

## Legitimate Judgment on Reinsurance and Islamic Alternative

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### Abstract:

Reinsurance in commercial companies, specializing in reinsurance, is one of the main obstacles which face Islamic insurance companies from legitimate perspective, considering that commercial insurance is prohibited according to the view of the majority of scholars and contemporary juristic complexes, for it implies usury, uncertainty and aleatory. If commercial insurance originally is prohibited, then dealing with commercial insurance companies is prohibited too. But necessity drives Islamic insurance companies to reinsure in commercial insurance companies to ensure their ability to cover the risks which Islamic policy holders may be exposed as policy holders in commercial insurance companies which practice reinsurance operations in commercial reinsurance companies. Contemporary scholars and Islamic juristic complexes invoked maxim ex injuria jus necessity or exigency as true value is justifies according to its reference with legitimate grounds to grant permissibility for doing reinsurance in commercial companies by Islamic insurance companies for whom reinsurance in commercial companies is prohibited.

It is well known by scholars that applying maxim ex injuria jus necessity or exigency, as true value is justified according to its reference with legitimate grounds, should consider its requirements. Necessity as true value is justified according to its reference. This drives Islamic insurance companies to reduce reinsurance operations in traditional reinsurance companies as far as possible; they should act to find alternatives especially with development of reinsurance industry, to establish Islamic reinsurance companies and to conclude insurance contracts with traditional reinsurance companies in terms of the shortest possible time along with considering other relevant legitimate grounds in this respect.

The study aimed to highlight such legitimate grounds on reinsurance operations practiced by Islamic insurance companies in commercial insurance companies to regulate them by rules of Islamic law “Shari’ah” along with some issues concerning reinsurance such as taking reinsurance commission and its judgment, what legitimate alternatives, judgment on taking a part of profit of insurance installment which invested by reinsurance companies and judgment of maintaining reserves on risks, alongside other issues related to reinsurance operations. The researcher mentioned views of some contemporary scholars, discussed and considered them along with proposing solutions and legitimate alternatives which contribute to development of Islamic reinsurance industry in terms of legitimate grounds. In addition, the researcher presented some practical approaches being practiced by Islamic insurance companies in reinsurance operations such as Jordanian Islamic Insurance Company (JIIC) along with giving commentary on such approaches. The research concluded by presenting results and recommendations.

**Keywords:** Legitimate, Judgment, Reinsurance, Islamic

### **Introduction:**

Reinsurance occupies a crucial position in the world’s insurance market that Insurance Companies worldwide are used to make self-insurance, to ensure business continuity and to fulfill their duty and commitment towards insured individuals and risks they may face in period of insurance. In this research, the researcher tackled the topic of reinsurance under the title of Legitimate Judgment and Islamic Alternative for its significance and legitimate caveats. Furthermore, it is overriding all concerns to seek for legitimate alternative.

### **The Significance of the Study:**

First: the significance of this study lies in its attempt to identify legitimate judgment for insurance and reinsurance, and views of scholars in this respect.

Second: reinsurance is one way for development and evolution through coverage of major risks by insurance in addition to its role in distributing risks among Insurance Companies.

### **Study Objectives:**

The main objective of this study is to search for views of jurists on legitimacy of reinsurance, to identify the stance of Islamic law towards it, to characterize correlation between rules of Islamic law and rules of law and to show the potential of reformulating rules of law in accordance with rules of Islamic law.

### **Questions of the Study:**

This study seeks to answer the following questions concerning legitimate judgment on reinsurance:

- 1- What is the extent of reinsurance legality? And to what extent regulations set by scholars and jurists are abided by?
- 2- Could there be Islamic alternatives for reinsurance?

### **First Enquiring**

#### **Contemporary Juristic Views on Reinsurance**

Reinsurance is a pattern of commercial insurance by which a contract is made between Reinsurance Company and insurance company, which carries out direct insurance operations with insured individuals and entities as well as it is known as direct insurer. Before defining legitimate judgment of reinsurance, it is necessary to state the fact that reinsurance is practiced by commercial insurance companies and Islamic insurance companies, even though there are areas of agreement and disagreement.

#### **Aspects of Agreement on Reinsurance among Islamic and Commercial Insurance Companies:**

- 1- Reinsurance in Islamic and commercial insurance companies is made between two parties, namely reinsurer and direct insurer.

2- The reinsurance contract is financial netting contract by which Islamic or commercial companies equally pay the agreed share of installments to reinsurers for which they have been subscribed in exchange for commitment made by reinsurers to assume share of risks that insurers may be exposed.

3- In reinsurance contract, relationship is only established between reinsurer and commercial or Islamic insurance company with respect to payment of compensations when the insured risk arises. Meanwhile, the insured individual or entity has no rights with a reinsurance company, but enjoys rights with the insurer.

4- Reinsurance Company provides Islamic or commercial insurance company with amounts of money in the name of reinsurance as well as it offers another amounts of money by the mane of profits of reinsurance.

### **Aspects of Disagreement on Reinsurance among Islamic and Commercial Insurance Companies:**

1- Commercial insurance companies did not take the legitimacy and illegitimacy of insurance into consideration when practicing reinsurance, whereas Islamic insurance companies take into account legitimacy and illegitimacy of doing insurance in their transactions and reinsurance operations.

2- Commercial insurance company considers being a fundamental party in reinsurance contract since it practices reinsurance on its own behalf in order to overcome major risks that threat, for the company is bound by insurance contract to pay compensations in case insured risks are materialized. Meanwhile, insured individual or entity is only obliged to pay insurance installment to commercial insurance company according to insurance contract. On the other hand, Islamic insurance company concludes contracts by proxy for insured persons in co-operative insurance. As managing insurance operations, Islamic insurance company is aware that due insurance installments of insured persons (policy holders) are insufficient to pay compensations for insured risks when they materialize. Additionally, reinsurance companies should provide protection for Islamic insurance companies to overcome threats that insured persons may be exposed.

3- Commercial insurance companies reserve amounts of money from reinsurance companies' shares and reinvest them, which frequently considers a usurious investment,

while amounts of money reserved by Islamic insurance companies from shares of reinsurance companies is kept as a deposit or being reinvested according to profiting-sharing Mudaraba contract legitimately, where insurance company is a profiting-share party and reinsurance company is a financier<sup>(1)</sup>.

4- As for commercial insurance companies, the amounts of money paid by reinsurance companies as compensations for damages, reinsurance commission or reinsurance commission profits are not subjected to legitimate judgment, whereas Islamic insurance companies consider the opinion of lawful supervisory concerning compensations for damages, reinsurance commission or reinsurance commission profits<sup>(2)</sup>.

#### **Judgment on Re-insuring in General:**

Re-insuring is similarly applied on the basis of the verdict of origin of insurance, not based on reinsurance verdict. So that it is given the legitimate judgment applied to the direct insurance contract. It also considers being a type of illegitimate commercial insurance pattern. Thus, money generated in terms of such type is illegitimate too, because it is done on the basis of a netting contract which includes usury and aleatory as stated by Islamic Fiqh Academy in 1985 corresponding 1406<sup>H</sup>. In addition to that, reinsurance is a betting operation in which coins are sold by coins on the unknown result of an event <sup>(1)</sup>.

