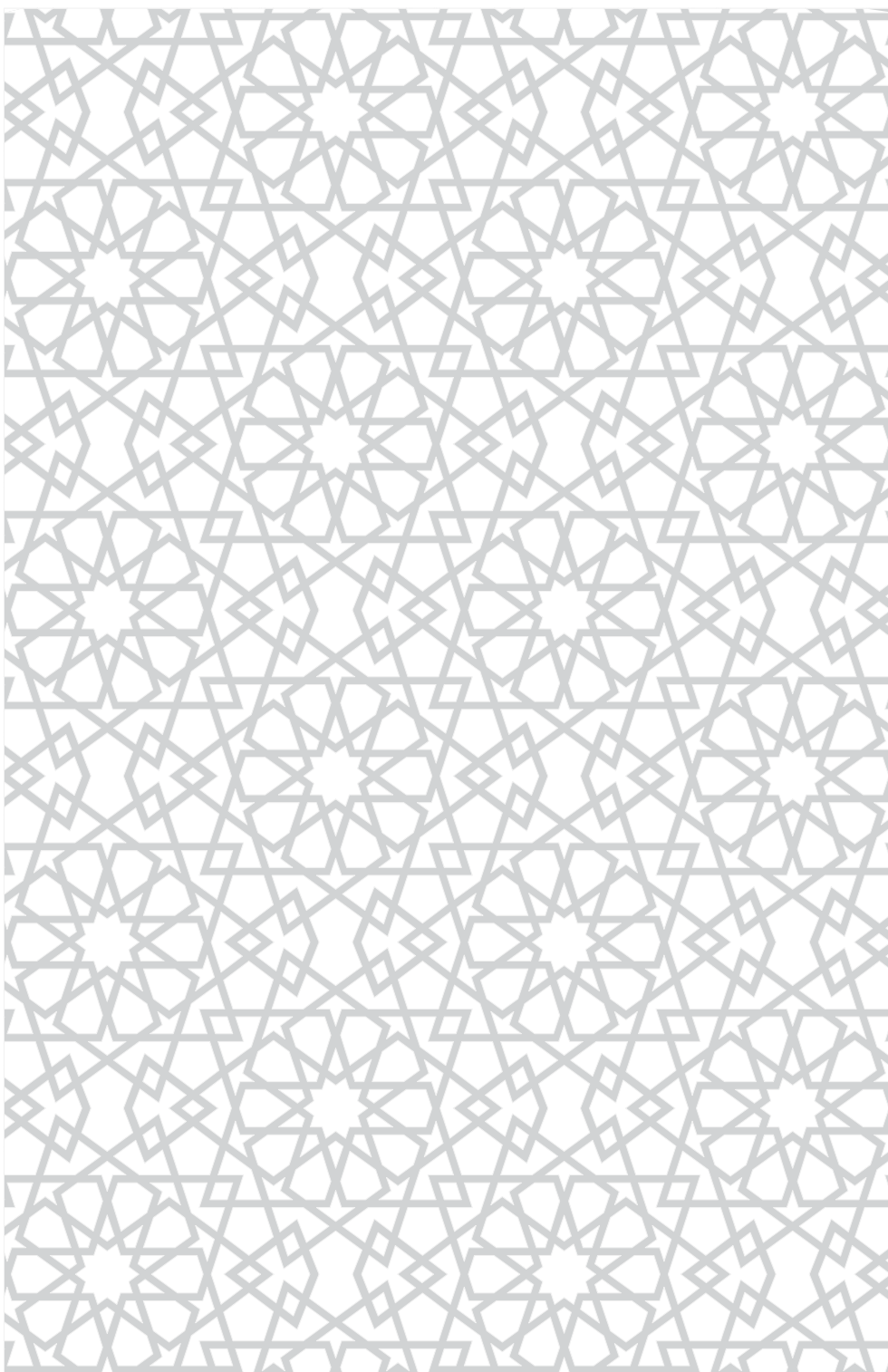


Shari'ah Standard No. (26)

Islamic Insurance



Contents

Subject	Page
Preface	677
Statement of the Standard.....	678
1. Scope of the Standard	678
2. Definition of Islamic Insurance in Contrast with Conventional Insurance.....	678
3. Status of Islamic Insurance According to Fiqh (Islamic Jurisprudence)	678
4. Contractual Relationships in Islamic Insurance.....	679
5. Principles and Shari'ah Bases of Islamic Insurance.....	680
6. Types of Islamic Insurance	681
7. Participation in Islamic Insurance	682
8. Commitments of the Participant in Islamic Insurance	682
9. Conditions in Islamic Insurance Policies.....	683
10. Commitments and Jurisdictions of the Joint Stock Company	683
11. Indemnity.....	685
12. Insurance Surplus.....	685
13. Expiry of Insurance Policy.....	686
14. Date of Issuance of the Standard.....	686
Adoption of the Standard.....	687
Appendices	
Appendix (a): Brief History of the Preparation of the Standard.....	688
Appendix (b): The Shari'ah Basis for the Standard.....	690
Appendix (c): Definitions.....	698



IN THE NAME OF ALLAH, THE ALL-MERCIFUL, THE MOST MERCIFUL

All praise be to Allah, the Lord of all the worlds, and blessings and peace be upon our master, Muhammad, and his household and all his companions

Preface

The purpose of this standard is to present the Shari'ah rules that govern Islamic Insurance, as well as the characteristics, basic aspects, principles and types of Islamic Insurance. The standard also aims to indicate the controls that Islamic financial Institutions (Institution/Institutions)⁽¹⁾ should observe in this connection.

