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The Takaful between economics, law, and religion. Considerations in relation to Islamic contract law and insurance transactions

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Abstract

The takaful industry as it exists today in terms of its growth potential and the challenges associated with its development. The opportunities associated with takaful are numerous, mainly due to its wider market reach and adaptability; unlike conventional insurance, takaful is permissible for Muslims and non-Muslims alike and offers a more diverse range of products. The takaful industry is also one of the fastest-growing businesses, contributing significantly to the global insurance industry. However, despite the promise of takaful, the industry faces many obstacles today. Most importantly, the overall value of the takaful industry in terms of total assets and contributions (premiums) is negligible compared to both the size of the Muslim population and the conventional insurance industry. Not to mention the challenges related to supervision and transparency, standardization, and lack of knowledge. Therefore, this paper will analyze the economic potential and impact of the takaful industry, as well as explore the role of takaful in poverty alleviation, where some research has already proven successful. It will also examine the challenges facing the industry, which are slowing down its development and preventing it from realizing its full potential.

Keywords: Islam, Shari'ah, Takaful, Insurance, Contract, Risk.

1. Introduction

The Islamic insurance industry is increasingly attracting the attention of Islamic jurists and economists because of the growth it has experienced over the past three decades (Cf. *See* paragraph 3).

There are two reasons for this success: the need to operate in accordance with Islamic law and the concrete practical needs of Muslim believers in their lives in society.

The first concerns Resolution No. 9 of 1985, adopted by the *Islamic Fiqh Academy*, which conveys the outcome of the work of the jurists gathered in *Jeddah* with the aim of studying and outlining a risk management tool in accordance with Islamic Revelation (Biancone, 2017).

On that occasion, it was noted that the conventional insurance contract – also known as the commercial one – contains a high-risk hazard between services, thus being contrary to the *Shari'ah* (Castro, 2017), to the prohibitions of *ribà* and *ghàrar* (Warde, 2000).

The insurance contract under Islamic law must be structured as a cooperative legal transaction based on charity, brotherhood, and 'joint management' of risk. The Islamic Fiqh Academy has urged Muslim-majority countries to align their legislation with the resolution to eliminate transactions based on unfair services that do not comply with the principles of Islamic law (Biancone, 2017).

The second reason, however, holds a different level of significance. The expansion of the risk management sector was desired by the 'new' generations of Muslims who needed a tool to cope with harmful future events while remaining *Shari'ah-compliant* (Cupri, 2021).

Considering these factors, offering a legal and economic analysis of this financial instrument is important.

First, we need to outline a general framework.

The term is derived from the Arabic verb *kafala*, which means «to guarantee together» (Rahman, 2015). *Takaful* is a set of insurance instruments that comply with *Shari'ah* principles and are based on the ethical-religious principles of Islam. It is an alternative to the conventional risk management model.

Takaful is based on the solidarity-mutualistic principle and uses the institution of donation to provide capital. In Islamic insurance, this principle aims to achieve the collective good of the participants. All insured persons pay a premium to deal with damages affecting the beneficiaries of the *takaful*. The main objective of the institution's legal structure is to promote cooperation among all parties involved. It is important to note that the purpose of the transaction is not fundamentally different from that of conventional insurance, although there are structural differences (Biancone, 2017).

According to Islamic belief, every event is considered a manifestation of God's will. Therefore, Muslims do not seek protection through instruments that rely on the future, as only God has the power to intervene. It is important to maintain objectivity and avoid subjective evaluations. In Islamic terms, preventing future damage - the object of the contract - may be seen as contradicting the divine will, which manages events and the lives of the Islamic community. The *takaful* sector uses a juridical stratagem called *hylal* (Piccinelli, 2006) to respect Islamic principles and meet the needs of the faithful. Its objective is to receive donations deposited into a fund that can be used to compensate for damages. The discussion will return to this point later. For now, let us focus on the Islamic source that underpins the entire Islamic insurance sector. This is a *hadith* of Prophet Muhammad. He saw a Bedouin releasing his camel in the desert and commented:

> «Why don't you tie up your camel? The Bedouin replied, I have put my trust in Allah. Muhammad replied, First tie up your camel, then put your trust in Allah» (Biancone, 2017).

This *hadith* is central to the examination as it highlights two profiles: obedience to Allah's divine will and the duty to adopt prudent behavior to avoid harmful events. The debate and the entire contemporary Islamic insurance sector developed around these two elements (Alhabshi and Abdul Razak, 2009).

