

<b>OPEN ACCESS</b> <b>RUSHD</b> (Bi-Annual Research Journal of Islamic Studies) <b>Published by:</b> Lahore Institute for Social Sciences, Lahore.	ISSN (Print): 2411-9482 ISSN (Online): 2414-3138 July-Dece-2023 Vol: 4, Issue: 2 Email: <a href="mailto:journalrushd@gmail.com">journalrushd@gmail.com</a> OJS: <a href="https://rushdjournal.com/index">https://rushdjournal.com/index</a>
---	--

Ahmed Abdul Rehman<sup>1</sup>

Muhammad Umar Farooq<sup>2</sup>

Ahmed Abdullah<sup>3</sup>

## **Shariah Appraisal of Insurance and Incoterms in International Trade**

### **Abstract**

Import and export business plays a very significant role in the market and the economy of the country. Pakistan is an Islamic state, and Muslims are obliged by Islamic rulings to certain practices and limitations to be observed in their trade activities. For that purpose, it is much needed that some important aspects of Imports, and exports business should be evaluated in the light of Islamic law. As it is known insurance plays a very basic role in risk management of such a big business. As well as it is also a legal requirement in most cases. But on the other hand, it consists of some prohibited elements according to the Islamic law.

This research identifies the legal requirements of the insurance in different stages of the imports, and exports business, as well

---

1 Lecturer, Department of Islamic Thought, History and Culture, Faculty of Arabic and Islamic Studies, AIOU Islamabad. [ahmed.rehman@aiou.edu.pk](mailto:ahmed.rehman@aiou.edu.pk)

2 PhD Scholar, AIOU Islamabad.

3 Lecturer GDC Khanpur HED KPK & PhD Scholar (Shariah), International Islamic University, Islamabad. [ahmedabdullahqureshi@gmail.com](mailto:ahmedabdullahqureshi@gmail.com)

as evaluates those issues in the light of Islamic law. It further discusses the solutions in the light of Islamic law and elaborates on the Islamic alternative for insurance, which is known as the Takaful.

**Keywords:** Takaful, Islamic State, business, Exports

## Introduction

Imports and exports involve the shipping of goods from one destination to another. There are many risks during the transportation process. The risk of loss and similar risks make businessmen seriously think of protective strategies to avoid it. These strategies vary similarly to the amount of the risk of losses. If they know the potential losses, they can manage the risk of the loss by taking preventive actions, and if they are presenting small enterprises, the individual may bear it himself, but the trouble occurs when it is unexpected and large as it can neither be assumed nor prevented.<sup>1</sup> The idea implied is that the burden of loss, which may collapse an individual, will be partial for the community as a whole.<sup>2</sup>

The origin of the present contract of insurance goes back to the maritime finances of the earliest Greeks as explained by Demosthenes that the assets were delivered on a boat or fleet and if they got lost, the money would be reimbursed even if not the full amount, however, a big portion of that, and the interest was being charged on a high rate due to risk of losing it.<sup>3</sup>

## The Definition and Formation of Insurance Policy

There are many definitions of insurance as insurance has different aspects; one famous definition describes it as “insurance is

---

<sup>1</sup>Mohammad Musleh-ud-Din, *Insurance and Islamic Law*, (Lahore: Islamic Publications Limited, 1978), 3.

<sup>2</sup>EC s.v. “Insurance”, (new edition, vol. 7) 617.

<sup>3</sup>EB s.v. “Insurance” (11<sup>th</sup> edition, vol. 14) 657.

a system for reducing financial risk by transferring it from a policy owner to an insurer”.<sup>1</sup> The social aspect of insurance involves “the collective bearing of losses through contributions by all members of a group to pay for losses suffered.”<sup>2</sup>

Another scholar describes insurance as “insurance achieves the sharing of risk by transferring risks from Individuals and businesses to financial institutions specializing in risk management.”<sup>3</sup> In law, it is described as “an insurance contract or the policy, transfers a risk, for a premium or consideration, from one party to another party. The party bearing the risk is known as the 'insurer' or 'assured' and the party whose risk is covered is known as the 'insured' or 'assured'.”<sup>4</sup>

Formation of Insurance Policy: The insurance contract like all other contracts, is formed by offer and acceptance.<sup>5</sup> The offer is usually through a proposal, giving details of the risks which, the applicant wishes the insurer to undertake. The premium is the consideration for the insurance or the price for which the insurer undertakes his liability.<sup>6</sup>

## Legal Requirement of Insurance

The imports and exports trade especially its contracts are being ruled in Pakistan by the State Bank of Pakistan’s Foreign Exchange Control Regulations. The Foreign Exchange Regulations, Chapter XV, articles 12 and 13, governing marine insurance states that “Article 12. Marine Policies – Imports; i) Imports into Pakistan are

---

<sup>1</sup>*How Insurance works for you* (Karachi: Insurance Division, Securities and Exchange Commission of Pakistan, 2011), 8.