(1) The word (Institution/Institutions) is used here to refer, in short, to Islamic financial institutions including Islamic Banks.

Statement of the Standard

1. Scope of the Standard

This Standard covers Islamic Insurance in terms of its definition, Shari'ah status, characteristics, principles, basic elements, types, and how it differs from Conventional Insurance. The Standard also sets out the controls to be observed by the Islamic financial Institutions offering products based on Islamic insurance. However, it does not cover social insurance schemes arranged by the state.

2. Definition of Islamic Insurance in Contrast with Conventional Insurance

Islamic Insurance is a process of agreement among a group of persons to handle the injuries resulting from specific risks to which all of them are vulnerable. A process, thus initiated, involves payment of contributions as donations, and leads to the establishment of an insurance fund that enjoys the status of a legal entity and has independent financial liability. The resources of this fund are used to indemnify any participant who encounters injury, subject to a specific set of rules and a given process of documentation. The fund is managed by either a selected group of policyholders, or a joint stock company that manages the insurance operations and invests the assets of the fund, against a specific fee.

As for Conventional Insurance, it is a Mu'awadah (mutual compensation) contract that seeks to make profit out of the insurance operation itself, and, hence, is subject to Shari'ah rulings on financial dealings that involve Gharar (uncertainty). Consequently, conventional insurance is banned by Shari'ah.

3. Status of Islamic Insurance According to Fiqh (Islamic Jurisprudence)

Islamic insurance is based on the commitment of the participants to make donations for the sake of their own interest. The participants,

therefore, protect their group by payment of contributions that constitute the resources of the insurance fund, and assign the management of that fund to a committee of policyholders, or to a joint stock company that possesses the license of practicing insurance business. In the latter case, the company assumes this job on the basis of a remunerated Wakalah (Agency) contract. In addition to managing the insurance operations, the committee of policyholders or the company also assumes the responsibility of investing the assets of the fund through Mudarabah or investment agency.

- 3/1 The managing company is entitled to its own capital and returns on capital, the agency fee, and its specific share of the profits earned by investing the insurance assets through Mudarabah or investment agency. The company also bears all the expenses of its operations including those relating to its tasks for investing the insurance assets.
- 3/2 The policyholders fund is entitled to the contributions and the returns thereon, the provisions and reserves relating to insurance business, and the insurance surplus. The fund bears all direct expenses pertaining to management of insurance operations.

4. Contractual Relationships in Islamic Insurance

There are three contractual relationships in Islamic insurance, including:

- 4/1 The Musharakah (partnership) among the participants, which leads to the establishment of a company that has articles of association and all other documents. The relationship between the participants may be confined to a Musharakah contract if a company manages the fund. [see Shari'ah Standard No. (12), on Sharikah (Musharakah) and Modern Corporations]
- 4/2 The relationship between the company and the policyholders' fund which is a Wakalah relationship in regard to management, and a Mudarabah or investment agency relationship in regard to the investment of the fund's assets.
- 4/3 The relationship between the policy holders and the fund which takes the form of donation commitment at the stage of making

contributions, and indemnification commitment at the stage of providing compensation for injury as per regulations and underlying constituent documents.

5. Principles and Shari'ah Bases of Islamic Insurance

Islamic insurance is based on the following principles and rules of Shari'ah, which shall be explicitly mentioned in the articles of association or the rules or the documents of the corporation:

- 5/1 Donation commitment, as it should be stipulated that the participant donates his contribution and the returns thereon to the insurance account for payment of indemnity, and may undertake to bear any deficit that may occur, as per regulations.
- 5/2 The company that arranges the insurance deal should maintain two separate accounts: one for its own rights and liabilities, and the other for the rights and liabilities of the policyholders.
- 5/3 The company should assume the role of the agent in managing the insurance account, and the role of the Mudarib or agent in investing the insurance assets.
- 5/4 The insurance account is entitled to the insurance assets and their returns on investment, and should bear the liabilities relating to these assets.
- 5/5 The adopted rules may comprise disposal of the surplus in a way that serves the cause of common interest of the participants, such as accumulation of reserves, reduction of the contribution, charitable donations and partial/full distribution of the surplus among the participants. The managing company is not entitled to any share of the surplus.
- 5/6 When the company is liquidated, all provisions and accumulated reserves pertaining to insurance should be spent on charitable purposes.
- 5/7 Preference should be given to policyholders to participate in management of the insurance operations through appropriate legal arrangements that enable them to exercise their control rights and protect

their interest. Such arrangements could include, among others, representation of policyholders in the Board of Directors.

5/8 Company shall adhere to the rules and principles of Islamic Shari'ah in all its activities and investments, especially in refraining from provision of insurance coverage for Shari'ah-banned items, activities or purposes.

5/9 A Shari'ah Supervisory Board shall be formulated for issuance of Fatawa (plural: Fatwa, i. e. juristic opinion) that are binding to the company, and establishment of an internal unit for Shari'ah monitoring and auditing.