#### **Judgment on Reinsurance in Commercial Insurance Companies:**

To identify legitimate judgment on reinsurance in commercial insurance companies, the following questions are necessary to be answered.

First question: do Islamic insurance companies doing reinsurance voluntarily or by force of law and exigency?

Second question: Are Islamic insurance companies allowed to practice reinsurance temporarily pending the establishment of reinsurance companies to provide Islamic alternative according to rules of Islamic law “Shari’ah”?

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<sup>(1)</sup> Dr. Melhem, Ahmed Salim, Reinsurance (pp.121-125). Dr. Algorra Daggi .(1995). Legitimate Grounds of Reinsurance Contract on Life. A Research Presented on 4<sup>th</sup> Juristic Symposium of Kuwait Finance House. 212, 1995, Ashgir, Mohammed Sulieman. Insurance on Life and Reinsurance. Dar Al-Nafaes Press, Oman, 1418<sup>H</sup>, (p.162).

<sup>(2)</sup> Dr. Melhem, Ahmed Salim. Reinsurance and Its Applications in Islamic Insurance Companies (p.124).

(1) Ibid. (p124).

Third question: what are the grounds for Islamic insurance companies to do reinsuring?<sup>(2)</sup> Answering these questions will reveal contemporary scholars' views on -Islamic reinsuring in commercial reinsurance companies. Be that as it may, scholars disagree over it.

### **Permissibility of Commercial Reinsurance in Islamic Insurance Companies:**

Islamic insurance companies may be permitted to reinsure in commercial reinsurance companies as stated by Shari'ah Supervisory Board in Jordan Islamic Insurance Companies, Jordan Religious Verdict Council, Shari'ah Supervisory Board of Arab Islamic Company, Dr. Ali Algarah and Shari'ah Supervisory Board of Faisal Islamic Bank (Sudan)<sup>(3)</sup>. However, they invoked their statement as follow:

1- Reinsurance is done on the basis of exigency which is referred to as equally as making a virtue of necessity. Therefore, it is imperative to resort to reinsurance companies for the purpose of insurance protection. Commercial reinsurance is permissible as contemporary measure in terms of public or private exigency<sup>(4)</sup>. Having considered patterns of transaction in Islamic insurance company and its articles of association, it is found by the council that these patterns bases on co-operative insurance system which is lawfully permissible as stated by Jordan Religious Verdict Council resolution.

Furthermore, Islamic insurance company reinsure in commercial companies which practice reinsurance operations, without considering rules of Islamic law "Shari'ah". Now that Islamic insurance company are obliged to reinsure though commercial insurance companies in order to be able to act in insurance sector, this situation will still be so pending the establishment of Islamic reinsurance companies.

As accordingly to that, reinsurance in such case is done according to the exigency which then considers as equally as making a virtue of necessity. Scholars defined exigency by saying that it is a difficulty or hardship that caused by failure to response to urgent need,

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(2) Shabbir, Mohammed Othman. (2007). Contemporary Financial Transactions (pp.142157). Dar Al-Nafaes Press, Oman, Dr. Melhem, Ahmed Salim, Reinsurance (pp.125-126).

(3) Dr. Melhem, Ahmed Salim. Ibid (pp.125-126).

(4) Al-Suyuti, Jalaluddin. (1990). Alaishbah and Alnazayir. 1st ed. Dar al-Kotob al-Ilmiyah, Beirut, Lebanon, (p.88).

whether exigency faces all people or specific community such as people of the country or by a group of a particular craft. Therefore, it is permissible to reinsure as long as it is needed according to such grounds. The council brings attention to that it is necessary for Islamic insurance companies to find Islamic reinsurance companies at international level so as not to grand permission on the basis of necessity. The council also confirmed the significance of legitimate supervisory in this respect and so reinsurance is to be done only when there is exigency and that God only knows more<sup>(1)</sup>.

- 1- There is insufficient number of Islamic companies which practice reinsurance.
- 2- Lessen the aleatory for which commercial insurance is prohibited through paying compensation for real damage<sup>(2)</sup>.

The verdict presented by Supervisory Board of Faisal Islamic Bank is one of the most significant verdicts. In this respect, the researcher questioned the management of Faisal Islamic Bank which established Islamic insurance company by saying that whether making arrangements for reinsurance through commercial insurance companies is permissible if necessary, pending the formation of Islamic reinsurance companies that take rules of Islamic law into consideration; noting that avoidance of lawful dispensation in reinsurance agreement will be considered in particular:

- 1- Concluding agreement with a reinsurance company will be based on partnership. In the sense that the reinsurance company will guarantee the bank 90% of loss the bank may exposed to in exchange for concession of 50% of the total insurance installments received, and then the bank will gradually reduce payments given to Reinsurance Company and thus this results in reducing the loss ratio that Reinsurance Company bears.
- 2- The bank shall be making no commission from Reinsurance Company.
  - a) The bank shall be making no profit commission from Reinsurance Company.
  - b) The bank will not maintain any reserves of current risks so as not to oblige to pay any usury interests.

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<sup>(1)</sup> Shukri, Bahaa Bahij. (2011). Reinsurance between Theory and Application (p.292) 2<sup>nd</sup> ed. Althagafa Alarabia Publishing House. View of Alzijlii, Wahba. (1986). Journal of Islamic Jurisprudence. 2<sup>nd</sup> ed. Vol. 2. 2<sup>nd</sup> Session of Islamic Jurisprudence Conference, (p.665).

<sup>(2)</sup> Aurygaat, Harbi and Jumea, Saeid. (2011). Insurance and Risk Management. 2<sup>nd</sup> ed. Wael Publishing House, (p.237).

- c) The bank does not interfere in the way the reinsurance company invests paid reinsurance installments and it has no share on returns of investment. In addition, the bank is not responsible for any loss which the company may be exposed to<sup>(1)</sup>.

It is reiterated by the bank that resorting to deal with reinsurance companies is making by virtue of necessity; instead, the idea of co-operative insurance would be strangled in the crib. Resorting to reinsurance by the bank as a temporary measure is done for some definite benefit to that lies in the prosperity of reinsurance industry consistent with Islamic approach, as well as pave the way for the establishment of Islamic companies immediately.

In answer to question, the supervisory board in the bank stated that reinsurance is subjected to the legitimate grounds which stated by the board in its response to enquiry concerning the commercial insurance. That is, reinsurance contract in its real terms is not different from the commercial insurance contract. In commercial insurance contract, the insured entities are insurance companies instead of being individuals.

The stated grounds prevent to do reinsurance except if there is exigency. Now, is there a need for doing reinsurance? To put it in another way, do insurance companies face difficulty and hardship if they do not deal with reinsurance companies? The answering to this question is that the responsibility of practicing reinsurance is placed on management of the bank and its insurance experts. Accordingly, it reasonably infers that there is indication for the need of reinsurance with reference to public and private exigency.

In their answer, insurance experts in the bank said that neither insurance companies can be established nor insurance industry can be flourished, except with reinsurance<sup>(1)</sup>. Referring to the answer of Faisal Islamic Bank's management and its insurance experts in this respect, the supervisory board, in its verdict, considers that reinsurance is permissible due to exigency along with insurance experts frame legitimate grounds to deal with reinsurance companies<sup>(2)</sup>.

