Abstract

Let us start from the point that in modern times the precious life of every human being is at risk for various reasons. The development of modern society, while providing technological solace and scientific guarantees, also poses so many risks to the human life. These risks may occur to one's life, their property or even their business ventures. Often these risks affect the lives of many in society in such a way that it leaves them vulnerable and helpless. The question, therefore, arises as to how to help these unfortunate people while recognizing that we live in a precarious world. Its uncertainties seem to confront our personal fortunes and our progress at nearly every turn of the road. Nevertheless, it would have been a much more hazardous world if we were not in a position to protect ourselves against its major uncertainties by means of insurance. The important part, which this great provider of security plays in our lives, can perhaps be brought home to us in some degree by briefly contrasting the present with the past. The primary objective of insurance is to uphold shared responsibilities among the parties involved, by way of mutual cooperation and thereby protecting an individual against unexpected risks. To what extent the modern system of insurance within the limits of law is capable of providing comfort and safety to us? An answer to this question can be formulated only after a rigorous examination of the existing systems of insurance and the legal frameworks associated with it.

Historically speaking, before the institution of insurance was organized, human beings were compelled to take tremendous risks in spite of anything they could do about it. This was true not only of the venture of some men but of the average men as well. Back in those days when a man's dwelling was destroyed by fire or tornado, he had to rebuild it with his own hands and by means of his own resources or seldom with, assistance of voluntary aid from his neighbor. The loss was total, for he could not insure his own life or property like his home against fire or tornado when a man's possession was stolen from him, his fortunes received a severe set back.
The damage could be devastating, for he could not insure his belongings, his cattle's, his grains, and his money against thieves. When a man dies suddenly, his wife and children are compelled to survive by utilizing their ancestral property or other properties. Sometimes, they may sell out their land, or start cultivation to make a life from of it. However, since the main source of income has been stopped and the absence of insurances can lead them to a situation where their life will not be financially smooth and prosperous.

Over the years, things have changed and today the system of insurance is one of the foremost enterprises which provide solutions to these types of issues. Fire, tornado, burglary and theft of automobiles are the miseries and insurances are the remedies, and both are part of our everyday affairs. As a result, individuals are no longer compelled to suffer tremendous risks, which their ancestors used to face. By means of insurance, they are able to protect themselves against almost any misfortune, which might overtake them. Contemplating the major hazards of life, it is not difficult to say which one of them gives us the greatest concern. It is naturally the risk of loss of human life. Concern for life is not merely because of the law of self-preservation but also because of our great anxiety to ensure the future welfare and security of our dependants. This deep-rooted human concern for dependents, coupled with consciousness of the risk of loss of human life, naturally leads us to the high appreciation of the utility of life insurance.

The thing which is certain about the present day life is its uncertainty yet the common man goes about his daily chores with the belief that hazards happen to others not to him. Even the most safely minded among us are not immune from uncertainty but are exposed to hidden and unexpected risks. Every meal carries some risk of infection. Every trip to our place of work and back exposes our lives and limbs to risks. The work place particularly the floor of factory is a veritable mine of risk factors. From accidents due to motor vehicle, electric gadgets, fires from gas stoves, roof collapse, burglary, break death due to allergy to an injunction, floods and drought to crop conditions, to unemployment, the list can never be completed. In this context, insurance
can be used as a scheme to control the risk effectively. Its primary function is to substitute certainty for uncertainty as regards the economic cost of disastrous events.

The institution of insurance is, under common legal system, rendering two pronged services to the nation; one is to help the individual in catastrophe and the other is helping the State to enable it to do social welfare services.

Under common law, insurance practices have obtained substantial recognition that accounts for the rapid development in this area in recent years. It can be assumed that such rapid development was produced by the speedy growth of the legal system in the areas of trade and commerce.

Under Islamic law, the idea of insurance (takaful) originated from the doctrine of ‘al-aqilah’ practiced by the ancient Arab tribes before 570 CE. It then obtained recognition in Islamic law because of the approval of Holy Prophet Mohammed (PBUH) in one of his judgments against a woman from the tribe of Huzail. Unfortunately, the development of Islamic Insurance practice has been less than satisfactory, and it is unable to keep pace with the developments in other aspects of commercial law. The main reason for such poor progress in the development of Islamic insurance (in both principle and practice) may be due to the conflicting opinions among Muslim scholars as regard to the validity of insurance practices. This diversification comes from a misconception about insurance, which has haunted the minds of many Muslim scholars and general Muslim Ummah. As a result, today we witness only a minimal development in the field of Islamic Insurance amidst the reluctance of scholars to involve them in comprehensive research in order to come up with relevant literature in this field.