2. The legal structure and contractual nature underlying takaful's operations

To better understand the operational features of takaful, it is necessary to focus on its legal structure.

In takaful operations, the beneficiary transfers the premium through a tabarru contract, which is a true donation. This eliminates risk, a central element in conventional insurance contracts because there is no contract for consideration. Islamic schools of jurisprudence, including the Maliki school, believe that the absence of risk or uncertainty in this form of contract makes takaful a halal operation due to its gratuitousness or lack of bilateral payment of assets (Qurradaghi, 2011).

Through this donation, the Muslim fulfils the obligation of 'joint management' typical of the Islamic insurance sector. The participant in the fund undertakes to ensure jointly, through this contribution, a situation of loss of another participant. This mechanism serves a dual purpose. Firstly, it guarantees mutual aid between Muslims. Secondly, it limits the scope of the prohibition of *ghàrar,* which would invalidate the transaction if present (Cupri, 2021).

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The relationship between the parties involved in the insurance operation is contractual, distinguishing it from conventional transactions (Archer, Abdel Karim, Nienhaus, 2009).

Takaful is based on the commitment of the participants to contribute a sum of money to take care of the interests of the parties involved and, consequently, their own. The policyholders' fund includes contributions, returns, reserves and provisions related to the insurance business and the insurance surplus. It also covers all direct expenses related to the management of insurance operations.

The management of the insurance fund is usually delegated to a company limited by shares. The company is responsible for maintaining a clear segregation between the assets and liabilities of the fund to ensure that the fund can collect the necessary assets and income, as well as the associated liabilities, in the event of certain contingencies.

The Management Company may dispose of its own capital, its income and the management fee resulting from the agency agreement. It may also dispose of the specific share of the profits resulting from the investment of the insurance assets and the commission provided for in the investment mandate. The Company is responsible for all transaction costs, including those related to the investment of the policy assets through the *mudarabah* contract or the *wakala* contract, both of which comply with the requirements of Islamic law (see section 2.1 of this article).

Islamic insurance can emphasize the *musharaka* contract (partnership) between participants. This can lead to the establishment of a company with its own statute or be limited to the *musharaka* alone if there is a third-party company to manage the fund.

The principles on which Islamic insurance is based must be explicitly mentioned in the company's articles of association, regulations, or information set, as outlined in AAOIFI standard No. 26 (2006).

It is important to mention the clause in which the participant agrees to pay his or her contribution without characterizing it as an act of generosity. This is to ensure that those in the group who need a sum of money can receive it, and the party is legally obliged to cover any capital deficits from the outset. According to Islamic law and most scholarship, this must be explicitly accepted by all parties at the time the contract is entered.

In addition, the management company must explicitly address any surplus in the contract from the outset. This can be achieved by including a clause specifically dealing with this aspect. Typically, any surplus will be used for charitable purposes or distributed in whole or in part to the various participants. It is important to note that the management company is prohibited from receiving any share of the surplus assets.

It is important to note the protection of compliance in insurance operations and products, which fits well into the current analysis. Like Islamic banks, this function is entrusted to an internal Supervisory Board known as the *Shari'ah* Supervisory Board (Siddiqui, 2007). The Board is of fundamental importance as it screens individual products and insurance transactions to certify and fully guarantee their compliance with *Shari'ah.* It is a system of internal control and external assurance that guarantees potential customers a *halal*, *i.e.*, lawful, offer.

The insured party has certain obligations that must be observed.

This includes promptly providing all necessary information about the property to be insured and notifying us of any circumstances that may increase the risks after the policy has been taken out. In the event of misrepresentation, the party loses the right to compensation, either in part or in full, in proportion to the incorrect information provided.

In addition, the party is obliged to pay the agreed periodic premiums. Failure to pay the periodic premiums within the agreed terms may result in the party being forced to terminate the contract. Failure to pay the periodic premiums within the agreed terms may result in the party being forced to terminate the contract. Islamic law provides even greater protection for parties who default in good faith. Islamic solidarity requires creditors to observe this rule carefully and invites them to be lenient towards the debtor (Donini, 2010).

In addition, the member must immediately notify the company of any insured event under the takaful contract. This notification must be made within the time limit specified in the contract. If there is a risk of significant financial loss due to a delay in notification, the negligent customer may be required to pay compensation for the value of the loss suffered because of the failure to notify.

Having outlined the main duties and obligations that characterize the Islamic insurance sector, it is now useful to focus on the Islamic contracts that form the basis of *takaful* and which inevitably determine its profile and operational mechanisms.