<sup>2</sup>*Ibid.*

<sup>3</sup>*Ibid.*

<sup>4</sup>*Ibid.*

<sup>5</sup>M.P. Picard, *Elements of Insurance Law*, (London: Sweet & Maxwell, Ltd, 1935), 54.

<sup>6</sup>Mohammad Musleh-ud-Din, *Insurance and Islamic Law*, (Lahore: Islamic Publications Limited, 1978), 38-39.

required compulsorily to be insured in Pakistan with companies operating in Pakistan. Imports can thus be made only on C & F or FOB basis. It is not permissible to issue marine policies covering imports into the country in currencies other than Rupees. ii) As an exception to the above general rule: a) National Insurance Company Limited is authorized to issue foreign currency policies against imports financed by P.I.C.I.C./I.D.B. P and directly by the loan giving agencies; b) Sub-authorisations issued under U.S. AID Programme on C.I.F basis can, at the option of the importers, be utilized for imports from U.S.A on C.I.F basis by arranging insurance in the U.S.A.”<sup>1</sup>

Article 13. Marine Policies states that the “Shipment between two countries outside Pakistan Shipments between two countries outside Pakistan financed by a person or firm in Pakistan with the permission of State Bank, can be insured in Rupees or foreign currency.”<sup>2</sup>

It has been evidenced that the insurance has its Islamic substitute i.e. *Takaful* which is applicable to import export business and to facilitate in all the circumstances where one may need insurance. However, a few scholars also have some objections on the Takaful contracts but those objections are very minor in their nature, and if *Shariah* principles are strictly implied in *Takaful* transactions, it will be more beneficial.

## Shariah Appraisal of Insurance

### Concept of Insurance in Shariah

As the basic thought behind the insurance is “to cover the risk of loss” or “fortunate many helping the unfortunate few”. This idea or concept is not only acknowledged in Islamic teachings but is also encouraged if anyone is doing it for a good purpose, he will be

---

<sup>1</sup> *Foreign Exchange Manual-2016* (Karachi: Exchange Policy Department State Bank of Pakistan, 2016), 5.

<sup>2</sup> *Ibid.*

getting rewarded by almighty Allah as it is stated in the Holy Quran;

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ﴾

"Help one another in righteousness and piety, but do not help one another in sin and transgression".<sup>1</sup>

The principles of Muwalat (مواالات), Maaqil (معاقل) Kafalah (كفاله) (Guarantee), Dhaman ضمان (indemnity) and the Waqf (وقف) and Tabarru (تبرع) support this concept. The practical aspect of Contemporary/Modern Insurance, however, is objected to by the Ulama or Shariah Scholars for various reasons. The reasonable objections of the Ulama are discussed in the coming paragraphs. Yusuf al-Qaradawi writes in his book "Al-Halal wal Haram fil Islam", that this contemporary concept of insurance businesses and their conduct or services are repugnant to Islamic principles or objectionable according to Shariah principles of trade and contracts. However, it should not be assumed that the rulings of Islam are against the concept and underlying purposes of insurance, but it is against the current practices and methods as they are not shariah compliant. So, if the basic thought of insurance is used in an Islamic way that is acceptable and Shariah does not prohibit that, that will be appreciated.<sup>2</sup>

The report submitted by the Shariah scholars to the Badan Petugas Khas committee<sup>3</sup> concluded after a very detailed debate on the permissibility or non-permissibility of insurance in Islam as they

<sup>1</sup>Al-Quran 5: 2.

<sup>2</sup>Yusuf al-Qaradawi, *al-Halal wal-haram fil-islam* <http://www.qaradawi.net> (accessed July 25, 2016).

