

6. Инклюзивный рост, обеспечивающий полное использование трудового потенциала и максимизации занятости, устранению гендерной дискриминации даст возможность перейти на высокую ступень развития как стране, так и региону;

7. Региональная интеграция будет способствовать посту партнерства и всестороннему сотрудничеству стран региона, обеспечению внешнеэкономической безопасности как для Азербайджана, но и всего региона.

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## FEATURES OF ISLAMIC INSURANCE TAKAFUL AND OPPORTUNITIES OF IT'S USING IN KAZAKHSTAN

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## ОСОБЕННОСТИ ИСЛАМСКОГО СТРАХОВАНИЯ ТАКАФУЛ И ПЕРСПЕКТИВЫ ЕГО ПРИМЕНЕНИЯ В КАЗАХСТАНЕ

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### АННОТАЦИЯ

**Цель.** Демонстрировать и понимать природу и принципы исламского страхования, а также основы шариата исламского страхования. Рассмотреть операционную структуру исламского страхования, структуру рынков исламского страхования, ограничения и возможности исламского страхования. Проанализировать, как этические соображения исламского страхования применяются и практикуются. **Методология.** Мой метод исследования по этой теме заключался в рассмотрении книг об исламском страховании, в страховом рынке Казахстана и аналитических данных о внедрении исламского страхования в страховой рынок Казахстана. **Результаты.** На основе SWOT-анализа, я проанализировала все угрозы и перспективы внедрения исламского страхования такафул в страховой рынок Казахстана. **Оригинальность.** В статье рассматривается актуальная как с научной, так и с практической точки зрения тема исламского страхования. До сегодняшнего дня проблема регулирования общественных отношений, тесно связанных с исламской финансовой деятельностью, банковскими аспектами и страхованием различных видов рисков в Казахстане не изучалась ни с научной, ни с практической точки зрения. **Практическая ценность.** Результаты работы будут интересны студентам, обучающимся в отраслях экономики, в частности студентам и людям, интересующимся перспективой исламского страхования в Казахстане.

### ABSTRACT

**Purpose.** To demonstrate and understanding of nature and principles of Islamic insurance and shariah framework of Islamic insurance. Consider operational framework of Islamic insurance, structure of Islamic insurance markets and constraints and opportunities for Islamic insurance. To analyze way in which ethical considerations of Islamic insurance are applied and practiced. **Methodology.** My method of research on this topic was by considering books on Islamic insurance, the insurance market of Kazakhstan and analytical data on the introduction of

Islamic insurance in the insurance market of Kazakhstan. **Results.** I analyzed all the threats and prospects of the introduction of Islamic insurance takaful in the insurance market of Kazakhstan on the basis of SWOT analysis. **Originality.** The article considers the actual, both scientifically and practically, topic of Islamic insurance. Until today, the problem of regulating the social relations that are closely associated with Islamic financial activities, banking aspects and insurance of various kinds of risks have not been studied in Kazakhstan, either scientifically, or practically. **Practical value.** The results of the work will be of interest to students studying in the economic sectors, in particular students and people interested in Islamic insurance takaful and its prospects in Kazakhstan.

**Ключевые слова:** Исламское страхование, такафул, рынок страхования Казахстана, экономика, му-дхараба, вакала, система страхования, Исламский институт финансирования.

**Key words.** Islamic insurance, takaful, insurance market of Kazakhstan, economics, mudkharabah, wakala, insurance system, Islamic financial institutes.

**INTRODUCTION.** The global economic crisis of 2008-2009, predestined aggravation of between the real and financial sectors of the economy. This was the reason for increased interest in Islamic financial institutions that exclude the use of speculative instruments and practices that served as the cause of the deterioration of the western countries and the macroeconomic indicators caused by the Asian financial crisis of 1997-1998. In this regard, it is a particular interest to study the Islamic insurance takaful, for the development of which the Kazakhstan has the following prerequisites.

