Business in between Cultures
the Development of Islamic Finance

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Shariah Issues in the Standardization of Islamic Banking Products

Abdulazeem Abozaid

Abstract

Standardization of Islamic banking products is one of the proposed solutions to the problem of the conflicts in *fatwas* and products. However, standardization of products involves many shariah issues and concerns. Standardization will not do Islamic banking and finance any good if products are standardized according to loose or controversial standards. Besides, standardization may be applicable only to one country and not to all Islamic banks in view of certain challenges that may hinder global application. The stand, for example, of a given central shariah committee on a particular product, whether by acceptance or rejection, may hinder the possible global standardization of products. On the other hand, the adoption of one Fiqh opinion and the exclusion of other valid ones is something that requires Shariah analysis. Furthermore, having Shariah scholars agreeing on one particular view is a challenge due to their subscription to different schools of Fiqh thoughts and a possible fanaticism by some scholars, which may necessitate supervision and intervention by higher authorities. Another shariah issue relates to the scope of standardization. Technically standardization may be applicable to products only and not to the day-to-day transactions in Islamic banks; consequently, this sector will remain a field of conflicting fatwas and structures, which may not help eradicate the problem as banks not happy with a standardized product may dodge and execute the same product through a normal transaction. The paper comes to explore and tackle all Shariah issues and concerns in an attempt to pave the way for a successful and sound standardization of Islamic banking products.

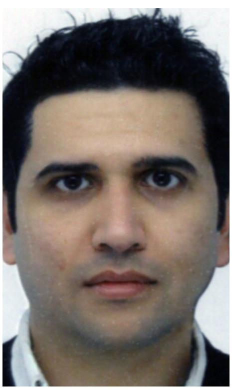
Abdulazeem Abozaid holds both a PhD and a Master in Islamic financial law. He has extensive experience working as a lecturer at *Damascus University* since 1998, then at the *International Islamic University Malaysia* specialising in Islamic financial law. He has subsequently worked as a sharia expert and trainer at *Emirates Islamic Bank* and a shariah board member and consultant for Islamic financial institutions, including *RHB Islamic Bank* in Malaysia, *Mithaq Takaful* Abu Dhabi and *Five Pillars Associates*, Singapore. Currently he holds the position of shariah manger at *Oman Arab Bank* in Muscat, Oman. He has conducted workshops and training courses in many Islamic banks, financial institutions and universities. Abdulazeem has contributed to the writing of new shariah standards to be adopted by Islamic financial institutions. His expertise in Islamic finance is demonstrated by his release of four authoritative books; *Fiqh Al-Riba* published in 2005 in 632 pages is his master work.

Ideal versus Reality: Has Islamic Finance Fulfilled its Promise?

Ercument Aksak & Mehmet Asutay

Abstract

Developments in the Islamic finance industry in the last two decades have significant impact on both economies of Muslim geography and global financial markets. Today, the Islamic finance industry has come a long way, and established itself as an important part of the global financial system. Double digit annual growth during the last two decades and the potential size of the market guarantees that this development and trend will continue, if not increase substantially for the foreseeable future. Inevitably, this strong performance of Islamic finance should be promising for achieving the goals and the aspirations of the Islamic political economy. […] This paper aims to address the implications of Islamic finance for Muslim economies by investigating the sustainability of the theoretical benefits from both financial and financing sides. In the first part, we address the equity, liquidity and stability aspects of Islamic finance's contribution to the financial markets of Muslim economies. Second, we analyze the effects of Islamic banking and finance development on the real sector and broader economic context by examining the contribution of Islamic finance to economic growth and industrial output. Finally, areas of possible improvement in light of the experiences from the last economic crisis will be discussed for further development.



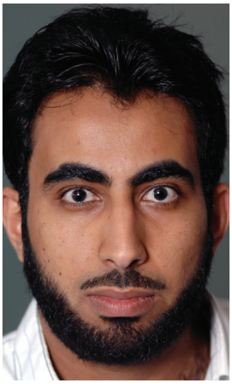
Ercument Aksak is a teaching fellow in finance at the School of Government and International Affairs, *Durham University*. After completing his PhD, he has been teaching to master and doctoral research students on various aspects of corporate finance, banking and finance, statistics, econometrics, political economy and Islamic economics and finance. He has over five years of teaching experience, with a special focus on doctorate level education. His main research interests are; corporate risk management, capital structure and financing decisions, governance, macro finance and Islamic economics, and finance.

