

THE PRACTICE OF HIBAH IN TAKAFUL INSTITUTIONS: A CASE STUDY IN TAKAFUL IKHLAS SDN. BHD

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ABSTRACT

Takaful is a form of protection to assist one self, family and loved ones. It is obligatory for Muslims to prepare themselves for life in the present, future and after their demise. Hence, to ensure these are achieved, an individual must plan his estate and property management whilst he is alive, and after his death. In short, Islam's property management aims to enable an individual to gain goodness now and for life in the hereafter. Takaful benefits become Islamic inheritance which guarantees the continuity of life for the family after the death of the contributor. Gifts (hibah) are an act of giving by a giver to a recipient that was made through love and affections. In reality, the implementation of hibah takaful in Malaysia is well accepted with rapid growth. Comprehensive documentation aspects are essential in avoiding disputes over inheritance after the death of a giver. This paper focuses on the concept of takaful, takaful benefits and practice of hibah takaful at Takaful Ikhlas Sdn. Bhd. It also discusses the documentation of hibah Form in Takaful Ikhlas prior and after enforcement of Islamic Financial and Services Act (IFSA) 2013.

Keywords: Takaful benefits, hibah, takaful ikhlas, Islamic inheritance law

INTRODUCTION

Takaful system has been applied ever since

the early years of Islam. It was implemented based on 2 concepts: 'Aqilah and al-Qasamah. 'Aqilah system was introduced by Rasulullah immediately after his migration (hijrah) to Madinah. A fund known as 'kunz' was set up through contributions of each member in the tribe (kabilah). The money from the fund was utilized to assist the heirs of a murderer, in the case of killing without intention, to provide compensation (diyah) or for ransom payment of prisoners of war. Al-Qasamah system, on the other hand, was a system of payment to the heirs of a murder victim whose killer was unknown, or for a murder case in which evidence was insufficient. This is comparable to a warranty, in the form of compensation as paid to the victim or heirs in modern Takaful (Ahmad Ma'sum Billah, 2007).

Sudan is the first country that has established an Islamic insurance company in 1979, followed by countries in Europe in the early 1980s. In 1979, Arab Islamic Insurance Company was launched in Saudi Arabia, subsequently Islamic Takaful Company in Luxembourg by Dar al-Maal al-Islami (DMI) in London in 1983. There is also an Islamic Insurance Company known as Syarikat al-Takaful al-Islamiah in Australia (Mohd Fadhil Yusof, 1996).

In South East Asia, Malaysia was the pioneer through the establishment of Syarikat Takaful Malaysia Sdn Bhd (STM),

which started operation on 2nd of August 1984. Its objective was to offer quality and professional Takaful (Islamic insurance) products and services to both Muslims and non-Muslims in the country. The catalyst for the Takaful industry was the decision of the Malaysia National Fatwa Committee in 1979 which decided that life insurance was an illegitimate contract as it contained the elements of usury (riba), gambling (maisir) and trading in risk (gharar) (Bank Negara Malaysia, 2004).

In brief, there are several motivating factors to the formation of Takaful. First, Muslims become more aware in practising wholesome Islam in their daily life. Second, Muslims wish to re-enact Islamic Financial system which is free of usury (riba), gambling (maisir) and trading in risk (gharar) for ummah development. Third, Islamic banking institutions that offer products that require Takaful businesses to have insurance protection services.

The formulation of the new Acts IFSA2013 involved the consolidation and rationalization of Banking and Financial Institutions Act 1989, Insurance Act 1996, Payment Systems Act 2003, Exchange Control Act 1953, Islamic Banking Act 1983 and Takaful Act 1984. It provides regulation and supervision of payment systems and oversight of the Islamic money market and Islamic foreign exchange market. The principal regulatory objective of IFSA is to promote financial stability and compliance with Shariah. The new act strengthens the regulation of financial institutions, Islamic money market and the Islamic foreign exchange market as well as Islamic payment instruments. Other than that, IFSA would help create greater transparency, governance and accountability in Islamic financial system