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<sup>(1)</sup> Algorra Daggi. (2005). Islamic Insurance. 2<sup>nd</sup> ed. Albasha'er Islamic House (p.431), Islamic Takaful Insurance. 6<sup>th</sup> ed. Vol.2. Dar Albasha'er (pp.593-594).

<sup>(1)</sup> Jamal, Ghurieb. Commercial Insurance and Islamic Alternatives. Alaietisam House (pp.342-343).

<sup>(2)</sup> Dr. Melhem, Ahmed Salim, Reinsurance (pp.121-125).

Concerning, Dr. Al-Sideg Al-Dhareer says that supervisory board of Faisal Islamic Bank convinced by the existence of exigency for doing reinsurance in commercial insurance companies, for there are no Islamic insurance companies<sup>(3)</sup>. In addition, the bank has no access to establish Islamic reinsurance companies and thus the supervisory board of the bank convinced by granting permission for reinsuring in reinsurance companies according to the following grounds:

a- Lessen the percentage of money paid to commercial reinsurance companies from installments to a minimum to make resorting to reinsurance practical in terms of jurisprudential maxim: exigency as true value is justified according to its reference.

Resorting to reinsurance is up to experts in the banks as well as determining the percentage of money insured by Reinsurance Company on the basis of loss.

b- No profit commission or any other type of commission is given to Islamic insurance company by reinsurance company<sup>(4)</sup>.

The Supervisory Board of Qatar Islamic Insurance Company decided that if profit commission means the benefits of reinsurer or his/her profits from illegal or suspicious investments; then, it is ill-gotten too. Given that illegal investment is done, it should be stated in one of contract's articles. It seems that what is meant by profit commission is that it is a commission given by reinsurer in the event that loss is not achieved which in turns invalidate insurance installments. Instead, a percentage of insurance installments would be returned to the company, if any, to encourage its keen on avoiding loss. Therefore, there is nothing to prevent taking such percentage or deposit it insurance account.

As a usual practice in the scope of insurance and reinsurance, Reinsurance Company pays for insurance company a commission to cover its administrative expense along with a little amount of money as a wage at the end of each year, after Reinsurance Company carries out profit and loss account. If reinsurance company finds out that there is a surplus from reinsurance installments after cutting off expenses and paying compensations, commercial insurance company is usually deserved to be given profit commission as a percentage of surplus, but if there is a loss, reinsurance company will bear it all by itself.

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<sup>(3)</sup> Dr. Melhem, Ahmed Salim. Ibid. (pp. 131-132).

On the other side, It is a usual practice in commercial insurance field that reinsurance company takes from commercial insurance company a rate of interest at 3.5% or it takes more than amounts of money which reserved by commercial insurance company. Accordingly, this practice is impermissible but such amounts of money can possibly be invested in one of the Islamic banks. In addition, profit percentage may be given to reinsurance company on the basis of speculation with pay wage or not<sup>(1)</sup>.

The solution is that the company should agree with reinsurer to deposit sum of money in Islamic banks, but the reinsurer has the right to withdraw the money at any time or reinsurer's amount of money might be deposited according to any accepted legal forms after it has been approved by supervisory board<sup>(2)</sup>. Yet, contemporary scholars are contentious about this issue. Islamic Financial Accounting and Auditing Board (IFAAB) prevents taking commission. To this point, it says that it is impermissible for Islamic insurance company to take reinsurance commission, but it has the right to request a reduction for its paid subscription to commercial reinsurance company<sup>(3)</sup>.

This opinion is also stated by Board of Arabic Islamic Insurance Company (BAIIC). In its verdict BAIIC said that there is nothing to prevent Islamic insurance companies from taking profit commissions from commercial reinsurance companies, provided that profit commissions should not be deposited in accounts of Islamic insurance companies, but they have to be spent by Islamic insurance companies doing good deeds or in public interests. Furthermore, contemporary scholars are along with such opinion<sup>(4)</sup>. As for Supervisory Board of Islamic Insurance Company in Jordan (SBIIC), it permitted Islamic insurance companies to take profit commissions, provided that the profit commission should be deposited in accounts of policy holders<sup>(1)</sup>.

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<sup>(1)</sup> Algorra Daggi. Islamic Takaful Insurance. Vol.2, (p.597-598).

<sup>(2)</sup> Algorra Daggi. (2005). Islamic Insurance: Fundamentalist and Jurisprudence Study. 2<sup>nd</sup> ed. Albasha'ir Islamic House (p.434).

<sup>(3)</sup> Standard (41). Section (7). Provision (2). Legitimate Grounds (565).

<sup>(4)</sup> Dr. Melhem, Ahmed Salim. Reinsurance (p.132).

<sup>(1)</sup> Dr. Melhem, Ahmed Salim, Reinsurance (p.133), Alnashmi, Ageel Jasem. Reinsurance: Obstacles and Solutions (23).

The researcher believes that this approach is inadequate because insurance companies perform services and take their administrative expenses directly from subscribers, and not through reinsurance companies. That is, taking commissions from reinsurance companies makes Islamic insurance companies as founders of commercial insurance companies. Hence, dealing is supposed to be between Islamic insurance companies and commercial reinsurance companies in terms of a separate contract. And those subscribers in Islamic insurance companies should not have relationship with reinsurance companies. For such reason, Sudanese Islamic Insurance Company makes agreements in terms of net profits and it does not take a commission from reinsurance companies.

c- Islamic insurance companies will not maintain reserves relevant to current risks because they entail to pay usurious interest for reinsurance companies.

As a usual practice in commercial insurance, insurance companies maintain a portion of installments due to reinsurance companies to face renewable risks and to pay benefits for the sake of the reinsurance companies. On the other hand, Sudanese Islamic Insurance Company avoids this approach and it does not maintain any reserves in the first place. Then, some reinsurance companies grant Islamic insurance companies to maintain reserves without paying benefits. It has been agreed with reinsurance companies that Islamic insurance company should invest reserves legitimately and pay percentage of profit to reinsurance companies. Some contemporary scholars including Dr. Abdulaziz al-Khait disagreed with such statement. He believes that such mentioned reserves according to insurance adjustment have deferred installments. The majority of scholars agreed that it is not permissible that speculative capital is debt due unless the debt is paid by debtor. Instead it is permissible when creditor receives his debt from debtor in form of speculation<sup>(2)</sup>.

d- Islamic insurance companies make no intervention in reinsurance companies' mode of investment of payable installments. Further, they make no claim for a share in returns on investment and they take on no responsibility for loss which reinsurance companies may be exposed to.

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<sup>(2)</sup> Algasar, Abdelaziz. Reinsurance: Obstacles and Solutions. Faculty of Shari'ah, Kuwait (30).

e- The Supervisory Board considers that the agreement with reinsurance companies should be made in terms of shortest possible time and Islamic insurance companies have to refer to the Board if the agreement is to be renewed.

f- Islamic insurance companies are to practice reinsurance in reinsurance companies, if available. The Supervisory Board urges the bank to establish Islamic insurance companies so as not to deal with commercial insurance companies<sup>(1)</sup>.

