

## The reality of the application of Takaful insurance in Algeria and its prospects under Executive Decree No. 21-81

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Received: 30/08/2021

Accepted: 17/10/2021

Publication: 01/12/2021

### Abstract:

This study aims to determine the reality of the application of Takaful insurance in Algeria, and the prospects for its application in the future in light of the Algerian legislator's issuance of Executive Decree no. 21-81, specifying the conditions and modalities for practicing Takaful insurance, which is the first explicit step towards adopting the Takaful insurance industry in Algeria.

This study concluded that "Salama Assurances Algérie" has partially applied the Takaful insurance mechanism previously, despite the lack of the necessary legal environment for it. This matter was resolved by the Algerian legislator through the issuance of Executive Decree no. 21-81, that has been widely accepted by insurance companies active in Algeria, which announced their intention to adopt the Takaful insurance industry in the near future.

**Keywords:** Takaful insurance; commercial insurance; "Salama Assurances Algérie"; the Algerian insurance sector.

**Jel Classification Codes :** G52, G22.

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## 1. Introduction

Takaful insurance has been introduced in recent decades as an Islamic alternative to commercial insurance operations, as it performs the function of insurance on Sharia grounds in an innovative way, and aims to provide the service provided by commercial insurance to the policyholder in legitimate cooperative ways.

The global Takaful industry has witnessed tremendous growth during the past decade, and has become an integral part of the prevailing financial system, as insurance services are nowadays occupying a large part of the interest of businessmen in commercial, industrial, service and other activities due to their great dependence on them in creating safety for their projects of all kinds.

Thus, insurance has become a requirement in our Islamic societies. The interest in Takaful insurance has lately increased in the developing and Islamic countries as a requirement for individuals and companies to spread a type of insurance that conforms to the teachings of Islamic Sharia. Among these countries is Algeria, which is somewhat lagging behind, due to its delay in providing a sound legislative environment to lay the foundations of Takaful insurance. It laid the first building block for this industry in 2021, by issuing Executive Decree no. 21-81, specifying the conditions and modalities for practicing Takaful insurance.

### 1.1. Problematic

Through the foregoing, the following main problematic can be putted forward:

**What is the reality of the Takaful insurance industry in Algeria? What are its prospects in light of the issuance of Executive Decree no. 21-81?**

### 1.2. Hypotheses

Due to the nature and content of the study, the presented problematic has been attached to a main hypothesis that remains subject to testing and discussion. It is represented in the following:

- The Takaful insurance industry in Algeria is somewhat late, this is due to the absence of legal and legitim frameworks regulating this industry, which hindered its development, which may change if the elements of an ecosystem suitable for this industry are provided.

**1.3. Study Objectives:** This study aims to achieve the following:

- Introducing the working mechanism of Takaful insurance and clarifying the main differences between Takaful and commercial insurance;
- Highlighting the most important provisions of Executive Decree no. 81-21;
- Determining the reality and prospects for the application of Takaful insurance in Algeria.

### 1.4. Study Methodology

The analytical descriptive approach was relied upon, in order to describe and analyse the study variables represented in Takaful insurance and the reality of its application in Algeria, as well as Executive Decree no. 21-81, specifying the conditions and modalities of its practice, and then analysing the most important results.

**1.5. Study Structure:** To answer the above-mentioned problematic, we will divide this study into the following axes:

- I. Conceptual framework of Takaful insurance;

- II. The reality of the application of Takaful insurance in the Algerian insurance market;
- III. Prospects for the application of Takaful insurance in Algeria under Executive Decree no. 21-81.

## **2. Conceptual framework of Takaful insurance**

Takaful insurance in the world has witnessed a significant growth during the past few years, which allowed it to reserve a great position in the global insurance market and make it a strong competitor to the conventional insurance, which for many years remained a monopoly in this sector. Today, according to the available statistics in this regard, we find a noticeable increase in companies of Takaful insurance and Takaful reinsurance in the world and the Arab region, this was not the case in the recent past. These statistics are a clear indication of the growing demand for Takaful insurance products and the financial market's need for them.

### **2.1. Definition of Takaful insurance, its characteristics and principles**

The term Takaful (cooperative) insurance is relatively recent, and the extent of its legality has been researched by contemporary scholars for more than sixty years, and conflicting legal fatwas were issued in it, reluctant between its permissibility and prohibition, and frequent jurisprudential conferences were held about it, and they eventually reached the prohibition of commercial insurance, or insurance with a fixed premium, and the permissibility of cooperative insurance as an alternative to commercial insurance, and we will tackle hereinafter the concepts related to Takaful insurance through its concept, characteristics, and principles.

#### **2.1.3. Definition of Takaful insurance**

There have been many opinions among different writers and researchers in expressing the definition of Takaful insurance, due to the different angle that each researcher focuses on when formulating the definition and the elements and aspects relied upon, and as such, we will present some definitions of this term.

- It is a system based on cooperation between groups or individuals who jointly undertake to compensate the damages incurred by any of them for the realization of similar risks, and those are the contributors to bearing the risks in the interests of the insured who has been harmed (Mohamed Lotfi, 2007, p. 239).