DEFINITION AND TAKAFUL CONCEPT

Takaful, a verb derived from the root word 'kafala' means safeguarding, guaranteeing and protecting. Al-Al-Quran uses the word to mean protecting (Al-Quran 3:37; 16:40). The word 'kafala' gets a prefix 'ta', which results in 'takafala'. Hence, the word 'takaful' is derived, which means mutual protection, mutual guarantee and mutual safeguard. Literally, an agreement is made within a group of participants, whereby in the case of one participant is befallen with a misfortune: disaster/accident /illness/death, he will receive an amount of money or monetary benefits from the existing to assist in the difficulty faced by the participant (<http://www.Takaful-malaysia.com>).

Takaful can be defined as a contract or agreement made within a group in which the members reach a consensus to mutually assist each other on any loss or damage. It is a protection plan based on relationships between individuals.

Legal definition of Takaful is (Takaful Act: 1984);

A scheme based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose.

Every soul will face death (Al-Quran 20:57, 17:35 and 3:185). We can only plan for our life but it is apparent that only Allah determines all. Takaful is one of the instruments in Islamic property management which warrants self, family and property protection. Risk from an event or occurrence may

result in negative consequence and effect that may befall an individual. As Muslims, it is compulsory for us to believe that risks are the provision (Qada' and Qadar) of Allah s.w.t. It is a form of a test of faith (Al-Quran 1:155-157). At times, trials by Allah are the results of the attitudes and undertakings of human beings themselves in their lives (Al-Quran 21:41).

However, we are not allowed at all to be passive without making any effort or attempt to avoid risks or minimizing them (Al-Quran 13:11). One should try his best in everything that he does and believe in tawakkal. The concept of tawakkal is submitting to God after we have tried our best. Rasulullah SAW taught his companions the concept of tawakkal, whereby only after one's camel is properly tied, one should then leave the safety of the camel to God. Besides that, risk management requires intelligence and efficiency to minimize any negative impact. The story of the Prophet Nuh (the Prophet Noah) building a huge ark to prepare for the great flood (Al-Quran 12:37 and 18:27) is much related to the efficacy of risk management.

The concept of tawakkal is submitting to God after we have tried our best.

The Prophet Yusuf (the Prophet Joseph) commanded the Egyptians to prepare for a 7-year economic crisis and long draught (Al-Quran 12:47- 48) and the Prophet Yaakub (the Prophet Jacob) instructed his children to enter Egypt through different roads and doors to avoid any undesirable circumstances (Al-Quran 12:67). Thus, all narrations in al-Al-Quran provide references and guides that reveal risk management practiced by the Prophets.

THE BENEFITS OF TAKAFUL AS AN INSTRUMENT OF INHERITANCE

This discussion refers to the benefits of Takaful as an instrument of inheritance. The author will discuss a product in the family takaful category, and its relations to the laws of Islamic inheritance. Besides this, the benefits to the family upon the death of the participant provide significant implications to this discussion.

When a participant dies before the maturity of the family takaful protection scheme, his heirs will receive payments from the takaful benefits as follows (Sobri Salamon, 1989):

- a) All the premiums which have been paid by the participant before he dies as accumulated in the participant's account, and the investment profits which are allocated based on al-Mudharabah agreement.
- b) The balance of the premiums which should be paid by the participant if he is still alive and maintains his participation. This balance is calculated from the date of the participant's death until the protection scheme matures. This balance of premium payments will be deducted from the special accounts of all other participants based on the consensus as contained in the Takaful agreement.
- c) The balance from the special accounts of all participants which is allocated for him. This balance is retrieved after all other expenses in managing family takaful, like benefit payments to participants' heirs, the death of other participants and other related expenses.

In takaful industry, hibah concept is used in several family takaful products in which

participants could give hibah in the form of assigning the takaful benefit to the nominee or hibah recipient.

