

CHAPTER FIVE

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APPLICATION OF *TAKāFUL* IN *SYARIKAT TAKāFUL MALAYSIA BERHAD* (STMB) AND *TAKāFUL NASIONAL SENDIRIAN BERHAD* (TNSB)

5.1 Introduction

The majority of the trusted and eminent *Shari'ah* Scholars and jurists as mentioned in the previous chapter have opposed and renounced the modern form of insurance companies and their present practices and claim its contract as unlawful, because it consists the elements of *Ribā* (interest), *Gharar* (uncertainty) and *Maisir* (gambling) in its contracts. The underlying investment activities of the modern insurance companies are interest based, and its policies also contravene the islamic law (*Shari'ah*). For instance, the presence of *Gharar* (uncertainty) at the time of signing the contract of insurance and the compensation or benefit to be paid depend on the outcome of future events that are not yet known. This is prohibited under the Islamic Law (*Shari'ah*). *Maisir* (gambling), another prohibited business element in Islam is also present in the contract. This can be seen from the point of view of the insured person when at the time of taking the insurance he/she believes that he will still be alive by the end of the term of the policy to receive the benefits stated in the contract. However, there is no doubt that Islam always encourages and emphasizes on mutual assistance and righteousness by helping one another in justice and the goodness of this world and the Hereafter, thus, the almighty Allāh says:

“Help one another in virtue, righteousness and piety, but do not help one another in sin and transgression...”
(*Al-Maidah* (5) 2).

“ The Believers, men and women, are protectors one of another:
They enjoin what is just, and forbid what is evil...”
(*Al -Tawbah* (9) 71).

Therefore, Islam as previously mentioned is not against the concept and idea of insurance itself as community pooling to alleviate the burden of the individuals, lest it should be ruinous to him,²⁷¹ but it only opposes the means and methods which aim is only to make profit by any ways and means. Any insurance practices which posses the following characteristics (1) sincerity, (2) moral attributes, and (3) absolute Islamic law principles (*Shari'ah*) in its dealing, Islam (as a way of life and dynamic religion) will absolutely welcome them.

On sincerity Allāh the Almighty says:

“Verily We have sent down the Book to you in truth: So worship Allāh by doing religious deeds sincerely for Allah’s sake only.” (*Az-Zumar* (39) 2).

“Say: Verily I am commanded to worship Allāh by obeying Him and doing religious deeds sincerely for His sake only.”
(*Az-umar* (39) 11).

“He is the Living (one): There is no god but He, call upon Him, giving Him sincere devotion. Praise be to Allāh, Lord of the Worlds!” (*Ghāfir* (40) 65).

“And they have been commanded no more than this: To worship Allah Offering Him sincere devotion Being true (in faith)”
(*Al-Bayyinah* (98) 5).

²⁷¹ .Muhammad Musleh al-Dīn, *Insurance and Islamic Law*, (Lahore: 1969) p.3.

On moral attribute, the almighty Allāh says:

“And be steadfast in prayer and regular in charity, and whatever of good (deeds that Allāh loves) you send forth for yourselves before you, you shall find it with Allāh. Certainly, Allāh is All-Seer of what you do” (*Al-Baqarah* (2) 110)

“Help you one another in virtue, righteousness and piety; but do not help one another in sin and transgression” (*Al-Māidah* (5) 2).

On submission to absolute Islamic Law, Allāh the almighty says:

“The Religion before Allāh is Islam (submission to His Will).”
(*āli ‘Imran* (3) 19).

“If anyone desires a religion other than Islam never will it be accepted of him; and in the Hereafter he will be in the ranks of those who have lost.” (*āli ‘Imrān* (3) 85).

“O you who Believe! Obey Allāh and obey the Messenger and those entrusted with authority from among you. (And) if you differ in anything amongst yourselves, refer it to Allāh and His Messenger, if you truly believe in Allāh and the Last Day. That is better and more suitable for final determination.”
(*An-Nisā’* 4: 59).

Al-Maudūdī in his comment on the above-mentioned noble verse from *Surah An-Nisā’* said: “ This verse is the basis of the whole religious, cultural and political system of Islam and is the first and foremost article of the constitution of an Islamic State. And he said the following fundamental principles have been permanently laid down in it:

1. In the Islamic system, Allāh who is the real Authority must be obeyed. A Muslim is first of all the servant of the almighty Allāh; all his other capacities come after this. Therefore a Muslim as an individual and the *Muslims* as a community owe their first loyalty to Allāh and they must subordinate all other loyalties to this, for they are

called upon to give their first allegiance to Allāh. Allegiance and obedience to anyone else shall be acknowledged only if these are not opposed to the allegiance and obedience to Allāh but are subordinate to the latter. All other allegiances that are opposed to this basic allegiance shall be broken asunder.

2. Allegiance and obedience to the Holy Prophet. This obedience is not inherited in Prophethood but is the only practical shape of obedience to Allāh. A Messenger is to be obeyed because he is the only authentic means through which we can receive Commandments and instructions from Allah. Therefore, the breach of allegiance to the Messenger of Allāh shall be a rebellion against the Sovereign, Whom he represents.
3. Allegiance to those invested with authority from among the *Muslims* themselves, and this comprises all those persons who are in any way at the helm of the affairs of the Muslims, religious scholars, thinkers, political leaders, administrators, judges of law courts, tribal chiefs and the alike. In short, all those, who are in any way invested with authority from among the Muslims, are to be obeyed, and it is not right to disturb the peace of the community life of the Muslim by entering into conflict with them, provided that (1) they are from among the Muslims and (2) they are obedient to Allāh and His Messenger. These two conditions are a prerequisite for obedience to them.
4. The fourth thing has been established as an absolute and permanent principle is that the Commandments of Allāh and Sunnah (traditions) of His Messenger are the

fundamentals of law and the final authority in the Islamic system. Hence if a dispute arises about any matter between any Muslims or between the rulers and the ruled, they should turn to the Noble *Qur'ān* and the *Sunnah* (traditions) of the Prophet *Muhammad* (peace on him and his family) for decision and should, all of them, submit to it if they are true Believers; otherwise their profession of Islam will become doubtful. *Muslims* have been taught to build their system of life on the above mentioned fundamentals and principles because therein lies their welfare; for this alone can keep them on the right path in this world and lead them to a happy life in the Hereafter.²⁷²

Allāh the Almighty says:

“And all who “obey Allāh and the Messenger, then they will be in the company of those on whom Allāh has bestowed His Grace, of the Prophets, the Sincere (lovers of Truth) the martyrs, and righteous. And how excellent these companions are!”
(*An-Nisā'* (4) 69).

Islam means absolute submission to the will of the Almighty Allāh, therefore, who ever declares himself as a *Muslim* he must believe in all the teachings of Islam. It is not acceptable to believe in one part of the Scriptures and disbelieve in the other, as this is a character of hypocrites and the double-faced people, Allāh says:

“Verily, the hypocrites will be in the lowest depth (grade) of the fire; no helper will you find for them” (*An-Nisā'* (4) 145).

²⁷² Abūl A'la Maudūdī, *The Meaning of the Qur'ān*, Vol.2, (Lahore-Pakistan:1971) pp.132-137.

Narrated by *Abū Hurairah* (may Allāh be pleased with him): The Prophet (peace be on him) said:

“The worst people before Allāh on the Day of Resurrection will be the double-faced people who appear to some people with one face and to other people with another face”²⁷³.

Hypocrites are ever ready to submit to the decisions of the Islamic Law (*Shari'ah*) if and whenever it goes in their favour; otherwise they resort to any system, custom and law court, which, will protect their interests.

In support of this Allāh the almighty says:

“Have you seen those (hypocrites) who claim that they believe in that which has been sent down to you, and that which was sent down before you, and they wish to go for judgement to false judges while they have been ordered to reject them. But Satan wishes to lead them far astray. And when it is said to them come to what Allāh has sent down and the Messenger you see the hypocrites turn away from you with aversion. How then, when a catastrophe befalls them because of what their hands have sent forth, they come to you swearing by Allāh, We meant no more than goodwill and conciliation. They (hypocrites) are those of whom Allāh knows what is in their hearts; so turn aside from them and admonish them and give them a piece of advice that may go deep into their hearts. (Tell them) “Every Messenger whom We have sent must be obeyed because Allāh has enjoined that. When they had wronged themselves, the best thing for them would have been to come to you and implore Allāh’s pardon, and if the Messenger had asked Allāh’s forgiveness for them, most surely they would have found Allāh Forgiving and Merciful.” (*An-Nisā'* (4) 60-64).

²⁷³ *Al-Bukhārī*, Vol. 8, The Book of Good Manners, Chapter. What is said about a double-faced person.

(Ḥadith number. 84)

5.2 *Al-Takāful* as an alternative to conventional insurance

Takāful (Islamic system of insurance) is the Islamic answers to the modern concept of insurance which is, one of the most controversial subjects among the Islamic jurists.²⁷⁴ Some of these scholars as indicated before see nothing unlawful in the basic principles underlying modern concept of the conventional insurance. And those who objected the whole concept of the modern form of the conventional insurance see no merit in such arguments.²⁷⁵ As a way out to the above mentioned controversial views among the Islamic scholars an alternative was found. Muslims are offered the concept of *takāful* (i.e. mutual or joint guarantee) which can be visualized as “a pact among a group of members or participants who agree to jointly guarantee among themselves against loss or damage that may inflict upon any of them as defined in the pact. Should any member or participant suffer a catastrophe or disaster he would receive a certain sum of money or financial benefit from a fund, also as defined in the pact, to help him meet the loss or damage.”²⁷⁶ The purpose of *takāful* may be life insurance and it may be risk insurance covering a property. If the insured person dies before the end of his covered time, or if an insured risk on the property materializes, then payment is made out of the account of the insured person. If, however, there is not enough money in the account, the outstanding balance is covered by the pooled fund. In other words, the participants in *takāful*, as mentioned above, share the consequences of a mishap.²⁷⁷

²⁷⁴ See chapter three, *Ruling From the Shari'ah Scholars pertaining to Conventional Insurance Contract*.

²⁷⁵ *Ibid.*

²⁷⁶ *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, (Kuala Lumpur, BIMB: 1996) p.8.

²⁷⁷ Nabil A. Šāleh, *Unlawful gain and legitimate profit in Islamic law*, (London) pp. 125-126.

The basic objective of *takāful* is to pay for a defined loss from a defined fund. Each member of the group pools effort to support the needy. It means mutual help among the group²⁷⁸

Today, there are more than twenty (20) companies worldwide providing *Takāful* business, operating inside and outside the Islamic world. The following is the list of *Takāful* providers in the world:

1. Australia:

Australia Takaful Insurance Inc.
Head Office

Suite 2,
Robinson Street Dandenong VIC,
3175 Australia
E-mail: mbassal@net2000.com.au

2. Bahamas:

Islamic Takafol and ReTakafol
10 Deveaux Street Nassau Bahamas

3. Baharain:

a. Islamic Insurance & Re-Insurance Company (IICO)

P.O. Box 2948
Manama
Bahrain

b. Takaful International Company (Bahrain)

P.O. Box 3230
Manama
Bahrain
E-mail: takaful2@batelco.com.bh

c. Takaful Islamic Insurance Company

Chamber of Commerce & Industry Building,
King Faisal Highway
P.O. 3005
Manama
Bahrain

²⁷⁸ *Takāful (Islamic Insurance) Concept & Operational Syatem From The Practitioner's Perspectiv..* p. 8.

4. Brunei:

a. Insurans Islam Taib Sendirian Berhad

Head Office:

Tingkat Bawah Bangunan Pusat Komersil & Perdagangan Bumiputera

Jalan Cator BS8811

Bandar Seri Begawan

Negara Brunei Darussalam

E-mail: easy@pp1.brunet.bn

insuranstaib@brunet.bn

b. Takaful IBB Berhad

Unit 5 Block A Kiarong Complex

Lebuhraya Sultan Hassanah Bolkiah

Bandar Seri Begawan BE1318

NEGARA BRUNEI DARUSSALAM

Email: takaful@brunet.bn

5. Germany:

Takaful S.A

Krefelderstrasse 21,

D-5000 Koln 1 Germany

6. Ghana:

Metropolitan Insurance Company Ltd.

Head Office:

2nd Floor Caledonian House

P.O. Box 20084

Accra

Ghana

E-mail: met@africaonline.com.gh

7. Indonesia:

PT Syarikat Takaful Indonesia

8. Iran:

a. Bimah Iran Insurance Company

107 Dr. Fatema Avenue,

P.O. Box 14155-6363

Tehran

Iran

b. Dana Insurance Company

898 Enghelab Avenue,
Tehran
Iran

9. Jordan:

Islamic Insurance Company

Wasfi Tal Street,
near Tabb'a Mosque
P.O. Box 941000
Amman
Jordan
E-mail: islamins@go.com.jo

10. Malaysia:

Syarikat Takaful Malaysia Bhd &

Takaful Nasional Bhd

11. Saudi Arabia:

a. International Islamic Insurance Company

5th Floor,
Al-Johrah Building,
Medina Road,
Jeddah 21463,
Saudi Arabia

b. Islamic Arab Insurance Co.

P.O. Box 6404
Dammam 31422
Saudi Arabia

c. Islamic Arab Insurance Company, UAE

4th Floor,
Dallah Tower
Palestine Road
Jeddah 21411
Saudi Arabia

d. Islamic Insurance Co. Ltd.

P.O. Box 21869,
Riyadh 11485
Saudi Arabia

e. Islamic Insurance & Re-Insurance Co. (IIRCO)

Bahrain Dallah Tower,
Palestine Road
P.O. Box 430
Jeddah 21411
Saudi Arabia

f. Islamic International Company for Insurance (Salamat)

P.O. Box 6324
Riyadh 11625
Saudi Arabia

g. Islamic Rhajhi Company for Co-operative Insurance

P.O. Box 99999
Riyadh 11625
Saudi Arabia

h. Islamic Takafol & Retakafol Company

P.O. Box 430
Jeddah 21411, Saudi Arabia

i. Islamic Takafol & Retakfol Company, Bahamas

1st Floor, Salim Centre
Khalid Ben Waleed Street
P.O. Box 15302
Jeddah 214444
Saudi Arabia

j. National Company for Co-operative Insurance

P.O. Box 86959
Riyadh 11632
Saudi Arabia

k. Takafol Islamic Insurance Co.

P.O. Box 20246
Riyadh 11455
Saudi Arabia
E-mail: takafol@khaleej.net.bh

**l. Islamic Corporation for Insurance of Investments and Export Credit
Export Credit Insurance Services**

1. Comprehensive Short Term Policy
2. Supplemental Medium Term Policy
3. Bank Master Policy.

12. Senegal:

Sosar Al Amane

Immeuble Fahd Bd Djilly Mbaye
BP21022
Dakar
Senegal

13. Singapore:

a. Singapore Ampro Holdings

Singapore AMP Centre
25 Jalan Tembusu
Singapore 438234
E-mail: ampro@singnet.com.sg

b. Syarikat Takaful Singapura (Agencies) Pte Ltd

10 Collyer Quay
#09-01/04

Ocean Building

Singapore 049315

As an agency, Syarikat Takaful Singapura (Agencies) Pte Ltd are acting for Keppel Insurance Pte Ltd in promoting family takaful products.

14. Srilanka:

Amana Takaful Limited

15. Sudan:

a. Sudan Shiekan Insurance & Reinsurance Co. Ltd.

b. Sheikh Mustafa Alameen Road

Khartoum

P. O. Box 10037

Khartoum

Sudan.

E-mail: shiekan@sudanet.net

c. JUBA Insurance Co. Ltd.

Horiah Av. - Baladiyah Av. Junction

Sayed Othman Al Ameen Bld.

P.O.Box 10043

Khartoum

Sudan

d. The National Reinsurance Company (Sudan) Ltd.

P.O. Box 443
Khartoum 11111
Sudan

e. The United Insurance Company (Sudan) Ltd.

Makawi Building
Baıldiyah Street
Nasir Square
P.O. Box 319
Khartoum
Sudan

f. Watania Co-operative Insurance Company Ltd.