- The cooperation of a group of people called the Contributors Body who are exposed to certain risks or dangers as a donation, to avoid the effects of these dangers, which one or some of them was exposed to, by compensating him for the damage resulting or arising from the occurrence of those risks. Therefore, each one of them is committed, as a donation, to pay a certain amount of money called "subscription" or "premium", determined by the insurance policy or subscription contract. The Takaful insurance company manages the insurance operations and invests its funds on behalf of the contributors' body, in return for a known share of the return on investment of funds as a speculator or a known amount as an agent, or both (Djaafer, 2006, p. 88).

- The Algerian legislator defined insurance as, in accordance with Article 03 of Executive Decree No. 21-81 of 23 February 2021 (issued in the Official Gazette No. 14 of 28

February 2021), specifying the conditions and modalities for practicing Takaful insurance, and aiming to implement Article 203 bis of the Order No. 07-95 of 25 January 1995, as amended and complemented by Law No. 06-04 of 20 February 2006, that Takaful insurance is an insurance system based on a contractual method, in which natural and/or legal persons called “participants” are involved. Participants who undertake to help each other in the event of a risk, or at the end of the term of the Takaful insurance contract, to pay an amount in the form of a donation called a “contribution”, and contributions paid in this regard, allow to create a fund called “Participants’ Fund” or “Participants’ Account” and the operations and actions related to the business of Takaful insurance are in accordance with the principles of Islamic Sharia that must be respected.

Accordingly, through the above, it can be said that Takaful insurance is an Islamic system, based on donation, and not on the basis of making a profit. It is based on cooperation and interdependence between a group of natural or legal persons, with the aim of bearing damages for the risks that may befall one or some of them.

### **2.1.2. Characteristics of Takaful Insurance**

No matter how many definitions of Takaful insurance are, the characteristics that characterize it, and that distinguish it from commercial insurance itself, are as follows (Mazouz, June 29th, 2021, pp. 3-4):

- The combination of the insurer and insured capacities for each insurance member: One of the most prominent characteristics of Takaful insurance is the existence of an exchange of benefits and sacrifices among insurance members. Compensation is paid to those who are at risk from the proceeds of the subscriptions paid by the members. The set of subscriptions constitute the balance in the joint account;
- Democracy of ownership and will: i.e. there is no distinction between one person and another who wants to join the company;
- No need for capital: Takaful insurance is based on the principle of agreement between a large number of members exposed to a certain risk on the distribution of the loss that falls to any of them, to all of them;
- Member solidarity: Members of this insurance are joint in covering the risks that befall one or some of them. They cooperate in the disintegration of risks and contribute to bearing the responsibility in the event of dangers and disasters through the contributions of persons in cash sums allocated to compensate those affected by the damage;
- Change in the contribution value: This is one of the characteristics of this insurance, given that each of them is insurer and insured, and for this reason the contribution required from each one is subject to increase or decrease according to the risks that are realized annually, and the consequences that facing them in terms of compensation. If the compensation lapses, the members have the right to recover the increase, and if the opposite occurs, the members can be asked for additional contributions.

### **2.1.3. Principles of Takaful Insurance**

Takaful insurance contract is based on a number of principles that can be mentioned in the following points (Djemaa, April 25<sup>th</sup>, 26<sup>th</sup>, 2011, p. 4):

- It is based on cooperation and donation among all participants, as the participants do not aim at profit in netting on insurance;
- Creating two separate accounts, one for the managing company itself, its rights and obligations, and the other for the policyholders' fund, their rights and obligations;
- The insurance surplus belongs to the insurance fund, and the managing company cannot take anything from it except in a legitimate way, and the entire surplus can remain a cumulative reserve to strengthen the insurance fund, or to reduce insurance premiums, and so on that is in the interest of the participants in the fund. In the event of the liquidation of the fund, the financial liability of the fund shall be disposed of at the nearest similar bank;
- Commitment to the principle of justice and protection of the fund's money when assessing the compensation that the managing company deserves, whether it is a consideration for investing the fund's money or managing its operations, and setting the standards and implementation mechanism necessary to achieve that principle;
- Commitment of the management company to respect the provisions of Islamic Sharia in all its activities, business and investments.

## **2.2. Formulas of Takaful insurance and the difference between the latter and commercial insurance**

### **2.2.1. Takaful insurance formulas**

Takaful insurance is based on a set of legal formulas that aim to meet the insurance needs for the benefit of the participants and subscribers, and they are represented in the forms of speculation, proxy and endowment.

#### **a. Insurance formula based on speculation**

Speculative contract is the contract under which the parties agree that one of them will pay money to trade in the other, where the profit and loss are in the proportion that they agree upon. It is a type of partnership in which, the share of one of the partners is the work, and the share of the other is the capital, which is permissible according to Sharia ( Abderrahmane, 2006, p. 53). There are two types of speculation:

✓ Absolute speculation: It is the payment of money in speculation without specifying the work, place, time and description of the work. In absolute speculation, the speculator has the freedom to act as he wants without referring to the owner of the money except at the end of the speculation;

✓ Restricted speculation: It is where the owner of the money places restrictions on the speculator by obliging him to do a certain type of work or to practice an activity in a specific place or time (Cheikhi, Labidi, & Fakir, November 16-18<sup>th</sup> 2017, p. 6).

