be sent to the address registered with the Manager after receiving an application on the forms supplied by the Manager and with due consideration to article 30 of this contract.

(21) A Participant who fails to pay the annual payment when due shall be deprived of the *Takaful* benefits and be considered as having withdrawn. The value of all *Mudáraba* units shall be paid to him and he will be treated as a withdrawing participant under the provisions of article 19 hereof, which he approved in the subscription application signed by him.

Section VIII Takaful Fur:d

" The example of believers in their affection, mercy and sympathy is like the example of the human body; if any one of its limbs complain, all other parts complain with vigilance and fever"

(22) As the Islamic *Shari'a* encourages solidarity, unity and co-operation among Muslims, the Participants have agreed among themselves to apply part of their installments to finance the *Takaful* fund in order to achieve co-operation and

solidarity among themselves, according to their need under the conditions of this contract. Therefore, participants have accepted in good faith and consent to relinquish part, or all, of their payments to the *Takaful* Fund and its profit, as provided in paragraph (b) of article 2, as a donation to effect payment of the investment portion of the installments remaining, until the maturity date for any deceased participant who dies before completion of what he undertook to pay as installments and as provided by Section IX.

Section IX Payment of Takaful Benefits

(23) In the event a participant dies before completion of what he undertook to pay as installments as stipulated in paragraph "a" article 2, the Manager shall pay to the heirs of the deceased the amount of installments remaining as from the date of his death to maturity date as described in paragraph "a" referred to, in addition to the value of *Mudáraba* units by the deceased and the assets according to the last valuation preceding the date of his death.

(24) The right of the heirs to *Takaful* benefits is subject to the following conditions:

- a) the information submitted by the deceased Participant in his application form is true and correct
- b) the death of the participant occurred for other reasons than suicide, which Islam has prohibited
- c) the death of the participant did not occur by execution or wilful homicide
- d) the deceased participant was not murdered by the heirs, but if the participant was murdered by one of the heirs, only that heir shall be deprived of the *Takaful* benefit;
- e) payment of all installments due before death was duly made;
- f) death has not been preceded by a request for withdrawal signed by the participant.

When the above *Takaful* conditions are met, *Takaful* benefits mentioned in article 23 shall be paid out from the *Takaful* Fund, after presentation of proof of death of the participant and the identification of heirs as described in article 25.

(25) All sums payable on the death of the participant are inheritance funds (*Tarekat*) and shall be payable by the Manager to the legal heirs as provided by the *Shari'a* after submission of the following:

a) the heir of the deceased shall complete a form provided by the Manager enclosing documents supporting the information contained in the form.

b) the heirs shall submit an inheritance declaration issued by an official authority proving death and indicating the identity of heirs and shares due to each of them. In the case that they fail to do so, they shall submit other documents satisfactory to the Manager establishing the number of heirs and the Religious Supervisory Board shall decide the share of each heir accordingly.

c) after completion of the above, the Manager shall pay, within a maximum of two months, to the heirs of the deceased the amounts indicated in article 23 by a bank cheque to be delivered to the heirs or their authorized representative.

(26) The Participant has declared that the information contained in the application signed by him to subscribe to this certificate is true and correct and that he accepts the conditions of this *Mudāraba* contract. In the event that this information proves to be untrue or incorrect, the heirs of the deceased participant shall have no right to the *Takaful* benefit, but shall only receive the value of the units acquired under paragraph (a) of article 2, together with whatever amount that may remain for his heirs in connection with the amounts or profits thereto paid, in accordance with paragraph (b) of article 2.

Section X General

(27) The owner is the person whose name is printed on the face of the *Mudāraba* certificate and is the one who is addressed for all purposes, and title to the certificate may not be transferred in any manner whatsoever.

(28) The liability of a participant is limited to his equity participation in the *Mudāraba*.

(29) A Participant shall pay, personally and from his own funds, every year the *Zakāt* due according to *Shari'a* , for this certificate as per the annual financial valuation together with his other assets on which *Zakāt* is due.

(30) If the Participant has not submitted a claim for payment within 30 days in the case of withdrawal, or if he is deemed to have withdrawn pursuant to articles 19 and

21, or in the case of death of the participant, or at the maturity date, the participant or his heirs authorizes the Manager to invest such sums, until the date of effective payment, for his benefit or that of his heirs.

If such a claim is thereafter submitted at any time, such sums shall be paid according to the value of *Mudáraba* units at the most recent valuation date with what Allah bestows as income (profit) according to article 16 hereof. Payment shall be made within 30 days of this claim.

(31) The contract shall be interpreted according to Islamic *Shari'a* and is enforceable, pursuant to the prevailing laws of the country where the Manager is located, and in conformity with the provisions of Islamic *Shari'a*.

(32) Any dispute arising between the two parties of the *Mudáraba* contract (The Manager and the Participant) and not settled amicably shall be settled by arbitration, according to the rulings of Islamic *Shari'a*. Each party shall nominate an arbitrator and the two so nominated shall nominate a third who chairs the arbitration panel. If they fail to so nominate a third party, or if any party fails to nominate his own arbitrator within the period prescribed by the arbitration regulations, such arbitrator shall be nominated by the Religious Supervisory Board of DMI in accordance with the periods and measures provided by the arbitration regulations of the Group of DMI. The judgement rendered by the Arbitration Board in this respect is final and binding on both parties.

(33) The Arabic text of this contract is the binding version.

(34) A notice to the Participant shall be deemed to be given 14 days after posting by airmail to the participant at his registered address.

(35) The application for subscription and the declarations are deemed to be an integral part of this contract.

Appendix 2

Arabian Insurance Guide

Islamic Reinsurance Operating Principles

According to the rulings of the Religious (*Shari'a*) Supervisory Board, an Islamic reinsurance company must function in accordance with Islamic co-operative principles as detailed below:-

I Premiums

(1) An Islamic reinsurance company shall not receive any reinsurance commission from a commercial reinsurance or insurance company but may pay or receive such a 'fee' from Islamic insurance or reinsurance companies. However, in order to develop a distinctively Islamic reinsurance system, the Islamic reinsurance company should transact business on a net premium basis.

(2) The Islamic reinsurance company may enter into profit-sharing arrangements with its participating (ceding) companies.

(3) The Islamic reinsurance company may also enter into profit-sharing arrangements with its reinsuring companies (retrocessionaires) both Islamic and commercial.

II Retrocession Protection (further reinsurance)

In order to protect the interests of its participating companies and shareholders, an Islamic reinsurance company may secure adequate retrocession protection from commercial reinsurance companies when necessary, subject to the provisions of paragraph I above and other conditions stipulated hereafter.

III Premium and Loss Reserves

(1) An Islamic reinsurance company may retain a part of the premium payable to its re-insurers (retrocessionaires) as a premium deposit/reserve (and also a loss reserve

where required under local laws or practices) and permit its participating companies to retain such reserves/deposits which shall be dealt by:

(i) considering them as free loans. The reinsuring company shall not receive any share of the profits from the investment of these reserves, subject to the condition that the insurance or reinsurance company holding the reserves/deposits is alone responsible for any investment losses.

(ii) investing such reserves on the basis of the Islamic Mudáraba in consultation with the reinsurance company concerned, and in this case, the reinsured company shall not bear any investment loss unless it is due to a faulty decision or lack of care by the company retaining and investing the reserves. The reinsuring company shall be paid an agreed percentage of profits net of taxes, if any, and the balance shall be retained by the company investing the deposits to cover its administrative expenses.

(2) Alternatively, the condition of retention of deposits could be waived altogether - a trend which is rapidly gaining ground. Furthermore, a participating company should accept a suitable reduction in the reinsurance commission payable to it in lieu of the profit payable on such deposits.

IV Accounts, Reserves and Appropriation of Surpluses

(1) An Islamic reinsurance company shall maintain and administer two funds - one known as Participating (Ceding) Companies' Fund and the other as Shareholders' Fund.

(2) Assets of the Participating Companies' Fund shall consist of:

- a) reinsurance premium received
- b) claims received from retrocessionaires
- c) such proportion of the investment profits generated by the investment of funds and other reserves, attributable to participating companies as may be allocated to them by the General Assembly on the recommendation of the Board of Directors of the company.

(3) All claims payable to the participating companies; retrocession costs, technical reserves and administrative expenses of the reinsurance company excluding expenses of the investment department, shall be met from the Participating Companies' Fund.

(4) The balance outstanding to the credit of the Participating Companies' Fund at the end of the year would represent their surplus.

(5) The General Assembly may on the recommendation of the Board of Directors allocate the whole or part of the surplus to the Participating Companies' Special Reserve or such other reserves as may be deemed necessary in the interest of the said companies.

(6) In case all the surplus is not allocated to the reserves, the balance will be distributed amongst the participating companies in proportion to the reinsurance premium paid by each company during the year.

(7) If the participating companies' fund produces a loss, the same shall be met out of their special reserves and in case the same is not available or is insufficient such deficit shall be met through a loan from the Shareholder's Fund, to be repaid from future surpluses.

(8) Assets of the Shareholders Fund shall consist of:

- a) paid-up capital, and reserves attributable to the shareholders;
- b) profit on the investment of capital & shareholders reserves;
- c) such proportion of the investment profit generated by the investment of the participating companies' funds and technical and other reserves attributable to participating companies as may be allocated by the General Assembly of the company, on the recommendation of their Board of Directors, in their capacity as managing trustee (*Mudárib*) of such funds.

(9) All administrative expenses of the Investment Department and other expenses attributable to the shareholders shall be debited to the Shareholder's Fund.

(10) The General Assembly may, on the recommendation of the Board of Directors, determine the shareholder's surplus after the deduction of all their expenses.

(11) The General Assembly may, on the recommendation of the Directors, allocate

such amounts to the Shareholders' General and other Reserves as may be deemed fit by them.

(12) The balance of the shareholder's surplus, if any, shall be distributed amongst them.

V Investment of Funds

An Islamic reinsurance company must invest its funds in sources permissible by the Islamic *Shari'a* only.

Appendix 3

Glossary of Mutual Insurance

case studies of the USA, Australia, Canada, Japan & Finland

The USA:

American Insurance Association (AIA)

This important association started as an organization of top Fire and Casualty executives who met, informally, to discuss important phases of the business. The headquarters is in New York.

American Mutual Insurance Alliance (AMIA)

An organization of mutual insurance companies similar to the American Insurance Association in the stock company field.

The resumé of an insurance company's assets, liabilities and details of its business are filed at the close of each calendar year with the insurance department of each state in which it is permitted to do business. This is usually distributed to members and published (in condensed form)

Assets

All the wealth of a company. Some assets are 'non-admitted' in that while they may be of value, they do not comply with the requirements of a state, and therefore cannot be used in determining the worth of a company in its published statement or its advertisements.

Best's Key Rating Guide

Gives financial reports annually on property and liability insurance companies. Headquarters in Morristown, New Jersey.

Captive Agent

An agent who, by contract, represents only one company and its affiliates.

