Cart before the Horse?

By Islamic Finance *news*

Takaful will be legally recognized in one of the most populous Muslim countries in the world when the Insurance Act 2009 comes into force in Bangladesh. The draft amended Act, which has been approved "in principle" by the cabinet, will replace the previous 1938 legislation.

Despite the current legislation not having a definition of Islamic insurance or Takaful and therefore not equipped to deal with the industry, the demand for Shariah compliant products grew, with as many as 13 conventional life and non-life insurance companies offering Takaful products through windows or projects.

With over 130 million Muslims in the country, non-Muslims constitute 9% of Takaful policyholders. Bangladesh currently has three life and three non-life Takaful companies, which were licensed in 2000 under the Insurance Act 1938. In addition, Parliament is slated to approve another law, the Insurance Authority Act, that would create an independent insurance regulatory body to govern both the conventional insurance and Takaful industries.

Such news would be cause for celebration but as Prime Islami Life Insurance managing director Kazi Md Mortuza Ali explained to Islamic Finance *news*, the amended Insurance Act would include a provision barring insurance companies from offering Takaful products together with its existing insurance products; likewise Takaful companies will not be allowed to offer conventional insurance products simultaneously.

This, he said, has not gone down well with the conventional insurance companies. "Many of the insurance companies which offer Takaful windows feel the law should be abrogated because they offer Takaful products side by side with their conventional products," he said.

Kazi elaborated that an option would be given to these companies to indicate their choice of offering conventional or Takaful within six months of the Act coming into force. The other option is to allow an insurance company to establish a subsidiary that would offer Takaful while the same would apply to a Takaful company to offer conventional insurance.

However, he said the full fledged Takaful companies support the amendment and have even proposed that the draft include a chapter on Takaful or provide a special regulation for Takaful. "If the government wants to have separate laws, it can do so but such a procedure would take more time as this has not been thoroughly examined by the government," he said.

Even though the conventional companies' contribution to the life Takaful sector is equivalent to that of the three life Takaful companies, Kazi said the Shariah compliance of their product offering is questionable.

On the independent insurance regulatory body, he said that as not much information has been provided, it is not clear whether the Shariah scholars in the advisory committee of this body would function in similar fashion to the Malaysian central bank's Shariah Advisory Council.

Kazi was unhappy with the process leading to the amended Insurance Act as the government had not taken into consideration the views of the Takaful industry. He said there are many provisions that ought to be dealt with, either by regulation or by rules, to facilitate Takaful in the draft Act.

"If the rules and regulations are not made immediately, it would be very difficult for the regulatory body to supervise the Takaful industry. This is a very general Act which cannot proceed further because there are as many as 40-50 issues to be dealt with.

"What therefore should have been done is that the Act and the regulations need to be introduced together. This Act should not be passed without the necessary rules and regulations," he said.

Kazi explained further that the Islamic Development Bank and the Asian Development Bank (ADB) are providing assistance to enhance the capacity of the new regulatory body. ADB has appointed local consultants from an international consulting firm, Maxwell Stamp, to review the rules and regulations that are required. Once reviewed, they would be presented to the stakeholders while seminars and symposiums are organized to obtain feedback from operators and users.

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"So to me, this will be a transition period. The independent committee will charge a levy from the companies and utilize the funds. Previously the funds came from the government's budget allocation so they did not have much financial strength and could not develop capacity. But now they would have ample funds.

"So they would possess finances and the independence. If they work very efficiently, perhaps they can do it within a year or two, which will be a crucial period within the industry," he said.

Kazi added that since the government has recognized Takaful and permitted the Takaful players to operate on a Shariah basis, it is their duty to draft regulations for it. "Now it is the government's statutory responsibility to ensure that it is run in a Shariah compliant manner. How far can be done is a different issue.

"We will have to wait and see which Shariah experts, who should be well versed in not only Shariah law but also in insurance, are appointed to the advisory committee.

They should also understand the gravity of the situation in order to facilitate Takaful as the bureaucrats, policy makers and Parliament have yet to fully understand these concepts. In fact, a lot people are confused, so there is a lot to be done," he said.