

## **Resolution of OIC Fiqh Academy (related to Islamic Economic and Finance)**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

### **Resolution No.186 (1/ 20) on: Rules of Insolvency and Bankruptcy in Islamic Shari‘ah and Contemporary Systems**

The Council of the International Islamic Fiqh Academy (IIFA) meeting in its 20<sup>th</sup> Session in Oran (People's Democratic Republic of Algeria), from 26 Shawwal to 2 Dhul Qadah 1433H ( 13-18 September, 2012).

Having regard to the researches received from the Academy on the above subject, and having listened to the discussions on the subject,

#### **DECIDES the following:**

##### **First: Definition of Insolvency and Insolvent Debtor**

1. Taking into account the text of paragraph 7 of the Academy's Decision No. 64(2/7 concerning the type of insolvency that requires respite, insolvency is defined as a temporary circumstance that befalls a person making him incapable of meeting his financial obligations and paying his debts. The insolvent is a person who fits this description.
2. Bankruptcy criterion: lack of sufficient funds to settle debts. A bankrupt person is one who fits this description.

##### **Second: The Main Differences between Insolvency and Bankruptcy According to Islamic Jurists**

1. Insolvency may or may not be preceded by a condition of solvency, whereas Bankruptcy cannot happen except when it has been preceded by a condition of solvency.

2. A bankrupt person could be restrained, whereas as the insolvent may be given respite if he can prove his insolvency based on Sharī‘ah tenets: Allah’s decreed that, “If the debtor is in straitened circumstances, then grant him respite till a time of ease” (Surat al-Baqarah, verse 280).
3. A Judge may not order the detention of an insolvent person if insolvency is established, whereas a bankrupt person may be detained for acts of fraudulence and forgery or negligence, and nonfeasance.
4. Insolvency can result from debt or legitimate expenditure, unlike bankruptcy which can only come from debt.

### **Third: Rules of Bankruptcy in Islamic Jurisprudence**

1. Prevent the bankrupt from disposing of his assets to the detriment of creditors, such as giving out donations, financial tradeoffs, admission of debt after declaration of bankruptcy. A ruling preventing the bankrupt from acts of disposition of assets and termination of such a ruling shall be in accordance with the decision of a competent judge.
2. The bankrupt may be prevented from travelling if that could cause an apparent harm to the rights of creditors.
3. Expiration of deferred debt deadlines given to the bankrupt.
4. A competent judge may order the disposal of the bankrupt’s assets in a manner that is beneficial to the creditors and the debtor by sharing the value. If new assets emerge for the debtor, the creditors have the right to demand payment of the remainder of their debts.
5. The creditor reserves the right to recover his asset, if found unaltered among the assets of the bankrupt if he was not paid for it.

### **Fourth: Imposition of Fine on Procrastinating Solvent Debtor**

The Academy re-affirms what was stated in its earlier Decision No. 51(2/6), item 3, concerning selling by installments, forbidding imposition of a fine on a procrastinating solvent debtor, but such a debtor may be charged with payment of judicial expenses.

**Fifth:**

The Academy is of the view that the following issues concerning insolvency be deferred to the next session:

1. Juristic issues concerning the protection of Islamic financial institutions including the question of debt insurance and obligation to pay pledged donations.
2. Rules on actions of the bankrupt during the uncertainty period.
3. Rules on the bankruptcy of companies and financial institutions in the light of contemporary systems.
4. Issues pertaining to insolvency (civil), where the term insolvency in some ordinances covers both bankruptcy and insolvency in Islamic jurisprudence.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**Resolution No.187 (2/ 20) on:  
Cooperative Insurance: Shari‘ah Rules and Regulations**

The Council of the International Islamic Fiqh Academy, meeting in its 20<sup>th</sup> Session in Oran (People's Democratic Republic of Algeria), from 26 Shawwal to 2 Dhul Qadah 1433H (13-18 September, 2012);

Having considered the researches received from the Academy on the subject: “Cooperative Insurance: Shari‘ah Rules and Regulations” during this session and the previous sessions; and

Having listened to the recommendations adopted by the Conference on “Cooperative Insurance: Dimensions, Perspectives, and the Position of the Islamic Shari‘ah” held in Amman (Hashemite Kingdom of Jordan), from 26-28 Rabi' al-Thani 1431H (11-13 April, 2010) in collaboration with the International Islamic Fiqh Academy, the Islamic Educational, Scientific and Cultural Organization, the University of Jordan, and the Islamic Research and Training Institute (member of the Islamic Development Bank Group); and having listened to the debates on the issue,

**DECIDES the following:**

**First:** Reaffirms its resolution No. 9/2 that the fixed premium insurance contract applied by commercial insurance companies is an exchange contract which involves significant risk (*gharar*) invalidating the contract and is therefore forbidden according to the Shari‘ah.

The alternative, which is compatible with the rules of transactions in Islam, is cooperative Insurance based on donation and cooperation.

**Second:** Given the problems that emerged during a number of applications within Islamic insurance companies, as well as statutory and regulatory obstacles

encountered in this process, there is a need for a comprehensive conception about cooperative insurance,

The Academy recommends the following:

- Mandates the Secretariat of the Academy to constitute a committee of Islamic jurists and experts in cooperation with the relevant research centers in order to arrive at a comprehensive draft rules and regulations for cooperative insurance. Such a draft should include Sharīʿah-compatible models allowing flexibility in practical implementation. This should include rules and regulations based on Sharīʿah which stipulate the basic principles of cooperative insurance such as:
  1. The concept and nature of cooperative insurance from the perspective of the Islamic Sharīʿah
  2. Comparison between cooperative insurance and commercial insurance:
    - (a) Comparison between Sharīʿah-compatible cooperative insurance and international principles of cooperation.
    - (b) Comparison between Sharīʿah-compatible cooperative insurance and the principles of commercial insurance.
  3. Relationships between parties to cooperative insurance and their descriptions, especially description of relationships between subscribers to the insurance pool, and the relationship between the pool and those entrusted with its management.
  4. Compensation rules for the manager of the pool and its estimation criteria.
  5. Rules on insurance surplus and deficit
  6. Sharīʿah regulations on subscription to, and withdrawal from, the cooperative insurance pool
  7. The Sharīʿah rules on liquidation of a cooperative insurance pool
  8. Rules and regulations on re-insurance
  9. The principle of participation in profit and loss
  10. Principle of substitution and related matters
  11. Principle of insurance deduction and related matters.

**Third** : The proposed draft to be agreed upon by the Committee shall be submitted to the next session of the Academy in order to prepare a draft resolution in the light of what was stated in paragraph 2 above.

Allah Knows Best

\*\*\*\*\*