**PROBLEM STATEMENT.** Improvement of the insurance market of Kazakhstan depends on its integration into the world economic space and the perception of its positive sides. One of the actual phenomena of today is the industry of Islamic insurance (takaful) and its formation as an alternative insurance model. Islamic Finance has become an integral part of global Finance market. In this regard, the perception of the Islamic insurance model would be a new stage in the development of the insurance market of the Republic of Kazakhstan would allow both Muslims and non-Muslims to use an alternative financial product.

**UNSOLVED PARTS OF PROBLEM.** The adoption of norms regulating Islamic financial relations in the field of banking, securities, investments and other financial segments in Kazakhstan, of course, is an objective prerequisite for the emergence and development of Islamic insurance standards. However, for the introduction of the Islamic model of insurance on the market of the Republic of Kazakhstan it is necessary to resolve the issues of legislation, personnel and, most importantly, accessibility for people. Despite the fact that the supreme legislative authority of the country – the Parliament of Kazakhstan, raised the question of the development and adoption of a legislative act regulating Islamic insurance activities, this law was not adopted. Many other problems remained also unresolved.

#### MAIN RESULTS OF RESEARCH.

**1. Integration the Republic of Kazakhstan to Islamic world.** It is very difficult to determine when the Institute of insurance began in the history of the Islamic world. But on the facts known to us it is possible to establish what place this Institute held in society. Mutual aid between people has existed since the time of the first tribal communities. The “al-aqilah” doctrine, as a principle of responsibility-sharing formed among Arab tribes, was used when a member of one tribe committed a crime against a member of another tribe. On the territory of modern Kazakhstan in the distant past there were also similar norms of behavior

among the tribes. If follow the history, the spread of Islam among the Kazakh tribes began much earlier, around the VIII century. Since then, the influence of religion has been manifested not only in everyday life, but also in social and political life. An example is the Karakhanid khanate formed in the IX century, which was the first to recognize Islam in the territory of Kazakhstan. But the main confirmation is the codes of laws adopted by the khans of those times. Khan Tauke, who ruled from 1680 to 1718 years, was the compiler of the codes of customary law of the Kazakhs “Zhety-Zhargy”. An important place among the vaults is the Kun law or on the payment of the offender's tribe for the crime committed by him. It can be seen that the “al-aqilah” doctrine and the Kun Institute are the same phenomena that have taken root in the tribes along with religion. It should be noted that the Institute of mutual assistance and mutual responsibility between members of the genus, which is widespread in all early Muslim tribes, confirms the existence of the first rudiments of insurance relations in Kazakhstan, as in other Muslim countries. At the present stage of development of Islamic insurance in Kazakhstan there are the first institutions regulated by the norms of Islamic law, for example, Islamic banking. However, in Kazakhstan at the moment there are no specialized regulations that would carry out the legal regulation of insurance relations based on the principles of Islam.

The first initiative of the government of the Republic of Kazakhstan on cooperation with the Islamic world is the entry into the organization of the Islamic Conference in 1995. In August 1997, the representative office of the Islamic development Bank (IDB) was opened in Almaty, which is the center for the Central Asian region. Technical cooperation programmes for the exchange of technical and information experiences, seminars to attract Islamic Finance and more were carried out with the support of IDB. However, the interest in Islamic financial products in the initial stages came not only from the government of the Republic of Kazakhstan, but also from individual representatives of the private banking sector. One of the first domestic financial institutions to cooperate with the Islamic development Bank back in 2003 was “TuranAlem” Bank. Cooperation with leading Islamic financial institutions has given us an understanding of what the Islamic financial market and its features, legal and economic mechanism of its regulation, as well as the prospects for its further development and implementation.

