



***In the Name of Allah, the Merciful, the Very Merciful***

*English Abridgment of the Arabic Statement (No. 3/2020) Issued by Islamic Economic Forum<sup>1</sup>*

*Regarding:*

## ***Borrowing Funds with Ribā by Corporations During the COVID-19 Pandemic***

### **Background**

Between April 30<sup>th</sup>, 2020, and May 10<sup>th</sup>, 2020, The Islamic Economic Forum (the “**Forum**”) ran a detailed discussion to address the matter of borrowing funds with *ribā* by corporations during the circumstances of the COVID-19 pandemic. The discussion was held amongst experts and lasted for over a total of one hundred hours. The participants presented the views of Islamic jurists and their rulings (as found in classical texts) as well as the relevant contemporary *ijtihād*. The participants also exchanged views in relation to a) the circumstances of necessity (*ḍarūra*) and need (*ḥāja*) and when such circumstances exist in relation to a natural person (*shakhṣ ṭabīʿī*) and a juridical person (*shakhṣ ʿtibānī*); b) the extent to which the fear of bankruptcy of a juridical person or a significant loss of its capital is considered to be a case of necessity that permits committing an impermissible act, such as the case of the fear of death or loss of limb (*ṭalaf*) faced by a natural person; and c) the level of consideration given to anticipated harm to the shareholders, employees, and creditors of the juridical person due shortfall in profits, major loss in capital, or bankruptcy and permanent exit from the business.

Having studied, considered and deliberated, the majority of the participants in the given discussion of held by Forum are of the view presented below:

### **The View of the Forum**

**Firstly**, necessity (*ḍarūra*) cannot be envisaged to exist in a scenario that compels a person to lend funds with *ribā*. In the Resolution on Prohibiting Banking Interest issued in 1965 by the Islamic Research Academy (Egypt), it was stated that making *ribā*-based loans is *ḥarām* (prohibited) and cannot be permitted on the grounds of necessity or need. Borrowing funds

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<sup>1</sup> Islamic Economic Forum is a specialized knowledge-based platform on social media which was founded by Mufti Khalid Hasani (Pakistan) on 1<sup>st</sup> February 2016. Its Arabic part is managed by Dr. Abdul Bari Mishal. The total number of members (in Arabic as well as English) are around 600 persons including Shari’ah scholars, experts, professionals, economists, academicians, advisors, Shari’ah auditors etc. based in 58 different countries. Also, the forum includes representatives of support organizations and various central banks. The forum has committees and taskforce, looking to online publish the discussions, translate the circulars, besides having administrative committee.



with *ribā* was also affirmed to be *ḥarām* (prohibited) and a sin. However, unlike lending, the prohibition on borrowing funds with *ribā* can be permitted in the face of a necessity. The assessment as to whether necessity exists or not is left for each individual to make for him or herself.

**Secondly**, it is prohibited for financial and investment companies, irrespective of their commercial or financial activities, to borrow funds with *ribā* on the following grounds:

- Shortfall of profits;
- Considerable loss in the capital;
- Bankruptcy and/or exit from the commercial activity, or
- Inability to pay employee salaries or to settle debts owed to creditors (whether the creditors are private or public entities).

That is, the listed situations cannot serve as a justification for the borrowing of *ribā*-based funds.

**Thirdly**, to extend the ruling on the permissibility of borrowing *ribā*-based funds for the natural person (due to necessity) to a juridical person would be a flawed analogy for the following reasons:

- The perishing of a natural person involves the death of a human who carries a soul, whereas the bankruptcy of a corporation involves the perishing of property (*māl*).
- The grounds listed above (under the paragraph starting with “Secondly”) cannot justify for the natural person the borrowing of funds with *ribā*, as per the legal rulings of earlier jurists. As such, such grounds cannot be the basis for analogy to justify such borrowing by a juridical person.
- In the face of insolvency, financial difficulties or fear of bankruptcy, the suitable course of action is for alternatives to be considered, such as the granting of additional time by the creditors (*inzār*), or repayment alternatives that are acceptable to the Shari’ah such as repayment in the form of a physical asset of a different kind or in the form of benefit(s).