Prospect of Standardising Shariah Scholars' Diverging Views ín the Islamic Finance Industry

Ahmad Alkhamees

Abstract

One of the main challenges currently facing the Islamic finance industry is the inconsistency in the fatwas issued by its Shariah Supervisory Boards (SSB). A product that is deemed as shariah-compliant by the SSB in one financial institution may not be regarded as the same by others. The aim of this paper is to investigate the prospect of standardising different opinions of shariah scholars regarding the permissibility of one financial product. It addresses the causes of juristic differences, and it traces the legal theories offered in classical Islamic jurisprudence to deal with this issue. The paper concludes by suggesting potential remedies and highlighting the limitation of implementing each one in Islamic and secular countries.



Ahmad Alkhamees is a qualified Saudi lawyer and currently a doctoral student at the School of Law, *University of Warwick,* United Kingdom. Prior to coming to the United Kingdom, he had completed his judicial training at the *General Court of Riyadh*, Saudi Arabia, where he served as a judge handling family and commercial law cases. Ahmad holds a BA in Shariah Law from the College of Islamic Law and Religious Principles, *Qassim University*, Saudi Arabia; a MA in comparative jurisprudence with first class honours from the higher institute for justice, *Al- Imam University*, Saudi Arabia, and a LLM in advanced legal studies from the *University of Warwick*, UK. His current research focuses on compliance issues in Islamic finance industry, shariah and international arbitration, and disputes between stockbrokers and investors in the Saudi capital market.

Co-existence of Islamic Finance and Modernity

Mehmet Asutay

Abstract
Islamic banking and finance (IBF) emerged in its modern version as a novel financing method since the early-1970s with the objective of responding to the perceived failure of capitalism through moral economy. Over the years, however, IBF has become part of the international financial markets rather than remaining as an alternative proposal. […] This paper argues that multiple modernities are produced with the involvement of shariah scholars as part of the IBF institutions and with the financial needs of the western countries. This on the other hand contributes to civilizational dialogues and the socially and religiously/culturally constructed financial mode (Islamic finance) finds a place for itself in the global financial system, which normally does not recognise cultural relativism. Thus, the emergence of IBF in non-Muslim majority countries contributes to mutual recognition, at least in finance related areas, regardless of how compromised it is, rather than the sustaining of Eurocentric hegemony.

Mehmet Asutay is reader in Middle Eastern and Islamic political economy and finance at the *School of Government and International Affairs (SGIA)*, and director of the Durham Doctoral Training Centre for Islamic Finance, a joint centre between the *Durham Business School (DBS)* and the *SGIA*. Asutay is also the programme director for DBS's MA/MSc in Islamic finance and the director of the Durham Islamic Finance Summer School. He teaches and supervises research on Islamic moral economy, Islamic banking and finance, the Middle Eastern economies, and political economy of the Middle East including Turkish and Kurdish political economies. While Asutay has published widely, he is also the managing editor of the *Review of Islamic Economics*, an Associate editor of the *American Journal of Islamic Social Sciences*, and is a member of the editorial advisory board of the *International Journal of Islamic and Middle Eastern Finance and Management*. He is also honorary treasurer of *BRISMES (British Society for Middle East Studies)* and of the *International Association for Islamic Economics*. His books on political economy and on Islamic economics and finance will appear in 2013.

Islamic Economy from the First Centuries to the Second Half of the Twentieth Century

Eleonora Biasi

Abstract

The paper discusses the rise and development of Islamic finance, not focusing only on the growth of modern Islamic finance, but mainly on the most ancient roots, since the principles and the basis of Islamic finance can be tracked much deeper in the past, to the pre-Islamic era. The paper also underlines the similarities, at the earlier state, with the other two monotheist religions: Christianity and Hebraism. The prohibition of *riba*, among other economic principles and values, was initially common to all those religions, but they then underwent different evolutions. The ideals of social justice and equity were always fundamental in the Islamic thought, so the economic and social structures and financial tools that were shaped during the Islamic expansion mirrored these values. To conclude, the paper analyzes the growth of Islamic finance in the twentieth century, from the first inceptions in Egypt (*Mit Ghamr*) and Malaysia (*Tabung Haji*) in the 60s, to the striking development of the following decades. The scientific approach used in the paper is multidisciplinary, in order to join the economic, the theological and the historical points of view.

Eleonora Biasi was born near Venice, Italy in 1987. In 2006 she moved to Milan to complete her university studies with a focus on languages and international relations in English, French, Spanish and Arabic. She continued her post-graduate studies in the Department of Political Science, traveling to Ireland, England, Egypt, Lebanon and Syria to conduct research. During her Master's degree she specialised in history and politics of the Muslim countries as well as Islamic finance. For the past two years, Biasi has been working as a community assistant and collaborated with a national geopolitical magazine as a columnist dealing with Middle Eastern affairs.