6. Types of Islamic Insurance

6/1 Property Insurance: which entails indemnification for actual injury, and comprises insurance against fire, car accidents, airplane accidents, liability, breach of trust, etc. [See Shari'ah Standard No. (5) on Guarantees – item 6/4]

6/2 Person Insurance: which includes insurance against the risk of disability and death, and is sometimes known as *Takaful* (mutual support). It corresponds to conventional life insurance.

6/2/1 Insurance against the risk of disability or death takes place as follows:

6/2/1/1 Submission of a request for participation indicating all personal affairs and characteristics, that need to be known for offering the insurance coverage to the insured, along with the particulars of the entitlements and obligations of the insured.

6/2/1/2 Specification of the contribution amount.

6/2/1/3 Specification of the benefits payable to the beneficiary as per agreement.

6/2/1/4 In case of death, the *Takaful* entitlements should be distributed among the deserving persons, parties or purposes as indicated in the documents, and accord-

ing to the regulatory rules issued by the Shari'ah Supervisory Board. In case the deceased was entitled to some investment balances, then the same should be distributed among the inheritors according to the Islamic rules of inheritance.

6/2/1/5 In case of insurance against death, it should be stipulated in the insurance policy that the insured (the beneficiary) or his inheritor should not be entitled to any compensation when the death is caused by a murder wherein the said beneficiary or inheritor is involved.

7. Participation in Islamic Insurance

- 7/1 Non-Muslims may participate with Muslims in the various types of Islamic insurance.
- 7/2 The contribution may be determined according to the actuarial principles based on statistical techniques. In this regard, due consideration should be given to whether the risk involved is fixed or variable, and to the contribution/risk tradeoff besides determination of the type and period of the risk coverage, and specification of the insurance amount.
- 7/3 The risk that constitutes the subject matter of insurance should be one that could probably occur. It should not be something that relates to the absolute will of the participant, and should not encounter any Shari'ah prohibition.

8. Commitments of the Participant in Islamic Insurance

The participant (insurance seeker) should observe the following commitments:

- 8/1 Submission of the required information about the risks to be insured against, and informing the company of any new circumstances that may increase these risks after concluding the contract. If it is proved that the participant had committed fraud or deceit, or submitted false information, he is then subject to partial or full deprivation

from indemnity. In case of unintentional misrepresentation by the participant, the indemnity shall become proportionate to the accurate information he presented.

- 8/2 Payment of contribution on time as per agreement. If the participant refrains from or delays payment of his contribution, the company has the right to terminate the contract or pursue legal enforcement of payment.
- 8/3 Informing the company, in its capacity as an agent of the policyholders' fund, of occurrence of the risk insured. Notification should be made during the period stipulated in the insurance policy, or within reasonable time if such period is not provided for in the policy. If the participant fails to make such notification, the company has the right to claim indemnity from him for the actual loss incurred by the insurance account due to such breach of commitment.

9. Conditions in Islamic Insurance Policies

- 9/1 There is no Shari'ah restriction on providing for special conditions in the insurance policy. Special conditions may relate to periods of insurance, denial of indemnity in specific cases as when the participant fails to notify the company about occurrence of risk on time, or charging the participant with a specific portion of the indemnity. A condition thus stipulated in the insurance policy remains binding as long as it does not contradict with the rules of Shari'ah or the prerequisites of the contract.
- 9/2 It is permissible to stipulate in the insurance policy special cases that lead to deprivation from indemnity provided that justice, preservation of rights, and avoidance of abusive conditions are well observed.

10. Commitments and Jurisdictions of the Joint Stock Company

- 10/1 The Company shall assume the various tasks of managing the insurance operations including; preparation of insurance policies, collection of contributions, payment of indemnities, and all other technical tasks. The Company performs such tasks against a specific fee, which should be stated in the agreement in order to obtain the participant's approval thereon by signing the contract.

- 10/2 The Company is entrusted with the duty of achieving common interest while undertaking the management of the insurance operations. However, it should not guarantee the insurance assets except in case of misconduct, negligence or breach of contractual obligations.
- 10/3 The Company shall bear its pre-operating expenses as well as all other expenses that relate to conducting its own business or the investment of its own funds.
- 10/4 The statutory reserve of the Joint Stock Company is deducted from its share capital and becomes part of its shareholders equity, a case that also holds true for all other capital-related deductions. No deduction shall be made from the policyholders fund or profits for the benefit of the shareholders of the Joint Stock Company.
- 10/5 For the sake of serving the policyholders' interest, it is permissible to deduct part of their funds or profits to be used as reserves or allocations pertaining to the insurance fund. Such deductions, however, should by no means belong to the shareholders of the Joint Stock Company. The accumulated balance of the insurance account shall be spent on charity purposes in case of liquidation.
- 10/6 The Company claims indemnity from the party who causes the injury, whether through breach of contractual commitment or any similar misbehavior. In this case, the Company represents the participants in disposing of all the tasks that relate to the case, such as filing of lawsuits, realization of the consequent rights, and depositing the proceeds in the insurance account.
- 10/7 When the Company invests the policyholders' funds through Mudarabah, it should bear the expenses that are normally borne by the Mudarib [see Shari'ah Standard No. (13) on Mudarabah]. However, if the Company invests such funds through investment agency, the deal shall be subject to Shari'ah rulings on remunerated agency.