In the insurance formula based on the speculation formula, the insurance company acts as a speculator and the participants in the takaful as the owners of the money, as the company (the speculator), manages the risks of each of the investment and insurance activities on behalf of the takaful participants, and receives in return a share in the form of a percentage of Investment profit or takaful surplus, which is usually explicitly stated in the takaful insurance contract. Through the speculation contract, it is stipulated that:

- The company or the participants shall not change the agreed upon partnership ratios

without referring to the other party, with regard to the investment profits or the takaful surplus after signing the contract;

- Takaful participants alone, as owners of money, bear any financial losses in investment and insurance activities, provided that the losses are not caused by misconduct or negligence on the part of the Takaful insurance company;
- The Takaful insurance company expects to receive profits if it ascertains that the costs of managing the Takaful insurance operation are less than its total share of investment profits and/or the Takaful surplus (Islamic Financial Services Board, 2009, p. 6) .

#### **b. Insurance formula based on proxy**

The formula based on proxy is among the legal formulas , on which many transactions between members of society are based, as insurance services define the proxy formula through the so-called insurance agents who carry out the marketing process of the insurance activity, and their operations are managed through the proxy formula, which is defined lexically as delegation and accreditation, contextually, it is defined as a contract that one of them authorizes another person to perform a specific act on his behalf, provided that the relevant action is permissible. The proxy contract stipulates that:

- The principal is the owner of the right to dispose by himself in what he has been entrusted with, so it is not valid to delegate the boy and the insane, as it is stipulated that the principal should be qualified to dispose of what he has been entrusted with; The principal is not prohibited from disposing of what he is entrusted with;
- The mandated subject must be known and is able to be represented, so it is not valid to be authorized to act in something unknown, nor in what is not accepted by Sharia, such as purely physical acts of worship such as prayer or fasting. However, it is permissible for the other doctrines, other than Malikia, to delegate Hajj and Umrah. Because it is a double cult, both financial and physical.

We distinguish in the proxy contract the following types:

- ✓ Absolute proxy: It is the one that has not been restricted by a restriction related to the disposal, the time, or the amount in the price.
- ✓ Restricted proxy: It is the one that is restricted by a certain type of transaction, at a specific time, or at a certain amount of price.
- ✓ General Proxy: It means the power of attorney that includes every matter that accepts representation for instance: I mandate you in all my affairs related to transactions;
- ✓ Special proxy: proxy is private, if it is limited to a specific matter or matters;
- ✓ Proxy dependent on a condition: It is the proxy that relates to the occurrence of a condition of a quality or time such as: I mandate you to sell this car of mine if so-and-so comes to the store;
- ✓ Proxy added to a time in the future: It is the proxy in which the power of attorney is added to a later time, such as: I mandate you to sell my car in the next month (Fellak, 2015, pp. 107-109);

As for the insurance contract on the basis of proxy, the participant appoints the

insurance company official as an agent to carry out on his behalf and for the rest of the participants the management of the cooperative takaful account, the investment reserve account, and all the procedures for preparing contracts, receiving premiums and paying compensation amounts, and the proxy is remunerated, which is calculated on the basis of a percentage of the contributions amounts in the Takaful account, or unremunerated (Cheikhi, Labidi, & Fakir, November 16-18<sup>th</sup> 2017, pp. 7-9).

### c. Takaful insurance according to the mixed formula

According to this formula, the Takaful insurance company relies on the proxy contract to manage the Takaful insurance activities, while the speculation contract is used to manage the investment activities (Islamic Financial Services Board, 2009, p. 7). Thus, it is entitled to a known fee for managing the insurance business (a percentage of the contributions), and it receives a percentage of the investment returns and contributions, as it is a speculator.

## 2.2.2. Comparison between Takaful Insurance and Commercial Insurance

Takaful insurance is similar to commercial insurance in some points and differs in others. We mention them as follows:

### a. Similarities Between Takaful Insurance and Commercial Insurance

The similarities can be summarized in the following points (Hamidi & Hawchin, 2019, p. 108):

- Both seek to achieve the goal of the insurance system, which is to break up the damages arising from risks, to reduce the burden on the affected;
- Both are public joint stock companies, providing insurance service after founders establish it with capital paid by its shareholders;
- Both use the same technical and statistical (scientific) bases in estimating the risks that are required to be insured, and estimating the amounts of premiums or contributions, with the presence of reinsurance in both commercial insurance and Takaful insurance;
- The conditions and the way the document is drafted are similar, as long as the conditions are acceptable in Sharia, and the difference is often limited to the texts and definitions of solidarity, with the ruling law being subject to not violating the provisions of Sharia;
- Insurance generally includes property insurance (against damages caused to it), and people insurance (death insurance, disability or injury insurance).

### b. Differences between Takaful insurance and commercial insurance

We will summarize the most important differences between Takaful insurance and commercial insurance in the following table:

**Table No. 01: Differences between Takaful insurance and commercial insurance**

Element of comparison	Commercial insurance	Takaful insurance
<b>In terms of the nature of the contract</b>	It is based on the compensation between a subscriber and the company with the intention of profit	It is based on donation and solidarity between the parties to the contract, not intended for profit
<b>In terms of</b>	It aims to make a profit from	It aims to achieve cooperation among the