Giving hibah and gift is highly recommended as suggested in the following verse of Al-Quran and hadith of Rasulullah SAW: "...but if they choose of their own accord to make over to you a part of it, then you may enjoy it with pleasure and good cheer." (Al-Quran 4:4). "Abu Abdullah al-Hafiz has reported to us, he said, I heard that Abu Zakaria Yahya bin Muhammad al-'Anbari said, I heard that Abu Abdullah al-Busyanji said, about the saying of the Prophet Muhammad SAW, "Exchange gifts (among you) and you will love each other." (al-Baihaqi, 1994).

Resolutions of Shariah Advisory Council of Bank Negara Malaysia state that assets in its tangible form or in the form of its benefit (usufruct) can be given as hibah to other parties. The issues that arise are:

- (i) Whether takaful benefit qualifies as an asset for hibah?
- (ii) Whether the status of hibah changes to a will (wasiah) if the participant dies since the transfer of the asset ownership would take place after the death of the donor?
- (iii) Whether a participant can revoke the hibah before the maturity of the takaful certificate?
- (iv) What are the implications, should the recipient of the hibah die before the maturity of the takaful certificate?

Fuqahas (Muslim Jurists) have differing opinions on the hibah of takaful benefits to the nominee mentioned in the benefit's nomination form. Based on the basic principle, hibah must be done while the participant is still alive. However, takaful

benefits are only effective after the participant's death. The status of the takaful benefits is disputable; whether it is the property of the deceased participant and distributed based on Islamic law of inheritance (faraid) or be made hibah (gift). The Shariah Advisory Committee (SAC) of the Central Bank of Malaysia (CBM), in its 34th meeting on 21st April 2003, decided on the application of hibah in the distribution of takaful benefits as follows:

- 1- The benefits can be made *hibah* as it is the absolute rights of the participant.
- 2- The status of *hibah* in the Takaful plan is permanent and will not become a will. This *hibah* is conditional. It is offered to the recipient for a certain period of time. In this context, takaful benefits are linked to the death of the participant and the maturity of the certificate. In other words, if the participant is still alive when the certificate matures, the benefits will be the property of the participants; whilst if the participant dies before the maturity of the certificate, *hibah* will take effect.
- 3- The participant has the rights to revoke *hibah* before the certificate matures, as *hibah* is only absolute after *al-Qabd*.
- 4- The participant has the rights to revoke *hibah* to a person and pass it to somebody else, or he can totally revoke his participation in the Takaful if the recipient dies before the certificate matures.
- 5- The Takaful nomination form should be adjusted and the status of the nominee should be mentioned clearly as a beneficiary or trustee.

The practice of Takaful Ikhlas, a company providing takaful benefits, for its family takaful products, is to provide a hibah proposal form if the participant plans to make hibah after his death. The company

also specifies that the hibah recipients should be parent(s), legitimate spouse, children or siblings. This is to protect the welfare of the nearest kin. Takaful with hibah integration concept will be more competitive in nature as compared to conventional insurance which obviously is without this application.

Hibah can also be adapted as an additional concept to Takaful products and can be practiced by other Takaful operators as in the product by Takaful Ikhlas Education Plan. This product is offered to parents with children. The parents will act as premium payer (hibah provider) and the children will be the Takaful participants. This type of hibah is necessary as it abides by all rulings and conditions.

The most important element regarding Takaful policy is the nomination of the recipient. This is to facilitate property management after the death of the participant. The nominee will act as trustee and not recipient (www.e-fatwa.gov.my). After the death of the participant, the trustee will be responsible to manage the property based on faraid ruling, wasiyah (will) or hibah according to the requests of the participant or as agreed upon in the Takaful agreement. Therefore Takaful participant must ensure that the nominee is credible and able to manage the property. It must be noted that children named for nomination must reach puberty to qualify for tasarruf (management).

The appointment of wasi or trustee and hibah is an important element in the distribution of property in Takaful. The participant gets a certain amount of monetary compensation should misfortune befalls on him. If the participant dies,

a certain amount of money will be given to his heirs, either by hibah or wasi. If a male participant provides hibah on all the compensations to his wife, his wife therefore will get all properties without faraid ruling. However, if the participant appoints his wife as a wasi, the wife is responsible in distributing the compensation to his heirs based on their consensus or through faraid. In general, the participant must make a wise selection in determining the best mechanism for property management while he is alive. The functions and roles of nominee, hibah proposal or trustee appointment should be well understood.

