



CONTRACTUAL RELATIONSHIPS IN
TAKĀFUL FUND AND ITS LEGAL ENTITY

BY

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ABSTRACT

This study sheds light on one of the most important issues in Islamic economics and widely spread in the Islamic world. That is the issue of contractual relations in *takāful* and the legal status of *takāful* fund. The principles and general features of *takāful* are viewed in the second chapter of this study. Then, the theory of legal personality is discussed as it is one of the theories that was recognized by Islamic jurisprudence and was, also, applied in many cases. Further, came the analysis and critique of contractual relations among the parties of *takāful*, namely; *takāful* fund, *takāful* participants and *takāful* operator. The obstacles and problems found in these contractual relations are presented with a humble effort to overcome some of them. Finally, the legal status of *takāful* fund is discussed. The discussion resulted in the independency of the fund and in possessing a legal personality due to the strong evidence provided by supporters of this opinion. In this study, two methodologies are applied: descriptive and analytical. The descriptive method is used in reviewing the general principles of *takāful* and describing the theory of legal personality, whereas the analytical method is applied all through the study. The study concludes a number of main results, to mention some of them; the existence of several cases of legal personality which was accepted in *Sharī'ah*, *takāful* is considered as a *tabarru'* contract as some contractual relations do not comply to the rules of *Sharī'ah* and the support and acceptance of the independency of *takāful* fund in addition to the position of an independent legal personality. The study recommends more in-depth research on the different aspects of *takāful* due to the limited number of resources in this field of study. Also, it calls for conducting more research on the nature of *tabarru'* to drive away any doubts arising now and then of the actual nature of *tabarru'*.

خلاصة البحث

تحاول هذه الدراسة تسليط الضوء على موضوع يعتبر أحد أهم مواضيع الاقتصاد الاسلامي وأكثرها انتشارا في العالم الاسلامي، وهو موضوع العلاقات التعاقدية الواردة في التأمين التكافلي والوضع القانوني المتعلق بصندوق التأمين التكافلي. جاءت الدراسة من خلال فصلها الثاني لبيان المبادئ والملاحح العامة للتأمين التكافلي، وجاء الفصل الثالث لعرض نظرية الشخصية الاعتبارية باعتبارها من النظريات التي اعترف بها الفقه الاسلامي ووردت الكثير من التطبيقات الفقهية بشأنها، ثم عقد الفصل الرابع لتحليل العلاقات التعاقدية بين الأطراف الرئيسيين في التأمين التكافلي، وهم صندوق التأمين التكافلي والمشركون في التأمين وشركة التأمين. حيث كانت هذه العلاقات محلا للتحليل والنقد، وقد حاول الباحث معالجة التعثرات والمشاكل المتعلقة بها. وفي النهاية جاء الحديث عن الوضع القانوني لصندوق التأمين التكافلي لينتهي الى استقلالية ذلك الصندوق وتمتعه بالشخصية الاعتبارية، وذلك لقوة المسوغات التي عضدت ذلك الرأي على الرأي المقابل، بعد النظر والنقد للرأيين ومناقشة أدلتهم. وقد اتبعت الدراسة المنهج الوصفي فيما يتعلق بعرض المبادئ العامة للتأمين التكافلي، وبيان النظرية المتعلقة بالشخصية الاعتبارية، في حين أن الباحث استعمل منهج التحليل الذي قاد الى عدة نتائج أهمها: وجود الكثير من النماذج الاعتبارية التي اعتد بها الفقه الاسلامي عبر النظر في نصوصه الداعمة لهذا التصور، واعتبار عقد التأمين التكافلي عقدا من عقود التبرعات، بعد تحليل طبيعة عقد التبرع، والنظر الى بعض العلاقات التعاقدية على أنها غير موافقة للشريعة الأمر الذي يقتضي معالجة بعضها، ثم دعم وتأييد استقلالية صندوق التأمين التكافلي وتمتعه بالشخصية الاعتبارية لقوة المسوغات التي ارتأها الباحث. وقد دعت الدراسة الى إجراء المزيد من الدراسات حول الجوانب المختلفة للتأمين التكافلي، لقلة المصادر المتوفرة في هذا المجال. كما أوصت بإجراء المزيد من الدراسات حول طبيعة عقد التبرع، ومحاولة الخروج من الشكوك التي تثار بين الفينة والأخرى حول حقيقة ذلك التبرع.