Co-Insurer

Where two or more companies share a risk they are 'co-insurers' of it. Also when a claimant is required to stand part of his own loss because of the operation of a co-insurance clause, he is a 'co-insurer'.

Commissioner of Insurance

The official of a state, charged with the duty of enforcing the insurance laws. Also sometimes called the 'Insurance Superintendent' or 'Director of Insurance'.

Compulsory Insurance

Certain states require that certain forms of insurance be carried by people in certain circumstances, e.g., workmen's compensation and, in the states of Florida, Massachusetts, New York, Puerto Rico and North Carolina, automobile liability.

Contractual Liability

Liability as set forth by agreements between people, as distinguished from legal liability which is imposed by law.

Crop-Hail Insurance

Insurance against hail damage to growing crops. Although hail is the basic peril in these policies, cover is often granted for crop damage resulting from additional perils, such as fire, windstorm, lightening, etc.

Direct Underwriters

Companies selling insurance through their employees direct to the public and not therefore through independent agents or brokers.

Directors' and Officers' Liability Insurance

Protects officers and directors of a corporation against damages from claims resulting from negligent or wrongful acts in the course of their duties. It also covers the corporation for expenses incurred in defending lawsuits arising from alleged wrongful acts of officers or directors. These policies always require the insured to retain part of the risk uninsured.

Dividend

In capital stock corporations, it is the distribution of the profits or a part of them to the stockholders. In mutual companies, the dividends go to the policyholders.

Errors and Omissions

A type of insurance which will step in to take the place of insurance that has not been effected due to a mistake or forgetfulness. Issued to concerns such as mortgage companies or others engaged in the routine insurance of many properties. This term also describes a clause in certain policies whereby the company agrees to waive its defences when an honest error has been committed, provided it is corrected when discovered.

Fair Plan

A programme recommended by the President's Advisory Panel on Insurance in riot-affected areas which provides fair access to insurance requirements for property owners who experience difficulty in buying insurance on property located in blighted or deteriorating urban areas. Basically, the Plan assures a property owner of a physical inspection of his property and a promise to provide fire and allied lines of insurance if the property is adequately maintained and if recommended improvements, necessary to make the property insurable, have been made. Many of these Plans have been extended to cover property state-wide.

Federal Insurance Administration

A government office, part of the Department of Housing and Urban Development (HUD), handling insurance programmes such as Federal Riot and Civil Commotion Reinsurance Contract which back up policies provided by FAIR Plans in a number of states and Federal Crime Insurance.

Financial Responsibility Laws

Laws enacted by most states to keep reckless and financially irresponsible drivers off the highways. These acts vary from state to state, but generally speaking, they suspend the driving license of any person who cannot pay a judgement arising out of an automobile accident or who has been involved in any automobile accident causing bodily injury or property damage or who has been convicted of a serious traffic

violation. In the latter two cases, the operator recovers his license if he files proof of his ability to pay claims up to certain fixed amounts for injury he may subsequently inflict on others, but in the first case, in many states, he cannot drive again until he has paid the outstanding judgement and filed proof of financial responsibility for future accidents. The required proof is usually supplied by a certificate filed by an insurance company or sometimes by a bond, or deposit of cash or securities. Sometimes referred to as 'Safety Responsibility' laws.

Independent Agency System

An insurance distribution system within which independent contractors, known as agents, sell and service property liability insurance solely on a commission or fee basis under contract, with one or more insurers that recognize the agent's ownership, use, and control of policy records and expiration data.

Insurance Department

That department of a state government which has charge of enforcing the laws governing insurance.

Insurance Information Institute (III)

An organization with headquarters in New York, composed of the principal stock company associations for all classes of business, other than accident, health and life insurance, formed to control and co-ordinate the public relations activities of each. Basically, the aim of the Institute is to attain a better public understanding and acceptance of the insurance business.

Insurance Services Office (ISO)

A voluntary non-profit association of property and casualty insurance companies, with its headquarters in New York, providing a great variety of services on a national basis. Among its operations are rating, statistical, actuarial and policy form services for all classes of property and casualty business. The association also functions, as provided by law, as an insurance rating organization. In addition, where applicable, ISO acts as an advisory organization or as a statistical agent. Established in 1971 by the consolidation of numerous associations and bureau performing these services for separate classes of business and in various parts of the country

Liability

An amount for which the insurer is obligated by law. Also the amount required by statute to be reported as a liability (money owed) in the insurer's annual statement.

Mass Merchandising

A general marketing technique, which, applied to insurance, is a programme where a group of persons insure with one company, usually at lower than standard premiums, because of the expense economy to the insurer. Until recently such plans were principally used in life, accident and health insurance but now are extended to other classes such as automobile and homeowners policies.

Mutual Insurance

Insurance in mutual companies, i.e. companies without stockholders or capital stock. All risks and all profits are the property of the policyholders. They are sometimes classed as co-operative insurance companies

National Association of Independent Insurers (NAII)

Companies, which do not belong to rating bureau unless legally required to do so, preferring to act independently, have formed this body to work together and exchange ideas. Membership of the association includes fire, casualty and surety companies of all types. It acts as an advisory body and statistical agent for its members. The headquarters is in Chicago. National Association of Mutual Insurance Companies (NAMIC). This is the world's largest insurance company trade association comprising more than 1,000 member companies located throughout the US and Canada. NAMIC is the channel through which all mutual fire and casualty companies, working together, can express views on common problems and take concerted action toward the solution for the immediate and long-term good of the mutual insurance business. The headquarters are in Indianapolis, Indiana.

National Flood Insurers Association

A voluntary pool of property insurers, formed to provide flood insurance for dwellings in specified areas in collaboration with US Department of Housing and Urban Development (HUD). This joint venture produces a market for flood coverage. The association was formed in 1968 with headquarters in New York.

Rating Bureau

An organization which fixes the rates that companies charge for their policies. In most states rating bureau are established in conformity with rating laws.

Reinsurance

The process whereby a company may share its risk with another, paying to such a sharing company a portion of the premium it receives. Conducted in different ways, reinsurance contracts pay only the company which reinsures, not the policyholder.

Surplus

After all a company's liabilities are deducted from a company's assets, what remains is the surplus.

Umbrella Liability

A form of excess liability insurance available to corporations and individuals, protecting them against claims in excess of the limits of their primary policies or claims not covered by their insurance programme. This latter coverage requires the insured to be a self-insurer for a substantial amount (\$10,000 -\$25,000).

AUSTRALIA:

Commonwealth Government Actuary

A Commonwealth official giving actuarial advice to government departments and the Life Insurance Commissioner on matters coming under Life Insurance Act. At the present time the office of Commonwealth Government Actuary and Commonwealth Life Insurance Commissioner is held by the same person.

Commonwealth Life Insurance Commission:

An official of the Treasury designated by the Commonwealth Life Insurance Act to administer the provisions of the Act regarding the conduct of life assurance business in Australia. Under this Act, life assurance includes both industrial insurance and superannuation business conducted by life offices.

Compound Bonus

In life assurance, a bonus to the amount related to the sum assured and existing bonuses.

Conversion of Policy

An alteration of a policy from one type to another, which can involve movement from the with-profit class to the non-profit class, or vice versa. This can mean that the policyholder becomes, or in the reverse case, ceases to be, a member of the Society.

Faculty of Actuaries

Similar to the Institute of Actuaries based in Scotland.

Friendly Societies

A specific type of mutual insurance society usually concerned with life and sickness insurance and governed by special legislation. Societies are often local in scope or limited to members of a particular trade or profession. Some societies have entered the field of health benefits in connection with the National Health Scheme.

Some of the larger ones also offer benefits similar to those offered by life assurance offices, although usually on a somewhat restricted scale.

Funds

The accumulation of excess of income over outgoings. In fire and accident insurance, this normally applies to the amount provided in respect of unearned premiums and for additional departmental reserves.

General Meeting

Attended by the members and governed by the Companies Act as regards convening, notice and business. Matters such as the accounts, the directors' and auditors' report, election of directors and appointment and remuneration of auditors, are dealt with at Annual General Meetings. Any other business is dealt with at Extraordinary Meetings. In today's world, where most companies have a large membership, only a very small proportion of members attend these meetings.

Industrial Assurance

Life assurance conducted by assurance companies which is subject to special

provisions in the Commonwealth Life Insurance Act 1945 - 1973. The significant feature of such business is that premiums are received by collectors. Contracts are normally for somewhat smaller sums assured than are funds in non-industrial business and premiums are payable weekly or monthly. A simplified range of policies is offered.

Institute of Actuaries of Australia and New Zealand

A professional association of actuaries based in Australia and New Zealand. This is a non-examining body whose members would normally also be members of one or other of two United Kingdom bodies, the Institute or Faculty. The functions of this Institute include the surveillance of professional conduct and practice and providing a forum for discussion of matters of mutual interest.

Insurance Office

The general description of a body conducting insurance business, whose title, amongst others, can be Company, Society, Association or Institution. It may coincide, although this is not always the case, with the description 'mutual'.

Letter of Acceptance

The document whereby the offer of a contract is made to a proposer by the Life Office. The payment of the first premium constitutes the agreement by the proposer to this contract.

Liabilities

The present value of the obligation to the policyholders, that is technical reserves, determined on a basis to be decided by the Actuary of the office.

In fire and accident insurance, liabilities comprise mainly provision for unearned premiums, outstanding claims and miscellaneous creditors.

Life Insurance Act 1945 – 1973

A Commonwealth Act of Parliament which stipulates the conditions under which companies and societies transact life insurance business.

Life Offices' Association for Australia

A voluntary association of companies or other institutions transacting life assurance

business in Australia. The mutual life offices are all members of this association.

Members

Persons entitled to vote at a general meeting of the mutual insurance office, normally those participating in profits. In fire and accident insurance, the policyholders of a society who, *ipso facto*, are also its members. Persons or classes of persons eligible for membership are defined in the societies Articles of Association.

Memorandum and Articles of Association

The legal document establishing the company and setting out the objects for which it has been established (the Memorandum) and details of its system of operation and administration (the Articles). Alterations can be made only by Members in General Meeting and in conformity with the provisions of the Companies Act.

Mutual Insurance

Insurance provided by funds of which share capital forms no part.

Mutual Insurance Society

A voluntary association of persons or companies to establish a formal organization for the purpose of providing themselves with a specialized insurance service in either a particular class of business (e.g. life assurance, employer's liability insurance) or a particular industry (e.g. agriculture).

Non-forfeiture

A provision frequently included in a life assurance policy whereby in the event of non-payment of premium, cover is maintained until arrears of premium and interest exceed the technical reserve, at which time the policy is terminated.

Non-profit Policyholders

Policyholders who do not share in the profits of the office. Their relationship to the assurer is no different from that of policyholders in a proprietary company.

Officers

Appointed by the Directors for executive duty, normally full-time.

Participation in Profits

The right to share in periodic distribution of surplus.

Policy of Assurance

The document prepared by the Life Office setting out the details of the contract between the office and the client.