- 10/8 When the insurance assets along with indemnities received from re-insurance companies fall short of covering indemnity commitments, the Company may cover the deficit from project financing or *Qard Hasan* (interest-free or benevolent loan) debited to the account of the insurance fund. In this regard, the deficits resulting from commitments of the current year may be covered from the surpluses of the succeeding years. The Company may also claim settlement of the deficit from policyholders if they undertake to do so in the insurance policy.
- 10/9 The insurance account shall bear all the expenses and fees that relate to insurance activities.
- 10/10 There is no Shari'ah restriction on reconciling between the Company and the party who causes the injury, if such reconciliation is in the interest of the participants, and conforms to the relevant Shari'ah rulings.

11. Indemnity

- 11/1 The participant shall receive either the loss, he incurred because of the injury, or the insurance amount; whichever is less, and as per regulations.
- 11/2 The participant should not receive both the indemnity and the compensation from other parties for injury caused to him.
- 11/3 In Property Insurance, indemnity should be confined to what has been provided for in the regulations, and may comprise subsidiary losses that can be appropriately estimated according to the actual injury.

12. Insurance Surplus

- 12/1 The insurance surplus is part of the assets of the insurance account and should be disposed of according to what has been stated in item 5/5 of this Standard.
- 12/2 Distribution of the surplus or part thereof among the policyholders should be in one of the following forms, provided that the selected form is explicitly mentioned in the regulations:

12/2/1 Distribution of the surplus among the policyholders in proportion to their respective contributions, and regardless of whether the policyholder has received indemnity during the financial period or not.

12/2/2 Distribution of the surplus among the policyholders who have not received indemnity during the financial period.

12/2/3 Distribution of the surplus among policyholders after deducting the amounts of indemnity they receive during the same financial period.

12/2/4 Distribution through any other method approved by the Shari'ah Supervisory Board.

13. Expiry of Insurance Policy

The insurance policy expires in any of the following cases:

13/1 At the end of the period agreed upon in the insurance policy. In case of property insurance, it is permissible to stipulate that the contract is automatically renewable unless the participant informs the company, within a specific period before expiry of the contract, of his desire to cease contract's renewal.

13/2 Termination of the policy by the company or the participant, if the policy provides for the right of termination to each of the parties to contract.

13/3 Complete damage of the insured property (in case of property insurance), without nullifying the entitlement of the participant to the indemnity, subject to the contract's conditions.

13/4 Death of the insured person in case of persons' (life) insurance, without nullifying the entitlement of the beneficiary to the insurance benefits, subject to the contract's conditions.

14. Date of Issuance of the Standard

This Standard was issued on 23 Rabi' I, 1426 A.H., corresponding to 2 May 2005 A.D.

Adoption of the Standard

The Shari'ah standard on Islamic Insurance was adopted by the Shari'ah Board in its meeting No. (16) held in Al-Madinah Al-Munawwarah on 7-12 Jumada I, 1427 A.H., corresponding to 3-9 June 2006 A.D.

Appendix (A)

Brief History of the Preparation of the Standard

The Shari'ah Board decided in its meeting No. (8) held on 28 Safar – 4 Rabi' I, 1423 A.H., corresponding to 11-16 May 2002 A.D., in Makkah Al-Mukarramah to issue a Shari'ah Standard on Islamic Insurance.

On 12 Jumada I, 1424 A.H., 12 July 2003 A.D., the Shari'ah Standards Committee decided to commission a Shari'ah consultant to prepare a draft standard on Islamic Insurance.

In its meeting No. (10) held on 23–24 Jumada II, 1424 A.H., corresponding to 23–24 July 2003 A.D., in Amman, the Hashemite Kingdom of Jordan, the Shari'ah Standards Committee (1) discussed the Shari'ah study and advised the consultant to incorporate the necessary changes, in the light of the discussions and observations of its members.

The Shari'ah Standards Committee (1) once again discussed the draft of the Standard in its meeting No. (11) held on 25–26 Safar 1425 A.H., corresponding to 15-6 April 2004 A.D., in the Kingdom of Bahrain and incorporated further changes in it. The committee also requested the consultant to review the document on the light of the discussions and incorporate necessary changes.

A third round of discussions on and amendments in the draft of the Standard also took place in meeting No. (12) of the Shari'ah Standards Committee (1) held on 28 Rabi' II, 1425 A.H., corresponding to 16 June 2004 A.D. in Dubai, United Arab Emirates.

The revised version of the Standard was then submitted to the Shari'ah Board in its meeting No. (13) held in Makkah Al-Mukarramah on 26 Sha'ban – 1 Ramadan 1425 A.H., corresponding to 10–15 October 2004 A.D. and further changes were incorporated in the document.

In its meeting No. (14) held in Dubai, United Arab Emirates on 21–24 Rabi' I, 1426 A.H., corresponding to 30 April – 2 May 2005 A.D., the Shari'ah Board discussed the draft of the Standard and decided, in the light of the discussions and comments of the members, to transfer it to the Shari'ah Standards Committee (1) for thorough study.