Alberto G. Brugnoni

Alberto G Brugnoni, a former director with *Merrill Lynch Bank*, is an independent consultant on Islamic finance and is the founder and Managing Director of *ASSAIF*, the oldest Islamic finance consultancy in Europe. In the mid-1980s, he pioneered some of the first Islamic transactions in Europe, and in 1997, he released 'Pilot Project Genoardo', a seminal study for the establishment of a *Mediterranean Development Bank* based on sharia-compliant principles. This was followed in 2006 by the first real estate sharia-compliant transaction in Italy and a project for the rehabilitation of Syrian landfills using Islamic finance instruments. In September 2011, he successfully structured the first syndicated Islamic facility in the Russian Federation for *Ak Bars Bank*. The transaction was named 'Europe Deal of the Year' and was the cover story of the March 2012 edition of *Business Islamica* magazine. Subsequently, he has worked on product development in Palestine and he is, at present, based in Kabul with the remit to launch takaful in Afghanistan and provide Islamic financing to rural communities across the country.

Case Study: Bosna Bank International

Amer Bukvić

Abstract

Islamic banking in Southeastern Europe took off in Bosnia and Herzegovina with the inception of *Bosna Bank International (BBI)* in 2000. The basic motivational factors for the establishment of the bank, which operates in accordance with Islamic principles, were its general contribution to economic development through its direct impact on the real economy. This means that credit expansion moves in step with the growth of real economy, bearing in mind society's well-being, and ensuring derivatives do not become instruments for gambling, etc.

This paper will examine how *BBI* operates in compliance with Islamic principles in a legal environment which does not recognise this way of banking activity. Law on banks and other related legal regulations in Bosnia and Herzegovina does not recognise Islamic banking products and principles, which implies that banks are not allowed to become directly involved in the trade of commodities, consumer products or real estate (murabaha). BBI found a solution in offering non-interest-based financing products such as Murabaha, Mudaraba, Musharaka, Diminishing Musharaka, Ijara, Wakala, Qard Hasan. All banking products of *BBI* have the following characteristics:

- All financings have a specific usage, are approved against a real commercial transaction and are designed to satisfy the different needs and demands of customers
- Each product has been approved by a Shari'a Board along with the contract text
- All contracts approved by the Shari'a Board are designed / implicate profit sharing, fee and rental charging
- The bank is a partner with clients with an average share of 95% in all of the contracts.

Amer Bukvić, CEO of *Bosna Bank International*, received his Master's degree from the *International University of Japan*. In addition, he completed the executive education program at the *Islamic Development Bank Group* and the management development program at the center for management development of the *London Business School*. After collecting work experience in the Islamic Development Bank Group he took the position of deputy director general at *Bosna Bank International* in 2004; becoming CEO in 2006. Further, Bukvić co-founded the *Sarajevo Business Forum (SBF*) which has arguably been the largest International investment conference to be held in Southeast Europe in recent times. *Independent Accreditation Agency* appointed him 'best manager' in BiH and Southeast Europe. He won the award for achivieving significant business success, profitability, innovation and best management practices in the banking industry. In 2012 the *Charter of International League of Humanists* awarded him with the 'Aurelio Peccei' award for humane and ethical human resources management, contributions to the creation of jobs and prosperity, and promoting foreign direct investments in Bosnia and Herzegovina.

Islamic Finance and the Plural Dimensions of Capitalism. Open Issues in Property Rights Theory

Valentino Cattelan

Abstract

This paper inserts the topic of Islamic finance into the broader context of economic development and property rights issues. In particular, it argues that Islamic finance embeds a capital theory that is alternative to the conventional one, whose inner nature can be properly understood only by re-framing capitalism through a plural approach to property rights.To this aim, Paragraph 1 shows the persistence of a hiatus between descriptive and normative property theories in dealing with capitalism. […] Within this framework, Paragraph 2 challenges the arguments fostered by Hernando de Soto in the book *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. […] Accordingly, Paragraph 3 interprets Islamic finance in the light of an openness to alternative capital models, underlining how the success of the 'culturally'-rooted market of Islamic finance proves the co-existence of complementary ways to achieve development. Paragraph 4 provides final considerations on the viability of this *plural capitalism*. Challenging the neutrality and universality of Western capitalism, the paper has suggested the application of a plural theory of property rights to capitalism as a possible path to fill the gap between descriptive and normative economic analyses of law in a global context. At the same time, rejecting a 'totalitarian' view on property rights, Islamic finance has been interpreted as a way to a plural capitalism able to open the market to complementary ways to bring about economic development.

