International Journal of Law and Jurisprudence
eISSN: 2255-1824
Volume 15, No. 2 (2026)

The Legal Status of Parties Involved in the Takaful Insurance Contract

Dr. Rezig Wassila
Lecturer 'A', University of Algiers 1, Faculty of Law, Benyoucef Benkhedda, Algeria
Email: w.rezig@univ-alger.dz

Received: 03/08/2026 Accepted: 29/10/2026 Published: 17/11/2026

Abstract

Insurance occupies a prominent place in human life, as the risks surrounding an individual are multifaceted, potentially affecting their property, health, life, or the fate of their dependents. Therefore, a person generally seeks insurance against these risks by resorting to commercial insurance companies that provide risk coverage in exchange for a financial amount paid by the insured. It is no secret to anyone that the main goal of these companies is to exploit people's need for security to achieve the greatest possible profit. To avoid the drawbacks inherent in commercial insurance, Takaful insurance emerged as an alternative offering products compliant with Islamic Sharia. Given that this type of insurance is relatively modern and its system involves complex legal relationships, this article seeks to examine the legal status of the active parties in this composite contract.

Keywords: Insurance - Takaful - Participants - Shareholders - Fund - Donation.

Introduction

The Takaful insurance contract is one of the most important contemporary insurance formulas that seeks to harmonize the needs of modern financial transactions with the requirements of Islamic Sharia. It does so by relying on the principles of cooperation, solidarity, and risk-sharing among participants, rather than transferring them to a profit-oriented insurance company.

Although the mutual idea was the first to emerge, particularly in Islam, the legislative regulation of Takaful insurance came late due to the novelty of Islamic banking services and the lack of alignment between insurance laws and the foundations of Takaful.

This type of insurance has gained significant importance in recent years through its role in meeting the needs of a large segment of citizens looking for financial products compliant with Islamic Sharia, by providing a legitimate alternative to conventional insurance that aligns with Islamic values and principles. This is especially true since the global financial crisis proved the efficiency of the Islamic insurance system, particularly in some Gulf countries, despite its novelty in others.

Efforts to regulate Takaful insurance in Algeria began to take concrete shape with the amendment of Article 203 of Ordinance 95-07 relating to insurance in Algeria, pursuant to Article 103 of the Finance Law for 2020. This added Article 203 bis, which is considered a crucial turning point in the trajectory of insurance in Algeria. This article was included to establish a regulated legal framework for insurance activity, enhance Takaful insurance, and enable it to consolidate its position within the insurance system in Algerian society. This was

followed by the issuance of Executive Decree No. 21-81 dated February 23, 2021, which determines the conditions and modalities of practicing Takaful insurance. This decree represents a fundamental legal framework for regulating Takaful insurance activity in Algeria in accordance with the provisions of Islamic Sharia.

Institutionally, "Salama Assurances Algérie" was the first company to apply partial Takaful mechanisms in 2006, despite the absence of a complete legal framework, until the issuance of Executive Decree No. 21-81, which opened the door for specialized companies and Takaful windows to practice Takaful insurance activity.

Given that the Algerian legislator described Takaful insurance in Article 203 bis, added by the Finance Law of 2020, as an insurance system based on a contractual approach through the joining of a group of participants, this indicates that the Takaful insurance system takes the form of a composite contract, meaning through several contracts. This results in legal relationships different from those customary in commercial insurance. Therefore, determining the legal status of the active parties in this contract is a pivotal issue, due to its implications for defining the nature of the legal relationship between the participants on the one hand, and the entity managing the insurance and the Takaful fund on the other. This reflects on the distribution of rights, obligations, and responsibilities among the various parties. Hence, the importance of this topic lies in the fact that it touches the legal structure of the Takaful contract at its core; resolving the legal qualification of its parties contributes to distinguishing it from the commercial insurance contract, enhancing contractual security, and ensuring the sound implementation of its provisions in practice.

Based on this, we raise the following problematic question: **To what extent does determining the legal form of the parties involved in the Takaful insurance contract contribute to achieving a balance between the requirements of legal regulation and the dictates of the Takaful nature of the contract?**

To answer the research problem and achieve the study's objectives, the descriptive approach was relied upon to describe the Takaful insurance system in general by addressing the theoretical aspect, and the analytical approach was used to analyze the legal texts regulating it that are related to the research topic.