Insurance under Islam has undoubtedly played a great role in commercial activities and contributed towards achieving a stable economic environment. It may be that conventional insurance involves some elements such as riba (usury), compulsory nomination clause, etc., which are contrary
to the divine sanctions. However, since the primary objective of insurance is to create a shared responsibility among the parties on the basis of mutual cooperation in providing protection for a person against unexpected risk so it may be justified by Divine sanctions i.e. Quran. The importance of insurance in providing economic security to the individual, therefore, cannot be denied by looking at only the unlawful elements that exist in conventional practices.

For the purpose of providing social and economic security for the Muslim Ummah, it is necessary to come up with an alternative insurance model (a variation of the conventional insurance policy) which must be justified by the Quran and the Sunnah. Islamic Insurance (Takaful) is based on the concept of social solidarity, cooperation and mutual indemnification of losses. Takaful operates on the Islamic principles of taawun (brotherhood or mutual assistance) and tabarru' (donation, gift or contribution). In takaful, the risk of loss is shared collectively and voluntarily by the participants who guarantee each other against defined losses or damages. Each participating member contributes resources (premium payments) and personal efforts to support the needy participants within the group. Consistent with Islamic beliefs, takaful is an example of how the fortunate may assist the unfortunate few. The essence of takaful is to maintain equity among the members of a group and to assist those in the group who have suffered misfortune. Earning a profit is not the sole objective of the takaful operator or participants (who share in any surplus takaful fund). The takaful participants are viewed as both the insurer and the insured. An Islamic insurance model may thus be based on, inter alia, the principles of al-Mudarbah financing and would, therefore, be in line with the Islamic principles of inheritance and bequest. This kind of insurance is completely in harmony with the teachings of Islam as enshrined in the Holy Quran and the Sunnah.

It is sincerely hoped that all Muslim scholars will avoid their differences and reach to common consensus in their views on the issue of the validity of insurance just by looking at conventional insurance practices. Moreover, they should try to construct a comprehensive alternative model of
insurance practices, which may be justified by Shariah principles so as to ensure that the contemporary Muslim Ummah may be able to benefit from and enjoy a better socio-economic security against unexpected risks or tragedies.

1. **The Choice of Topic**

   There are many loopholes and lacuna in common legal system relating to insurance. The system requires much improvement so that the provisions of the insurance laws may be applied for the benefit of the insured. Under this system the benefits to the insured are much less as of the insurer (the State), on the other hand the Islamic insurance (takaful) which is generally prevailing in Muslim countries looks more appreciable because here the takaful contract is made basically for the benefit of insured.

   On minute study of two systems one may find a lot of difference not only in the concept but in the operational frame work also. As common law insurance is based on the principle of indemnity whereas the Islamic Insurance is based on mutual co-operation and brotherhood.

   A legally viable and effective mechanism is necessary to resolve conflicts in International financial system and avoid financial wars. There are lot of hue and cry and protests against the practice of Islamic insurance (takaful) in developing countries.

   The above facts have prompted me to undertake the study of insurance law under common legal system and Islamic legal system. In my thesis, I have tried to point out the difference in the application of these two systems and endeavor has also been made to justify the life insurance under Islam.

2. **Need for study**

   The need for this research work stems its origin from the world wide accepted principles of insurance, which basically means sharing the responsibility. There is a lot of difference between the principles and practice of insurance under both the systems. As both the systems are very good in
their own spheres but with the present financial crisis in the world arena, insurance in Islamic system is more effective in order to deal with the contemporary financial crises in the world. Under Islamic system of insurance profit and losses are divided among group of people and it is not the individual who has to bear all the risk, as risk under this system is to be shared between the group of people. So it is a requirement of contemporary world. A fully impartial and independent Islamic insurance system is a need of an hour under International financial system, hence the need for research in this area.

3. **The Objective of the Study**

The present research study tends to achieve the following objectives and put forward an agenda for academicians, policymakers, highest legislative establishments and corporations involving in insurance business to incorporate thereof in their pursuit for providing maximum benefits to the participants:

i) The study is an effort to understand the conceptual framework of insurance under both the legal systems.

ii) A threadbare study has been pursued in discussing the operational framework under both the systems. In respect of the models of insurance under common legal system, it is quite mature, on the other hand, a working model has been proposed by the researcher based on the Islamic principles that may suit to the Indian position.

iii) To find out the feasibility of introducing life insurance in Islamic system.

iv) To propose the legal regulation of Islamic insurance in developing countries.