Takaful vs. Conventional Insurance

The concept of conventional insurance is equivalent to Takaful, i.e. protection warranty contract for any misfortunes. However, the implementation of the warranty on the unfortunate participant is different whereby the protection in conventional insurance is not provided mutually among the participants but from the company to the participants (Mohd Fadhil Yusof, 1996).

The takaful system has many benefits as compared to conventional insurance, which is profit-oriented. The advantages of Takaful system can be summarized as follows:

- 1- The warranty of financial protection based on Islamic rulings (Sobri Salamon, 1989)
- 2- Periodic premium payment for family Takaful (refer **Table 1**)
- 3- Profit-sharing between company and participants through mudharabah contract (refer Takaful models)
- 4- Family benefits after the death of the participant.
- 5- Spiritual benefits (Mohd Fadhil Yusof, 1996)

The aspect of spiritual benefits has proven that Takaful holds a greater, unparalleled advantage as compared to the conventional insurance system. Islam as ad-Deen (a way of life) is the most complete in fulfilling the requirements of life, now and beyond, physically, mentally and spiritually. These advantages of Takaful can be explained further through:

- i) mutual responsibility through the concept of tabarru' (Al-Quran 4:114)
- ii) mutual cooperation through the concept of ta'awwun (Al-Quran 3:2)
- iii) mutual protection in difficulty (kafalah)

In this respect, Takaful is not only for Muslims but it is also offered to non-muslims alike. The multi-racial Malaysian society, who is different in culture and religion, is encouraged to embrace Takaful. The general principle of upholding Islamic society (*muamalat*) is justice and equality.

Besides that, the advantages of Takaful can also be implemented on stakeholders like the customers, government, managers, investors and shareholders. This can be summarized as in **Table 1**.

The difference between Takaful and conventional insurance must be emphasized to highlight the benefits of Takaful as the best alternative insurance instrument.

The advantage of takaful as compared to conventional insurance is very obvious. It is a comprehensive system with the objective of elevating the Muslim's economic and financial system. The Takaful industry has been established for 26 years in Malaysia and this effort of developing a dynamic, versatile and efficient Takaful industry would not be successful without the superior co-operation of Malaysia's Central Bank and Takaful operators.

Table 1:
The Advantages of Takaful

Stakeholders	Takaful Advantage
Customers	Fulfilling the demands on several products on protection and savings at reasonable cost, comparable to those by conventional insurance.
Government	Capable of utilizing knowledge and skills to manage and govern Takaful schemes with competitive remuneration package.
Managers	Establish Takaful as an alternative to conventional insurance in comprehensive Islamic financial system.
Investors/shareholders	Provide reasonable returns on investments comparable to conventional insurance.

Source: Bank Negara Malaysia (2004)

Table 2:

The Summary of the Differences between Takaful and Conventional Insurance

Takaful	Conventional Insurance
Combination of <i>tabarru'</i> , <i>mudharabah</i> and <i>wakalah</i> contracts	Buy and sell contract (without material, clear contract (<i>akad</i>) made i.e. the policy) – buying and selling is evidently corrupt (<i>fasid</i>)
Participants' mutual assurance	The company guarantees premium payor (commercial in nature)
Participants' money is not company money	Participants' money is owned by the company
<ul style="list-style-type: none"> - Managers as governors and pay Takaful benefits from Takaful fund - Lack of fund is covered by interest-free loan (<i>qardhul Hasan</i>) 	The company is responsible in paying insurance benefits (from its assets)
Legal investment from <i>syara'</i> point of view	No restriction except for credibility
<ul style="list-style-type: none"> - Profit-sharing - Balance of profits is placed in participants' monetary fund 	Profit is totally owned by the company (profit-motivated)
Distribution of profits is based on <i>mudharabah</i> contract or profit performance fee	Distribution is based on company's decision
Surpluses, profits or returns are held by the Takaful fund to be re-distributed to participants	Participants do not have rights on surpluses
Syariah Regulatory Council (Takaful Act 1984. Section 8 (5) (b))	None
Abide by <i>syara'</i> and free from usury (<i>riba</i>), gambling (<i>maisir</i>) and trading in risk (<i>gharar</i>)	Does not abide by <i>Syara'</i> and contains elements of usury (<i>riba</i>), gambling (<i>maisir</i>) and trading in risk (<i>gharar</i>)
Payment of trade <i>zakat</i> (trade obligatory alms)	No <i>zakat</i>