In this regard, the research is divided into two axes:

- The first axis deals with the conceptual framework of the Takaful insurance contract, as the legal relationships arising from the Takaful insurance contract cannot be qualified without defining its conceptual framework and identifying its parties.

- The second axis deals with the specificity of the contractual relationships arising from the Takaful insurance contract.

First Axis: The Conceptual Framework of the Takaful Insurance Contract

Section One: Definition and Foundations of Takaful Insurance

First: Definition of Takaful Insurance

Linguistically, insurance (Ta'min) is derived from safety (Amn), the opposite of fear. It is said: "Amina amnan wa amanan" (he was safe). From it comes "Amanah" meaning fulfillment (of trust), and "Iman" meaning belief.

Takaful: from Kafala, meaning guarantee. It is said: "Kafala bir-rajuli wa takaffala wa akfalahu iyyahu" if he guaranteed him, and "Al-Kafil": the contracting party.

Jurisprudentially, some have defined it as "a group of people participating in a system that allows them to cooperate in bearing the damage that befalls one of them by paying appropriate compensation to the affected person from the premiums they donate."

Dr. Mustafa Al-Zarqa defines it as: "A transfer of the damages that God brings upon the individual seeking security, which he is unable to bear, to the community's arena, to mitigate their impact on the community until they reach a very negligible degree, so that none of them feels it. It is a guarantee to repair the effects of risks if they materialize and occur."

The Shari'ah Framework of the Islamic Financial Accounting Standard for Takaful Insurance Companies No. 12, issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), defined Takaful insurance as: "A system based on the participants donating all or part of the contributions provided to pay compensation for damages that befall some of them, with the company's role limited to managing the insurance business and investing its funds."

Takaful insurance has other names, such as Islamic cooperative insurance and mutual insurance. It is called cooperative due to the cooperation of a group of participants in compensating for the damages resulting from the insured risks that befall one of them. It is also called mutual because the participants mutually bear the damages that befall one of them as a result of the occurrence of the insured risk, and because each member of the body of participants in the insurance combines the capacities of the insurer for others and the insured.

Consequently, Takaful insurance is the solidarity of a group of people exposed to the same risk, where each of them contributes an installment of money to face the risk that may occur to one or all of them, provided that the damage is covered by a part of the total amount collected from the group's contribution installments.

Legislatively:

The Algerian legislator defined Takaful insurance through the text of Article 203 bis of Ordinance No. 95-07 relating to insurances, as amended and supplemented, as: "An insurance system based on a contractual approach joined by natural and/or legal persons called participants (the insured). The participants who undertake to assist each other in the event of risks occurring or at the end of the term of the Takaful insurance contract, proceed to pay an amount in the form of a donation called a 'contribution'. The contributions paid in this manner allow for the creation of a fund called the 'participants' fund' or the 'participants' account'. The operations and actions related to Takaful insurance business comply with the principles of Islamic Sharia, which must be respected."

It is noted that the Algerian legislator, in defining Takaful insurance, has combined the definition of Takaful insurance as a system and as a contract, which was expressed as a system based on the contractual approach. This is the same definition repeated in Article 3 of the new regulation, namely Executive Decree No. 21-81, which determines the conditions and modalities of practicing Takaful insurance.

Second: Foundations of Takaful Insurance

Takaful insurance finds its foundations in several legal texts, represented in:

1- Civil Code:

The provisions of the Civil Code governing the insurance contract were not restricted in their application to commercial law and came in general terms, applying to the insurance contract in general. Since the provisions of the commercial insurance contract do not conflict with the provisions of the Takaful insurance contract in their general rules, there is no objection to applying them to the latter, especially if there is no contradiction.

2- Texts in Special Laws:

Executive Decree No. 09-13 dated January 11, 2009, containing the model basic law for mutual companies, is considered the first initiative expressing the Algerian legislator's intention to develop the Takaful insurance sector in Algeria. Some of its provisions align with certain aspects specific to Takaful insurance companies, such as the possibility of establishment without stipulating profitability vis-à-vis the insurers. However, it is considered inadequate and limited in applying the remaining Sharia standards for insurance.

This was followed by Executive Decree No. 21-81 dated February 23, 2021, which determines the conditions and modalities of practicing Takaful insurance, and it is the first text to adopt Takaful insurance as a new insurance formula.

