

## NOMINATION IN CONVENTIONAL INSURANCE AND TAKAFUL

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Nomination is a procedure where a depositor or investor designates an individual or group to manage their account upon passing. Generally, nominated property refers to an asset specifically assigned by the owner to be transferred to a nominee or nominees in the event of their death.

Nomination in conventional insurance involve the policyholder assigning a beneficiary to receive the policy benefits in case of the policyholder's demise. Similarly, in takaful, nominations entail appointing individuals to receive takaful benefits as specified in the certificate upon the participants passing. It's a crucial process in both conventional insurance and takaful, ensuring designated recipients receive the intended benefits after the policyholder and participant's death.

Nevertheless, there are a few comparisons between nomination in conventional insurance and takaful. The nomination process in conventional insurance involves the creation of a trust in the name of nominee if they are the policyholder's spouse or child. When the nominee is the spouse or child, a trust will be created in favour of the nominee who will receive the policy moneys beneficially. If there is no living spouse or child at the time of nomination and the nominee is the parents, then they will be entitled to the full amount of the policy money. In such a case, the policy is called a trust policy. However, in instances where a living spouse or child exists at the time of nomination and one nominates their spouse and parent or their child and parent, a trust will solely be established in favour of the spouse or child, excluding the parent. Parents are regarded as non-trust nominees and will only receive the money as an executor. Similarly, if there is a living spouse or child during nomination and only the parent is nominated, no trust will be established in favour of the parent. A non-trust policy is created when a policyholder nominates a person other than his or her spouse, child or parent. They will receive the money only as an executor and responsible for distributing it according to the deceased's will. If there's no will, the distribution follows the applicable law. A trust policy does not apply in the case of a Muslim policy owner. The nominee of a Muslim policy owner takes the policy moneys only as an executor and must distribute the moneys in accordance with Islamic laws.

According to the Financial Services Act (FSA) 2013, under Schedule 10, Section 130.

5. (1) states that a nomination by a policy owner, other than a Muslim policy owner, shall create a trust in favour of the nominee of the policy moneys payable upon the death of the policy owner, if the nominee is his spouse or child; or where there is no spouse or child living at the time of nomination, the nominee is his parent.

Subsequently, Section 130. 6. (1) of Schedule 10, FSA 2013 states that a nominee, other than a nominee under subparagraph 5(1), shall receive the policy moneys payable on the death of the policy owner as an executor and not solely as a beneficiary and any payment to the nominee shall form part of the estate of the deceased policy owner and be subject to his debts and the licensed insurer shall be discharged from liability in respect of the policy moneys paid.

Comparatively, in takaful; under Schedule 10, Section 142. 3 (1) of Islamic Financial Services Act (IFSA) 2013 states that a nominee under subparagraph 2(1) shall receive the takaful benefits payable under a takaful certificate either as an executor or as a beneficiary under a conditional *hibah*, as the case may be, as stated in the nomination form by the takaful participant. Subparagraph 2 (1) of Schedule 10 IFSA 2013 outlines the power to make nomination by a takaful participant.

In addition, the Shariah Advisory Council (SAC) of Bank Negara Malaysia, in its 34th meeting dated 21 April 2003, has resolved that the takaful benefit may be made as *hibah*, where the status of the *hibah* will not be transformed into a bequest. Based on the resolution, the takaful participant is also entitled to revoke his *hibah* which was made to certain individual and deliver the benefit to another person, or terminate his participation in takaful if the nominated recipient passed away before the maturity date and takaful nomination form shall clearly mention that the status of nominee is as beneficiary, if it is intended by the participant as *hibah*.

Based on the above, it indicates that IFSA 2013 and resolution made by the SAC of BNM doesn't strictly prescribe the creation of a trust policy in nomination for takaful benefit. Instead, it allows for a more flexible approach, and the nominees, even beyond spouses, parents or children can potentially be nominated as the beneficiaries for the takaful benefit based on the conditional *hibah*, and they may also be nominated as executor who is responsible for executing the deceased's will, aligning with Islamic principles.

In the nutshell, the flexibility offered under the takaful nomination for the *hibah* beneficiary assists the takaful participant to plan his estate distribution either to his family member or anybody that he intended to make the gift. In addition, participating in the takaful contract and make the *hibah* through the takaful nomination is not limited to the muslim takaful participant only; thus non-muslim may opt to take up the takaful and nominate the beneficiary of the takaful benefit without the restriction. This flexibility potentially provides option that is more adaptable to all people in aligning the distribution of takaful benefits based on their wishes based on guidance provided by IFSA 2013 and the SAC resolution.

#### References:

1. Azman Bin Ismail, (2009). Nomination and Hibah Issues in the Takaful Industry, ISRA Shari'ah Conference on Takaful 2009 (ICS 2009)
2. Bank Negara Malaysia (2010), Shariah Resolutions in Islamic Finance, 2nd Edition, Bank Negara Malaysia
3. Berjaya Somp Insurance, Nomination Guide, <https://www.berjaysompo.com.my/uploads/files/Download%20Library/Nomination%20Guide.pdf>
4. Financial Services Act (2013), Laws of Malaysia, Act 758, Schedule 10, Section 130. Payment of Policy Moneys Under Life Policy and Personal Accident Policy,
5. Islamic Financial Services Act. (2013), Laws of Malaysia, Act 759, Schedule 10, Section 142, Payment of Takaful Benefits Under Family Takaful Certificate and Personal Accident Takaful Certificate
6. MCIS Life, MCIS Insurance Berhad, Importance of making a nomination, <https://www.mcis.my/Custom-Care/Insurance-Info/Importance-of-Making-a-Nomination/ImportanceofMakingaNomination.aspx>

7. MyPF (29th March 2019), How to go about appointing nominees and trustees, Free Malaysia Today (FMT), <https://www.freemalaysiatoday.com/category/leisure/2019/03/29/how-to-go-about-appointing-nominees-and-trustees/>
8. Nurdianawati Irwani Abdullah, Nazliatul Aniza Abdul Aziz (2010), Case Studies of the Practice of Nomination and Hibah by Malaysian Takaful Operator, 2 (2), ISRA International Journal of Islamic Finance
9. Siti Asishah Hassan, Rusnadewi Abdul Rashid. (2019), A need for regulatory framework of nominated property in Malaysia: An issue of rights and duties of nominee, Proceedings of Regional Conference on Science, Technology and Social Sciences (RCSTSS 2016).
10. Siti Khadijah Abdullah Sanek, Irma Kamarudin, Sarirah Che Rose, Rohayati Hussin (2023), Nomination and Its Legal Status Concerning Moveable Estates for Muslims and Non-Muslims in Malaysia, Kedah International Conference on Social Science and Humanities UiTM Kedah (Online), Malaysia, 21-22 June 2023: International Conference on Contemporary Legal and Policy Issues (ICCLPI)

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