The Islamic financial system has long been an integral part of the global financial system and the implementation of its individual components within the national legal system could really serve the development of the Institute of insurance law as an integrated branch of law. In this regard, it is important for the Kazakh insurance system to perceive the positive aspects of the insurance system functioning in the Islamic world. It was repeatedly said by President of Kazakhstan N. Nazarbayev in his messages to the people that Kazakhstan should become the center of Islamic Finance in Central Asia. The first steps are the most difficult, including the introduction of certain elements of the Islamic financial system, such as insurance. It is necessary not only political volition, but also the development and adoption of new legislation that could become the Foundation for the development of an alternative insurance system in the Republic of Kazakhstan.

In 2009, the Parliament of the Republic of Kazakhstan adopted the Law of the Republic of Kazakhstan "on amendments and additions to some legislative acts of the Republic of Kazakhstan on the organization and activities of Islamic banks and Islamic financing organizations". For the first time, the law defined the Islamic Bank institution. In addition, numerous amendments were made to the legislation, which made it possible to open Islamic banks, Islamic investment funds and issue Islamic securities. In April 2011, the Parliament of the Republic of Kazakhstan adopted another law "on amendments and additions to some legislative acts of the Republic of Kazakhstan on the organization and activities of Islamic banks and Islamic Finance organizations", which eliminated the shortcomings of the previous one and contributed to the effective regulation of Islamic financial products.

**2. Malaysian Islamic insurance market and the possibility of applying its experience in the Republic of Kazakhstan.** Today, Kazakhstan does not have a specialized regulatory act that would regulate social and economic relations developing in the system of Islamic insurance. But in our country there are already such financial organizations that consider financial mutual assistance and equity participation in various financial risks as the main principles of their activities. These insurance companies conduct their activities through the establishment of a mutual insurance association. The reason for this is contained in the fatwa of the Council of the Islamic Academy of law At the organization of the Islamic Conference "on insurance and reinsurance" from 1985, in which the Council declared a form of commercial insurance not compliant with the Sharia due to the presence of taboo elements. As an alternative, the Council proposed a cooperative form of insurance based on voluntary mutual assistance and cooperation. Therefore, organizations wishing to maintain Sharia compliant insurance choose the form of mutual insurance.

In order to bring Kazakhstan's legislation into full compliance for the functioning of the alternative insurance system, the government involves financial analysts, qualified experts and institutions of the leading Islamic States. Among the sought – specialists are Malaysian experts in Islamic Finance. The reason for the

demand for Malaysian experts is that about 30 years have passed since the beginning of the development of the modern Islamic insurance market in the world, but not everyone has managed to achieve such great success as Malaysia. In Malaysia, the sectors of Islamic banking and insurance exist in parallel with the traditional systems of insurance, banking and developed at the same high level. The Malaysian model of development of Islamic financial institutions is recognized by many Islamic countries and is of great interest to those who seek to create the same favorable environment for Islamic Finance within their government. The assets of the Malaysian Takaful industry reached \$3 billion in 2016 and has an annual growth rate of 21-29%. Today, the largest participants of the Malaysian market are the UK, Bahrain, Germany and Japan. High rates are of interest: what is the peculiarity of success and what contains the mechanism that works on the multi-million market?

Malaysian financial market is a structure consisting of several main links that contribute to the formation of a strong and competitive Takaful industry. The Central Bank, the national Sharia Advisory Council, The Malaysian Takaful Association, the Islamic financial services Council and other strategic regulators in the complex are the key to the success of the Malaysian insurance business model. At the top of the financial pyramid of the state regulators of the insurance market of Malaysia is the Malaysian Bank "Negara", legally recognized by the Central Bank of Malaysia, holding the monetary and financial stability, significant growth of the Malaysian economy. In addition to the fact that the Central Bank supports the stability of the financial sector of the economy, it directs large reserves to the formation of Malaysia as the center of the Islamic financial market. The Malaysian Bank Negara, as the main regulator of the financial and banking sectors of the economy, the authority regulating the insurance industry (both traditional and Islamic), penetrates into all spheres of insurance industry. It develops guidelines on authorized capital, financial statements, prudential limits, as well as standards and other directives that directly regulate the activities of Takaful and retakaful companies.