4. **Hypothesis**

The hypothesis and research variable of the present research work have been premised on the following formulation:

i) To find out the faults and lacunas in both the systems.
ii) An effort has been made for the comparative study of both the systems and to bring out the distinctions between them.

iii) To prepare a roadmap for the implementation of the practices of Islamic insurance (takaful) in India including the feasibility of life insurance under Islam.

iv) To have an alternative system of insurance in India as the insurance practices in the country are insurer oriented not insured oriented.

5. **Scope of Study**

The scope is restricted to the following domain:

(i) The conceptual framework of insurance under common legal system and Islamic legal system

(ii) The rule oriented set up under which both insurance system works.

(iii) Identifying the differences between two systems.

(iv) To provide a relatively clear description and understanding of Islamic insurance system.

(v) The manner in which insurance under both the system could be made more justiciable and equitable.

(vi) Emphasis of study on insurance under common legal system has been mainly confined to the Indian position.

6. **Impact of Study**

Since the subject matter of the study exhaustively deals with the problems, difficulties and solutions, the impact of study would be to add to the existing fund of knowledge and to provide the latest update, so as to make it useful in the present as well as in the future.

7. **Methodology**

The methodology adopted by the researcher is purely doctrinal and analytical in nature. It involved an in depth study of source materials, text review, case study and comparative study of both the systems of insurance. The research is based on two types of material i.e. primary materials and
secondary materials. The Primary materials consists of verses of Holy Quran, Hadiths, text of laws, declarations etc. on the issue. Secondary material consists of books, articles, encyclopedia, research papers, newspapers and magazines. The research also includes study of case laws. Use of internet was also made to gather important information relating to the subject of study. The entire research is analytical and descriptive in its nature. Throughout the work uniform mode of citation was followed. Articles from Journals are cited as suggested by the respective journals themselves. While citing a textbook the author's name is cited first, followed by the name of the book, publisher, place of publication, year of publication and page number.

This work should not be considered as exhaustive and conclusive. There is a lot of scope for further study on the topic and relating to the other matters concerning insurance particularly under Islamic law.

8. Chapter-wise Introduction

The brief chapter-wise contents are as under:

Chapter-I This chapter deals with the history, origin and development of insurance under common legal system as well as under Islamic legal system.

Chapter-II This chapter exhaustively deals with the central idea and principles of insurance under common legal system as well as under Islamic legal system with Sharia'h thoughts. The sources of law affecting insurance under common legal system and Islamic legal system are also elaborately discussed. Further, this chapter also deals with the comparative consideration of essential elements of both the systems.

Chapter-III This chapter exclusively pertains to the origin and development of re-insurance under common legal system as well as under Islamic legal system. It will also highlight the importance of re-insurance in the working of both the system in the contemporary era.
Chapter-IV This chapter is devoted to the conceptual framework of life insurance under common legal system and Islamic legal system. It will also deal with the factors affecting the validity of the life insurance under Islamic legal system. Suggestions with regard to the applicability of life insurance under Islamic legal system are also made.

Chapter-V This chapter pertains to the regulatory framework of insurance under common legal system. It also examines the different models of regulation of Islamic Insurance and their effects.

Chapter-VI This chapter attempts to deal with the differences between insurance under common legal system and Islamic legal system.

Possible Suggestions and Recommendations

Although both Common law and Islamic law provide adequate provisions relating to the operation of insurance, there is room in both legal systems for amendment and development, both in principle and practice. The researcher has made an attempt to analyse both Common law and Islamic law insurance practices.

This section seeks to provide some possible suggestions and recommendations for a further development of insurance laws and practice at Common law, and also for a further Islamisation of insurance in both principle and practice, so as to suit the contemporary world’s economy.

Recommendations for further development of insurance practices under Common Law

1. It is submitted that a transaction involving the elements of interest may be regarded as an unfair and unfriendly dealing from several ideological and religious points of view. Therefore, it is suggested that the elements of fixed interest in an insurance practice should be eliminated. As an alternative, the doctrine of profit and loss sharing financing technique should be adopted in which the parties concerned may share the risk accordingly, in order to meet the original objective of insurance practices in sharing responsibilities against risk.
2. The main function of an insurance policy is to provide material security against unexpected risks, that everybody in society regardless of age, color, sex or position is at risk. The nature of the risk may be different depending on the fate of the individual but they are nevertheless at risk. Thus, it is wrong to claim that an adult is at risk but others such as minors, infants or foetuses in their mother’s wombs are at no risk. These groups of lives too may be at risk, especially to their health, care, education, accommodation and food.