1st Floor, Hashim Hajo Building,
P.O. Box 231
Khartoum
Sudan

g. Sudanese Insurance & Reinsurance Co.

16. Trinidad & Tobago

Takaaful T&T

C/o Muslim Credit Union
73 EMR Curepe
Trinidad & Tobago
E-mail: jali@carib-link.net

17. Tunisia:

BEIT Laadat Ettamine Tounsi Reinsurance

Immeuble Best-re
Zone Nord, Les Berges Du Lac
B.P 484 1080 Tunis Cedex
E-mail: general@bestre.com.tn

18. Turkey:

Ihlas Sigorta A.S

Mahmutbey Cad.Nekas Ismrk.
No: 17/19 Sirinevler/Ist
Turkey

19. U.A.E.

a. Islamic Arab insurance

Dubai Islamic Banking Building- Al-Dira
P.O. Box 10214
Dubai
UAE

b. Oman Insurance Company

Life Department
P.O. Box 5209
Dubai
UAE
E-mail: life@oicem.com

20. U.S.A.

Takaful USA {First Takaful USA}

576 Valley Road, Ste 141
Wayne, NJ 07470
USA
E-mail: info@takafulusa.com²⁷⁹

²⁷⁹ <http://islamic-finance.net/http://islamic-finance.net/http://www.islamic-finance.net/islamic-insurance/insindex.htmlhttp://www.islamic-finance.net/islamic-insurance/insindex.html>

Table 2: List of *Takaful* Companies in 'Arab Countries. ²⁸⁰

Company(s)	Year(s)	Country(s)
Al-Salam Islamic Takaful Co.	1992	Bahrain
Bahrain Islamic insurance co.	n.d	Bahrain
Islamic insurance and Re-insurance Co.	1985	Bahrain
Sarikat Takaful al-Islamiyah	1983	Bahrain
Takaful international	1989	Bahrain
Islamic insurance Co. Plc.	n.d	Jordan
International company for cooperative insurance	n.d	Kuwait
Qatar Islamic insurance Co.	1994	Qatar
Al-Aman cooperative insurance (al-Rajhi)	1985	S.Arabia
Global Islamic Insurance Co.	n.d	S.Arabia/Bahrain
International Islamic Insurance co.	n.d	S.Arabia/UAE
Islamic Arab insurance co. (Dallah al-Baraka group)	1979	S.Arabia
Islamic Arab insurance co. (IAIC)	n.d	S.Arabia/UAE
Islamic corporation for insurance of investment and export credit	1995	S.Arabia
Islamic insurance and reinsurance Co.(IIRCO)	1985	S.Arabia/Bahrain
Islamic international insurance Co. (salamat)	1985	S.Arabia/UAE
Islamic Takaful and Re-Takaful Co.	1986	S.Arabia/Bahamas
Islamic Takaful and Re-Takaful Co. (Bahamas)	1983	Bahamas
Islamic universal insurance	n.d	S.Arabia/Bahrain
National cooperative Ins Co. (NCCI)	1986	S.Arabia
Takaful Islamic insurance Co.Bahrain	n.d	S.Arabia/Bahrain
Al Baraka insurance Co.	1984	Sudan
Islamic insurance Co.	1979	Sudan
Sheikan insurance Co.	n.d	Sudan
The national Re-insurance company (Sudan) Ltd.	n.d	Sudan
The united insurance company (Sudan) Ltd.	1968	Sudan
Watania co-operative insurance Co.	1989	Sudan
BEIT ladat Ettamine Tounsi Saudi (Best Re)	1985	Tunisia
Alliance insurance	n.d	UAE
Oman insurance Co.	n.d	UAE
The Islamic Arab insurance Co.	1980	UAE

²⁸⁰ <http://islamic-finance.net/http://islamic-finance.net/http://www.islamic-finance.net/islamic-insurance/insindex.htmlhttp://www.islamic-finance.net/islamic-insurance/insindex.html>

Table 3: List of the *Takaful* Companies in Non-*Arab Muslim* Countries²⁸¹

Insurance Islam TAIB sendiri Berhad (IITSB)	1993	Brunei
Tabung Amanah Islam	n.d	Brunei
Takaful and Re-Takaful Co.	n.d	Brunei
Takaful Ab birhad	n.d	Brunei
Life Takaful (pte)	1999	Bangladesh
General Takaful (pte)	1999	Bangladesh
Syarikat Takaful Indonesia	n.d	Indonesia
PT Asuransi Takaful keluarga	1994	Indonesia
PT asuransi Takaful Umum	n.d	Indonesia
Pt Syarikat Takaful	n.d	Indonesia
Takaful asuransi	n.d	Indonesia
Asian Re-Takaful international (L) Ltd. (ARyIL)	1997	Malaysia
Asean Takaful group (ATG)	1996	Malaysia
Syarikat Takaful Malaysia Bhd.	1984	Malaysia
Takaful national Bhd	1993	Malaysia
ihlas sigorta As	n.d	turkey

Table 4: List of *Takaful* Companies in Non-Muslim Countries²⁸²

Company(s)	year	Country(s)
Takaful Australia	n.d	Australia
Islamic Takaful & Re-Takaful	n.d	Bahamas
Metropolitan Insurance Co.Ltd.	n.d	Ghana
International Takaful Co.	n.d	Luxembourg
Takaful S.A (formerly Islamic Takaful co.)	1982	Luxembourg
Sosar Al Amane (al Baraka group)	n.d	Senegal
Amprom holding Singapore Pte Ltd.	n.d	Singapore
Keppel insurance	n.d	Singapore
Syarikat Takaful Singapura	1995	Singapore
Amana srilanka(Pte)	1999	Srilanka
Takaful T&T	n.d	Trinidad
Takaful UK Ltd.	1982	UK
UBK @ IIBU Manzil programmes	1998	UK
Failaka investments, Inc.	1996	USA(Chicago)
Takaful USA management services,LLC	1996	USA
Takaful T & T Friendly Society	1999	Trinidad & Tobago

²⁸¹ *Ibid.*

²⁸² *Ibid.*

5.3 Concept of Insurance in Islam

The basic concept of insurance in Islam has existed since Islam's earliest appearance. The essence of insurance in the Islamic system could be seen in the establishment of the treasury (*bait-al-māl*) in order to help look after the welfare of *Muslims* and those reside within the Islamic domain. Another institution of the greatest form of insurance which Islam has legislated for its followers is *Zakāt* (the obligatory charity). In this system the money will be collected from the wealthy by the appointed authority and be distributed to those who deserve to receive from this fund, as outlined in *Surah at-Taubah* (9) Verse 60. Among those deserving to receive this fund are those in debt (*ghārimeen*). According to *Yūsuf al-Qaradāwī*, some of the early interpreters of the word *gharim* said, "It denotes one whose house has burned down or whose property or trade has been destroyed by flood or other disasters."²⁸³ As mentioned earlier that the concept of insurance does not contradict with the principles of the Islamic law (*Sharī'ah*). In fact, the principle of group responsibility and compensation was absolutely accepted and recommended by Islam. In Islam we find insurance for individuals against undesirable risks or hazards, and also we find provision for assisting them to overcome disasters which may befall them. We also find the concept of insurance in the traditions of the Prophet *Muhammad* (pbuh), an example of which is *Hadīth* narrated by *Abū Hurairah* (Allāh be pleased with him) that when the body of a dead person having burden of debt upon him was brought to Allāh's

²⁸³ Yūsuf al-Qaradāwī, *The Lawful and the Prohibited in Islam*, (Kuwait: 1993) pp.273-277.

Messenger (pbuh), he would ask whether he had left property enough to clear off his debt, and if the property left had been sufficient for that (purpose), he observed funeral prayer for him, otherwise he said (to his Companions): You observe prayer for your companion.²⁸⁴

'Abd al Hamīd Ṣiddīqī in his comment on this *Ḥadīth* said: This action from the prophet *Muhammad* (pbuh), "does not mean that he did not like to observe the funeral prayer for his deceased Companion. What he, in fact, wanted was that his Companions who had means enough to pay his debt should come forward and relieve him of his burden. The Holy Prophet (pbuh), was fully aware of the love and the sense of mutual brotherhood amongst his Companions and was, therefore, confident that they would not let his dead Companion be deprived of the great privilege of having his funeral prayer led by the Prophet (pbuh), himself."²⁸⁵

When Allāh the almighty opened the gateways of victory for the Prophet (pbuh), he said regarding the heirs of a deceased person in order to emphasize the concept of insurance and mutual cooperation among the *Muslims*. In a *Ḥadīth* narrated by *Abū Hurairah* (Allāh be pleased with him) the prophet said:

"By Him in Whose Hand is the life of *Muhammad*, there is no believer on the earth with whom I am not the nearest among all the people. He who amongst you (dies) and leaves a debt, I am there to pay it, and he who amongst you (dies) leaving behind

²⁸⁴ *Muslim*, V.3, Book of inheritance, (Ḥadīth number 3944).

²⁸⁵ Abd al- Ḥamīd Ṣiddīqī , *ṣaḥīḥ Muslim translation*, V.3, p.855.

children I am there to look after them. And he who amongst you leaves behind property, that is for the inheritor whoever he is²⁸⁶

“This *Ḥadīth* gives a clear indication of the responsibilities of an Islamic State in regard to the destitute people. It is the duty of the Islamic state to look to their economic needs and see that they do not suffer from hunger and deprivation, to clear off their debts if they are not solvent enough to pay them back and to properly look after the destitute families in case their earning members die. The Islamic State does not leave such helpless beings to the strokes of fortune. The Islamic State has certain responsibilities in regard to them which it must undertake with full enthusiasm.”²⁸⁷

However, Islam preferred organizing insurance on the basis of mutuality and cooperation. Among the Arabs at the commencement of Islam insurance against captivity and against killing were a real need, thus, in the Constitution of *Madīnah al-Munawwarah* of the first year of the emigration of Prophet *Muhammad* (peace be on him and his family) this insurance is called *ma'aqil* and it work in the following manner. If an enemy made someone prisoner of war, payment of ransom was needed for purchasing his liberation, and also culpable homicides required payment of wergild or blood money or compensation for the injury. This often exceeded the means of the individual concerned.²⁸⁸

²⁸⁶ *Muslim*, V. 3, Book of inheritance, (Ḥadīth number 3946).

²⁸⁷ Abd al-Ḥamīd ṣiddīqī, *ṣaḥīḥ Muslim translation*, V.3, p.855.

²⁸⁸ Muhammad Hamīdullāh, *Economic System of Islam*, (IIU, Islamabad, Pakistan) pp.8-9.

Regarding the blood money and compensation Allāh the almighty says:

“Never should a Believer kill a Believer; but (If it so happens) by mistake, (compensation is due); If one (so) kills a Believer, it is ordained that he should free a believing slave, and pay compensation to the deceased’s family, unless they remit it freely.”(*An-Nisā’* (4) 92).

Prophet *Muhammad* (pbuh), has organized insurance on the basis of mutuality, as required by Islam when the almighty Allāh says:

“Help you one another in righteousness and piety, but help you not one another in sin and transgression. And fear Allāh. Verily, Allāh is Severe in punishment”. (*Al-Mā’idah* (5) 2),

The members of a tribe could count on the central treasury of their tribe, to which everybody contributed according to his means, and if the treasury of the tribe proved inadequate, other related or neighboring tribes were under obligation to render help.²⁸⁹

A hierarchy was established for organizing the units into a complete whole whereby those emigrated from *Makkah al- Mukarramah* known as *al-Muhājirūn* who belonged originally to the various tribes, and the tribes of the people of *Madinah al-Munawwarah* known as *al-Anṣār* who gave the *Muhājirūn* asylum and every kind of assistance they may need, moral and material, should all constitute a new tribe of their own, for the purposes of the mentioned mutual insurance. Under the magnetic personality and wise leadership of the Prophet *Muhammad* (pbuh), who does not speak of his own desire, as the almighty Allāh says:

“ Nor does he say (aught) of (his own) Desire. It is less than inspiration sent down to him” (*An-Najm* (53) 3-4)

²⁸⁹ *Ibid.*

These two groups became like blood brothers. What the almighty Allāh says on this sincere and pure relationship of the brotherhood in Faith:

“Those who believed and adopted exile and fought for the Faith with their property and their persons in the cause of Allāh as well as those who gave (them) asylum and aid –these are (all) friends and protectors one of another...” (*Al-Anfāl* (8) 72)

“Those who believe, and adopt exile, and fight for the Faith in the cause of Allāh, as well as those who give (them) asylum and aid-these are (all) in very truth the believers; for them is forgiveness of sins and provision most generous”.
(*Al-Anfāl* (8) 74).

In the administration of the companions of the Prophet *Muhammad* (pbuh), after his death, particularly in the time of the caliph *‘Umar bin al-khaṭṭāb* (may Allāh be pleased with him and the rest of the Prophet companions) the concept of insurance was clearly and obviously existed and well organized. The mutualities or units of insurance were organized on the basis of professions, civil or military administrations to which one belonged. Earlier in (chapter one), I mentioned how caliph *‘Umar bin al-khaṭṭāb* (may Allāh be pleased with him) had organized a system of pensions in an institution called “*Dīwān*” for all the inhabitants of the country. while adults received the minimum necessary for living, a child as soon as he was born, will began to receive a certain pension.²⁹⁰

On this regard *Sheikh Yūsuf al-Qaraḍāwī* said: “The Islamic system has already insured the *Muslims* and others living under its governance in its characteristic fashion, the characteristic which permeates all its teachings and legislation. This provision is

²⁹⁰ Abī -al Ḥasan al-Māwardī, *Al-Ahkām al-Sulṭānīyah*, (1973: Egypt) pp.199-218

accomplished either through mutual help among individuals or through the government and its treasury, for the treasury, known as *bait al-māl*, is the universal insurance company for all who reside within the Islamic domain”²⁹¹

5.4 Basic Principles of Islamic Insurance

Insurance business under Islamic law possesses certain basic principles upon which contract of insurance is to be held valid. The principles could be classified into two categories: 1. Absolute Islamic Law principles.

2. Principle of *tabarru'* (i.e. donation)²⁹²

a. Absolute Islamic Law principles

The contract should not in any of its aspect contravene any of Islamic law principles. Therefore, it is important to indicate here that it is not necessary or inevitable that those new contracts such as insurance contract to much those well known contracts in the islamic jurisprudence or doctrine, or to have its conditions in the holy *Qur'ān* and the *Sunnah* of Prophet *Muhammad* (pbuh), but it is enough that these new contracts should not contravene or be in conflict with islamic forms of business transactions, because the basic refers to the permissibility of things which include contracts and its conditions, therefore, nothing is unlawful except what is prohibited by a sound and clear evidence from the Holy *Qur'ān*, or the tradition of Prophet *Muhammad* (pbuh). This principle of

²⁹¹ Yūsuf al-Qaradāwī, *The Lawful and the Prohibition in Islam*, (Kuwait: 1993) p.277.

²⁹² 'Alī Muhyī al-dīn . *Al-Dawābit-a l-Sharīah li 'Uqūl-al-Ta'mīn 'alā al-Ḥayāh* (Kuwait:1995) pp.190-197.

natural permissibility is not only limited to things and objects but also includes all aspect of human actions and behavior that are not related to acts of worship.

In his book *The Lawful and the Prohibited in Islam*, the eminent scholar, *Sheikh Yūsuf al-Qaraḍāwī*, has cited the great Islamic scholar *Ibn Taymīyyah* saying: People's saying and actions are of two kinds: (a) acts of worship by which their religion is established, and (b) customary practices which are required for day-today living. From the *Sharī'ah* we know that acts of worship are those acts which have been prescribed and approved by Him. Nothing is to be affirmed here except through *Sharī'ah*. However, as far as the worldly activities of people are concerned, they are necessary for everyday life. Here the principle is freedom of action. Nothing may be restricted in this regard except what Allāh the almighty has restricted, because commanding and prohibiting are both in His hands.²⁹³ This Islamic principle is supported by many Islamic texts from both the *Qur'ān* and the traditions of the Prophet *Muhammad* (pbuh). Among the texts are the saying of Allāh almighty in the following verses:

“O you who believe! Fulfil (all) **obligations**.”
(*Al- Māidah* (5) 1)

“...And fulfil (every) **covenant**. Verily, the **covenant**, will be questioned about” (on the Day of Resurrection)
(*Al-Isrā'* (17) 34).