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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*To My Dear Father, Mother,
Brother and Sister
To My Beloved wife
To My Friends
With Love*

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Praise is to Allah the Almighty for the blessings He (S.W.T) bestowed upon us; and peace is upon our prophet Muhammad and upon his household and companions. Every individual belongs to a community where each member supports the other, and that applies to the academic communities where students, lectures, colleagues and friends provide assistance and support to each other. This thesis, like any other academic work, could not have been completed without the help and support of many. Above all, my utmost appreciation and gratitude goes to my dear father, Prof Dr. Amir Hasan Sabri Al-Taimimy, for all the encouragement and support that he has given me throughout my life and during my pursuance of higher education in particular. My never ending respect, indebtedness and appreciation also go to my supervisor, Dr. Uzaimah Ibrahim, for all the time, effort, support and encouragement she spent and gave while reading this thesis, correcting its errors and guiding me through its execution and procedures. My gratitude also goes to my wife, Iman Najim Khalaf, for commenting on this thesis and continuous support and concern throughout my research period. Special thanks go to Mr. Abdul-Hameed from Nigeria, for the fruitful information he had generously provided, and which contributed much to findings of the research as well as proofreading the work. Last but not least, my heartfelt appreciation and gratitude to all my friends and colleagues who helped in the collection of research materials and provided the mental support and encouragement I needed.

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TABLE OF CONTENTS

Abstract	ii
Abstract in Arabic	iii
Approval Page.....	iv
Declaration Page	v
Copyright Page.....	vi
Dedication	vii
Acknowledgements.....	viii
CHAPTER ONE: INTRODUCTION	1
1.0 Introduction	1
1.1 Summary Of The Proposed Dissertation.....	2
1.2 Objectives.....	3
1.3 Problem Statements.....	3
1.4 Hypothesis.....	4
1.5 Litratue Review.....	4
1.6 Scope And Limitation Of The Study	7
1.7 Methodology	8
CHAPTER TWO: PRINCIPLES OF TAKĀFUL.....	9
2.0 Introduction	9
2.1 Defining The Concept Of <i>Takāful</i>	10
2.1.1 <i>Al-Ta'mīn</i>	10
2.1.2 <i>Al-Takāful</i>	11
2.1.3 <i>Takāful</i> (Islamic Insurance)	12
2.2 Shari'ah Basis Of <i>Takāful</i>	13
2.2.1 Evidence on Legitimacy of <i>Takāful</i>	13
2.2.2 Selected Cases From <i>Shari'ah</i>	15
2.2.3 Approval of Muslim Jurists.....	17
2.2.4 Rationale of <i>Takāful</i>	18
2.3 Applicable Features And Contracts In <i>TAKĀFUL</i>	19
2.3.1 Applicable Features in <i>Takāful</i>	19
2.3.2 Essential Contracts in <i>Takāful</i> :.....	21
2.3.2.1 <i>Tabarru'</i>	21
2.3.2.2 <i>Ju'alah</i>	23
2.3.2.3 <i>Wakalah</i>	25
2.3.2.4 <i>Mudārabah</i>	27
2.3.2.5 <i>Kafalah</i>	29
2.3.2.6 <i>Waqf</i>	31
2.4 Models Of <i>TAKĀFUL</i>	32
2.4.1 <i>Mudārabah</i> Model (Also Known as Profit Sharing Model)	33
2.4.2 <i>Wakalah</i> Model	35
2.4.3 Combination of <i>Mudārabah</i> and <i>Wakalah</i> Model.....	37
2.4.4 Based on <i>Waqf</i> Model.....	37

