

Right of beneficiaries for endowment contracts: Fitting French life insurance to Islamic morality

The Islamic finance industry has yet to fully take off in France: but the insurance sector represents a positive opportunity for Shariah compliant ethics to access the market. EZZEDINE GHLAMALLAH takes us through the complexities of Islamic beneficiary planning in France.



ISLAMIC INSURANCE

By Ezzedine Ghlamallah

The French life insurance is first of all a contract governed by specific rules. When a third beneficiary is indicated, it establishes a 'stipulation for the benefit of a third party', which gives to the beneficiary a personal and direct right against the insurer. The guarantee is not a part of the inheritance of the contracting party; and the life insurance also allows realizing an operation of investment so that the subscriber can constitute in average or long-term a capital.

The subscription of a life insurance policy allows realizing an operation of transfer on one hand of its heritage which can be made in an isolated way or with other ways such as the legacy or still the donation. The subscription can be caused by a liberal intention which can also be secondary being in the realization of an operation of investment. Envisaged as a wealth transfer instrument, the subscription of the life insurance policy presents two main objectives: the fiscal optimization of the wealth transfer of a fraction of the heritage and the bonus of one or several beneficiaries indicated independently of the disposable portion of the property. The reasons of the designation of the beneficiary by the subscriber can be then very varied: it can among make possible the payment of his future transfer taxes, confer him future income or still favor him.

Thanks to a beneficiary clause drafted according to his needs, the beneficiary benefits from a liberality subjected to particular legal and fiscal rules. This liberality is granted on the paid premiums. With the mechanism of the stipulation for the benefit of a third party, the beneficiary holds his rights directly of the insurer. Of this fact the payable capital or the pension in the death of the insured are not a part of the insured's inheritance. Fiscally, the

acquired guarantee will not be subjected to inheritance tax and will be submitted to a particular taxation.

Legal characterization of beneficiaries under Shariah

It urges us to establish a link with a possible Muslim investor who wishes to respect the rules of Islamic finance by signing a Family Takaful policy and who is also worried about the conformity under Shariah of the beneficiary clause of its contract. This respectful subscriber of Islamic laws will have to write a specific beneficiary clause such as it has been approved by the Shariah Board of CIFIE in the certification of the contracts Swiss Life Salam and Vitis Life Amâne. It is thus essential to advise to Muslim investor to proceed to the writing of a will according to the teachings of the Islam.

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Imam Mâlik reported: "The established Sunnah with us, in which there is no dispute, is that it is not permitted for a testator to make a bequest (in addition to the fixed share) in favor of an heir, unless the other heirs permit him. If some of them permit him and others refuse, he is allowed to diminish the share of those who have given their permission. Those who refuse take their full share from the inheritance".

Imam Malik related from Amir ibn Sad ibn Abi Waqqas that his father said: "The Messenger of Allah, may Allah bless him and grant him peace, came to me to treat me for a pain which became hard to bear in the year of the farewell Hajj. I said, 'Messenger of Allah, you can see how far the pain has reached me. I have property and only my daughter inherits from me. Shall I give two thirds of my property as Sadaqah?' The Messenger of Allah, may Allah bless him and grant him peace, said, 'No.' I said, 'Half?' He said, 'No.' Then the Messenger of Allah, may Allah bless him and grant him peace, said, a third, and a third is a lot. Leaving your heirs rich is better than leaving them poor to beg from people. You never spend anything on maintenance desiring the Face of Allah by it, but that you are rewarded for it, even what you appoint for your wife." The disposable portion of the property does not have to exceed a third party of the fortune.

To stipule a beneficiary, there are simultaneously two rules to be respected: the beneficiary does not have to be an heir and the will is limited at the most to a third of the deceased's fortune. The subscriber of a Shariah compliant life insurance policy can however appoint one or several legitimate heirs if the other heirs give the right to him. Here are some examples of people not heiresses under Shariah and who could be appointed beneficiaries of the clause of a Shariah compliant life insurance policy: non-Muslim parents (Islam decreed that the non-Muslim parents receive a legacy on behalf of their Muslim children), the born child out of wedlock (which under Shariah inherits from his mother and not from his biological father), the Jewish or Christian insured's wife or still one of his creditors.⁽²⁾

Ezzedine Ghlamallah is the director of Solutions Insurance and Islamic Finance in France (SAAFI). He can be contacted at ezzedine.ghlamallah@saafi.fr.