Valentino Cattelan is lecturer in Islamic finance at the *University of Rome Tor Vergata*, Italy. His research interests include legal and financial pluralism, property rights theory, Islamic contract law, law of Islamic finance, comparative law, EU law and governance, and legal education. In relation to his expertise he has been awarded by the European Commission a grant for the teaching module *Integrating Islamic finance in the EU market*, which comprises, among other educational initiatives, the yearly Rome Islamic Finance Summer School. Cattelan actively contributes to workshops, conferences and seminars on Islamic law and finance. Among his publications is 'Islamic Finance and Ethical Investments. Some Points of Reconsideration', in *A New Model for Options in Islamic Law*, in Hassan/Mahlknecht, (eds.), *Islamic Capital Markets: Products and Strategies*, London 2011. Further, he is editor of the volume *Islamic Finance in Europe: Towards a Plural Financial System* (in course of publication).

The Standardisation of Islamic Financial Law
The Relevance of Standard Terms and Conditions

Jonathan Ercanbrack

Abstract
Academic and practitioner-oriented research concerning legal standardisation is usually concerned with black-letter rules of national jurisdictions or with the non-binding standards issued by non-governmental organisations such as the *Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI)*. Yet very little attention, if any, has been paid to standard terms and conditions, the so-called "boilerplate" clauses companies and law firms develop for use in their contracts. Boilerplate clauses regulate and administer contracts and deal with a number of issues that save drafters valuable time and effort. Substantive clauses are those which are negotiated between the parties and thus vary according to the contractual circumstances. Because little mandatory law constrains the parties in a commercial context, and parties often exclude mandatory provisions, the importance of standard terms and clauses for considerations of legal standardisation cannot be overemphasised.

This paper examines the challenges in standardising Islamic financial law in view of the difficulties concerning the ways in which different jurisdictions, whether civil, common or sharia-based, interpret standard terms and clauses differently. The paper is also concerned with understanding the ways in which standard terms and clauses shape Islamic financial jurisprudence across jurisdictions.

Jonathan Ercanbrack is lecturer in the law of Islamic finance at the School of Oriental and African Studies (SOAS), *University of London*. His research interests are primarily focused on Islamic law, Islamic financial law and the regulation of financial markets. He is currently working on a research manuscript concerning the way in which Islamic financial law is innovated in global financial markets and within municipal legal systems. Jonathan's education began at the *University of Utah*, where he studied German. His studies soon took him to the *Universität Heidelberg* in Germany, where he completed a Vordiplom in Economics. This was followed by a Master's degree in the Politics of Empire and Post Imperialism at the *London School of Economics*, where he focused on empires and the political economy of the Middle East. He obtained a doctorate in Islamic financial law from *SOAS* in 2012.

The Law of Islamic Finance: Law without a Legal System

Nicholas HD Foster & Simon Archer

Abstract

Islamic finance (IF) is based on certain parts of the sharia, i.e. religious law. Call these parts 'commercial fiqh'. But: the commercial fiqh had to be adapted for the needs of IF, creating a new type of religious law. Call this 'financial fiqh'. However, to serve its purpose financial fiqh has to be living law, and living law needs a legal system (ways of making, amending, developing, interpreting, applying, enforcing, teaching and studying the law). Financial fiqh does not have one. It is a body of rules floating in a systemic vacuum, regulated by municipal legal systems, and dependent on them for its effectiveness. Call the totality of legal aspects of IF 'the law (and legal infrastructure) of Islamic finance'. As IF has matured, this situation has led to demands for greater certainty in order to reduce sharia non-compliance risk. Also, some high profile cases have highlighted the lack of a sharia dispute resolution system. Various attempts have been made to deal with the certainty issue, but numerous questions remain. These questions cannot be satisfactorily resolved, let alone examined, unless there is a realisation of the existence and nature of the fundamental problem and the need for legal expertise to assist in finding solutions. In other words, the law of islamic finance needs to be recognised as an area of activity and study in its own right. […]

