Liability An amount for which the insurer is obligated by law. Also, the amount required by statute to be reported as a liability (money owed) in the insurer's annual statement.

Mass Merchandising A general marketing technique which, applied to insurance, is a programme where a group of persons insure with one company, usually at lower than standard premiums, because of the expense economy to the insurer. Until recently such plans were principally used in life, accident and health insurance but now are extended to other classes such as automobile and homeowners' policies.

Mutual Insurance Insurance in mutual companies, that is, companies without stockholders or capital stock. All risks and all profits are the property of the policyholders. They are sometimes classed as cooperative insurance companies.

National Association of Independent Insurers (NAII) A body, formed to work together and exchange ideas, of companies that do not belong to a rating bureau unless legally required to do so, preferring to act independently. Membership of the association includes fire, casualty and surety companies of all types. It acts as an advisory body and statistical agent for its members and has headquarters in Chicago.

National Association of Mutual Insurance Companies (NAMIC) This is the world's largest insurance company trade association, comprising more than 1,000 member companies located throughout the US and Canada. NAMIC is the channel through which all mutual fire and casualty companies, working together, can express views on common problems and take concerted action toward the solution for the immediate and long-term good of the mutual insurance business. The headquarters are in Indianapolis, Indiana.

National Flood Insurers Association A voluntary pool of property insurers, formed to provide flood insurance for dwellings in specified areas in collaboration with the US Department of Housing and Urban Development (HUD). This joint venture produces a market for flood coverage. The association was formed in 1968 and has headquarters in New York.

Rating Bureau An organization that fixes the rates that companies charge for their policies. In most States rating bureaux are established in conformity with rating laws.

Re-insurance The process whereby a company may share its risk with another, paying to such a sharing company a portion of the premium it receives. Conducted in different ways, re-insurance contracts pay only the company which re-insures, not the policyholder.

Surplus After a company's liabilities are deducted from its assets, what remains is the surplus.

Umbrella Liability A form of excess liability insurance available to corporations and individuals, protecting them against claims in excess of the limits of their primary policies or claims not covered by their insurance programme. This latter coverage requires the insured to be a self-insurer for a substantial amount ($10,000–25,000).

Australia

Commonwealth Government Actuary A Commonwealth official giving actuarial advice to government departments and the Life Insurance Commissioner on matters coming under the Life Insurance Act. At the time of writing the offices of Commonwealth Government Actuary and Commonwealth Life Insurance Commissioner are held by the same person.

Commonwealth Life Insurance Commissioner An official of the Treasury designated by the Commonwealth Life Insurance Act to administer the provisions of the Act regarding the conduct of life assurance business in Australia. Under this Act, life assurance includes both industrial insurance and superannuation business conducted by life offices.

Compound Bonus In life assurance, a bonus to the amount related to the sum assured and existing bonuses.

Conversion of Policy An alteration of a policy from one type to another, which can involve movement from the with-profit class to the non-profit class, or vice versa. This can mean that the policyholder becomes, or in the reverse case ceases to be, a member of a society.

Faculty of Actuaries Similar to the Institute of Actuaries based in Scotland.

Friendly Societies A specific type of mutual insurance society usually concerned with life and sickness insurance and governed by special legislation. Societies are often local in scope or limited to members of a particular trade or profession. Some societies have entered the field of health benefits in connection with the National Health Scheme. Some of the larger ones also offer benefits similar to those offered by life assurance offices, although usually on a somewhat restricted scale.

Funds The accumulation of excess of income over outgoings. In fire and accident insurance, this normally applies to the amount provided in respect of unearned premiums and for additional departmental reserves.

General Meeting A meeting attended by the members and governed by the Companies Act as regards convening, notice and business. Matters such as the accounts, the directors' and auditors' report, election of directors and appointment and remuneration of auditors are dealt with at Annual General Meetings and any other business is dealt with at Extraordinary Meetings. In today's world, where most companies have large memberships, only a very small proportion of members attend these meetings.

Industrial Assurance Life assurance, conducted by assurance companies, which is subject to special provisions in the Commonwealth Life Insurance Act, 1945–1973. The significant feature of such business is that premiums are received by collectors. Contracts are normally for somewhat smaller sums assured than are funds in non-industrial business and premiums are payable weekly or monthly. A simplified range of policies is offered.

Institute of Actuaries of Australia and New Zealand A professional association of actuaries based in Australia and New Zealand. This is a non-examining body whose members would normally also be members of one or other of two United Kingdom bodies, the Institute or Faculty. The functions of this Institute include the surveillance of professional conduct and practice and providing a forum for discussion of matters of mutual interest.

Insurance Office The general description of a body conducting insurance business, whose title, amongst others, can be Company, Society, Association or Institution. It may coincide, although this is not always the case, with the description 'mutual'.

Letter of Acceptance The document whereby the offer of a contract is made to a proposer by the Life Office. The payment of the first premium constitutes the agreement by the proposer to this contract.

Liabilities The present value of the obligation to the policyholders, that is, technical reserves, determined on a basis decided by the Actuary of the office. In fire and accident insurance, liabilities comprise mainly provision for unearned premiums, outstanding claims and miscellaneous creditors.

Life Insurance Act 1945–1973 A Commonwealth Act of Parliament which stipulates the conditions under which companies and societies transact life insurance business.

Life Offices' Association for Australia A voluntary association of companies or other institutions transacting life assurance business in Australia. The mutual life offices are all members of this association.

Members Persons entitled to vote at a general meeting of the mutual insurance office, normally those participating in profits. In fire and accident insurance, the policyholders of a Society are, *ipso facto*, also its members. Persons or classes of persons eligible for membership are defined in the society's Articles of Association.

Memorandum and Articles of Association The legal document establishing the company and setting out the objects for which it has been established (the Memorandum) and details of its system of operation and administration (the Articles). Alterations can be made only by Members in General Meeting and in conformity with the provisions of the Companies Act.

Mutual Insurance Insurance provided by funds of which share capital forms no part.

Mutual Insurance Society A voluntary association of persons or companies to establish a formal organization for the purpose of providing themselves with a specialized insurance service in either a particular class of business (such as life assurance, employer's liability insurance, etc.) or a particular industry (such as agriculture, etc.).

Non-forfeiture A provision frequently included in a life assurance policy whereby in the event of non-payment of a premium, cover is maintained until arrears of premium and interest exceed the technical reserve, at which time the policy is terminated.

Non-profit Policyholders Policyholders who do not share in the profits of the office. Their relationship to the assurer is no different from that of policyholders in a proprietary company.

Officers Staff appointed by the directors for executive duty, normally full-time.

Participation in Profits The right to share in periodic distribution of surplus.

Policy of Assurance The document prepared by the Life Office setting out the details of the contract between the office and the client.

Reserves Arbitrary additions to the liabilities or writing down of the assets to add to the stability of the office.

Reversionary Bonus In life assurance, a bonus expressed as an amount payable when a policy becomes a claim.

Simple Bonus In life assurance, a bonus the amount of which is related only to the sum assured.

Surplus The excess of funds over liabilities determined at a valuation. In fire and accident insurance, it is synonymous with profit, that is, the balance remaining for the benefit of members after payment of claims, commission and expenses and after provision for outstanding claims and unearned premiums.

Terminal Bonus In life assurance, a final allocation of bonus payable when the policy becomes a claim.

With-profit Policyholders Those who have the right to a share in profits. Usually synonymous with membership of the Society.

Canada

Accidental Death Insurance Insurance accepted by the insurer which is an additional insurance to a life contract and obliges the insurer to make an additional payment of compensation if the person insured meets with a fatal accident.

Accumulation of Capital Creation of a capital by regular payments into an interest bearing fund to accumulate surplus for increasing future reserves.

Actuary Expert in risk calculation of probabilities in life and accident insurance, etc. According to the wording of the new law, this term also describes a Fellow of the Canadian Institute of Actuaries.

Agency A term with three distinct meanings:

1. an organism that, within a definite area, acts as an intermediary between the insurer and the insured and is responsible for insurance production and, to some extent, administration;
2. the method of acquisition, in contrast to the system of general agents; and
3. the office in which this activity is performed.

Aggravated Risk *See* 'Substandard Risk'.