<b>the insurance objective</b>	insurance operations, as if the insurance premiums exceed the expenses and compensations, they are considered profit	participants, as the company's purpose is not profit, because it does not benefit from the remaining insurance premiums, no matter how much they are
<b>In terms of the methodological reference</b>	Subject to legislation and customs of traditional commercial origin	All its activities are subject to the provisions and principles of Islamic Sharia, through the creation of a specialized body in the organizational structure called "The Fatwa and Sharia Supervisory Board."
<b>In terms of the Sharia ruling</b>	It is forbidden, according to the consensus of most Fiqh groups, because it is not free from usury, deception, ignorance and gambling.	It is permissible in Sharia, and the scholars are unanimously agreed that it is permissible. It does not use what it has collected from instalments in usurious transactions
<b>In terms of the components of the financial liability</b>	The financial liability consists of one account that includes the paid-up capital, its returns and interests, and the remaining insurance profits, and this financial liability is responsible for all the company's obligations.	The financial liability consists of two independent financial liabilities. The first is the liability of the company (the subscribers) consisting of the paid-up capital and the returns it obtains from the speculation contract between the company and the insurance account, and the second is the insurance account consisting of insurance premiums and their returns.
<b>In terms of insurance surplus and profit</b>	The principal amount or any part of the value of the premium paid in no way belongs to the insured, because it enters into the ownership of the company and is included in its profits and is called "insurance profit."	The original value of the paid premium goes back to its owner with the deduction of the share of compensation, expenses, and reinsurance, which is called the "insurance surplus."
<b>In terms of premium investment returns</b>	The returns of the commercial insurance company belong to the commercial company only	Returns from the investment activities of the subscribers' fund are returned to the insurance account after deducting the company's share as a speculator.

**Source:** Iman Harmouch, Sabri Mukaimah, The Reality and Prospects of Takaful Insurance in Algeria - Simulation of Global Experiences-, Journal of Administrative and Financial Sciences, Volume 03, Issue 02, El Oued University, 2019, p. 70.

### 3. The reality of the application of Takaful insurance in the Algerian insurance market

Takaful insurance is a type that is considered relatively new in Algeria, because its presence on the ground is limited to the insurance company "Salama Assurances Algérie", and despite the issuance of the executive decree of 2009 that allowed the establishment of mutual insurance companies without discrimination between one sector and another, it was incomplete in many aspects, and did not specify principles and modalities for practicing Takaful Insurance, after which Executive Decree No. 21-81 was issued, which specifies the modalities of practicing Takaful insurance, but its application in reality requires a lot of effort



and work on several sides and requires more time to actually embody its provisions. Therefore, the insurance company “Salama Assurances Algérie” is currently the only company that applies Takaful insurance in Algeria.

### 3.1. An overview of the Algerian insurance market

The Algerian insurance sector is one of the most important economic sectors in developing and developed countries alike, but this sector continues to suffer a significant lag in Algeria, unlike other sectors, as its contribution (penetration rate) was estimated at 0.72% in 2019 (National Insurance Council, s.d.), which is a weak percentage, compared to the rates achieved in developed countries, which are estimated at an average of 9%, and 3% for developing countries (National Insurance Council, 2015, p. 7).

#### 3.1.1. Structuring the Algerian insurance market

The Algerian market consists of a group of insurance companies that are classified into damage insurance companies, personal insurance companies and specialized insurance companies. The Insurance Supervisory Committee of the Ministry of Finance announced the list of approved insurance companies (until September 09th, 2020), as follows:

**Table No. 02: Insurance companies active in the Algerian market**

Damage insurance companies	Personal insurance companies	Specialized insurance companies
<ul style="list-style-type: none"> <li>- National Insurance Company (SAA).</li> <li>- Algerian Company for Insurance and Reinsurance (CAAR).</li> <li>- Algerian Company for Insurance (CAAT).</li> <li>- The National Agricultural Mutual Fund (CNMA).</li> <li>- Algeria Trust for Insurance and Reinsurance.</li> <li>- Algerian Insurance (2a).</li> <li>- International Company for Insurance and Reinsurance (CIAR).</li> <li>- Insurance company for hydrocarbon (CASH).</li> <li>-The insurance company “Salama Assurances Algérie”.</li> <li>- General Mediterranean Insurance (GAM).</li> <li>- Alliance for Insurance</li> <li>- AXA Insurance Algeria - Damage</li> </ul>	<ul style="list-style-type: none"> <li>- CARDIF, Algeria.</li> <li>- Life Insurance Algeria (TALA).</li> <li>- Karama Insurance.</li> <li>- Health and Precautionary Insurance Company (SAPS), called (Amanah).</li> <li>- Macir Vie.</li> <li>- AXA Life Insurance Algeria.</li> <li>- Mutual.</li> <li>- The Algerian Gulf Company for Insurance of Persons (AGLIC), called (L’Algérienne Vie)</li> </ul>	<ul style="list-style-type: none"> <li>-Central Company for Reinsurance (CCR).</li> <li>-Algerian Company For Insurance and Guarantee of Exports (CAGEX).</li> <li>-The Mortgage Guarantee Company (SGCI).</li> </ul>