Reserves

Arbitrary additions to the liabilities or writing down of the assets to add to the stability of the office.

Reversionary Bonus

In life assurance, a bonus expressed as an amount payable when a policy becomes a claim.

Simple Bonus

In life assurance, a bonus the amount of which is related only to the sum assured.

Surplus

The excess of funds over liabilities determined at a valuation.

In fire and accident insurance, synonymous with profit, i.e. the balance remaining for the benefit of members after payment of claims, commission and expenses and after provision for outstanding claims and unearned premiums.

Terminal Bonus

In life assurance, a final allocation of bonus payable when the policy becomes a claim.

With-profit policyholders

Those who have the right to a share in profits. Usually synonymous with membership of the Society.

CANADA

Accidental Death Insurance

Insurance accepted by the insurer which is an additional insurance to a life contract

and obliges the insurer to make an additional payment of compensation, if the person insured meets with a fatal accident.

Accumulation of Capital

Creation of a capital by regular payments into an interest bearing fund to accumulate surplus for increasing future reserves.

Actuary

Expert in risk calculation of probabilities in life and accident insurance, etc.

According to the wording of the new law, this term also describes a Fellow of the Canadian Institute of Actuaries.

Agency

A term with three distinct meanings:

1. organism that, within a definite area, acts as an intermediary between the insurer and the insured and is responsible for insurance production and, to some extent, administration.
2. the method of acquisition, in contrast to the system of general agents
3. office in which this activity is performed.

Annuitant

Person drawing a pension from a natural person or a corporate body on the ground of an annuity contract or a judgement of a court of law.

in connection with annuity contracts, this expression is preferred to the term 'insured'.

Applicant

The one who signs the policy form. He becomes the contracting partner, when the policy is issued by the insurer.

Application

Also called proposal. A document filled in and signed by the applicant which contains the application and gives the insurer information about the circumstances that have to be known for the evaluation of the risk to be covered.

Assets

The total values which a company must possess to be able to meet its obligations to the insured persons. The law prescribes both the types of possible investments and the maximum percentage of holdings in each class of investment. The most important classes include: mortgage loans, state and private bonds, real estate, equity shares of industrial companies, loans on policies.

Auditor

Charged with the annual audit of the books and accounts of an insurance company and nominated according to the laws referring to the insurer or by the annual general meeting. He has to be an accountant and a member of an established accountants' association and must not be a shareholder, a board member, a manager, or an employee of the insurer. He draws up the annual report and this report, together with the one of the Board of Directors, is presented to both the annual general meeting and the insurance office.

Beneficiary

Person who, in the event of a claim covered by contract, shall receive the sum insured. The beneficiary may be designated so that the sum insured is payable to the policyholder, to his legal successors, or to a nominated beneficiary. If it is to be paid to the policyholder's legal successors, heirs, executors, or trustees, it forms a part of his inheritance.

Board of Directors

At the general meeting, the board members are elected. If it is a joint stock company, they are elected by the shareholders and normally are shareholders themselves. In case of a mutual society, the members elect the Board of Directors, all of whom have themselves to be members entitled to vote.

In the event of a joint stock, life insurance company issuing with-profits policies, the holders of such policies who are present at the general meeting elect at least one third of the board members. Every board member elected in this way has to be himself a holder of a with-profits policy.

The members of a mutual life insurance company, a mutual assistance society, or a

fire insurance mutual are entitled to vote. An individual has to be of age. Regardless of the number or the sum of contracts, every member has only one vote, can vote himself, or appoint a proxy.

Bonus System

According to this system, additional insurance can be included into a with-profits policy during the term of the contract. In such cases the share in the profits is used as a single premium for the purchase of supplementary insurance.

Certificate of Deposit

To be presented by every member of a fire insurance mutual, before a policy is handed over to him. The amount is fixed by the Board of Directors according to the regulations of the company relative to the risk to be covered by the insurance. The terms 'certificate of deposit' have to be indicated at the head of the form in a conspicuous way.

Certificate of Participation

Instead of indicating all the rights and obligations of its members in the contracts, a mutual assistance society can make reference to its rules and by-laws in the certificates of participation. This method implies that the associate can claim his right to demand a copy of those rules.

Claim

The happening of the event specified in the policy, as a result of which the insurer is bound to indemnify

- (i) the insured in his person or in his belongings, or, in case of death,
- (ii) the nominated beneficiary according to the contractual terms.

Claims Inspector

A person employed directly by an insurance company or contracting with an insurance company to examine and estimate the damage and establish the allowable claim payment.

Contracting Partner

Person or corporate body effecting insurance. Where a third person's life is insured

and the policyholder is not identified. In case of a group insurance contract, the contracting partner is the employer. (See: 'Applicant' and 'Policy Applicant').

Contribution

Premium paid by the member of a fire insurance mutual or a mutual assistance society. The rate of contribution is fixed by the Board of Directors. The amount of every contribution is deducted from the one indicated in the certificate of deposit signed by the member. This term is also used for the share to be paid by a member participating in a pension or group insurance contract.

Conversion into a Mutual Insurance Company

Transformation of a life insurance company issuing shares into a life insurance mutual by means of stock redemption. The plan referring to this has to be set down in special regulations approved by the majority of shareholders summoned to a meeting for this purpose.

It can be carried out if it meets the requirements of the authorities controlling the company. However, the Minister has to be convinced that the conversion into a mutual society is feasible, that the capital to be raised for the redemption of stock presents no risk to the protection of the insured persons, that a certain percentage of shares is offered for sale and that the prices are fair and reasonable.

Conversion Privilege

According to this privilege, which is granted under a term insurance contract, the insured, if he has paid all the outstanding premiums, may assign his policy to the insurer in exchange for a new life endowment insurance contract of which the sum insured may be equal to or smaller than the existing contract. Another examination of his insurability is not necessary and he can choose between:

- (i) paying the difference between the premiums paid according to the original contract and those which would have been stipulated by the new contract for the same period of time. In consequence, the dates of issue of the new and the original contract are identical.
- (a) concluding a new contract. In this case, the age of entry is that at the time of conversion, and the rate of premium is the one fixed by the insurer for the new type of contract.

Deposit

Amount prescribed by law which has to be paid to the Ministry of Finance by every insurer requesting the granting or renewal of the concession. It has been established with a view to guaranteeing the performance of contractual obligations.

Disability insurance

Additional insurance to a life insurance contract. It binds the insurer to compensate an insured disabled through illness or injury by premium waiver or by cash indemnity.

Discharge

Some industrial life insurance contracts contain the so-called 'discharge' clause. If no beneficiary is nominated, the insurer is entitled to decide in favour of certain persons such as those who have given the insured financial support or who have borne the expenses of his funeral.

In this way the insurer is in a position to pay benefits without any delay and with a minimum of administration cost. Distraint (immunity from). The proceeds of the policy do not belong to the estate of the insured. Hence his creditors do not have a legitimate claim to them if a beneficiary is nominated. In Quebec this particular protection is to the advantage of the preferential beneficiaries, i.e. the insured's wife and children. In case of a mutual assistance society, the benefits to which the insured, his widow, his heirs, or his legal successors have a rightful claim are not subject to distraint.

Dividend

Share of profits paid to every shareholder of a joint-stock company. According to the profit-sharing system, the contracting parties have a share in the profits realized by the company.

Extra Premium

Also called loading. An additional charge imposed by the insurer in case of substandard risk. Chiefly claimed for occupational reasons, in case the insured person performs an activity that is dangerous or injurious to health or for reasons of health, if

the insured is afflicted with some infirmity or disease, or because of his, or his family's, antecedents.

Fidelity Guarantee

Guarantee for every person who has responsibility for any aspect of the funds of an insurer. It assures the company and its policyholders against unfaithful performance of the obligations stated in the regulations of the company. The guarantee amount is fixed by the Board of Directors or a minimum amount is prescribed by law.

Funds

Every mutual assistance society is bound to keep the books so that separate funds exist for the various kinds of aids and indemnities.

In addition, a special fund exists for the purpose of meeting the general expenses. Once a year, all those funds are balanced with the inclusion of the respective premiums and contributions.

General Manager, Officers

Cadres of high rank authorized by the Board of Directors. Their rights and obligations are described in the company regulations relative to the business purposes.

General Meeting

Meeting of shareholders of a joint stock company or of members of a mutual society, where the motions on the agenda are put to the vote, the annual reports of the board members are received, the board members are elected, and other items such as selection of an auditor and determination of his remuneration may be discussed and acted upon. The general meeting is convened according to the legal rules or the by-laws of the company.

General Provisions

In addition to the conditions described in the paragraph 'insurance policy', insurance of persons has to contain the following provisions:

- (i) the time fixed for premium payment
- (ii) a table for the calculation of the surrender value
- (iii) a policyholder's rights regarding participation in profits
- (iv) his rights regarding the surrender value and loans on his policy

- (v) the terms of reinstatement
- (vi) his rights concerning the transformation of the contract
- (vii) the modalities of paying sums due
- (viii) the term during which payments have to be effected

Guaranteed Values

Values reached by the policy after a certain period of time. They vary with the age, currency, and type of the contract and include:

- (i) prolongation value, or temporary insurance of the same capital as the original insurance.
- (ii) surrender value, or the sum reimbursed to the insured on the cancellation of his contract.
- (iii) reduction value, or reduced insurance of the same nature as the original insurance.

Industrial Life Insurance

Life insurance contract of which the sum insured amounts to a maximum of \$2000. No participation in profits and no bonus or dividend payment. Premiums become due every fortnight or at shorter intervals, also monthly, if collected at the insured person's residence.

Insurability

Determination by the insurance company whether insurance may be issued, modified or declined based upon individual risk factors of the applicant.

Future insurability guarantees to the insured by contract an opportunity to effect an additional insurance at future specified times. Another examination of his insurability is not necessary and the future increased optional insured amounts are fixed at the conclusion of the original contract.

Insurable Interest

In life insurance, it can be defined as the policyholder's legitimate interest in the continuation of the insured life for economic reasons or family. In property insurance, it becomes relevant if a person suffers damage through the loss or destruction of property. The Civil Code says that the insurable interest must exist when loss to

property occurs. In life insurance, however, it is only necessary that the insurable interest existed when the contract was issued. The degree of a person's interest in his own life is not limited. Between the creditor and debtor the life insurance interest is limited to the debt, and for property insurance against loss or damage, the interest shall not exceed the real value of the property insured.

Insurance Contract

Contract by virtue of which the insurer obtains a premium or contribution and is bound to pay benefits to the policyholder or to a third party in case of an insured loss. The text of a contract is usually recorded in a document called policy.

Insurance Policy

Document that attests the insurance contract, indicates the commencement and the term of the contract, the names of the parties and of any person to whom the sum insured is to be paid, the premium amount, the type of risk, the subject-matter of the contract, the sum insured, and contains the general provisions.

Insured

An individual or a corporate body participating in the insurance by signing an insurance contract accepted by the insurer.