Annuitant A person drawing a pension from a natural person or a corporate body on the ground of an annuity contract or a judgment of a court of law in connection with annuity contracts; this expression is preferred to the term 'insured'.

Applicant The one who signs the policy form. He becomes the contracting partner when the policy is issued by the insurer.

Application Also called a 'proposal'. A document filled in and signed by the applicant which contains the application and gives the insurer information about the circumstances that have to be known for the evaluation of the risk to be covered.

Assets The total values which a company must possess to be able to meet its obligations to the insured persons. The law prescribes both the types of possible investments and the maximum percentage of holdings in each class of investment. The most important classes include: mortgage loans, State and private bonds, real estate, equity shares of industrial companies, loans on policies.

Auditor A person charged with the annual audit of the books and accounts of an insurance company and nominated according to the laws referring to the insurer or by the Annual General Meeting. The auditor has to be an accountant and a member of an established accountants' association and must not be a shareholder, a board member, a manager, or an employee of the insurer. The auditor draws up the annual report and this report, together with one of the board of directors, is presented to both the annual general meeting and the insurance office.

Beneficiary Person who, in the event of a claim covered by contract, shall receive the sum insured. The beneficiary may be designated so that the sum insured is payable to the policyholder, to his legal successors, or to a nominated beneficiary. If it is to be paid to the policyholder's legal successors, heirs, executors, or trustees, it forms a part of his inheritance.

Board of Directors At the general meeting, the board members are elected. If it is a joint stock company, they are elected by the shareholders and normally are shareholders themselves. In the case of a mutual society, the members elect the board of directors, all of whom must themselves be members entitled to vote. In the event of a joint stock, life insurance company issuing with-profits policies, the holders of such policies who are present at the general meeting elect at least one-third of the board members. Every board member elected in this way has to be himself a holder of a with-profits policy. The members of a mutual life insurance company, a mutual assistance society, or a fire insurance mutual are entitled to vote. An individual has to be of age. Regardless of the number or the sum of contracts, every member has only one vote, and can vote in person or appoint a proxy.

Bonus System According to this system, additional insurance can be included into a with-profits policy during the term of the contract. In such cases the share in the profits is used as a single premium for the purchase of supplementary insurance.

Certificate of Deposit Certificate to be presented by every member of a fire insurance mutual before a policy is handed over to him. The amount is fixed by the board of directors according to the regulations of the company, relative to the risk to be covered by the insurance. The term 'certificate of deposit' has to be indicated at the head of the form in a conspicuous way.

Certificate of Participation Instead of indicating all the rights and obligations of its members in the contracts, a mutual assistance society can make reference to its rules and by-laws in the certificates of participation. This method implies that the associate can claim his right to demand a copy of those rules.

Claim The happening of the event specified in the policy, as a result of which the insurer is bound to indemnify: (i) the insured in his person or in his belongings, or, in case of death; and (ii) the nominated beneficiary according to the contractual terms.

Claims Inspector A person employed directly by an insurance company or contracting with an insurance company to examine and estimate the damage and establish the allowable claim payment.

Contracting Partner Person or corporate body effecting insurance. Where a third person's life is insured and the policyholder is not identified, in the case of a group insurance contract, the contracting partner is the employer. (*See also* 'Applicant' and 'Policy Applicant'.)

Contribution Premium paid by the member of a fire insurance mutual or a mutual assistance society. The rate of contribution is fixed by the board of directors. The amount of every contribution is deducted from the one indicated in the certificate of deposit signed by the member. This term is also used for the share to be paid by a member participating in a pension or group insurance contract.

Conversion into a Mutual Insurance Company The transformation of a life insurance company issuing shares into a life insurance mutual by means of stock redemption. The plan referring to this has to be set down in special regulations approved by the majority of shareholders summoned to a meeting for this purpose. It can be carried out if it meets the requirements of the authorities controlling the company. However, the Minister has to be convinced that the conversion into a mutual society is feasible, that the capital to be raised for the redemption of stock presents no risk to the protection of the insured persons, that a certain percentage of shares is offered for sale and that the prices are fair and reasonable.

Conversion Privilege According to this privilege, which is granted under a term insurance contract, the insured, if he has paid all the outstanding premiums, may assign his policy to the insurer in exchange for a new life endowment insurance contract of which the sum insured may be equal to or smaller than the existing contract. Another examination of his insurability is not necessary and he can choose between: (i) paying the difference between the premiums paid according to the original contract and those which would have been stipulated by the new contract for the same period of time (consequently making the dates of issue of the new and the original contract identical); or (ii) concluding a new contract. In this case, the age of entry is that at the time of conversion, and the rate of premium is the one fixed by the insurer for the new type of contract.

Deposit Amount prescribed by law which has to be paid to the Ministry of Finance by every insurer requesting the granting or renewal of the concession. It has been established with a view to guaranteeing the performance of contractual obligations.

Disability Insurance Additional insurance to a life insurance contract. It binds the insurer to compensate an insured disabled through illness or injury by premium waiver or by cash indemnity.

Discharge Some industrial life insurance contracts contain the so-called 'discharge' clause. If no beneficiary is nominated, the insurer is entitled to decide in favour of certain persons such as those who have given the insured financial support or who have borne the expenses of his funeral. In this way the insurer is in a position to pay benefits without any delay and with a minimum of administration cost.

Distraint, Immunity from The proceeds of the policy do not belong to the estate of the insured. Hence his creditors do not have a legitimate claim to them if a beneficiary is nominated. In Quebec, this particular protection is to the advantage of the preferential beneficiaries, namely the insured's spouse and children. In the case of a mutual assistance society, the benefits to which the insured, the widow(er), the heirs, or the legal successors have a rightful claim are not subject to distraint.

Dividend Share of profits paid to every shareholder of a joint-stock company. According to the profit-sharing system, the contracting parties have a share in the profits realized by the company.

Extra Premium Also called 'Loading'. An additional charge imposed by the insurer in case of substandard risk. Chiefly claimed for occupational reasons, in case the insured person performs an activity that is dangerous or injurious to health or for reasons of health, if the insured is afflicted with some infirmity or disease, or because of the insured, or the insured's family's, antecedents.

Fidelity Guarantee Guarantee for every person who has responsibility for any aspect of the funds of an insurer. It assures the company and its policyholders against unfaithful performance of the obligations stated in the regulations of the company. The guarantee amount is fixed by the board of directors or a minimum amount is prescribed by law.

Funds Every mutual assistance society is bound to keep the books so that separate funds exist for the various kinds of aids and indemnities. In addition, a special fund exists for the purpose of meeting general expenses. Once a year, all these funds are balanced with the inclusion of the respective premiums and contributions.

General Manager, Officers Cadres of high rank authorized by the Board of Directors. Their rights and obligations are described in the company regulations relative to the business purposes.

General Meeting A meeting of shareholders of a joint stock company or of members of a mutual society, where the motions on the agenda are put to the vote, the annual reports of the board members are received, the board members are elected, and other items such as selection and remuneration details of an auditor may be discussed and acted upon. The general meeting is convened according to the legal rules or the by-laws of the company.

General Provisions In addition to the conditions described under 'Insurance Policy', insurance of persons has to contain the following provisions:

1 the time fixed for premium payment;
2 a table for the calculation of the surrender value;
3 a policyholder's rights regarding:
    i participation in profits;
    ii the surrender value and loans on the policy; and
    iii the transformation of the contract;
4 the terms of reinstatement;
5 the modalities of paying sums due; and
6 the term during which payments have to be effected.

Guaranteed Values Values reached by the policy after a certain period of time. They vary with the age, currency, and type of the contract, and include:

1 prolongation value, or temporary insurance of the same capital as the original insurance;
2 surrender value, or the sum reimbursed to the insured on the cancellation of his contract; and
3 reduction value, or reduced insurance of the same nature as the original insurance.

Industrial Life Insurance A life insurance contract of which the sum insured amounts to a maximum of $2,000. No participation in profits and no bonus or dividend payment. Premiums become due every fortnight or at shorter intervals, also monthly, if collected at the insured person's residence.

Insurability Determination by the insurance company as to whether insurance may be issued, modified or declined based upon individual risk factors of the applicant. Future insurability guarantees to the insured by contract an opportunity to effect an additional insurance at future specified times. Future examination of his insurability is not necessary and following increased optional insured amounts are fixed at the conclusion of the original contract.