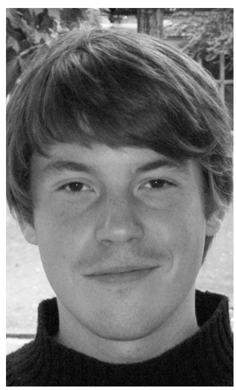
Nicholas Foster is senior lecturer in commercial law, School of Law, School of Oriental and African Studies, *University of London*. He has been co-director of the Centre for Islamic and Middle Eastern Law at SOAS, was the founding editor of the *Journal of Comparative Law* and a member of the advisory board of the *Islamic Studies Network*, and is a member of the *British Association for Islamic Studies Interim Steering Group*. He has written on the legal aspects of Islamic finance, Islamic commercial and financial law, UAE commercial law, corporate law theory and comparative commercial/corporate law. In his research he aims to analyse contemporary issues in the light of comparative law, legal history and legal theory. He is working at present on the emerging Islamic finance legal system, the role of commercial law in the westernisation of law in the Middle East and the history and spread of corporate law.

Islamic Finance from the Perspective of Western Financial Agents

Renaud Foucart & Eddy S. Fang

Abstract

In light of the dramatic expansion Islamic finance (IF) has experienced over the past few decades, the industry has received increasing attention not only within Muslim economies but all around the world, as illustrated by the involvement of numerous non-Muslim public and private institutions. This trend is also reflected in the global media, which have played a significant role in the international diffusion of Islamic financial ideas over the last decade. As a consequence it is generally recognised in the field that the negative and skeptical perceptions that Western financial agents had of IF [...] are now very much outdated. The present paper thus provides a much-needed update to the state of research by investigating the current perceptions of Western financial professionals towards IF. Using data from an original survey, we carry out a Principal Component Analysis (PCA) to characterise the main dimensions on which financial agents diverge. The PCA extracts five dimensions -accounting for 61% of the variance in the agents' answers-which we interpret with the help of the results of a pilot field survey. The main dimension, 'Islamic ethics', relates to the recognition of IF as an ethical alternative to conventional finance. The second dimension 'convergence' relates to whether IF can be successful without converging with conventional finance. The third, 'ethics in finance', accounts for financial agents' appraisals of the inclusion of ethical concerns in the financial markets. The fourth, 'cognitive integration', accounts for the idea that IF can only survive in the financial markets because it corresponds to the specific preferences of Muslim market agents. The fifth, 'cosmetic repackaging', is concerned with the possibility that IF is simply a rebranding of conventional products. These five dimensions provide an understanding of why conventional financiers may support IF for very different reasons, and therefore, in practice, support very different policies.



Renaud Foucart holds a PhD in economics from *ECARES (Université libre de Bruxelles)*. He is a postdoctoral research fellow of *Nuffield College (Oxford University)*. His fields of interest are microeconomic theory, industrial organisation and public economics.

Islamic Banking and the Italian Financial Tradition
Legal Remarks on a Dialectical Relationship

Gabriella Gimigliano

Abstract

Islamic banking and the Italian legal framework belong to two different cultures. While the former treats the borrower as a bank's partner, in the latter the borrower is an unconscious and insured investor, namely a depositor. Can they meet somewhere? In Italy there is a growing presence of Muslims and, according to Article 3 of the Italian Constitution, it is an essential State duty to remove economic and social obstacles to allow the full development of the human being and the active participation of all workers in the political, economic and social organisation. Examining the Italian regulations and the most remarkable case law, the paper maintains that there is no formal obstacle to the performance of a sharia compliant bank in Italy, however there are functional and corporate issues to deal with. […] Paying attention to functional and corporate issues, the paper is made up of two parts: While in the first one it analyses differences and similarities between a so called Islamic bank and the Italian financial models (banks, investment firms, payment institutions and undertakings for collective investment in transferable securities), in the second part, it drives its attention towards the shariah *s*upervisory board in order to assess how it challenges the Italian company law on corporate governance. Finally, drawing its conclusions, the paper tries to account for why in other EU member states shariah compliant intermediaries have already had access to the domestic financial markets, while this has not happened yet in Italy where there seems to be no formal obstacle to deal with.

Gabriella Gimigliano is a lecturer in business law at the *University of Siena*. She took her PhD in banking law in 2007, defending a thesis on the competition legal framework for retail payment services. Islamic banking is one of her research interests, as she also devotes her attention to banking and business law in Italy. She has recently been studying Islamic banking in the community and in the domestic legal framework. Her publications on the matter are 'Islamic Banking and the "Duty of Accommodation"', in Khan/ Porzio (eds.), *Islamic Banking and Finance in the European Union* (2010) and 'Islam and Finance in the Community Law', in Cattelan (ed.) *Islamic Finance in Europe: Towards a Plural Financial System* (forthcoming). Currently she is working on a paper on the sharia and banking contracts at the community law level.