2.5 CONCLUSION	39
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CHAPTER THREE: THEORY OF LEGAL PERSONALITY FROM ISLAMIC PERSPECTIVE..... 41

3.0 Introduction	41
3.1 The Significance Of Legal Personality	41
3.2 Definition Of Legal Personality	42
3.3 Principles Of Legal Personality	43
3.4 Features Of Legal Personality	45
3.5 Types Of Legal Personality.....	46
3.6 Opinion Of <i>Sharī'ah On Dhimmah</i> As The Pillar In Forming The Legal Personality.....	47
3.6.1 The Definition of <i>Dhimmah</i> and its role in Legitimatizing Legal personality in Islamic <i>Fiqh</i>	47
3.6.2 Termination of <i>Dhimmah</i>	52
3.7 Models Of Legal Personality	53
3.7.1 Models of Public Legal Personality	53
3.7.1.1 Sharī'ah Basis of the concept of Ummah as a Legal Personality	53
3.7.1.2 Legal Personality of the State.....	57
3.7.2 Models of Private Legal Personality	62
3.7.2.1 The Legal Personality of Waqf	62
3.7.2.2 Company's Legal Personality	65
3.8 Conclusion.....	67

CHAPTER FOUR: CONTRACTUAL RELATIONS IN TAKĀFUL FUND . 69

4.0 Introduction	69
4.1 <i>Takāful</i> Contracting Parties.....	69
4.1.1 <i>Takāful</i> Fund	69
4.1.2 <i>Takāful</i> Participants.....	70
4.2 Contractual Relations In <i>Takāful</i>	70
4.2.1 Contractual relations between participants and takāful fund	71
4.2.1.1 Al-iltizām bi al-Tabarru'	72
4.2.1.2 Hibah bi Thawāb (Hibah in the Condition of 'iwaḍ)	75
4.2.1.3 <i>Nahd</i> (share people's living)	77
4.2.2 Contractual Relations between Takāful Fund and Takāful Operator.....	78
4.2.3 Contractual Relations among Takāful Participants.....	84
4.2.4 Contractual Relations in <i>Waqf</i>	85
4.2.4.1 Contractual Relations between Waqf Fund and Takāful Operator	85
4.2.4.2 Contractual Relations between Waqf Fund and Participants	87
4.3 Conclusion.....	89

CHAPTER FIVE: LEGAL PERSONALITY OF <i>TAKĀFUL</i> FUND	91
5.0 Introduction	91
5.1 <i>Takāful</i> Fund	91
5.2 Ownership Of <i>Takāful</i> Fund.....	92
5.3 Conclusion.....	97
CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS	98
6.0 Summary And Conclusion	98
6.1 Recommendations	101
BIBLIOGRAPHY	102

CHAPTER ONE

INTRODUCTION

1.0 INTRODUCTION

Exposure to all sorts of unexpected risks is a natural phenomenon in any society. These risks may occur to people's life their properties and their business ventures, which may render them helpless.

The question that arises in this case is how to mitigate these risks. The insurance has been suggested as an effective solution to the current issue. Indeed, the primary objective of insurance is to uphold shared responsibilities among the parties involved, by way of mutual co-operation, thereby protecting an individual against an expected risk.¹

It is important to mention, that insurance plays a great role in commercial activities and contributes to the achievement of a stable economic environment.

In Islamic law, the idea of insurance is derived from the doctrine of *al-Āqilah* practiced by the ancient Arab tribes before 570 CE. In addition, the concept of insurance has obtained its recognition based on the Prophet Muḥammad's (S.A.W) judgments in a case involving a woman from the tribe *Hudhayl*.² Despite the fact that there is an efficient theoretical foundation of insurance, yet the practical aspect of it is somehow under developed. Therefore, it has been unable to keep pace with

¹ Mohd Ma'sūm Billāh, *Applied Takāful and Modern Insurance Law and Practice*, Malaysia: Sweet & Maxwell Asia, 3rd edn., 2007, 1.