In life insurance the insured is the person whose life is insured and who is also the applicant or contracting party and policyholder. In a contract on the life of a third party the insured is the third party. In this case the person who contracts for coverage is called applicant, contracting party and policyholder but not insured. In a group contract the employer negotiates with the insurer. He is generally called policyholder. The insured persons are the employees covered.

Insurer

Term by which one understands:

- (i) the insurance company
- (ii) every person professionally competent in the domain of insurance. A person who, directly or indirectly, offers his services as an insurer or assumes this title, effects or is bound to effect insurance, collects premiums, contributions, or other sums due by virtue of such contracts, and is bound to

make the payment of insurance benefits or mutual aids.

Lapse

Cancellation of a life insurance contract for non-payment of premiums at the expiration of the time fixed for payment, which is 30 days from the due date.

Liabilities

Total debts, charges, and obligations of a company. The reserves provided by the articles form the principal item and are used for covering the obligations to the insured persons. The following items should be mentioned also: the reserve for amounts deposited with the company, the reserve for the payment of profit shares (or dividends), the reserve for payments falling due, the employees' pension fund, the unpaid bills, etc. The excess of assets over liabilities forms the net property of the shareholders (if such exist) and of the insured persons.

License

Authorization a corporate body has to obtain from the Superintendent so as to act as an insurer. The same term describes the authorization that entitles a person to bear the title of an insurance agent and to act as such. The Superintendent grants it by virtue of a special examination.

Finally, a corporate body can obtain this license, if all the persons through the intermediary of whom it acts or intends to act are authorised in such a way.

Life Insurance Agent

Person charged by a life insurance company with contacting and keeping in touch with clients. A distinction is made between

(1) the full-time professional agent, whose sole occupation is the production and maintenance of life insurance, and

(2) the part-time agent, who dedicates only part of his time to his pursuit.

Member

One of the founders of a fire insurance mutual or any other person who subscribes a certificate of deposit so as to obtain a policy. In case of a mutual assistance society, too, this term describes a founder or a person who subscribes an application for admission and undertakes to pay the premiums, contributions, and donations

prescribed in the regulation and is willing to comply with the regulations. The term also describes a company, association, or other organized group insurance, whereas the person insured by such a contract is called a participating member.

Mutual Assistance Society

According to the wording of the Insurance Law of Québec, a mutual assistance society is an association founded with a view to using the contributions of its members for supporting those members who suffer misfortune caused by sickness, accident, and financial reverses or through the death of their children or wards. In case a member dies, his widow, his orphans, or his legal representative are supported in the same manner.

Mutual Life Insurance Company

Also called mutual life insurance society. Insurance company that has used its surplus for the redemption of stock or originates in the transformation of a mutual assistance society. In both cases, the insured persons are the owners of the company and are entitled to elect the board members.

Participation in Profits

Clause of an insurance contract according to which the insurer is bound to give the policyholder of a participating contract a share in the profits made by the company. The insured persons are obliged to accept the distribution of the profits arranged by the Board, as it is stated in their contracts.

While it would be expected that joint stock companies issued non-participating policies and mutual societies with-profits policies, the majority of joint stock companies issue with-profits policies. Hence, they are bound by law to distribute at least 90 per cent of the profits gained from this category of business to the insured persons. On the other hand, mutual societies also issue non-participating policies.

Rating

This term has two distinct meanings:

1. general statement of the premium rates applicable to all age groups and arranged according to the various combinations of contracts offered by the company or, in property insurance, according to the types of construction, isolation, fire, etc.

2. the fixing of the premium for a given contract.

Reinstatement

Also called revival. Restitution of a life insurance contract that has been cancelled for non-payment of the premium. Within two years after the cancellation, the policyholder has to make an application, which is granted on the condition that the insured complies with the terms of insurability, makes payment of the overdue premiums and reimburses the advances plus interest.

Reinsurance

Process according to which an insurer (assignor) transfers part of the risk to be covered to a re-insurer (assignee).

Re-insurer

Insurance or reinsurance company that shares the risk with the insurer by underwriting the excess of the insured limit or a part of the risk assumed by the insurer for the purpose of setting a limit to the insurer's loss of property. The insurer pays a premium adequate to the risk assigned to the re-insurer.

Reserve Fund

Fund established by the Board of Directors of a fire insurance mutual when the contributions are fixed. It is built up with the surplus remaining to the company after deduction of the ordinary expenses and losses and may be used for balancing the annual contribution and for the adjustment of damages. The annual contribution levied for this fund amounts to 10 per cent of the amount fixed in the certificate of deposit.

Substandard Risk

Also called aggravated risk. Risk not acceptable at normal or ordinary conditions because of the occupation, previous history of the person insured or poor health of the person. Risks of this kind entail additional premiums and may even be rejected by the insurer.

Sum Insured

Sum guaranteed by contract, exclusive of supplementary insurance benefits (e.g.

double indemnity in case of death by accident). This amount is usually indicated on the first page of the policy.

Superintendent of Insurance

The Superintendent directs an insurance office, under the control of the Minister of Financial Institutions, Companies, and Co-operatives. In Québec, he and his staff are treated in accordance with the civil service law. As he is charged with the control of the insurance transactions, he has access to all the documents relative to insurance transactions and in possession of a person acting as an insurer or insurance agent. It is his office that licenses an insurance company or insurance agent.

JAPAN:

The Financial Structure

A mutual (insurance) company has no capital. For establishing a mutual company, it is necessary, however, to raise a certain amount of money, called a foundation fund. It serves for starting up business activity and as a guarantee to the policyholders. This fund is a kind of a debt from a third party to be paid off in the future. It is prescribed by the Insurance Business Law that a certain amount of money necessary for the repayment should be appropriated as a redemption each business year. A mutual company is required to set aside a reserve that is used for making up the general losses which may occur in the future.

Management:

The bodies of a mutual company are subject to the provisions of the Insurance Business Law but many sections of Commercial Law are binding on a mutual company by virtue of statutory references.²

The company is managed by the following bodies:

(1) General Assembly of Members

The Insurance Business Law provides that every mutual company must have, as a rule, a general assembly of members, but that it may, in its articles of incorporation, provide itself with a body to take the place of the

general assembly of members. In practice, a mutual company has determined that the general meeting of representatives of members is almost the same as that of the general assembly of members. This body decides all questions of special importance relating to the constitution and existence of the mutual company, such as amendment of the articles of incorporation, winding-up of the company, transfer of contracts and amalgamation. This general meeting of representatives of members elects members of the Board of Directors.

Board of Directors

This board has the exclusive right to decide the conduct of the business, but has no title to represent the company in dealing with third parties. The representative(s) of the company are elected from the directors by the Board. Directors are called to keep the articles of incorporation, the proceedings at the general assembly and of the directors' meeting at the office, and a list of members and inventory, a balance sheet, a business report, a profit and loss account, and minutes of resolutions relation to the amortisation of the foundation fund, the payment of interest thereon, the reserve and the distribution of surplus at the head office.

(3) Auditors

Auditors are elected by the general meeting of representatives of members and are entitled to scrutinise the accounts of the company. Every auditor or the committee of the auditors has a right of access at all times to the books and papers relating to the accounting of the company and is entitled to require from the directors explanations concerning the accounts. Auditors must submit to the general meeting of representatives of members a report on the accounts presented by directors and examined by themselves.

Action calling the Director to Responsibility

The members representing not less than three hundred members may, in writing, demand the company to bring an action to call the director to account.

Actuary

A life insurance company shall appoint an actuary to be in charge of matters relating

to insurance calculations such as the basis of calculating premiums and liability reserve. S/he shall acknowledge and confirm the correctness of the accounts in the documents to be filed with the Minister of Finance by the company.

Advisory Council

Council, consisting of business leaders, professors and representatives of consumers chosen from outside the company, and which may be set up to consider constructive comments regarding the management.

Amalgamation

A mutual insurance company may amalgamate with another mutual insurance company. In this case, the surviving company after amalgamation or the new company shall be a mutual company. In the case of an amalgamation of a mutual company with a stock company, the surviving company or new company may be a stock company.

Auditor

Every auditor has a right of access at all times to the accounting books of a company and is entitled to require explanations concerning the accounts from the directors. The accounts, examined by auditors, must be presented to the general meeting of representatives of members.

Board of Directors

A body elected by the general meeting of representatives of members and having the exclusive right to decide the conduct of the business. Representative directors elected by the Board of Directors represent the association when dealing with third parties.

Cause of Termination of Membership

Membership is terminated for any cause specified in the articles of incorporation or by the extinction of the relationship of insurance.

Claim for Repayment

The withdrawing member may, in accordance with the provisions of the articles of incorporation, or of the insurance policy conditions, demand the repayment of the sum to which s/he is entitled. Deposit
When the Minister of Finance deems it necessary, s/he may require the persons filing an application for a license to transact insurance business to deposit a proper amount.

And, when he considers it necessary, in view of the situation of affairs or assets of an existing insurance company, he may order the deposit of assets, or may issue other orders necessary for its supervision.

Dissolution

Winding up of a mutual company can take place on expiration of the term in the articles of incorporation, by resolution of a general assembly of members, amalgamation of the company, by transfer of all insurance contracts, by bankruptcy of the company, by cancellation of the license, or by judgement of a court ordering dissolution.

Distribution of Remaining Assets

Except as otherwise provided for in the articles of incorporation of the company, the remaining assets after liquidation shall be distributed among the members at the time of the company's winding up, in the same ratio as the distribution of surplus.

Distribution of Surplus

Surplus may be distributed among the members qualifying under the articles of incorporation at the end of each business year, according to the decision of the general meeting of representatives of members

Documents to be Produced to the Minister of Finance

An insurance company shall close its books as on the last day of March each year, and shall, without delay after the conclusion of the general assembly, produce an inventory, a balance sheet, a business report, a profit and loss account and minutes of resolutions relating to the amortisation of the foundation fund, the payment of interest thereon, the reserve and the distribution of profits or surplus for the Minister of Finance. These documents should be offered to the policyholders, insured persons or beneficiaries, for inspection.

Exception in Valuation of Shares

If the market price of a share listed on the securities exchange market which is held by an insurance company exceeds its acquisition cost, the company, with the approval of the Minister of Finance, may mark its price ranging from more than its acquisition cost to less than its market price. This valuation profit (unrealized capital gain) must

be funded as a reserve for policyholders of the company. ³

Founder Members

To incorporate a mutual company, at least 7 founder members are necessary. They must make out articles of incorporation and make available the fund necessary for the company and assemble initial members (policyholders) of more than 100 in number.

Foundation Fund

Amount of money provided by founders and contributors towards the foundation fund upon the formation of a mutual company and designed to serve as a guarantee and operating fund; this fund is in the nature of a loan rather than a capital and must be amortised in the future. The IBL provides that a mutual company must have a foundation fund of 30 million yen or more.

General Assembly of Members and General Meeting of Representatives of Members

A mutual company has a general assembly of members as a final decision making organ, comparable to a joint stock company's general meeting. The general meeting of representatives of members may be substituted for that of members.