2.1 The *mudarabah* and *wakala* contracts used in the *takaful* sector

Two contractual cases, *mudarabah* and *wakalah*, are the main models of *takaful* organization. The differences between these models relate to the type of contractual relationship between the manager and the insured and the method of remuneration for the management activity.

Firstly, attention must be drawn to the *mudarabah* contract. This contract adopts a partnership model in which the financing party (*rabb-ul-mal*), in the specific case of takaful, the insured, contributes capital. The other party, the manager (*mudarib*), in this case, the fund manager, has the task of administering the assets (Donini, 2010).

Regarding the profile of capital injection by the insured, this operation takes the form of a donation to comply with Islamic law. The underlying contract, *mudarabah*, provides clear rules for making any excess capital investments. However, it should be noted that this transaction is not the primary purpose of the entire operation. Instead, placing a partnership contract based on the transaction is merely an additional activity to optimize the proceeds of the Takaful fund until the time of any claims for compensation by the participants.

Therefore, this contribution focuses on the use of the *mudaraba* contract in takaful operations. In this arrangement, the takaful operator acts as the *mudarib* (entrepreneur) while the participants act as the *rab-al-mal*. The *takaful* operator is responsible for managing the investment of the fund's capital on behalf of the participants in the *takaful.*

The utilization of this contract affects the distribution of profits generated by the *takaful* fund. Typically, the profits are divided equally between the parties unless otherwise agreed upon in the contract. Regarding the distribution of losses, they are usually borne by the *rabb-ul-mal* party unless the *mudarib* acted fraudulently or *ultra vires.* However, to protect the interests of the participants, takaful operators must comply with certain rules. One of these rules is the recall of capital loans (*qard hasan*) by operators in the event of a shortage of *takaful* risk funds.

Additionally, Islamic jurists argue that the contract underlying the *takaful* transaction is a valid alternative to instruments typically used in the secondary market, which are based on interest rates. The phrase 'so-called' has been removed as it is unnecessary. Conventional investors typically invest in long-term bonds or stocks that may involve goods and services considered *haram*, meaning illicit (Iqbali and Mirakhor, 2011). It is important to avoid subjective evaluations unless clearly marked as such. The text has been improved to adhere to conventional structure, clear and objective language, formal register, precise word choice, and grammatical correctness. The sentence structure has been simplified, and technical term abbreviations have been explained. The text has been balanced by avoiding biased language. The logical flow of information has been maintained with causal connections between statements. No new content has been added to the text.

In conclusion, this management model involves the participant paying a contribution to the *takaful* operator, which is then split into a savings part - the participant's account - and a risk part - the participant's special account or risk fund. The funds in the participant's account belong to the individual who made the payment, while the amounts in the participants' special account become a welfare fund, *i.e.*, a real joint account.

The *wakala* model is another option for the base of the *takaful* fund. This model regulates the legal relations between the *takaful* operator and the participants through an agency contract. The operator acts as an agent (*wakeel*) on behalf of the participants-clients for both risk management and investments. The *wakeel* is compensated through a contractually specified commission or a percentage of turnover. The fees should cover all management costs and the shareholder profit charged to the *takaful* fund. The *takaful* operator should not share the results of the subscription as they belong only to the participants. Since the fees of *takaful* operators are calculated in relation to the contributions entered the fund, there is a tendency to take out the largest number of policies, which often results in a general lowering of the quality of claims management (Annuar, Rosly, Abdul Rashid, 2004).

The model has been widely criticized for not providing sufficient incentives for *takaful* operators to manage the *takaful* fund effectively. To address this issue, an alternative *wakala* model has been introduced. This model offers performance-based commissions, including an initial fee and a fee proportional to the subscription surplus for good management. Providing incentives to economic agents implies an increase in profit and turnover of contributions and invested funds.

From a comparative perspective, it can be argued that the modified *wakala* contract is more like *mudarabah.* The structure of the incentive changes, but the mode of governance is similar in form and purpose to that of *mudarabah.*

3. Size and diffusion of takaful in the world: a quantitative analysis

In recent years, there has been an increase in demand from Muslims, and it appears that they are more inclined to engage with Islamic finance institutions (IFIs). The Islamic finance industry has experienced a compound annual growth rate of 6% from 2012 to 2017, and as of 2021, the total asset value of global Islamic finance markets amounted to 4.5 trillion U.S. dollars. It is projected that the total asset value for the global Islamic finance markets will amount to 6.67 trillion U.S. dollars by 2027, as shown in Figure 1.