The Shari'ah Standards Committee (1) studied the draft of the Standard in its meeting No. (17) held in Kingdom of Bahrain on 4–5 Sha'ban 1426 A.H., corresponding to 8–9 September 2005 A.D.

The revised draft of the Standard was again submitted to the Shari'ah Board in its meeting No. (15) held in Makkah Al-Mukarramah, on 22–26 Sha'ban 1426 A.H., corresponding to 26–30 September 2005 A.D. The Board decided to send the document to concerned experts for review and comments before discussing it in a public hearing.

AAOIFI held a public hearing in the Kingdom of Bahrain on 1 Safar 1427 A.H., corresponding to 1 March 2006 A.D. More than 30 participants representing central banks, Institutions, accounting firms, Shari'ah scholars, academics and other interested parties attended the session. Several comments and observations were posed, to which the members of the Shari'ah Standards Committees (1) and (2) duly responded.

In its meeting held in the Kingdom of Bahrain on 1 Safar 1427 A.H., corresponding to 1 March 2006 A.D., the Drafting Committee discussed the comments and observations made in the public hearing and made the changes that it deemed necessary.

In its meeting No. (16) held in Al-Madinah Al-Munawwarah on 7–12 Jumada I, 1427 A.H., corresponding to 3–9 June 2006 A.D., the Shari'ah Board discussed the amendments proposed by the Drafting Committee, incorporated some changes in the document and approved the Standard (unanimously for some clauses and with the majority for others), as indicated in the minutes of the Board's meetings.

Appendix (B)

The Shari'ah Basis for the Standard

- Commercial Insurance is prohibited because it involves Gharar (uncertainty). In this regard Muslim, *Ashab Al-Sunan* (compilers of the books of Sunan) and others quoted Abu Hurayrah as having said: “*The Prophet peace be upon him prohibited sales which involve Gharar*”.⁽²⁾
- The Fuqaha define Gharar in several ways, which -in brief- indicate that it is a process that has unknown/unrevealed consequences and outcomes.⁽³⁾
- Some contemporary scholars believe that Gharar is similar to betting and gambling.⁽⁴⁾
- Resolutions of Fiqh forums on insurance include the resolution of the Islamic Fiqh Academy in its first session held in 1398 A.H., which endorsed a preceding resolution on the subject issued by the Council of Eminent Shari'ah Scholars of the Kingdom of Saudi Arabia in its session No. (10) held in Riyadh on 4 April 1397 A.H. A third resolution on the subject was issued by the International Islamic Fiqh Academy - Resolution No. 9 (9/2).
- Permissibility of cooperative/mutual/social insurance stems from the fact that it is based on cooperation and donation, rather than on Mu'awadah (exchange contract). It is well known among the Fuqaha (Maliki School)

(2) “*Sahih Muslim*”, *Kitab: Al-Buyu'* [3: 1153]; “*Sunan Abu Dawud*” [2: 228] (H: 3367); “*Sunan Al Nasa'i*” [2: 217]; “*Sunan Ibn Majah*” [2: 739]; “*Sunan Al-Tirmidhi*” [3: 532]; “*Sunan Al-Darimi*” [2: 167]; “*Al-Muwatta'*” [2: 664]; “*Musnad Al-Imam Ahmad*” [1: 203] and [2: 367 and 439]; “*Sunan Al-Bayhaqi*” [5: 226]; and “*Musannaf Ibn Abu Shaybah*” [8: 194], Section (2).

(3) See: “*Sharh Al-'Inayah Ma'a Fath Al-Qadir*” [5: 192]; “*Tabyin Al-Haqa'iq*” [4: 46]; “*Al-Taj Wa Al-Iklil*” [4: 362]; “*Fath Al-'Aziz Bi-Hamish Al-Majmu'*” [8: 127]; “*Matalib Uli Al-Nuha*” [3: 25]; “*Al-Qawa'id Al-Nuraniyyah*” (P. 116); “*Nazariyyat Al-'Aqd*” (P. 224). See: “*Al-Gharar Wa Atharahu Fi Al-'Uqud*” by Al-Siddiq Al-Amin Al-Darir (published by Saleh Kamil Center for University Thesis), (P. 54).

(4) See: Husayn Hamid, “*Al-Gharar*” (P. 72).

that Gharar has no impact on donation contracts. This viewpoint is well supported by a number of Quranic verses and sayings of the Prophet (peace be upon him) which instruct Muslims to promote cooperation.

- Consequently, several resolutions were issued by Fiqh forums regarding permissibility of cooperative insurance. Such resolutions include, the resolution of the Islamic Research Academy of Al-Azhar Al-Sharif, the resolution of the Islamic Fiqh Academy of the World Muslim League referred to earlier, and the resolution of the International Islamic Fiqh Academy, which states that: "The contract that respects the origins of Islamic dealings is the cooperative insurance Contract which is based on donation and cooperation...". The fact that cooperative insurance is permissible, also does not seem to have encountered any dispute among contemporary Muslim Fuqaha.⁽⁵⁾
- Permissibility of cooperative insurance and non-permissibility of commercial insurance is in fact due to the following differences:
 - a) The conventional insurance contract is a financial Mu'awadah (exchange contract) that aims at making profit out of the insurance operations. Therefore, its permissibility should be judged in the light of the Shari'ah rulings on financial transactions. Consequently, such rulings prohibit the conventional insurance contract, which involves Gharar.
 - b) In the Islamic insurance contract, the company assumes the role of the agent of the insurance account, whereas in the commercial insurance contract the company is an original party that signs the contract in its own name.
 - c) The company in commercial insurance owns the premiums against its commitment to pay the insurance amount; whereas in Islamic insurance, it is the insurance account rather than the company that owns the contributions.
 - d) In Islamic insurance the residual premiums and the returns on them, that remain after deduction of expenses and indemnity amounts,