Now, there are six institutions operating in insurance on the basis of Islamic co-operative insurance. The researcher believes that if those institutions deal fully with each other, they can work independently from commercial insurance companies; especially no excuse can be made for them to do so<sup>(2)</sup>.

#### **View of Shari'ah Supervisory Board of Islamic Insurance Company in Jordan:**

Shari'ah Supervisory Board of Islamic Insurance Company in Jordan (SBIIC) has fairly permitted doing reinsurance in reinsurance companies just in case reinsurance cannot partially or fully be done in Islamic reinsurance companies. The SBIIC made the evidence that there is exigency for practicing reinsurance and in such situation exigency is referred to as equally as making a virtue necessity because just few reinsurance companies are found which hardly meet the needs of one of Islamic insurance companies with respect to reinsurance. In its verdict, SBIIC reasonably permits taking reinsurance commission from commercial insurance companies as accordingly to that reinsurance agreements might be concluded on the following grounds:

a- Insurance companies conclude agreement with reinsurance companies by virtue of annual agreement which intends to make insurance companies conveying a part of risks that they bear to reinsurance companies.

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(1) Algorra Daggi. Islamic Insurance (p.432-433). Urygaat, Harbi and Jumea, Saeid. Insurance and Risks Management (p.238), Alzuhli, Wahaba. Islamic Jurisprudence and Its Evidence (p.3430).

(2) Aldarir, Sidig. (1987). Commercial Insurance and Reinsurance. Included in Agenda of 1<sup>st</sup> Jurisprudence Symposium of Kuwaiti Financing House (pp.204-206).

b- Insurance companies oblige in advance to transfer agreed portion to reinsurers over the ranges of risks to which reinsurance agreement is made and the reinsurer commitments to accept this. The reinsurer's responsibility arises when a real insurance contract is concluded with insured entity according to terms of reinsurance agreements.

c- Insurance companies commit to pay reinsurance installments in exchange for a commitment made by reinsurer to pay his part of the claims and oblige to pay insurance companies a commission on contracts according to concluded agreements. It is possible in agreement to state that insurance companies can share profits made by reinsurers in concluded agreements.

d- Insurance companies maintain 40% of referred installments from agreements on fire and public accidents, and marine and health insurance in order to ensure implementation of reinsurer's commitment towards insurance companies. The amount of money is to be released after one year according to reinsurance agreements. The amount retained by Jordan Islamic Bank invests legitimately and agreed share is given to reinsurers from earnings of retained amount of money.

e- Collected earnings will be included in reinsurer's accounts and cut off received commissions from reinsurers as integrated part of reinsurance costs.

f- Reinsurers commit to pay commission to insurance companies as determined by specific percentage of reinsurance installments. This is not necessarily represented a commission literally, but it is a contribution from reinsurers to direct expenses which are borne by insurance companies particularly reinsured risks.

g- These commissions include in revenues in accounts of policy holders.

h- Reinsurance agreements state insurance companies has the right of sharing reinsurers by specific percentage of net profits which reinsurers earn from reinsurance agreements.

i- These commissions will be counted by the end of agreement and included within reinsurance commissions in accounts of policy holders in form of revenues<sup>(1)</sup>.

j- Both reinsurance commission and commission of reinsurance profits will not be paid from reinsurers' money that grow and invest legitimately; but, they are a part of reinsurers' financial dues which reserved in the company<sup>(2)</sup>.

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(1) Dr. Melhem, Ahmed Salim, Reinsurance (ppp.134-135-136).

(2) Dr. Alnashmi Ageel. Islamic Reinsurance: Obstacles and Solutions (25).

**View of Dr. Wahabi Alzihuli:**

Dr. Wahabi Alzihuli believes that reinsurance is considered on the basis of verdict of principal insurance. It is permissible for co-operative insurance companies to reinsure in other co-operative companies if available and this can be justified due to public exigency, but that will not happen or be true when constraints of aleatory implied in a netting contract for they impact and breach the contract. A contract should not be concluded in terms of something that prevents to practice reinsurance in commercial insurance companies, provided that there is a true value of exigency as pointed out by Shari'ah Supervisory Board of Fisal Islamic Bank (SBFIB). If there is true value of exigency to conclude a contract, then the contract will not be breached, even it implies uncertainty. That is, contracts are made for the interest of people's exigency.

It is meant by true exigency that all legitimate grounds will be used to achieve the purpose of contract excluding a contract that implies aleatory. As the exigency for practicing reinsurance bases on concluding agreement or contract between direct insurance company and reinsurance company and managers of companies who do reinsurance besides that there are no reinsurance institutions established on co-operative basis, exigency entitles doing reinsurance legitimately at present time in international commercial insurance companies; this is done through paying commission for insurance company to cover its administrative expenses, as well as paying a wage in exchange for burdens and actions that it carries out to study the causes of accident, risks and damages in addition to conditions of a company that claims installments. As for profit commission on surplus of compensations paid to affected entities, administrative expenses and interest rate which paid to commercial insurance company in exchange for amounts of money retained by direct insurance company can be distributed in terms of speculation in Islam, and invested surplus money and reserves in particular projects if possible. But if that is not possible, interest must be paid for necessity just in case as necessity knows no laws<sup>(1)</sup>.

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<sup>(1)</sup> Alzuhli, Wahab. (2007). Encyclopedia of Contemporary Islamic Jurisprudence. Damascus (ppp.220-221-222). He was born in 1932 in Syria. He was one of Sunna prominent scholars. He was member of Jurisprudence Complex as an expert in Mecca, India, USA and Sudan. One of his most popular followers are Abdul el-Sataar Abu Ghoda and Abdul Latif Farfur. Islamic Jurisprudence and

Previously mentioned are the most important constraints and legitimate grounds for practicing reinsurance in commercial insurance companies so that Islamic insurance companies must abide by them and consider opinion of Shari'ah Supervisory Board (SSB) before they conclude any reinsurance contracts with commercial reinsurance companies, which place heavier burden on Islamic insurance companies for establishing Islamic insurance companies so as to get rid of doing reinsurance in commercial insurance companies and to make all their transactions compatible with rules of Islamic law (Shari'ah). It is stated in the verdict of SSB of Dellah Al-Baraka that if there are only non-Islamic insurance companies, exigency for practicing insurance is justified and true compensations is considered, then reinsurance is fine<sup>(1)</sup>.

### **Second part: Prohibition of Commercial Reinsurance in Islamic Insurance Companies:**

This includes a dissenting opinion which stated that Islamic insurance companies are not permitted to practice reinsurance in commercial insurance companies. That was practically said by Dr. Abdulaziz al-Khayyat and Muhammad Othman Shabir. Concerning, decision made by Islamic Fiqh Academy (IFA) stated that Prof. Dr. Abdulaziz Al-Khayyat, former dean of Faculty of Shari'ah in University of Jordan and member of Jordanian Fatwa Council, believes that it is impermissible for Islamic insurance companies to conclude reinsurance agreements with commercial insurance companies under the pretext of necessity knows no laws because the legitimate meaning of necessity that knows no laws is not realized in such situation.