Insurable Interest In life insurance, Insurable Interest can be defined as the policyholder's legitimate interest in the continuation of the insured life for economic reasons or family. In property insurance, it becomes relevant if a person suffers damage through the loss or destruction of property. The Civil Code says that the insurable interest must exist when loss to property occurs. In life insurance, however, it is only necessary that the insurable interest existed when the contract was issued. The degree of people's interest in their own lives is not limited. Between the creditor and debtor the life insurance interest is limited to the debt, and for property insurance against loss or damage; the interest shall not exceed the real value of the property insured.

Insurance Contract Contract by virtue of which the insurer obtains a premium or contribution and is bound to pay benefits to the policyholder or to a third party in case of an insured loss. The text of a contract is usually recorded in a document called the Policy.

Insurance Policy The document that attests the insurance contract, indicates the commencement and the term of the contract, the names of the parties and of any person to whom the sum insured is to be paid, the premium amount, the type of risk, the subject-matter of the contract, the sum insured, and contains the general provisions.

Insured An individual or a corporate body participating in the insurance by signing an insurance contract accepted by the insurer. In life insurance the insured is the person whose life is insured and who is also the applicant or contracting party and policyholder. In a contract on the life of a third party the insured is the third party. In this case the person who contracts for coverage is called applicant, contracting party and policyholder but not the insured. In a group contract the employer negotiates with the insurer, and is generally called the policyholder. The insured persons are the employees covered.

Insurer Term which defines:

1 the insurance company; and
2 every person professionally competent in the domain of insurance. A person who, directly or indirectly, offers services as an insurer or assumes this title, effects or is bound to effect insurance, collects premiums, contributions, or other sums due by virtue of such contracts, and is bound to make the payment of insurance benefits or mutual aids.

Lapse Cancellation of a life insurance contract for non-payment of premiums at the expiration of the time fixed for payment, which is 30 days from the due date.

Liabilities Total debts, charges, and obligations of a company. The reserves provided by the articles form the principal item and are used for covering the obligations to the insured persons. The following items should be mentioned also:

1 the reserve for amounts deposited with the company;
2 the reserve for the payment of profit shares (or dividends);
3 the reserve for payments falling due;
4 the employees' pension fund; and
5 unpaid bills, etc.

The excess of assets over liabilities forms the net property of the shareholders (if such exists) and of the insured persons.

Licence
Authorization a corporate body has to obtain from the Superintendent so as to act as an insurer. The same term describes the authorization that entitles a person to bear the title of an insurance agent and to act as such. The Superintendent grants it by virtue of a special examination. Finally, a corporate body can obtain this licence, if all the persons through the intermediary of whom it acts or intends to act are authorized in such a way.

Life Insurance Agent The person charged by a life insurance company with contacting and keeping in touch with clients. A distinction is made between:

1 the full-time professional agent, whose sole occupation is the production and maintenance of life insurance; and
2 the part-time agent, who dedicates only part of his time to his pursuit.

Loading *See* 'Extra Premium'.

Member One of the founders of a fire insurance mutual or any other person who subscribes a certificate of deposit so as to obtain a policy. In case of a mutual assistance society, too, this term describes a founder or a person who subscribes an application for admission and undertakes to pay the premiums, contributions, and donations prescribed in the regulation and is willing to comply with the regulations. The term also describes a company, association, or other organized group insurance, whereas the person insured by such a contract is called a participating member.

Mutual Assistance Society According to the wording of the Insurance Law of Quebec, a mutual assistance society is an association founded with a view to using the contributions of its members for supporting those members who suffer misfortune caused by sickness, accident, and financial reverses or through the death of their children or wards. In case a member dies, the widow(er), orphans, or legal representative are supported in the same manner.

Mutual Life Insurance Company Also called a Mutual Life Insurance Society, an Insurance company that has used its surplus for the redemption of stock or originates in the transformation of a mutual assistance society. In both cases, the insured persons are the owners of the company and are entitled to elect the board members.

Participation in Profits The clause of an insurance contract according to which the insurer is bound to give the policyholder of a participating contract a share in the profits made by the company. The insured persons are obliged to accept the distribution of the profits arranged by the board, as it is stated in their contracts. While it would be expected that joint stock companies issued non-participating policies and mutual societies with-profits policies, the majority of joint stock companies issue with-profits policies. Hence they are bound by law to distribute at least 90 per cent of the profits gained from this category of business to the insured persons. On the other hand, mutual societies also issue non-participating policies.

Policy *See* 'Insurance Policy'.

Rating This term has two distinct meanings:

1 a general statement of the premium rates applicable to all age groups and arranged according to the various combinations of contracts offered by the company or, in property insurance, according to the types of construction, isolation, fire, etc.; and
2 the fixing of the premium for a given contract.

Reinstatement Also called 'Revival'. Restitution of a life insurance contract that has been cancelled for non-payment of the premium. Within two years after the cancellation, the policyholder has to make an application, which is granted on the condition that the insured complies with the terms of insurability, makes payment of the overdue premiums and reimburses the advances plus interest.

Re-insurance Process according to which an insurer (assignor) transfers part of the risk to be covered to a re-insurer (assignee).

Re-insurer Insurance or re-insurance company that shares the risk with the insurer by underwriting the excess of the insured limit or a part of the risk assumed by the insurer for the purpose of setting a limit to the insurer's loss of property. The insurer pays a premium adequate to the risk assigned to the re-insurer.

Reserve Fund Fund established by the board of directors of a fire insurance mutual when the contributions are fixed. It is built up with the surplus remaining to the company after deduction of the ordinary expenses and losses and may be used for balancing the annual contribution and for the adjustment of damages. The annual contribution levied for this fund amounts to 10 per cent of the amount fixed in the certificate of deposit.

Revival *See* 'Reinstatement'.

Substandard Risk Also called Aggravated Risk. Risk not acceptable at normal or ordinary conditions because of the occupation, previous history of the person insured or poor health of the person. Risks of this kind entail additional premiums and may even be rejected by the insurer.

Sum Insured Sum guaranteed by contract, exclusive of supplementary insurance benefits (such as double indemnity in case of death by accident). This amount is usually indicated on the first page of the policy.

Superintendent of Insurance The Superintendent directs an insurance office, under the control of the Minister of Financial Institutions, Companies, and Cooperatives. In Québec, the Superintendent and his or her staff are treated in accordance with the civil service law. Charged with the control of the insurance transactions, the Superintendent has access to all the documents relative to insurance transactions and in possession of a person acting as an insurer or insurance agent. It is this office that licenses an insurance company or insurance agent.

Japan

Financial structure

A mutual (insurance) company has no capital. For establishing a mutual company, it is necessary, however, to raise a certain amount of money, called a foundation fund. It serves for starting up business activity and as a guarantee to the policyholders. This fund is a kind of debt from a third party to be paid off in the future. It is prescribed by the Insurance Business Law that a certain amount of money necessary for the repayment should be appropriated as a redemption each business year. A mutual company is required to set aside a reserve that is used for making up the general losses which may occur in the future.

Management

The bodies of a mutual company are subject to the provisions of the Insurance Business Law but many sections of Commercial Law are binding on a mutual company by virtue of statutory references (Kogawa 1992). The company is managed by the bodies detailed below.

General assembly of members

The Insurance Business Law provides that every mutual company must have, as a rule, a general assembly of members, but that it may, in its articles of incorporation, provide itself with a body to take the place of the general assembly of members. In practice, a mutual company has determined that the general meeting of representatives of members is almost the same as that of the general assembly of members. This body decides all questions of special importance relating to the constitution and existence of the mutual company, such as amendment of the articles of incorporation, winding-up of the company, transfer of contracts and amalgamation. This general meeting of representatives of members elects members of the board of directors.

Board of directors

This board has the exclusive right to decide the conduct of the business, but has no title to represent the company in dealing with third parties. The representative(s) of the company are elected from the directors by the board. Directors are called to keep the articles of incorporation, the proceedings at the general assembly and of the directors' meeting at the office, and a list of members and inventory, a balance sheet, a business report, a profit and loss account, and minutes of resolutions relating to the amortization of the foundation fund, the payment of interest thereon, the reserve and the distribution of surplus at the head office.