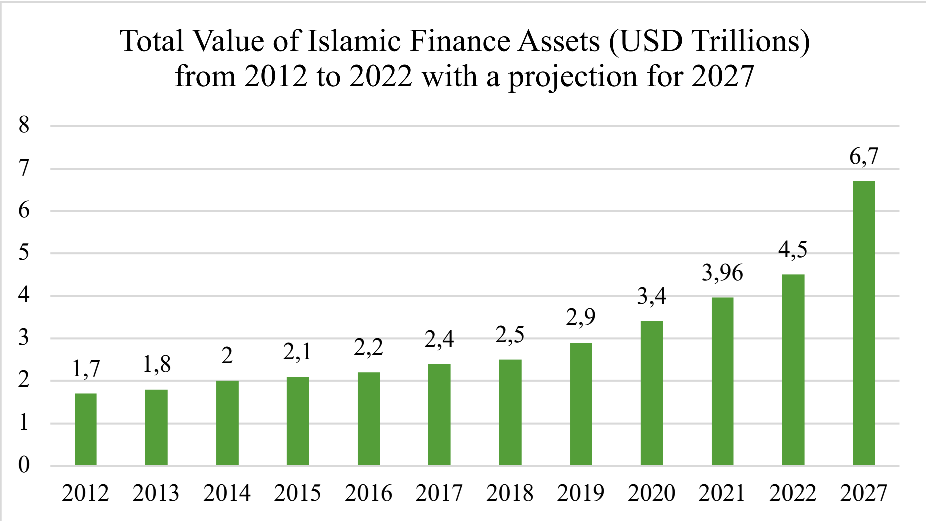

Figure 1: *Total Value of Islamic Financial Asset. Source: Authors' elaborations on IFD 2023*[1].

Malaysia, Saudi Arabia, and Indonesia are the largest market contributors to global Islamic banking markets, followed by GCC countries (see Figure 2). Malaysia has become the first country with the highest number of Islamic banks worldwide, with 38 units between Islamic banks and windows. Iran is the leading *Shari'ah compliant country* and has 42 Islamic banks.

[1] The figures for 2012 to 2021 are based on historical data, with the 2021 value sourced from the State of the Global Islamic Economy Report. The 2022 value is reported in the ICD-LSEG Islamic Finance Development Report 2023. The projection for 2027 is also from the same report. Please note that these figures are estimates and projections, and actual values may vary due to market dynamics and other influencing factors.

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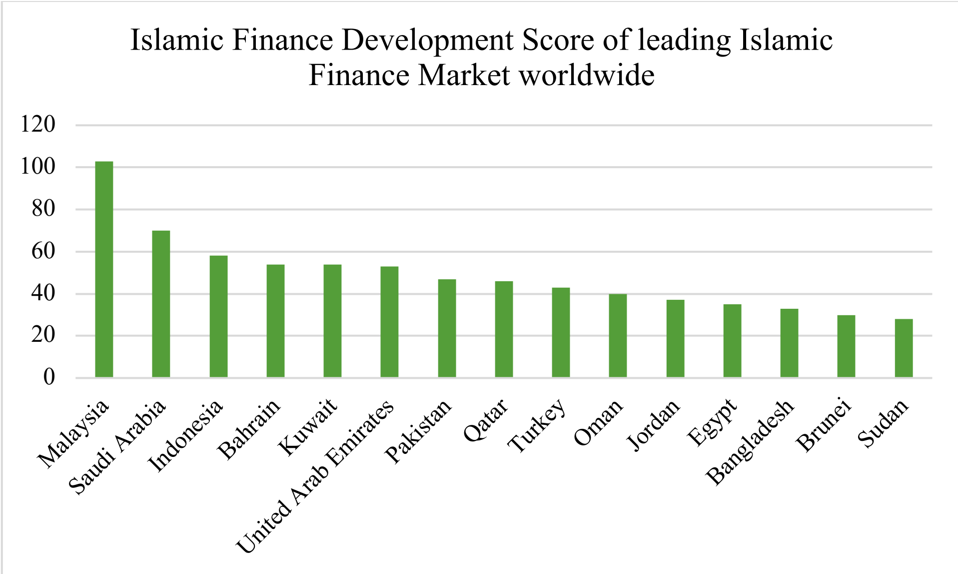

Figure 2: *Leading Islamic Finance Countries. Source: Authors' Elaborations on IFDI 2023*[2].