² M. Muḥsin Khān, *The Translation Of the Meaning of Ṣaḥīḥ al-Bukhārī, Kitāb al-Diyah*, (Pakistan, Kāzī Publications, vol.9, 1979), 34, no. 45.

development in other aspects of commercial law such as, contracts banking and other financial transactions.

Since the importance of insurance in the contemporary world is obvious, Islam as a way of life has introduced a distinct model of insurance for which the Qur'ān³ and the Sunnah⁴ provide the conceptual framework.

Therefore, recently Muslims scholars have made their efforts to come up with an alternative insurance model.

This kind of insurance which is called *takāful* has its own characteristics, functions and benefits. In other word, the laws that guide *takāful* are enshrined in the *Shari'ah*. *Takāful* is considered as a contract, so, the most important element in *takāful* is the contractual relations among its parties. These relationships are based on numerous contracts, which are based on the *Shari'ah*. The other aspect of *takāful* is *takāful* fund. This fund reflects the uniqueness of *takāful* industry. It has been noticed that *takāful* fund plays an active role in the *takāful*'s operations. Therefore, it can be observed that this fund has its own significance. This great role would be discussed in this research.

To sum up, experts from *Shari'ah* and economics background should work together to come up with a comprehensive approach to explaining the concepts of *takāful* to the globe.

³ The *Qur'ān* is the book containing the speech of Allah revealed to the Prophet Muḥammad (S.A.W) in Arabic and transmitted to us by continuous testimony, or *twātur*.

⁴ The *Sunnaah* refers to all that narrated from the Prophet Muḥammad (S.A.W), his acts, his sayings and whatever he has tacitly approved.

1.1 SUMMARY OF THE PROPOSED DISSERTATION

This research is divided into five chapters. The first chapter deals with background of the research, touching specifically on the introduction of the research, objectives of the work, literature review, the hypothesis, limitation to the research, research methodology and other foundational issues. The second chapter provides a deep explanation about the concept of *takāful* and its legality from Islamic perspective. Furthermore, it highlights the applicable contracts in *takāful* as well as their/its contemporary models. The third chapter emphasizes on the theory of legal entity from Islamic jurisprudence perspective. The fourth chapter sheds light on the contractual relationships in *takāful* fund. The fifth chapter gives an overview on the legal entity of the *takāful* fund. Finally, chapter six presents conclusion and some recommendations.

1.2 OBJECTIVES

1. To examine and analyze the essential contracts in *takāful*.
2. To examine the legal entity of *takāful* fund from *Shari'ah* perspective.
3. To scrutinize the basic operational models of *takāful* in order to determine their relationship.
4. To find out appropriate solution with respect to the practice of *takāful*.

1.3 PROBLEM STATEMENTS

There is no doubt that participants in *takāful* contribute to *takāful* fund. This means that ownership of fund is supposed to be held by the *takāful* fund. However, some researchers claim that the ownership is held by the participants because *takāful* fund is not considered as a separate entity. In this regard, one may ask who has the priority of obtaining the ownership: either *takāful* fund or participants especially in distribution

of surplus? Moreover, numerous contractual relationships may take place in *takāful* fund. Therefore, it is significant to figure out how do Islamic jurists view some operational models for *takāful* like modified *wakālah*.

1.4 HYPOTHESIS

In *takāful* there are three essential relationships. The first one exists between the insurance's company and shareholders. The second relationship is between the *takāful* operator and the participants. The last relationship concerns the participants and *takāful* fund. In other word, the participants are expected to give donations to the *takāful* fund. On the other hand, the *takāful* fund may not have the independent legal entity except in case of *waqf* model. Therefore it is hypothesized that;

- 1- The relationship between *takāful* operator and participants can be observed in different models. Some models such as modified *wakālah* may contravene *sharī'ah* principles.
- 2- The relation between participants and *takāful* fund may in conformity with Islamic law.
- 3- The issue of *takāful's* fund entity has propelled us to predict that in some cases the ownership of *takāful* fund goes to the participants.

