

The nomination clause in life takaful

Mr Sâmî Hazoug of **Strasbourg University** and **Sheikh Faizal Ahmad Manjoo** of **Minarah MultiConsulting** summarise the key take-aways from a colloquium on life takaful in France, which awaits its third takaful provider.



Mr Sâmî Hazoug

Sheikh Faizal
Ahmad Manjoo

Strasbourg University is one of the leading tertiary institutions in Europe. It has produced few Nobel Laureates; in 1987 and 2014 for chemistry and 2011 for medicine.

The University has also pioneered the first Master course in Islamic finance in France, creating inertia for this discipline. The eMBA degree is spearheaded by Mr Sâmî Hazoug and Professor Michel Storck from the prestigious Law Faculty.

With its leading academic role in Islamic finance, the Faculty organises many impressive colloquia. This year, one of its main colloquia was on life takaful, held on 23 May. The colloquium's main objective was to critically analyse the nomination/ beneficiary clause in life takaful policy under French law in order to dissect its impact on the Islamic law of inheritance, taxation and insurance policies.

Why a colloquium on life takaful in France?

Europe has 16 million Muslims, of which six million live in France. France is considered as the fifth biggest insurance market with EUR180.7 billion (US\$249.97 billion) collected in 2012. This is a scaffold to market life takaful as an alternative to life insurance which is compulsory under many circumstances under French law. Two takaful companies have been established in France and a third one is in the pipeline.

A more interesting reason is the new development in France regarding life insurance, considered as a legal and fiscal package with a capitalisation structure. In 2012, it recorded a premium collection of EUR112.9 billion, a figure which is increasing at a rate of 4%. In 2013, a report indicated a need to invest these premia in more appropriate channels to boost the economy. This opens a new gateway for Islamic investments rather than the traditional investments in bonds and shares.

The life insurance policy is construed on specific rules. The beneficiary clause gives the beneficiary a direct right of access against the insurance company. Under French law, the compensation to be paid after death does not form part of inheritance law. The insurance code (C. ass. Art. L 132-12) stipulates: "The capital or the stipulated amount payable to the stipulated beneficiary or the heirs of the deceased insured does form part of the insured's estate after his death. The beneficiary, whatever be the form and date of his nomination, is known to have only one right from the date of the contract even though his acceptance is after the death of the insured".

The tax implication of this legal provision is an important element to consider as it has an interpretational impact on the Islamic law of inheritance.

The nomination clause

There were five main speakers for the colloquium. The discussion panel was chaired by Professor Storck.

The highlight of the conference was the nomination clause in a life takaful contract. Two leading experts held different views as to whether the nomination clause should encapsulate the inheritance (mirath) aspects of Islamic law.

Mr Tarik Bengarai, Chairperson of the Independent Committee for Islamic Finance in Europe (CIFIE), held the view that the nomination clause should reflect Islamic law because French insurance law does accommodate heirs. He advocated the fact that under Islamic law, heirs are predetermined, therefore a nomination clause should not even be utilised because this will indicate a contractual beneficiary and not an inheritance heir. He explained however that the concept of wasiyyah (bequest) can be used to cater for non-heirs, even if they are non-Muslims.

Mr Ezzedine Glamallah, CEO of Solutions d'Accès à l'Assurance et la Finance Islamiques (SAAFI) and ex-



(L-R) Mr Ezzedine Glamallah, Professor Michel Storck, Mr Bastien Perrine and Mr Florian Burnat



Present cohort of eMBA Islamic Finance students at Strasbourg University, with Professor Michel Störck and Mr Sâmi Hazoug (both in charge of the course) in the middle

President of the Islamic Finance Specialists Organization, emphasised that the beneficiary clause in life insurance is both an instrument of guarantee and an instrument for transmission of funds which are not subjected to tax law. The question is whether this money should form part of mirath or can be the legal asset for a beneficiary.

Mr Glamallah argued that despite the view that it should solely be for the legal heirs, when viewed through the prism of French law, there is no need to insist on a will/testament because the insured can stipulate a beneficiary during his life with the post-effect of taking possession as this can be construed as a donation because this is his savings account held with the insurer. The legal question that begs for a debate under French law is whether the said money can be considered as inheritance, or a donation as is the case for Muslims under French law. He argued that it can be considered as a donation.

Tax implications in France

Mr Florian Burnat, Avocat at CMS Bureau Francis Lefebvre, addressed the tax implications on life takaful under French jurisdiction. The main point raised was that the “Islamic” trait has no tax implication because life insurance will be treated as a “multi-support life insurance contract”.

Mr Bastien Perrine, Country Manager of Vitis Life France, elaborated on a life takaful product the company has developed in Luxembourg, which operates on the basis of wakala. Thirteen funds for

the product have been certified as Shariah compliant. He elaborated on the functionality of the product and some of the practical problems encountered in selling it.

Global issues

Finally, Sheikh Faizal Manjoo, CEO of Minarah MultiConsulting, spoke about the challenges faced by the takaful industry globally and what France can learn from these experiences. One of the challenges he raised concerned retakaful issues for the life insurance contract under French law. Sheikh Faizal raised the issue of “cession” as compared to “donation” in a retakaful treaty contract and its jurisprudential impact. The word “cession” can echo the concept of a bilateral contract and thus attracts riba, gharar and maysir as compared to donation. The case laws are not final on this issue.

Another important aspect Sheikh Faizal raised was the spectrum of risks underwritten in the mainstream insurance industry, compared to the takaful industry. The risk market is shifting to a great extent towards intangible property which the takaful industry is not covering.

The colloquium was an inspirational platform that generated many discussions on the way forward in synthesising Islamic law and French law in propelling life takaful in France and other French-speaking jurisdictions. ■

Mr Sâmi Hazoug is Course Co-ordinator and Lecturer at Strasbourg University’s Faculty of Law. Sheikh Faizal Ahmad Manjoo is CEO of Minarah MultiConsulting Ltd and Head of the Islamic Finance Department with Markfield Institute of Higher Education.

