CHAPTER 5
CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

As a conclusion, Islam as a way of life (*al-deen*), is not against the concept of insurance. In fact, the concept of insurance taken as a means of precautionary measures against risks upon life and property fits contentedly within the framework of Islam. In addition, the pure objective of insurance i.e. mutual help and co-operation are always encouraged in the life of Muslims, as enshrined by Allah The Almighty to the effect:

> *"...Help you one another in virtue, righteousness and piety, but do not help one another in sin and transgression"*[1]

However, Islam opposes the means or methods of implementing the concept (i.e. through the contract of buying and selling) since it is associated with objectionable elements such as *gharar, maysir* and *riba*'. There is a legal maxim (*al-qawa`id al-fiqhiyyah*) which states that 'the end does not justify the means'. Thus, although the purpose of insurance is praiseworthy, it cannot be used as a basis to justify the incorrect means of achieving the purpose. In other words, both purpose and means must be jointly aligned with the *Shari`ah* principles.

Nevertheless, there is no consensus among Muslim scholars with regards to the existence of such elements in conventional insurance contract. There are at least three standpoints: Some hold it permissible (*mubah*) provided that it is free from the element of *riba'*; others reject it wholesale; and still others accept it in some of its forms only. By pursuing each of the group's rationale and evidence, it is concluded that the existence of *gharar* and *maysir* is ambiguous or uncertain.

[1] *Surah al-Maidah* 5 : 2

The only force that causes conventional insurance null and void from the *Shari`ah* perspective is the element of *riba'.*

This is true especially when conventional contract of insurance is regarded as a contract of sale, whereby the insurer promises to compensate the insured in exchange for the premium paid. Since the amount of premium and compensation (both in terms of money) being exchange differ in amount and takes place at different times, it brings about the problem of *riba' al-fadl* and *riba' nasiah.* Moreover, insurance companies invest the premiums which they have collected, in interest bearing investments. Islam does not tolerate with *riba'* since it is regarded as an economic evil harmful to society, economically, socially as well as morally. Besides, it is the only business practice which is assured with a serious threat of war from Allah The Almighty.

> *"O you who believe! Be afraid of Allah and give up what remains (due to you) from riba' (from now onward), if you are (really) believers. And if you do not do it, then take a notice of war from Allah and His Messenger..."* [2]

As an alternative to insurance, Muslim scholars have come up with the idea of *takaful*, which is based on the contract of donation with condition of compensation (*tabarru`*). Based on this contract, the company no longer acts as an insurer to the insured. It is the participants who take action as the insurer as well as the insured. The *takaful* operator merely acts as a fund manager in partnership with the participants under the contract of *al-mudharabah.* Subsequently, the objectionable elements have been put to an end.

However, many people after being told about the crucial role played by *tabarru`* are not convinced that one word could make such difference. Most people expect the difference to be something more dramatic. The word *tabarru`,* although

[2] *Surah al-Baqarah* 2 : 278-279

innocuous, it fundamentally changes the whole transaction. This would be analogous to say, the difference between being married and just living together out of wedlock. Although to some there is no difference, to the Muslims, the difference is literally heaven and hell.

In essence, it is not necessary 'to reinvent the wheel' for a system to be Islamic as Islam can accept whatever that is good and not against its teaching. Therefore, in the case of Islamic insurance, it can apply the basic principles of conventional insurance as well as other operational aspects including the computation of contribution, as long as they are not explicitly prohibited. This is in accordance with the legal maxim 'everything is *halal* unless it is specifically forbidden'. For instance, Islam adopted and refined the custom of *diyat* (blood money) which was practiced by the pagan Arabs before Islam.

With regard to complaints that *takaful* (STMB) costs more than conventional insurance for the same type of policy, it is only relevant to the motor policy. This is due to the application of its own tariff or rates which is higher than conventional standard PIAM tariff. For other types of general policies, STMB does not vary from other conventional companies, since it follows the standard PIAM's rates as well as market rates. However, in the long run, one will find that motor *takaful* policy does not differ much in terms of actual cost, as a portion of the contribution will be reimbursed as a *mudharabah* profit. For other types of general policies, it will actually become cheaper. On the other hand, family takaful policies cost less than their counterparts in conventional life insurance, since STMB excludes agent's commission in determining the contribution amount.