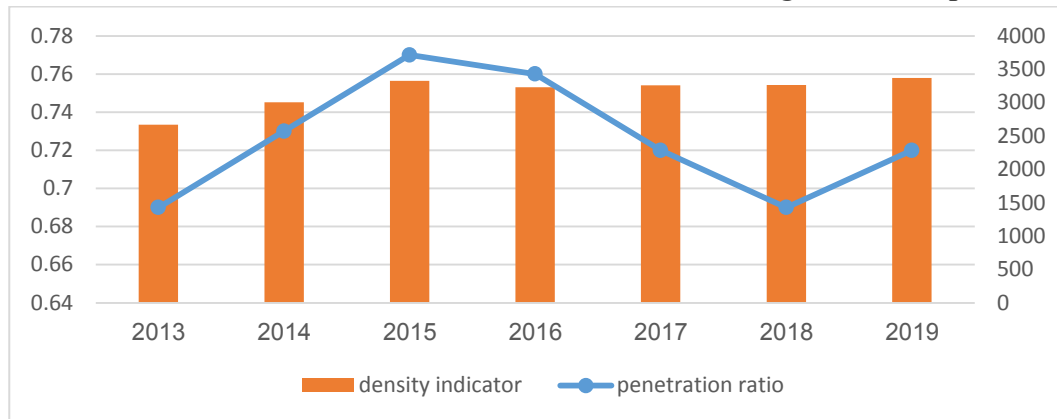
**Source:** Prepared by the researcher based on the data of the Insurance Supervisory Committee in the Ministry of Finance, available on the website: <https://www.uar.dz/communique/>, 15/08/2021.

#### 3.1.2. The most important indicators of the Algerian insurance sector

The performance of the Algerian insurance sector can be evaluated through two main indicators: the market penetration ratio, which expresses the insurance sector’s contribution to the country’s gross domestic product, and the insurance density indicator, which measures the amount of expenditure per capita on insurance services by the number of monetary units,

and this by analysing the ratio of the evolution of these two indicators during the period 2014-2019.

**Figure No. 01: Performance indicators of the insurance sector in Algeria for the period 2014-2019**



**Source:** Prepared by the researcher based on the data of the National Insurance Council for the period 2012-2019, which are available on the website: <https://www.bdc.s.dz/index.php?p=39&g=39>, 12/08/2021.

We note from the above figure that the contribution of the Algerian insurance sector amounted to 0.69% in 2012. This percentage witnessed a successive increase in the years 2014-2015, recording 0.73% and 0.77%, respectively, to decline in 2016 to 0.76%, and continued to decline in 2017 and 2018 with rates estimated at 0.72 % and 0.69%, and then increased again in 2019 to reach 0.72%. In general, they are considered as low rates, not exceeding 1%, and from this, it can be said that the insurance sector's contribution to the gross domestic product is very weak. As for the density indicator, its value ranges between 2671.88 DZD and 3368.16 DZD, and it is considered very low compared to other countries.

### **3.2. Takaful insurance in Algeria through the insurance company “Salama Assurances Algérie”**

As previously mentioned, the insurance company “Salama Assurances Algérie” is the only company in Algeria that currently provides Takaful insurance services, so we will define the mother company as well as its branch in Algeria, and we will look at the Takaful insurance products offered by it in the Algerian market

#### **3.2.1. About the insurance company “Salama Assurances Algérie”**

Salama Islamic Arab Insurance Company is one of the world's oldest and leading companies in providing Islamic solutions for Takaful insurance. It is also listed on the Dubai Financial Market with a paid-up capital of 1.61 billion UAE dirhams (330 billion US dollars). Since its establishment in 1979 until today, Salama has been a pioneer in the Takaful sector and has the distinction of being a leading provider of Sharia-compliant insurance solutions (Salama Assurances, s.d.).

The insurance company “Salama Assurances Algérie” is adopted by virtue of Resolution No. 46 issued on July 02nd, 2006 by the Minister of Finance, thus it acquired Al Baraka wa Al Aman Insurance and Reinsurance Company, established on March 26th, 2000, which today became “Salama Assurances Algérie” after joining the Salama Group. It provides today multiple services in the Algerian market, as it has 261 points of sale throughout the national territory and 6 regional directorates (Amri & Guettoufi, 2020, p. 160). It is currently the only

one of all insurance institutions in Algeria, that deals with Islamic insurance and Takaful services.

### **3.2.2. Applications of Takaful Insurance by “Salama Assurances Algérie”**

The insurance company “Salama Assurances Algérie” uses three Sharia formulas in executing its financial business, and specifically managing takaful funds, namely: the proxy formula, the speculation formula, and the mixed formula, which we discussed earlier. Salama presented its Takaful products that allow individuals to benefit from the accumulation of capital or a contractual pension in the event of security events that may lead to a sudden drop in their income. The company launched insurance products based on the principles of Islamic Sharia and known as Takaful, which are represented in:

- Takaful insurance and capital accumulation: the provision and payment of capital includes the rate at the time of retirement;
- Takaful Insurance and Social Welfare: In the event of death or absolute and final disability of the insured, immediate payment of a lump sum is allowed to the concerned beneficiaries (husbands, children, mothers) in the form of life insurance which is a new policy for householders;
- Takaful insurance and credit: It allows repayment of the outstanding loan balance to the lender in the event of the death of the insured and is intended for public and private sector employees;
- Benefits of Takaful products: They are flexible products that enable people to: the ability to form a pension, protect the family in the event of natural death or disability by allocating a predetermined lump sum, the beneficiaries have an opportunity to obtain fixed capital early, improve the family situation, and provide guarantees to choose several special precautions that are suitable to ensure protection.

The flexibility of the company’s products resides in the fact that it is designed in three options: minimum, medium, and best. Each option offers additional guarantees depending on customer needs (Bahlouli & Khouiled, December 03-04<sup>th</sup>, 2012, pp. 11-13).