1.5 LITRATURE REVIEW

It is well known that the subjects of *takāful* and re- *takāful* have been discussed and presented widely in many conferences and forums. However, the essential contractual relationships and the legal entity of *takāful* fund are still not given enough attention by the researchers and specialists in *takāful*. Therefore, in order to bridge this gap the

researcher seeks to shed some light on this issue. To do so, a thorough literature review has been done to evaluate the previous researches in this domain.

Al-Qarah Dāghī, in his interesting book, *takāful*, discusses the concepts in *takāful*. He shows the benefit of *takāful* operations and different types of *takāful*. In addition to that, he briefly examines the legal entity of *takāful* fund, without taking into account the evaluation of ownership of money.⁵

In the same vein, together with her colleague, Engku Rabiah Adawiah, elaborates *takāful* and re- *takāful* in the eighth chapter of the book: *Essential Guide to Takāful*. They talk about the general concept of *takāful* and reasons of recognition of *takāful* operations instead of commercial insurance. The authors highlight the contracts that arise in *takāful* and types of *takāful*. However, the impediments of having *takāful* model based on *waqf* are not been assessed.⁶

Mohd Ma'sum Billah, in *Applied Takāful and Modern Insurance*, identifies the origin of *takāful* and its conception. He illustrates the general principles of *takāful* with different views of Muslim scholars about *takāful* and insurance. He explains the external factors that affect *takāful* Policies. In the last part of his book, he discusses the mechanisms of *takāful*.⁷

‘Abd al-Salām Unagin, in his article, *The Basic Principles of Takāful and its Components*, comes up with some ideas regarding the concept of *takāful* such as, types and pillars. He scrutinizes the main differences between *takāful* and commercial insurance. Furthermore, a clarification was made as regards the basic principles of *takāful*. These principles are *al-iltizām bi al-tabarru’*, *co-operation* and *al-gharar*. He

⁵ ‘Alī al-Qarah Dāghī, *Takāful: Analytical study*, Beirut: Dār al-Bashā’r al-Islāmiyyah, 2005.

⁶ Engku Rabiah Adwawih, *Essential Guide to Takāful*, Malaysia, CERT, 2007.

⁷ Ma’sūm Billāh.

argues that *al-iltizām bi al-tabarru'* is not *mu'āwadah*. However, the author has not discussed the relationship between the company and its shareholders.⁸

'Abd al-Sattār Abū-Ghuddah, in his article, *Takāful through Waqf*, defines the concept of *takāful* and its goals. In addition, he presents the components of *takāful* as well as the practical aspects. The writer concentrates on *waqf* model and on how it works. Again, Abū-Ghuddah, shows presents the divergent opinions in support of and against the *waqf* model. On the other hand, this article raises question regarding the independent legal entity of *takāful* fund and the participants in *takāful* fund. He contends that the right to get the surplus at the end of the *takāful* operation should be given to the participants.

Aḥmad Sālim, Milḥam, in his work, *Re-Insurance and its Applicability in Takāful Companies*, examines, in the first chapter, the concept of commercial insurance. He explores in details the historical aspect of commercial insurance, its characteristic, its elements, its types as well as its principles from the Islamic perspective. In the second chapter, the author focuses on the concept of *takāful*. He investigates the historical aspect of commercial insurance, its characteristic, its elements, its types and its principles. Besides that, distinction between two terms: Islamic and commercial insurances has been highlighted. In the third chapter, he identifies the operation of re-insurance in details. However, the author has not talked about the contractual relationship.⁹

'Abd al- Sattār al-Khuwaylidī, in his article, *Legal Problems and Challenges Facing Takāful*, shows in brief the ways of managing *takāful*. He discusses the rights

⁸ 'Abd al-Salām Unagin, *The Basic Principle of Takāful and its Components*, Amman, Jordan University, 2010.