For insurance activities regulated by Sharia law, the establishment of Sharia councils is mandatory. The highest authority among the Sharia councils of Malaysia is the Sharia Advisory Council, established by the Central Bank of Malaysia in 1997, as the authority responsible for overseeing Islamic banking, Takaful business and other Islamic financial industries regulated by the Central Bank. The Sharia Advisory Council is not only a scientific Advisory and Advisory authority, but also actually performs certain control functions of the banking Department. The Council performs not only control functions, but also the role of an observer of compliance with the established norms of Islamic law. The Sharia Supervisory Board, which is responsible for approving all Islamic financial products, has been empowered to establish regulations regarding Islamic banking, Islamic insurance business, Islamic Finance and other Sharia based products. Over the years, the

Council has issued resolutions regulating Islamic financial activities that are not contrary to Sharia law. This Council from 1997 to 2009 issued about 135 decisions, the decision on Takaful-business was made in 2002.

The system of Sharia councils in Malaysia is a strict and hierarchical structure. This allows the state not only to control the entire spectrum of the Islamic financial market in Malaysia, but also to support its successful, progressive development and smooth functioning. In the case of the development and adoption of the law regulating Islamic insurance in Kazakhstan, there will be a specific task to create a scientific advisory, possibly advisory and control authority that would be consistent with the functions of the Sharia Council. It should be noted that today there is a real shortage of specially trained personnel in the field of Islamic law in the world. This authority should include not only theologians and scientists, but also highly qualified specialists in the field of Islamic banking and insurance. This problem concerns both Muslim States and other countries, including Kazakhstan. The way out of this situation consists of several points: first, it is necessary to attract competent professionals with practical experience in this field from Muslim countries. Secondly, it is necessary to train domestic personnel who could work in the field of Islamic Finance and insurance.

At the initial stage of formation of the Islamic financial system in Kazakhstan there are various issues and problems related to the practical implementation of this system. One of the few international organizations whose practical and technical assistance could be supported is the international organization Islamic financial services Council. The organization, which has been operating since 2003, is a standardizing authority regulating the stable development of the Islamic financial industry. The range of activities of the organization is very extensive, in particular, to promote the development of the Islamic financial services industry through the introduction of new or adaptation of existing international standards corresponding to the Sharia, the development of guidelines for the effective management and regulation of institutions offering Islamic financial products, to promote cooperation between member countries in the development of the Islamic financial services industry. Today, this international organization has established about 17 standards, including a guide to the management of Islamic insurance, solvency standards and other standards that contribute to the effective development and regulation of Islamic institutions offering Islamic financial products and services in the field of insurance. Domestic experts and specialists have long been attracted by the prospect of membership in this Council, as it will increase the effectiveness of legislative acts regulating Islamic financial relations in the Republic of Kazakhstan. As of 2011, about 200 intergovernmental organizations, regulatory authorities and other market participants enjoy this privilege and successfully participate in interstate cooperation to develop the Islamic financial services industry.

Islamic insurance system as a flexible and self-developing structure is constantly improving. This is facilitated by both the state in the person of authorized

authorities and non-governmental initiative organizations. Organized by the operators of Malaysia, Indonesia, the state of Brunei and the Republic of Singapore in 1995, "ASEAN Takaful Group" was established to strengthen voluntary cooperation between Asian Takaful operators, as well as operators of other parts of the world. Now the organization, renamed to "Global Takaful Group", provides free exchange of information on all aspects of Takaful operations between members, develops recommendations, represents the interests of its members, promotes qualified training of Takaful companies with the help of various institutions and specialized educational centers.