Figure 3 highlights the dominance of Islamic banking within the industry, accounting for the majority of total assets. The sukuk market also represents a significant portion, reflecting its importance in Islamic finance. Although the *takaful* has been the most innovative product of modern times and the importance of insurance coverage in every aspect of life, this sector is considered to lag the Islamic financial services industry. The *takaful* sector is the smallest of the Islamic finance industry, accounting for US$73 billion, or just 2% of total global Islamic finance assets[3].

Sector	Assets (USD Trillions)	Percentage of Total Islamic Finance Assets	Number of Institutions/Instruments
Islamic Banking	3.24	0,72	455
Sukuk	0.77	0,17	2,600+ instruments
Islamic Funds	0.14	0,03	1,500+ funds
Takaful	0.09	0,02	350+ operators
Other Islamic Financial Institutions	0.27	0,06	1,000+ institutions

Table 1: *Islamic Finance by Sector. Source Authors' Elaboration on IFDI 2023.*

[2] These scores are sourced from the ICD-LSEG Islamic Finance Development Report 2023, which assesses the development of the Islamic finance industry across various countries. The IFDI is a composite weighted index that measures the overall development of the Islamic finance industry. Please note that these scores are based on data available up to 2023 and are subject to change as the Islamic finance industry evolves.

[3] The asset values are approximations based on the total industry assets reported in the ICD-LSEG Islamic Finance Development Report 2023.

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The takaful market experienced significant growth in 2021, with a 17% increase (refer to Figure 4). This growth has resulted in intense competition between Islamic and conventional operators, especially in the GCC region. The increased medical and motor claims has been a major driver of this competition.

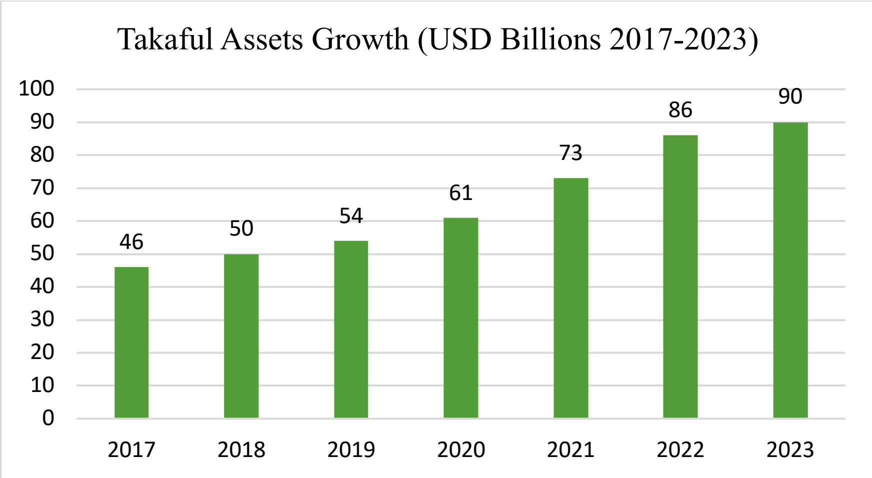

Figure 4: *Takaful Growth. Source: Authors' Elaborations on IFDI 2023.*

Takaful distribution varies across the globe, with Southeast Asia experiencing significant growth. This could be attributed to factors such as sizeable Muslim communities, governmental support for Islamic finance, and an expanding middle class seeking financial products that align with their principles. However, takaful is less prevalent in other regions. In 2022, the takaful market was dominated by Iran, Saudi Arabia, and Malaysia, which together accounted for 79% of total assets (Figure 5). Saudi Arabia had 35 takaful operators and contributed US$33 billion in total assets, showcasing its strong position in the market. Meanwhile, Malaysia had 20 active companies and contributed over US$9 billion in total assets, highlighting its significant presence as well. The takaful market in Iran is steadily growing, with USD 12 billion in assets thanks to 26 TO. Additionally, Indonesia and the United Arab Emirates are also significant contributors to the takaful market. It is worth noting that Indonesia is the second Asian country, after Malaysia, to provide more than three billion US dollars to this sector.