⁹ Aḥmad Sālim, Milḥam, *Re-Insurance and its applicability in Takāful companies*, Jordan, Dār al-'Ilm wa al-Thaqāfah li al-Nashr wa al-Tawzī', 2005.

and obligations of *takāful*'s parties. Furthermore, he mentions the challenges being faced by *takāful*. However, he does not cover the aspect of legal entity of *takāful* fund.¹⁰

Wahbah al-Zuhaylī, in his research paper, *The Concept of Co-operative insurance*, raises some important question regarding the aims of *takāful*; what are the similarities and differences between *takāful* and commercial insurance? What is the principle of commercial insurance? How different is the *takāful* from Social insurance? Lastly, what is the principle of *al-iltizām bi al-tabarru'*? However, the paper does not cover the historical aspect of *takāful* and its growth.¹¹

Aḥmad, al-Khulī, in his book, *Theory of Legal Entity between Islamic Jurisprudence and Law*, identifies the views of jurists about the legal entity from legal perspective. He states the components of legal entity and its characteristics. Moreover, he affirms that there are public legal personalities and private legal personalities. On the other hand, he examines the position of Islamic jurisprudence regarding legal entity. He shows samples of public and private legal personalities.¹²

Based on the previous studies it is quite clear that the books and articles did not pay a great attention to some models of *takāful* operations. They do not cover the arguments on *takāful* fund's entity.

1.6 SCOPE AND LIMITATION OF THE STUDY

This study will focus on the basic principles in relation to *takāful*. It will examine the principle of legal entity from *Shari'ah* perspective and its practice in *takāful* fund.

¹⁰ 'Abd al-Sattār al-Khuwaylidī, *Legal problems and challenges facing Takāful*, Jordan University, 2010.

¹¹ Wahbah al-Zuhaylī, *The concept of co-operative insurance*, Amman: Jordan University, 2010.

¹² Aḥmad, al-Khulī, *Theory of legal entity between Islamic Jurisprudence and Law*, Cairo, Dār al-Salām, 2003.

Moreover, discussions on, this study will also concentrate on the basic operational Models for *takāful* and the contractual relationship in *takāful* fund.

The discussions of this study will therefore be constraint within the Islamic juristic opinions, and the contemporary studies related to *takāful*.

1.7 METHODOLOGY

This study will use two main approaches; quantitative and qualitative approaches.

The researcher in conducting this research would exploit qualitative approach. Therefore, the current work will use two studies under this approach;

Firstly, the descriptive study will be used in order to describe the applicable concepts in *takāful*. Moreover, theory of legal entity from an Islamic perspective will be shown in a descriptive way. Such approach is relevant to draw a real picture about *takāful*.

Secondly, the researcher will also utilize an analytical study in order to analyze contractual relationships in *takāful*. Such approach is very useful to such study because it helps to discover whether contractual relationships and its practice comply with the *Shari'ah* principles. Furthermore the researcher is going to analyze the legal entity of the *takāful* fund.

Lastly, the present research is library-based research. The researcher would use the library facilities in order to complete the research. With the aid of the Islamic law books, law journal and internet data bases which are available in the library while writing this research. It is worth mentioning here that, the researcher is not going to embark on empirical study while undergoing the research.

CHAPTER TWO

PRINCIPLES OF TAKĀFUL

2.0 INTRODUCTION

Insurance is one of the most essential components in life nowadays. That is, insurance is relevant to almost all fields of life; social, financial, and economic. Muslim jurists have made an effort in finding an alternative to the conventional insurance that will fulfill the main objectives of insurance in accordance to Islamic law. Therefore, *takāful* (Islamic Insurance) is based on different mechanisms. For example, *takāful* could be based on participants' contributions (*al-iltizāmu bi al-tabarru'*) or on *waqf* (endowment). *Takāful* aims at achieving the same benefits that conventional insurance achieves for the participants. However, unlike the conventional insurance, Takaful operates freely of *gharar* (uncertainty), *ribā* (usury) and any other prohibited contracts in *Shari'ah*. This is actualized through the participants contributing certain amounts to establish a *takāful* fund from which claims are paid when damage takes place. After then, the surplus if any is distributed among the participants.