**Fourthly**, natural persons who were affected by company losses or the bankruptcy of the company, in their capacity as shareholders, workers or creditors, may borrow *ribā*-based funds provided that the circumstances, as defined by Shari’a, that give rise to a necessity-based exemption exist. Allah says in Quran: “*He has only prohibited for you carrion, blood, the flesh of swine and that upon which a name of someone other than Allah has been invoked. Then,*



*whoever is compelled by necessity, neither seeking pleasure nor transgressing, there is no sin on him. Verily, Allah is Most-Forgiving, Very-Merciful” [1:173].*

Necessity, which justifies an exemption (*rukḥṣa*), would be established in this case when the human being faces the threat of loss of life against himself or parties which are dependent on him (e.g., a spouse or children) as a result of abstaining from borrowing funds with *ribā*. The harm facing the person must be either certain or highly probable. Also, it must be that the threat of said harm cannot be avoided except by committing the prohibited conduct (i.e., the conduct must be necessary to avert the harm). The presence of other means such as the availability of aid from other persons or entities (whether governmental or otherwise) or the ability to liquidate non-essential assets prevents the exemption from being granted. When these conditions are fulfilled, the exemption can only be used to the extent necessary. Such an assessment, however, is left for each individual to make and to those whose *fatwa* is sought in making such an assessment.

**Fifthly**, it cannot be taken for granted that a private need (*ḥāja khāṣa*), in this scenario, can be treated like a necessity. That is because needs have a lower rank than that of necessity and do not have the same juristic effect of permitting that which is originally prohibited (*ḥarām*). As per Imām Shāfi‘ī (d. 820), “*something prohibited cannot be permitted on the grounds of need except in the case of necessity*,” (Al-Umm: 3/28). As for what was attributed to Ibn al-Qayyim (d. 1350) that *ribā* is prohibited for purpose of eliminating pretexts (*sadd al-dharā‘*), that statement is not related to *ribā* in loans and debts but is rather related to *ribā* in sale contracts. Also, the statement of Ibn Nujaym (d. 1561) in “Al-Baḥr al-Rā‘iq” that a person in need may borrow with profit applies only to *bay‘ al-mu‘āmalā*, which is a form of combining a loan and sale as advised by later Ḥanafīs.

**Sixthly**, and notwithstanding the above, a need that is public, such that it affects the communal matters and society at large, is deemed to be a matter that should be addressed by public authorities. A *fatwa* cannot be issued on such a question without coordinating with such entities in light of the range of acceptable policies permitted by the Shari‘ah. For Muslim minorities, this role can be performed by those entities that represent them.

It is worth noting that the above paragraph refers to a public or general need (*ḥāja ‘āma*), which is addressed in a famous precept in fiqh (*qā‘ida fiḥiyyah*) which states: “if a need becomes prevalent, then it is treated like a necessity”. The Forum recommends scholarly



committees and academies to define the concept of public need (*ḥājja ʿāma*), and the effect of its application on Shariʿah rulings.

### **Date of Issuance**

This Statement was issued on 17<sup>th</sup> Ramaḍān 1441 H corresponding 10<sup>th</sup> May 2020 by the Executive Shariʿah Committee, which was established by the Islamic Economic Forum for this purpose.

The Statement was endorsed in the General Session of the Forum on 25<sup>th</sup> Ramaḍān 1441 H, corresponding to 18<sup>th</sup> May 2020.

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*End of English Abridgement<sup>2</sup>*

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<sup>2</sup> English abridgment was prepared by Dr. Yousuf Azim Siddiqi (Malaysia), Amir Aboguddah (Canada), and Suheyib Eldersevi (Turkey).

*This is an English Abridgment of a Statement issued in Arabic. The Shariʿah Executive Committee does not take the responsibility of English translation.*