Source: Takaful Malaysia (2010)

Practice of *Hibah* in Syarikat Takaful Ikhlas Sdn. Bhd.

Hibah is one of means to distribute one's assets in Islamic financial planning. It may be used either in one's lifetime or in estate distribution of the deceased. It is very simple, yet influential tool in estate planning in the sense it may influence the portion of some heirs if one executes the *hibah* when one is about to die. *Hibah* basically means a gift as when Prophet Zakariya prayed to his Lord in order to be granted descendants, saying "O my Lord! Grant unto me from thee a progeny that is pure" (Al-Quran 3:38).

Hibah may come into discussion when the rule of faraid does not allow some heirs to get the rights of inheritance and *wasiyyat* was not made on him. It is known that the rules of faraid only apply to Muslims; in the case when the deceased has different religions with their heirs, the heirs will not be entitled any inheritance. Thus, *hibah* may solve the particular circumstances by giving certain portion of his wealth to the heirs who have different religion and any particular blocked heirs (heirs who are not entitled to get inheritance, being blocked by other heirs) before he passed away.

Furthermore, in the case of a father who wants to give his son more than what he supposes to get in estate planning, the only choice he has is to execute *hibah*. If he chooses to do it under *wasiyyat* (will writing), the son is only entitled to one third of the estate. So if the father feels that the son is entitled to get more than a third and wants to ensure that he receives it, the only way is to give *hibah* within the father's lifetime. If this *hibah* is executed in time where he is about to die, it may be in the form of will writing (*wasiyyat*).

Thus it is recommended to appoint a professional trustee to execute the *hibah*. Even though the *hibah* belongs to the recipient technically, it is the trustee who will manage, maintain or dispose the estate. One can put conditions for the trustee that the *hibah* is given to the recipient only upon the death of the giver. By doing this, one not only expedites the process of distribution, as the *hibah* will not be subjected to the laws of faraid, the estate is protected as well. Therefore, it will allow the son to legally own the property. As a result, *wasiyyat* and *hibah* are devices that we can use to provide for the distribution of our estate upon our death.

Hibah in general is a transfer of ownership of a property or usufruct to another without any compensation during the life of the donor (Ibn Rushd, 1995). *Hibah* is material in discussing the *takaful's* benefit.

Hibah in general is a transfer of ownership of a property or usufruct to another without any compensation during the life of the donor (Ibn Rushd, 1995). *Hibah* is material in discussing the *takaful's* benefit. In Malaysia, the *takaful* businesses regulated by Islamic Financial Services Act 2013 (Act 759) effective on 30th June 2013. Prior to that, such a business is solely regulated by Takaful Act 1984 (Act 312). Since 1984, throughout the period, Central Bank of Malaysia has issued several guidelines and circulars in order to strengthen the *takaful* legal framework. Pursuant to the existing legislations, it seems good when the legislations prescribe several provisions dealing with the position of *hibah* in *takaful*.

Hibah is adapted as an additional concept of Takaful products and is practiced by most Takaful operators such Education Plan product by Takaful Ikhlas Sdn. Bhd. (Othman Yaakob, 2008). For example, this product is offered to parents with children. Parents act as a contribution payer (*hibah* contributor) and their children are participants of the Takaful (*hibah* recipients). This kind of *hibah* is permissible because it fulfills all the pillars and requirements. Pursuant to Takaful, the author thinks that it should be discussed separately in order to get ample space to discuss the concepts, principles and practices as an instrument of property management.