Auditors

Auditors are elected by the general meeting of representatives of members and are entitled to scrutinize the accounts of the company. Every auditor or the committee of the auditors has a right of access at all times to the books and papers relating to the accounting of the company and is entitled to require from the directors explanations concerning the accounts. Auditors must submit to the general meeting of representatives of members a report on the accounts presented by directors and examined by themselves.

Glossary of legal and contractual terms and procedures

Action calling the director to responsibility The members representing not less than 300 members may, in writing, demand the company to bring an action to call the director to account.

Actuary A life insurance company shall appoint an actuary to be in charge of matters relating to insurance calculations such as the basis of calculating premiums and liability reserve. The actuary shall acknowledge and confirm the correctness of the accounts in the documents to be filed with the Minister of Finance by the company.

Advisory Council Council, consisting of business leaders, professors and representatives of consumers chosen from outside the company, and which may be set up to consider constructive comments regarding the management.

Amalgamation A mutual insurance company may amalgamate with another mutual insurance company. In this case, the surviving company after amalgamation or the new company shall be a mutual company. In the case of an amalgamation of a mutual company with a stock company, the surviving company or new company may be a stock company.

Auditor Every auditor has a right of access at all times to the accounting books of a company and is entitled to require explanations concerning the accounts from the directors. The accounts, examined by auditors, must be presented to the general meeting of representatives of members.

Board of Directors A body elected by the general meeting of representatives of members and having the exclusive right to decide the conduct of the business. Representative directors elected by the board of directors represent the association when dealing with third parties.

Cause of Termination of Membership Membership is terminated for any cause specified in the articles of incorporation or by the extinction of the relationship of insurance.

Claim for Repayment The withdrawing member may, in accordance with the provisions of the articles of incorporation, or of the insurance policy conditions, demand the repayment of the sum to which he or she is entitled.

Deposit The persons filing an application for a licence to transact insurance business may be required to deposit a proper amount when the Minister of Finance deems it necessary. And, when considered necessary, in view of the situation of affairs or assets of an existing insurance company, he may order the deposit of assets, or may issue other orders necessary for its supervision.

Dissolution Winding up of a mutual company can take place on expiration of the term in the articles of incorporation, by resolution of a general assembly of members, amalgamation of the company, by transfer of all insurance contracts, by bankruptcy of the company, by cancellation of the licence, or by judgment of a court ordering dissolution.

Distribution of Remaining Assets Except as otherwise provided for in the articles of incorporation of the company, the remaining assets after liquidation shall be distributed among the members at the time of the company's winding up, in the same ratio as the distribution of surplus.

Distribution of Surplus Surplus may be distributed among the members qualifying under the articles of incorporation at the end of each business year, according to the decision of the general meeting of representatives of members.

Documents to be Produced to the Minister of Finance An insurance company shall close its books as on the last day of March each year, and shall, without delay after the conclusion of the general assembly, produce an inventory, a balance sheet, a business report, a profit and loss account and minutes of resolutions relating to the amortization of the foundation fund, the payment of interest thereon, the reserve and the distribution of profits or surplus for the Minister of Finance. These documents should be offered to the policyholders, insured persons or beneficiaries, for inspection.

Exception in Valuation of Shares If the market price of a share listed on the securities exchange market, which is held by an insurance company, exceeds its acquisition cost, the company, with the approval of the Minister of Finance, may mark its price ranging from more than its acquisition cost to less than its market price. This valuation profit (unrealized capital gain) must be funded as a reserve for policyholders of the company. (See 'Principle of Assets Valuation' and 'Reserve Provided for in Article 86 of the IBL'.)

Founder Members To incorporate a mutual company, at least seven founder members are necessary. They must make out articles of incorporation and make available the fund necessary for the company and assemble initial members (policyholders) of more than 100 in number.

Foundation Fund The amount of money provided by founders and contributors towards the foundation fund upon the formation of a mutual company and designed to serve as a guarantee and operating fund; this fund is in the nature of a loan rather than a capital and must be amortized in the future. The IBL provides that a mutual company must have a foundation fund of 30 million yen or more.

General Assembly of Members and **General Meeting of Representatives of Members** A mutual company has a general assembly of members as a final decision-making organ, comparable to a joint stock company's general meeting. The general meeting of representatives of members may be substituted for that of members.

Incorporation of a Mutual Company A mutual company may be organized by the following procedures:

1 making out the articles of incorporation by founders;
2 drawing original members, more than 100 in number;
3 setting out of the foundation fund;
4 convening the constituent general assembly; and finally,
5 registration of incorporation.

Insurance Business Law (Law No. 41, 1939) The Insurance Business Law consists of two main parts:

1 insurance supervision articles; and
2 articles relating to rights and obligations of members and to formation, management, and winding-up of a mutual company.

Insurance Company In the Insurance Business Law (IBL) it is stipulated that insurance business may be carried on only by joint stock or mutual companies with a capital or foundation fund of 30 million yen or more.

Interdiction of Carrying On Any Other Business An insurance company is, as a rule, prohibited from carrying on any other business. But a life insurance company may be authorized by the Minister of Finance to grant a policyholder a loan on his policy up to the amount of the surrender value.

Liability or Mathematical Reserve An insurance company must calculate a liability reserve according to the type of its insurance contracts every financial year and shall make entries in the books specially provided for this purpose.

Licence to Insurance Business Only companies licensed by the Minister of Finance may carry on insurance business. In applying for a licence, an insurance company must offer to the Minister of Finance such documents as articles of incorporation, a document showing the method of carrying on the business, etc.

Limited Liabilities of the Members of a Mutual Company Members of a mutual insurance company are not personally liable for the debts of the company and have no obligation to pay supplementary amounts over and above the premiums already paid.

Liquidation Bringing to an end the outstanding business of a company being wound up. It is carried out in the following order:

1 collection of debts;
2 realization of the remaining assets;
3 setting of claims of the company's creditors;
4 repayment of the foundation fund; and finally
5 distribution of remaining assets to the then members.

Mutual Insurance Company A legal person or body which is incorporated according to the IBL and grants insurance cover to its members against contributions. It is called an 'in-between corporation', neither a public service corporation nor a commercial company.

Mutualization of a Stock Company Alteration of a company's structure from a joint stock insurance company into a mutual company in accordance with a certain procedure, such as the passing of a resolution of the general meeting of shareholders or the approval of the Minister of Finance, is provided in Articles 19–31 of the IBL.

Particulars to be entered into the Register of Members In the register of members, the following particulars must be entered:

1 the names and domiciles of the members; and
2 the class of insurance, the amount insured and the corresponding premium for the insurance of each member.

Principle of Assets Valuation In cases of assets valuation, an insurance company must, as a general rule, be based on the cost principle provided in the Commercial Law and also the principle of conservatism (not conservation?) in order to ensure the solvency. (*See* 'Exception in Valuation of Shares'.)

Prohibition of Composite Management of Life and Non-life Business An insurance company is prohibited from doing life and non-life business concurrently. A life insurance company, however, may carry on *re-insuring* life insurance.

Reduction of the Amount Insured A mutual company shall have provisions in its articles of incorporation regarding a reduction of the amount insured. Most articles of incorporation describe that a reduction of the amount insured shall be the last resort in the event of an abnormally high loss.

Reserve Provided for in Article 86 of the IBL A legal reserve is provided for in Article 86 of the IBL. It was originally established for keeping the income and outgoings of the company from the influence of accidental profit and loss caused by the selling and buying or valuation of the assets. Hence, the profits should be allocated to this reserve, whereas the losses should be made up by withdrawals from it. With the sanction of the Minister of Finance, the profits may be used for other purposes wholly or in part.

Reserve to Make Up for Losses For the purpose of making up for losses, a mutual company shall set aside a reserve out of surplus for each business year. The total amount and the minimum amount thereof to be laid aside each year shall be determined by the articles of incorporation.

Selection of Representatives of Members A selection committee nominates the candidates for the representatives. Those nominated take up the posts of representatives, unless more than a certain portion object to the nomination within one month.

Finland

Actuary Every life insurance company must employ an actuary who is charged with mathematical calculations. The Ministry of Social Welfare stipulates the conditions with which the actuary must comply so as to be able to exercise his functions.

Articles The articles contain provisions such as those which lay down the title, field of activity, organization and representation of the company, as well as the rights and obligations of the members. The articles have to be ratified by the supervisory authority (the Ministry of Social Welfare and Health).