He also considers that there is no exigency to permit practicing reinsurance in commercial insurance companies as a temporary measure until establishing Islamic insurance companies for that purpose. He also advised start-up Islamic insurance companies so as not to do insurance beyond their capacity, and not double their earnings through ill-gotten money, namely usurious dealings. He went on saying that Muslim commercial transactions, principally, should be free of usury.

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Its Evidence Book and Summary of Jurisprudence are of his most famous books. He died in 2015 in Damascus.

<sup>(1)</sup> Verdict No. (14/7) Verdicts of Albarak Supervisory Board; Dellah Albaraka Collected and Edited by Abdul el-Sataar Abu Ghoda. Dr. Azizeldeem Koja .(2003). 2<sup>nd</sup> ed.

If some Islamic institutions are obliged to carry out usurious transactions, as the ones that central banks are forced to conduct, such interactions consider being impermissible or unjustified, adding that we also do not agree with such act, even when Islamic insurance companies voluntarily do reinsurance, and tray hard to look for a legal opinion that issue by Islamic scholars in Legitimate Consultants Board (LCB).

It concludes that it is impermissible to practice reinsurance in reinsurance companies which engage in usury. Instead, this can be done in one case that if there are Islamic insurance companies, they work for the interest of others as well as act with reinsurance companies and invest their shares legitimately. Otherwise, it is fear that Islamic insurance companies might collapse if they do not do reinsurance in reinsurance companies. It is thought by Dr. Abdulaziz Al-Khayyat that the way Islamic insurance companies deal with reinsurance companies bases on law because Jordanian law forces Islamic companies to deal temporarily with reinsurance companies pending the establishment of Islamic insurance companies<sup>(1)</sup>.

#### **The View of Dr. Muhammad Othman Shabir:**

He concluded that reinsurance contract made between Islamic insurance companies and reinsurance companies considers being a netting contract which implies usury and aleatory, along with commercial insurance contract is also impermissible when usury and aleatory are implied. In addition, concluding reinsurance agreements between Islamic insurance companies and reinsurance companies is impermissible due to the availability of Islamic alternative represented by Islamic insurance and reinsurance companies as Reinsurance Company in Bahrain, Saudi-Tunisian Reinsurance Company in Tunisia, Islamic Takaful Insurance and Reinsurance Company in the Bahamas<sup>(2)</sup>.

#### **Decision of Islamic Fiqh Academy:**

So when reinsurance is one of the hardest things because most Islamic co-operative-insurance companies are young start-up companies, as well as no reinsurance companies based on co-operative notion and commercial insurance are found,

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<sup>(1)</sup> Abdulaziz Al-Kiat Report of Afitaa Council. (2000). Dr. Melhem, Ahmed Salim, Reinsurance (pp.19-140).

<sup>(2)</sup> Shabbir, Mohammed Othman. (2007). Contemporary Financial Transactions (ppp.142-144-156).

All of this begs the question that is it permissible for Islamic insurance companies to reinsure in commercial reinsurance companies? As it is known that commercial insurance contract is not different in its content from commercial insurance contract. Instead of the insured entity is being an individual, it is a company; therefore, reinsurance is given the verdict of commercial insurance as previously mentioned; that is, reinsurance is likely impermissible as stated by majority of scholars <sup>(3)</sup>. After viewing presentations offered by scholars involved in the session on insurance and reinsurance, discussing presented studies and considering opinions of juristic complexes and scientific bodies in this respect, Islamic Fiqh Academy (IFA) in its session held in Jeddah in 1406<sup>H</sup> corresponding 1985 decided that:

**First:** the commercial contract of constant installments that companies deal with implies obvious aleatory, and thus it is impermissible and illegitimate too.

**Second:** replacement contract which fulfill principles of Islamic transactions considers a co-operative insurance contact that bases on co-operation and donation, and so also is reinsurance contract on the basis of co-operative insurance.

**Third:** Call upon Islamic States to establish co-operative insurance institutions and co-operative institutions for reinsurance pending Islamic economy frees from such abuse and not to violate the order made up by Allah for the sake of this nation. Those who stated such statement inferred that:

- a) Reinsurance in commercial insurance companies is a sub-form of forbidden commercial insurance and thus it is forbidden too.
- b) The presence of Islamic alternative in Islamic insurance companies, though it is insufficient, responds to the basic need, in the hoping of expanding in future.
- c) Stating permissibility of reinsurance makes Islamic insurance companies to rely on such statement, and they will not act to establish Islamic reinsurance companies.

Reinsurance in commercial insurance companies is a form of commercial insurance and it is forbidden as stated by majority of contemporary scholars. Principally, reinsurance in commercial reinsurance companies is impermissible.

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<sup>(3)</sup> Islamic Fiqh Academy. (1985). Resolution No. 9. Vol. 2 (p545)

But when exigency is justified according to insurance experts' statement and Islamic insurance companies in particular as stated by Dr. Sidig al-Darier are fairly start-up companies in newly emerging countries in this respect<sup>(1)</sup>, it seems that there is nothing to prevent practicing reinsurance in commercial insurance companies as a result of exigency and exigency as a true value is justified according to its reference particularly in the view of fundamentalists<sup>(2)</sup>.

In its decision No. 25(7/6) concerning insurance and reinsurance, the Council of Europe (EC) decided the following<sup>(1)</sup>: there are some cases and conditions along with taking into account provisions given in Juristic Complexes on prohibition of commercial insurance, which formed in terms of constant installments and without giving insured entity the right to have company profits or bear loss in addition to legitimacy of co-operative insurance, which based on organized co-operation between insured entities and their surplus concerns if any, and the company being responsible only for insurance, and investment portfolio and its assets, required creative solutions to deal with special conditions and to meet their requirements with regard to Muslims status particularly in Europe where commercial insurance dominates there. Bearing in mind that there is a true exigency to do commercial insurance in order to avert threats that Muslims may be exposed to in their lives and especially no Islamic alternative, co-operative insurance, is available at present time, the council gave verdict on permission of commercial insurance in the following situations or similar cases:

- 1- In cases of legal obligations such as third-party insurance against vehicles, machines, equipment's, workers or employees in terms of social insurance or contracting.
- 2- In cases when there is exigency for insurance in order to save embarrassment and to relieve severe hardship, and then aleatory which existed in insurance system is except; one example of this is insurance on Islamic institutions such as mosques.

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<sup>(1)</sup> Al-Darier, Sidig. Insurance and Reinsurance in Legitimate Patterns (pp.204-206) Presented in Agenda of 1<sup>st</sup> Jurisprudence Symposium of Kuwaiti Financing House (pp.204-206).

<sup>(2)</sup> Al-Suyuti, Jalaluddin .(1990). Alaishbah and Alnazayir. 1<sup>st</sup> ed. Dar al-Kotob al-Ilmiyah, Beirut, Lebanon (p.88).

<sup>(1)</sup> Decisions and Advisory Opinions Issued by European Council for Advisory Opinions and Researches. (2013). 1<sup>st</sup> Ed.

The council recommends financiers and intellectual people to strive actively to found Islamic financial institutions such Islamic banks and Islamic co-operative insurance companies as often as they could.