Common law principles provide that the minimum age to buy a policy ranges from 10 to 16 and above, while disqualifying the ones who are below the age of 10, despite the fact that they may also be at risk.

It is therefore suggested that the existing principles at Common law relating to age should be amended. The amended provision should include an infant below the age of 10 and even a foetus in the mother’s womb should qualify to be insured. The policy may be bought under the name of the respective guardian, who may have the role of caretaker on the under-age’s policy to enable him to be protected against unexpected risks.

3. The agents and the brokers, directly or indirectly, contribute to the promotion of the insurance business. The agents and the brokers basically do the work of the insurer. Therefore, it is suggested that the agents and brokers in an insurance practice, should be treated as part and parcel of the insurer’s employees, and they should either be paid monthly salaries by the insurer or they should be given a right to have a share in the profits and other reasonable benefits of the insurance company. In this way, the agents and the brokers should not depend for their benefits on the percentage of the premiums paid by the insured.

4. From the experience of insurance practices at Common law, it has been discovered that a person nominated by the policyholder in a life policy
will be the absolute beneficiary after the death of the policyholder. In this situation, the nominee will have an absolute material gain over the policy without sharing with the other beneficiaries or heirs of the policyholder, who are also affected by the death of the policyholder. This seems to be unfair to the other legal heirs of the policyholder.

It is therefore suggested that the policy of the insured should be regarded as part and parcel of his own estate. The nominee in the policy should be treated not as an absolute beneficiary, but a mere executor or trustee who will receive the benefits under the policy and distribute them among the rightful beneficiaries of the insured according to the principles of inheritance. This enables all the beneficiaries of the insured’s estate to be fairly treated.

5. Under Common law insurance practice, it is a general requirement that the parties to the insurance policy must make a fair disclosure of the material facts or matters which are relevant to the policy. The duty to disclose includes both moral and physical hazards of the subject matter of the policy and the policy itself.

It has already been discussed that the past moral hazards of the insured especially in a life policy are immaterial to the policy. This is because the policy is going to be in force in the future, and furthermore an insurance policy is a financial transaction, which should not be subject to the insured’s past moral behaviour.

Thus, it is suggested that the duty to disclose the material facts or matters in a policy should not include the past moral hazards of the insured; rather it should be regarded as irrelevant to the enforcement of a policy.

6. In a life policy at Common law the beneficiaries of the insured hold the right to make a claim for the exact amount named in the policy, regardless of when the insured dies or how much he has paid as premium, so long as the death of the insured is confirmed at any time
after the commencement of the policy and before the policy matures. Such a practice under Common law may enable the beneficiaries to hope for a gain, instead of seeking for a material security against risk. The main objective of insurance practices is to uphold mutual co-operation against unexpected risk, but not to provide one with unlimited material gain.

It is therefore suggested that in a life policy the claim of the beneficiaries may include the total amount of paid premiums, share of profits over the paid premiums, dividends or bonus and also an amount of contribution from the company's fund to be made in favour of the beneficiaries, depending on the beneficiaries' financial standing and company's policy. Mutual co-operation will then be sustained in a true spirit. It is further suggested that the amount of contribution from the company's funds may be an additional amount to meet the exact amount named in the policy, besides the total amount of paid premiums etc.

7. At Common law insurance, the premiums paid by the insured may be forfeited in certain situations upon certain grounds. For example, for a breach of utmost good faith, the notion of forfeiture may take place. It is suggested that a breach of utmost good faith or the commission of other offences may require the insured to be punished but this punishment should not extend to the insured forfeiting his legitimate paid premiums.

8. At Common law insurance, the No Claim Benefit (NCB) is recognised in a general policy. But despite its recognition, the claimant has no right to claim it in cash or by cheque, rather it is treated as a partial payment for the premium required for the renewal of the same policy. It may be unfair to the claimant not to have the right to claim the No Claim Benefit (NCB) in cash or by cheque. It is therefore suggested that for a fair dealing between the insurer and the insured, the No Claim
benefit (NCB) should be kept optional at the wish of the claimant. If therefore, the claimant wants to take it in cash or by cheque or as a partial payment for the renewal of the policy, he should be allowed to do so as he wishes.