(5) Fatawa of the Shari'ah Advisory Board of Al Rajhi Banking & Investment Company, Fatwa No. (40).

become the property of the policyholders account, and constitute a surplus, which can be distributed among the policyholders. This cannot be imagined in commercial insurance where the company owns and receives the premiums as soon as it signs the contract. In commercial insurance, the premiums constitute part of the revenue and profits of the company.

- e) In Islamic insurance, the returns on investment of the premium assets belong to the policyholders account, after deduction of the Mudarib share for the company, whereas such returns belong to the company in commercial insurance.
- f) Islamic insurance aims at achieving cooperation among the members of the society, rather than generating profits from the insurance operations, whereas commercial insurance is profit-oriented.
- g) The company in Islamic insurance earns profits through investment of its own funds and its share in Mudarabah, as it assumes the role of the Mudarib and the insurance account assumes the role of the Rab al-Mal (owner of the capital).
- h) In Islamic insurance, the insurer and the participant are in fact the same person although they differ in recognition, whereas the insurer and the participant are totally different in commercial insurance.
- i) The company in Islamic insurance adheres to the rules of Islamic Shari'ah and the Fatawa of its Shari'ah Supervisory Board, while in commercial insurance there are no such commitments.
- j) In Islamic insurance, the allocations from the insurance account, which remain there until the time of liquidation of the company, are spent on charity purposes, and do not go to shareholders, whereas in commercial insurance such amounts go to shareholders.
- The Shari'ah ruling that the Islamic insurance contract is an act of donation that both parties are bound to honor, is measured by analogy to what is known in Fiqh as *Nihd*,⁽⁶⁾ or donation pledge. It has been narrated that

(6) Al-Bukhari in his "*Sahih*" [15: 128] commented on *Nihd* or *Nahd* where he said (....since Muslims did not see any harm in *Nihd*, in which the members of =

Ali and Ibn Mas'ud said: "A gift, if specifically defined, is binding, whether received or not." It has also been narrated that Abu Bakr and Umar indicated that a gift does not become binding before receipt.⁽⁷⁾ Malik however reconciled the two viewpoints by indicating that Ali, Ibn Mas'ud and the others seem to have focused on the fact that the contract as such is binding, while Abu Bakr and Umar seem to have focused on the fact that the receipt of the gift is a prerequisite of finalizing the contract. The latter viewpoint was justified by the desire to leave no room for an excuse that Umar explicitly mentioned.⁽⁸⁾ The obligatory nature of the donation contract can also be derived from the saying of the Prophet (peace be upon him) that: "*A person who withdraws his gift is like a dog that withdraws its vomit*".⁽⁹⁾

- The basis of the Shari'ah ruling that the company should not guarantee the insurance assets is that the company is an agent, and the Fuqaha unanimously agree that an agent should not guarantee the property except against misconduct, negligence or breach of the contract.
- The justification for stating the nine principles of Islamic insurance in the articles of association of the company is the need to preserve the element of donation in the contract and emphasize it as a basic aspect of the company, and hence preserve the cooperative nature and permissibility of the insurance operation. Otherwise, the insurance operation becomes a Mu'awadah transaction, and therefore subject to impact of Gharar as mentioned earlier. In other words, emphasis on the nine principles is because they constitute the fundamental differences between Islamic insurance and commercial insurance. Several Fatawa were issued to

= of the group consume different amounts of the food to which they have equally contributed) and he narrated some sayings of the Prophet (peace be upon him) that support this practice. In "*Fath Al-Bari*" [5: 129], Ibn Hajar indicated that *Nihd* was an ancient practice of Muslim travelers who used to contribute equally to the stock of food they need during their journey, and leave each of them free to consume the portion of the food he needs. At the end of the journey, they distribute the food leftover among themselves, unless they decide to keep it for another journey. This is quite similar to the treatment of the surplus in Islamic Insurance.

(7) See: "*Al-Muwatta`*" [2: 468]; and "*Nasb Al-Rayah*" [4: 122].

(8) "*Bidayat Al-Mujtahid*" [2: 534].