In short, the reality of reinsurance as considered by researcher is that commercial insurance companies in the world reinsure in large reinsurance companies in world's largest companies to ensure more profits through insurance operations and to mitigate the loss which they may suddenly be exposed in exchange for installments paid by insurance companies to reinsurance companies. The second party commits to pay agreed compensations in terms of agreement which concluded between two parties in case of insured risks are materialized, where the intended party shall pay installments. Laws regulating insurance operations in commercial insurance companies as insured entities are the same for reinsurance companies as insurers.

Perhaps, the idea invented by the West to ensure more profits is the same idea upon which commercial insurance company based on; therefore, such idea is impermissible according to those who stated the impermissibility of commercial insurance companies. And so the establishment of co-operative reinsurance companies is needed in Islamic world according to recommendations made by conferences, seminars and researchers in order to lower the flowing of bounties of Muslims to the West, along with Islamic economy progress is keeping up, which may help to protect money and to cope with civilization so as to make inclusion of Islam for all aspects of life come true, and to show that Islam is applicable in every time and place without compromising rules of Islamic law "Shari'ah" which set by the leader of the nation, the prophet Muhammad (peace be upon him) and being completed by His companions and good scholars.

The dream of establishing reinsurance companies which jurists, economists and financiers used to have in their minds becomes a reality with the new millennium. Though these companies have been recently established, their solid regulations today correspond to some of the world's leading reinsurance and commercial insurance companies in terms of financial immunity, modern technologies and good tools, which makes us to classify such Islamic companies as one of the major world companies.

Regarding, there are over eight Islamic reinsurance companies including Islamic Company for Insurance and Reinsurance in Saudi Arabia, National Company for Reinsurance in Sudan, and Asia International Company for Reinsurance in Malaysia.

Yet, some reinsurance companies can't afford to cover 100% of reinsurance operations because they are unable to meet the needs of insurance companies or co-operative insurance companies in view of the large installations, buildings, planes, ships, and governmental and public properties. So we have to accept certain percentage of covering reinsurance program as proved by Shari'ah Supervisory Board of Faisal Islamic Bank (SSBFIB), and other Co-operative Companies. After considering views of scholars and Islamic Juristic Complexes, we give preference to the first statement which states the permissibility of reinsurance by Islamic insurance companies in commercial insurance companies according to Islamic rules pending the establishment of general federation of reinsurance companies or such huge project is to be adopted by Faisal Islamic Bank (FIB), whose membership includes more than fifty States, and it has strong financial immunity which is capable to meet the needs of insurance companies around the world. On the other hand, the statement signifies the impermissibility of reinsurance, for there is no true necessity or exigency. Thus, this statement requires clarification. That is, if Islamic insurance companies do not reinsure in commercial reinsurance companies in the absence of Islamic insurance companies, serious implications will be arisen, such as:

1- Causing huge loss and collapse of companies and remaining of insurance industry at the hands of Jews who unfortunately control this industry<sup>(1)</sup>.

2- Leading to destruction, loss, bankruptcy and loss of money of policy holders; legitimately, preserving money is one of Islamic purposes and five necessities. Allah, the Almighty, says "Given not to the incapable (what is in) your (keeping of their) wealth which God has given to you to maintain; but feed and clothe them from it and speak kindly to them"<sup>(2)</sup>. Preserving money of insurance companies, contributors and policy holders is referred to as exigency whose true value is equally as making a virtue of necessity. I believe that true exigency entitle the permissibility of doing reinsurance in commercial insurance companies according to previously stated legitimate grounds.

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<sup>(1)</sup> Jamal, Ghurieb. Commercial Insurance and Islamic Alternatives. Alaietisam House.

<sup>(2)</sup> Al-Nisa Chapter. Verse No. 5

3- Establishing Islamic insurance companies to practice takaful reinsurance and able to meet the needs is neither easy nor simple but that definitely needs time; even Western giant reinsurance companies did not come into being just over one year or ten years, but over 350 years. Insurance institutions keep going on establishing takaful reinsurance companies but they have to attempt hardly to achieve intended objective to save embarrassment from Islamic insurance.

4- As establishing Islamic economy is absolutely necessary, it is then our task to protect this experiment along with exerting great efforts to provide legitimate alternatives<sup>(3)</sup>.

Compulsory reinsurance in large or international commercial insurance companies requires public and special grounds so as not to violate the rules of Islamic law “Shari’ah”.

Followings are public grounds:

A) Reinsurance in commercial insurance companies shouldn’t cause significant damage or serious loss to the national economy through payment of money in hard currency. If only little loss or damage to possible extent is materialized, then reinsurance is permissible in terms of public exigency which entitles making a virtue of necessity for avoidance of involving in difficulties that may cause destroy self.

B) Reinsurance process shouldn’t lead to smuggle money out. Therefore, co-operative insurance company has had to deal with reinsurance companies within the country if possible in order to prevent money diversion abroad.

C) Direct insurer shouldn’t pay usurious interests in exchange for insurance amounts and take nothing of such interests. But when reinsurance companies exit in non-Islamic countries, insurance companies have to take such interests for the sake of poor people or for public interest such as building school or hospital. Otherwise, if such amount of money in form of interest is not taken, this will strengthen reinsurance companies to have more power than ours.

E) Direct insurer should be keen on settling reinsurance operations by means of contribution, which will be taken from installments of insured entities and contributors in exchange for contribution paid by Reinsurance Company to cover risks which may be realized<sup>(1)</sup>.

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<sup>(3)</sup> Algorra Daggi. (2011). Islamic Takaful Insurance. 6<sup>th</sup> ed. Vol.2 Albasha’ir Islamic House (p.601).

<sup>(1)</sup> – Dr. Alzuhli, Wahabi. Conteparory Islamic Jurisprudence (pp.339-340).

Followings are private grounds which base on true exigency:

1- Contract to be concluded in terms of exigency: it is that people will get into state of difficulty and hardship if they do not assume such contract for not making use of a benefit which legitimately considered that falls in the domain upon which legitimacy enacted either for the interest itself or by similar case.

2- That exigency is public or private; public exigency is that all people need it. Private exigency is that certain group of people's need it such as the people of country or people of specific craft. Exigency alone is not enough; it must be accompanied by dealing because dealing is the manifestation of exigency.

3- That exigency is determined; all legitimate ways are assigned to achieve the purpose aimed at, except for a contract that implies aleatory. Otherwise, true exigency, for which prohibited dealing is resorted to, does not exist in reality<sup>(2)</sup>.

Based on all above mentioned opinions, the question that arises here: is it permissible to deal with non-Islamic insurance companies where there are so many existing Islamic insurance and reinsurance companies? The answer to that question: if the board finds that there are so many existing Islamic insurance companies as well as Islamic reinsurance companies which results in disappearance of exigency that makes permissibility to deal with non-Islamic insurance companies. Thus, the board recommends Islamic banks and institutions to deal with Islamic insurance companies where they exist, committing to deal with reinsurance legitimately<sup>(1)</sup>. Consequently, it is our juristic conviction that reinsurance in such companies is permissible owing to public exigency and necessity, considering that Takaful insurance companies capable of comprehensive coverage should be urgently established by governments and people.

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<sup>(2)</sup> Agga, Mustafa. An Introduction to Jurisprudence (p.603), Aldarir, Sidig. Aleatory and Its Impact on Contracts (ppp.600-605-610).