3- General Conditions in Insurance Policies:

Insurance bodies play an important role in controlling the texts of contracts, their conditions, and all matters related to the insurance sector. With the evolution of the conditions governing the insurance contract prepared by these bodies, they have sometimes become tantamount to law.

Section Two: Principles of Takaful Insurance

Takaful insurance is based on the following fundamental principles:

1- Principle of Solidarity and Cooperation: Insurance is based on cooperation and solidarity, making it fulfill the purposes and objectives of Islamic Sharia. Solidarity and Takaful lead to distributing the risk among all the insured through the compensation paid to the affected party in the event the risk materializes, using the money collected from the proceeds of their premiums.

2- Principle of Donation:

The Takaful insurance contract is considered a donation contract because what the insured pays in contributions is donated to the one upon whom the damage and risk fall. The participant does not intend profit or trade through the insurance contract. The donation of the contribution value is the basis for the legitimacy of Takaful insurance. Considering the Takaful insurance contract as one of the donation contracts has resulted in a very important consequence: the existence of near-consensus among contemporary scholars on its permissibility and legitimacy. Through it, the spirit of cooperation and solidarity among the insured in bearing the losses and damages resulting from the realization of the insured risk becomes apparent, and this is a form of solidarity and righteousness.

3- Principle of Separating the Funds of Participants (the Insured) and Shareholders: One of the most important principles of Takaful insurance is the necessity of separating the accounts of the body of participants (the insured) and the body of shareholders, as they are two independent bodies.

4- Principle of Distributing the Insurance Surplus to Participants:

It is not permissible to distribute any of the insurance surplus to the shareholders because if what is distributed is in return for services provided by the shareholders as a wage, the consideration must be known and deserved whether a surplus exists or not. If it is in return for investing the contributions or the surplus, it would be a known percentage of the profits, and the shareholders bear the investment expenses.

Executive Decree No. 21-81, through Article 23, stipulated the distribution of the balance of the participants' fund if it is positive, according to the contractual conditions in one of the following three ways:

- The first method: Distribution to all participants without distinguishing between those who benefited and those who did not benefit from compensation during the year in question.
- The second method: Distribution exclusively to participants who did not benefit from compensation during the year in question.
- The third method: Distribution based on the contribution rate of each participant after deducting the compensation paid to him during the year in question. If the amount of compensation paid exceeds his share in the balance amount, the participant does not benefit from any payment.

In the event that the balance of the fund is negative, the company can grant a credit to the participants' fund via a "Qard Hasan" (benevolent loan), provided that this loan is recovered from the positive balance of the fund achieved subsequently, on the condition that the amount of the Qard Hasan does not exceed 70% of the amount of the own funds of the company practicing Takaful insurance.

5- Principle of Operating Under the Supervision of a Fatwa and Sharia Supervisory Committee:

The establishment of the National Sharia Board for Fatwa for the Islamic Financial Industry came in implementation of the provisions of Regulation No. 20-02 defining banking operations related to Islamic banking. This board was established through Decision No. 01-20 dated April 1, 2020, in its first article, which states: "A board named the 'National Sharia Board for Fatwa for the Islamic Financial Industry' shall be established at the council level, referred to in this decision as the board."

Executive Decree No. 21-81 did not only specify the methods of organizing and managing the Takaful insurance activity to comply with the provisions of Islamic Sharia, but also included a provision mandating that the activity of companies practicing Takaful insurance be subject to the supervision of a Sharia supervisory committee.

This decree obliges every Takaful insurance company to establish this internal committee, which is tasked with monitoring and following up on all operations related to the company's Takaful insurance, and issuing binding opinions and decisions regarding the compliance of these operations with the principles and provisions of Islamic Sharia.

To ensure that the Sharia supervisory committee performs its duties fully, Executive Decree No. 21-81 requires the insurance company practicing Takaful insurance to provide an undertaking to supply the committee members with all necessary information and documents to enable them to perform their duties effectively.

The company practicing Takaful insurance must also appoint a Sharia auditor specifically tasked with monitoring the compliance of operations related to Takaful insurance with the opinions and decisions of the Sharia supervisory committee.

Section Three: Parties to the Takaful Insurance Contract

The Takaful insurance contract is concluded between two main parties: the participant, who is also known as the insured, and the insurer, which is the Takaful insurance company. A contract is established between these two parties.

