59. “Insurable Interest” in Takaful

Insurable interest is a paramount necessity in both conventional insurance and takaful. Generally, it refers to the relationship or interest between the insured party (the policy holder or takaful participant) and the subject matter to be insured, whether it involves life, personal, asset or certain liability. If insurable interest does not exist, the insurance or takaful contract is invalid or unenforceable. Insurable interest is also important in determining the motive and aim of a person purchasing an insurance policy or participating in a takaful plan.

For instance, if a person applied for a life insurance policy or a family takaful plan for himself, and nominated his wife and children as beneficiaries, his application is considered to have insurable interest, specifically the interest of his family in the event of death or permanent disability of the policy holder or takaful participant. Hence, his application is eligible for approval by the insurance or takaful company. On the other hand, if a person applied for a life insurance policy or a family takaful plan for another person, and nominated himself as the beneficiary, his application will not be approved because there is no insurable interest.

In this regard, the SAC was referred to on the concept of insurable interest in takaful.

Resolution

The SAC, in its 52\textsuperscript{nd} meeting dated 2 August 2005 and 76\textsuperscript{th} meeting on 9 June 2008, has resolved the following:

i. The concept of insurable interest does not contradict the Shariah and it may be applied in takaful (in takaful, terminologically it is referred to as “permissible takaful interest”);

ii. In general takaful, a person with legal and financial interests in a particular subject is deemed to have permissible takaful interest;
iii. For family takaful, the permissible takaful interest exists whenever there is a clear relationship between two parties that involves the elements of affection, emotional interdependence, and reasonable expectation of loss in terms of material or psychological. In this situation, a person is deemed as having permissible takaful interest on his spouse, children, employees (for an employer) and any other individual who is dependent on him in any way permissible in Shariah;

iv. When concluding a takaful contract that involves a third party who is of permissible takaful interest, the participant or certificate holder shall obtain the consent of the third party, unless the third party is a child of minor age;

v. As a general principle, permissible takaful interest shall exist at the time the contract is concluded and at the time of incident or takaful benefit is made. The permissible takaful interest is considered as no longer in existence if a particular relationship with the third party has ended during the in force period of the takaful certificate. Therefore, upon death of the third party, the participant or certificate holder is not entitled to receive the takaful benefit as beneficiary.

Nevertheless, if a marital relationship has ended by a divorce during the in force period of the takaful certificate, the permissible takaful interest is still considered as continuously in force. Hence, unless the covered party has clearly refused to give his consent, the participant or certificate holder is allowed to receive takaful benefit (either as beneficiary or wasi) upon death of the covered party.

In addition, the covered party is entitled to the disability benefit (including critical illness coverage) in the event of permanent disability of the covered party. If the takaful certificate involves investment or savings element, the participant or certificate holder would also be entitled to the value of the saving or investment on the maturity date of the takaful certificate; and
vi. In preserving the interest of the takaful participants as well as the third party, the takaful company has the right to deny any application to participate in a takaful scheme if no permissible takaful interest was established, or to deny any claim of benefit if there was any evidence indicating bad intention on part of the participant or certificate holder.

**Basis of the Ruling**

Even though the concept was initially introduced in conventional insurance to avoid elements of wagering and gambling, this concept is also consistent with fundamental features of takaful. Under the concept of *tabarru*`, takaful participants mutually agree to guarantee each other from any form of risks acceptable in Shariah by commitment to give contribution. However, such flexibility may lead to moral hazard or manipulation of the takaful contract for non-Shariah compliant purpose. In line with the Shariah principle known as *sadd zarai*` (blocking the means that may lead to harmful result), the concept of permissible takaful interest is viewed as a mechanism to avoid such moral hazard or manipulation.