**3. Regulation of Islamic insurance relations in Malaysia.** All over the world, not only Muslims use the services of Takaful companies in the field of personal, property insurance, as well as business risk insurance. Both in the history of Malaysia and throughout the Islamic economic space, the first and serious step in regulating Islamic insurance relations was the Takaful act of 1984. In order to emphasize the peculiarities of the Takaful-act, it is necessary to compare it with A.Kardish one of the earlier normative acts, the Turkish Decree No. 83/7406, adopted on December 16, 1983. Decree No. 83/7406 was adopted by the government of Turkey to address the issue of the regulation of Islamic financial relations. Because Turkey was a secular state, the act did not mention Islamic financial institutions or the Sharia Council. However, the financial mechanism for profit and loss, which is characteristic of any Islamic financial institution, has been recognized. Despite the fact that the decree is intended to regulate financial relations based on the principles of Sharia, it establishes only an external mechanism. Malaysian Takaful-act as a legislative act regulating Islamic financial relations, occupies a special place, because it openly established insurance relations that have developed in the system of Islamic law. Takaful-an act regulating insurance relations based on the norms and principles of Islamic law, gave a new direction to the development of insurance law in Malaysia. It can not be said that this was unexpected, since the Constitution of Malaysia (1957) the country is officially recognized by the Islamic state. However, this turn at the same time can be called sharp, judging by the previous stages of development of insurance relations in Malaysia.

Between 1874 and first world war, great Britain completely colonized and controlled the Malaysian Peninsula. The regulations governing insurance relations were merely a reflection of UK law, common law and statutes. Following the Malaysian civil law act of 1956, section 5 stated that the law governing insurance relations was based on the English statutes. Only about 6 of the statutes or otherwise affect the insurance relationship developing at that time in Malaysia: the Act of life insurance from 1882, the Act of games from 1845, the Act of marine insurance in 1906, the Act of gambling policy from 1909, the Act on the reform of family law from 1969.

The development of Islamic insurance in Malaysia began with the adoption of the insurance fatwa by Members of the national religious Council in 1972. Ac-

According to this fatwa, the practice of traditional insurance was declared illegal due to the content of prohibited elements in Islam, such as usury, uncertainty, excitement. The fatwa also laid the Foundation for Islamic insurance called Takaful. Prior to 1980, virtually all States in Malaysia had adopted similar fatwas on the inadmissibility of traditional insurance. In 1982, a specialized Committee was established by the government to study the possibility of carrying out Islamic insurance activities, or rather to establish an Islamic insurance company in Malaysia. On 11 May 1984, the Committee submitted a report on the results of its work. The report, which consisted of 6 chapters, contained an answer to the government's question on how to create an insurance company that would meet all the requirements of Islamic law. A great deal of work has been done by the members of the Committee, whose main objective was to establish Takaful, a company in Malaysia. However, the most important achievement was Takaful-act adopted by the Parliament of Malaysia.

The Malaysian legal framework governing Islamic insurance can be divided into several groups. The first group includes the basic law adopted in 1984 – Takaful-an act designed to regulate licensing, registration procedure and other procedural aspects of insurance activities of Takaful company. The second group includes guidelines and circulars adopted by the Central Bank regulating the operational process, management process and other issues related to Takaful operators registered under the Takaful act. The third group includes resolutions issued by the Sharia Supervisory Board, which are binding on all participants of the Islamic financial market. The recommendations and standards created by specialized organizations (the Council of Islamic financial services and The international Association of insurance observers for the regulation and management of Islamic insurance), which are not of a legal nature, can be referred to a separate group.

The Takaful act was adopted on 24 December 1984 and came into force on 1 January 1985. Takaful-act in the process of application in practice has undergone certain changes and adjustments, that is, developed and improved as the formation of insurance relations in Malaysia. The normative act consists of 4 parts and covers almost all possible legal aspects encountered in the activities of the Takaful operator, starting with the conduct of insurance activities and ending with the jurisdiction of the courts. In the first section, Takaful is defined as a system based on brotherhood, solidarity and mutual assistance through voluntary financial assistance among participants.