Auditor The general meeting elects at least two auditors (and their deputies), who are charged with checking the books and the balance sheet.

Board of Directors of an Insurance Company The board of directors must consist of at least three members and is elected by the general meeting or the board of administrators.

Bonus All surplus of life insurance has to be paid back to the policyholders. The repayment is effected according to certain rules laid down in the articles or in the general policy conditions.

Chairman of the Board of Directors The Finnish legislation permits the Chief Officer (General Manager) to be also chairman of the board of directors.

Company Report For each financial year the board of directors has to draw up a company report that covers the activities of the company and comments on the closing of accounts.

Concession Permission by the government to make insurance transactions. In connection with the grant of the concession, the articles of the company are ratified.

Control Office Organ established for the annual checking of the management, the books, and the balance sheet.

Establishment, Institution In earlier legislation this term was synonymous with the (insurance) company. It is no longer used in this sense.

General Manager of an Insurance Company The General Manager is nominated by the board of directors or administrators. The articles normally contain provisions relating to the obligations and liability of the General Manager, who may be a member of the board of directors or a person not affiliated with this organ.

General Meeting The supreme organ of an insurance company where, in case of a mutual society, the members exercise their rights to vote. The powers of the general meeting can be delegated to a special meeting of sub-committee elected by the policyholders.

Guarantee Fund According to the law of 30 December 1952, a guarantee fund is required for the establishment of a mutual. In circumstances defined in the articles, the holder of a share in the guarantee fund (guarantor) may be entitled to vote.

Insurance Business According to the law of 30 December 1952, insurance can only be transacted by joint-stock or mutual companies. A concession has to be granted by the supervisory authority. The law contains separate rules of company law for stock companies and for mutuals as well as some types common to both.

Insurance Company The insurance company law in force at present was promulgated on 30 December 1952. An insurance company is either a mutual or a joint-stock company. The law contains provisions that specifically apply to the mutual or the joint-stock type as well as others common to both of them.

Insurance Supervisory Authority Official organ charged with the supervision of private insurance. According to the law of 30 December 1952, every insurance company is subject to supervision. The Ministry of Social Welfare acts as supervisory authority.

Meeting of Sub-committee Body elected by the members of a mutual insurance company entitled to vote; the members of the sub-committee must be members of the company (*Yhtiokokous* and *Edustaja*).

Member The individual or corporate body taking out an insurance policy and, thereby, becoming a member of a mutual society.

Merger The assets and liabilities are transferred from one company that is generally to be dissolved into another.

Mutual Insurance Company Also called a mutual insurance society. In principle, the policyholders of a mutual insurance company are its owners and are usually held responsible for its liabilities. Both the mutuals and the stock companies are subject to the control of the supervisory authority, that is to say, they are State-controlled.

Obligation to Pay an Additional Contribution A kind of extra payment of a supplementary amount over and above the premiums already paid. It has to be laid down in the articles of a mutual whether and to what extent the policyholders are responsible for the liabilities of the company. If necessary, the articles must contain the principle according to which the personal liability of a member can be claimed.

Outstanding Claims Reserve Reserve for pending claims (damage) which has to be indicated as a special item on the balance sheet. The supervisory authority gives directions about the calculation of the outstanding claims reserve.

Parent Company The company that owns more than half the shares (or votes) of another stock company. The two companies form a combine. A combine-like arrangement can also occur between two mutuals if, in accordance with the articles, one of them assigns to the other a decisive number of voting rights at its general meeting.

Perpetual Insurance Fire insurance on house property, in a contract without specified expiration dates. Since 1967, insurance of this type has no longer been effected. A single premium or premiums for a limited period of time is charged.

Principle of Adequacy According to the law of 30 December 1952, the amount paid for the insurance, that is to say the premium (reduced by possible surplus amounts), shall be in adequate proportion to the insurance benefits.

Proxy It has to be stated in the articles of a mutual whose policyholders employ their rights to vote directly to what extent the voter may appoint a representative in his or her place. In a meeting of the sub-committee representing the members, the right to vote has to be exercised personally.

Representative In principle, the mutual insurance company policyholders are entitled to vote at the general meeting. However, in accordance with the articles, the powers of the general meeting can be delegated to a meeting of a sub-committee whose members are elected by the members of the company, a customary practice for a large mutual.

Reserve Fund Reserves that form part of the company's own capital. According to the law in force at present, the reserve fund is no longer compulsory.

Supervision The insurance companies are subject to the control of the Insurance Department of the Ministry of Social Welfare and Health. The powers of the supervisory authority are regulated by the law of 30 December 1952.

Supervising Authority Insurance Department of the Ministry of Social Welfare and Health.

Transfer of Insurance Portfolio According to the law of 30 December 1952, an insurance portfolio can be entirely or partly transferred from one company to another. This cession depends on the permission of the supervisory authority.

Appendix 4

GLOSSARY OF ISLAMIC FINANCIAL TERMS

bai bithaman ajil Contract of sale of goods on deferred payment, either lump sum or instalment.

fatwa A religious decree.

fiqh Islamic jurisprudence, interpretation of the *Shari'a* religious law.

gharar Deception involving deliberate creation of, or exploitation of, uncertainty as with gambling.

halal Permissible under the *Shari'a* religious law.

ijara Leasing contracts whereby a bank purchases equipment on behalf of a client.

ijara wa iqtina As *ijara* but the purchaser owns the equipment at the end of the contract.

jahala Ignorance.

Mudaraba Trust financing where there is an agreement between two parties, one of whom is the *rab-al-maal* (financier), the other the *mudarib* (entrepreneur). The profit is shared out in accordance with the contract, the entrepreneur being rewarded for his efforts and the financier (who can be the bank or an individual) for the use of his capital and the risk in providing the capital.

Murabaha Cost-plus financing involving a contract between a bank and its client for the resale of goods at a price which includes a profit margin agreed by both parties, as owner the bank retains responsibility for the goods until they are resold.

Musharaka A partnership agreement between two or more parties whereby they jointly finance a project with profit shared according to a pre-agreed ratio, and losses shared in relation to the equity holding in the project. An entrepreneur's share of the profit may exceed his liability for losses, reflecting the effort he puts into the project. A method of Islamic venture capital funding.

qard al hassan An interest-free loan.

rabb-al-maal Financier or investor.

riba An addition to the principal of a loan, usually interpreted as interest payment or receipts for both commercial and private loan.

riba al-fadl Interest involved in barter.

Shari'a Islamic religious law derived from the Quran and the *Hadith* (sayings of the Prophet Mohammed).

Sunna Practice and traditions of the Prophet Mohammed.

ta'min Insurance.

Takaful Islamic insurance provided under the principle of mutual support.

waqf Property the income from which is used to help the poor and needy. *Waqf* property cannot be bought or sold, and is usually administered by a religious foundation.

Zakat A religious tax applied annually to wealth in the form of liquid assets at the rate of one-fortieth of the value of the assets. The revenue can only be used for charitable purposes such as helping the poor or the needy.

NOTES

1 THE MEANING OF INSURANCE IN ISLAM

1 Al-Ghazali, Ihya' Ulum el-Din (Revival of Religious Sciences) has devoted one of four volumes to worship. He discusses the knowledge, articles of faith, secrets of purity, prayer, fasting, pilgrimage, the rules of reading the Quran, invocations and supplications and observation of daily duties according to fixed times.