<sup>3</sup> This was a special committee of scholars to study the feasibility and possibility of establishing a substitute to commercial insurance created by the Malaysian government in 1982 to create Islamic insurance company in the country." Laporan Badan Petugas, *Report to the Badan Petugas Khas*, (Kuala Lumpur: 1982), 60.

stated that insurance can be divided into two different types, one is commercial insurance. So, the contracts of commercial insurance in not allowed and are void (*fasid*), and strictly prohibited and declared as haram in Islamic teachings. These types of strictly prohibited according to Islamic law as these contracts consist of Interest (*Riba*) as well as the *Gharar* (uncertainty), and these both things nullified a contract. Yet, it should be noticed that it does not mean that the Shariah or Islamic principles do not acknowledge the aims and objectives of insurance but rather the way it is formulated. Prof. Dr. Ahmad Ibrahim, a well-known scholar of Malaysian origin wrote about commercial insurance generally as “insurance in its current form does not comply with Islam.” The methods of contemporary insurance are repugnant to Islamic principles as most of the insurance contracts consist of interest etc. because they pay back in case of any issue more than the amount they charged. Secondly, these insurance corporations invest this amount in interest-based businesses and generate profit from there. Further, this type of insurance is similar to gambling due to uncertainty, etc.<sup>1</sup>

To consider the *Shariah* perspective regarding any contract, fundamentally there is a discussion on the distinctive features of that contract, and whereas that contract lies in the dominance of commercial contract or donation.

Therefore, the conditions & and classifications of different contracts are discussed in the following.

## Classification of Contracts

Given their distinctive features, contracts may be classified into four categories:<sup>2</sup>

---

<sup>1</sup>Laporan Badan Petugas, Government of Malaysia, Kuala Lumpur, *Report to the BadanPetugasKhas*, (Kuala Lumpur: 1982), 60.

<sup>2</sup>Mohammad Musleh-ud-Din, *Insurance and Islamic Law* (Lahore: Islamic Publications Limited, 1978), 78.

## 1. Granting of property may be of the following kinds:

- a) for exchange, known as sale, (بیع).
- b) without exchange, known as Hiba (ہبہ) .
- c) By way of devotedness, namely, *Waqf* (وقف)
- d) To create inheritance, namely, bequest. (وراثت).

## 2. Granting of usufruct of something, not the entity itself:

a) if it is the usufructs that are exchanged with anything, it is known as *Ijara* which includes leasing commodities and things that are movable or unmovable but not consumable for Hire. It may not be for the goods that are consumables because it is the transfer of only usufruct, not the entity itself. This contract may be for the rendering of service, such as for driving a vehicle to transfer the goods, putting in safe custody a property, working any professional duty, or providing any skill,

b) Providing Usufruct but not in any compensation, for example, anything on loan basis which is known as (*A'riya*) and *wadiya* (deposit) etc.

## 3. Contracts:

- a) For getting and emancipation of obligations, namely pledge, suretyship,
- b) For representing others, namely agency, and partnership.

## 4. Granting of marital services, namely marriage.

The contract of sale is by far the most important of all these transactions. This contract is defined as the exchange of property (mall). According to Islamic law, there are four attributes of property:

- (i) It must have some value;
- (ii) It must be a thing, the benefit of which is permitted;
- (iii) It must be possessed; and
- (iv) Capability of being held in reserve.

Therefore, concerning the subject matter sales are of four kinds:

- (a) Sale or Bay, i.e. exchange of a determinate article for a price,
- (b) Barter or Muqayada, i.e. exchange of a determinate article for another determinate article,
- (c) Salam, which is a contract with strict conditions of the full amount in advance, and the quality quantity and date of delivery of the commodity must be specified.
- (d) Sarf, the exchange of currencies or the exchange of gold or silver with the same.

Of these four kinds, the first two are simple and commonly take place and therefore, require no exposition while the third is not much related to our subject; the *Sarf* is closely connected with the subject of insurance.

*Sarf* is defined as an exchange of monetary value for monetary value.<sup>1</sup> If an article belonging to the species of monetary value, i.e. gold or silver, is sold for an object of a similar type, then shariah asks for on-spot exchange and handover of the objects and it must be cared about that on both sides the quantity must be similar. For that reason, there is no difference in whether gold or silver is sold in the shape of coins, ornaments, or otherwise. They should be considered as a monetary value because that is the very nature of these metals. These conditions are not confined to the sale of gold and silver only but apply to other transactions where similar weight or measure is exchanged.