Incorporation of a Mutual Company

A mutual company may be organized by the following procedures:

1. making out the articles of incorporation by founders,
2. drawing original members more than one hundred in number,
3. setting out of the foundation fund,
4. convening the constituent general assembly and
5. registration of incorporation.

Insurance Business Law (Law No 41, 1939)

The Insurance Business Law consists of two main parts. One is the part of insurance supervision articles and the other is that of articles relating to rights and obligations of members and to formation, management, winding-up of a mutual company.

Insurance Company

In the Insurance Business Law (IBL) it is stipulated that insurance business may be carried on only by joint stock or mutual companies with a capital or foundation fund

of 30 million yen or more.

Interdiction of Carrying on any other Business

An insurance company is, as a rule, prohibited from carrying on any other business. But a life insurance company may be authorized by the Minister of Finance to grant a policyholder a loan on his policy up to the amount of the surrender value.

Liability or Mathematical Reserve

An insurance company must calculate a liability reserve according to the type of its insurance contracts every financial year and shall make entries in the books specially provided for this purpose.

License to Insurance Business

Only companies licensed by the Minister of Finance may carry on insurance business. In applying for a license, an insurance company must offer to the Minister of Finance such documents as articles of incorporation, a document showing the method of carrying the business on etc.

Limited Liabilities of the Members of a Mutual Company

Members of a mutual insurance company are not personally liable for the debts of the company and have no obligation to pay supplementary amounts over and above the premiums already paid.

Liquidation

Bringing to an end the outstanding business of a company being wound up. It is carried out in the following order:

1. collection of debts
2. realisation of the remaining assets
3. setting of claims of the company's creditors
4. repayment of the foundation fund
5. distribution of remaining assets to the then members.

Mutual Insurance Company

A legal person which is incorporated according to the IBL and grants insurance cover to its members against contributions. It is called an 'in-between corporation', neither a

public service corporation nor a commercial company.

Mutualisation of a Stock Company

Alteration of a company's structure from a joint stock insurance company into a mutual company in accordance with a certain procedure, such as the passing of a resolution of the general meeting of shareholders or the approval of the Minister of Finance, is provided in the articles 19 - 31 of the IBL.

Particulars to be entered into the Register of Members

In the register of members, the following particulars must be entered:

1. the names and domiciles of the members
2. the class of insurance, the amount insured and the corresponding premium for the insurance of each member.

Principle of Assets Valuation

In case of assets valuation, an insurance company must, as a general rule, be based on the cost principle provided in the Commercial Law and also the principle of conservatism not conservation?) in order to ensure the solvency. (See 'Exception in valuation of shares').

Prohibition of Composite Management of Life and Non-life Business

An insurance company is prohibited from doing life and non-life business concurrently. A life insurance company, however, may carry on reinsurance business of life insurance.

Reduction of the Amount Insured

A mutual company shall have provisions in its articles of incorporation regarding a reduction of the amount insured. Most articles of incorporation describe that a reduction of the amount insured shall be the last resort in the event of an abnormally high loss.

Reserve provided for in Article 86 of the IBL

A legal reserve is provided for in article 86 of the IBL. It was originally established for keeping the income and outgoings of the company from the influence of accidental profit and loss caused by the selling and buying or valuation of the assets. Hence, the

profits should be allocated to this reserve, whereas the losses should be made up by withdrawals from it. With the sanction of the Minister of Finance, the profits may be used for other purposes wholly or in part.

Reserve to make up for Losses

For the purpose of making up for losses, a mutual company shall set aside a reserve out of surplus for each business year. The total amount and the minimum amount thereof to be laid aside each year shall be determined by the articles of incorporation.

Selection of Representatives of Members

A selection committee nominates the candidates for the representatives. Those nominated take up the post of representatives, unless more than a certain portion object to the nomination within one month.

FINLAND

Actuary

Every life insurance company must employ an actuary who is charged with mathematical calculations. The Ministry of Social Welfare stipulates the conditions with which he must comply so as to be able to exercise his functions.

Articles

The articles contain provisions such as those which lay down the title, field of activity, organization and representation of the company, as well as the rights and obligations of the members. The articles have to be ratified by the supervisory authority (the Ministry of Social Welfare and Health).

Auditor

The general meeting elects at least two auditors (and their deputies), who are charged with checking the books and the balance sheet.

Board of Directors of an Insurance Company

It has to consist of at least three members and is elected by the general meeting or the Board of Administrators.

Bonus

All surplus of life insurance has to be paid back to the policyholders. The repayment is effected according to certain rules laid down in the articles or in the general policy conditions.

Chairman of the Board of Directors

The Finnish legislation permits the Chief Officer (General Manager) to be also Chairman of the Board of Directors.

Company Report

For each financial year the Board of Directors has to draw up a company report that covers the activities of the company and comments on the closing of accounts.

Concession

Permission by the government to make insurance transactions. In connection with the grant of the concession, the articles of the company are ratified.

Control Office

Organ established for the annual checking of the management, the books, and the balance sheet.

Establishment, Institution

In earlier legislation this term was synonymous with (insurance) company. It is no longer used in this sense.

General Manager of an Insurance Company

S/he is nominated by the Board of Directors or Administrators. The articles normally contain provisions relating to the obligations and liability of the General Manager, who may be a member of the Board of Directors or a person not affiliated with this organ.

General Meeting

The supreme organ of an insurance company, where, in case of a mutual society, the members exercise their rights to vote. The powers of the

general meeting can be delegated to a special meeting of sub-committee elected by the policyholders .

Guarantee Fund

According to the law of December 30, 1952, a guarantee fund is required for the establishment of a mutual. In circumstances defined in the articles, the holder of a share in the guarantee fund (guarantor) may be entitled to vote.

Insurance Business

According to the law of December 30, 1952, insurance can only be transacted by joint stock or mutual companies. A concession has to be granted by the supervisory authority. The law contains separate rules of company law for stock companies and for mutuals as well as some common to both types.

Insurance Company

The insurance company law in force at present was promulgated on December 30, 1952. An insurance company is either a mutual or a joint stock company. The law contains provisions that specifically apply to the mutual or the joint stock type as well as others common to both of them.

Insurance Supervisory Authority

Official organ charged with the supervision of private insurance. According to the law of December 30, 1952, every insurance company is subject to supervision. The Ministry of Social Welfare acts as supervisory authority .

Meeting of Sub-committee

Body elected by the members of a mutual insurance company entitled to vote; the members of the sub-committee must be members of the company.⁴

Member

The individual or corporate body taking out an insurance policy, and thereby, becoming a member of a mutual society.

Merger

The assets and liabilities are transferred from one company that is generally

to be dissolved into another.

Mutual Insurance Company

Also called mutual insurance society. In principle, the policyholders of a mutual insurance company are its owners and are usually held responsible for its liabilities. Both the mutuals and the stock companies are subject to the control of the supervisory authority, that is to say, they are state-controlled.

Obligation to Pay an Additional Contribution

A kind of extra payment of a supplementary amount over and above the premiums already paid. It has to be laid down in the articles of a mutual whether and to what extent the policyholders are responsible for the liabilities of the company. If necessary, the articles must contain the principle according to which the personal liability of a member can be claimed.

Outstanding Claims Reserve

Reserve for pending claims (damage) which has to be indicated as a special item on the balance sheet. The supervisory authority gives directions about the calculation of the outstanding claims reserve.

Parent Company

Company that owns more than half the shares (or votes) of another stock company. The two companies form a combine. A combine-like arrangement can also occur between two mutual, if, in accordance with the articles, one of them assigns to the other a decisive number of voting rights at its general meeting.

Perpetual Insurance

Fire insurance on house property, in a contract without specified expiration dates. Since 1967, insurance of this type has not been effected any more. A single premium of premiums for a limited period of time is charged.

Principle of Adequacy

According to the law of December 30, 1952, the amount paid for the insurance, that is to say the premium (reduced by possible surplus amounts) shall be in adequate proportion to the insurance benefits.

Proxy

It has to be stated in the article of mutual whose policyholders employ their rights to vote direct, to what extent the voter may appoint a representative in his or her place. In a meeting of the sub-committee representing the members, the right to vote has to be exercised personally.

Representative

In principle, the mutual insurance company policyholders are entitled to vote at the general meeting. However, in accordance with the articles, the powers of the general meeting can be delegated to a meeting of a sub-committee whose members are elected by the members of the company, a customary practice for large mutual.

Reserve Fund

Reserves that form part of the company's own capital. According to the law in force at present, the reserve fund is no longer compulsory.

Supervision

The insurance companies are subject to the control of the Insurance Department of the Ministry of Social Welfare and Health. The powers of the supervisory authority are regulated by the law of December 30, 1952.

Supervising Authority

Insurance Department of the Ministry of Social Welfare and Health.

Transfer of Insurance Portfolio

According to the law of December 30, 1952, an insurance portfolio can be entirely or partly transferred from one company to another. This cession depends on the permission of the supervisory authority.

Appendix 4

Glossary of Islamic Financial Terms

<i>Bāi Bithamān ajil:</i>	Contract of sale of goods on deferred payment, either lump sum or installment
<i>Fatwa:</i>	A religious decree
<i>Fiqh:</i>	Islamic jurisprudence, interpretation of the <i>Shari'a</i> religious law
<i>Gharar:</i>	Deception involving deliberate creation of, or exploitation of, uncertainty as with gambling.
<i>Halāl:</i>	Permissible under the <i>Shari'a</i> religious law
<i>ʾijāra:</i>	Leasing contracts whereby a bank purchases equipment on behalf of a client
<i>ʾijāra wa ʾiqṭināʾ:</i>	as <i>ijara</i> but purchaser own equipment at the end of the contract
<i>Jāhāla:</i>	Ignorance
<i>Mudāraba:</i>	Trust financing where there is an agreement between two parties one of whom, the <i>rab-al-maal</i> , is financier, and the other who is the <i>Mudārib</i> or entrepreneur. The profit is shared out in accordance with the contract, the entrepreneur being rewarded for his efforts and the financier (who can be the bank or an individual) for the use of his capital and the risk in providing the capital

<i>Murābaha:</i>	Cost plus financing involving a contract between a bank and its client for the resale of goods at a price which includes a profit margin agreed by both parties; as owner the bank retains responsibility for the goods until they are resold.
<i>Mushāraka:</i>	A partnership agreement between two or more parties whereby they jointly finance a project with profit shared according to a pre-agreed ratio, and losses shared in a relation to the equity holding in the project. An entrepreneur's share of the profit may exceed his liability for losses, reflecting the effort he puts into the project. A method of Islamic venture capital funding.
<i>Qarḍ al Hassan:</i>	An interest free loan
<i>Rabb- al-Maal:</i>	Financier or investor
<i>Ribá:</i>	An additional to the principal of a loan, usually interpreted as interest payment or receipts for both commercial and private loan
<i>Ribá al-faḍl:</i>	Interest involved in barter
<i>Sharīʿa:</i>	Islamic religious law derived from <i>Qurán</i> ., the <i>Hadith</i> (sayings of the Prophet Mohammad)
<i>Sunna:</i>	Practice and traditions of the Prophet Mohammad
<i>Taʿmīn:</i>	Insurance
<i>Takāful:</i>	Islamic insurance provided under the principle of mutual support

Waqf: Property the income from which is used to help the poor and needy. *Waqf* property cant be bought or sold, and is usually administered by a religious foundation

Zakāt: A religious tax applied annually to wealth in the form of liquid assets at the rate of one-fortieth of the value of the assets. The revenue can only be used for charitable purposes such as helping the poor or the needy.