## **4. Prospects for the application of Takaful insurance in Algeria under Executive Decree no. 21-81**

Executive Decree no. 21-81 of 23 February 2021 (Executive Decree no. 21-81 , 2021) aims to specify the conditions and modalities for practicing Takaful insurance. This decree came in three chapters clarifying the general provisions of Takaful insurance in the first chapter, and the conditions and modalities for practicing Takaful insurance in the second chapter. As for the third chapter, it deals with the organization and management of Takaful insurance companies.

### **4.1. Analytical reading of Executive Decree no. 21-81 specifying the conditions and modalities for practicing Takaful insurance**

Executive Decree no. 81-21 defines Takaful insurance in Article No. 03 as previously mentioned, and defines its types according to Article No. 02, which classified Takaful insurance into two types:

- Family Takaful: which corresponds to the insurance on persons stipulated in Article 23

of Law No. 06-04 of 20 February 2006, amending and completing Article No. 203 of Ordinance No. 07-95 of 25 January 1995, which states in its first clause that: “the companies that enter into commitments, their execution depends on the length of human life, the state of health and physical integrity of people, capitalization and assistance to people”.

- General Takaful: which corresponds to the insurance for damages stipulated in the second clause of Article 23 of Law No. 06-04 amending and completing Article No. 203 of Ordinance no. 07-95, which states that: “Insurance companies of all kinds, other than those referred to in point 1” above mentioned.

Article 02 of Executive Decree no. 21-81 emphasized the necessity of having two funds, the first of which is the participants’ fund or the participants’ account, which is the account in which contributions and investment incomes are allocated and from which compensation and management fees are paid. This fund is managed by the company that practices Takaful insurance according to Article 08 of the same decree, and the second fund is the Partners’ Fund or the Partners’ Account, which are the accounts of the company practicing Takaful insurance and/or reinsurance, and it was emphasized that the Partners’ Fund should be completely separate from the participants’ fund.

Article 2 also tackled the concept of “Qardh El Hassan” which it defined as: “an interest-free credit, repayable within an agreed timeframe and which aims to cover the deficit recorded by the participants’ funds.

The legislator also stipulated, through Executive Decree no. 21-81, a number of legal provisions related to Takaful insurance, whether those related to its conditions and modalities of its practice, or those related to the organization and management of Takaful insurance companies. In the following, we will tackle these provisions.

#### **4.1.1. Conditions and modalities for practicing Takaful insurance**

Regarding the modalities of practicing Takaful insurance, Article 4 of Executive Decree no. 21-81 stipulates that the practice of Takaful insurance by the insurance company shall be according to one of the following two methods:

- Through an internal organization called “window”, within an insurance company carrying out conventional insurance operations. In this case, this company is required to separate, on a technical, accounting and financial level, Takaful insurance operations from operations relating to conventional insurance. It must also complete the accreditation file for this organization, as stipulated in Article 6 of the same decree, which is as follows:

A. The exploitation model that the company intends to adopt, which practices Takaful insurance, in accordance with the provisions of Article 9 of the said Decree, which will be detailed later;

B. The list of the Sharia Supervisory Committee, accompanied by each document proving the knowledge of its members in the field of Islamic Sharia, and a certificate of nationality for each member of the committee;

C. The regulation that the company intends to put in place for practicing Takaful insurance;

- D. The company undertake to achieve complete separation between the participants' account and the partners' account, as stipulated in the provisions of Article 21 of the same decree, which will be mentioned later;
- E. The method adopted for distributing the balance of the participants' fund as stipulated in the provisions of Article 23 of the same decree, which will be detailed later.

▪ Through an insurance company that exclusively practices Takaful insurance operations: In this regard, Article 7 stipulates that, in addition to the documents stipulated in the provisions of Executive Decree No. 96-267 of 03 August 1996, as amended and completed, issued in the Official Gazette No. 47 of 07 August 1996, Insurance companies that practice exclusively Takaful insurance must include elements A, B, C, D and E specified in Article 6, mentioned above, in their accreditation file.

As for the method of managing the company that practices Takaful insurance operations for the participants' fund, Article 9 of the decree stipulates that it shall be according to the proxy formula, the speculation formula, or the mixed formula between proxy and speculation. These formulas are defined in Articles 11, 10 and 12, and Article 13 stipulates that: The remuneration taken by the Takaful insurance company is determined according to the approved formula (proxy, speculation or mixed) by the Insurance Control Department when needed.

Article 14 stipulates that the general conditions of Takaful insurance policies must be subject to the visa stipulated in Article 227 of Ordinance No. 95-07, as amended and completed, and that the visa application must be accompanied by a certificate of conformity of the Takaful insurance products to the provisions of Islamic Sharia, delivered by the Sharia Board of Fatwas for the Islamic financial industry.

Article 15 also stipulates that the Takaful insurance company must establish an internal committee called the Supervisory Committee, tasked with monitoring and following up all operations related to the company's Takaful insurance, and expressing an opinion or decisions regarding the conformity of these operations with the principles and provisions of Islamic Sharia. The decisions of the Sharia Supervisory Committee are binding on the company. The provisions and laws of the work of this committee have been clarified in Articles 16 to 20 of the same decree.

#### **4.1.2. Organization and management of Takaful insurance companies**

The legislator stipulated the organization and management of Takaful insurance companies from Article 21 to Article 26 of Executive Decree no. 21-81, where Article 21 stipulates that the company practicing Takaful insurance must keep financial and accounting accounts separately, as follows:

- An account related to the investment of the partners' capital of the Takaful insurance company.
- An account related to the participants' fund that we have already touched upon, in which it is registered:

- For revenue: Contributions, employment income, accident appeals, and any other revenue;
- For expenditures: Compensations, balances and other operating expenses.