The contract of Insurance may be treated as a *Sarf* contract of sale, so there must be equality on both sides which is not found if we treat this contract as a common sale contract then the question will be what is the subject matter of sale, the real compensation in insurance is the security which the insured feels in return for his premium, then it may be contended that security in insurance is not tangible to form the sort of subject-matter of a contract required by Islamic law. The understanding of such legal techniques comes

---

<sup>1</sup>Ibid.



with experience.<sup>1</sup>

## Non-Shariah Compliance Elements

It has been decided by the consensus of the *Shariah* Scholars that the current practices of insurance by modern insurance companies are not valid and therefore, are void (*fasid*) transactions. It conflicts with the principles of *Shariah* regarding contract, because it contains the following elements:<sup>2</sup>

1. That the entire Insurance business is based upon Interest which is prohibited.
2. The insurance companies usually invest the money paid by the assured in interest-bearing securities, which makes the transaction unlawful.
3. That it is a wagering contract.
4. That it is in result gambling.
5. That its nature is uncertain.

Some detail of these elements is given below;

- (1) *Reba* (Usury): It is a well-known term in Islamic commercial law; therefore, it is defined by Imam Al-Jasa's, a famous Hanafi jurist & and scholar as "*Reba* is the loan given for a specified period on condition that on the expiry of the period, the borrower will repay it with some excess".<sup>3</sup>

The *Reba* or Usury as defined in "*A Dictionary of Islam*" means "a term in Muslim law defined as an excess according to a legal standard of measurement or weight, in one or two homogenous articles opposed to each other in a contract of exchange, and which such excess is stipulated as an obligatory condition on one of the parties without any return"<sup>4</sup>

---

<sup>1</sup>Ibid, 84.

<sup>2</sup>Ibid. & Asem Samih Ahmad. "A critical study of Takaful (Islamic Insurance) and its modern implementation." (PhD diss., the University of Birmingham, 2006), 27.

<sup>3</sup>Abu Bakr Al-Jassas, *Ahkam al-Qur'an*, vol. 1, (Istanbul: 1335 A.H.), 469.

<sup>4</sup>Thomas Patrick Hughes, *A Dictionary of Islam* (Lahore: 1964), 544.

We can understand with some details in the Supreme Court's Judgement on *Reba* as the Order of the Court stated that any amount of money small or great access on and over the principal amount of a loan contract is "*Reba*", and therefore strictly banned and forbade in the sources of Islam, i.e. the Holy Qur'an. And there is no distinction between whether this amount of loan is for which purpose, either for basic needs or for commercial transactions and businesses and productions. The Holy Prophet (PBUH) clearly stated the following as *Reba* (as stated in the court verdict):

- (i) "A transaction of money for money of the denomination where the quality on both sides is not equal, either in a spot transaction or in a transaction based on deferred payment.
- (ii) A barter transaction between two weighable or measurable commodities of the same kind, where the quantity on both sides is not equal, or where the delivery from any one side is deferred.
- (iii) A barter transaction between two different weighable or measurable commodities where delivery from one side is deferred."<sup>1</sup>

The above-mentioned different types are considered as *Riba-al-Sunnah* in *Shari'ah*, as its prohibition is derived from the second source of Islamic Jurisprudence, the Sunnah of the Holy Prophet (PBUH). With the other type of *Riba*, which is the *Rib-al-Qur'an*, there are four kinds of operations characterized as '*Riba*'.<sup>2</sup>

## (2) *Gharar* (uncertainty)

As we know insurance has a fixed amount of premium and ensures the customer that if he suffers a loss, the insurer will provide his service by compensating it against his service charges, and if there is no loss then the amount of premium will be the profit

---

<sup>1</sup>Khalil-ur-Rehman Khan, *The Supreme Court's Judgement on Riba* (Islamabad: Shari'ah Academy, IIU Islamabad 2008), 357.