<sup>(1)</sup> Verdict No. (3). Economic Legal Opinions. Comprehensive Encyclopedia. Dellah Albaraka Symposium, from: [www.islamport.com](http://www.islamport.com).

## Second Enquiring

### Alternative Ways for Contact of Reinsurance

Legal Opinion Boards (LOB), which entitled permissibility to commercial insurance companies to reinsure, has taken in account true exigency which is referred to as equally as making a virtue of necessity. Thus, establishing Islamic insurance companies becomes an urgent requirement, though this takes a long time to see remarkable success achieved by insurance companies; until that happens, proposing solutions to realize intended goal through the most direct routes is so significant, along with taking into accounts that there are few reinsurance companies which are unable to achieve required insurance coverage. Here, we present several proposals and alternative views for reinsurance in this respect as follows:

#### **First: Insurance by Solidarity among Islamic Insurance Companies:**

A number of companies collaborate with each other's to share insured risks which cannot be borne by one company on its own. Hence, each company endures a part of such risk that it can bear and cover it; what is known by insurance experts as fragmented underwriting<sup>(1)</sup>.

Dr. Bahaa Bahij Shukri commented on this proposal by saying that what is known as fragmented underwriting is a subscription system used in LLOYD's Insurance, which is one of the global largest groups of subscription in which individual responsibility is central of work. This could not be implemented in Islamic or commercial insurance companies because underwriters in LLOYD's Insurance, whose number is more than 100 subscribers, sit altogether in one hall where insurance broker can pass insurance form for subscribers being selected. Each subscriber determines a part of risk insurance value to a bear. As for Islamic insurance companies spread across different countries, it is impractically to use such system of working<sup>(2)</sup>.

**Second:** To establish general federation of Islamic insurance companies basing on co-operation for companies and to entitle one company to act on behalf of the others so as to conclude contract with insured entities along with acceptance of other companies to such contract in terms of a part that relevant to their field of specialization,

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<sup>(1)</sup> Jamal, Ghurieb. (1975). Insurance in Islamic Shari'ah and Law. 1<sup>st</sup> ed. Dar Alfikir Alarabi (pp.150-135).

<sup>(2)</sup> Shukri, Bahaa Bahij. (2011). Reinsurance between Theory and Application. 2<sup>nd</sup> ed. Althagafa Alarabia Publishing House (293).

Each company on its own, which is known as joint insurance, the case in which each has its own legal personality. In this position, such companies are joined together to form a single financial autonomy in form of high insurance capacity to actualize fundamental justification for reinsurance in order to overcome serious risks which may exceed the amounts of compensations. The juristic evidence for collective insurance is driven from the system of indemnity payment for unintentional act which proved by true prophet traditions (Hadeeth)<sup>(1)</sup>.

We believe that what is meant by joint subscription is joint account in scope of insurance. This when insurance companies agree to form joint account with each other and it is managed by one member of them or it will be established by an independent management that working independently from managements companies involved in account. Such companies would assign some huge risks to which companies conclude contract to insure on the basis on joint account. Joint account, though it is among other ways of reinsurance, can be applied only to specific number of risks and it is unhelpful for direct insurer to cover the rest of portfolio risk through reinsurance. It is not for joint account management, in this regard, to conclude insurance contracts with insured entities directly on behalf of insurance companied involved in joint account. This is because concluding insurance contracts with insured entities departs joint account from the fundamental purpose and contradict laws that regulate insurance operations in various countries, which restrict practicing insurance in joint-stock companies, provided that legitimate permission should be obtained from competent authorities in this field. Joint account is just preventive measure that restored to by insurer in particular situations to reduce wide imbalance in risks covered by insurance portfolio and to avoid catastrophic loss as a result of declination in degree of actualization of such risks<sup>(2)</sup>.

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<sup>(1)</sup> Abdul el-Samae3 Al-masri. (1987). Islamic Insurance between Theory and Application. 2<sup>nd</sup> ed. Wahba Bookshop, Altawfieeg Publishing House (p.82).

<sup>(2)</sup> Shukri, Bahaa Bahij. (2011). Reinsurance between Theory and Application (pp.294-295).

**Third: Establishing Islamic Reinsurance Companies by Contribution from Islamic Insurance Companies owing to Their Limited Financial Capacity:**

These companies will be established mainly as joint-stock companies with high capitals by capitalists in addition to direct Islamic insurance companies; stock value for Islamic insurance companies to practice co-operative insurance at higher levels of insurance, at present time, has to be high, which will enable them to raise their absorptive capacity. Introduction of this principle means classifying co-operative insurance companies into groups according to their absorptive capacity and ability to ensure that the company would not be overburden in order to avoid making any excuse to deal with commercial reinsurance and Islamic reinsurance <sup>(1)</sup> so as to realize the meaning of holy verse “Our Lord! Impose not on us that which we have not the strength to bear<sup>(2)</sup>”.

**Forth: Establishing Islamic Reinsurance Companies with Substantial Amount of Capital through Contribution by Islamic Banks in Islamic World:**

Establishing Islamic insurance companies expands Islamic economic cycle through funding Islamic and financial institutions and banks such as institutions which cannot fulfill their economic mission without being dealt with Islamic insurance companies. Therefore, such financial institutions especially Islamic banks should support Islamic insurance companies in the basis of financial capacity to be capable of bearing consequences of serious risks that each insurance company, on its own, invariably fails to bear. Instead, this can be done through establishing Islamic insurance companies with capitals provided by Islamic financial institutions<sup>(3)</sup>.

**Firth: Simplified Co-operative Means for Islamic Reinsurance:**

Every Islamic insurance company contributes to amount of money which will fit intended risks which want to be covered and the amounts of money should be paid in advance. All collected amounts of money put under the control of hired and trusted management.

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<sup>(1)</sup> Melhem, Ahmed Salem, Reinsurance and Its Applications in Islamic Insurance Companies (p.158).

<sup>(2)</sup> Albagara (Cow) Chapter. Verse No. 286.

<sup>(3)</sup> Abu Habeeb, Saeed. (1983). Insurance between Prohibition and Permissibility. Dar Alfikir Almuasir (pp.60-61),

Then, payment for loss of agreed risks is covered or it should be taken from such amount of money. Instead, one company from co-operative insurance companies agrees with co-operative insurance companies and undertakes to pay an amount of money when insured risk happens or materializes. Trade-off is, then, concluded between companies. Both types consider being good and sound co-operation which apparently meet rules of Islamic law “Shari’ah” comparing to other co-operative patterns that practiced in the time of the prophet Mohammed “peace be upon him” and approved by Shari’ah such as the prophetic tradition related by Abu Musa al-Ash’ari may God pleased with him, narrated that the messenger of God may God’s prayers and peace be upon him, he said: The Ash’ari people, if widowed in the invasion or their foods of children shortage in the city, gathered what they had in one garment and they shared it equally, so they are mine and I am among them.

In this way, insurance companies become an insurer and a reinsurer. So every company joins the co-operation commits to cover a given part of risks and the management of the group acts to count all parts of risks. Demands for reinsurance will be given to the management of the group according to insurance deposit that each company obliges to give to its subscribers. Then, the management of the group distributes surplus of deposits among companies by virtue of committed percentages. When insured risk happens, each company will pay the committed percentage according to its share. In case of achieving surplus, it will be returned to the company with the scale of its share<sup>(1)</sup>. These two types are described by mutual co-operative associations. Thus, such associations can mutually agree upon to form private fund. If an association exposes to risk and it can’t fulfill its obligations, then it may resort to reinsurance fund to pay.