The appointment of an executor (*Wasi*) or trustee and *hibah* are important elements in the distribution of property in Takaful. The participants received a total amount of compensation in the event of misfortune. If the participant dies, a sum of money will be given to his heirs. The *hibah* or executor would be considered according to the circumstances. If the husband makes a *hibah* of compensation to his wife, she will get all the property without having to follow the *faraid*. However, if the participants appoint as executor of his wife, she should divide the compensation to the heirs or beneficiaries in accordance with the consent of the *faraid* rule. In general, participants need to make smart selection mechanism to determine the best estate planning during their lives especially in the aspects of: i) the nominee, ii) the appointment of *hibah* proposals or, iii) the appointment of executor. It should be clearly understood the actual role and functions of all three elements.

The method of '*Hibah Proposal*' is applied by Syarikat Takaful Ikhlas Sdn. Bhd.

Through this method, the takaful participant (by filling up the *Hibah* Proposal Form) will only propose to the Participant Special Account Fund (*Tabarru'* Fund) in which one or more individuals will be beneficiaries to his takaful benefit. It should be stressed here that the *hibah* has yet to happened, but it is mere a "proposal" from the participant as to *Tabarru'* Fund donates to the proposed beneficiaries upon the death of the participant prior to maturity. Thus, the portion which is subjected to *hibah* is the takaful benefits money upon the death of participant from *Tabarru'* Fund, while the payment from the account of participant is considered as an estate and will be distributed to the respective participant representatives via *faraid* rules.

However, those who could be named as beneficiaries to the benefit are limited to parents, a legitimate spouse, children and siblings (*Hibah* Proposal Form, Takaful Ikhlas Sdn. Bhd.). This purpose of having a limited list of beneficiaries is to protect the interests of the nearest kin who are under the responsibility of the participant. Although it is contrary to *hibah* rules that give liberty to the property owner to give *hibah* to any intended individual, on the other side of coin, the limitation of certain individuals who could be beneficiaries can be considered as being in line with the principle of *Siyasah Shar'iyah* as to protect the interest of individuals who are affected by the death of the participant and those who are still under responsibility of the participant (specifically children and wife). The author also believes that it is also consistent with the objectives of the participation of a payer/contributor to any takaful or insurance scheme, which is to provide personal and family protection that are under the responsibility of the participant

in the event of death or disability of the participant. This protection concept is known as "Takafulable Interest" and it is equivalent to "insurable interests" concept in the context of conventional insurance (Section 152 of the Insurance Act 1996).

The *Hibah* Proposal method may be considered as an alternative to *hibah* issue that requires *hibah* implementation is subject to the death of participant as ruled by the Shariah Advisory Council of CBM above. Although the requirements such as '*umra* and *ruqba*' in *hibah* is recognized by CBM, it is still an issue disputed by the Fuqahas. Thus, Takaful Ikhlas has made a stand that *khilafiyah* matters (disputable matters not agreed by all Fuqahas) should be avoided in accordance with the Islamic legal maxim (*Qawaied Fiqhiyah*) which means, "Out of the disputable matter is encouraged" (Al-Suyuti, n.d). Besides the conditional *hibah* issue, the *Hibah* Proposal method is said to overcome the unsatisfied *qabd* issue because of takaful benefit is yet to exist when the *hibah* was made. Since the declaration submitted by the takaful participant is a 'proposal', it could be withdrawn and the list of beneficiaries of such benefits can also be amended by the participant at any time.

In this case, the named takaful participant in the takaful product itself is the beneficiary of the received *hibah*. This occurs when the parents became payers/contributors to their children in education takaful products. The modus operandi of this type of *hibah* is easy to understand because the contributor, for example, a father becomes a donor by contributing a certain amount every month till the maturity period as a contribution for the benefit of his son (the participant)

as a beneficiary. Once the contributions reach the maturity period, then the sum contributions (savings) with the profits (if any) will be handed over to the respective children. Similarly, he is also entitled for the benefits of participation in any takaful products. This application occurs in takaful products in which education saving in nature at Ikhlas (for example, Ikhlas Education Takaful). Moreover, *hibah* in such product also could be seen as an action to provide specific rewards to participant by takaful company. Reward such as academic excellence award will be taken from the *Tabarru'* Fund (Participant Special Fund).