<sup>2</sup>Ibid.

of insurer. So here is uncertainty.<sup>1</sup>

### (3) *Maisir* (Gambling)

We can say that the Insurance is gambling because if there is no loss the Insurer win the game and if there is loss the other party win as he gets indemnified his loss. And these situations are unknown and dependent on each other.<sup>2</sup>

### The Shariah Compliant Substitute; *Takaful*

*Takaful* means in Arabic "Guaranteeing each other". *Takaful* is called *Shariah-compliant* insurance. It is an Islamic substitute for Insurance based on the principle of "Ta'awun (cooperation)" and "Tabarru (gift and donation)". Here the members of the group with their consent mutually share their risks. So, this becomes an understanding between them that any kind of loss or injury will be borne collectively.<sup>3</sup>

It provides compensation for almost all the risks covered by conventional insurance. It works on the *Waqf* model or *Wakalah-based* model. In the *Waqf* model, all the customers of the policy contribute to a *Waqf* pool, and all of them agree that if there is a loss to any pool member, all of them will compensate for that loss. This concept is based on *Shariah* principles.<sup>4</sup>

#### A. Basic characteristics of *Waqf*

*Waqf* is an act of donating the benefit of property owned for welfare or religious purposes and completed by taking the property from personal ownership and transferring it to the perpetual ownership of Allah.<sup>5</sup>

<sup>1</sup>Maulana Ismatullah, *Takaful ki Sharai Haythiyat*, (Karachi: Idaratul Maarif, 2010), 71.

<sup>2</sup>Ibid., 70.

<sup>3</sup>Ibid., 73.

<sup>4</sup>Ibid., 88.

<sup>5</sup>Ab Rahman Asmak and Wan Marhaini Wan Ahmad. "The Concept of *Waqf* and its Application in an Islamic Insurance Product: The Malaysian Experience." *Arab Law Quarterly* 25, no. 2 (2011): 203-219.

The *Waqf* model is organized by the *Takaful* operator who invests donations to form *Waqf* (Endowment) pool to reimburse the members of the pool scheme, in the situation of problems resulting in loss. Then it is run by participants' contributions which maintain the pool of participants' funds.<sup>1</sup> The policyholders are considered members and beneficiaries of the *Waqf* pool<sup>2</sup>. Further, the fund of the pool be invested in a *Shariah* compliance venture and profit shall be reinvested into the *Waqf* reserve.<sup>3</sup> Besides this, the company may charge a performance fee.<sup>4</sup>

### B. The Structure of a Takaful Company

Basically, a company is created for takaful undertakings by the investments of a few persons to initiate a halal trade venture, and they decide that one of the objectives of this venture will be to help those who are in need due to any loss in their business, etc. To actualize this objective, they establish a pool based on *Waqf* (وقف). They decide in the conditions for a person who is interested to be a member in this pool that he should contribute or invest in this pool to be a member of this pool.<sup>5</sup> So, the amount of this segregated

---

<sup>1</sup>Yuosef Abdullah Alhumoudi, "Islamic Insurance *Takaful* and Its Applications in Saudi Arabia" (PhD. Diss. October 2012), 125. (Engku RabiahAdawiah Engku Ali, Hassan Scott P. Odierno, and Azman Ismail. *Essential Guide to Takaful:(Islamic Insurance)*. CERT Pubs. Sdn. Bhd., 2008.)

<sup>2</sup>Sheila Nu NuHtay, Mohamed Arif, YounesSoualhi, Hanna RabittahZaharin, and Ibrahim Shaugee. *Accounting, Auditing and Governance for Takaful Operations*. (Singapore: John Wiley & Sons, 2012).

<sup>3</sup>Yuosef Abdullah Alhumoudi, "Islamic Insurance *Takaful* and Its Applications in Saudi Arabia" (PhD. Diss. October 2012), 128.

<sup>4</sup>Sheila Nu NuHtay, Mohamed Arif, YounesSoualhi, Hanna RabittahZaharin, and Ibrahim Shaugee. *Accounting, Auditing and Governance for Takaful Operations* (Singapore: John Wiley & Sons, 2012).

<sup>5</sup>Maulanalsmatullah, *Takaful kiSharaiHaythiyat*, (Karachi: Idara-tul- Maarif, 2010), 79.

fund and its ownership transfers from the ownership of Waqif (a person who establishes *Waqf*), according to the principles of *Shariah* for *Waqf*. The members of the pool will participate with a payment as an endowment to that *Waqf* pool to reimburse their losses by that Company.<sup>1</sup> This amount and funds will be invested ultimately into a harmless project, which is allowed in *Shariah* for investment, and that *Waqf* pool will become the owner of this. The rules for compensation by *Waqf* for beneficiaries of *Waqf* can be determined to adopt the basis of compensation.