Upon the realization of the insured risk, the insured is the creditor party towards the insurer. The insured is mostly the beneficiary of the insurance contract itself, but insurance rights can devolve to a person other than the insured, who is the one benefiting from them. This beneficiary can be a natural or legal person, and in this case, the beneficiary is not a party to the insurance contract.

First: The Insurer (The Insurance Company)

Executive Decree 21-81 came in implementation of the provisions of Article 203 bis of Ordinance 95-07 relating to insurances. It clarifies the conditions and modalities of practicing Takaful insurance activity in accordance with the rules of Islamic Sharia, through companies specialized in this field, or through what are called windows established at the level of traditional commercial insurance companies.

This decree obliged the Takaful insurance company to keep financial and accounting records separately: an account related to investing the capital of the company's partners, and an account related to the participants' fund, in which revenues represented by the participants' contributions, and expenditures represented by compensation, balances, and other management expenses, are recorded.

In the case of practicing Takaful insurance activity through Islamic windows, which are very similar to Islamic banking windows in conventional banks, it requires the conventional insurance company to technically, accounting-wise, and financially separate Takaful insurance operations from operations related to conventional insurance, while providing an undertaking to do so.

The legal form of the Takaful insurance company is in the form of a joint-stock company, and its organizational structure consists of two parties:

1- Shareholders or Mudaribs: They are those who form the company's capital and sign the memorandum of association and the articles of association. The shareholders in the Takaful insurance company manage the insurance activity (the participants' body fund), prepare and issue various insurance policies, collect contributions, and pay compensation. In addition to investing their funds provided in the form of capital upon incorporation, the shareholders also invest the insurance funds provided in the form of contributions to the participants' body fund.

2- The Insured:

The essence of the relationship existing among policyholders or participants lies primarily in the cooperative participatory system. The Takaful nature and the element of pure donation that dominates the insurance process necessitate that the insured are in solidarity with one another, as the members of the participants' body combine the capacities of the insurer and the insured. Their common interest within the framework of the insurance process is that each

participant has the right to claim compensation from the fund in the event a specific risk occurs, and he is a guarantor and obligated for the compensation payable to other policyholders, each according to his contribution rate.

The combination of the capacities of the insurer and the insured at the same time in the person of the participating member entails two important effects, which are:

1- The Takaful insurance company makes efforts to meet the desires and needs of its members.

2- The integration of the two capacities in one person significantly reduces the disputes that usually arise between the insurer and the insured due to the lack of complete trust between the two parties, which is evident in commercial insurance. In addition, the combination of the two capacities in the member makes exploitation nonexistent. The funds collected from the participants' premiums and the profits generated from them belong to them, either in the form of profits contributing to reducing future premiums, or in the form of a return distributed to them.

Second: Participants (The Insured)

The participant is the party threatened by the insured risk. This risk may affect his property, as is the case in damage insurance, or his person, as in the case of life insurance, and he bears the burden of paying the insurance premium.

In the context of the Takaful insurance contract, the participant bears the responsibility of paying the insurance premiums in the form of donations to the Takaful insurance company.

Section Four: Distinguishing Between Takaful Insurance and Commercial (Conventional) Insurance

To be able to determine the relationships arising from the Takaful insurance contract, a distinction must be made between it and conventional insurance regarding the most important fundamental differences so that the new relationships in the Takaful insurance contract become clear as follows:

- Commercial insurance is based on commutative exchange between the insurer and the insured, such that the insurer is obligated to compensate the insured in exchange for entitlement to the insurance premiums, while Takaful insurance is based on cooperation among the insured to fragment and reduce the risks they may face.

- In Takaful insurance institutions, there is a complete and total separation between the shareholders' account, which is known as the institution's capital, and the participants' account, which is known as the Takaful insurance fund. Thus, there are two funds: the shareholders' fund and the participants' fund. In contrast, this separation does not exist in the accounts of the commercial insurance institution; both the shareholders' and participants' funds are in one account, i.e., one fund.

- The funds in the commercial insurance fund are the property of the insurance company, and any surplus in it after paying compensation belongs to it. Meanwhile, the funds in the Takaful insurance fund belong to the insured, and any surplus belongs to them, and the management company's hand over it is a hand of trust (Amanah), not a hand of ownership.