Hibah Practice in Takaful Ikhlas after the Enforcement of Islamic Financial Services Act (IFSA) 2013

The enforcement of the Islamic Financial Services Act (IFSA) on 30th June 2013 shows the changes of legal framework landscape that regulate the Islamic financial system in Malaysia. The statute that repeals the Islamic Banking Act 1983 (IBA) and Takaful Act 1984 (TA) provides the regulatory framework for Islamic financial activities by the institutions under the supervision of CBM.

IFSA is drafted to provide the regulation and supervision of Islamic financial institutions (IFIs), payment systems and other related entities as well as the supervision of Islamic money market and Islamic foreign exchange markets. This situation makes IFSA as a single statute for IFIs under the supervision of CBM; and has a wider scope of regulation compared to IBA and TA which were drafted in particular to regulate the Islamic banking institutions and takaful operators.

Pursuant to Section 6 (IFSA 2013), the creation of IFSA is to promote financial stability and compliance with Shariah for Islamic finance industry in Malaysia (which consist of Takaful industry) are in line with section 2(1) of the Central Bank of Malaysia Act 2009 (CBMA) that defines the Islamic financial business as "any financial business in ringgit or other currency which is subject to the laws enforced by the Bank and consistent with the Shariah."

Islamic financial services are authorized and regulated by IFSA. It can be divided into two categories which are "licensed business" and also "approved business". A business that is licensed by the Minister, on the recommendation of CBM, is a business that includes Islamic banking business, takaful business, international Islamic banking business and international takaful business (refer to Section 8 (1) (a) and section 10). While approved business that are approved by CBM means businesses that are related to business of operations of payment systems, Islamic payment instruments and issuance of designated Islamic payment instruments, takaful broking business, Islamic financial advisory business, Islamic money market and Islamic foreign exchange markets (refer to Section 8 (1) (b) and section 11).

Beneficiary Nomination aspect under Conditional *Hibah* is one of the most significant changes in the new Takaful legislation in which it is about the authority to make a nomination. IFSA gives the statutory right to a takaful participant, who attained the age of sixteen years old and above, and took up a family takaful certificate or personal accident takaful upon his life, to nominate an individual to receive takaful benefits payable upon his death

as beneficiary under the conditional *Hibah* (Paragraph 2 (1), Schedule 10). The participant also has right to put the nominee named as *wasi* only (ibid.). The beneficiary will receive the takaful benefits payable upon the death of the participant as his own because the takaful benefits have been transferred to him through conditional *Hibah*.

In reality, takaful benefits shall not form part of the estate of a deceased takaful participant or be subject to his debts (Paragraph 3(1) and (2), Schedule 10). On the contrary, an individual who receive benefits as *wasi* shall distribute the takaful benefits in accordance with the will of the deceased takaful participant or the law relating to the distribution of the estate of deceased persons as applicable to that takaful participant (Paragraph 6 (2), Schedule 10). Nomination will be void if a nominee dies during the lifetime of takaful participant or the participant revokes the nomination by submitting a written notice to takaful operator or the participant may make a subsequent nomination (Paragraph 4 (1) (a) (b) (c), Schedule 10).

Legal provisions relating to the rights of participant to nominate a beneficiary under conditional *Hibah* could be seen as to give the opportunity to participant to ensure that the takaful benefits payable upon the death of participant will be fully obtained by the hibah recipient. This right could be used to safeguard the interests of the nearest kin of takaful participant such as spouse, children or parents. However, this provision may also cause some issues as follows:

Confusion may arise regarding the ownership status of the takaful benefits under

the conditional *Hibah* despite the SAC has approved its use since conditional *Hibah* is similar to *hibah ruqba'* (Bank Negara Malaysia, 2007). Moreover, *hibah ruqba'* as opined by the majority of fuqahas (Wahbah Al-Zuhayli, 2007; Muhammad Najib Al-Muti'i, n.d.; Al-Nawawi, 1991; Al-Nawawi, 2000) saying that ownership of *hibah* will be transferred directly to the recipient and will not be returned to the contributor if the recipient dies during the lifetime of the contributor ('Ali Haydar, n.d.).