Against this backdrop, this chapter reviews four main sections. The first section defines the concept of *takāful*. The second section discusses the *Shari'ah* basis (legality) of *takāful*. The third section deals with the applicable features and contracts in *takāful*. Finally, section four reviews the main models of *takāful*, namely; *muḍārabah*, *wakālah*, combination of *muḍārabah and wakālah* and based on *waqf* model.

2.1 DEFINING THE CONCEPT OF *TAKĀFUL*

Mainly, *Takāful* is based on two elements: *al-t'mīn* (insurance) and *al-takāful* (solidarity).¹

2.1.1 *Al-Ta'mīn*

Linguistically, *al-t'mīn* is derived from the Arabic root (*amina*) a noun meaning to be secured. From which security and secure (adj.) in contrast to fear are derived. The Arabs say: 'a secure man' if he is honest, and 'a secured house' to refer to security and safety. In the Qur'ān (*Ibrāhīm*: 35), Allāh (S.W.T) says: (O my Lord! Make this city (Makkah) one of peace and security²). The Arabs also say: 'a secured man' to refer to a person whom people trust and do not fear his treachery. Faithfulness is the opposite of treachery since faithfulness usually insures safety and security from any form of damage.

It is concluded from what has been previously mentioned that *al-t'mīn* in general refers to meanings related to safety, security and indemnity. These meanings are closely related to the financial and socio-economic roles of *al-t'mīn* as it usually leads to the stability of financial, social and economic ways of life.

Conceptually, *al-t'mīn* is based on a general notion that encourages cooperation among participants to reduce any form of danger or damage and to eliminate harm from the victim. In other words, *al-t'mīn* aims at involving many people in solving the financial problem of the victim by way of contribution. *Al-Khafīf*

¹ Qadhāfi al-Ghanānīm, *al-Ta'mīn al-Ta'āwunī: Maḥmuhū -ta'şīluhū al-shar'ī- dawābituhū*, a research paper submitted for the Islamic Insurance Conference held in Amman, Jordan University, April 11-13, 2010, 3-8.

² Muḥammad Khān & Muḥammad Taqī al-Dīn al-Hilālī, "Interpretation of the meaning of the noble Qur'ān," Muḥamma' al-Malīk Fahad li ṭibā'at al-Muḥṣaf al-Sharīf, < <http://www.qurancomplex.org> > (accessed 20 May, 2010).

states that “*al-ta’min* is a kind of contract proposed by businessmen to reduce the amount of harm caused from time to time. This harm may be in the form of property damage or loss, or it may even affect people’s life like death or diseases. Later on, the amount of damage is eliminated by dividing it among many participants. Each participant will take care of a part of the amount of the damage. Such contracts are usually organized and monitored by qualified associations based on statistical and empirical principles³”.

To sum up, *al-ta’min* is a contract that reduces the amount of harm among members of a group of people. Each one of them contributes a part to eliminate the harm and to ensure security.

2.1.2 *Al-Takāful*

Linguistically, *al-takāful* is derived from the Arabic root *ka-fa-la* meaning to take mutual responsibility for something or someone on behalf of something or someone else (i.e., to guarantee). Moreover, a guarantor is a person who sponsors someone to guarantee his/her debt or to take the responsibility of protecting and taking care of him/her. Consequently, *takāful* is the cooperation and solidarity among a group of people to prevent any potential harm.⁴

Conceptually, *al-takāful* has been defined as to make every effort to support others by way of devotion according to *Shari’ah* principles. In Malaysia, the term Islamic insurance has not been used. However to represent the term, *takāful* is being adopted.

³ ‘Alī al-Khafif, “al-Ta’min,” *al-Azhar Magazine*, (n.v.) (n.i.), 1417, 7.