### C. Shariah Assessment; Impediments in Takaful

It is narrated in a hadith by the Holy Prophet (P.B.U.H) that:

عن عامر قال سمعت النعمان بن بشير يقول : سمعت رسول الله صلى الله عليه و سلم يقول ( الحلال بين والحرام بين وبينهما مشبهات لا يعلمها كثير من الناس فمن اتقى المشبهات استبرأ لدينه وعرضه ومن وقع في الشبهات كراع يرعى حول الحمى أوشك أن يواقعه ألا وإن لكل ملك حمى ألا وإن حمى الله في أرضه محارمه ألا وإن في الجسد مضغة إذا صلحت صلح الجسد كله وإذا فسدت فسد الجسد كله ألا وهي القلب<sup>2</sup>

The translation is as that the holy Prophet (PBUH) stated that the legal and illegal things are very obvious (in Islam), and between these Hla and Haram, there are some suspicious things or doubtful issues. So, for you is to take care of that as whoever keep himself away from those suspicious matters, he protects himself from the sins and definitely will avoid from illegal things, and whosoever do these suspicious things (thinking that it is doubtful and not

<sup>1</sup>Abdul Wahab, Abdul Rahim, "Takaful Business Models- Wakalah Based on Waqf: Shariah and Actuaries Concerns and Proposed Solutions", A Paper Presented at the 1St Saudi International Takaful Forum, Jeddah, (September 2004), 11.

<sup>2</sup>(Sahih Bukhari, 1929, narrated by Nau'man bin Bashir)

haram), possibly may commit the illegal things. Sins are Allah's Hima (i.e. private pasture) and whoever pastures (his sheep) near it, is likely to get in it at a sandy moment.

The charity part of *Takaful* has raised concerns among scholars on its viability.<sup>1</sup> Because there is a confusion that according to Islamic law if a person donates anything he cannot take it back.<sup>2</sup> Therefore, it is said that it is '*aqd al mu'awadah*' as there is a contractual relationship between the endowment and reimbursement one receives from the pool fund<sup>3</sup>. Here, this look like that a volunteer undertaking of contribution that gives rise to a commitment to repay which ends in *Riba*, *Gharar*, and *Maysir* for the reason that money is exchanged with money, and the cash is paid in compensation is unspecified.<sup>4</sup> Further in the matter that one does not know the time on which he will be compensated creates the *Gharar*. In the *Waqf* model, the *tabarru* fund belong to the participants and no one in particular.<sup>5</sup> This consequently creates the issue of fictitious entity which is objected to by some *Shariah* Scholars.

### Improvements in Takaful

To harmonize the insurance with the principles of *Shariah* law, there is a need to be taken some steps to change the current

---

<sup>1</sup>Syed Ahmed Salman, "Contemporary Issues in Takaful (Islamic Insurance)." *Asian Social Science* 10, no. 22 (2014): 210.

<sup>2</sup>Maulana Ismatullah, *Takaful ki Sharai Haythiyat*, (Karachi: Idaratul Maarif, 2010), 87.

<sup>3</sup>Asem Samih Ahmad. "A critical study of Takaful (Islamic Insurance) and its modern implementation." (PhD diss., the University of Birmingham, 2006), 27.

Kamaruddin Sharif, "Mudharabah and Tabarru in Takaful contracts." (Paper, International Conference on Takaful/Islamic Insurance, June, 2000) 7.

<sup>4</sup>Ibid.

<sup>5</sup>Maulana Ismatullah, *Takaful ki Sharai Haythiyat*, (Karachi: Idara-tul-Maarif, 2010), 91.

practices. For example, the indemnity shall be to the amount of the actual loss and not, as currently practised, there are different ways by which an assured can be indemnified, like indemnity by cash payment, by the way of repairs, by replacement, or change. It is suggested that the indemnity be made in kind only in the form of goods and services similar to the loss.<sup>1</sup> This stipulation will reduce the possibility of contractual *Reba* from *Takaful* contract as this would mean exchange of commodities with money, instead of money to money. Gambling also cannot occur under the suggested changes.<sup>2</sup> Further, in the case of deficit, the *Takaful* operator will provide to cover the deficit a *Qard Hassan* and in the future, it will be with surplus repaid.<sup>3</sup>

### Incoterms

It is essential to differentiate the point on which the title of shipment transfers from the exporter to the importer because when the title of goods changes, it will transfer the liability and all kinds of risks from one party to another.