The main feature of Takaful-business, described in the law, is its division into two classes: Family Takaful and General Takaful. Takaful business may be conducted by an organization as defined in the Malaysian companies act of 1965, or by an organization registered under the cooperative societies act.

In Malaysia, the state has a clear policy regarding Takaful operator and its activities. To protect the interests of all participants in the insurance process before Takaful-operators put a lot of requirements for the implementation of established rules and regulations. To

improve the operational efficiency of Takaful business, create a healthy Takaful Fund and protect the interests of participants, the Central Bank of Malaysia adopted a guide on the structure of Takaful operations. In accordance with paragraph 10.1–10.2 of the manual, the operator must ensure the effective management of the Takaful Fund, including a financial risk control system and a monitoring system. He is also responsible for the welfare of the Takaful Fund and for the competent performance of his functions and the functions of his agents.

The existence of legal relations between the parties always implies the emergence of any disputes. The judicial system of Malaysia regulates disputes arising in Islamic Finance. The Supreme court of Malaysia has judges who are empowered to deal with the category of cases and disputes arising in the field of Islamic Finance. To date, the procedures of the regional Kuala Lumpur arbitration center are conducted in accordance with the rules of arbitration on Islamic banking and financial services. The rules of arbitration shall apply for the purpose of deciding any dispute arising out of a commercial contract, business agreement or transaction based on the principles of Sharia law. They contain rules governing arbitration procedures, the composition of the arbitral Tribunal, decision-making procedures, etc.

With the development of legal relations in the field of Islamic financial activity in the Republic of Kazakhstan, it is necessary to simultaneously introduce such constituent elements as the Sharia Supervisory Board, specialized arbitration for the consideration of Islamic financial disputes, etc. as mentioned earlier, in 2009 and 2011, laws were adopted to amend and Supplement some legislative acts of the Republic of Kazakhstan on the organization and activities of Islamic banks and Islamic financing organizations. The mechanism of regulation of Islamic banking relations is fixed by the legislation and actually operates in the market of Kazakhstan. In this regard, it is necessary to ensure the normal existence and functioning of insurance organizations based on the principles of Sharia.

With the development of the Islamic financial industry in the Republic of Kazakhstan there will be a need to introduce some separate elements for more effective regulation of this market. For example, the establishment of the Sharia Council will contribute to the maintenance and more stable functioning of the investment, financial and insurance system established by our country, based on the principles of Sharia. Accordingly, it is possible to propose the creation of a Supervisory Board with Advisory and control functions in the field of activity at the National Bank of Kazakhstan various Islamic financial institutions. This authority should have a certain legal status and to exist as a separate Committee. The legal provision on this authority must comply with the Constitution of the Republic of Kazakhstan, financial legislation, as well as meet the requirements of the Islamic financial space. Functioning of the Advisory and Advisory authority the control powers will ensure that the financial activities carried out are in compliance with the Sharia.

Experience in resolving financial and economic disputes in Malaysia. Since Kazakhstan already has

certain elements of Islamic financial and investment activities, there is a possibility of various financial disputes. In this case, it is necessary to take advantage of Malaysia's experience in resolving financial and economic disputes. Arbitration as a form of resolution of financial disputes in the field of Islamic law is extremely relevant in the absence of various higher courts and its economic benefits in contrast to other ways of settling financial conflicts. Since the financial market of Kazakhstan has large participants from the Islamic world, the emergence of the arbitration court, acting and making decisions on the Sharia canons, will attract additional Islamic investment capital to the national financial market, as it will guarantee their protection.

**CONCLUSION.** Based on the above, it should be noted that the creation of the Islamic insurance system and its implementation (implementation) in the national legislation, daily financial detail and judicial practice will allow Kazakhstan to integrate more deeply into the global system of the world economic space. All these steps are being taken to more successfully develop and modernize the financial, investment and insurance sector of the domestic market. It is also necessary for further development and improvement of the national legislation regulating the insurance market.

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