-
- 1 *Sheḥab El Dīn, Mohammad Ahmed, Al Taʾmīn wa Taḍbiqah fī al-Nizām al-Saudi, 1990*
 - 2 *Tokashi, Kogawa, Non Life Insurance Institute of Japan, Sep 92 issue*
 - 3 *See 'Principle of Assets valuation' and 'Reserve provided in article 86 of the IBL'.*
 - 4 *'Yhtiökokous' and 'Edustaja'*

Glossary and Index of some terms included in the thesis

Transliteration based on the encyclopaedia of Islam; in this glossary there are some key word's selected as an example only.

ʿabd el-(...name)	:Abd El- .. Name of a person
ahkām	:Judicial decision
ʿaqd or ʿUqūd	:Contract
ākhirā	:Hereafter
allāh	:God
al-Bukhārī	:Author of a collection of hadiths
al-Duwal	:Countries
al Bayān	:Explanation
al-Hādārah	:Civilisation
al-Īqtisād	:Economy
al-Māliyya	:Fiscal
al Mujtamaʿāt	:Societies
al-Mūʿaṣarah	:Contemporary
al-Nāmiyah	:Developing
al-Shari'ah	:Islamic law
al-Sunna	:What the Prophet Muhammad said or did
al-Taʾmīn	:Insurance
al-Tafsīr	:Exegesis
amān	:Safety, peace
ʿarabi	:Arabic
bayʿ	:Contract of sale
dar al-islām	:Islamic, territories
fi al-Islām	:In Islam
ḥadīth	:What the prophet Muhammad said or did
ibn	:Son
lil taʿawun	:For co-operation
kafālā	:Surety, Bond
misr	:Egypt
mukhtasar	:Summery
mohammad	:Muhammed, Muhammad
nazariyya	:Theory
ribā	:Usury, Increase
zakāt	:Obligatory alms, Fifth pillar of Islam
al-Tatbiq	:Implementation

Bibliography

ABŪ SULAYMĀN, ʿAbdul Hamīd Ahmad

*Nazariyāt al-ʾIslām al-Iqtisādiyyah:
Al-Falsafah Wa al Wasaʾil al-Muʾāsiriyyah*
Dār Misr lil Tibāāh, Cairo 1960

ʿABD AL-RASŪL, ʿAlī

*Al Mabādiʿ al Iqtisādiyya fī al-ʾIslām,
wá l bināʿ Al-iqtisādi li l dawal al-ʾIslāmiyah*
Dār al-Fikr al-ʾArabī, Cairo 1968

ʿABDUH AL-Ṣāid ʿAbdul Mutalib

al-Taʾmīn al-ʾIslāmi
Dār al-Kitāb al-jāmiʿi, Cairo, 1988

ABU AL-SAʿŪD, Mahmoud

*Al-Istithmār al-ʾIslāmi fī al-ʾĀsr al-Rāhin
in Qadāya Muʾāsira fī al-Hadāra
al-ʾIslāmiyya vol. 2,*
Dār al-Rāʾid al-ʾArabī, Beirut, 1984

ABRAHĀM, Thanyan Solimān

al-Taʾmīn wa ahkām al-Shariʿah al-ʾIslāmiyah
Ph.D. thesis, Mohammed Bin Saūd University,
Riyadh, 1991

AHMED, ʿAbdul Karīm Fathy,

Al Niẓām al Iqtisādi fī al-ʾIslām, 1977
Dar al-Fikr al-Arabi, Cairo, 1977

AMEER ʿALĪ,

The Spirit of Islām
American Insurance Association
(AIA) Publication , vol 2, 1992

ANDERSON, J and BESANT, Annie

The Life and Teachings of Mohammad,
London, 1985

AL-ASHKAR, ʿAhmed Abdel Fatah

The Islamic Business Enterprise
Croom Helm, London 1987

AL ʾĀTĀR, ʿAbdel Nasser Tawfiq

Hokm al-Taʾmīn fī al-Shariʿa ʿa al-ʾIslāmiyah,
Paper presented to the 1st Conference
on Islamic Economics, Egypt, 1983

- AL BAHĪ, Mohammad, *Nizām al Tamīn fī Hadyi Ahkām al-Islām wa Darūrāt al-Mujtamā*
Dar al Fikr, Cairo 1965
Al-Islām fī Hāl Mashākel al Mujtamaāt al-Islāmiyya al Mu'āsira,
Dār al Fikr, Cairo, 1973
- BAKHĪT, Mohammad, *Risālaān,*
Al-Nil Printing House, Cairo, 1906
- BALARESQUE, B., *Le Contrôle de l'Etat sur les Entreprises d'Assurances, Revue*
General Des Assurances Treasures, Vol.49
- BALLANTYNE, W M., *Legal Development in Arabia,*
Graham & Trotman, London , 1990
- AL BANNA, Hasan *Five Tracts of Hasan al Banna,*
Translated by Charles Wendell, 1978
Al Damān fī al Fiqh al Islāmi, 1973
Egypt, Cairo , 1973
- BAROU, N *Cooperative Insurance,*
P.S. King & Sons, London, 1936
- BASHĪR, al-ʿUf, *Siyasāt al-Marhaliyya*
Dār al-Fakr, Beirut, 1974
- BERNSTEIN, J *Scandinavian Journal of Economics,*
No 88 issue November 1994
- BRITTEN, Sir Leon *Speech to European*
The EU Committee of Insurance
EU Publication No. 1989
- BERNARD, Rodrigues *Canadian Underwriters, Monthly Magazine*

Toronto, Canada, May 1996

BROWNIE, John E H

The Insurance Contracts Act 1984
Craftsman Publishing, Melbourne 1986
Captive Insurance Company Report
News Letters, July 1986

AL BUKHĀRĪ, Ahmad

Ṣaḥīḥ al-Bukhārī, 1386 AH ,

CARTER, R L

- 1) *Handbook of Insurance*, London, 1973
Study on the use of the word 'Mutual'
Within the Insurance Industry, No. 4,
(Lonhro Report, 1993)
- 2) *Economics and Insurance*
PH Press Ltd, UK, 1978
- 3) *Study on the use of the word "Mutual"*
in the insurance Industry
- 4) *Elements of Insurance.*
Pitman Publishing, 1987

CHADBURY, R.G

Managing Mutual Life Office
City University Publications, UK 1992

CLARK, Malcolm,

The Reasonable Expectation of
the Insured in England,
The Journal of Business Law, Sep 89.
September, 1989

COOPER, R L

Study on the use of the word Mutual
in the Insurance Industry
Chartered Insurance Institute Publications, 1988

AL-DAKHIL, A M

The Banking System & its Performance in
Saudi Arabia
Ṣāqī Books, London 1998
(This reference came to my attention too late)

AL DASŪQĪ, Mohammad El-Sayed

1) *Al-Ta'min Bayn al-Nazariah wa'l-Tatbiq*
(Insurance in Theory and Practice)

al-Wa'yy al-Īslāmī

(Kuwait) (60); Feb 70: 12-10 (A)

2) *Al-Ta'min wa Mawqif al-shari'ah*
al-Īslāmiyah minhu al-Majlis al-Āla
lil Shu'oon al-Īslāmiyah

Cairo, 1967

AL DAMASHKĪ, Abī Zakriya yahya
bin Sharf al Nawāw

Riyadh al Ṣālihīn,

Damascus, Syria

6th Edit, 1986.

AL DARĪR, Mohammad al Amīn

Al Gharar wa Atharuhu fī al Uqūd fī al fiqh
al Īslāmī,

Cairo, 1987

DELWIN, A. Roy

Islamic Banking: Rapid Growth and

the Moral Dilemma, Middle East

Executive Reports, April 1986

DICTIONARIES

1) *al-Mojāmaa al-Wasīt vol. 1*

2) *Lisān al-Ārab*, vol. 13

3) *Qāmūs al-Muḥīt*, vol 4

4) *Mukhtar al-Ṣahāh*

EC COMMISSION

Panorama of EC Industry

EU Publications, 1989

THE ENCYCLOPAEDIA OF ISLAM

The Encyclopaedia of Islam,

E.J Brill, (Leiden), 1913, Rep 1978

EUROPEAN UNION

European Union Publications,

Ref. No: 92/49/EEC

FĀRIS, Bāsīm A

Insurance and Reinsurance in
the Arab World,

- Kluwer Publishing, London 1983
- AL FANGARĪ, Mohammad Shawki,
Al Madkal ila al Iktisādī al 'Islāmī,
 Dār al-Nahda al-Ārabiyya, Cairo, 1972
Al Madhāhib al-Iktisādiah fī al-'Islām,
 Ukāz Publishing, Riyadh, Saudi Arabia, 1981
Al-'Islām wal Ta'min
 Ukāz Publishing, Riyadh, Saudi Arabia, 1984
Al-'Islām wal Dhamān al Egtimā'ī
 Ukāz Publishing, 1980
Al-'Islām wa Mushkilāt al-Fikr
 Al-Ārabi Journal, Kuwait 1982
- FIELDS, S
*Expense Preference Behavior in Mutual
 Life Insurance,*
 Chartered insurance Institute 1988
- LA FRENIER, Normand
*Canadian Association of Mutual
 Insurance Companies,* 1990
- GAHIN, F and JORGENSEN, J L
The Theory of Risk and Insurance,
 London, 1968
- AL GHAZĀLĪ, Imām Abu
Ihyā'a 'Uloom al-Din, 4 vols.
- MOHĀMMĀD, Hāmed Ibn
 Dār al-Kutub al-Hadīthah, Cairo, 1950
- AL GHAZALĪ, Sheik Mohammad
 1) *al-'Islām wā l Awdā' al-Iqtisādīyah*
 Dār al-Kutub al-Hadīthah, 1st edn 1947
 Re-published 1961
 2) *Al-Sunni al-Nabawiyah bayn ahl al-Fiqh
 Wa ahl al-Hadith,*
 Dār al-Kutub al-Hadīthāh, Cairo, 1989
Al-Janīb al-...min al-'Islāmī
 Dār al-Da'āwa, Egypt, 1990

