

## UNVEILING THE LEGAL FOUNDATIONS OF TAKAFUL: A COMPARATIVE EXPLORATION ACROSS KEY NATIONS

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Takaful, often referred to as Islamic insurance, is a financial system that adheres to Islamic principles and provides a Sharia-compliant alternative to conventional insurance. It operates on the principles of mutual cooperation and shared responsibility among participants, making it distinct from conventional insurance. The legal framework for Takaful varies from one country to another due to differences in regulatory structures, legal traditions, and interpretations of Islamic law. This article aims to provide a comparative analysis of the legal basis of Takaful in different countries[1].

Takaful is rooted in Islamic jurisprudence, and its legality is contingent on compliance with Islamic law (Sharia). Sharia-compliance in Takaful involves adherence to several key principles, including:

**Mudarabah and Wakalah:** Takaful operators may employ the Mudarabah or Wakalah model. In Mudarabah, the participants act as investors (Rab-ul-maal), and the Takaful operator serves as the fund manager (Mudarib), sharing profits and losses. In Wakalah, the Takaful operator acts as an agent for the participants, charging a fee for its services.[2]

**No Riba (Interest):** Takaful prohibits the payment or receipt of interest (riba), which is considered unethical in Islamic finance.

**No Gharar (Uncertainty):** Takaful contracts must be free from excessive uncertainty (gharar), ensuring that the terms and conditions are clear and unambiguous.

**No Maisir (Gambling):** Takaful avoids transactions that involve excessive risk or resemble gambling (maisir).

Malaysia has emerged as a global leader in Islamic finance, including the Takaful industry. The legal basis for Takaful in Malaysia is comprehensive and well-defined, reflecting the country's commitment to fostering a robust Sharia-compliant financial sector. The key legal elements governing Takaful in Malaysia include the Takaful Act 1984 and the subsequent Islamic Financial Services Act (IFSA) 2013.

**Takaful Act 1984:**

The Takaful Act 1984 was the foundational legislation for the Takaful industry in Malaysia. This Act primarily regulated Takaful operators and set out the framework for their operations. It addressed issues related to the establishment, registration, and management of Takaful operators, as well as the rights and obligations of participants (policyholders) and shareholders.

Notably, the Takaful Act 1984 allowed for two models of Takaful operations: the Mudarabah model and the Wakalah model, which provided flexibility for Takaful operators to choose their preferred business structures. The Act also

established the Sharia Advisory Council (SAC) as an advisory body responsible for ensuring Sharia compliance in the industry.

Islamic Financial Services Act (IFSA) 2013:

The Takaful Act 1984 underwent significant amendments with the introduction of IFSA 2013. IFSA consolidated the regulatory framework for Islamic finance in Malaysia, including Takaful, under a single statute. This streamlined approach aimed to enhance the efficiency and effectiveness of regulation in the Islamic financial sector.

Key provisions of IFSA relevant to Takaful include:

**Licensing and Prudential Requirements:** IFSA introduced stricter licensing requirements and prudential standards for Takaful operators, ensuring the stability and financial soundness of the industry.

**Consumer Protection:** The Act emphasized the importance of consumer protection and introduced measures to safeguard the interests of Takaful participants, such as disclosure requirements and dispute resolution mechanisms.

**Sharia Governance:** IFSA reinforced the role of the SAC in advising on Sharia matters and ensuring that Takaful operations comply with Islamic principles.

**Governance and Risk Management:** The Act established governance and risk management standards for Takaful operators, including requirements for sound corporate governance practices.

**Market Conduct:** IFSA introduced standards for fair market conduct, ethics, and professionalism within the Takaful industry.

**Capital Adequacy:** The Act established capital adequacy requirements to ensure that Takaful operators maintain sufficient capital to cover their obligations.

In addition to the Takaful Act and IFSA, the Central Bank of Malaysia (Bank Negara Malaysia) plays a crucial role in regulating and supervising the Takaful industry. The central bank oversees the implementation of Takaful regulations and regularly engages with Takaful operators to promote compliance with Sharia principles and financial standards.

Furthermore, Malaysia has a well-established ecosystem of Sharia scholars and advisory boards that provide guidance to Takaful operators on Sharia compliance matters. These scholars ensure that Takaful products and operations are in line with Islamic principles and that any ethical or legal concerns are addressed.

In conclusion, Malaysia's legal basis for Takaful is characterized by a strong regulatory framework, with the Takaful Act 1984 and IFSA 2013 at its core. This legal foundation, coupled with effective supervision by Bank Negara Malaysia and the guidance of Sharia scholars, has contributed to the growth and success of the Takaful industry in Malaysia, making it a benchmark for Islamic finance worldwide.

The legal basis for Takaful in Saudi Arabia is rooted in Islamic law (Sharia) and is regulated by the Saudi Arabian Monetary Authority (SAMA). Here's a closer look at the legal foundation for Takaful in Saudi Arabia:

**Regulatory Authority - Saudi Arabian Monetary Authority (SAMA):**

Takaful operations in Saudi Arabia fall under the regulatory purview of the Saudi Arabian Monetary Authority (SAMA). SAMA is responsible for overseeing and regulating the entire financial sector in the Kingdom, including Islamic finance and Takaful.

**Takaful Regulations and Guidelines:**

SAMA has issued specific regulations and guidelines governing Takaful operations in Saudi Arabia. These regulations outline the legal and operational framework for Takaful companies, ensuring that they comply with both Islamic principles and regulatory requirements. Some key aspects covered by these regulations include:

**Sharia Compliance:** Takaful companies in Saudi Arabia must adhere to Sharia principles in their operations. Sharia compliance is overseen by a Sharia board or council that provides guidance and ensures that Takaful products and practices align with Islamic law.