⁴ Majd al-Dīn al-Fayrūz’ābādī, “al-Qāmūs al-Muhīt,” ṣakhr, <<http://lexicon.ajeeb.com>> (accessed 20 May 2010); Muḥammad bin Abū Bakar al-Rāzī, *Mukhtār al-siḥah*, ed. Maḥmūd (Beirut, Lebanon Distributors Library, n.d.), 586; Aḥmad bin Fāris bin Zakariyā, *Mu’jam Maqāyīs al-Lughah*, edited by ‘Abd al-Salām Hārūn (Dār al-Fikr, n.d.), vol. 5, 187.

2.1.3 *Takāful* (Islamic Insurance)

It has been made clear that the notion of *takāful*: is strongly established on two bases: cooperation and solidarity. Thus, the *Sharī'ah* has shown a great interest in these two bases. In the Qur'ān (*al-Mā'idah*: 2), Allāh the Almighty says:

((وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ))

Help you one another in *Al-Birr* and *Al-taqwā* (virtue, righteousness and piety); but do not help one another in sin and transgression⁵.

As such, *Takāful* is best defined as “a comprehensive cooperative insurance against all forms of damage run by specialized corporations recognized with *Sharī'ah* applications⁶”. On the other hand, al-Qarah Dāghī elaborately defines *takāful* as "an agreement between *takāful* operator on behalf of *takāful* fund and the participants (i.e., a person or personnel morale). The participants are recognized as members of the *takāful* fund and are asked to pay an amount of money by way of contribution under the virtue of *takāful* fund. As a result, participants will receive an amount of money when any harm occurs according to *takāful* contract and the regulations of the operator⁷”.

According to these two definitions, *takāful* is a kind of contract practiced by a group of people. The participants contribute their money to compensate those among them who is faced with difficulty or afflicted with harm. Nonetheless, if the contributions happen to be out of capacity, fall below the needed amount of money, the participants are asked to pay additional money to fulfill the need. On the other hand, the participants will get back any surplus left after compensation. The main aim

⁵ Muḥammad Khān & Muḥammad Taqī al-Dīn al-Hilālī, (accessed 20 May, 2010).

⁶ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), *Al-Ma'āyir al-Shar'īyyah*, (Bahrain: AAOIFI, 2007), 450.

⁷ 'Alī Muḥī al-Dīn al-Qarah Dāghī, *al-Ta'mīn: Dirāsah fiqhīyyah ta'sīliyyah*, (Beirut: Dār al-Bashā'ir al-Islāmiyyah, 2004), 203.

of such a kind of contract is to reduce the financial responsibility of a member in the Takaful scheme the moment damage or harm occurs to him. It could be perfectly considered as a non-profitable cooperative association. Such type of contract covers risks of fire, accidents, air and land transportations and all forms of properties.

2.2 SHARĪ'AH BASIS OF TAKĀFUL

This section discusses the legitimacy of *takāful* from different perspectives. First, it reviews textual evidences from the Holy Qur'ān and the Sunnah and refers to quotes by Muslim jurists. Then, it states similar cases from *Sharī'ah*. The third point sheds light on the verdicts on Takaful made by Muslim jurists. Finally, it presents the basic principles of the legitimacy of *takāful*.

2.2.1 Evidence on Legitimacy of *Takāful*

The legitimacy of *takāful* has been established by the two important primary sources of *Sharī'ah*: The Qur'ān and the Sunnah.

Among the evidence from the Qur'ān are the following verses *āyah*:

((وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ))

Help you one another in *Al-Birr* and *Al-taqwā* (virtue, righteousness and piety); but do not help one another in sin and transgression⁸. (*al-Mā'idah*: 2)

This *āyah* indicates the element of cooperation and support among Muslims. Hence, it is clear that the idea of *takāful* is embedded in this *āyah* as people are enjoined to support one and another to drive away any potential harm. In addition, ibn Kathīr states in the *tafsīr* of this *āyah* that “Allāh the Al-Mighty instructs Muslims to

⁸ Muḥammad Khān & Muḥammad Taqī al-Dīn al-Hilālī (accessed 23 May, 2010).