- One of the most prominent technical differences distinguishing Takaful insurance from others is the basis of insurance coverages, as the scope of insurance coverages in Takaful

insurance is governed by Islamic Sharia. For example, it is not permissible to insure usurious debts. Conversely, commercial insurance companies will not have reservations about covering this type of risk, as their goal is to achieve the highest possible profitability rates.

Second Axis: The Specificity of Contractual Relationships Arising from the Takaful Insurance Contract

The Takaful insurance contract is a composite contract from which legal and financial relationships arise, harmonizing with a set of jurisprudential qualifications. These relationships represent pillars and technical standards in Takaful work as follows:

First: Legal Qualification of the Relationship Between the Participants and the Takaful Insurance Company

According to the Sharia rules for Takaful insurance companies, the nature of the relationship between the company and the insured is the separation between the insured's account and the company's account. Those in charge of management are merely agents on behalf of the insured in managing the company's funds.

The participants (policyholders) participate in the company's management by electing representatives for them on the board of directors to achieve the concept of Takaful. Dr. "Ali Muhyi al-Din al-Qaradaghi" believes that it is better for the participants to participate through one of the following methods:

A- Forming a participants' council (policyholders) that serves as their general assembly, where a limited number (five or seven people) is selected from among them as a board of directors who are members of the company's general assembly, and then one or more are chosen from among them by election or appointment to be a member of the company's board of directors.

B- Choosing five or seven of the policyholders (their selection is based on who pays the most and participates in the insurance, then the one after him, and so on). They become members of the general assembly, and then one is chosen from among them by appointment or election among themselves to be a member of the company's board of directors.

C- Choosing the participants with the most insurance as a member of the company's board of directors. The justification for this is that most of the company's business concerns the policyholders, and therefore they should have someone representing them in management.

Second: Legal Qualification of the Relationship Between the Takaful Insurance Company and the Participants' Fund

The participants' fund is managed by the company practicing Takaful insurance operations according to one of the following management formulas:

1- The Formula Based on Wakala (Agency):

In this formula, the Takaful insurance company, as a specialist in the field, performs the function of an agent on behalf of the participants in Takaful, who have the status of the principal. Based on the Wakala contract, the Takaful insurance company acts in both investment activities and Takaful insurance business. The insurance company, as the agent, receives a wage for the service it performs in the form of a commission called the "Wakala commission," calculated on the basis of a fixed percentage applied to the amounts of the paid contributions.

In this capacity, the Takaful insurance institution does not share in the risks faced by the Takaful insurance funds, nor does it receive anything from the insurance surpluses, nor does it bear the deficit.

To incentivize the Takaful insurance company for good performance, it can be granted an additional financial amount, the formula of which is agreed upon between the Takaful participants and the Takaful insurance company following the conclusion of the Wakala contract.

2- Mudaraba Formula:

According to this formula, the company invests the balance in the participants' fund as an additional activity for it in exchange for a percentage of the profits achieved for the fund, provided that this percentage is known in advance, representing the investment management wage. The company invests the funds accumulated in the participants' fund, as well as investing its capital in investment funds compliant with the provisions of Islamic Sharia and under the supervision of Sharia supervisory bodies.

According to Executive Decree No. 21-81, the company practicing Takaful insurance undertakes to manage the fund for a wage calculated on the basis of a pre-determined share of the technical and financial surpluses generated by the fund.

3- Combining Wakala and Mudaraba:

According to this mixed method, the company practicing Takaful insurance undertakes to manage the fund in exchange for a wage consisting of a Wakala commission and a pre-determined share of the technical and financial surpluses generated by the fund.

Third: Legal Qualification of the Relationship Among the Participants Themselves and Between the Participants' Fund

The relationship between the participant (the insured) and the participants' fund is considered one of the most important financial relationships upon which the Takaful insurance contract is based. The form of this relationship is that the participant pays the Takaful insurance contribution as a participant in the Takaful goal with the group of participants, for which the fund was established. This goal is cooperation and participation in compensating for the damages that occur to one of the participants. Thus, the relationship is a non-profit cooperative Takaful participation relationship. Since the participants' fund enjoys an independent legal personality, the contribution paid by the participant exits the participant's estate, and its ownership transfers to the participants' fund as soon as it is paid.