(9) "*Sahih Al-Bukhari*" [5: 190]; and "*Sahih Muslim*" (H: 1622).

demonstrate these differences including, Fatwa No. (12/11) issued by the 12th Seminar on Islamic Economics of the Al Baraka Group, Fatwa No. (42/3) issued by the Shari'ah Supervisory Board of the Al Rajhi Company, Fatwa of the Shari'ah Board of Faisal Islamic Bank and Fatwa of the Islamic insurance Company of Jordan.⁽¹⁰⁾

- The general framework of the contract and the nature of its conditions have been set up along the lines of binding contracts in Islamic jurisprudence, and the peculiar characteristics of the insurance contracts as far as the insured is concerned.
- The ruling that the insurer and the insured must fulfill their commitments is based on the Shari'ah prerequisite of honoring contracts. Since the insurance contract is a binding contract, all its conditions should be honored unless they violate the rules of Islamic Shari'ah. Such reasoning is well supported by various Quranic Verses and sayings of the Prophet (peace be upon him) that explicitly instruct Muslims to honor their contracts and conditions. In this regard, Allah, the Almighty, says: {***"O You who believe! Fulfill (all) obligations..."***}.⁽¹¹⁾ The Prophet (peace be upon him) also says "*Muslims are at their conditions*".⁽¹²⁾
- The company could manage the insurance account against fee or free of charge because the relationship here is viewed as agency, which the Fuqaha unanimously approve, with or without remuneration. The Fatawa in this regard comprise those of the 12th Seminar on Islamic Economics of the Al Baraka Group (Fatwa No. (12/11), the resolution of the Islamic Fiqh Academy of the Muslim World League – Makkah Al-Mukarramah (Fatwa No. 961), and Fatwa No. (51) of the Council of Eminent Scholars of Saudi Arabia.
- The basis of assigning the investment of the assets of the insurance fund to the company is the Mudarabah contract, which the Fuqaha unanimously declare as permissible. Arrangement of investment in this manner entails

(10) See: "*Fatawa Al-Ta'min*", Dallah Al Baraka Group, Dr. Abdul-Sattar Abu Ghuddah and Dr. Izzul-Din Khoja (eds.), (pp. 99-108).

(11) [Al-Ma'idah (The Table): 1].

(12) Related by Al-Bukhari in his "*Sahih*" [4: 451]; and Al-Tirmidhi with "*Tuhfat Al-Ahwazi*" [4: 584]. Al-Tirmidhi deemed it a good, authentic Hadith.

specification of a profit share for each party, and entitlement of the insurance fund to its respective share. The relevant Fatawa in this regard include the Fatwa of the Shari'ah Supervisory Board of Faisal Islamic Bank,⁽¹³⁾ Fatwa No. (12/11) of the 12th Seminar on Islamic Economics of the Al Baraka Group and the Shari'ah Standard No. (13): Mudarabah.

- The emphasis on honoring commitments in general – including commitment of the company to furnish *Qard Hasan* to the insurance account – is based on the Shari'ah requirement of honoring pledges that are binding to either of the two parties. This viewpoint to which some leading Fuqaha subscribe is well supported by Qur'an, Sunnah and reported Muslim practice, such as the divine Quranic instruction: {“...**Fulfill (all) obligations...**”} has been taken by the Fuqaha to comprise any Shari'ah-accepted commitment of the Muslim. There are also several sayings of the Prophet (peace be upon him) which indicate that Muslims are bound to honor their contracts, covenants and pledges.⁽¹⁴⁾ Several resolutions of Shari'ah forums and Shari'ah Boards were also issued in this connection including, resolution No. 40 – 41 (2–5/3) of the International Islamic Fiqh Academy⁽¹⁵⁾ and the Fatwa of the Shari'ah Supervisory Board of the Islamic Insurance Company of Jordan.⁽¹⁶⁾
- The ruling that responsibility of providing the evidence lies with the participant depends on the general rules in the Qur'an, the Sunnah and the opinion of the Ulema that evidence should be established by the claimant. This has been indicated in several Fatawa including Fatwa No. (14/6) of the United Shari'ah Board of Al Baraka Group.
- Permissibility of the two types of Islamic insurance (mentioned in this Standard) rests on the various evidences of permissibility of Islamic insurance in general, as discussed earlier, and are supported by various Fatawa of Shari'ah Boards. Such Fatawa include Fatwa No. 2/9 of the 2nd Al Baraka Seminar on Islamic Economics, Fatwa No. 10/3/5 of the 10th Al Baraka seminar on Islamic Economics, and other Fatwa issued by the Shari'ah

(13) See: Chapters on Mudarabah in books of various schools of Fiqh, and the term “Mudarabah” in the Kuwaiti Encyclopedia.

(14) See: “*Mabda' Al-Rida Fi Al-'Uqud: Dirasah Muqaranh*” (Principle of Consent in Contracts: A Comparative Study) and its references.

(15) See: Magazine of the International Islamic Fiqh Academy, Issue No. (5), (2/754– 965).

(16) “*Fatawa Al-Ta'min*”, (P. 106).

Supervisory Boards of Dubai Islamic Bank, Kuwait Finance House, Qatar Islamic Bank and the Islamic Insurance Company – Jordan.⁽¹⁷⁾