Development of Interest-free Banking in Bosnia and Herzegovina

Fikret Hadžić & Velid Efendić

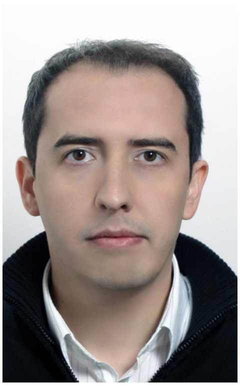
Abstract

The main aim of this research is to explore the banking history of Bosnia and Herzegovina and to make an overview of its development from the fifteenth century. Accordingly, we tried to find the first instances of the establishment of interest-free banking in Bosnia and Herzegovina as well as its implementation in business practice. The methodology of our research is based on the desk research of the available historical data about banking in Bosnia and Herzegovina. Additionally, we conducted interviews with individuals that have specific experience and knowledge about the recent banking history of Bosnia and Herzegovina. In this way, we gained valuable information about some specific aspects of the development of banking in Bosnia and Herzegovina that are not available in written or electronic data sources. The main source of the data and information for this research were the archives of the *Gazi Husrefbeg Library* as well as archives of several banks, libraries and electronic databases. Our findings showed that the first examples of a banking business in Bosnia and Herzegovina was in 1411. Accordingly, the first phase of banking development in Bosnia and Herzegovina was until 1463 when it ended with the occupation by the Ottoman Empire. The second phase was during the Ottoman Empire and Austrian-Hungarian Empire. This was the phase of establishment of the first banks and modern banking in Bosnia and Herzegovina. We found that sometimes these institutions were established with specific characteristics and motives based on interest free financing. A last phase of modern banking history in Bosnia and Herzegovina is characterised by several projects and initiatives for the establishment of interest-free or Islamic banks. The only successful project is *BBI,* as the only bank in Bosnia and Herzegovina that, in the last decade, has tried to implement Islamic banking principles in its business practice.

Fikret Hadžić graduated in 1982, earned his MBA in 1989 and his PhD in 2003 at the *School of Economics and Business* in Sarajevo. Since 2003 he has been working as a professor at the same school giving lectures on the following subjects: banking, banking management, Islamic banking and finance as well as management planning and control as part of undergraduate, postgraduate and MBA courses. In 2009 he was elected as an associate professor. Apart from the above, the author has been successfully engaged in business consulting in the financing, banking and investment area. He is the author of multiple professional and scientific papers presented and published at national and international symposia, congresses and conferences. Furthermore, he is also author of several books on banking, especially in the field of Islamic economics, banking and finance.

Velid Efendić

Velid Efendić is a senior teaching assistant at the *University of Sarajevo,* Faculty of Economics in the field of banking where he started working in 2004. While he is currently waiting to defend his doctoral dissertation, he is also head of the *Banking Academy of Faculty of Economics* in Sarajevo, a 'life-long learning' center for bankers in different fields of practical education. He has already contributed and published various papers to international conferences in the field of Islamic finance and bank efficiency. Efendić also worked in many research and business projects as a consultant in cooperation with the *Economic Institute Sarajevo* as well as other domestic and foreign institutions, e.g. the *University of Nebraska*, Lincoln. His prior fields of research interests have been: banking and bank efficiency, Islamic banking and finance, and investment analysis. The topic of his doctoral dissertation is *Efficiency of the Banks in South Eastern Europe with Special Reference on Bosnia and Herzegovina*.



Islamic Branding and Islamic Finance
Understanding Reverse Sharia Arbitrage

Haider Ala Hamoudi

Abstract

Sharia arbitrage, a term coined by the economist Mahmoud El Gamal, refers to the overwhelming tendency of Islamic finance to mimic parallel transactions in conventional finance, and to charge a rent for the sole purpose of attaching to it an Islamic label. The primary image created by El Gamal's severe terminology, which compares the 'arbitrage' to the selling of indulgences in the Middle Ages, is one of deception and obfuscation. The salience of this imagery may well be debated as concerns retail banking, but it is more difficult to defend in the vast majority (by monetary value) of Islamic finance transactions. To take a simple example, the investors in multibillion dollar *sukuk* are sophisticated and well aware of the conventional analogues available. They can hardly be compared to one who pays over money to charlatans in fear of eternal damnation. Yet if we assume, as seems sensible, that some sort of sharia premium must be paid to the coterie of lawyers, bankers and religious scholars necessary to make any such complex Islamic finance transaction effective and enforceable, then what might explain the willingness of the parties to undertake the expense? Purely a desire to comply with the strictures of the sharia is hardly sufficient in those instances where, as is often the case, one or both of the parties participate in the conventional market in other circumstances. […] This article develops the idea of reverse sharia arbitrage further with respect to the decisions of two sovereigns in particularly difficult political and economic circumstances, Iraq and the Palestinian Authority, to access the Islamic finance markets.