9. The courts of justice at Common law have used their powers to award unlimited damages of millions of dollars in favour of the victim, especially in accident cases. The courts should not simply use its power to make such an award without considering the fact that an insurance policy is a policy of mutual co-operation and not for gain, in which the victim or insured may be awarded reasonable damages. This will make a reasonable balance between the liable party and the claimant, upon the principles of mutual co-operation and shared responsibilities.

It is suggested that the court’s powers to award unlimited damages should be curtailed. Furthermore, if the victim or insured expects more in damages then they should insure their lives through multiple policies. As an alternative, there should be both private and national social security funds from which the insured or victim may seek necessary additional fund. This may enable them to maintain their future without much difficulty, and they will not depend on a single insurer, and the court also should not put an unfair burden on the insurer by awarding unlimited damages to the insured.

Recommendations for further development of Takaful practices in the contemporary economic reality

1. Although Divine sanctions provide necessary guidance on insurance practices as justified by the Sharia’h principles, Islamic scholars and many Muslims are divided in their views. Some of them oppose the idea of insurance entirely, while some oppose it partially. Those who oppose the idea of insurance and keep on doing it have not tried to come up with an alternative model justified by the Sharia’h principles. As insurance plays a great role in providing necessary benefits for the
Muslim Ummah, especially economic security against unpredicted risk, the opponents may oppose the idea of insurance practiced under the conventional system. But they should also seriously think of an alternative solution for the contemporary Muslim Ummah, especially for their economic security against risk.

It is therefore suggested that those Islamic scholars and Muslims who oppose the idea of insurance entirely without coming up with possible solutions, may kindly offer their noble skills or knowledge in coming up with an insurance model which is justified by Sharia’h principles, if they are unable to do this, they should at least contribute or give their fullest support to those who are struggling to come up with a comprehensive model of Islamic insurance which suits the contemporary Muslim Ummah.

2. Although insurance plays a vital role especially in everyday commercial life, there is very little literature or research from the Islamic perspective which may benefit the Ummah. It is, therefore suggested that the Islamic scholars should prepare a constructive schedule or plan to spend a portion of their valuable time to come up with an alternative model from the Sharia’h point of view. Meanwhile, both academic and financial institutions which offer and operate Islamic economic systems, may establish research units specifically for the development of insurance practices. The activities in such research units may include relevant course work, seminars, symposiums, conferences and also sponsoring research projects in the various aspects of insurance practices from the Sharia’h perspective.

3. It is admitted that the insurance practices may provide the Ummah with greater benefits, especially in providing economic security against unpredicted risk. It is the fundamental obligation of every government to provide security for its citizens. No government could deny the fact that insurance practices could play a greater role in the economic security of its citizens.
It is therefore suggested that the Muslim governments should take insurance practices as one of the fundamental aspects of the respective nations. The respective government should make the insurance practices compulsory for every citizen. Dr Mohd Daud Bakar has already made a constructive suggestion for the Islamic insurance practices (Takaful), which could possibly be made as a mandatory financing scheme for the purpose of safeguarding the essential needs of the Ummah in the absence of the practices of al-‘aqilah. This may not only provide individual material security against risk, but simultaneously may ensure economic prosperity for the Ummah.

4. Quite a number of Islamic insurance companies have been established in several countries, especially in the late 20th Century. Despite such a development in Islamic insurance practices, there are so far no exclusive written statutes behind these insurance companies passed by the Parliaments of respective countries, save Malaysia, which has its own written statute, passed by its Parliament in 1984 to govern Islamic insurance practices in Malaysia. Even though the Islamic insurance companies of the world (except Malaysia) are being governed by some rules, decrees, or juristic opinions (fatwa), these do not provide the same weight as the statutes passed by Parliament.

It is therefore suggested that each insurance company should be established under the banner of Shariah teachings, and should have exclusive statutes passed by the legislative bodies of the respective countries, which may provide reliable protection to these companies. This will also afford stability to the operations of these companies.