- The rulings relating to the contract as such are based on the general principles of contracts in Islamic Shari'ah, which emphasize avoidance of fraud and deceit and the need to observe the time limits indicated in the contracts. Shari'ah rulings on compensation have also been resorted to in this connection, in addition to the Fatawa and resolutions issued by various forums such as the Islamic Fiqh Academy of the Muslim World League, the Supreme Council of Ulema of Saudi Arabia and the Shari'ah boards of Islamic banks and Islamic insurance companies.⁽¹⁸⁾
- The jurisdictions of the company are determined on the basis of its articles of association, the various documents that govern the contractual relationship, the general principles of contracts and conditions, insurance conventions, and some Fatawa of Shari'ah boards.
- The rules that regulate the relationship between the company and the policyholders are based on the articles of association, which consider this relationship as an agency contract (remunerated or free of charge) for the management of the insurance operations, and Mudarabah for the investment of the insurance assets.
- Indemnity is based on the general Shari'ah directives emphasizing the principle that "one should neither tolerate harm nor cause it to others"⁽¹⁹⁾ as well as the general principles and rules of Fiqh that advocate fair, and at the same time, non-obsessive indemnification for injury. Furthermore, inferences on indemnity could also be drawn from the cooperative nature of this donation-oriented contract, in addition to some Fatawa such as Fatwa No. (3) of the 10th Al Baraka Seminar on Islamic Economics, and the various Fatawa of the Shari'ah boards of Islamic banks and Islamic insurance companies.⁽²⁰⁾

(17) *"Fatawa Al-Ta'min"* (pp. 193–206).

(18) *ibid.*

(19) This Hadith has been related by Malik in *"Al-Muwatta'"*, *"Kitab Al-Aqdiyah"*; Ahmad in *"Musnad Al-Imam Ahmad"* [1: 313] and [5: 527]; and Ibn Majah in his *"Al-Hashiyah"* [2: 782].

(20) *"Fatawa Al-Ta'min"*, (P. 153).

- Treatment of the insurance surplus is based on the cooperative nature of the contract and the practice of the *Sahabah* [companions of the Prophet (peace be upon him)] with regard to *Nihd*, as reported by Bukhari.⁽²¹⁾
- Possibility of contract termination stems from the fact that the insurance contract is a time-specific contract, and therefore it expires at the end of its stipulated period just like *Ijarah* (hiring). The insurance contract also expires on the damage of the insured property (or death of the insured), as there will be no object of commitment.

(21) Al-Bukhari in his "*Sahih*" [15: 128] commented on *Nihd* or *Nahd* where he said (...since Muslims did not see any harm in *Nihd*, in which the members of the group consume different amounts of the food to which they have equally contributed) and he narrated some sayings of the Prophet (peace be upon him) that support this practice. In "*Fath Al-Bari*" [5: 129], Ibn Hajar indicated that *Nihd* was an ancient practice of Muslim travelers who used to contribute equally to the stock of food they need during their journey, and leave each of them free to consume the portion of the food he needs. At the end of the journey, they distribute the food leftover among themselves, unless they decide to keep it for another journey. This is quite similar to the treatment of the surplus in Islamic Insurance.

Appendix (C)

Definitions

Premium

It is the amount of the contribution, which the participant donates, along with its related profits, for the benefit of the insurance scheme.

Insurance Amount

It is the amount paid by the company out of the insurance account at the occurrence of the risk insured against.

Risk Insured Against

It is the probable, legally acceptable, accident.

Commercial Insurance

It is a contract between an insured party and a technical insuring body, stipulating that the former pays the latter a specific number of financial installments or a lump sum amount, against the commitment of the latter to bear a risk that can be insured against, through payment of an estimated financial indemnity to the insured or the beneficiary, on the occurrence of the risk. [Clause No. (747) of the Egyptian law, Clause No. (773) of the Kuwaiti Law and Clause No. (983) of the Iraqi Law].

Cooperative Insurance

A collective insurance contract is a contract whereby each participant undertakes to pay a specific amount of money as donation to indemnify any member of the group who encounters the risk insured against.

Islamic Insurance

It is a kind of cooperative insurance, which covers all types of risks, under the management of a specialized company that adheres to the rules and principles of Shari'ah. In this sense, Islamic insurance differs from coopera-

tive insurance as the latter only covers a specific group of beneficiaries who might encounter risks, for instance, merchants, sailors and the like while Islamic insurance is available to the general public. Islamic insurance also differs from cooperative Insurance with regard to adherence to the rules and principles of Islamic Shari'ah as well as in some technical aspects pertaining to premiums. In cooperative insurance, premiums may be variable at the beginning; whereas in organized Islamic insurance, premiums are specific due to use of precise statistical studies.

Mutual Insurance, the Alternate to Life Insurance

It is the insurance that covers the risks of death, inability, injury or illness, for the individual or the group, through payment of the insurance amount to the participant or the beneficiary, as per the agreement.

Surplus

The Surplus comprises of residual premiums of the participants (the insured) in addition to the reserves and profits, after deducting all expenses and indemnity amounts (paid or payable during the same year). The residual amount, thus computed, is considered as surplus, rather than profit.

Gharar

It is what one cannot predict its unrevealed/unknown consequences. Something that may occur/materialize or may not⁽²²⁾.

Participant

The Participant is a person who accepts the cooperative insurance scheme, signs the insurance policy and undertakes to observe its consequent commitments. It may be referred as the insured, the insured for and the policyholder.

Insurance Account

It is the account established by the company by virtue of its articles of association, to accommodate the premiums of the participants and the returns thereon as well as the reserves. Such account has an independent

(22) See: *"Al-Gharar Wa Atharahu Fi Al-'Uqud"* (P. 53).

financial liability towards its own claims and commitments, though it is represented by the company for its all affairs. This account is also known as the insurance fund, the policyholders account or the portfolio of the participants group.