Jurists have differed in qualifying the contractual relationship between the participant and the participants' fund on the one hand, and among the totality of the participants themselves on the other, as follows:

1: The Relationship Between the Participants and the Fund

A- Gift with a Condition of Consideration (Hiba bi-Shart al-'Iwadh):

Some have argued that what the participant pays to the participants' fund is a gift on the condition that the participants compensate him when the conditions are met and with a part of the insurance surplus, which is supported by the Maliki school of thought.

However, the Hanafi, Shafi'i, and Hanbali schools criticized this qualification, arguing that if the contract is qualified on the basis of a gift with a condition of consideration, it is considered

a sale. In addition, there is a difference between Takaful insurance and a gift with a condition of consideration, because compensation may or may not occur; it is probabilistic, depending on whether the insured risk occurs or not. Meanwhile, the consideration in a gift with a condition of consideration is mandatory, and the right to it is established merely upon accepting the gift. Also, there is no equivalence between the value of the contribution and the compensation in Takaful insurance, whereas there is equivalence in the two countervalues in a gift with a condition of consideration. Therefore, this qualification is excluded.

B- Commitment to Donate:

According to the text of Article 3 of the aforementioned Executive Decree 21-81, the participants who undertake to assist each other in the event of risks occurring or at the end of the term of the Takaful insurance contract, proceed to pay an amount in the form of a donation called a "contribution".

C- Nahd:

It is a type of cooperation that was known during the era of the Prophet (PBUH) and the Companions, where each participant pays an amount equal to what his companion paid. They are equal in payment but unequal in disbursement, as more may be spent on one of them. However, this difference is not considered as long as they agreed to cooperate. Then, what remains after expenses is distributed among them if they did not save it.

D- Waqf (Endowment):

Some scholars have moved to qualify the relationship between the participant and the participants' fund on the basis of Waqf, as long as it is permissible for the Waqif (endower) to benefit from his Waqf. Takaful SA in South Africa successfully applied this formula, establishing a Waqf fund with an independent legal existence owned neither by the company nor the participants. Participants provide donations to it, compensation for damages is paid according to its regulations, and the company takes 10% of the donations in exchange for managing the fund. If a surplus occurs, 10% of it is paid to charitable causes, 75% of it is distributed to the participants, and the rest is kept in the fund as a reserve for it.

2: The Relationship Among the Participants Themselves

The relationship among the insured takes two forms:

Direct (Professional) Cooperative Insurance Contract:

Here, the participants are known to each other, or work in a specific profession and form a joint contract, such as professional syndicates and others. In this case, they do not need a Takaful company acting as an agent for them, but rather the participants manage their contract themselves.

Under this contract, the participants undertake the management of the insurance process. They collect the values of the contributions and pay the insurance amounts after confirming their entitlement. Thus, the relationship between them is direct, and no other party mediates it. Consequently, the parties to the contract agree to consider the one on whose side the risk occurs as a creditor to the rest of the contracting parties, and the creditor demands the participants to bear their shares of the loss as debtors.

Indirect Cooperative Insurance Contract:

In this case, the participants entrust a specific body to manage the insurance operations as an agent for them in exchange for a wage. This body undertakes concluding contracts, issuing policies for each participant, collecting contributions from them, receiving notifications of the realization of a risk for any participant, as well as paying insurance amounts when due, investing the surplus of the amounts accumulated with it, and performing everything regulated in its specific memorandum of association.

Section Three: Granting Legal Personality to the Group of Participants as a Modern Idea

It is customary in the scientific rules for measuring risk that the more participants there are in fragmenting the risk, the less the responsibility of each participant is than in the case of a small number of participants. This is the same rule applied in the Takaful insurance contract. Given the massive number of total participants, the question arose about the possibility of this group enjoying a legal personality to be an effective way to represent them.

The proponents of this idea are from modern jurisprudence, as they justified their idea with a set of justifications and reached important conclusions if their idea is realized, represented in:

First: Justifications for Recognizing the Legal Personality of the Group of Participants

The importance of the legal personality lies in representing and facilitating all procedures concerning the totality of the participants in the contract. However, some may object to this representation for the total participants in Takaful insurance, as it requires prerequisites such as the agreement of the contracting parties to establish this legal personality, in addition to certain procedures, like publication, for example.