²⁹³ Yūsuf al-Qaraḍāwī, *The Lawful and the Prohibited in Islam*, (Kuwait: 1993) pp.14 – 18.

The words '*Uqūd*' and '*Auhūd*' in the noble verses are Arabic word which means obligations.²⁹⁴ These words implicate so many things such as commercial contracts like buying and selling or any other transactions. And also social contracts like contract of marriage, etc.²⁹⁵

The points that are emphasized and stressed here are based on the mentioned noble verses where any contract or transaction which does not contravene the principles of the Islamic Law (*Sharī'ah*) is permissible, because the basic refers to the permissibility of things which includes contracts and its conditions. Narrated by '*Urwah*' (May Allāh be pleased with him) the prophet (peace be on him) said:

(...Any condition, which is not in Allāh's Law, is invalid even if there were a hundred such conditions. Allāh's Rules are the most valid and Allāh's Conditions are the most solid.)²⁹⁶

b. Principle of *Tabarru'*

A contract of an Islamic insurance in order to be held valid according to Islamic Law (*Sharī'ah*) is that it must (in principle) base on *Tabarru'* (i.e. donation), so that the elements of *Gharar* (risks) will be avoided. The concept of *Tabarru'* is integrated into the Islamic insurance policy in order to eliminate the elements of uncertainty which will consequently leads to a dispute among *muslims*. The almighty Allāh says:

²⁹⁴ Ibn Manzūr, *Lisān-al- 'Arab*, (Beirut: 1968) Vol. 3, pp.296-297. See also, al-Zubaydī, *Tāj-al- 'Arūs*, (Cairo: 1306H) Vol. 2, pp. 426-427. Muhammad b. Abū Bakr al-Rāzī, *Mukhtār al-Šihāh*, (Jeddah: 1986) pp.444-445. Rohi Baalbaki, *Al-Maurid*, (Beirut, Lebanon: 1991) pp.770-771.

²⁹⁵ Abū Bakr al-Jazā'irī, *Aisar-al-Tafāsīr*, (Al-Madīnah al-Munawwarah: 1994) pp.586-587. See also, Muhammad 'Alī Šābūnī, *Mukhtaṣar Tafsīr Ibn Kathīr*, (Beirut: 1981) pp.474-475. 'Abd Allāh Yūsuf 'Alī, *The Meaning of the Holy Qur'ān*, (Commentary 682) p.238.

²⁹⁶ *Al-Bukhārī*, Vol.3, The Book of Conditions, (889).

“And obey Allāh and His Messenger, and fall into no dispute, lest ye lose heart and your power depart; and be patient and persevering; for Allāh is with those who patiently persevere.”(*Al-Anfāl* (18) 46).

Thus, the insured shall agree to donate or contribute a proportion of his premium to a mutual and joint fund that provides benefit to him or fellow insureds that suffer the define loss.²⁹⁷

Allāh the almighty says:

“The Believers, men and women, are protectors, (helpers, supporters, friend) of one another; they enjoin what is just, and forbid what is evil; they observe regular prayer, practice charity, and obey Allāh and His Messenger. On them will Allāh pour His Mercy. Surely Allāh is Almighty, All-Wise.”
(*At-Taubah* (9) 71).

Narrated by *Abd Allāh bin 'Umar* (may Allāh be pleased with them): Allāh's Messenger (peace be on him) said:

“A Muslim is a brother of another Muslim, so he should not oppress him, nor should he hand him over to an oppressor. Whoever fulfilled the needs of his brother, Allāh will fulfil his needs; whoever brought his (Muslim) brother out of a discomfort, Allāh will bring him out of the discomforts of the Day of resurrection, and whoever screened a Muslim, Allāh will screen him on the Day of Resurrection.”²⁹⁸

The concept of Islamic system of insurance which consists the elements of shared responsibility, common interest, and solidarity has been accepted by the *muslim* jurists for the reasons that all the participants would cooperate among themselves for their

²⁹⁷ Fathī Lāshīn, *la'ādat-ul-ta'mīn fīl Islam*, (Kuwait: 1990) pp.97-106.

²⁹⁸ *Al-Bukhārī*, Vol. 3, The Book of the Oppressions, (622).

common interest and goodness, and each one of them would pay his or her due, in order to help those who are in need of assistance among them.

As mentioned earlier the element of “*Al-Gharar*” or uncertainty in the contract has been eliminated as far as subscription and compensation are concerned, and it does not aim at deriving advantage at the cost of other individuals.²⁹⁹

Therefore, Islamic jurists and intellects have agreed that *takāful* to be the substitute for conventional insurance. In order the contracts of *takāful* insurance system to be valid according to Islamic law, *tabarru'* system should become the main core of *takāful* concept which will make insurance in *takāful* comply with the Islamic system of business (*muā'malah*). Because the presence of this principle within the *takāful* configuration and arrangement will ensure that *takāful* is within the sphere or scope of Islamic Law (*Sharī'ah*), the system is free from the elements of uncertainty (*Gharar*), gambling (*Qimār* or *Maisir*), and interest (*Ribā*), which are the main reasons in prohibiting the contract of the conventional insurance.³⁰⁰ However, *Takāful* system (Islamic insurance) based its operations on the Islamic principles of *al-Muḍārabah* that is profit and loss sharing. Therefore, it is important and significant before we study the concept and operational system of *takāful* business to explain and clarify the provisions and principles of *al-Muḍārabah* itself, its definition, legitimacy, and all other aspects that are related to it. The aim is to have deep and profound understanding of *takāful* and its operations.

²⁹⁹ *Takāful (Islamic insurance) Concept & Operational System From the Practioner's Perspective*, (Kuala Lumpur, Malaysia: 1996) pp.7-8.

³⁰⁰ Ali, Muhyee al-Dīn, *Al-ḥawābit-ul-sharī'ah-li-'uqūḍ-ul-ta'mīn-alal-hayāt*, (Kuwait: 1995) pp.191-192.

5.5 The concept of *al-Muḍārabah* in *Sharī'ah*

In the conventional economic system, private investment occurs in two ways:

- a. Active investment, where one or more persons put their own capital into a project, manage it themselves and enjoy the fruits of their labour and capital themselves.
- b. Passive investment, where the investor provides the capital and receives a return but takes no further part in the project. In this investment the investor has three options:
 1. To deposit his capital in a bank and receive interest.
 2. To buy securities or bonds and receive interest.
 3. To buy shares in a company and receive a dividend.

According to the Islamic Law (*Sharī'ah*) the income from the first two options is regarded unlawful, while the third option and the active investment are permissible.”³⁰¹

In the beginning of the Prophet *Muhammad* (pbuh) mission as a Messenger of the almighty Allāh, he did one of the three things with regard to the practices and customs of the *Arabs* before the light of Islam.

1. If these practices and customs involved the denial of the existence or the oneness of the Lordship of almighty Allāh or associating anything or anyone with Him or were against any command of Him, the Prophet Muhammad (pbuh) will prohibit such things outright.
2. If it did not involve any such things or actions the Prophet (peace be on him) will not interfere with it.

³⁰¹ A.L.M. Abd al Gafoor, *Muḍārabah-based Investment and Finance*, IBFNET web site

3. If some useful or essential practice involved some elements of the first and that could be removed, the Prophet (pbuh) will remove the offending elements and allowed the modified version to be practiced. *Muḍārabah* and other contracts (such as *Mushārah* etc). belonged to the second group.³⁰² However, *Muḍārabah* is an ancient form of doing business, which is been practiced by the Arabs since long before the advent of Islam. The Arabs in *Makkah* (*Quraish*³⁰³) were travelers and merchants they carry goods in the summer to the north Syria and south to the Yemen in winter. Regarding their trade journeys to the Yemen and Syria Allāh says:

“ (It is a grate Grace and protections from Allāh) for the taming of the Quraish, (And with all those Allāh’s Grace and Protections for their taming, We cause) the (*Quraish*) caravans to set forth safe in winter (to the south) and in summer (to the north without any fear)” (Quraish (106) 1-2).

“When a trading caravan is organized it was the practice of *Quraish* either to join it with their own goods and money or to send it through agents who did the business on their behalf. When a caravan returned home and the goods were all sold, the mission was complete and it was time to prepare the ‘balance sheet’ and calculate the profit or loss. Traders who took their own money and goods assessed the success of the mission by the profit or loss they made and enjoyed the fruits of their labour or mourned their loss on their own. Those who combined their fortunes with that of one or more of their colleagues and undertook the project together had to go one step further and divide the fortune or loss among the partners according to a pre-agreed pattern.

³⁰² *Ibid.*

³⁰³ Quraish were the noblest tribe of Arabia, the tribe to which belonged the Prophet Muhammad himself.

The rules of this pattern had long been established by custom and had been known by the name *Mushārah*. The agents who carried others' goods or money had to give accounts to their principals and claim their share of the profit or loss according to a pre-arranged pattern. This too had rules assigned by custom and was known by the name *Muḍārah*.³⁰⁴

5.5.1 The central idea in the concept of *al-Muḍārah*

The central idea in the concept of *al-Muḍārah* or profit and loss sharing contract is that two parties, one with his capital and the other with his efforts and knowledge in doing business agreed to do business together. The investor or capital-owner (*Rabb-al-Māl*) provides the capital and plays no further part or any interference in the business execution, which is the exclusive province of the agent (*Al-Muḍārib*). However, if the business ends in profit both will share it in a pre-arranged proportion, but if results in loss the whole loss will be borne by the the investor and the working partner who does not normally partake in the investment in terms of money, gains no benefit out of his efforts and time, which was his part of the investment³⁰⁵

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid.* See also Nabīl A. ṣāleh, *Unlawful gain and Legitimate profit in Islamic Law*, (second ed. London) pp.123-143.

5.5.2 Definition of *al-Muḍārabah*

Al-Muḍārabah, is also called *al-Qirād*³⁰⁶ defined by nearly all schools of Islamic jurisprudence as “ a contract between at least two parties whereby one party called the investor (*rabb al-māl*) entrusts money to the other party called agent (*muḍārib*) who is to trade with it in an agreed manner and then return to the investor the principal and a pre-agreed share of the profits and keep for him self what remains of such profits”.³⁰⁷

In another wards *Muḍārabah* means that one party provides capital and the other utilizes it for business purposes under the agreement that profit from the business will be shared according to a specified proportion.³⁰⁸

5.5.3 Legitimacy of *Muḍārbah* in Islamic Law

Partnership (*Shirkah*) and profit sharing (*Muḍārabah*) were in practice throughout the Prophet Muhammad (peace be on him and his family) period and he did not prohibit it. On the contrary, he expressed approval, of these methods of business. And the Companions (May Allāh be pleased with them), trained by Prophet and obedient to him unanimously adopted these methods of business also.³⁰⁹

³⁰⁶ Sayyid Sābiq, *Fiqh al-Sunnah*, Vol.3 (Beirut, Lebanon: 1997) p. 152. See also, Ibn rushd, *Bidāyah al-Mujtahid*, Vol.4, Kitāb al- Qirād (Beirut: 1995) p.1367. Abī al-Hasan al-Māwardī, *Al-Muḍārabah*, (Egypt ,al-Manṣūrah, , 1989), pp.117-119. Al-Mardāwī, *Al-Inṣāf*, Vol. 5 (Cairo: 1956) pp.427ff. (Qirād and Muḍārabah are both the same, i.e. that the goods or money belong to the one and the labour of the other and both share in the profit in a pre-agreement.)

³⁰⁷ Al-Shāfi ‘ī, *Mawsū‘at al-Imām al-Shāfi ‘ī*, Kitāb al-‘Umm, Vol.4 (Beirut: 2000) pp. 269-272. See also, Abī al-Hasan al-Māwardī, *Al-Muḍārabah*, pp.118-120. Sayyid Sābiq, *Fiqh al-Sunnah*. Vol.3 (Beirut: 1997) p.152. Nabil A. šāleh, *Unlawful gain and legitimate profit in Islamic Law*, p.128.

³⁰⁸ al-Mardāwī, *Al-Inṣāf*, Vol. 5 (Cairo: 1956) p.427. See also Ibn Rushd. *Bidāyat al-Mujtahid*, Vol.4, Kitāb al- Qirād (Beirut: 1995) p.1367. Muhammad Nejātullāh šiddiqī, *Partnership and profit-sharing in Islamic Law*, (Islamic Foundation, U.K. 1985) p.15.

³⁰⁹ Ibn Qudāmāh, *al-Mughnī*, Vol.5,(Riyadh: 1981) pp.32ff. See also Sayyid Sābiq, *Fiqh al-Sunnah*, pp.152-153. Abū Bakr Jābir al-Jazā‘irī, *Minḥāj al-Muslim*, (Madīnah al Munawwarah, 1976), p.334. Abī al-Hasan al-Māwardī, *Al-Muḍārabah*, pp.118-120.

1. Reported by *Mālik b. Anas* that *Zaid b. Aslam* reported from his father that '*Abd Allāh* and '*Ubaid Allāh*, sons of '*Umar b. al-Khaṭṭāb* (may Allāh be pleased with them), set out towards '*Irāq* with a force. On their return they visited *Abū Mūsā al-'Ash 'arī* who was the Governor of *Baṣrah*. He welcomed them and then glorified them and then said: Oh that I could do you some good or profit, I would do it. He said again: Why not, here is some property out of the property I intend to send to the Commander of the Faithful. Here I shall give you a loan of this amount. Buy goods of '*Irāq*. Sell them at *Madīnah*. Give the principal to the Commander of the Faithful and you take the profit. They said: We agree. He gave accordingly and wrote to '*Umar b. al-Khaṭṭāb* to realize the property from them. When the two arrived they sold the goods and obtained profit and took the principal property to '*Umar b. al-Khaṭṭāb*. '*Umar b. al-Khaṭṭāb* asked: Was such a loan given to each man of the army? They said: No. The Commander of the Faithful said: Then he must have given the amount to you knowing you to be the sons of the Commander of the faithful. Pay the principal as well as the profit. '*Abd Allāh* was silent, but '*Ubaid Allāh* said: O Commander of the faithful, you should not have acted thus, for if the goods had been damaged or lost we should have paid the penalty. He said: yes. '*Abd Allāh* still kept silence but '*Ubaid Allāh* repeated the statement. Meanwhile one of the Companions of '*Umar* ('*Abd al-Rahmān b. 'Auf*) spoke out and said: O Commander of the faithful, it would be better if you do *muḍārabah*. Then '*Umar* took the principal and half the profit and '*Abd Allāh* and '*Ubaid Allāh* took the remaining half of the profit.³¹⁰

³¹⁰ Sayyid Sābiq, *Fiqh al-Sunnah*, p. 152. See also al-Imām Mālik, *Al-Muwatta*, Vol. 2. (Kitāb al-Qirāḍ) on partnership, p.687.

2. *Ya 'qūb al-Madanī* reported that *'Uthmān b. 'Affān* gave him goods by way of *muḍārabah* so that *Ya 'qūb* may work and partake in the profit.³¹¹
3. It is reported that the prophet (peace be on him), went to *Syria* for trade with *Khadījah's* merchandise on the basis of profit sharing (*muḍārabah*).³¹²
4. Reported by *ibn 'Abbās* (May Allāh be pleased with him) that *Al-'Abbās b. 'Abd al-Muṭṭalib* engaged in *muḍārabah* deals with certain conditions and when the Prophet (peace be on him) came to know of it, he expressed his approval.³¹³

In support of these methods of business (*shirkah and muḍārabah*) the jurist (*A'imma*) emphasized that it is necessary to use these methods in the interest of human welfare. Because, "it often happens that a person possesses capital but is unable to engage in business, or the other way about- willing to engage in business but without disposal capital. It is possible through *muḍārabah* for both these parties to attain a common objective by mutual co-operation"³¹⁴

The evidence mentioned above confirms and substantiates the legitimacy of the *muḍārabah* contract. This contract in fact, is non-binding one, (*'aqd jāiz ghayr lāzim*), therefore, it can be terminated by the will of either party, at any point.³¹⁵ *Muḍārabah* contract will be considered valid only upon fulfilling the following three conditions:

³¹¹ Ibn Hajar al- 'Asqalānī, *Bulūgh al-Marām min Adillāh al-Ahkām*, (Bāb al-Qirād , Ḥdīth number 890) (Beirut: 1992) p. 267.