Haider Ala Hamoudi is associate professor of law at the *University of Pittsburgh*. He received his BSc from the *Massachusetts Institute of Technology* in 1993. In 1996, Hamoudi received his JD from *Columbia Law School*, and also received a JSD from the same institution in 2008. Hamoudi's scholarship focuses on Middle Eastern and Islamic law, particularly, but not exclusively, as it pertains to matters of commerce. He has called for a reassessment of the manner in which law in the Muslim world is understood and approached, with less reliance on medieval texts and more emphasis on the positive law of the nation states of the Muslim world and on the political, social, economic and ideological influences that influence its interpretation. In 2009, Professor Hamoudi was awarded the Hessel Yntema prize for the best article produced in the *American Journal of Comparative Law* by an author under the age of 40. His works relating to Islamic commerce and finance include *The Surprising Irrelevance of Islamic Bankruptcy*.

Roundtable: Where Do We Go From Here?
The Future of Islamic Finance

Mohamed Aslam Haneef

Abstract

Despite very encouraging numbers showing the positive development of Islamic banking and finance (IBF), there has also been a parallel stream of consistent criticism of the IBF industry. At the core of these criticisms one finds a shallow/simplistic understanding of the concept of 'Islamisation of knowledge'. The presentation argues that the 'loss of adab' thesis of Al-Attas (1978) with its 'corruption of knowledge' dimension exists in the IBF industry. This problem must be addressed by scholars if we are to develop a sustainable IBF industry. In relation to knowledge, loss of adab includes lack of apprehension between what constitutes *'fard ayn* and *fard kifayah* knowledge (in this case for Islamic finance) as well as the narrowing of the meaning of relevant fundamental concepts in the Islamic worldview. Genuine Islamisation requires overcoming these problems as they have great implications for education and human resource development, elements central to the sustainable future of IBF.

Mohamed Aslam Haneef is currently professor at the Department of Economics and Center for Islamic Economics and Policy Research, *International Islamic University Malaysia*. He received his PhD from the School of Development Studies, *University of East Anglia*. His thesis entitled *Intellectual Parameters of Contemporary Islamic Economic Thought and Policy* won the Ismail Faruqi Award for Academic Excellence in 1996. He teaches economics and Islamic economics at both the undergraduate and graduate levels. Further, he has published widely and conducted research and consultancy in various areas of economics and development studies. Haneef has been involved in numerous public and private executive training programs, specialising in Islamic economics and contemporary development issues. Among other positions he has been editorial board member of *IIUM Journal of Economics and Management Sciences* since 1997. He is currently director of the *Centre of Islamic Economics and Policy Research, IIUM,* and had been executive committee member of *International Association of Islamic Economics* since 2012.

Monetary Policy in a Dual Financial System

Zubair Hasan

Abstract

In most countries across the globe - Muslim or non-Muslim - where Islamic banking has shown progress, it operates in a dual banking system. Islamic banks work in competition with their conventional counterparts. In this scenario, a crucial issue remains unattended in the current literature. A major function of a central bank, among others, is the controlling of credit banks in the economy and the guidance of the distribution of the wealth they create into areas of social priority. We address this issue in the present paper. As preliminaries, we explain briefly the credit creation process and show why it is required in modern economies. We then take up the ticklish issue: should Islamic banks adopt the operation and argue that they have to, if not today surely when Islamic banking acquires a mature status and matches the heights of conventional institutions. Finally, we examine central bank control methods through (i) regulating the price of credit – the bank rate and (ii) the measures that focus on the volume of credit as the point of control. In a mixed system it may not be efficacious to have different sets of measures for the two parallel systems – Islamic and conventional. The second set of measures does not pose many problems to modify them for common use. As Islam shuns interest, the price side puts one in a dilemma. This paper attempts to resolve this riddle and in that lies its innovative contribution. The work could contribute to PhD research work in progress at INCEIF. The paper draws on some earlier writings of the author but the treatment of the issues is much different and more systematic. The material forms part of chapter in a book commissioned by Oxford University Press.