It is familiar that if the buyer or his agent is there, they can take over the goods in their possession, and the liability will come to that person because when the seller gives access to the buyer the liability of the seller is completed, therefore it is according to the

---

<sup>1</sup>Muhammad Anwar and Muhammad Hussain, "Comparative Study of Insurance and "Takafol" (Islamic Insurance) [with Comments]" *The Pakistan Development Review*, Vol. 33, No. 4, (Winter 1994)

(Papers and Proceedings PART II Tenth Annual General Meeting of the Pakistan Society Development Economists Islamabad, April 2-5, 1994). (Islamabad: Pakistan Institute of Development Sciences)1315-1330

<sup>2</sup>Ibid.

<sup>3</sup>Abdulrahman Khalil Tolefat, and Mehmet Asutay. *Takaful Investment Portfolios: A Study of the Composition of Takaful Funds in the GCC and Malaysia*. (Singapore: John Wiley & Sons, 2013).

Hanafi school of thought<sup>1</sup> as they consider the giving access from the seller to the goods as transferring of risks to the buyer and not consider it necessary that he take the physical possession of goods.

Therefore, if the buyer or his agent is not there, international practices and customs consider the giving to the carrier as a transfer of risk, and it is also according Sale of Goods Act as section 23 (2);

“In view of ss 23 and 39, the goods are to be treated as delivered to the buyer and property and possession of the goods passes on to the buyer when the goods are handed over to the transporter.”<sup>2</sup>

The question arises here this custom is acceptable according to Islamic law? The answer is that if the buyer nominates any carrier/freight forwarder for the shipment, then that company will become an agent for the buyer in taking possession of that goods and if the buyer does not nominate any carrier or freight forwarder for shipment then it will be considered that the buyer gives this right to seller that he chooses any company. Therefore, in this situation, the liability also came to the buyer. There are no objections by Shariah in recognizing this custom.<sup>3</sup>

For this purpose, in international trade, the International Chamber of Commerce has designed some terms that are not laws, but we can assume these rules as a custom in international trade which are called Incoterms. The first edition of Incoterms was created in 1936, and then revised in 1952 and so on; the latest version is Incoterms 2010.<sup>4</sup>

---

<sup>1</sup>Muhammad Taqi Usmani, *Fiqh Ul Buyoo Ala Madhahib Al-Arbaa* Vol. 2 (Karachi: MaktabaMaarif-ul-Quran, 2015), 1090.

<sup>2</sup>Satish J. Shah, *Pollock & Mulla: On the Sale of Goods Act 1930* section 23, (LexisNexis, 2011), 203.

<sup>3</sup>Muhammad Taqi Usmani, *Fiqh Ul Buyoo ala Madhahib Al-Arbaa*, vol. 2 (Karachi: Maktaba Maarif-ul-Quran, 2015), 1090.

<sup>4</sup>Juana. Coetzee, "Incoterms 2010: Codified Mercantile Custom or Standard Contract Terms." *Stellenbosch L. Rev.* 23 (2012), 564.



Most of the Incoterms are compliant with *Shariah* principles, the remaining should be studied, reviewed, amended, and developed to make the Incoterms an Islamic product.

## 3.2 Incoterms in the light of *Shariah*

### EXW (Ex Works)

This is the term in which the responsibility and obligation come onto the buyer. The seller has the responsibility to provide the goods on his premises (works, factories, etc.) the exporter is not responsible for bearing the costs/expenses of loading goods on vessels provided for shipment. The buyer is responsible for bearing all the expenses from that EXW place to his destination.

This term doesn't have any conflict with *Shariah*, because it is according to the *Hanafi* school of jurists as they say only giving access to the buyer on the subject of sale will be considered the possession of the buyer and transfer the liability from seller to the buyer.<sup>1</sup>

### FCA (Free Carrier)

The seller must deliver the shipment, cleared for export, to the carrier at the specified place or point by the buyer, if no specified place or point is described, the seller can give at any location into the charge of the carrier.