Upon closing of the fiscal year, the fund balance constitutes the technical result resulting from the difference between the above-mentioned revenues and expenditures according to Article 22, where if the fund balance is positive, the amount of this balance is distributed according to the contractual terms, as determined according to one of the methods mentioned in Article 23, which is:

- ✓ The distribution includes the total of participants without distinction between those who benefited and those who did not benefit from compensation, during the relevant fiscal year;
- ✓ The distribution is limited to participants who did not benefit from compensation, during the relevant fiscal year;
- ✓ The distribution is made on the basis of each participant's contribution, after deducting the compensation paid to them, during the relevant fiscal year. If the amount of compensation paid exceeds his share of the balance amount, the participant shall not benefit from any payment.

The method used in distributing the fund balance is clarified in the articles of association of the insurance company, which practices Takaful insurance.

But if the fund balance is negative, Article 24 stipulates that a company that practices Takaful insurance can grant credit to the participants' fund, called "Qardh El Hassan", The amount of "Qardh El Hassan" shall be recovered from the positive balance of the fund, which will be realized later, and "Qardh El Hassan" cannot exceed the amount of 70% of the amount of funds belonging to the company carrying out Takaful insurance.

With regard to Takaful reinsurance operations, Article 25 stipulates that a company carrying out Takaful insurance can resort to reinsurance companies carrying out reinsurance in the form of Retakaful "Takaful again".

If this is not possible and by virtue of the Daroura principle "necessity", the company carrying out the Takaful insurance can resort to conventional reinsurance companies, after decision of the Sharia supervisory committee. However, the practice of reinsurance, in the form of takaful reinsurance, according to Article 26, must be subject to the conditions and modalities stipulated in the provisions of Executive Decree no. 21-81.

#### **4.2. Prospects and challenges of the application of Takaful insurance in Algeria**

Executive Decree no. 21-81 is considered the cornerstone for establishing legal and legislative frameworks for the localization of the Takaful insurance industry in Algeria, by defining the laws on Takaful insurance that separate it definitively from its commercial counterpart, which will encourage insurance companies active in the Algerian market to move towards adopting Takaful insurance industry.

#### 4.2.1. Prospects for the application of Takaful insurance in Algeria

After the issuance of Executive Decree no. 21-81 of 23 February 2021, many insurance companies active in Algeria expressed their intentions to engage in the Takaful insurance industry, and to join the insurance company “Salama Assurances Algérie”, which was the only activist in this field, as some managers of these companies announced during press interviews about their future projects that they are about to study in order to experience the Takaful insurance, where:

- The assistant to the Chief Executive Officer of the National Insurance Company (SAA) and the head of the Takaful insurance project in the same company, Mahfouz Ziane Bouziane, revealed that they are preparing to establish two independent companies to practice Takaful insurance, the first specialized in property and civil liability insurance, and the second specialized in insurance for persons. He pointed out that this strategic and ambitious project will be the fruit of a distinguished partnership between public insurance companies and public banks that have opened or will open windows for Islamic banking. Although Executive Decree 81-21 framing the practice of Takaful insurance, allows the practice of this activity by opening a window for Takaful insurance by traditional companies or establishing a subsidiary or an independent company, they preferred, in the National Insurance Company, the second formula, as they decided not to engage in this experience alone, but rather they shared it with their partners in the insurance and banking sectors, in order to ensure the greatest chances of project success and to avoid useless competition in an emerging industry, as is the case with Takaful insurance (harchaoui, 2021, pp. 39-40).
- The General Manager of the Algerian Company for Insurance and Reinsurance “CAAR” Zohir Laiche announced the launch of the “Family Takaful” insurance products, indicating that work is underway to be prepared at the level of “Karama” subsidiary of the company, which is specialized in personal insurance (RABHI, 2021).
- The General Manager of the company “Salama Assurances Algérie”, Mohamed Ben Arbia, which was the pioneer in Takaful insurance in Algeria, expressed the company’s readiness for the Takaful Insurance Law, announcing a new strategy to adopt the company with the Takaful Insurance Law. The company, as the general manager revealed, began to form a wide network for preparatory procedures, expressing his optimism about this law, which, according to him, will clarify the vision, and determine the duties and rights of all parties. In the context of the competition that “Salama Assurances Algérie” will face in the insurance market, especially within the framework of the solidarity of public companies to establish two specialized companies in Takaful insurance, as it was previously the only company dealing with Takaful insurance products, despite the lack of the necessary legal environment at that time, saying that he welcomes honest competition, built on sound foundations (Yenoune, 2021, pp. 12-13).
- The company “Alliance Assurances” announced that, in the context of the reforms taken by the higher authorities and the launch of Islamic banking and Islamic insurance more commonly known as Takaful Insurance, it intends to launch Takaful insurance in the near future, in line with the national policy to promote Islamic banking. The company has

started appointing a team of high-level experts to implement the project in the fullest and in the shortest time possible (Alliance Assurances, 2021).