³¹² Sayyid Sābiq, *Fiqh al-Sunnah* , p. 152. See also Abil-Hasan al-Māwardī , *Al-Muḍārabah*. pp. 120-125.

³¹³ Abil-Hasan al-Māwardī , *Al-Muḍārabah*. pp. 120-125.

³¹⁴ Sayyid Sābiq, *Fiqh al-Sunnah* , pp. 152-153 . See also Muhammad Nejātullāh ṣiddiqī, *Partnership and Profit-sharing in Islamic Law*. P.14.

³¹⁵ Abu al- Hasan al-Māwardī, *Al-Muḍārabah*, pp.124-125. See also Sayyid Sābiq, *Fiqh al-Sunnah*, p.154

1. Availability of *rab al-māl*, or *ṣāhib al-māl* (i.e. Provider of the capital)

2. Availability of *muḍārib*, or *al-‘āmil* (i.e.gent-manager)

3. Determination of the share of profit for each one of them.³¹⁶

Muslim jurists unanimously agreed that under the *muḍārabah* contract, the party that provides the capital and the party that engages in business may each comprise many persons, means that, the capital may be provided by several persons and the business may be carried out by several other persons (i.e. *ta ‘addud ṭarafai ‘aqd al-muḍārabah*).

Alternatively, capital may belong to one person and the party that utilizes it in business may be many (i.e. *ta ‘addud al- ‘āmilīn fī al- muḍārabah*), or again, several persons may pool their capital while one person uses it for carrying on business (i.e. *muḍārabah al-ithnine –li- ‘āmilin wāhid*). However, if the business was carried out by many persons, and the capital belong to one person, in other *muḍārabah* contract to be considered valid in this regard, the share of profit for each one of them must be specified and equally.³¹⁷

³¹⁶ Sayyid Sābiq, *Fiqh al-Sunnah*, Vol.3 pp.153-154. See also Ibn Rushd. *Bidāyah al-Mujtahid*, Vol.4, Kitāb al- Qirād (Beirut: 1995) p.1369. Abī al- Hasan al-Māwardī, *Al-Muḍārabah*, pp.124-125.

³¹⁷ *Ibid.* pp. 274 –279. Ibn. Qudāmah, *Al-Mughnī*, Vol. 5, pp. 145- 194. Al-mardāwī, *Al-Inṣāf*, Vol. 2, p.437.

5.5.4 Table 5: Duties and rights of the Investor and the agent³¹⁸

Duties and rights of the investor	Duties and rights of the agent
1. To hand over the investment capital to the agent otherwise the contract of <i>muḍārabah</i> will be invalid.	1. To comply with the trust vested in him while conducting the <i>muḍārabah</i> affairs. This is a primary duty of the agent.
2. To see the agent- manager complying with the terms and conditions of the <i>muḍārabah</i> .	2. To liquidate the <i>muḍārabah</i> . That is to reconvert the <i>muḍārabah</i> investment to money.
3. To share in the profit with the agent on a strictly proportional basis.	3. To conduct the <i>muḍārabah</i> affairs with an appropriate degree of freedom.
4. To see his liability exclusively limited to the capital he has invested. In this regard, his interest will be protected.	4. To deduct all legitimate business expenses from the investment capital in his trust.

The distribution of profits between the investor and the capital owner (*Rab al-māl*) and the agent (*Muḍārib*) must be on a proportional basis and cannot be a lump sum or a guaranteed return. In a valid *muḍārabah* the investor is not liable for losses beyond the amount of the capital he has given to the agent. And the agent who does not normally

³¹⁸ al-Mardāwī, *Al-Inṣāf* Vol.5, pp.427ff. See also Nabīl A. ṣāleh, *Unlawful gain and legitimate profit in Islamic Law*, pp.133-143. See also Abī al- Hasan al-Māwardī, *Al-Muḍārabah*, p.149. Ibn Qudāmāh, *Al-Mughnī*, Vol. 5, pp. 76-77. Abī al- Hasan ‘Alī al-Mardāwī, *Al-Inṣāf*, Vol.5 (Kitāb al-sharikah) (Cairo: 1956) pp.407-465.

partake in the investment in terms of money, does not bear any share of the losses, losing only his time and effort.³¹⁹

5.6 Basic Provisions and Injunctions Regarding *Muḍārabah*

a. The amount of the capital invested in *muḍārabah* contract must be determined and known to the parties involved, this is the view of all four schools of Islamic jurisprudence (*al-Ḥanafīyyah*, *al-Mālikīyyah*, *al-Shafi 'aīyyah*, and *al-Ḥanābilah*).³²⁰

b. Distribution of Profits and Liability for Loss

b.1.1 Distribution of Profit

As mentioned earlier the profit will be distributed between the two parties in *muḍārabah* contract in proportions agreed by them in advance. The share of each one of them in profit must be settled as a simple proportion or percentage. No fixed amount can be settled for any party. If a person provides capital to another on *muḍārabah* and both parties settled that all the profit will be exclusively for the capital-owner and not for the working partner or other way round all the profit will be exclusively for the working partner, according to *Shafi 'aīyyah* and *Ḥanābilah* any clause securing for the capital-owner or the working partner all the profits the agreement of *muḍārabah* in this case,

³¹⁹ Ibn Rushd. *Bidāyat al-Mujtahid*, Vol.4, Kitāb al- Qirāḍ (Beirut: 1995) pp.1367-1379. See also Abi al-Hasan al-Māwardī, *Al-Muḍārabah*, pp.117ff. al-Mardāwī, *Al-Inṣāf* Vol.5, pp.427ff. Sayyid Sābiq, *Fiqh al-Sunnah*, pp.154-155. Nabil A. šāleh, *Unlawful gain and legitimate profit in Islamic Law*, pp.128-129.

³²⁰ Abū Bakr al-Jazāirī, *Mihāj al-Muslim*, (Al-Madīnah al-Munawwarah: 1976), pp.334-335. al-Māwardī, *Al-muḍārabah*, pp. 131-133. Ibn Qdāmah, *Al-Mughnī*, Vol.5, pp. 19-86.

will be considered null. This is because it conflicts or contradicts with the objectives and the essence of the concept of *muḍārabah*, which is necessarily entail the distribution of the profits between the two parties involved. *Ahnāf* advocated that the contract in this form is no longer a contract of *muḍārabah* but a credit. But *Mālikīyah* have no objection to such agreement. It is deemed by them as a gift with no adverse bearing on the *muḍārabah* contract, therefore, the contract is valid and sound.³²¹ In my view, base on the essence of *muḍārabah* concept, I incline to the view of those who advocate that the *muḍārabah* agreement here is considered null, not valid, because *muḍārabah* is based on a partnership in profit, one provides capital and the other uses his time and efforts to liquidate the capital, therefore the profit must be shared between them in a pre-agreed proportional share, otherwise the contract will no longer be *muḍārabah*.

b.1.2 Fixed sum lump of profit cannot be settled for any party

All the jurists unanimously agreed that a fixed sum of profit cannot be settled under *muḍārabah* contract for any party, because *muḍārabah* is a contract of partnership in profit, therefor, the share of the profit for the parties concern must be settled as a simple proportion of profit that is one-half or, one-third or, one-fourth. If a certain sum is settled for one party, let say 1000 dollars out of profit or, more than it or, less than it, and the rest for the other party or between them, the *muḍārabah* agreement in this case will become void.³²²

³²¹ Al-Māwardī, *Al-muḍārabah*, pp.212-215. Ibn Qudāmah, *Al-Mughnī*, Vol.5, pp. 35. Al-Mardāwī, *Al-Inṣāf*, Vol.5, pp.248-249. al-dusūqī, *Hāshiyah-al- Dusūqī 'ala al-Sharh-al-kabīr*, Vol.3, p.523.

³²² Ibn. Rushd al-Qurṭubī, *Bidāyah-al-Mujtahid wa nihāyah-al-Muqtaṣid*, Vol. 2 (al-Halabī: 1975), p. 238. Ibn Qudāmah, *Al-Mughnī*, Vol. 5, pp. 76-148. al-Māwardī, *Al-Muḍārabah*, pp. 151-152.

b.2.1 Liability for Loss

Loss is the part of the capital that is destroyed. There is no difference of opinion among all schools of Islamic jurisprudence regarding the fact that under the *muḍārabah* contract a working party or agent (i.e. *muḍārib*) who does not normally partake in the investment in terms of money, does not bear any share of the losses, but losing only his time and effort provided the loss is not due to any misdeed on his part. The working party is normally considered a trustworthy partner with respect to the capital remitted to him, therefore he is not liable for any loss occurring in the normal course of the business activities, except when there is a breach of trust.³²³ That is when the working party (*muḍārib*) breaks one or more of the agreed conditions.

According to *ibn Qudāmah*, “under *muḍārabah* loss would occur in the capital specifically and will not be borne by the party engaged in business because loss means a reduction in capital which is owned by the capitalist and is not at all shared by the party doing business. Loss will therefore accrue only to the party investing capital and not to the other party.”³²⁴

b.2.2 When the Profit or Loss should be determined

There is no difference of opinion among the jurists of Islam that profit or loss in *muḍārabah* should be determined at the termination or end of business.³²⁵ Because this is the only appropriate time for any final settlement.

³²³ al-Māwardī, *Al-muḍārabah*, pp. 190-192. Ibn Qudāmah, *Al-Mughnī* Vol.5, p. 192. al-Mardāwī, *Al-Inṣāf*, Vol.5, p.455. Muhammad Nejātullāh ṣiddīqī, *Partnership and Profit-sharing in Islam*, pp. 19-22.

³²⁴ Ibn Qudāmah, *Al-Mughnī* Vol. 5, p.119.

³²⁵ *Ibid.* pp. 57-64.

5. Request from the working partner for the distribution as soon as the profit appears.

If a working partner demands his share of profit as soon as profit appears before the termination of business, the capital-owner should not be forced to do so, and so-and-so the working partner should not be forced to share out the profit before the termination of business,³²⁶ because no guarantee that the working partner (*al- 'āmil*) if there is a loss and was asked to surrender what he takes out of the profit before the termination of the contract he will be able to pay back the required amount. It would be legitimate if both agreed to share out the profit because all rights are limited to them only.³²⁷

In this regard, *Ibn Qudāmah* has stated in *Al-mughnī*, that there is no fault if the working partner is given some installments out of profit, but if, on the final accounting, it is necessary to recover some money out of the installments profit paid to him before the termination of the contract, it must be recovered. In another word, if after the distribution of the profit and a part of the capital is lost, both must return the profit so that the capital-owner may be repossessed in full of his investment. *Atthaurī Shāfi 'ī* and *Ishāq* has mentioned this view. *Abū Ḥanīfah* said: The distribution of profit is not legitimate as long as the capital-owner (*rab al-māl*) is not in possession of his capital.³²⁸

Muhammad Nejātullāh ṣiddīqī said: “ It is clear from the writings of all four schools of Islamic jurisprudence that there is nothing wrong in some amounts being taken out of profits as ad hoc installments- where this is done by mutual agreement of the partners and where, obviously, the business is showing profit at the time.

³²⁶ al-Māwardī, *Al-Muḍārabah*, pp. 200-201.

³²⁷ Ibn Qudāmah, *Al-Mughnī*, Vol.5, p.63. al-Mardāwī, *Al-Insāf*, pp.445-447.

³²⁸ Ibn Qudāmah, *Al-Mughnī*, Vol.5, pp.63-65.

No school of jurisprudence would object to such a distribution being regarded as 'provisional' and subject to final settlement of claims on the termination of business. In the case of a joint enterprise continuing in operation for a long time, it would be easier and in the interest of the parties themselves, that distribution of profit is permitted before the termination of business. This is all the more necessary in case of *muḍārabah* as the working partner will not be able to continue in this business, possibly his only source of income, if he gets nothing out of it for a long time.³²⁹

My opinion on this issue is that none of them should be forced to share the profit before the termination of the *muḍārabah* contract because no guarantee that it may not be a loss in the business, but it would be legitimate if both agreed to share out the profit, because, as mentioned above, all rights on this wealth is limited to them only.

6. The working partner has no right to take anything out of the profit without the permission of the capital-owner

There is no difference of opinion among the Islamic jurists that, when the profit appears the working partner has no right to take anything out of it without the permission of the capital-owner. There are three reasons why this right has been denied to the working partner (*al-muḍārib*)³³⁰

1. The profit is considered as a protection to invested capital. The working partner has no guarantee that there may be a loss which this profit may not be enough to cover.

³²⁹ Muhammad Nejātullāh ṣiddīqī, *Partnership and Profit-sharing in Islamic Law*, p.35.

³³⁰ Ibn Qudāmah, *Al-Mughnī*, Vol.5.p 63.

2. The capital-owner is his partner in profit; therefore he has no right to take anything out of the profit without the permission from him.
3. His right of ownership on this profit is incomplete, as mentioned above, there may be a loss in future and in order to make it good he may have to surrender this profit.

However, if the capital-owner has permitted him to take some part of it, it would be legitimate, because all rights on this wealth are limited to these two parties only, therefore, they are the only persons who have claim on it.³³¹

7. The working partner cannot claim his share of profit as far as he did not return the original capital in full

All the Islamic jurists unanimously agreed that in *muḍārabah* the working partner is not entitled to any share of profit as long as the original capital (*ra's al-māl*) has not been returned to the capital-owner, and whenever there is both profit and loss in business, loss is to be made good out of profit whether the loss and profit have occurred in a single turnover only, or one turnover has resulted in loss while another in profit.³³²

Regarding the working partner's right to his share of profit as soon as profit accrues before distribution. *Ibn Qudāmah* said: "Our dominant view is that his right is established". This is the opinion of *Abū Ḥanīfah*. The opinion of *Imām Mālik* is that the

³³¹ *Ibid.* Vol.5, p.63.

³³² *Ibn Qudāmah, Al-mughnī*, Vol.5, p.57. *al-mardāwī, Al-Inṣāf*, Vol.5, p.443. *al-Jazā'irī, Minhāj al-muslim*, p. 335.

working partner cannot have a claim on profit unless distribution takes place. And to *Imām Shāfi* 'ī are ascribed both views in two of his saying.³³³

8. Limited financial liabilities

The financial liability of the investor in *muḍārabah* is exclusively limited to the capital he has invested. The working partner or agent has no right to spend any sum greater than the original capital (*ra's al-māl*) without the investor's permission.³³⁴ In another word, "the financial liability of the investor would be limited to the extent of his capital investment except when he has permitted the working partner to borrow or to purchase on credit thereby adding to his liability."³³⁵ If the working partner exceeded these bounds or makes some business transactions that lead to an increase in financial liabilities beyond the limits of the invested capital he alone will be responsible for it. Likewise if a certain financial liability has fallen upon the working partner on account of his personal deed, it will have nothing to do with the *muḍārabah* business.³³⁶

9. Business expenses (*ma 'ū nah al-'amal*)

There is no difference of opinion among the Islamic jurists that is the working partner's right to deduct all legitimate business expenses such as rental, payment of taxes, etc. from the investment capital in his trust. The limits of his freedom are defined by its conformity to the twin criteria of customary commercial practice (i.e. *mā-jarat 'alaihi 'ādat al-tujjār*). Any expenses should be considered and retracted from the profit if any,

³³³ Ibn Qudāmah, *Al-mughnī*, Vol. 5, p. 57.

³³⁴ *Ibid.* p. 47. al-Māwardī, *Al-muḍārabah*, pp. 257-258.

³³⁵ Muhammad Nejātullāh ṣiddiqī, *Partnership and Profit-sharing in Islamic Law*, p. 78.