**Licensing and Registration:** Takaful operators must obtain the necessary licenses and approvals from SAMA before commencing operations. This ensures that only qualified entities participate in the Takaful industry.

**Prudential and Capital Adequacy Requirements:** SAMA sets prudential standards and capital adequacy requirements to ensure the financial stability and solvency of Takaful operators. These standards are designed to protect the interests of policyholders.

**Market Conduct and Consumer Protection:** Regulations also focus on market conduct, ethics, and consumer protection. Takaful companies are required to maintain high standards of professionalism and transparency in their dealings with policyholders.

**Financial Reporting and Disclosure:** Takaful companies are mandated to provide regular financial reports and disclosures to SAMA and the public to enhance transparency and accountability.

**Sharia Advisory Boards (SAB):**

Sharia compliance is a fundamental aspect of Takaful in Saudi Arabia. Takaful operators typically have Sharia Advisory Boards (SAB) or Sharia Supervisory Committees composed of Islamic scholars and experts in Islamic finance. These boards provide ongoing oversight, review Takaful products, and ensure that all activities align with Sharia principles.

Saudi Arabia is home to several Takaful operators, both local and international, that offer a wide range of Takaful products and services. These companies operate in accordance with the regulations and guidelines set by SAMA and under the guidance of their respective Sharia Advisory Boards.

In summary, Saudi Arabia's legal basis for Takaful is firmly grounded in Islamic law and is regulated by the Saudi Arabian Monetary Authority (SAMA).

The regulations and guidelines put in place by SAMA, along with the oversight of Sharia Advisory Boards, ensure that Takaful operations in the Kingdom adhere to Sharia principles while meeting the necessary financial and regulatory standards. This legal framework has played a crucial role in fostering the growth and development of the Takaful industry in Saudi Arabia.

Pakistan has made significant strides in developing a legal framework for Takaful operations, aligning its regulatory system with Islamic finance principles. The legal basis of Takaful in Pakistan encompasses various laws, regulations, and guidelines to ensure the industry's compliance with Islamic Sharia principles. Here's an overview of the legal framework for Takaful in Pakistan:

#### Insurance Ordinance, 2000:

The Insurance Ordinance, 2000 serves as the foundational law governing both conventional and Takaful insurance in Pakistan. Within this ordinance, there are specific provisions related to Takaful. Key elements of the Insurance Ordinance relevant to Takaful include:

**Establishment and Licensing:** It outlines the procedures for the establishment and licensing of Takaful companies and Takaful operators in Pakistan.

**Sharia Compliance:** The Insurance Ordinance requires Takaful operators to follow Sharia-compliant principles and practices in their operations.

**Takaful Fund:** The ordinance defines the Takaful fund, which consists of contributions from participants and any other sources. This fund is to be managed according to Islamic principles.

#### Takaful Rules, 2012:

To further strengthen the regulatory framework for Takaful in Pakistan, the Securities and Exchange Commission of Pakistan (SECP) issued the Takaful Rules in 2012. These rules provide specific guidelines and regulations for Takaful operators. Key aspects covered by the Takaful Rules include:

**Sharia Compliance:** Takaful operators are required to establish Sharia Advisory Boards to ensure compliance with Islamic principles. These boards play a pivotal role in reviewing and approving Takaful products and operations.

**Disclosure and Reporting:** The rules mandate that Takaful operators maintain transparency by disclosing financial information and performance reports to the SECP and policyholders.

**Licensing and Governance:** The rules set standards for corporate governance, capital adequacy, and risk management to ensure the stability of Takaful companies.

**Consumer Protection:** Takaful operators must establish mechanisms for the resolution of complaints and disputes, ensuring fair treatment of policyholders.

**Investment Guidelines:** The rules outline investment guidelines that align with Sharia principles, ensuring that Takaful funds are invested ethically.

#### Sharia Advisory Boards (SAB):

Similar to other countries with Takaful operations, Pakistan requires Takaful companies to establish Sharia Advisory Boards (SAB) or Sharia Supervisory

Committees. These boards consist of Islamic scholars and experts who oversee the company's adherence to Sharia principles.[4]

Regulation by the Securities and Exchange Commission of Pakistan (SECP):

The SECP serves as the primary regulatory authority overseeing the Takaful industry in Pakistan. It reviews and approves Takaful products, monitors compliance with regulations, and conducts inspections to ensure the industry's stability and adherence to Sharia-compliant practices.

Pakistan has a growing number of Takaful operators, both local and international, offering various Takaful products to cater to the needs of the market. These operators function within the regulatory framework set by the SECP and under the guidance of their respective Sharia Advisory Boards.[3]

In conclusion, Pakistan has established a comprehensive legal framework for Takaful, encompassing the Insurance Ordinance, 2000, and the Takaful Rules, 2012, to regulate and govern Takaful operations. The presence of Sharia Advisory Boards, oversight by the SECP, and a growing number of Takaful operators have contributed to the development and growth of the Takaful industry in Pakistan, making it an essential component of the country's Islamic finance landscape.

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## **DEVELOPMENT OF A MODEL FOR ACCOUNTING FOR FINANCIAL RESULTS IN CONSTRUCTION ORGANIZATIONS IN THE CONTEXT OF THE ADOPTION OF IFRS 15 "REVENUE FROM CONTRACTS WITH CUSTOMERS" IN UZBEKISTAN**

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Issues of improving the accounting of revenue, expenses and financial results are in the circle of interests of both the preparers of financial statements and their users. In Uzbekistan, in the context of reforming accounting following IFRS, existing rules are being revised, and new ones are being issued by analogy with international standards [1, 2, 3].