5. It may not be unusual, despite insurance practice being based on mutual co-operation, solidarity and brotherhood or shared responsibilities against risk, that the parties to an insurance practice may, in certain situations, have disputes among themselves especially when questions of claims or settlements arise. Such disputes may need to be referred to a court of justice for fair judgment between the parties.
It may not be justified to bring a dispute arising from a Shari‘ah based transaction to be settled before a court which is not governed by the Shari‘ah principles. In other words, a secular court should not try a case arising from a Shari‘ah based transaction. This is because when there is any dispute among Muslims, they must take the directives from Allah and His Messenger for a just settlement. But, how could a secular court judge would base its judgement on provisions laid down by Allah and Sunnah. This argument is therefore justified by the following Divine sanction, Almighty Allah commanded:

*If you differ in anything among yourselves, refer it to Allah and His Messenger, if you do believe in Allah and the last day, that is best and most suitable for final determination.*

Furthermore, Allah also commanded that if you judge mankind, you must judge with *adl* (justice). Can we expect a secular court to maintain *al-‘adl* (justice) in its judgment in the spirit of Shari‘ah sanctions? The answer is definitely no. Allah says to the effect:

*And when you judge between man and man that you judge with justice.*

It is therefore, suggested that countries which have Islamic insurance companies should have an independent Shari‘ah court, so that the cases or disputes arising from the Islamic insurance companies may be tried by the respective Shari‘ah courts, with the spirit of *‘adl* (justice) as expected by the Divine sanctions. It is hoped that the disputes arising from a Shari‘ah based institution will be settled by the Shari‘ah courts themselves, without having to go before secular courts of justice. In this way, the real spirit of Islam may be sustained in dispute settlements, arising from insurance practices under the Shari‘ah discipline.

Since there are dual systems of insurance practices existing in many Muslim countries of the world, there is a higher possibility that some of the elements from the conventional insurance practices may be involved in the practices of Islamic insurance, due to the rapid
development of insurance under the conventional system as compared to the development under Islamic law. To protect the Islamic insurance companies from being involved in their practices with some elements from the conventional system, it is necessary to have Sharia’h experts as in-house advisers behind each Islamic insurance company besides establishing the required Sharia’h board, whose role should be to make sure that all aspects of the operation of the company should not involve any element which is contrary to the teachings of Islam.

It is suggested that every Islamic insurance company, before it is established, must have a general provision in the relevant statutes to have a supervisory council, comprising only Sharia’h experts. Those Sharia’h experts may play an important role in making sure that the company operates absolutely on the basis of Sharia’h principles. This council may also from time to time, provide necessary consultation to the company for further development of insurance laws and practices justified by the Shari ‘ah sanctions.

7. There are many Muslims both literate and illiterate, who are still not familiar with the idea and significance of insurance practices. Wider publicity may provide constructive ideas about the significance of insurance practices for those people. It is therefore, suggested that the Muslim governments, the Islamic insurance companies and other relevant authorities should take the initiative to have a publicity campaign through any form of mass media, leaflets, speeches and personal interactions to educate the Muslim population. This may provide those illiterate and ignorant people with the necessary understanding about Islamic insurance practices.

8. Holding of seminars, symposiums, conferences, summits and workshops on specific fields, may contribute to producing different categories of literature and also ideas for a particular issue. It is believed that should there be constant seminars, symposiums etc. on
the issue of insurance practices from the Sharia’h point of view, they may contribute to a further Islamisation of insurance practices.

It is therefore suggested that the relevant institutions and Islamic insurance companies of today may take the initiative to regularly organize relevant seminars symposiums, workshops, summits and conferences for the further development of dynamics of Islamic insurance. This will also provide the contemporary Ummah with better knowledge and substantive relevant literature for further research and development.

9. As already been submitted that the insurer in an insurance practice should play a role in undertaking the responsibility to provide reasonable material security against risk to the subject matter of the policy. It is, quite impossible for the insurer alone to provide adequate material securities against the risk. To lighten the absolute burden on the insurer, the idea of the establishment of re-insurance companies occurs. However, despite the existence of numerous re-insurance companies under the banner of conventional systems, the Islamic insurance companies are not allowed to seek coverage from the conventional re-insurer, for the simple reason that the operations of conventional re-insurers involve some elements contrary to the Sharia’h spirit. In contrast, the operation of insurance under the banner of Islamic law is subject to Divine sanctions.

It is therefore recommended that the respective authorities of Islamic insurance companies of the contemporary world, should take an effective initiative to establish additional necessary re-insurance companies under the banner of Sharia’h principles besides the existing five (ATG, ARIL, IIRCO, Best Re and ITRCO). Such an initiative may possibly be taken with the co-operation of the Muslim rulers of the countries of the world, and also the OIC (Organization of Islamic Conference) to establish them both, at the local and international levels. This may enable the Islamic insurance companies to seek reinsurance
coverage through both, facultative and treaty systems from the Islamic re-insurers, without involving the re-insurers under the conventional principles.