

SHARED RISK & REWARD

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My Reading List

- 10Questions with David Stark ([link](#))
- Shari'ah considerations in bankruptcy by Michael McMillen ([link](#))
- TID Wakala Case ([Sharing Risk blog](#))
- Arcapita Bankruptcy ([Sharing Risk blog](#))
- Shari'ah Law in UK Courts ([PDF](#))
- Dubai World Tribunal rules ([PDF](#))

Blog Posts This Week

- [Islamic cooperatives in Indonesia look for apex organization](#)
- [ISRA executive director on Shari'ah board governance](#)

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Blake Goud
blake@sharingrisk.org

SHARING RISK

1500 SW FIRST AVE., SUITE 910
PORTLAND, OR 97201

<http://www.sharingrisk.org>
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New UAE Insolvency Law

An article in *Financier Worldwide* due out in August 2012 included a [10Questions piece](#) with a restructuring expert at Deloitte, David Stark, about a draft law being developed to put in place a new restructuring and bankruptcy regime in the UAE. The need for a new insolvency and restructuring law was on display when Dubai World was unable to pay its \$3.5 billion sukuk in December 2009 and relied on an *ad hoc* Dubai World Tribunal to resolve the debt problems at the government-related company.

The tribunal was established in the Dubai International Financial Centre, based on UK laws, to address an urgent need. It was conducted in English, the language spoken by most of the members of the Tribunal, and many creditors. Clearly, a law for the UAE will be in Arabic, and Mr. Stark describes how the law will be tailored to fit local conditions (rather than cutting and pasting US, UK or some other legal system).

What becomes interesting for Islamic finance is that there will be experts involved to “ensure that any new statute meets Sharia’a requirements”. This is an area where there has been less development and a great deal of demand. Islamic finance bankruptcies around the world have for the most part been pushed into legal systems not concerned with the transactions’

Shari’ah-compliance.

In the UK, the courts explicitly refused to consider Shari’ah-compliance in both the Beximo Pharmaceuticals and Blom Bank/TID cases. In the US, neither the East Cameron bankruptcy nor the ongoing Arcapita bankruptcy have seen the courts get into the matter of Shari’ah-compliance, and nor are they likely to.

These jurisdictions were set up long before Islamic finance became common, and are secular legal systems. There is some flexibility in how the parties resolve a bankruptcy including involving their own Shari’ah scholars. The court will not rule on which side is right in a Shari’ah dispute and nor can they be expected to.

It will certainly take a considerable amount of time for the new insolvency law to be designed and longer still for it to develop a track record where it can be relied upon to provide certainty in an insolvency or restructuring process, but if it were able to deliver both the certainty that is needed in insolvency and restructuring and develop a good record of ensuring that the process is Shari’ah-compliance, the UAE could attract more global Islamic financial business.

Until next week,
Blake Goud