



Shariah Rulings on Insolvency and Bankruptcy

📅 18 September, 2012 | Fiqh of Financial Transactions, Insolvency and Bankruptcy Provisions

In the Name of Allāh,

the Entirely Merciful, the Especially Merciful

Praise is due to Allāh, Lord of the worlds, may the blessings and peace be upon our master Muḥammad, the last of prophets, on his family, and all his companions.

Resolution No. 186 (1/20)

Shariah Rulings on Insolvency and Bankruptcy

The Council of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation, holding its 20th session in Oran, People's Democratic Republic of Algeria, on 26 Shawwāl - 2 Dhū al-Qi'dah 1433h (13-18 September 2012),

Having examined the research papers submitted to the Academy concerning *Shariah Rulings on Insolvency and Bankruptcy and the Contemporary Systems*,

Having listened to the discussions on the subject,

Resolves

First: Definition of Insolvency and Insolvent Debtor

1. Taking into account clause (seventh) of the Academy resolution no. 64 (2/7) on *Criterion of Judgement about State of Insolvency that Necessitates Respite*, insolvency is a contingent description denoting the state in which a person becomes unable to do his obligatory spending or repay his due. An insolvent person is a person who is thus described.
2. Bankruptcy as a precise concept refers to the insufficiency of the debtor's funds to repay his mature. A bankrupt is a person who is in such a position.

Second: Key Differences between Scholars on Insolvency and Bankruptcy

1. Insolvency could be preceded by a state of richness or not, contrary to bankruptcy which can never occur except after richness.
2. On issuance of bankruptcy verdict, the bankrupt is legally put under 'Restraining Order,' whereas the insolvent who proves his insolvency by Shari'ah-satisfactory ways, becomes entitled to respite until time when he is in a position to repay as Allāh the Almighty says, «If the debtor is in a difficulty, grant him time till it is easy for him to repay.» (Al-Baqarah, 280).

3. The insolvent is not sentenced to imprisonment when he proves his insolvency, while the bankrupt can be imprisoned by way of ta'zīr (discretionary punishment), in case of deception, cheating, negligence or default.
4. Insolvency can relate to either a debt or legal right such as sustenance expenses, contrary to bankruptcy, which always relates to

Third: Rulings on Bankruptcy in Islamic Jurisprudence

1. The bankrupt has to be deprived of the right to dispose of his property in any way that could cause harm to his Imposition and cessation of such prevention should be by virtue of a judicial verdict.
2. It is permissible to prevent a bankrupt from travelling, if his travelling would lead to clear harm to his creditors'
3. On declaration of bankruptcy, dates of maturity of outstanding debts, which the bankrupt owes to other parties, cease to be valid.
4. Judiciary should sell bankrupt's assets in the way it deems most beneficent to the creditors and debtor and divide sale If it appears that the bankrupt has new assets, creditors have the right to claim repayment of the unsettled portion of their debt out of the funds obtained from the sale of these new assets.
5. When a creditor finds, after the declaration of bankruptcy, the same asset he lent to the bankrupt among the latter's assets, the creditor has the right to get his asset back provided the asset is still in its original condition and its value has not been repaid to the creditor.

Fourth: Imposition of a Fine on the Procrastinating Solvent Debtor

The Academy reiterates what has been stated in its previous resolution no. 51 (2/6), items (Third & Fourth) on "Installment Sale," regarding the prohibition of imposing a fine or stipulating compensation on procrastinating solvent debtor, while he could be burdened with legal expenses.

Fifth: Other Related Issues

The Academy sees a postponement of the discussion on the following issues regarding “Insolvency and Bankruptcy” to a later session:

1. Fiqh issues relating to the protection of Islamic financial institutions, including “Insurance of Debts” and “Commitment to ”
2. Rulings on disposals of the bankrupt and the insolvent during period of
3. Rulings on the bankruptcy of Companies and Financial Institutions in the context of Contemporary Systems.
4. Issues relating to (civil) insolvency, because it is being observed that the term insolvency in man-made laws may sometimes comprise bankruptcy and insolvency in the Islamic Fiqh

Indeed, Allāh is All-Knowing.