2 On the authority of Abu-Hurairah, *Hadith* No. 158 of Al Ahadith al-Kodsi'a, Dar al Toras, Cairo, 1980.

3 As if to emphasize again a warning against deadening familiarism, we are given a beautiful description of the righteous and God-fearing man. He should obey salutary regulations, but he should fix his gaze on the love of God and the love of his fellow man. We are given four heads: 1 Our faith should be true and sincere; 2 We must be prepared to show it in deeds of charity to our fellow man; 3 We must be good citizens, supporting social organization; 4 Our own individual soul must be firm and unshaken in all circumstances. Although they are interconnected, they can be viewed separately. Faith is not merely a matter of words. We must realize the presence and goodness of God. When we do so, the scales fall from our eyes. All the falsified and fleeting nature of the present cease to enslave us: His power (angels), His messengers and His message are no longer remote from us, but come within our experience. Practical deeds of charity are of value when they proceed from love, and from no other motive. In this respect, our duties also take various forms, which are shown in reasonable gradation, our kith and kin, orphans (including any persons who are without support or help), people who are in real need but who never ask (it is our duty to find them out, and they come before those who ask), the stranger, who is entitled to laws of hospitality, the people who ask and are entitled to ask, i.e. not merely lazy beggars, but those who seek our assistance in some form or another (it is our duty to respond to them), and the slaves (we must do all we can to give or buy their freedom). Slavery has many insidious forms, and all are included. Charity and piety in individual cases do not complete our duties. In prayer and charity we must also look to our organized efforts: where there is a Muslim State, these are made through the State, in facilities for public prayer, and public assistance and for maintenance of contracts and fair dealing in all matters. Then come the Muslim virtues and patience. They are to preserve the dignity of man (Yousuf 1938: 69–70).

4 This is addressed to all mankind and not only to the Muslim brotherhood, although it is understood that in a perfect world the two would be synonymous. As it is, mankind is descended from one pair of parents. Their tribes, races and nations are a convenient label by which we may know certain differing characteristics. Before God they are all one, and He gives most honour to who is most righteous (Yousuf 1938).

5 On the authority of Abu-Mohammed Abdullah, the son of Omar ibn al-As, *Forty Hadith No. 41*.

6 Al-Tabari: Jaffar Mohammed Jarier, *Tafsir al-Tabari, Jamaa al-bayan fi Tafsir al-Qurán*.

7 Ibid.

8 The spiritual and moral duties are now brought into juxtaposition. We are to worship none but God, because none but God is worthy of worship, not because 'the Lord thy God is a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me . . .' (Exod. 5). Note that the act of worship may be collective as well as individual, hence the plural (*ta'budu*). The kindness to parents is an individual act of piety, hence the singular (*taqul*, *qul*, etc.). The metaphor is that of a high-flying bird which lowers her wing out of tenderness to her offspring. There is a double aptness: 1 When the parent was strong and the child was helpless, parental affection was showered on the child. When the child grows up and is strong, and the parent is helpless, can he do less than bestow similar tender care on the parent? 2 But more: he must approach the matter with gentle humility: for does not parental love remind him of the great love with which God cherishes his creature? There is something here more than simple human gratitude: it goes up into the highest spiritual region (Yousuf 1938).

9 In the Jewish Decalogue, which was given to a primitive and hard-headed people, this refinement of kindness, to those in want and to wayfarers (i.e. total strangers whom you come across) finds no place. Nor was there much danger of their wasting their substance out of exuberance. Even the command 'to honour thy father and mother' comes after the ceremonial observance of the Sabbath. With us the worship of God is linked up with kindness to parents, kindred, those in want, those who are far from their homes though they may be total strangers to us. It is not mere verbal kindness. They have certain rights which must be fulfilled (Yousuf 1938).

10 *Hadith* related by al-Bukhari (author unable to find page reference).

11 Abdeen, Mohammed Amin Bin Omer Bin Abdel Aziz Aldemashqy (1784–1836) was born and died in Damascus. He was the most influential jurist of his time (Rad Al-Muhtar ala Al-dar Al-mukhtar (repr. 1966)).

12 See *Hadarat al-Islam Magazine*, Vol. 2, 1st Issue: 37.

13 Postscript, part 3, line 273, published by Dar el-Kutub Al-Arabia al-Kubra, Egypt.

14 Mohammad Al-Bahi (1967: 192, 203) sees in the insurance contract a juxtaposition of a solidarity contract and a *Mudaraba* contract, 97–98 concerning the draft of the new Egyptian Civil Code.

15 *Mudaraba* contracts issued by *Dar al-Mal al-Islami* Trust – Geneva under which the heirs of the contractant obtain, in case of death of this latter before his 60th birthday, the returns that the contractant was entitled to receive and the sum of the contributions that the insured would have paid had he lived to the age of 60. See Appendix 1.

16 Only Hanafi and Hanbali allow the *Mudaraba* with a fixed duration (Ibn Qadumah 1972: 5:69–70).

17 The contract of *Mudaraba* is concluded by using *Mudaraba*, *girad* or similar words (Ibn Qadumah 1972: 5:22).

18 Uways cites the decisions of the *al-Majaal-Fiqhi* forbidding commercial insurance and stating that insurance cannot be considered a *Mudaraba* contract. See also Bakhit (1906: 4–5) and Sayyed (1981a: 194–6).

19 Attempted by a number of 'Islamic' insurance schemes (e.g. Dar al-Mal al-Islami Trust).

20 In Hanbali law, only the clause would be invalid (Ibn Qadumah 1972: 5:64–5).

21 Art. 19 of the ITC: *Mudaraba* deprives the 'insured' from his right of contracting out during the first two years of the *Mudaraba*.

22 Even this has been contested (Homoud 1985: 214).

23 The Malaysian Islamic insurance company (*Takaful* Company – *Syarikat Takaful Malaysia Sendrian Berhard*), operating under the Malaysian *Takaful* Act 1984 aiming at regulating Islamic insurance companies (see above) mentions in its 'Family Takaful Plan and Takaful Mortgage Plan' that the plan is 'run on the basis of the principle of *al-Mudaraba*'. One can also read: 'I hereby agree that on the basis of the principle of *al-Mudaraba* and other related principles of *Shari'ah* . . .'. Apart from such allusions to *Mudaraba* the whole contract contains a life insurance policy with the specific feature that the investment of the premiums is done in a manner not contrary to the *Shari'a* and that the benefits are payable to the heirs of the insured, although one of the incentives for saving under the scheme is to secure a sum of money specifically for the dependants of the insured.
24 See the *Shorter Encyclopedia of Islam*; the English synonym used is 'endowment'.
25 This point is subject to a controversy in Hanbali law where some scholars required such a consent (Ibn Qadumah 1972: 546).
26 Except for the Maliki; see Al-Khafif (1941: 397).
27 Ibn Qadumah (1972: 5:585).
28 'If one offers *badana* [i.e. a camel for sacrifice] or something else in Allah's cause he is allowed to benefit from it in the same way as others benefit from it even if he did not stipulate that' (Sahih Al-Bukhari: Book of Wills and Testaments: 4:13).
29 Opinion of Mohammad Shafi (Jurisconsult, Dar al-Ulum, Karachi) cited in the thesis of Mohammad Muslehuddin (1966: 163–4).
30 The idea would be to constitute a common *waqf* administered for a remuneration by a *mutawalli* (the insurer) responsible for managing the *waqf* in a profitable way. The beneficiaries designated by each founder (the other insureds) would receive from the *waqf* an amount of money in compensation for a loss that they eventually suffer.
31 In application of the *Hadith* 'It is better for you to leave your inheritors wealthy than to leave them poor begging others' (Al-Bukhari 1386 AH, Book of Wills and Testaments: 4:3; Chapter II, *Sahih Muslim*: 3:1251, Book 25 *Hadith* 5 (1628); and Ibn Hanbal 1986: 1:173).
32 Except in Maliki law, (*Al Musnad*: 173).
33 The clause enabling the *nazir* (manager) to give from the *waqf* to the beneficiary that he chooses is valid because this does not constitute an exclusion of a beneficiary from the *waqf*. It only makes his entitlement to receive from the *waqf* conditional upon a qualification.
34 In the context of an eventual insurance scheme the *waqf* is not in itself conditional, which would have rendered it void (according to all Sunni schools except for Maliki). Only the payment of benefits is conditional upon an uncertain event.
35 Except for *waqf* for charitable purposes (Ibn Qadumah 1972: 5:587).
36 For the *Hanafi* the onerous donation is a donation in respect of its formation and a sale in respect of its effects.
37 For a detailed discussion see Muslehuddin (1966: 272–4).
38 Ibn Qayyim considers that the aleatory sales prohibited by the Prophet fall either under the heading of *riba* or gambling (Ibn Qayyim 1968: 2:7).
39 See Yusuf al-Qardawi (1962: 12(6):51), where the author compares *Bayt al-Mal*, i.e. the Islamic public treasury, to a national insurance company.
40 *Mudaraba* companies and *Mudaraba* (Floatation and Control) Ordinance, 1980. Source: *Islamic Studies*, Vol. 24, No. 1–1985, pp. 67–85, also in *The Gazette of Pakistan, Extraordinary* (26.6.1980) pp. 388–400.
41 Respectively Act No. 276, and Act No. 312. This latter enactment will be discussed later.
42 *Malaysian Takaful Act*, S. 3–5 (b).
43 Ibid., S. 16–1.