³³⁶ *Ibid.* p. 79.

and the rest of the profit would be distributed between them according to the conditions agreed upon.³³⁷

10. Working partner's personal expenses. (*nafaqat al-‘āmīl*)

Dissimilar views on this issue among the Islamic jurists. According to the *Ḥanafī* teaching, the working partner (*al-āmīl*) is entitled to all his personal expenses out of the investment money on a business trip only. It is not necessary the working partner's right be expressly stipulated in the contract.³³⁸ And also *Mālikīyyah* have similar opinion whereby the working partner is given freedom to take all his personal expenses out of the investment money during a business trip until he return to his home.³³⁹ *Ḥnabilah* have different view on this issue they said: personal expenses may be deducted from the *muḍārabah* investment, if its stipulated in the contract between the parties involved, whether they are incurred at home or on business trip.³⁴⁰ From the conflicting account of the *Shāfi‘ī ‘aīyyah* teaching, it is clear that the working partner is not entitled to deduct his personal expenses from the investment money unless these expenses are incurred during a business trip and unless the capital-owner gives him permission to do so.³⁴¹

³³⁷ al-Māwardī, *Al-muḍārabah*, pp.169-170. Ibn Qudāmāh, *Al-mughnī* Vol.5, p.167. al- Dusūqī, *Ḥāshiyah al- Dusūqī* Vol.3, p.522. See also Nabīl A. šāleh, *Unlawful gain and legitimate profit in Islamic law*, pp.141-142.

³³⁸ al-Kāsānī, *Al-badā‘ī ‘al- līl-kāsānī*, (Bierut, Dār al-Kitāb al-‘Arabī : 1982). Vol.6. pp. 79-115.

³³⁹ Addusūqī, *Ḥāshiat-ul-dusūqī*, Vol.3, p. 53.

³⁴⁰ Ibn Qudāmāh, *Al-mughnī* Vol.5, p. 152. al-Mardāwī, *Al-Inšāf*, Vol.5, pp. 440-441.

³⁴¹ al-Māwardī, *Al-muḍārabah*, pp.170-172. Ibn Qudāmāh, *Al-mughnī*, p. 70. Ibn Rushd, *Bidāyah al-mujtahid wa nihāyah al-muqtaṣid*, Vol.2, p.240.

I think among the views mentioned above, the opinion of *al-Ḥanafī'ah* is the more acceptable one. This is because, if not for the sake of *muḍārabah* business the working partner will not be traveling and faced the hardship, therefore, he is entitled to take all his personal expenses during his trip out of the investment money, whether its stipulated in the contract or not.

11. *Muḍārabah* for a Fixed Period (*tawqīt al-muḍārabah*)

According to *Aḥmāf* and *Ḥanābilah* jurists and some of the *Shāfi'īyyah* jurists, *muḍārabah* for a fixed period is legitimate.³⁴² The *muḍārabah* contract can be made for a fixed time of period, and no party will lose the right to terminate the contract at will. If, at the end of the fixed term, there remain goods to be sold, the investor has no right to prevent the working partner to sell them off. However, the working partner should, before the expiry time, make no further purchases and take the necessary steps to convert the goods into money so that the capital takes the form of cash,³⁴³ (i.e. *al-inḍāq*, according to jurists).

This was not the position of the *Malikīyyah* and *Shāfi'īyyah* school. According to them the specification of a time period will make the *muḍārabah* invalid.³⁴⁴ The basis of their opinion is that *muḍārabah* contract is a non-bidding one (*'aqd ghayr lāzim*) and therefore any partner can terminate the agreement at any time, and if a predetermined duration is allowed non of the them will be able to disengage himself at the moment of his choice.³⁴⁵

³⁴² Ibn Qudāmah, *Al-mughnī*, Vol.5, pp.69-70.

³⁴³ al-Māwardī, *Al-Muḍārabah*, pp.145-147. See also Muḥammad Nejātullāh ṣiddīqī, *Partnership and profit-sharing in Islamic Law*, pp.86-90.

³⁴⁴ Ibn Qudāmah, *Al-mughnī*, Vol.5, p. 69. al-Māwardī, *Al-Muḍārabah*, pp. 145-147. al-Bājī, *Al-Muntaqa*, Vol.5 (Egypt, Maṭb 'ah al-s 'ādah), p. 162.

³⁴⁵ al-Māwardī, *Al-Muḍārabah*, pp. 145-147.

However, the view of *Aḥmāf* and *Ḥanābilah* on the subject matter is more acceptable.

12. Termination of contract on the death of the either partner

There is no difference of opinion among the Islamic jurists that *muḍārabah* contract terminates or ends with the death of either of the two partners.³⁴⁶ If the deceased was the capital-owner (*rab al-māl*), and the capital is in the form of cash, the working partner-irrespective of whether is aware of the death of the capital-owner or not as the termination legality is not dependent upon knowledge and information- has no right to use it in anything, the original capital and the share of profit due to the deceased, after final settlement of accounts, must be transferred to his heirs (*waratha*). However, if the original capital is in the form of merchandise (*‘aurūḍan tijārī’ah*) the Islamic jurists said it is permissible to allow the working partner to sell it off so that it takes the form of cash (*naqdan*).³⁴⁷ It is permissible also to allow the working partner to continue the contract after the death of the capital-owner whether the capital is in the form of merchandise or in the form of cash, if that is the will of his heirs.³⁴⁸ In our opinion this is the preferable view. There is no difference of opinion among the Islamic jurists also that there are circumstances other than death where the contract of *muḍārabah* is also terminated to the extent of the share of one partner, such as insanity (*junūn*), lack of discretion (*rushd*), and legal restrictions on appropriations (*al-Ḥajru ‘alaihe*).³⁴⁹

³⁴⁶ al-Māwardī, *Al-Muḍārabah*, pp. 206-210. al-Mardāwī, *Al-Inṣāf*, Vol.5, pp.451-452.

³⁴⁷ Ibn Qudāmah, *Al-Mughnī*, Vol.5, p.64. al-Māwardī, *Al-Muḍārabah*, pp. 206-208.

³⁴⁸ *Ibid.*, Vol.5, p. 181. *Al-Muḍārabah*, p.209.

³⁴⁹ *Ibid.*, Vol.5, p.64. See also Muḥammad Nejātullāh ṣiddīqī, *Partnership and profit-sharing in Islamic Law*, p. 96

5.7 *Takāful* Industry in Malaysia

In June 1972 the National *Fatwa* Committee of the Malaysian Islamic Affairs Council declared that the present western concept of insurance as practiced in Malaysia is *Haram* (unlawful) as it contains elements of *Ribā*, *Gharar*, and *Maisir*. In 1982 the government of Malaysia set a committee to study and look into the implementation of Islamic system of insurance in Malaysia. In 1984 the appointed committee submitted a report in which it recommended the introduction of the Islamic insurance system (*Takāful*).

This recommendation resulted in the birth of *Takāful* Act in 1984, and that paved the way for the introduction and establishment of the *Syrikat Takāful Malaysia Berhad* (STMB) and *Takāful Nasional Sendirian Berhad* (TNSB)³⁵⁰

5.7.1 *Takāful* Act 1984

In section 2 of the *Takāful* Act, *Takāful* is defined as a “scheme based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose.”³⁵¹

In Malaysia the operation of *Takāful* is licensed and regulated by the above mentioned Act which was passed by the Malaysian Parliament with a view of ensuring that *Takāful* Scheme as a sector within the Islamic system would grow in an orderly manner. This Act was intended to be only a regulatory piece of legislation and not a statutory source of the substantive law relating to an Islamic scheme of mutual insurance.³⁵²

³⁵⁰ Nik Ramlah Nik Mahmood, *Insurance Law In Malaysia*, p.244

³⁵¹ *Takāful* Act 1984, S. 2.

³⁵² *Ibid.*, p. 247.

Although the insurance industry in Malaysia is regulated by the insurance Act 1963, it however, cannot be applied or enacted on *Takāful* as it contains provisions which are not in line with the requirements of the Islamic Law (*Sharī'ah*).³⁵³ This Act is not only enables the government to regulate and control *Takāful* operators like all other insurers but also to ensure that the operation of the company does not depart from the Islamic principles and teachings. Thus, the Act defined the meaning of the *Takāful* business as “business of *takāful* whose aims and operations do not involve any element which is not approved by the *Syariah*.”³⁵⁴ Even in relation to the registration of *Takāful* operators, the Act provides that the Director General “shall refuse to register an applicant unless he satisfied that the aims and operations of the *takāful* business which it is desired to carry on will not involve any element which is not approved by the *Syariah*.”³⁵⁵

5.7.2 Supervisory authority and the Director General of the Company

Under the *Takāful* Act 1984, “The Central Bank shall be the responsible for administering, enforcing, carrying out and giving effect to, the provisions of this Act and the Governor of the Central Bank shall be the Director General of *Takāful* and shall exercise, discharge and perform on behalf of the Central Bank, the powers, duties and functions conferred on the Director General under this Act”.³⁵⁶

³⁵³ Muhammad Fadzli Yusuf, The Concept and Operational System of Takaful Business, *New Horizon*, (June 1996, P. 14).

³⁵⁴ *Takāful* Act 1984, S. 2.

³⁵⁵ *Ibid.* S. 8 (5) (a).

³⁵⁶ *Takāful* Act 1984, S (54)(1) .

It is clear that the supervisory authority under this Act is the Central Bank of Malaysia (Bank *Negara* Malaysia) whereby the Governor of the Bank is the Director General of the *takāful* companies in Malaysia.

5.7.3 *Sharī'ah* Supervisory Council

In the articles of association of the *Takāful* operator there is a provision which specified that: A *Sharī'ah* Supervisory council, whose members would be made up of *Muslim* religious scholars in the country, shall be established to advise the company on matters pertaining to the *Sharī'ah* in its operations of the *Takāful* business in order to ensure that the company do not involve any unlawful element which is unacceptable in Islamic Law.

“The Council’s function is strictly supervisory, it does not participate in the daily affairs of the company.”³⁵⁷ In the Articles of Association of the *takāful* operator concerned provision for the establishment of *Syariah* Supervisory Council to advise an operator on the operations of its *takāful* business in order to ensure that it does not involve in any element which is not approved by *Shari'ah*.³⁵⁸

Dr. *Nik Ramlah*, indicated that the Act is silent on the status of the Council’s advice. She said: Perhaps a company that fails to act upon such advise can be regarded as pursuing aims contrary to the *Syariah*, thus allowing the Director General of *Takāful* to cancel the company’s registration.³⁵⁹

³⁵⁷ Nik Ramlah Nik Mahmood, *Insurance Law in Malaysia*, pp.250-251.

³⁵⁸ *Takāful* Act 1984, S. 8 (5) (b).

³⁵⁹ Nik Ramlah Nik Mahmood, *Insurance Law in Malaysia*, p.251.

5.8 Syarikat Takāful Malaysia Berhad (STMB)

Syarikat Takāful Malyasia Bhd. is the first *Takāful* operator to be established in Malaysia, as well as in Asia. It was incorporated on 29th November 1984, under the Companies Act 1965 as a private limited company under the name *Syarikat Takāful Malaysia Sdn. Bhd.*³⁶⁰ with an authorized capital of hundred million *Ringit* Malaysia (RM 100 million) and paid-up capital of ten million (RM 10 million).³⁶¹ The company is a subsidiary of Bank Islam Malaysia Berhad with, 87.15% of its equity held by the Bank. The other shareholders are states Islamic Religious Council and *Bait al-Māl* of various states in Malaysia.³⁶² On October 19th 1985 the company was converted to a public limited company and subsequently adopted its present name *Syarikat Takāful Berhad* or STMB.³⁶³ The company officially commenced business operations on 2nd August 1985 with staff strength of 22 persons following its official launching by the Prime Minister of Malaysia. On the 30th January 1986 the first two branch offices of the company was opened in the east coast, west of Malaysia, *Kota Bharu*, *Kelantan*, and *Kuala Terengganu*, *Terengganu*.³⁶⁴ Currently the company operates from more than hundred (100) channels and branches throughout the country as shown below.

³⁶⁰ *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, p. 2.

³⁶¹ Muhammad Fadzli Yusuf, *The Concept and Operational System of Takāful Business*, *New Horizon*, (June 1996, p. 14.)

³⁶² *Ibid.* See also *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, p. 47.

³⁶³ *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, p. 2.

³⁶⁴ *Ibid.*

5.8.1 Table 6. *Takāful* Branches of Net work in Malaysia

<u>State</u>	<u>State</u>
Kuala lumpur	Selangor
Johor	Kedah
Negeri Sembilan	Melaka
Perlis	Perak
Kelantan	Pulau pinang
Pahang	Terengganu
Sarawak	Sabah

Source: Csu@takaful-malasia.com.my

5.9 Takāful Nasional Sendirian Berhad (TNSB)

In line with Vision 2020 Malaysia has also witnessed the birth of the second *Takāful* company (MNI) *Takāful Sendirian Berhad*. It was established on 15 october 1993 under the *Takāful* Act 1984 as a private limited company with an authorized capital of fifty million Ringit Malaysia (RM 50 million) and paid-up capital of twenty five million Ringit Malaysia (RM 25 million), which increased to thirty five million Ringit Malaysia (RM 35 million). Currentlty the company operates from many branches throughout the country as mentioned in the following table:

5.9.1 Table 7. *Takāful Nasional Sdn.Bhd.* Branches in Malaysia

<u>State/ City</u> Kuala lumpur	<u>State/ City</u> Shah Alam
Pulau pinang	Negeri Sembilan
Terengganu	Kelantan
Melaka	Pahang
Johor	Kedah
Perak	Sarawak
Sabah	Tawau, Sabah

Source: TNSB.

5.10 Takāful Contract

Muḍārabah as previously mentioned is been defined by almost all the Islamic schools of jurisprudence as a contract between at least two parties whereby one party called the investor (*rab al-Māl*) entrusts money to the other party called the agent-manager (*muḍārib*) who is to trade with it in an agreed manner and then return to the investor the principal and a pre-agreed share of profit and keep for himself what remains of such profits.³⁶⁵ The contract of *Takāful* is based on this principle of *al-Muḍārabah* between the *Takāful* Company as the agent-manager or entrepreneur (*al-muḍārib*) and the participant as the investor or provider of capital (*rab al-Māl*, or *ṣāhib al-Māl*). In consideration for his or her participation in the scheme, the money-owner or the investor (*rab al-Māl*) agrees to provide the agent-manager (*al-muḍārib*) with the capital (*ra's al-Māl*) in the form of *Takāful* contributions. The agent in return agrees to provide the participant with a scheme for investment and protection.³⁶⁶ The contract in *al-muḍārabah* is clearly spells out the rights and duties of the parties involved in which the contract would be considered in Islamic Law (*Sharī'ah*) valid. Thus in the contract of *Takāful* the rights and duties of both parties (investor and the agent-manager) “such as the way in which the contribution will be used and the pre-agreed ratio in which the profits, if any will be shared”³⁶⁷, is clearly recognized.

³⁶⁵ Nabil A. ṣāleh, *Unlawful gain and legitimate profit in Islamic Law*, p. 128.

³⁶⁶ Nik Ramlah Nik Mahmood, *Insurance Law in Malaysia*, p. 248.

³⁶⁷ *Ibid.*

As mentioned earlier the concept and principle of *Tabarru'* is the core of the any Islamic insurance contract in order to be held valid in *Sharī'ah*. Therefore, in order to eliminate the element of uncertainty in *Takāful* contract this concept of donation is incorporated in it. In this regard, each participant that needs protection from *Takāful* must be present with a sincere intention to donate or to give away a certain portion of his or her *Takāful* contribution in order to help fellow participants in times of hardship or suffer a defined loss. The use and the existence of this *Tabarru'* principle in the contract of *Takāful* has ensured that Islamic system of insurance does not contradict the teaching of Islam, and has also eliminated the presence of interest, uncertainty, and gambling in *Takāful*.

5.10.1 Right to enter into a contract of *takāful*

The *Takāful* Act 1984 provides that “ A person under the age of eighteen years shall not have the capacity to enter into a contract of *takāful*.”³⁶⁸

The question arises here is that, what is the age of puberty in which human being will become responsible for his deeds and actions according to Islamic Law (*Sharī'ah*)?