The researcher believes that these two types of co-operation cannot be applied since the number of subscribers in co-operative insurance companies is more than the number of mutual co-operative associations. Therefore, establishing large institution to parallel global commercial insurance companies in their financial capacity is required, as well as laws of the State do not authorize to establish co-operative associations.

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<sup>(1)</sup> Alashgir, Mohammed Sulieman. (1995). Ibid. Presented in the Agenda of 1<sup>st</sup> Jurisprudence Symposium of Kuwaiti Financing House (p.30).

Three decades ago, some institutions operating in co-operative insurance, jurists, scholars and researchers considered that establishing large institution with strong financial capacity to parallel commercial insurance companies worldwide was difficult at that time. That is, the establishment of such co-operative insurance companies requires liquidity to cover risks and calamities that existed institutions in Islamic world may not be able to fulfill or meet the requirements and needs of co-operative insurance to cover risks huge and disasters<sup>(1)</sup>. In addition to that, the establishment of co-operative reinsurance company depends on success, progress and continuity of co-operative insurance companies, besides the existence of huge reserves to pay compensations for insured individuals or companies as a result of incidents and calamities<sup>(2)</sup>.

Dr. Wahabi Alzhuli states that the big problem facing co-operative insurance is that co-operative insurance did not widely utilize at international level and there are no huge institutions to compete world's largest reinsurance companies; therefore, resorting to such companies is compulsory and necessary according conditions of true exigency at present time pending considerable alternative is found besides small-scale alternative, noting that reinsurance causes serious loss in national economy<sup>(3)</sup>. So that some scholars found that nothing to prevent from reinsurance in commercial insurance companies in the world when there is true exigency. It is worth mentioning that SSBFIB set a number of grounds for practicing reinsurance in commercial insurance companies as previously stated<sup>(4)</sup>

#### **Sixth: Conducting Reinsurance by Commercial Companies:**

This when a commercial company whether a bank or other entity undertakes to manage Islamic co-operative reinsurance operations which has several patterns:

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<sup>(1)</sup> Alzuhli, Wahabi .(1986). Contemporary Financial Transactions. (2002). 1<sup>st</sup> ed. Dar Alfikir Almuasir (p.139).

<sup>(2)</sup> Algorra Daggi and Mohiu al-Diyn, Ali. (1995). Reinsurance Contract on Life, and New Developments in Contrcats. 1<sup>st</sup> ed. Research presented on 3<sup>rd</sup> Juristic Symposium of Kuwait Finance House (p.139).

<sup>(3)</sup> Alzuhli, Wahabi. (1995). Legitimate Grounds for Patterns of Insurance on

<sup>(4)</sup> Jamal, Ghurieb. Commercial Insurance and Islamic Alternatives (pp.339-344), Alzijlii, Wahba. Contemporary Financial Transactions (pp.289-290).

**First pattern:** cooperation should be of simplified form and installments paid by insurance companies gather altogether in Reinsurance Company, which undertakes to pay from such installments when risk realizes; it acts to return surplus and distributes it to reinsurers. In addition, all amounts of money

May be deposit in current, saving or investment account in Islamic bank until being used as previously stated <sup>(1)</sup>

**Second patterns:** joint-stock commercial company, which will primarily be established for undertaking Islamic reinsurance, will manage co-operative reinsurance operations. It will accept subscriptions from insurers according to used rules in evaluation of installments and disburse from subscriptions money when risks happen. The powers of proposed commercial company may be specified in one of the following two aspects:

**First:** speculation by compiled installments should be offered opportunity and invested them through ways which are appropriate in view of company. The company will be given agreed percentage which will be determined in advance, for example 10% that will be deposited in account of insurance complied installments held by the company. If a loss is caused by means of investment, the company will not bear any part of loss and as a result it will not gain any profits for its contributors.

**Second:** Reinsurance Company takes wage in exchange for managing reinsurance operations as well as for investing insurance amounts of money; in such case, Reinsurance Company deserves to get paid, regardless of whether it gets loss or it makes profits. A certain percentage can be specified for the company which will run reinsurance operations according to previously mentioned ways. Then, it will be given specific percentage, for instance, 1% out of each insurance installment, and to be invested for a year as an example in exchange for investment operation<sup>(2)</sup>.

From her side, the researcher suggests alternative proposal for reinsurance operations in following way: co-operative insurance company could be established by the government. In the sense that government of each state establishes Reinsurance Company for all co-operative insurance companies in states,

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<sup>(1)</sup> Jamal, Ghurieb. Commercial Insurance and Islamic Alternatives (pp.339-344), Alziuhli Wahabi. Contemporary Financial Transactions (ppp.158-290-290).

<sup>(2)</sup> Alashgir, Mohammed Sulieman.(1995). Research presented on 3<sup>rd</sup> Juristic Symposium of Kuwait Finance House (p.30).

Oversees it and appoints specialized committee including competent fields of specializations in order to manage co-operative insurance operations in companies to ensure that companies involved act according to legitimate grounds. The committee may also supervise reinsurance operations. The government or State could take a wage for managing insurance operations by proxy, and invest such amounts of money in development projects, unemployment and solving population crises or budget deficit in the State involved.

The researcher considers that all patterns of reinsurance are appropriate and useable forms which should be encouraged and supported, except the last pattern unless it is temporary one. However, multiplicity of reinsurance companies offer flexibility that suits reinsurance companies. As the experiment of Islamic banks along with Islamic insurance companies has been successful, though formidable difficulties, Islamic reinsurance companies are necessarily to succeed too, despite their partial success. Yet, the researcher believes that the success of Islamic reinsurance companies is a matter of time to integrate construction of Islamic economy. The need of Muslims for reinsurance and insurance companies is the same as their need for Islamic banks and institutions in order to get good pleasure of Allah.

Adopting the suggested Islamic solution for the problem of commercial reinsurance used by Islamic insurance companies will achieve credibility and save away criticism; thereby Muslims reassure trust and confidence in dealing with Islamic institutions with regard to reinsurance operations according to apparent legitimate grounds<sup>(1)</sup>.

### **Significant Findings and recommendations:**

- 1- Reinsurance in commercial insurance companies is likely permissible on exigency basis as making a virtue of necessity according to legitimate grounds.
- 2- It is not permissible for Islamic insurance companies to resort to reinsuring in commercial insurance companies only when there are no Islamic insurance companies on the basis of making a virtue of necessity.
- 3- Islamic insurance companies should obtain approval of the Shari'ah Supervisory Board on reinsurance agreements before being concluded.

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<sup>(1)</sup> Alashgir, Mohammed Sulieman.(1995). Research presented on 3<sup>rd</sup> Juristic Symposium of Kuwait Finance House (p.30).

- 4- Islamic insurance is only beginning for the absence of sufficient Islamic insurance companies.
- 5- Islamic insurance companies in Islamic world should work to find Islamic reinsurance companies to dispose of clutches of commercial companies.

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