But the proponents of this idea believe that the need for this personality has become urgent, similar to the company contract.

Among the justifications for recognizing the legal personality of the group of participants is the availability of the two necessary elements for its establishment, namely the material element and the moral element.

Regarding the material element, represented by the existence of a group of individuals gathering with the aim of achieving a continuous common goal of social value, it exists in the gathering of the participants to achieve a common goal, which is facing risks. Likewise, regarding the moral element, represented by considering that group of people an independent legal entity distinct from the persons involved in forming it, it can be observed in the status characterizing the group of participants, as it enjoys many characteristics sufficient to distinguish it from its constituent persons, where a special organization is put in place to ensure the achievement of the purposes for which the participants gathered. Consequently, the components of the legal personality for the group of participants in the Takaful insurance contract are practically present, clearing the way for the legislator to recognize it given the benefits accruing to individuals and society from the participants engaging in Takaful insurance by concluding a contract among themselves.

- Also among the justifications is that the legislator, by recognizing the legal personality of the insurer practicing Takaful insurance activity, does not go back to recognizing the existence of an independent entity for the group of participants, but rather for the sake of the good

organization of the management of the insurance process and ensuring supervision over this legal personality.

Second: Consequences of Recognizing the Legal Personality of the Group of Participants

Recognizing the legal personality of the group of participants in the Takaful insurance contract entails many effects for them, as that personality can practice its activity itself, and it enjoys a trade name, an independent financial estate, capacity to acquire rights and bear obligations, an independent domicile and management center, and representation in the form of a general assembly.

Dr. Omar Hamid Al-Hamid believes that this idea cannot be applied to participants in Takaful insurance because the legal personality requires at the beginning the will and approval of all partners to establish it, and that the number of participants in the Takaful insurance system is unstable; it increases every day, so a legal personality cannot be conferred on a future person who has not yet participated.

As for Dr. Haitham Hamid Al-Masarweh, he is a supporter of this idea and proposes that merely by concluding the contract, a mutual insurance association is established having a legal personality, and the law determines the conditions and situations that must be met in this association to ensure the achievement of its purposes.

However, we believe that this idea is possible in the event that Takaful insurance is limited to participants known only to each other, i.e., restricting insurance to these participants only, such as their affiliation to a specific sector, for example, and their will is focused on gathering in the form of a single entity with a legal personality, provided they are organized according to a legal organization that ensures the achievement of their purposes if possible.

Conclusion

The importance of Takaful insurance lies in completing the links of the Islamic economy, parallel to Islamic banks, Islamic financial markets, and Islamic reinsurance companies, where a complementary relationship arises among them requiring mutual support for the success of any one of them.

The Takaful insurance contract is a composite contract based on a set of contracts and legal relationships in which the formulas intersect in a manner compliant with Islamic Sharia. According to the Algerian legislator, the contractual relationships arising from the Takaful insurance system are confined to three contractual relationships: an obligation to donate relationship between the participant and the participants' fund; a Wakala with a wage, Mudaraba, or Wakala with a wage and Mudaraba simultaneously relationship in the relationship between the insurance company and the participants' fund; and a Wakala relationship between the participants and the Takaful insurance company.

Through our study of the subject, we reached the following suggestions:

- The necessity for Takaful insurance institutions to adhere to Takaful insurance and reinsurance activities in accordance with their Sharia characteristics and controls, because it is a strong motive for advancing Takaful insurance institutions.

- The necessity of updating some tools to face the technical difficulties associated with issues of an accounting, fiscal, and supervisory (precautionary) nature that practitioners may

encounter in the daily management of Takaful insurance companies, for which the Algerian legislator must provide appropriate regulatory answers.

- Establishing specialized international bodies in the Takaful insurance industry that seek to develop its products and work on educating individuals about its concepts.

List of Sources and References:

First: Sources

- Law No. 19-14 dated December 11, 2019, including the Finance Law for 2020, Official Gazette No. 81, issued on December 30, 2019 [In Arabic].

- Law No. 23-09 dated June 21, 2023, including the Monetary and Banking Law, Official Gazette No. 43 of 2023 [In Arabic].

- Executive Decree No. 09-13 dated January 11, 2009, containing the model basic law for mutual companies, Official Gazette No. 3, issued on January 14, 2009 [In Arabic].