The honorable Verse in *Sūrah An-nūr*:

“ And when the children among you come
to the age of puberty” (24, V.58)

indicates that the child will be become responsible for his deeds the moment he attain the age of puberty or sexual maturity (i.e. *Bulūgh* or *I'ḥtilām*)

³⁶⁸ *Takāful Act* 1984, S. 64.

According to 'Abd Allāh Nāsiḥ 'Alwān,³⁶⁹ the age between (7-10) is called the age of distinction or consent (i.e. *Tameer* z). And the age between (10-14) is called the age of adolescence (i.e. *Murāḥaqah*), while the age between (14-16) is called the age of puberty (i.e. *Bulūgh* or *Iḥtilām*) whereby a person will become fully responsible for his deeds and actions.³⁷⁰ However, there is no difference of views among the Islamic jurists that whenever a person reach the age of puberty he will become fully responsible for his deeds, conduct, and actions. All of them agreed that puberty is the clear sign or indication of reaching the age of responsibility. The boy will be considered responsible for his deeds the moment he attain puberty, and the girl also will become responsible the moment she attain puberty or menstruate or pregnant.³⁷¹ But they differ on the definite and precise age for which human being will be responsible for his deeds, conduct and actions as follow:

1. The dominant view of the *Ḥanafīyyah* school on this issue is that the child will not be considered *Bālig* (i.e. puberty age, adult) until he reaches eighteen (18) years of age. The ground of their argument is the saying of the almighty Allāh:

“And come not near to the orphan’s property, except to improve it, until he (or she) attains the age of full strength.”
(*Al-An ‘ām* 6: 152)

They said the full strength of the boy as it was narrated from *Ibn. ‘Abbās* is eighteen years.³⁷² As for girls is concerned; they said the age of seventeen (17) is the age of puberty in the their case. And the ground of this distinction between boys and girl is that

³⁶⁹ Lecturer at King ‘Abd al- ‘Azīz University, Jeddah, (Islamic studies department) Saudi Arabia.

³⁷⁰ ‘Abd Allāh Nāsiḥ ‘Alwān, *Tarbiyat-ul-awlād fī Islām*, Vol.2, (Cairo: 1993) p. 499.

³⁷¹ Muḥammad ‘Alī al-ṣābūnī, *Rawā ‘I al-bayān*, Vo.2, (Beirut: 1980) p. 212.

³⁷² *Ibid.*

girls physically, grow up and develop faster compared to the growth and development of the boys, therefore, they attain the age of puberty faster by reaching the age of 17 years.³⁷³

5. According to *Shāfi'īyyah* and *Ḥanābilah* (*Al-shāfi'ī, Aḥmad b. Ḥambal, Abū Yūsuf and Muḥammad*³⁷⁴) the age of puberty for the boys and girls is fifteen (15) years. And *Abū Ḥanīfah* ascribed this view also in one of his saying. The argument for holding this view is based on the custom. They argue that it is common and usual that boys and girls by physical indications reach the age of puberty (*Bulūgh* or *I'ḥtilām*) at fifteen years. Therefore, this is the age whereby human being as long as he remains sane will be considered fully responsible for his deeds and actions include capacity to enter into any legal relationship, such as contracts.³⁷⁵

5.10.2 Right for a child to enter into *al-muḍārabah* contract

There is no difference of opinion among the Islamic jurists that lack of discretion (*rushd*) is one of the reasons that makes the contract of *al-muḍārabah* invalid.

But what about a child who reaches the age of consent and not yet reaches the age of puberty?. Does he have the right to enter into the *muḍārabah* contract without the consent of his guardian? The Islamic jurists differ on this issue as follow:

1. According to *Shāfi'ī 'ḥyāh*, conducts or actions from the child are considered invalid until he reaches the age of puberty, therefore, if he enters into *al-muḍārabah* contract

³⁷³ *Ibid.*

³⁷⁴ Abū Yūsuf and Muḥammad are the famous students of Imām Abū Ḥnīfah.

³⁷⁵ Muḥammad 'Alī al-Ṣābūnī, *Rawā'ī 'l al-bayān*, Vo.2 pp. 212-213.

before the age of majority that contract will be considered null. And to *Ḥanābilah* ascribed this view also in one of their saying. But they (*Ḥanābilah*) said it is allowed for the father of the child or the guardian of the orphan to enter into the contract or business on behalf of him (the child or the orphan) if, he (the father or the guardian) sees that will benefit and serve the interest and goodness of the child³⁷⁶.

2. According to *al-Hanafī'ah*, and *al-Mālikī'ah*, and *al-Hanābilah* in one of their saying, the child who reaches the age of consent (i.e. *mumayyez*) has the right to enter with his money into the contract of *al-muḍārabah* with whomever he wants, provided his guardian allowed him to do so³⁷⁷

It is clear from the above views that all the *Fuqahā'* (Muslim jurists) except *Abū Ḥanīfah* agreed that the age of majority according to Islamic Law is the age of fifteen, even to *Abū Ḥanīfah* as we mentioned above ascribed this view also in one of his saying. The *Takāful* Act on this issue differ from the preferable opinion of the *Fuqahā'* (Muslim jurists), because in Islam an individual's legal capacity depends on reaching the age of puberty (i.e. *mukallif* or *bāligh*) and the age of puberty according to *Fuqahā'* is by reaching the age of 15 years as indicated above. Therefore, 18 years is not the age of majority in Islam.

³⁷⁶ Al-Māwardī, *Al-Muḍārabah*, p.252. See also Ibn. Qudāmah, *Al-Muqhnī*, Vol.2 (Cairo : h. 1374) p.146.

³⁷⁷ Al-Māwardī, *Al-Muḍārabah* p. 253. See also, Abī al- Fath' *Jāmi' 'l Aḥkām al- ṣighār*. Ibn Qudāmah, *Al-Muqhnī* Vol.2, p. 146.

In my view I think this opinion is the preferable and acceptable opinion because it is proved by custom in most cases or in general that age of fifteen is the age of puberty whereby the human will become fully responsible for his conduct and actions (i.e. *mukallif* or *bāligh*) Therefore, an amendment of this section in the *Takāful* Act is highly recommended.

5.11 Operational system of *Syarikat Takāful Malaysia Berhad* (STMB) and *Takāful Nasional Sendirian Berhad* (TNSB)

The *Takāful* Act 1984 divides the *Takāful* business in two types of business as follows:

1. Family solidarity business or Family *Takāful* business (Islamic life insurance).
2. General business or General *Takāful* business (Islamic general insurance).³⁷⁸

Takāful Act S.3 (a) (i) and (ii) “*takāful* business shall be divided into two classes-

- (i) family solidarity business which, in addition to all *takāful* business concerned with solidarity certificates shall include, in the case of any *takāful* operator, any type of *takāful* business carried on as incidental only to the operator’s other solidarity business; and
- (ii) general business, that is to say, all *takāful* business which is not family solidarity business³⁷⁹

³⁷⁸ *Takāful* Act 1984, S. 2-3.

³⁷⁹ *Takāful* Act 1984, S. 2-3.

According to *Mohammad Fadzli Yusof*, “The fundamental objective and basic working operation differ between these two types of business.”³⁸⁰ Under the family *Takāful* business, **STMB**. and **TNSB**. provide various types of Family *Takāful* Plan which generally are long-term *al-muḍārabah* contracts. Basically, a family Plan provides cover of mutual aid among its members or participants expressed in the form of financial benefits paid from a defined fund should any of its members be inflicted by a tragedy.³⁸¹ On the other hand, the General *Takāful* business, **STMB**. and **TNSB**. manages various types of General *Takāful* Scheme, usually on a short-term basis. The schemes provide protection in the form of mutual financial help to compensate its members or participants for any material loss, damage or destruction that any of them might suffer arising from a catastrophe, disaster or misfortune that might inflict upon his or her properties or belongings”³⁸².

5.11.1 Family *Takāful*

Family *Takāful* Plans are designed to serve the requirements of both individual under the Individual Plans and corporate sector under the Group Plans. For the individual it is a long-term saving and investment program. Also, the plan provides mutual financial assistance among the participants.³⁸³

³⁸⁰ *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective* p.10.

³⁸¹ *Ibid.* p. 11.

³⁸² *Ibid.*

³⁸³ *Ibid.*

5.11.2 Family *Takāful* Plans bjectives

The aims and the objectives of the Family *Takāful* Plans are as follow:

- a. to encourage participants to save regularly for a fixed period in order to create a long- term contingency fund,
- b. to invest the participants money in a manners which are unobjectionable to Islam,
- c. and to provide protection in the form of *Takāful* benefits to the heirs of the participant who die before the maturity of his *Takāful* Plan.³⁸⁴

5.11.3 Operational system of Family *Takāful*

Someone or any person between the age of eighteen³⁸⁵ to fifty five years who wishes to join and participate in the Family *Takāful* Plan is free to choose any one of the maturity periods offered by *Syrikat Takāful* Malaysia. And the maturity periods are: 10, 15, 20, 25, 30, 35, and 40 years³⁸⁶. As mentioned before, a participant may choose one of these maturity periods or any of the types of Family Plan offered by the *Takāful* Company provided that his plan should mature by the time he reaches sixty years old³⁸⁷.

5.11.4 *Takāful* Installments

Those who participate in *Takāful* Plans are required to pay their *Takāful* Installments regularly to the company. These installments would be credited into a fund called Family *Takāful* Fund' under the Family Business. However, the participant in *Takāful* during the

³⁸⁴ *Ibid.*

³⁸⁵ Refer to the topic, *Right to enter into a contract of takāful*, p. 203.

³⁸⁶ *Ibid.*, pp. 12-15.

³⁸⁷ Nik Ramlah Nik Mahmood, *Insurance Law in Malaysia*, p. 245.

term of the Plan decides on the size of his monthly, or quarterly, or semi-annually, or annually installment, but subject to the minimum amount set by the company at that time. Each installment paid by the participant in this Plan goes into two different or separate accounts called the **Participant's Account (PA)** and the **Participants Special account (PSA)**³⁸⁸ For the purpose of saving and investment the larger proportion of the participant's installment is credited into the participant account, (PA) and the rest of the installment with the knowledge and consent of participant is credited into the Participants Special account (PSA) as donation (i.e. *tabarru'*) from him, so that the company will be able to pay the *Takāful* benefits to the fellow participant in times of hardship, or to the heirs of any participant who may pass away before the maturity of his Family *Takāful* Plan. The charitable nature of the installment which credited into Participants Special account (PSA) is made known and clear to the participant, when he enters into the *Takāful* contract. The rate or the actual proportion of each Participant's donation (*tabarru'*) to the PSA account is determined by the company based on the amount of payments it makes from that fund to the families of participants die before the maturity of his Family *Takāful* Plan.³⁸⁹ The company invested the money or the installments paid by the participants from both accounts (PA & PSA) in a manner not contrary to the Islamic Law (*Sharī'ah*). Any profits from the Participants account (PA) investment will be shared in accordance with the *al-muḍārabah* principle (i.e. profit and loss sharing) in a mutually pre-agreed ratio between the company and the participants.

³⁸⁸ *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, p.27.

³⁸⁹ Nik Ramliah Mahmood, *Insurance Law in Malaysia*, p. 245. See also *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, pp. 27- 28.

As for the Participants Special account (PSA) is concerned; profits from its investment are used to build up the fund³⁹⁰

5.11.5 Payment of *Takāful* benefits in the Event of Death

Takāful Act S.65 (1) says “When a participant, in relation to any family solidarity certificate or solidarity certificate, dies and on his death *takāful* benefits are payable under the certificate or certificates, the operator may make payment to a proper claimant such sum of the solidarity money as may be prescribed without the production of any probate or letters of administration and the operator shall be discharged from all liability in respect of sum paid.”³⁹¹

The above section of the *Takāful* Act clearly stated that if a participant dies before the maturity of his *Takāful* Plan, the *Takāful* benefit is to be paid to his heir or to a proper claimant. The *Takāful* company shall arrange the payment to the participant’s proper claimant as follow:

1. From his participant account (PA). “The total amount of the *Takāful* installments paid by the deceased participant from the date of inception of his *Takāful* Plan to the due date of payment of installment prior to his death, and his share of profit from the investment return of his installments which have been credited into PA.”³⁹²

³⁹⁰ Nik Ramlah Nik Mahmood, *Insurance Law in Malaysia*, p.245.

³⁹¹ *Ibid*

³⁹² *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner’s Perspective*, p. 28.

2. From his Participants Special account (PSA). “The outstanding *Takāful* installments which would have been paid by the deceased participant should he survive the period of the Plan, calculated from the date of death to the date of maturity of his *Takāful* Plan.”³⁹³

I think it is important to indicate here that in the event of Muslim participant death any payment to his beneficiary must be according to the Islamic Law of inheritance (*Farāīḍ*) in order to avoid depriving those who are entitle by the Islamic Law to inherit, as long as the operational system of *Takāful* is based on the Islamic teachings and principles.

5.11.6 Maturity Benefits

A participant who survive the period of *Takāful* Plan should be paid from his participant account (PA) at the date of maturity of his *Takāful* Plan all the installments that he has paid during the tenure of his participation and also his entire share of profits from the investment of *Takāful* installments credited into his participant account (PA) fund. Also he is entitled to a share of surplus, if any, the amount of this surplus to be distributed upon maturity of the *Takāful* Plan varies according to term of participation and the age of the participant at the time the *Takāful* Plan was effected. In case that a participant decided to withdraw from the Family *Takāful* Plan before the maturity of his Plan, he shall be entitled to returned all the amount of installments credited into his participant account (PA) from the date of entry to the date of the withdrawal, and the profits from investment accumulated during the same period.

³⁹³ *Ibid.*

As for the Participants Special account (PSA) is concerned; the contributions in this fund by the participant as form of donation (*Tabarru'*) which he has agreed to make when he enter into *Takāful* contract will not be refunded to him.³⁹⁴

5.12 Operational system of General *Takāful* Business

General *Takāful* Schemes are contracts of joint guarantee, on a short-term basis, and based in its operations on the principle of *al-muḍārabah*. These Schemes of the General *Takāful* are designed to provide protection for its participant both individuals and corporate bodies against losses arising out of personal accidents or damage inflicted upon their property due to a disaster or catastrophe.³⁹⁵ As mentioned above the contract in the General *Takāful* Schemes is based on the principle of *al-muḍārabah*. The company as *al-muḍārib* shall collect the *Takāful* contribution that is the *Ra's al-Māl* (the capital) paid by the participant *Rab al- Māl* (the investor) and managed the various classes of General *Takāful* including the investment of the mentioned contribution.

As indicted before, the participant shall pay the *Takāful* contribution as *tabarru'* that is donation for the purpose of helping fellow participants in times of hardship, and the contract stipulated also the sharing of surplus if any between the participant and the Company as in accordance with the principle of *al-muḍārabah*.³⁹⁶

³⁹⁴ *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, pp.29-30, also See Nik Ramlah Nik Mahmood, *Insurance Law in Malaysia*, p.246.

³⁹⁵ *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, p.69 and also see Nik Ramlah Nik Mahmood, *Insurance Law in Malaysia*, p.247.

³⁹⁶ Ahmad Mazlan Zulkifli, { *Working system of General Takāful business* } *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, p70.

5.12.1 General *Takāful* Fund

In accepting to participate in the General *Takāful* schemes the participant agree to pay the *Takāful* installment as donation (*tabarru'*) on *al-muḍārabah* contract basis with the company. The contract stipulates the amount, which the participant has to contribute under the General *Takāful* Plan taking into account factors such as the value of the property and the risk involved.³⁹⁷ All contributions are paid into the General *Takāful* Fund, and from this fund all the mutual compensation or indemnity would be paid to any participant who suffer defined loss or damage arising from a disaster or catastrophe affecting his property, and also part of this fund is used to cover the operational cost for managing the company General *Takāful* Business such as the cost for arranging *Retakāful* program and setting- up of reserve shall also be deducted from the fund.³⁹⁸ The company as the agent will invest this fund in the manner approved by the Islamic Law and the return from this investment will be pooled back to the fund in line with the virtues of mutual help shared responsibility and joint guarantee as embodied in the concept of *takāful*.³⁹⁹ At the end of the financial year after deducting the mentioned operational costs and no claims are made and the fund registers a surplus, therefore, it is to be shared between the company as *al-muḍārib* and the participant as *Rab al-Māl* , and the sharing of the surplus will be at an agreed ratio according to the principle of *Al-muḍārabah* contract such as 5:5, 6:4, 7:3 etc. Profits attributable to the participants are paid on expiry of their

³⁹⁷ *Ibid.*

³⁹⁸ *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, pp.70-71.