Despite promoting *takaful* as a *Shari`ah*-compliant insurance for more than 15 years, the majority Muslims are still unaware of the importance of having *takaful* policies as a lawful precautionary measures against risks. This is shown by the low penetration of family *takaful* at only 1.9% of the total Malaysian population. Moreover, the *takaful* industry remains small relative to conventional insurance.

As at the end of year 2000, *takaful* contributions in Malaysia represented only 3.8% of conventional insurance premium, while *takaful* assets stood at only 2.2% of total conventional insurance assets. Nevertheless, the annual growth rates of assets and contribution income of *takaful* industry have constantly shown higher values than conventional insurance, even in the midst of the economic crisis. On top of that, the growth potential for takaful is enormous since there is not less than 10 million Muslims in Malaysia, more than one-half of Malaysian population. With Islam being the official religion coupled with an increasing Islamic consciousness among Muslims the *takaful* penetration as well as its growth will be improved in the future.

5.2 *Takaful* Industry Five-Year Strategic Plan

To tap the tremendous potential in the *takaful* industry, the Central Bank of Malaysia has drawn up a five-year strategic plan in consultation with the statutory associations, conventional insurers and *takaful* operators. The strategic plan focuses on a number of areas of development , each with defined objectives and strategic action plans. Central to the plan are specific targets set for the *takaful* industry to achieve over the next five tears. The targets include market penetration of family business of 7% (currently 1.9%) of the Malaysian population, and total contribution income of both the general and family *takaful* business to reach 7% (currently 3.8%) of the total premium income of the conventional insurance sector.

These targets are supported by strategies to enhance the market penetration of *takaful* business by allowing more players into the market, promoting the diversification of marketing channels, encouraging product innovation and instilling greater public awareness of the benefits of *takaful*. The plan also sets out strategies to strengthen the financial soundness of *takaful* operators and the regulatory framework governing the *takaful* industry. These strategies are rooted in specific action plans to achieve the ultimate objectives under the five-year plan. They include:

1. A comprehensive review of the *Takaful* Act by the Central Bank to replace the existing regulatory framework with a more comprehensive legislation that incorporates the experience thus far gained from administering both existing *takaful* and conventional insurance legislation;

2. The introduction of model accounts and new statistical statements to ensure minimum reporting standards, greater disclosure of financial information and transparency of operations;

3. Measures to promote regional expansion and international cooperation in *Takaful*;

4. Measure to develop Malaysia into a center for *takaful* training and education.

The progressive implementation of the strategies outlined in the five-year plan should see the *takaful* sector evolve into a significant sub-sector of the Malaysian insurance industry in the coming years.

5.3 Recommendations

1. In order to achieve the 7% target as outlined in the five-year strategic plan, *takaful* operators should rigorously promote the concept of *tabarru`* apart from the concept of *al-mudharabah*. It should not remain hidden. Every effort should be made to highlight it, otherwise, there would be no difference from buying insurance. Although the profit sharing contract of *al-mudharabah* is the main attraction now, it may not remain attractive for long, especially when the fire and motor tariffs are disbanded. This is

expected to happen in the year 2003 when the financial sector is liberalized. When that happens, *mudharabah* will no longer be the competitive advantage as insurers will come up with lower rates and more added value products.

Moreover, the *mudharabah* profit in general policies depend upon surplus. Should there any surplus left at the end of a financial year, profit would be distributed. If economic condition is bad and claims ratio is high, there would be no profit to be shared. *Tabarru'* on the other hand, would remain the hidden beauty, but it must be highlighted as people would not notice otherwise. *Tabarru'* has the potential to bring about a positive mindset towards *takaful* not only in Muslims but all Malaysians. This is because Malaysians are generally charitable.