44 Ibid., S. 27–1.
45 Ibid., S. 37–1.
46 Namely the Banking Act 1973 (Act No. 102), the Companies Act 1965 (Act No. 125), and The Central Bank of Malaysia Ordinance 1958 (No. 61).
47 *The Official Gazette of Turkey*, Dec. 1984: 58–9.
48 Ibid., Jan. 1985: 56.
49 Ibid., Dec. 1983: 19.

2 *RIBA* (USURY) AND *GHARAR* (RISK)

1 Al-Naysaburi, Abu Hassan Ali Ahmed al-Wahdi, *Asbab al-Nazoul fi al-Quran*.
2 The Quranic verses forbidding *riba* are: II / 275, 276, 278, 279, III / 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, IV / 161. These are in addition to the following fundamental *Hadith*: 'Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, measure for measure and hand to hand. If the articles are of different species, exchange them as you wish, the exchange being made hand to hand' (Muslim, Sahih, *Book of Musaqat*, *Hadith* 81).
3 These are: 1 Not submitting to the oneness of God; 2 Making magic; 3 Killing another person for no valid reason; 4 *Riba*; 5 Stealing orphans' wealth or inheritance; 6 Avoiding going to war when called for for the faith; and 7 Avoiding malicious scandal against unchaste women.
4 A narrower definition is given by Ibn Abidin who sees *gharar* as the uncertainty of the existence of the subject matter of a sale (Ibn Abdin 1966: 4:147).
5 No differentiation in detail will be made between *gharar* and *juhala* in this work and it is the broad meaning of *gharar* comprising *juhala* which will be considered, so that *gharar* will be contemplated not only as the uncertainty affecting the existence of a contract or an obligation included in it but also the ignorance of one of its essential elements, like the nature of the subject matter of the contract or its quantity. (See al-Sanhuri 1934: 2:49.)
6 Ibn Taymiyyah expressly cites lack of knowledge of the nature or kind or quantity of the subject matter as a sort of *gharar*.
7 See also Ibn Taymiyyah 1985: 29:22.
8 This saying has also been reported by Abu Dawud (*Al-Bukhari*, *Hadith* 3376). 'Sales by throwing stones' refers to a pre-Islamic transaction whereby the sale is concluded on the throwing of a stone.
9 See also the following *Hadith*: 'The Prophet peace be upon him has prohibited two sales in one' (Ibn Hanbal 1986: 2:174–5).
10 See also Al-Qarafi 1927: 150–1; Al-Hattab 1938: 6:51.
11 See also Muslehuddin (1975): 59.

3 PRE-MODERN AND MODERN *JURISTS'* STANDING ON INSURANCE

1 This *fatwa* was issued in Safar of 1319 Hijri, and published in the magazine *Almuhamah*, Volume 5, Issue 460: 563.
2 Distinguished scholar, one well known for his views on Islamic *muamalat*.
3 Sheikh Mohammed Bakheit bin Hussein el-Muteiay el-Hanafi, the Grand Mufti of Egypt and one of the greatest jurists, lived 1854–1935. An author of many important books.
4 An Egyptian erudite, graduate of al-Azhar. The Grand Mufti of Egypt 1925.
5 An Egyptian scholar born 1874. Studied in al-Azhar and Dar el-Ulum; formerly a member of the Linguistic Academy. Author of many books.

6 Sheik Mohammad el-Molky, Islamist scholar, died 1956; one of his books is *al-Arowat al-Wosqah*.
7 Published in *Al-Azhar* Magazine, Vol. 25, Part 2: 23.
8 An Egyptian erudite, graduate of al-Azhar, formerly manager of the Arabic and Religion Inspection department of al-Azhar.
9 Egyptian jurist, 1899–1963; graduate of al-Azhar. He gained a PhD in Philosophy from France.
10 A lecturer in Islamic Jury and Civil Law at the Faculty of Law, Damascus University.
11 Section 11 of the Pension Scheme specifies that the Insurance money should be sent to the legal inheritors, unless the beneficiary has appointed other beneficiaries before his death to whom the money should be sent. That would conflict with the inheritance system of *Shari'a*. If the employee were allowed to do that, he would be depriving the legal inheritors from their rights, accordingly hindering the implementation of *Shari'a*.
12 The source of these points is *The Islamic Jurisprudent Week*, page 511. However, the author is unable to find the year or volume number.
13 Al-Dasuqi (1967: 83) listed the scholars who prohibit all kinds of insurance: 1 Al Motayy, Mohammad Bakhit, Mufti of Egypt, 1910; 2 Quraa, Abdul Rahman, Mufti of Egypt, 1925; 3 Ibrahim (1941: 3:8); 4 Egyptian High Islamic (*Shari'a*) Court, Judgment date 28 December 1907; see Issa (1978: 125) and Al-Sanhuri (1934: 1:158); 5 Tagg (1972); 6 Al-Qulqaly 1978: 110; 7 Makhloof, Mohammad *Abdel Hadi*; 8 Alyan (1987); 9 Gamal (1930); 10 Issa (1978); 11 Prince Al-Saud, Mohammad Al-Fisul, Chairman of Dar al Hal al-Islami; 12 Shaarawi (1977); 13 Al-Khali (1987); 14 Ali, Mohammad, Banna (1974), *Lewaa al-Islam*, issue 11; 15 Al-Naqar (1973); 16 Committee of *fatwa*, Al-Azhar, Egypt, *fatwa* date 24 April 1958; and 17 Al-Zarqa (1962).
14 1 Abu Zahra (1982); 2 Al-Darir (1987); 3 Kassem; 4 Hasan (1976); 5 Al-Dasuqi (1967); 6 *Al-Najd, Ahmed, Abdul Sattar Zohow*, Aqd al Ta'min baynal Shaí'ah a wal Qanon, 1972; 7 Saad (1983); 8 Majm'a al Abahath al Islamiyya, Committee for Islamic Research Conference, June 1965; 9 Al-Gharib (1979); 10 Al-Fangari (1984); 11 Lasheen (1981); 12 Nasser (1974); 13 Sharaf al-Din (1982); 14 Nadwat al Tashiaa, Conference for Legislations, Libya, 1972; 15 Al-Almi, Al Toatomar (1976), *Ill iktisad al Islami*, International Conference for Islamic Economics, Mecca; 16 Hayat Kabar al Olmaa (1977), The Association for Prominent Jurists in Saudi Arabia; see Appendix 1; 17 *Magmaa Al Fiqhi al Islami wa Rabatad al Alam al Islami*, Islamic League (1978).
15 In *Mejalat Al Fikr al Islami* (March 1988: 16), there was a survey containing the following scholars who approved all kinds of insurance: 1 Al- Mohammad, Abdullah Sayam, 1932 (he was the first scholar to allow all kinds of insurance); 2 Al-Zarqa (1962); 3 Khafif, whose opinion was presented to the 1967 International Conference for Islamic Economics in Mecca; 4 Al-Sayeh, Abdel Hamid, President of the Jordanian Court. His opinion was submitted to *Majma al Bohuth al Islamiyya*; 5 Al-Bahi (1967); 6 Al-Sanhuri (1964: Vol. 7); 7 Awad (1962).
16 1 Al-Thaalby, Mohammad Bisr Al Hassan; 2 Al-Hilar, Taki al Din; 3 Malik, Ramzi, Mufti Lebanon; 4 Mabrook, Mohammad; 5 Al-Sanhuri, Mohammad Faraq.
17 Al-Nadwa, Mohammad Ishaq, reported on: Ala al Islami, Vol. 10, No. 7, pp. 61–6. Resolution of the Lucknow Conference, 15–16 December.
18 Position of Mohammad Abu Zahra reported in *Mesrati* (1984).
19 The only exception to this principle are *ex gratia* payments made by the insurer, which are a matter of company policy and do not have any impact on the nature of the insurance contract from a legal point of view.
20 Prophet Mohammed said, 'Do not sell the fruit until their good condition becomes evident', *Hadith* 3675, book 9, Sahih Muslim.