- GIBBON, Edward and Edward P *Corporate Uncertainty and Risk Management*,
Risk Management Society Publication,
New York, 1982
Hadara al-Islamiyya, Vol.2, 1984
- HADĀRAT AL-ĪSLĀM Magazine, Cairo, Egypt
Vol. 21 issue 1984
- AL-HAKĪM, Ahmed Shokrī *al-Tā' min fī Iktasdiyat al-Duwal al-Nāmyah*
Maktabat al-Anglo al-Masriyyah
Cairo , 1971
- HANDSELL, D S *Elements of Insurance*,
M & E Handbooks,
Pitman Publishing, 4th ed., 1987
- HAYKAL, Muhammad Hussayn, *Hayāt Muhammad*,
Maktabet al-Nahda al-Miriya,
Cairo, 1968
- HETHERINGTON, J A C *Who Owns Mutual Insurance Companies*
Wisconsin Law Review, No.4, 1969
- AL-HĪNDI, Abu Sālmān *Bima e Zindagi Islami Nuqta-e Nazar*
see (Life Insurance from the Islamic
Viewpoint),
Karachi, al- Maktabah Sa'diyah, N.D. (U)
- HOMOŪD, Sāmī Hassan *Islamic Banking*
Arabian Information, London, 1985
- HOUSELL, D S. *Elements of Insurance*
Pitman Publishing, London, 1987
- HOLTOM, R B, *Underwriting Principles and Practices*,
The National Underwriting
USA, 1973

AL-HUṢARĪ, Ahmad

*Al-Syasaḥ al-Iktisādiyya wa Nizam al-Malliyya
fi al-Fiqh al-Īslami*

Maktabat al-Kolleyat al-Azhariya Publishing
Cairo, 1982

IBN ĀBIDĪN,

*Hshiyat Radd al-Muhtār, ala al-Durr al-
Mukhtār,*

Al-Halabī Printing House
Cairo, Reprint, 1966

IBN AL ĀRABĪ, Abū Baker Mohammed

Ahkām al Qurān

Dār al- Maʿarifa, Cairo, 4 vol. Rep 1972

IBN HANBAL,

Al Muasnad,

Dār al-Kutub, Cairo, 1895. 4Vols. Rep 1986

IBN KATHĪR, Abu Al- Fida
Al- Demashqī

Tafsir,

Dār al- Qurān, Beirut,, 3Vols. Rep 1981

IBN NUJAYM,

Al shbah wa al Nuzair

Dār al-Fikr, Beruit, 1983

IBN QADUMA

Al Mughni,

Dār el-Kitab al-Ārabī Beirut,
vol. 2, 4, 5, 6 (12 vols.) 1972

IBN QAYYIM, al Jaqwziyya

Zad al-Māād fi Hoda Khair al-Ībad,

Maktabat al-Riyadh al-Haditha,
Saudi Arabia, 4 vols. 1972

IBN RUSH, Abū Al Walid Ahmad

Bidayāt al Mujtahid wa Nihayat al Mujtāsīd.,

Dār al-Kutub al-Hadithah, Cairo, 595 AH.

IBN TAYMIYYA, Ahmed Abdul Halim

Al-Fatawa, vol.29.

*Al Amer be al-Ma'arouff wa al-Nahy an
al-Munkar, 1970*

IBRĀHĪM, Ahmad Mohammad

Awdāh ila' l ta-'min fi' l-Shari'ah wa' l Qānūn
Insurance in Islamic Law and Secular Law,
Beirut Mar, June 71 and 77-83,
Al-Ta'min fi' l-shari'ah wa' l-qānūn
(insurance in Islamic Law and Secular
Law) Al-Fikr Al-Islāmi (Beirut),
2 Feb 70 & 75- 83(A)

INSURANCE ANNUAL REPORT

Insurance Annual Report,
UK, 1991

INSURANCE HANDBOOK

Insurance Handbook,
Kluwer Publications,
December, 1989
The Insurance Institute
of Canada, March, 1992

International Association of
Mutual Insurance Companies
(AISAM), Amsterdam, 1992

The Japanese Chamber of
Commerce, London, on
Behalf of the Minister of
Finance, Japan.

THE INSURANCE INSTITUTE OF CANADA

The Insurance Institute of Canada, Magazine
March, 1992

INTERNATIONAL ASSOCIATION OF
MUTUAL INSURANCE COMPANIES

International Association of Mutual Insurance
Companies (AISAM),
Amsterdam, 1992

ISSA , Ābduh,

1) *al-Iktisād al-Islāmi Madkal wa manhag.*

- Dār al-Buhūth al-ʿIslāmīyah, Beirut, 1974
- 2) *al-Taʾmīn*
Al-Balagh, Kuwait, 1969
- 3) *Al-Taʾmīn al-Asīl wal-Badīl*
Dār al-Buhūth al-ʿIslāmīyah, Beirut, 1972
- 4) *al-ʿĀmin wal-Taʾmīn, Nazrah Mawḍūʿiyah*
Majalit al-Muslim al-Muṣir, issue no 9, 1977
- 5) *al-Taʾmīn Bayn al-Halāl wal-Harām*
Dār al-ʿItēsam, Cairo, 1978
- 6) *al-Taʾmīn*, (Insurance)
al-Balagh, (Kuwait), July 69, Aug 69.
- 7) *al-Taʾmīn: al Asīl wal-Badīl*
(Insurance: Real and Substitute)
Beirut, Dār al-Buhūth al-ʿIslāmīyah, 1972.
- ʿIZZI DIĒN, Mawil
- Tadlīs and Taghrīr
Encyclopædia of Islam
Leiden, Brill, London, 1994
- JAMAL, Mohammad Gharīb
- Nahwa Nizām Taʾmīn Islāmī,*
Dār al-ʿItēsam, Cairo, 1978
- The JAPANESE CHAMBER OF
COMMERCE
- London, on behalf of the Minister of
Finance, Japan
- AL JAZĪRĪ, ʿAbdul Rahmān
- Kitāb Al Fiqh li-Madhāhib al-ʿĀrāb,*
Dār al-Kitab, Beirut, 1969
- AL KHATĪB, Muhibb el-Dīn
- al Taʾmīn* (Insurance),
Al-Azhar, Cairo 26(3), Sep 54.130-133 A
- KHIRO, Kato
- Japan Institute of Life Insurance*, 1994
Japanese Government Publications
Japan, 1994
- AL KHAFĪF, ʿAlī
- 1) *Ahkām al Muʿamalat al Shariʿah,*

Hijazi printing house, Cairo 1941
 2) *al-Damān fī al-Fiqh al-Islāmi*,
 Majalit al-Azhar, 1971
 3) *al-Ta'mīn*
 Majalit al-Azhar vol. 37, 1978
 4) *al-Milkiyyah al-Fardiyyah wa Tahdīduha fīl Islam*
 Hijazi Printing House, Cairo, 1964
 5) *Mukhtasar al-Mu'amalat al-Shari'ah*,
 2nd Edit., 1970
l-Ta'mīn (Insurance),
 Al-Azhar, Cairo, 37(1) May 65:79-89; 37 (2-3)
 Sep 65:156-160; 37(4), Oct 65 268-274;
 37 (5-6), Nov, Dec, 65: 353-357 37(7)
 Jan 66: 416-420; 37(8), Feb 66; 478-485;
 37 (9,10), Mar 66; 534-546; 38(1),
 Apr 66, 110-115 (A)
Al Damān fīl-Fiqh al-Islāmi, 1973

KEETON, Robert E.,

*Insurance Law Rights at Variance
 with Policy Provisions*,
 Harvard Law Review, Vol.83

KHALĀF, ʿAbdel Wahāb

*Al Syasah al Shari'iyah aw Nizam al Dawlah
 al Islamiyah fī al Sho'un al Dostoriyah
 wal Khārgiah wal Mulliah*,
 Dār al-Ansār, Cairo, 1997

KHĀN, Mohsin and MIRAKHOR ʿAbbās

- 1) *The Financial System and Monetary Policy
 in Islamic Economy*, King ʿAbdul ʿAziz
 University Publications, 1989
- 2) *Money and Banking in Malaysia, 1994*
- 3) *Insurance in the Light of Islamic Legal
 Principles, 1990*

KHATER, Mohammad

- 1) *Athar Taṭbiq al-Hodūd fī al-Mujtamaa*
 Paper presented to a conference in
 al-Faqh al-Islāmi, University of Imam

- Mohammad Bin Sáud al-Íslāmiyah,
Saudi Arabia, 1982
- 2) *Athar Tadbiq al-Hadoud fi al-Mujtamaa*
Paper presented to a conference in
al-Fiqh al-Íslāmi,
Mecca, 1976
- KHORSHID, Aly
*Insurance and Islam - the Challenge to
Western Firms New Horizon Islamic
Banking and Insurance Journal*, vol. 33, 1994
- KHURSHID, Ahmad
Studies in Islamic Economics,
Islamic foundation, UK, 1981
- KIDWANI, Ragab Abdul Satar,
Nazariaht al-Tá min al-Taawoni,
Ph D Thesis
Cairo University, 1987
- KILN, Robert
Reinsurance in Practice,
London 1981
- KILINGMULIER, E
*The Concept and Development of
Insurance in Islamic Countries*,
Islamic Culture 43(1), Jan 69, 27-37
- KLOCK, D R,
Perspective on Insurance, ,
Prentice Hall Inc., Englewood Cliffs,
NJ, USA, 1974
- KOGAWA, Tokashi
Non life Insurance Institute of Japan
September, 1992 issue
- LAHEAC, Francis
Insurance Contract Law in the EU,
European Union Publication, Nov 1993
- LALLEY, Edward P,
Corporate Uncertainty and Risk Management,
Risk Management Society Publication,

- New York, 1992
- LASHEEN, Fathy *Sharikat al-Ta'min wal-Badeel al-Islami,*
Dar al-Fikr, Beirut, 1981
- AL MUHMUD, Abdallah bin Zayd *Ugud al-Ta'min wa Makanuha fi al-shari'ah*
Cairo, Egypt, 1986
- AL MARDAWI, Ala' al-Din; *Al-Insaf,* vols. 5, .6, 1986
Beirut, 1086
- AL MASRI, Abdel Sami',
1) *Why God Prohibited Riba,*
Maktabat Wahbba, Cairo, 1987
2) *Al-Ta'min al-Islami bayn al-Nazariyyah
wa al-Tutbiq*
Maktabet Wahba, Cairo, 1987
- MALLAT, Chibli *Islamic Law and Finance*
School of Oriental & African Studies,
London University, 1988
- MASON, Kenneth R *United Estate International Trade
Commissioners,*
USA Government Publications, 1992
- MILLER, J S *Insurance Principles and Practices,* 1966
Money and Banking in Malaysia, 1994.
- MOGHAIZEL, Fadi *Insurance in the light of Islamic legal principles,*
University of London, 1990
- MOHAMMAD, Sa'd Sadiq *Al Tamin fi'l Shari'ah wal Qanun*
(Insurance in Islamic Law and Positive Law)
Al-Wa'f al-Islami, Kuwait 61, Mar. 70:51-59
- MUSLEHUDDIN, Mohammad, *Insurance and Islamic Law,(Thesis)*
SOAS, University of London, 1966