FCA is *Shariah* compliant, because when the seller handover the goods to the specified carrier by the buyer on the directions of the buyer, the carrier becomes the agent of the buyer, so the possession of the carrier will be considered the possession of the buyer, therefore according to *Shariah* the seller's liability terminated on this point.<sup>2</sup>

### FAS (Free Along Side)

It is used only for sea or inland waterways. The seller must

---

<sup>1</sup>Muhammad TaqiUsmani, *FiqhulBuyoo Ala Madhahib Al-Arbaa*, vol. 2 (Karachi: MaktabaMaarif-ul-Quran, 2015), 1092.

<sup>2</sup>Ibid.

handover the shipment alongside the ship at the specified port and must clear the shipment for export. After that point onward the importer is required to bear all expenses and costs.

In this situation, according to *Shariah*, all liabilities come on the buyer after that the seller completes his duty, therefore this term has no conflict with Islamic Law.<sup>1</sup>

### FOB (Free on Board)

This term is designed for maritime goods i.e. sea or inland waterway transportation. The seller is required to load goods themselves on board the carrier specified by the buyer. The exporter must clear the shipment for export. All expenses and risks after the goods cross the ship's rail pass to the buyer, the title and risks become the responsibility of the buyer from the same point.

In this situation, the freight forwarder company acts as an agent to the buyer, therefore, the responsibility of the seller finishes after loading goods on board of the carrier and it is according to *Shariah*.<sup>2</sup>

### CFR (Cost and Freight)

This term is designed only for sea or inland waterway transportation. In this term, the exporter is required to clear the shipment for export, and all costs and freight to bringing the goods from the seller's premises to the port of destination will be on the seller but when the goods pass the ship's rail, the title of shipment and risk come on the buyer. Therefore, the difference between the FOB and CFR is that from shipment to the port of destination, the cost and freight will be on the buyer in FOB and will be on the seller in CFR.

We can legitimate it according to *Shariah* by assuming the situation that the buyer gives his right to choose the carrier to the seller, therefore the seller acting as his agent in selecting the carrier, after that when the seller hand over the goods to the carrier his

---

<sup>1</sup>Ibid.

<sup>2</sup>Ibid.

liability finishes, and this is according to *Shariah*.<sup>1</sup>

### CPT (Carriage paid to)

This term is designed for all modes of transportation. The exporter will pay the cargo for the consignment of the delivery to the specified endpoint. The damage or harm to the cargo happens after the sending to the carrier is transferred from the exporter to the buyer. This word commands the exporter to clear out the shipment for export.<sup>2</sup>

### CIF (Cost, Insurance, and Freight)

This term is designed only for transportation by maritime or inland waterways. All costs and transportation to bringing the merchandise from the vendor's premises to the seaport of the endpoint will be on the seller but when the supplies pass the ship's rail, the title of consignment and dangers are transferred to the buyer. Nevertheless, the seller is also obliged to grant protection alongside the buyer's risk of loss or damage to the goods during transit. In this term, the exporter is required to clear the shipment for export; the seller has the same obligations in CIF as under CFR except for Insurance.<sup>3</sup>

According to *Shariah*, there is one objection which is that according to this term, there is no specified port of shipment, and it creates suspicion it is *Gharar*, which is not allowed, therefore, when they are using this term if they specify any port of shipment then it will become *Shariah* compliant.<sup>4</sup>

### Conclusions:

This research concludes that it is very significant for an economy that is transforming into a *Shari'a*-compliant economy or an

---

<sup>1</sup>Muhammad Taqi Usmani, *Fiqh al Buyoo Ala Madhahib Al-Arbaa* Vol. 2 (Karachi: Maktaba Maarif-ul-Quran, 2015), 1093.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

Islamic economy that it should take care of its international trade because the Import and export business plays a very significant role in the market and the economy of the country. For that purpose, it is much needed that some important aspects of Imports, and exports business should be evaluated in the light of Islamic law. Insurance plays a very basic role in the risk management of such big businesses. As well as that it is also a legal requirement in most cases.

This research identifies the legal requirements of the insurance in different stages of the imports, and exports business, as well as evaluates those issues in the light of Islamic law. It further discusses the solutions in the light of Islamic law and elaborates on the Islamic alternative for insurance, the Takaful. It is strongly suggested that the Takaful model should be replaced to conventional insurance, as it is obvious that the insurance consists of Interest, which is prohibited and is also declared by the Federal Shariat Court. The other alternate options for risk management in international trade may be the use of those Incoterms which are acceptable by Islamic Law as mentioned in this research.