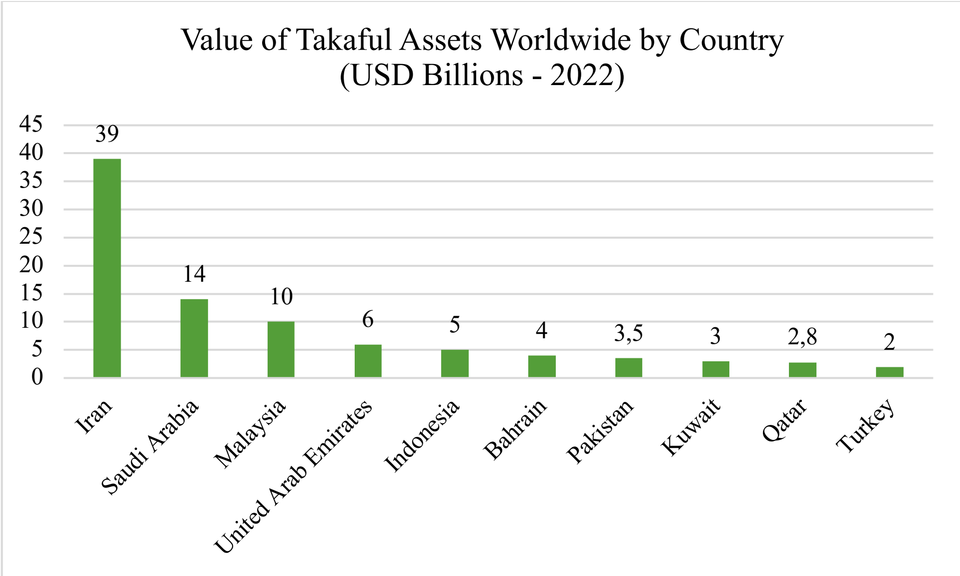

Figure 5: *Value of Takaful assets by country. Source: Authors' Elaborations on IFDI, 2023.*

Although the potential of the takaful market is currently marginal, there are untapped markets in North America, Europe, and Africa. With nearly two billion Muslims worldwide and numerous insurable interests, the takaful sector should have grown to over 2% of the global Islamic financial services industry. Furthermore, OIC member countries account for about a quarter of the world's population. Most of the global Muslim population is young, with 60% of individuals under the age of 25. This presents a significant opportunity for businesses to target this demographic early on and establish a long-term customer base. As their levels of affluence continue to rise, this young Muslim population has the potential to become a valuable market for years to come[4].

4. Closing thoughts and prospects

Since the Islamic *Fiqh* decision in 1985, it has been established that the mutualist principle is the cornerstone of insurance in accordance with the Islamic religion. Participants decide to protect themselves collectively against certain events by contributing their resources to a collective fund. The *takaful* insurance approach is characterized by the role of the company as the manager of the participant's fund. The structure is logical, with causal links between statements and a clear progression of information. The text is free of grammatical, spelling and punctuation errors. Contributions are made in the form of a donation, known as a *tabarru*, to remove the element of *ghàrar*. No changes are made to the content. This ensures full *Shari'ah* compliance in all transactions. The language used is clear, objective and value-neutral, with a formal register and precise choice of words. The text adheres to conventional structure and formatting features, with a consistent citation and footnote style. In the conventional insurance system, the insured person pays a lump sum in the form of a premium and has an obligation to the insurance company. Moreover, if the insurance company makes a profit on its investments, the policyholder does not receive any share of the underwriting profit as all the funds belong to the company. In *takaful*, however, any profit is distributed to the insured.

[4] It is along this trajectory that major financial centers could play a role in ensuring that financial inclusion is at the top of the political-economic agenda. Lloyd's CEO said: "It is extremely important that we in the London market continually review the products and services we offer to our customers around the world and how we deliver them. Having the ability to deliver Shari ′ ah-compliant risk products will ensure that London remains relevant to all communities and strengthen our position as a center of innovation." Another key aspect is the InsurTech sector, where financial technology (FinTech) is applied to expand insurance offerings.

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Although the *takaful* market has yet to gain a real foothold in the global market, unlike the *Shari'ah-compliant* contractual and financial sector, its 'ethical' structure is an emanation of the principles of fairness and mutual burden-sharing, providing economic protection to the members of the fund. The Islamic insurance market is characterized by a focus on social justice, which brings it closer to conventional ethical instruments in the European market. It represents a new paradigm of risk management that is a source of profit in the insurance, banking, and financial markets.
In non-Muslim majority contexts, there is an opportunity to explore the unexplored legal-economic world due to the ever-increasing Muslim migratory flows and the growth of trade relations between the West, the Middle East, and Southeast Asia. This world provides a platform for insurance, or more generally, risk models, to interact and develop as a reflection of an increasingly globalized, open, and free market.

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