2. STMB should reconsider its decision by not using agents in distributing the *takaful* products due to its incongruity with the *mudharabah* contract. This is mainly because the role of intermediaries in insurance industry is of special importance as many policies have been affected through the agents. Moreover, many Muslims still have a misconception about the idea and practices of *takaful.* Therefore, a more proactive actions should be taken by appointing agents to publicize and inform Muslims about the concept, significance and importance of involvement in *takaful* practices which includes the double benefits, i.e. benefit of getting insurance cover that is *halal* (permissible) and benefit of doing a good deed. It is submitted that, the agent may be one of the chief sources in making the idea of *takaful* popular, and they may contribute to the convincing of the heart of the society. This agency system has been adopted by the second *takaful* operator as it is approved by its *Syari`ah* Supervisory Board. As a result, the second *takaful* operator is gaining much more publicity and acceptance than STMB.

By employing agents, the issue of commission paid to them could be perceived under the purview of the agency (*al-wakalah*) contract. Under this contract, agents that work on behalf of the operator are entitled to some kind of fee or reward for their services rendered. However, as the *takaful* operator itself is an agent to the participants (the participants are both the insurer and insureds), the consent of the participants as the principals to enter into another agency contract with those agents is a must. By virtue of this consent, the *takaful* operator may pay the commission to those agents whereby this payment could come from the fund of *takaful* contributed by each and every participant.

3. *Takaful* operators should conduct a training course for their staff at all levels. This is crucial in ensuring that all staff or personnel have a clear understanding and knowledge about Islam especially concerning the aspect of *mu`amalah*. The fundamental knowledge such as legal maxim (*al-qawaid al-fiqhiyyah*) and Islamic jurisprudence (*fiqh* and *usul al-fiqh*) should be a compulsory subject in the course. This is mainly because, without this very basic, one neither can recognize the basic principles in Islamic transaction (*mu`amalah)* nor can use these principles to devise a new *Shari`ah* compliance products.

4. Both *takaful* operators should propose some amendments to the *Takaful* Act 1984 especially regarding the principle of insurable interest. It is sad to admit that the Act does not provide any provision relating to the insurable interest as justified by the *Shari`ah* sanctions. Although the guidelines relating to insurable interest in a *Takaful* policy are verbally expressed by the representatives of the *takaful* operator, they actually have no statutory basis. Such guidelines could be challenge at any time, since there is no written statutory basis. In this regard, it is suggested, the general principles of insurable interest should be based on the principles of *fara'id*, in which the benefits over the policy should be regarded as the estate of

the participant, and the insurable interest could only be vested on those who according to the general principles of *fara'id* have the beneficial rights over the estate of the participant after his death.

5. The minimum age of a person to buy a policy should also be amended. Currently the Act requires the participant or proposer of *takaful* to be at least 18 years old. As *takaful* policy is a financial transaction, which binds both the operator and the participant based on the general principles of *al-`aqd* (contract), the minimum age of the contracting parties should then be the age of *rushd* (puberty or majority). A majority of the Islamic jurists including *Imam* Shafi`ie set the age of *rushd* at 15 years for both male and female. Therefore, since the Islamic law applying in Malaysian society is based on the Shafi`i's school of thought, it is suggested that the minimum age of a person to hold a policy should be reduced to 15 years instead of 18 years.

6. The Act provides that the Director General of Takaful shall refuse to register an applicant unless he is satisfied, that the aim and operation of the proposed takaful business will not involve any element which is 'not approved' by *Shari`ah*. However the Act does not define *Shari`ah* nor does it explain what is meant by an element 'approved' or 'not approved' by *Shari`ah*. This is a serious omission as 'approved' by *Shari`ah* may have meaning far wider than 'being permitted in Islam'. This is because in Islam, apart from elements which are strictly prohibited (*haram*) there are also elements which are discourage or frowned upon (*makruh*) and those that are greatly encouraged (*sunnat*). While the presence of elements which are *haram* will clearly not be approved by the *Shari`ah*, it is not clear whether the presence of *makruh* elements will be approved or disapproved by the *Shari`ah*.