³⁹⁹ Muhammad Fadzli Yusuf, "The Concept and Operational System of *Takāful* Business" *New Horizon*, June, 1996, pp.12-13

respective General *Takāful* Schemes provided they have not received claims during the period participation.⁴⁰⁰

5.12.2 Types of General *Takāful* Schemes (products)

The General *Takāful* Business provides various General *Takāful* Schemes for both individual and corporate sectors as a form of cover against loss or damage arising upon a disaster or catastrophe. General *Takāful* business is divided into five main classes

1. Motor Takāful,
2. Marine Takāful,
- 3-4. Miscellaneous and Accident Takāful,
5. And Engineering Takāful.⁴⁰¹ The Schemes afforded under the various divisions are shown as follows:

a. Fire *Takāful* Scheme

Basic Fire. House owners.
Householders. Industrial all risks.

b. Motor *Takāful* Scheme

Motor car. Motorcycles.

c. Accident and Miscellaneous *Takāful* Scheme

Personal Accident. Group Accident. Personal Accident for pilgrims.
All risks. Workmen's Compensation. Public liability. Money.

⁴⁰⁰ *Ibid.*

⁴⁰¹ Ahmad Mazlan Zulkifli, "Working system of General *Takāful* business", *Takāful (Isl/Tamic Insurance) Concept & Operational System From The Practitioner's Perspective*, p.79.

Equipment all risks. Employer's Liability.

Plate glass. Fidelity Takāful. Sprinkler Leakage.

Professional Indemnity.

d. Marine *Takāful* Scheme

Marine Cargo

e. Engineering *Takāful* Scheme

Machinery breakdown. Contractor's All Risks.

Boiler and Pressure Vessel. Erection All Risks.

Storage Tanks. Bonds⁴⁰²

⁴⁰² *Ibid.*, pp. 79-80. See also Muhammad Fadzli Yusuf, "The Concept and Operational System of Takāful Business", *New Horizon*, June, 1996, pp. 12-13.

Table 8. Lists of products offered by
Syarikat *Takāful* Malaysia Bhd.

Under the Family Takāful Plans	
1. Individual Plans :	
<u>Family Takaful Plan</u>	<u>Takaful Siswa</u>
<u>Takaful Rawat</u>	<u>Takaful Waqaf</u>
<u>Takaful Mortgage</u>	<u>Takaful Dana Pekerja</u>
<u>Takaful Keyman</u>	<u>Takaful Ziarah</u>
<u>Takaful Ma'asvi</u>	<u>Takaful Hawa</u>
<u>EPF Takaful Annuity Scheme</u>	<u>Takaful Sihat</u>
<u>Family Takaful Plan For Education</u>	<u>Takaful Wiladah</u> (malay only) new product
2. Group Plans:	
Group Family Takaful Plan	Group Family Takaful Plan (credit)
Group Medical Takaful Plan	
Under the General Takāful Plans	
<u>Fire Takaful Scheme</u>	<u>Liability Takaful Schemes</u>
<u>Motor Takaful Schemes</u>	<u>Engineering Takaful Schemes</u>
<u>Accident Takaful Schemes</u>	<u>Houseowner's and Householder's</u>
<u>Takaful Sa'adah</u> (malay only) new product	

Source: STMB.

**Table 9. Lists of products offered by
Takāful Nasional Sdn. Bhd.**

Under the Family Takāful Plans	
Takāful Ehsan	Takāful Mesra
Takāful Barakah	Takāful Sejahtera
Takāful Kelompok	Takāful Remaja
Takāful Gadaijanji	Takāful Mutiara
Takāful Medic	Takāful Ilmu
Takāful Jariah	Takāful Iqra’
Takāful Kredit	
Under the General Takāful Plans	
Harta Benda (i.e Properties) (Takāful Pemilik Rumah dan Barang Rumah Kediaman, Kebakaran, Kerugian Turutan)	Liabiliti (i.e. Liabilities) (Takāful Majikan, Awam, Pampasan Pekerja, Pampasan Pekerja Asing)
Motor (i.e. Motor Car) (Takāful Kenderaan Berinjin)	Takāful Kemalangan Diri (i.e. Personal Accident)
Pelbagai (i.e. Variety) (Takāful Wang, Kecurian, Semua Risiko...)	Marin (i.e. Marine) (Takāful Marin Kargo)
Produk Pakej (Takāful Milikku	Takāful Tanggungan Awam

Source:TNSB.

5.13 Performance of the *Takāful* Industry in both Family and General *Takāful* Plans

According to the year 2000 report by Bank Negara on the performance of *Takāful* Industry in Malaysia, the growth of the industry gained momentum in the year 2000 with the main business indicators recording higher double-digit growth rates. According to the report, the combined contribution income of the family and general *Takāful* business sectors grew by 30.5% (1999: 24%) to RM444.7 million, of which 71.5% of the income was generated from the family *Takāful* business sector.

The higher growth of the combined contribution income was attributable to the aggressive marketing campaign undertaken by the *Takāful* operators to educate the public on the benefits of *Takāful* products. In line with improved economic conditions, the family *Takāful* business sector has recorded a strong growth in year 2000. Total new *Takāful* contributions recorded a growth at 80.8% (1999:29.6%) to RM279.5 million. As for the performance of General *Takāful* business, the sector has picked up its growth momentum in year 2000 with gross contributions increasing by 23.9% to RM177 million after recording moderate growth of 16.5% in the previous financial year. All sectors under general *Takāful* business recorded at least a double-digit growth.⁴⁰³

In the following tables the performance of *Syrikat Takāful Malaysia Berhad*, and *Takāful Nasional Sendirian Berhad* in both Family and General *Takāful* Plans has been illustrated as follow:

⁴⁰³ Bank Negara Malaysia Annual report (2000)

**a) Performance of *Syrikat Takāful Malaysia Bhd.*
in both Family and General *Takāful* Plans
(1990 - 98 and 2001-2002)**

Table 10. Family *Takāful* Fund (in million)

From	1990	1991	1992	1993	1994	1996	1997	1998	2001	2002
Profit attribut able to particip ants	RM 42274, 8	RM 582,17 5	RM 1,294, 693	RM 2,324, 919	RM 4,435, 025	RM 10,581 ,948	RM 15,812 ,531	RM 23,606 ,454	RM 62,942 ,055	RM 93,141, 555
Paid during the year	599,77 9	1,319, 312	2,373, 299	4,517, 414	7,754, 783	16,046 ,025	23,952 ,707	32,381 ,071	61,709 ,584	91,75 0,098
Net <i>Takāful</i> instalme nts / contrib utions at the end of the year	13,811 ,968	19,367 ,260	26,627 ,924	34,634 ,135	44,441 ,872	98,588 ,524	144,86 8,618	214,05 5,189	923,55 3,064	1,101, 223,7 22
Family <i>Takāful</i> Fund at the year end	14,394 ,143	20,661 ,953	28,952 ,843	39,069 ,160	52,077 ,955	114,40 1,055	168,47 5,072	202,83 7,146	904,72 3,487	1,102,9 17,670

The last statutory of the company's family Takaful Fund was made for the year ended 30 June, 2001 and the results showed a surplus of RM14, 758,881 in respect of the participants' special account.

Source: *Syrikat Takāful Malaysia Bhd. (STMB) Annual Report* From the year (1990) to the year (2002).

Table 11. General *Takāful* Fund (in million)

From	1990	1991	1992	1993	1994	1996	1997	1998	2001	2002
Profit attributable to participants	RM 5,957,376	RM 4,219,994	RM 6,023,958	RM 9,772,328	RM 10,342,005	RM 10,581,948	RM 15,812,531	RM 24,217,095	RM 60,409,249	RM 65,258,190
Paid during the year	4,029,794	6,147,576	8,357,499	13,351,812	16,325,341	16,046,025	23,952,707	36,391,235	72,489,935	88,523,621
Reserve for unearned <i>Takāful</i> contributions	7,346,822	9,479,003	10,762,040	11,539,486	14,098,629	29,872,059	36,182,993	47,389,205	107,180,480	123,173,779
<i>General Takāful</i> Fund at year end	9,274,404	11,812,544	14,341,524	17,522,822	20,210,844	41,033,671	48,381,724	29,459,843	81,192,284	102,249,295

Source: *Syrikat Takāful* Malaysia Bhd. (STMB) Annual Report year (1990- 2002).

**b) Performance of *Takāful Nasional Sdn. Bhd.*
in both Family and General *Takāful* Plans
(1997- 99 and 2001- 2002)**

Table 12. Financial Performance of *Takāful Nasional Sdn.Bhd.* (1997-2002)

From	1997	1998	1999	2001	2002
Family <i>Takāful</i> - Annual Gross Contribution	RM 57,100,002	RM 84,443,305	RM 118,384,480	RM 744.204.706	RM 575.544.339
General <i>Takāful</i> -Annual Gross Contribution	12,657,788	23,522,536	35,331,663	77,735,569	87,838,569
Annual Total Gross Contribution	69,787,790	107,974,141	153,716,143	851,097,328	724,760,566
Profit Before Tax & <i>Zakāt</i>	6,300,000	4,500,000	12,800,000	Net profit 6,995,596	Net profit 19,015,951
Family <i>Takāful</i> Fund	94,306,635	160,389,908	258,828,528	1,050,850,511	1,547,952,012
Total Company's Assets	160,300,000	243,800,000	387,300,000	1, 267,179,902	1,870,077,837

Source: *Takāful Nasional Sdn.Bhd.* Annual Report Year (1997 - 2002).

Currency :
All amounts are stated in Ringgit Malaysia.

5.14 Some features of STMB and TNSB

In the previous paragraphs of this chapter the basic objectives, principles and the operational system of both Family *Takāful* Plan and General *Takāful* Scheme have been explained and examined. In this respect, I think it is important also to point out some of the *Takāful* features and aspects, which are parts of the *Takāful* operation system. The selected features to be pointed out here are the company's concept, underwriting, insurable interest, and principle of Utmost Good Faith.

5.14.1 The Company's Concept

Syarikat Takāful Malaysia (STMB) and *Takāful Nasional Sdn.Bhd. (TNSB)* as previously mentioned provide its business according to the principles of *al- Takāful* which means the act of a group of people reciprocally guaranteeing each other, and *al-Muḍārabah* which is the commercial profit-sharing contract between the providers of capital for a business venture and the company.⁴⁰⁴

5.14.2 Underwriting

"When one is operating an insurance business, it is crucial for one to be able to underwrite any risks proposed, so that the risks could be spread"⁴⁰⁵

"Underwriting is a management process to ensure that the principle of equity is being applied and upheld. As to the concept of *al-Takāful*, it also embodies the principle of

⁴⁰⁴ Hardinur Mohd Noor, *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective*, p.47.

⁴⁰⁵ Muhammad Fadzli Yusuf, "The Concept and Operational System of *Takāful* Business", *New Horizon*, June, 1996, p.12.

partnership. It is therefore essential for the participants to be seen as equal at the point of entry”.⁴⁰⁶ In the business of *al- Takāful* the process of the underwriting as a management tool is applicable, whereby it would help to determine a fair system of donation (*Tabarru*) by the participants. “If it is revealed from the underwriting that a participant would pose an undue strain to the *Takāful* Fund due to his poor health, or his property is relatively hazardous than his fellow participants, then he may have to agree to increasing his donation (*Tabarru*) to the level assumed to be fairly adequate in corresponding with the risk exposure covered by the *Takāful* Fund. The process of underwriting is not to discriminate, or out-rightly reject, the proposal of any participant. Above all, it is crucial for all participants to protect the *Takāful* Fund for their mutual and common benefits. In the same manner, as manager and trustees the company must, at all times, safeguard the *Takāful* Fund from any undue strain.”⁴⁰⁷

5.14.3 Insurable interest

Insurable interest is the financial interest, which a person has in the subject matter of the General *Takāful* contract. The aim of having this principle is to ensure that no one should use the policy as a tool of cheating or destroying lives. Participant interest in *Takāful* constitutes the legal right to cover arising out of a financial relationship, recognized at law between the participant and the subject matter covered. The participant must stand in relationship with the subject matter of *Takāful* whereby he benefits from its safety,

⁴⁰⁶ *Ibid.*

⁴⁰⁷ *Ibid.*

well being or freedom from liability and would be prejudiced by its damage or the existence of liability”⁴⁰⁸ Even though, the *Takāful* Act does not specifically require the element of insurable interest in both Family *Takāful* and General *Takāful*, but having insurable interest will prevent for instance, General *Takāful* from being a wagering contract, and will also ensure that justice is done by ensuring that adequate compensation is paid to the participant who claimed a loss. “Insurable interest must be shown at the time of the loss because it is only by showing interest at the time of the loss that fairness and justice in paying compensation can be ensured”⁴⁰⁹

5.14.4 Utmost Good Faith

Utmost good faith is “a positive duty to voluntarily disclose, accurately and fully, all facts material to the risk proposed, whether asked for them or not”⁴¹⁰ Utmost good faith must be maintain in *Takāful* operations. Because a *Takāful* policy can at any time be called in question should operator or the participant be able to prove the counter’s breach of good faith in the material facts of the policy. *Takāful* Act imposes duty to disclose all material facts not only on the operator, but also on both parties to the *Takāful* contract. Section 28 of the *Takāful* Act 1984 states that:

“ Any person who, by any statement, promises or forecasts which he knows to be misleading, false, or deceptive, or by any fraudulent concealment of a material fact,

⁴⁰⁸ Hardinur Mohd Noor, *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner’s Perspective*, p.64.

⁴⁰⁹ Nik Ramlah Nik Mahmood, *Insurance Law in Malaysia*, p. 249.

⁴¹⁰ Hardinur Mohd Noor, *Takāful (Islamic Insurance) Concept & Operational System From The Practitioner’s Perspective*, p.65.

or by the reckless making (fraudulently or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into any contract of *Takāful* with an operator shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or both.”⁴¹¹

5.15 Establishment of *Takāful* industry is an invitation to what is good and right

The establishment of the *Takāful* company as an alternative to the conventional insurance is indeed an invitation to the people to what is good and right, and forbidding them from what is bad, wrong and evil. Therefore, those ‘*Ulamā*, who work hard and come out with this form of Islamic insurance as substitute to the modern form of the conventional insurance to the *Muslim Ummah*, they will get their reward from the almighty Allāh in this world and the Hereafter as He promise to reward those who did good things. We read in Holy Qur’ān the saying of the almighty Allāh in the following verses:

“The Believers, men and women, are protectors one of another, they enjoin what is just, and forbid what is evil...”
(*Al-Tawbah* (9) 71).

“Those who, if We establish them in land, (they) establish regular prayer and give regular charity, enjoin the right and forbid the wrong, with Allāh rests the end (And decision) of (all) affairs” (*Al-Ḥajj* (22) 41).

“Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong. and it is they who are successful.” (*āl-‘Imrān* (3) 104).

⁴¹¹ *Takāful* Act 1984, S. 28

In the case of a non-muslim who wishes to participate in *Takāful* (General or Family) he can be accepted as one of the participants, because Islamic Law indeed allowed Muslims to deal with non-muslims as long as the way of such dealing does not contradict the teachings of the honorable Islamic Law. In regard to this, Allāh the almighty says:

“Allāh does not forbid you to deal justly and kindly with those who fought not against you on account of religion nor drove you out of your homes. Verily, Allāh loves those who deal with equity” (*Al-Mumtahanah* (60) 8).

As mentioned in the beginning of this chapter majority of the Islamic jurists have renounced and repudiated the modern form of insurance companies and their practices and claimed its contract as something impermissible in the Islamic Law. I would like to conclude the chapter by saying that there is no difference of opinion among all the Islamic jurists in regard to the permissibility of the *Takāful* system of insurance as substitute of conventional insurance. Because this system of *al-Takāful* as previously mentioned, is fall under the Gratuitous Contracts such as donation (i.e. *al-Tabarru'*) etc. also as form of helping one another in righteousness (i.e. *al-Ta'āwun 'ala al-birr*).