The conditional *hibah* contract is likely to be misused by the participant as to deny certain successor rights to receive takaful benefits as IFSA does not clearly mention who is the individual that eligible to be named as beneficiary under the conditional *hibah*. Since the statute neither interprets the definition of beneficiary nor the existence of legal provisions that requires the beneficiary to have a protectable interest on the protected person (takaful participant), this statute gives an absolute power to the takaful participant to nominate any individual as beneficiary under the conditional *hibah*. The situation is different with insurance laws under FSA when it limits certain individuals only such as spouse, children or parents (if there is no spouse or children) are eligible to receive policy money on the basis of statutory trust, while other nominees will receive policy money as an executor only (refer to Paragraph 5(1)(a)(b) and 6(1) of Schedule 10 of FSA).

Before the IFSA 2013 came into enforce, Takaful Ikhlas applicants must fill in two nomination forms which are Nomination Form and *Hibah* Proposal Form. For a Muslim who has being named in the Nomination Form, he is responsible to

manage the compensation that he received by distributing to the legal heirs in accordance to *Fara'id* ruling or any order of the court as indicated by the 49th National Fatwa Committee Consultation for Islamic Affairs of Malaysia on 10th September 2000:

"Nominee in the Employees Provident Fund (KWSP), Bank Simpanan Nasional, Post Office, Banks, Insurance Companies and the Trade Unions seems to be like an executor or a testator of a will. Those individuals can receive money of the deceased from above-mentioned sources as to be distributed among legal individuals in accordance with the Islamic law of inheritance."

While the named nominee in the *Hibah* Proposal Form, is considered as beneficiary and the specified percentage is allocated for him. After IFSA 2013 being enforced, *Hibah* Proposal Form was changed to Conditional *Hibah* Nomination Form. A participant who wishes to give the compensation that should be distributed among his heirs, must recommend to the trustee of *Tabarru' Fund* (Takaful Ikhlas Sdn Bhd) to give the money to the nominees who has been named in the Conditional *Hibah* Form, if he is befallen by death.

In this situation, after the death of takaful owner, the contributor is the takaful owner but Takaful Ikhlas Sdn Bhd who acts as a trustee and is responsible for *Tabarru' Fund*. As a result, the money that can be given is the sum of compensation in which he is entitled for, while the accumulated money in his personal investment account shall be distributed according to *Fara'id* ruling or use to repay his debts.

CONCLUSION

Inheritance management in Malaysia plays a significant role in ensuring harmonious family relationship. Even though the laws of the country do not mention specifically the instrument contained in Islamic Inheritance, its implementation however is very effective and efficient. The co-operation between the country's administrative, legislative and financial institutions provides positive implications to its development and sound implementation.

The benefits of takaful should be understood in depth because of its distinctive position from the view of Islam's rulings and implementation. There have always been disputes in the society after the death of the individual who has invested in Takaful, complicating the inheritance process. Therefore, if the benefit of takaful is managed systematically and abides by the rulings of Islamic

inheritance, the rights of the heirs are protected.

In reality, *hibah* practice in Malaysia is growing rapidly and well accepted. This could be proved by the existence of takaful operator such as Takaful Ikhlas Sdn Bhd. that offering Takaful *Hibah* to meet the real criteria of hibah as an instrument of Islamic effective property management. Technical and legal aspects have to be observed and adjusted for the betterment of the company and its customers.

The enforcement of IFSA2013 has brought significant changes to the laws of takaful in Malaysia, arguably more extensive than the Takaful Act (1984). The newly added provisions also emphasize the aspects of the duty of disclosure and the pre-contractual representations as well as nomination including matters relating to takaful benefit payments to beneficiary under the concept of conditional *hibah*.

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