- Muslim Economic thinking; A survey of Contemporary Literature, 1981
- MUZZAM, Ālī,
- 1) *An Islamic Economic Move*, New Century Publishers, London, 1983
 - 2) *Islamic Banking and Strategies of Economic Co-Operation*, New Century Publishers, London 1982
 - 3) *In Search of an Islamic Economic Model* New Century Publication, London 1983
- National Association of Independent Insurance, Annual Report, 1993*
- AL NAJJAR, Dr. Ahmed
- Al Nizariah al Iktisadiyah fi al Islām*, Dār al-Tahrir , Cairo, 1973
- Al Madkhāl ila al-Nazariyāt al Iktisudayah fi al Manhaj al-Islāmī*, Dār al-Fikr, Beirut, 1973
- AL NAYSABŪRĪ, Abu Hassan Ālī Ahmed
- Tafsīr, Garā'ib al-Qur 'ān wa Raghā'ib al-Furkān*, 1387 AH
- Al Qāmūs al Muhit*, vol. 4
- NONIEWICZ, Helen
- Life Insurance Marketing and Research Association*, 1986
- OSMĀN, Ahmad Abiktie
- The Contribution of Islamic Banking To Economic Development*, The case of the Sudan, PhD Thesis, Durham University, 1990
- PARKER, Mushtak
- Islamic Trade Finance* New Horizon, No 33, Nov. 1994
- The Rise of Islamic Banking* The Middle East, issue Oct 1987
- Philips & Drew
- European Insurance Review*

- European Publications, June 1990
- PEFFER, Irving, *Perspective on Insurance*,
Prentice Hall Inc, New York, 1988
Englewood Cliffs, N.J. USA, 1974
- PUCCIA, Mark J *Canadian Life Insurance*, Market Report,
June 1992 issue
- QĀDĪ, Sobhī Ābdul Al-Hanīfa *Qadāya Masiriyyah fī al-Hadārah
al-Īslāmiyah*
Dār al-Rā'id al-Ārabī, Beirut, 1984
- AL QARAFĪ, *Al Furuq*, vol. 3,
Cairo, 1927
- AL QARDĀWĪ, Yūsuf 1) *Nazarāt al-Sharī'ah ila'l-tā'awun wa'l-Ta'mīn*
Cooperation and Insurance as viewed by Sharī'ah)
2) *Al-BāTh al-Īslāmi* (Lucknow, 12 (6) Mar, 68.
Mushkilāt al-Fakr WA Kifa Wagha al-Īslām, 1980
3) *Al Halāl WA al-Haram fī al-Īslām*, 1978
- AL QURTABĪ *Tafsir, al Qurtabi*, 32 vols.
- QUTB, Sayyed 1) *Fī Zilāl al-Qur'ān*, 1978
2) *Al Adala al-Ījtimā'iyya fī al-Īslām*, 1958
- QURASHĪ, Anwar Iqbāl *al-Īslām wal-Riba*
Translated to Arabic by Farouq Hilimī
Maktabet Miṣr, Cairo 1945
- RAHMĀN, Afzalar, *Banking and Insurance (Economic Doctrines
of Islam)*, 1979
Muhammad, Encyclopaedia of Sierah,
Muslim School Trust, London, 4 Vols. 1981
- RAYNES, H E A, *History of British Insurance*, 2nd Ed

- Pitman & Sons, London, 1948
- RODINSON, Maxim, *Islam ET Capitalism,*
Middle East Executive Reports,
April 1988, and May 1988
- ROGER, Paul P. *Insurance in the Soviet Union 1986*
- SALUS, A.A., *Current Financial Transactions in
View of Islamic Fiqh,*
Dar al-Fikr, Cairo, Egypt, 2nd Edition
- SANDERS, G T *Mutual Association Captives,*
Longman Intelligence Reports, 1987
- SAYYED, Sabeq, *Fiqh al-Sunna*
Cairo, 1981
Yas alunaka fī al-Dīn wa al-Hayāt,
Vol. .6, Cairo, 1981
Al-dīn wa al-mujnamā,
al-Maktabah al- Arabiah, Cairo, 1970
- SCHACHT, J *Shorter Encyclopedia of Islam,*
E.G.Brill (Leiden), London, 1961
- AL SHARĀBASĪ, Ahmad 1) *Al Islām wa al-Iktisād,*
Dār al-Qaumiyah lil Tibā'a wal-Nasher, 1965
2) *Al Ma'jam al-Iktisādī al-Islāmi,*
Cairo, 1981
3) *Al-Din Wal Mujnamā*
al-Maktabah al-Ārabiyya, Cairo, 1970
- AL SHA'RĀNĪ, Mohammad Amin *Al-Damān al-Ijtimā'i fī al-Islām,*
Dār al-Fikr, Beirut, 1975
- AL SHARĀWĪ, Mohammad Metwali *Moajezaht al-Qūrān*

- Maktabatul-Turath al-Islami,
Cairo, 1988
- AL SHARKHASĪ, Shams al-Dīn
Kitāb al Mabsout,
vol. 22, 26 Vols.
Al-Maktabah al-Ahliyah, Cairo,
1906, reprint 1913, Cairo
- AL SABONĪ, Muhammad Āli,
Tafsīr, vols.1, 6, *Safwat al Tafsīr*, vol. 1
Al Mazhab al Iktisādīā fī al Īslām, 1981
Al Mu'jam al Wasit, vol. 1
Safwat al Tafsīr, 1983
- AL-SANHURĪ, Abd al-Razzāq Ahmed
Masādir al-Haq, fī al-Fiqh al-Īslāmī, vol.2,
1934, Dār al-Kitab al-Masriyah, Cairo
Al-Wasit fī Sharh al Qānūn al-Madani, 1964-7
- AL SANUSI, Ahmad Ṭaha
Aqsād al-Tam' in fī'l-Tashri' al-Īslāmī
(Insurance Contract in Islamic Legislation,
Al Azhar, Cairo. 25(2), 232-236; 25(3), 303
-307 (A)
- SHAĀBAN, Zakī al-Dīn
al-Tā min Wughat Nazar al-Sharī'ah al-Īslāmīah
Majalat al-Haqq Wal-Sharī'ah, No 2, July 1978
- SHAHAB EL DĪN, Mohammad Ahmed
Al Tā min Wa Tatbiqoh fī al-Nizām al Saūdi,
Dār al-Nahdah al-Ārabiyyah, Cairo, 1990
- AL-SHATBĪ, Abū Ishāq Abrāham
Bin Mussa al-Malki
Al-Muafaqāt fī Ōsoul al-Sharī'ah
Explanation by Sheik Abdullah Durāz
Dār al-Ma'rifa, Beirut, 970 AH,
4 vols, re-printed in 1986
- SHIRAZI, H
Islamic Banking,
London, 1990.
- SIDDIQĪ, Muhammad Nejatulah
1) *Insurance in Islamic Economy*,

- The Islamic foundation UK, 1985
- 2) *Partnership and Profit Sharing in Islamic Law*,
The Islamic foundation, UK, 1985
 - 3) *Insurance in an Islamic Economy*,
The Islamic Foundation, 1985
 - 4) *Muslim Economic Thinking*
A survey of contemporary literature,
King Abdul Aziz University Publication,
1981
 - 5) *Issues in Islamic Banking; Selected Papers*,
King Abdul Aziz University Publication, 1983
- AL-SHOBBĀN AL MUSLIMEEN
(Muslim Youth)
MAGAZINE, vol 13, issue 3, Nov.1941
- AL SYOTĪ, Jalāl El-Dīn ʿAbdul Rahmān
Tafsīr al-Jalālyn
Matbaʿat al-Anwāw Al Mohammadiyah
Cairo, 911H
- AL ṬABARĪ, Jaffar Mohammad Garier,
Gamaa al Biyan, vol. 4, 9, 14
*Tafsīr al-Tabrī Jāmaā al-byan fī Tafsīr
al-Qurān*, 30 vols.
Dār al-Fikr, Cairo, 1978
- TANTĀWĪ, Muhammad Saīd
1) *al-Halāl wa al-Haram fī muāmlāt al-bunoók*
Al-Ahrām Publication, Cairo, 1992
2) *Al-Igṭihad fī ahkam al-shariʿah*
Al-Ahrām Publication, Cairo, 1992
- TAKASHI, Kohawa
Non Life Insurance Institute of Japan,
Monthly Magazine, Japan
September, 1994 issue
- TAYLOR, Canon
The Preaching of Islam
(paper read before the Church Congress, UK
October 7, 1887

- TAYLOR, T.W and EVANS, J.W. *Islamic Banking and the Prohibition of Usury in Western Economic Thought, National Westminster Bank Quarterly Review, 1987*
- THOMPSON, Howard E, *Financial Implication of over reserving in Non-life Insurance Companies, The Journal of Risk and Insurance, 1921*
- UDOVITCH, Abraham *Partnership and Profit in Medieval Islam, Princeton University Press, Princeton, 1970*
- UWAYS, Adbul Al-Halim, *Mushkilāt al-'Iqtisād al-'Islāmī, Jeddah, 1970*
- WAQĀR, Maṣood, *Towards an Islamic Economic System, Dar al-Fikr, Beirut, 1989*
- WARSO Bernard and Raymond Hill *The insurance industry in economic development New Your University press, 1986*
- WILSON, Rodney,
- 1) *Islamic Business, Theory and Practice, 1985, Economist Publication.221, & (1985)*
 - 2) *The Arab commons markets and inter Arab trade Intelligent unit report, London 1979*
 - 3) *Banking and finance in the Arab Middle East London 1983*
 - 3) *The economics of the Middle East FT Financial Publications London , 1979*
 - 5) *Islamic Finance FT Financial Publishing, London, 1997*
- WISE, D J, *CIS Chairman 's Report, CIS Accounts, UK, April 1993*
- YORROW, George, *Social Security and Friendly Societies*

Oxford Publication, 1990

YOU, Lin See,

The Conduct of Monetary Policy in Malaysia,
Bank Negara Malaysian Quarterly Bulletin,
vol. 6, no.1, 1991.

يوسف علي، عبدالله
YOUSUF ALI, Abdullah

The Glorious of Qur'ān
The Holy Qur' an text translation and commentary,
3rd Ed.
Mohammad Bin Saud University Publications,
Riyadh, Saudi Arabia, 1938

YUSI, Yama Shito

Moody's Insurance Service,
Japanese Government Publications
April 1998

يوسف، ميري بن،
YUSUF, Miri bin,

Ghayat al-Muntaha, vol.2, 1969
Dar al-Fikr, Beirut, 1969

AL ZARQA, Mustafa Ahmed

- 1) *Ākad al Tā' min (Al-Sawkurah) WA Mawḳif al Shari'ah al-Islāmiyah Menuh*,
Maktabat Jama'è Demashq, Sirya, 1962
- 2) *Nizām al Tā' min Hagigatuhu Wal-Ra'yy al Shari'i fi hi*,
Mawsu'at al-Risalat, Beirut, 1984