21 Moghaizel states that *riba* is not applicable to the insurance contract. Such a conclusion is not quite right. Although *riba* was prohibited not with insurance in mind, we cannot be certain that an insurance contract is free from the element of *riba*, as in most insurance the premium is reinvested and the difference between the premium paid and claims (if made) has an element of *riba*.

22 With the exception of gifts made during the death or sickness (*marad*) of the donor, which are treated as a will. See Al-Kasani (1986): 7:98).

23 Breach of a promissory warranty entitles the insurer to repudiate the contract from the date of the breach. Section 38–1 of the Marine Insurance Act, 1906 states: 'In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure.' Section 55-2-a of the Marine Insurance Act, 1906 provides that 'The insurer is not liable for any loss attributable to the wilful misconduct of the issued.'

24 The author adds that the intention of the policyholders to donate the premium must be expressed in the articles of association of the insurance company.

25 See *Majma' al Buhuth al Islamiyya* (1965), Conference of Islamic Economics. The conference covered cooperative and, particularly, mutual insurance. Contributors to the conference and researchers following the conference supported their views. Some of these were: 1 Al-Dasuqi Mohammad (1966); 2 Al-Gorff, Mohammad Makky Sadi (1973); 3 Al-Kamal, Cahoreb (1977); 4 Hassn, Mohammad Deltogi (1988); 5 Hassan Hamed (1967); 6 Yousef Kassem (1986); 7 Mohammad Shawki Al-Fangari (1984); 8 Fathy Al-Said Lasheen (1981); 9 Abdul Nasser Tawfiq Al-Atar (1974); 10 The Conference of Islamic Economics (1980). Researchers concluded and the conference recommended cooperative (including mutual) insurance.

26 Officers and staff of the company can often secure the required quorum. See Hetherington 1969: 1068). The author reaches the conclusion that 'The practice in both property-liability and life companies plainly rejects the almost total non-participation of policyholders in the selection of management (ibid.: 1083).

27 Scandinavian life offices make *ex gratia* payments in situations where the life insured died before the risk attached. Such payments purport to repair injustice by having their sources in the terms of the contract (Sellmer 1972: 33:502–20).

28 See Mohammad Bakhit, *Risalatan*, and the opinions of Mohammad Abdu quoted and discussed in *Rashid rida al Manar*, Vol. 27, 1926, pp. 344–6. The Lucknow Conference classified insurance under the head of foreign transactions (foreign in the sense of non-Islamic).

29 Writing about the history of the insurance contract indicated that in Europe during the Middle Ages, every innovation was suspect due to the absolute supremacy of tradition. Acknowledged operations were used as shields for new contracts. The insurance contracts were hidden under the cover of a charter agreement.

30 The author states that 'Insurance was initially a favour'.

31 All members of *Al Majma al Fiqhi*, except Sheikh Mustafa Al Zarqa (Dean of Law and Islamic *Shar'iah*, University of Damascus, one of the scholars who has strong views and arguments in favour of insurance; not all his views are accepted by other jurists).

32 A re-insurance contract is one where the insurance company is obliged to share the burden of risks insured by another company.

33 A jurist of a Syrian origin, he lived in Egypt as an author and translator. He established the magazine *Al-Zahar*.

34 This is a contractual idea. Good deeds or faith result in God's blessing.

4 THE DEVELOPMENT OF MUTUAL INSURANCE IN THE WEST

1 European Union Publications, ref. 92/49/EEC.

2 Ibid., ref. 92/99/EEC.
3 Ibid.
4 Sir Leon Britten, then Vice President of EU.

5 THE DEVELOPMENT OF ISLAMIC BANKING AND INSURANCE IN MALAYSIA

1 Law of Malaysia, Act 312, as amended by the Economics Department, *Money and Banking in Malaysia*, Bank Negara Malaysia, 1994.
2 Malaysian *Takaful* (Amendment) Act A620, 1985, Section 54-1.
3 Ibid., Sections 8 and 11-1(a).
4 Ibid., Section 11-1(g) and 11-1(m).
5 Ibid., Sections 37 and 38.
6 Ibid., Section 8-5.
7 The investment policy of the operator is also subject to the control of the competent Minister who may require an operator to abstain from a specified kind of investment (S.17-6).
8 Malaysian *Takaful* (Amendment) Act, Section 17-1 requires that *Takaful* funds be kept separate from all other assets of the operator.
9 Ibid., Section 21.
10 Ibid., A. 41.
11 Ibid., Section 37.
12 Ibid., Section 42.
13 Laws of Malaysia Act 89 (revised 1972) and subsequently subjected to various amendments.
14 1982 C 50.
15 The *Takaful* Act, Section 41 and Section 22 of the 1982 Act.
16 Ibid., Section 33 and Section 44 of the 1982 Act.
17 In this respect, Section 38 of the 1982 Insurance Companies Act and Section 17-4 of the *Takaful* Act are similar except for a slight difference of terminology.
18 The *Takaful* Act, Section 48-1 and Section 54 of the 1982 Act.
19 Ibid., Section 32 of the *Takaful* Act and Section 62 of the 1982 Act.
20 Respectively, Section 47-1(b) and Section 45.
21 The *Takaful* Act, Sections 16 and 17, and Section 28 of the 1982 Act. By virtue of Schedule 1 of the 1982 Act, long-term business comprises life and annuity, marriage and birth, linked long-term, permanent health, tontines, capital redemption and pension fund management.
22 Ibid., Section 29-7.
23 Ibid., Sections 4-2(b) and 32.
24 Applied by Regulation 68 of the Insurance Companies Regulations 1981 (SI 1981 No. 1654).
25 For example, The Policyholders Protection Act 1975 (1975 C.75): 'An Act to make provision for indemnifying (in whole or in part) or otherwise assisting or protecting policyholders and others who have been or may be prejudiced in consequence of the inability of the Kingdom to meet their liabilities . . .'
26 The *Takaful* Act, Section 4-1.
27 Ibid., Section 2, interpretation of the word '*Takaful*'.
28 Ibid.
29 Ibid., Sections 13-2 and 21-7.
30 Ibid. In that context the definition of *Takaful* business given by Section 2 of the Act seems most appropriate: '*Takaful* business means business of *Takaful* whose aims and operations do not involve any element which is not approved by the *Shari'a*.'

31 Issued by the Malaysian *Takaful* Company, *Syarikat Takaful Malaysia Sendirian Berhard*.
32 Bank Negara Malaysia (BNM) Website http://www.bnm.gov.my

6 THE DEVELOPMENT OF ISLAMIC BANKING AND INSURANCE IN SAUDI ARABIA

1 Issued by Royal Order No. 32 of 15/1/1350 AH (1930) (Articles 324–89).
2 See '*Saudi Arabia Draft Insurance Law*', Middle East Executive Reports, April 1988: 6 and May 1988: 7.
3 Royal Decree No. M/5, dated 17/4/1405 AH (8/1/1985).
4 National Company for Co-operative Insurance, Saudi Arabia, Annual Accounts, 1999.
5 Arab 'Islamic' insurance companies are listed in the Annual Arabian Insurance Guide.
6 See advertising of The Scheme in Arabia, February 1985: 68. Clause 22 of the contract states: 'As the Glorious Islamic *Shari'a* encourages unity and co-operation among Muslims, the Participants have agreed among themselves'.
7 Thomson v. Weems, The relevant case in English law is (1884) 9 App. Cas. 671, HL.
8 Soliman Saad Al-Humayyd, Chairman, NCCI, This information is taken from the NCCI Website (http://www.ncci.com), and outlines their experiences of Islamic Banking in Saudi Arabia.

7 BASIC PRINCIPLES FOR AN INSURANCE SCHEME ACCEPTABLE TO THE ISLAMIC FAITH

1 See Chapter 4, p. 202, 'Mutual insurance in the USA'.
2 See Chapter 4, p. 207, 'Insurance in Europe'.
3 See Appendix 3, 'Mutual insurance in Canada'.
4 See ibid., 'Mutual insurance in Japan'.
5 See ibid., 'Mutual insurance in Finland'.
6 The Malaysian *Takaful* Act, 1984.

8 CONCLUSIONS

1 *Hadith* related by Ibn Majid, included in the 40 *Hadith* 1977.

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