- Executive Decree No. 21-81 dated February 23, 2021, which determines the conditions and modalities of practicing Takaful insurance, Official Gazette No. 14, issued on February 28, 2021 [In Arabic].

- Regulation No. 20-02 defining banking operations related to Islamic banking, Official Gazette No. 16, issued on March 24, 2020 [In Arabic].

- Decision No. 01-20 dated April 1, 2020, containing the establishment of the National Sharia Board for Fatwa for the Islamic Financial Industry, Publications of the High Islamic Council, Issue dated August 17, 2020, National Enterprise of Graphic Arts, Reghaia, Algeria [In Arabic].

Second: References

Books:

- Mustafa Al-Zarqa, The Insurance System (Reality and the Sharia Opinion Therein) [In Arabic], Fourth Edition, Al-Resalah Foundation, Beirut, 1994.

- Omar Hamid Al-Hamid, Takaful Insurance Between Law and the Insurance Contract [In Arabic], First Edition, Dar Al-Ayam, Amman, Jordan, 2018.

- Omar Hamid Al-Hamid, Cooperative Insurance Between Reality and Application [In Arabic], Dar Al-Ayam, Amman, 2020.

- Israa Abdel Hadi Mohammed, The Legal Regulation of Takaful Insurance, A Comparative Study [In Arabic], First Edition, Arab Center for Publishing and Distribution, Egypt, 2020.

- Haitham Hamid Al-Masarweh, The Cooperative Insurance Contract in Islamic Sharia and Positive Law [In Arabic], University Publications House, Alexandria, 2008.

2- Seminars:

- Abu Ghuddah, Abdul Sattar, Foundations of Takaful Insurance [In Arabic], Second Conference for Islamic Banks, Damascus, March 13, 2007.

- Riyad Mansour Al-Khulaifi, Takaful Insurance Laws, Sharia Foundations and Technical Standards [In Arabic], Cooperative Insurance Conference, Jordan, April 11 to 13, 2010.

- Khidher Khanfri, Sabah Chenait, Takaful Insurance, Reality and Prospects [In Arabic], Intervention presented at the Seventh International Seminar on "The Insurance Industry: Practical Reality and Development Prospects - Country Experiences", Hassiba Benbouali University of Chlef, Faculty of Economic Sciences, Commercial Sciences and Management Sciences, December 03-04, 2012.

- Youssef bin Abdullah Al-Shubaili, Takaful Insurance Through Waqf [In Arabic], Research presented to the Cooperative Insurance Seminar, International Islamic Organization for Economics and Finance, King Faisal Conference Hall, Riyadh, January 20, 2009.

3- Articles:

- Rima Chikh, Takaful Insurance in Algeria Between Sharia Controls and Standards of 'AAOIFI' and Legal Controls [In Arabic], Journal of Research in Contracts and Business Law, Volume 7, Issue 73, Faculty of Law, Frères Mentouri University, Constantine, 2022.

- Noureddine Al-Kilani, Characteristics of the Takaful Insurance and Reinsurance Contract and its Sharia Controls [In Arabic], Middle East Journal of Legal and Jurisprudential Studies, Manar Al-Sharq for Studies and Research, Jordan, Volume 4, Issue 1, 2024.

- Touaitia Taher, Brahmi Khaled, Takaful Insurance as an Alternative to Enhance the Insurance Industry in Algeria [In Arabic], Journal of Advanced Studies in Finance and Accounting, Journal of the Faculty of Economic Sciences, Commercial Sciences and Management Sciences, Larbi Tebessi University, Tebessa, Algeria, Volume One, Issue One, January 2018.

4- Doctoral Dissertations:

- Saliha Fellag, Requirements for the Development of Takaful Insurance "Arab Experiences" [In Arabic], Doctoral thesis, Faculty of Economic Sciences, Management Sciences and Commercial Sciences, Hassiba Benbouali University, Chlef, Algeria, 2014-2015.

- Maouche Mohammed Lamine, Requirements for Developing the Mechanisms of Action of Takaful Insurance Companies in Algeria in Light of Some International Experiences: Malaysia, Saudi Arabia, UAE [In Arabic], Doctoral thesis, Faculty of Economic Sciences, Commercial Sciences and Management Sciences, Economic Sciences Branch, Ferhat Abbas University, Setif 1, 2019-2020.