#### **4.2.2. Challenges of implementing Takaful insurance in Algeria**

- Compulsory forms of depositing 50% of the profits of insurance companies with the treasury as bonds still hinder the process of separating funds for commercial insurance from funds destined for the takaful category, a matter that must be resolved in order to fully comply with the principles of Islamic Sharia;
- The low insurance culture among individuals, as it is considered as a tax that he is obliged to pay for. This is due to the low average income of the individual on the one hand, the high prices of insurance products on the one hand, and the insurance companies' failure to raise the awareness of the necessity of insurance as well as not introducing their products, which will be repeated with Takaful insurance, as the Takaful insurance companies did not adapt the value of the premiums to the capabilities of individuals on the one hand, and did not commercialize Takaful insurance products and introduce them to individuals on the other hand;
- Although the concept of takaful insurance has been advanced before, it is new to the Algerian citizen, so the definition and marketing of takaful insurance products must be intensive, as for example, the takaful insurance premiums are paid with the intention of donation, not obligation, and invested for the purpose of cooperation and charity and not for the purpose of profit. They are fresh ideas for the Algerian individual, so some may find it difficult to pay their money for the purpose of cooperating with strangers they do not know;
- Lack of qualified human resources that combine the technical aspect and the legal aspect related to Takaful insurance transactions.

#### **5. Analysis of the results**

It can be said from the above that the trustee bodies were keen to provide the minimum conditions necessary for practicing Takaful insurance activity without delving into the rationales and technical issues that they referred to the regulatory and implementation texts to be issued later, which requested, in the course of their preparation, the insurance institutions to submit a proposal in order to remedy the accounting, tax and regulatory procedures omitted by the decree, to name a few.

The sure thing is that Takaful insurance will constitute a real addition to the insurance market in Algeria in terms of accompanying Islamic banking products and providing an alternative for the Algerian citizen who is embarrassed to deal with the conventional insurance system, as is the case with dealing with conventional banks. Thus, we will have an integrated system that responds to the desires and convictions of all segments of society in a manner that serves the public interest.

There are no insurance companies that carry out Takaful insurance transactions in Algeria, except for "Salama Assurance Algérie" company, which tried to provide a range of Takaful insurance services, but it was in conflict with the legal and regulatory frameworks that are not supportive of this industry in the absence of special laws regulating Takaful insurance, and this led to the reluctance of other insurance companies to adopt Takaful



insurance services (before the issuance of Executive Decree no. 21-81). However, the issuance of Executive Decree no. 21-81, which laid the foundation stone for Takaful insurance in Algeria, will allow insurance companies active in the Algerian market to adopt the Takaful insurance industry, and this is what we have seen in the statements and announcements of insurance companies about their future projects related to Takaful insurance (This proves the validity of the main hypothesis).

## **6. Conclusion**

The idea of Takaful insurance is based on cooperation to ward off risks and share profits and losses, based on foundations and rules that are in line with the provisions of Islamic Sharia. Takaful insurance industry has gained great acceptance and spread all over the world. Despite this wide spread, the Takaful insurance industry in Algeria is still young, as there were no previous legal frameworks in line with the legal requirements of Takaful insurance, until the legislator issued Executive Decree no. 21-81 specifying the conditions and modalities for practicing Takaful insurance.

### **6.1. Results:**

Based on our study, we reached the following conclusions:

- Executive Decree no. 21-81 specifying the conditions and modalities for practicing Takaful insurance is the first step in laying the foundations for the Takaful insurance industry in Algeria, through a complete separation of the Takaful Insurance Law from commercial insurance, but this decree remains incomplete because it does not address the technical and technical issues that are expected to be tackled later in other decrees;
- Takaful insurance is practiced by the insurance company, through an insurance company that practices Takaful insurance operations, - or through an internal organization called a “window” with an insurance company that practices conventional insurance operations, according to two forms, namely, family Takaful insurance, and general Takaful insurance;
- The company that practices Takaful insurance operations, manages the participants’ fund according to three formulas of exploitation, namely: proxy, speculation and the mixed formula between proxy and speculation, for the company to choose one of them;
- The decree specified how to keep the accounts of the Takaful insurance company, and how to deal with cases of surplus and deficit that could occur to it, as it stipulated that the surplus belongs to the participants’ fund and the managing company does not deserve any of it, which is consistent with what the Fiqh academies and the accounting and auditing organization for Islamic Finance Institutions said;
- The Algerian legislator emphasized the necessity of framing Takaful insurance operations at the level of each Takaful company by establishing a “Sharia Supervisory Committee” tasked with monitoring and following up on all operations, specifying their qualifications, tasks, how to organize them and the duration of their work.

### **6.2. Recommendations:**

Through what was stated in this study, the following recommendations can be made:

- Despite this general positive atmosphere about the future of the Takaful insurance industry in Algeria, the success of the project requires serious work to provide the best

conditions for its success, so the contribution of both public insurance companies and public banks is the biggest guarantee of its success;

- The need to pay attention to the awareness and sensitivity aspect of Takaful insurance products through the organization and implementation of intensive advertising programs and promotional campaigns aimed at instilling the insurance culture in the Algerian individual, as the focus on insurance production and neglect of the effective insurance marketing framework leads to the difficulty of marketing or selling Takaful insurance services;
- The actual commitment to the regulatory aspects of the work of Takaful insurance companies approved by the international legal bodies is considered one of the rules that guarantee a sound start;
- The necessity of establishing reinsurance companies in parallel with insurance companies so that the latter does not resort to reinsurance with commercial reinsurance companies;
- The necessity of providing the executives and skills in the field of Takaful insurance, including insurance experts and Sharia specialists.

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