All praises and thanks be to Allāh the Lord of the mankind and all that exist. It is clear to every *Muslim* that this system of Islamic insurance *al-Takāful* is indeed the Islamic alternative to the conventional insurance for *Muslims*. In this chapter the operational system of *al-Takāful* has been pointed out and explained how the system conform to the Islamic Law (*Sharī'ah*). However, those *Muslims* who prefer and persist in dealing with conventional insurance companies even though the Islamic insurance companies *al-Takāful* have become widely known and widespread inside and out side the Islamic countries. I would like to advice them to change their directions towards the right and

lawful path as long as they claim to be *Muslims* not hypocrites. Because it is the character of hypocrites as previously mentioned to believe in one part of the Scriptures and disbelieve in the other, or to be a double-faced people. Hypocrites will be in the lowest depth of the fire and the Double-faced people are the worst people before the almighty Allāh on the Day of Resurrection. In the following verses Allāh the almighty has commanded the entire mankind to obey Him and also to submit to His Will. Because He is the real Authority therefore, He must be obeyed. And also the Prophet (peace be on him and his family) must be obeyed, any breach of allegiance to the Messenger of Allāh shall be a rebellion against the Sovereign, Whom he represents. Read what Allāh the almighty says:

“The Religion before Allāh is Islam (submission to His Will).”
(*āli ‘Imran* (3) 19).

“If anyone desires a religion other than Islam never will it be accepted of him; and in the Hereafter he will be in the ranks of those who have lost.” (*āli ‘Imrān* (3) 85).

“O you who Believe! Obey Allāh and obey the Messenger and those entrusted with authority from among you. (And) if you differ in anything amongst yourselves, refer it to Allāh and His Messenger, if you truly believe in Allāh and the Last Day. That is better and more suitable for final determination.”
(*An-Nisā’* (4) 59).

Islam set no quantitative limits to the extent of material growth of individuals in *muslim* society as long as the methods for such growth are conform with the honorable Islamic Law, because the utmost aim for a sincere *Muslim* is to please the almighty Allāh by obeying His rules in order to be among the pious and righteous persons whom the

almighty Allāh promised good end in the Hereafter. In this regard, read the following verses:

“But seek, with that (wealth) which Allāh has bestowed on you, the home of the Hereafter, and forget not your portion of lawful enjoyment in this world; and do good as Allāh has been good to you, and seek not mischief in the land. Verily, Allāh likes not the *Mufsidūn*” (those who commit great crimes and sins, mischief-makers, corrupters, etc.) (*Al-Qaṣaṣ* (28) 77).

“That home of the Hereafter (i.e. Paradise), We shall assign to those who rebel not against the truth with pride and oppression in the land nor do mischief by committing crimes. And the good end is for the pious and righteous persons.” (*Al-Qaṣaṣ* (28) 83).

“And (when) it is said to those who are the pious “What is it that your Lord has sent down?” They say: “That which is good.” For those who do well in this world, there is good, and the home of Hereafter will be better. And excellent indeed will be the home (i.e. Paradise) of the pious” (*Al-Nahl* (16) 30).

“Allāh increase the provision for whom He wills, and straitens (it for whom He wills), and they rejoice in the life of the world, whereas the life of this world as compared with the Hereafter is but a brief passing enjoyment” (*Al-Ra‘d* (13) 26).

Table 13: List of Comparison between Conventional Insurance and Islamic insurance *Takāful*

	Comparison element	Conventional insurance	Islamic insurance <i>Takāful</i>
1	The meaning	Insurance contract is an agreement by one party to assume another's risk of loss in consideration for the payment of a premium.	<i>Takāful</i> contract is an agreement which falls under the donation contract (i.e. <i>Tabarru'</i>) among group of people or participants who agree to jointly guarantee and help each other against loss or damage that may inflict upon any of them as defined in the agreement.
2	Investment activities	Are interest based activities	Are in conformity with Islam
3	Nature of the contract	Is a contract of buying and selling.	Is based on the principle of <i>Takāful</i> and <i>Muḍārabah</i>
4		Profit is the main objective in its operations	Mutual cooperation is the utmost aim in its operations.
5	<i>Al-Ghrrar</i> <u>Uncertainty</u> <i>Al-Maisir</i> <u>Gambling</u> , And <i>Riba</i> Interest.	The three elements are present in its contract.	Its contract is free from these three elements.
6	General purpose	To assist the unfortunate groups who are confronted with financial predicaments. In another word, Handling risk or uncertainty regarding loss.	To assist the unfortunate groups who are confronted with financial predicaments. In another word, Handling risk or uncertainty regarding loss.
7	<i>Sharī'ah</i> ruling	Unlawful (<i>Harām</i>) according to the majority of <i>Fuqahā'</i> , and most of the jurisprudence conventions.	Lawful (<i>Halāl</i>) by consensus of all the <i>Fuqahā'</i> , (jurists) and all the jurisprudence conventions.

Conclusion

The purpose of this work did not extend beyond discussing what is lawful and unlawful in human transactions and Muslims economic way of life. It has become clear from the foregoing discussions that the modern conventional insurance system, which has generated a lot of controversies among Muslim jurists is one of the highly regarded contracts in the world due to its strong nature with the economic and business life of people. The following is the summary of the more important results of this study.

1. It is explained in the introduction how the almighty Allāh glory be to Him perfected the religion of Islam for mankind and guides people through this religion from darkness to light and to right path. And also explained that one will have a real happiness in accordance with what Allāh has ordained and revealed for guidance. Therefore, the researcher presented a humble advice to the *Muslim Ummah* to adhere firmly and strongly to the religion of Islam by implementing all its tenets, provisions, and ethics. This is Because people feel good, happy, safe and secured in respect of themselves, their property, honor and dignity whenever Islamic law and teachings is implemented and followed.
2. In the field of the Islamic economic system, the researcher explained that the objectives and principles of Islam aim at establishing a just society wherein everyone will behave responsibly and honestly. And then the dissertation discussed how Islam as entire way of life, in matters, material as well as spiritual, has given detailed regulations for the Muslims economic way of life, which is fair and balanced in every aspect. And also how

the guidance of Allāh glory be to Him extends into all parts of our lives. The important remakes the researcher observed through the study of this topic (the basic principles of the Islamic economic system) are: (1) Islam acknowledges and accepted different forms of ownership, viz. individual ownership, state ownership, and public ownership. But real ownership belongs to the almighty Allāh; man holds property in trust for, which is accountable to Him, in accordance with rules clearly laid down in *shari'ah*. (2) Islam allow individuals, at the economic level, a limited freedom, within the bounds of the spiritual and moral values in which Islam believes by providing the textual stipulation to forbid a group of social and economic activities, which hinder the realization of the ideals and valued adopted by Islam, such as *Ribā* (usury), monopoly etc. (3) Principle of social justice is the most important attribute in Islamic economy. Islam indeed permits difference in wealth within reasonable limit but does not tolerate this difference growing so wide that some people spend their life in luxury and comfort, while the great majority of people are left to lead a life of misery and hunger. (4) Acquisition of property as well as its use and disposal are subject to limits set and should be guided by the norms laid down by Allāh. (5) Absolute ownership of man is a concept alien to Islam, as it belongs to the almighty Allāh alone.

3. In regard to trade, without doubt Allāh the almighty has created human beings in a state of dependence upon one another, and He has directed them toward exchanging goods and utilities through buying and selling or other lawful methods of doing business, because such transactions will make social and economic life function smoothly. Therefore, He has permitted trading and forbidden *Ribā* (usury) or

acquiring wealth through unlawful means. In this regard the researcher explained how Islam does not permit its followers to earn wealth in any way they like, rather it differentiates between lawful (*Ḥalāl*) and unlawful (*Ḥarām*) ways of acquiring wealth based on the criterion of overall well-being of the society. This is because every objective of the Islamic law is to promote the welfare of the people, and enjoin the bounties of the almighty Allāh within the framework of values for righteous living through which Islam seeks to promote human welfare.

4. In the discussion concerning the prohibition of *Ribā*, it is mentioned that the strict and firm prohibition of *Ribā* transaction in Islam is a result of its deep concern for the moral, social and economic welfare of mankind. According to *al-Qarāḍāwī* “in a society in which interest is lawful, the strong benefit from the suffering of the weak. As a result, the rich becomes richer and the poor poorer, creating socio-economic classes in the society separated by wide gulfs. Naturally, this generates envy and hatred among the poor toward the rich, and contempt and callousness among the rich toward the poor. Conflict arises, the socio-economic fabric is rent, revolutions are born, and social order is threatened.”⁴¹² In this discussion I also outline the wisdom in prohibiting the interest transaction. According to *Muslim* scholars the wisdom in prohibiting *Ribā* transaction in Islam is:

⁴¹² Yūsuf al-Qarāḍāwī, *The Lawful and the Prohibited in Islam*, (al Madīnah Printing & Publication, Jeddah, 1993), P.264 –266.

- (1) to protect the property of the *Muslim* not to be eaten unjustly.
 - (2) To encourage and direct *Muslim* to invest his money through lawful channels.
 - (3) To block anything which will generate hatred, evil and envy among *Muslims*.
 - (4) Interest by its nature, creates selfishness, cruelty, hard-heartedness, money-worship etc., and kills the spirit of fellow feeling and co-operation. It is therefore, ruinous for society both morally and economically.
 - (5) To encourage people to do good to one another as required by Islam, therefore if interest is prohibited in a society, people will lend to each other with good will, expecting back no more than what they have loaned, so that the spirit of mercy and charity among the *Muslims* will be more firm and strong.
5. I discussed the issue of the modern conventional insurance system from the *Sharī'ah* (Islamic law) perspectives. I discussed its functions, objectives, essential elements and characteristics of its contracts. I also explore how the contemporary Muslim jurists have differed on the legality of the system according to Islamic law. It becomes patent to me during my study on this issue that the stand of the majority of the *Muslim* jurists who are of the opinion that the modern form of the conventional insurance companies and its practices is unlawful and not conform to any Islamic system of transactions is the preferable and more acceptable. The reason being that, the policies of these companies contravene the principles of Islamic law. Also it is articulate that its contracts consist of the elements of *Ribā* (i.e. interest), *Gharar* (i.e. risk), and *Maysir* (i.e. gambling). Besides, the underlying investment activities of the conventional insurance companies, are interest (*Ribā*) based.

6. In my discussion concerning the prohibition of the modern conventional insurance, I explained the stand of the Muslim scholars which is, Islam is not against the concept and the idea of insurance itself, but it only opposes the means and methods which aim is only to make profit by any ways and means. Any insurance practices which, posses certain Islamic characteristics (such as sincerity, moral attributes, absolute Islamic law principles etc.) in its dealings, Islam will welcome them.

7. And then I discussed how the course of history has forced Muslims to accept certain institutions which, have developed in the west (such as modern conventional insurance etc.) and yet in conflict with the values and principles enunciated by Islam. And then I mentioned how the majorities among the *Muslim* jurists who objected the concept of the modern commercial insurance contracts work hard to come out with an alternative to the modern form of the conventional insurance system. Due to their humble effort the concept of *al-Takāful* (the Islamic insurance) is been introduced to *Muslim Ummah* as a substitute to the modern commercial insurance system. During my study on this topic it becomes obvious to me that the basic concept of insurance has existed since Islam's earliest appearance. The establishment of the treasury (*Bait al-Māl*) in order to help look after the welfare of *Muslims* and those residing within the Islamic domain, and introducing the institution of the greatest form of insurance which, Islam has legislated for its followers that is *Zakāʾ* (the obligatory charity) are the articulate essence of insurance in the Islamic system.

8. The Muslim jurists stressed that any Islamic insurance system in order to be held valid according to Islamic law must (in principle) based on the concept of *al-Muḍārabah* (i.e. profit and loss sharing contract) and the concept of *al-Tabarru'* (i.e. donation), so that the elements of *Gharar* (i.e. risk, uncertainty) will be avoided in the system. Also the presence of these principles within the *Takāful* configuration and arrangement will make insurance in *Takāful* comply with the Islamic system of business (*muā'malah*), also will ensure that the system is within the scope of the Islamic law, thus the system is free from the elements of uncertainty, gambling, and interest.

9. Concerning the legitimacy and legality of *al- Muḍārabah* in *Sharī'ah* (the Islamic law). I explained that there is no deference of opinion among the Muslim jurists on the lawfulness and validity of its concept. It is an ancient form of doing business which, is been practiced by the Arabs since long before the advent of Islam on a specific manner which, become clear to me during this research work. I discussed most of the *Muḍārabah* provisions and injunctions which, I think are related to this study (such as distribution of profits and liability for loss, termination of the *Muḍārabah* contract on the death of the either partner, etc.).

10. *Syrikat Takāful Malaysia Berhad* is the first *Takāful* operator to be established in Malaysia, and followed by *Takāful Nasional Sendirian Berhad*. In this research work I discussed the concept, development and the operational system of these companies. Concerning the *Takāful* act, I discussed some of it clauses which, I think need some amendment. For example right to enter into a contract of *Takāful*. The *Takāful* Act 1984,

S. 64 provides that "A person under the age of eighteen years shall not have the capacity to enter into a contract of *Takāful*". In this regard I discussed the view of famous four Islamic school of thought on the precise age of puberty in which, human being will be responsible for all his or her deeds, conduct, and actions in the sight of Islamic law. However, in my view the opinion of those who consider the age of puberty to be fifteen years is preferable. Because it is common and usual that boys and girls by physical indications reach the age of puberty (*Bulūgh* or *I'ḥtilām*) at fifteen years. Therefore, this is the age whereby human being as long as he remains sane will be considered fully responsible for his deeds and actions including the capacity to enter into any legal relationship, such as contracts.

11. Finally, I would like to end this conclusion recommending that, a lot need to be done in order to clarify the concept and the idea of the Islamic insurance (*al-Takaful*) to the whole *Muslim Ummah*. During my discussions with some Muslims from different countries it becomes patent to me that many Muslims in the Islamic world are not aware of the *Takaful* system concept. Therefore, more efforts need to be put in order to achieve this noble goal. In order to attract both Muslims and non Muslims to participate more in the *Takaful* system I think more products need to be introduced in the system particularly in those countries whereby Muslims are the minorities (such as United States of America, Canada, Europe etc.).

The most important point I wish to stress in this study is that mere knowledge of the lawful and unlawful, is not sufficient without practicing or implementation. Therefore, a Muslim should not indulge himself in sins and neglect the Islamic principal obligations which are known to every Muslim, and rush toward the Hell with his eyes wide open.

Allāh the almighty says:

“But whosoever turns away from My Message, verily for him is a life narrowed down, and We shall raise him up blind on the Day of judgement. He will say: “O my Lord! Why hast thou raised me up blind, while I had sight (before). (Allāh) will say: “Thus didst thou, when Our Signs came unto thee, disregard them: so wilt thou, this day, be disregarded. And thus do We recompense him who transgresses bounds and believes not in the Signs of his Lord: and the Penalty of the Hereafter is far more grievous and more enduring” (*tā Hā* 20: 124-127)

“Say: “Whether ye hide what is in your hearts or reveal it, Allāh knows it all: He knows what is in the heavens, and what is on earth. And Allāh has power over all things. On the Day when every soul will be confronted with all the good it has done, and all the evil it has done, it will wish there were a grate distance between it and its evil. But Allāh cautions you (To remember) Him self. And Allāh is full of kindness to those that serve Him. Say: “if ye do love Allāh, follow me: Allāh will love you and forgive you your sins; for Allah is Oft-Forgiving, Most Merciful. Say: “Obey Allāh and His Messenger”: But if they turn back, Allāh loveth not those who reject Faith. (*ālī ‘Imrān* 3: 29-32)

“This is the Way of thy Lord, leading straight: We have detailed the Signs for those who receive admonition” (*Al-An ‘ām* 6: 126)

I end this research work with this supplication. All praise is for the almighty Allāh, Who guided us to this; had He not given us guidance, we would not have been guided.