Zubair Hasan is an Indian economist and has been in academia for over half a century. Having worked worldwide in a number of educational institutions, mainly the *University of Delhi* and the *International Islamic University of Malaysia*, he joined *INCEIF the Global University of Education in Islamic Finance* as a professor of Islamic economics and finance in 2008. His main areas of interest are economics and finance. He has cooperated with various Islamic financial institutions including the *Institute of Islamic Banking and Finance, IIUM,* and sits on the editorial board of several reputed journals. In recognition of his numerous contributions to the subject, he was awarded the prestigious Islamic Development Bank (IDB) Prize in Islamic Economics in 2009. His next publication *Islamic Banking and Finance: An integrative Approach* is scheduled for publication in May 2013.

Global Financial Crisis and Islamic Finance Solution

Mohammad Kabir Hassan

Abstract

The current global financial crisis has exposed the flaws and the vulnerability of the free market economy of Adam Smith and Friedrich Hayek that has dominated economic thought for most of the past 50 years. We may be witnessing the failure of capitalism at the start of the 21st century following the collapse of the centralised economic systems of the East and the disintegration of the Soviet Empire in the late 1980s. Can the fact that Islamic financial institutions have been barely affected by the global credit crisis be attributed to the resilience and expediency of Islamic finance or is it because the Islamic financial system has not yet been tested? Furthermore, does such a crisis and its implications for the global financial system present an opportunity for shariah-compliant Islamic finance to consolidate its position internationally as a viable alternative to the ailing global financial system? Islamic financial scholars and practitioners alike advocate that Islamic economics has a built-in mechanism that enables the global financial system to perform in an orderly manner and avoid such systemic collapse. They further argue that the current global financial crisis would not have occurred if the Islamic principles of finance were implemented in international financial markets. Others, on the other hand, claim that 'immaturity' of the Islamic financial industry has, at least in part, prevented Islamic banking from facing the same destiny faced by conventional banking. They argue that Islamic banking can no longer claim immunity from the global financial crisis and maintain that the Islamic financial system still needs to validate its substance and demonstrate its resilience – considering the fact that this emerging industry comprises a modest proportion of the global financial industry. This paper endeavors to explore these crucial issues and address fundamental questions regarding the potential role of Islamic finance in stabilising international financial markets.

M. Kabir Hassan is professor of Finance in the Department of Economics and Finance at the *University of New Orleans,* Louisiana, USA. Hassan received his PhD in Finance from the *University of Nebraska-Lincoln*. As a financial economist he has consulting, research and teaching experiences in development finance, money and capital markets, Islamic finance, corporate finance, investments, monetary economics, macroeconomics and international trade and finance. Thus, he already provided consulting services to the *World Bank, International Monetary Fund, Islamic Development Bank, Federal Reserve Bank,* USA, and other financial institutions worldwide. Among others, he is editor of *The Global Journal of Finance and Economics* and *Journal of Islamic Economics, Banking and Finance*, *International Journal of Islamic and Middle Eastern Finance and Management*. Recently Hassan completed a textbook on *Islamic Finance*, (with R.N. Kayed & U.A. Oseni) which is scheduled for publication in spring 2013.

Which Interests have to be satisfied for the Success of Interest – Free Banking?

Damir Jelic

Abstract
Europe has a long tradition of banking where the intention was not to make a profit on the capital but to support the economic, social and moral situation of some segment of the population. Numerous credit cooperatives and savings banks, which flourished all across Europe from the mid nineteenth century, using various legal and organisational forms, were not profit but development oriented institutions. While many of them managed to grow, stabilise and to take their place in the economic system, there were many other which failed in this mission. I will try to assess the main factors which influenced successes and failures of non-profit oriented institutions in modern European history. By analysing the factors which influenced the successes and failures of non-profit banks in the European past, we are able to set up a model which again could be useful in predicting an eventual success of Islamic banking. Thus, the paper aims to highlight the interesting destiny of non-profit banking – in the last instance successful non-profit banking mostly as a tool for the development of a profit-oriented economy.

Damir Jelic holds BA degrees in Mechanical Engineering, History and Philosophy from *Zagreb University*, where he also undertook a partial study of economics. After several years of working as a mechanical engineer, he continued his studies with a MA in International Economic History at *Leicester University*. With the research thesis *Provincial Banking in Austro-Hungarian Monarchy and Successor States 1913/1925* he obtained a PhD degree at the School for Historical Studies *of Leicester University* in 2008. His main interest lies in historical determinants for the economic development of East Central and South Eastern Europe. Since 1999 he has been the editor of the *European Association for Banking and Financial History (EABH) e.V.*'s biannual newsletter *bulletin*.

Introducing Islamic Finance to Russia
Assessing Viability and Impediments

Andrei Juravliov

Abstract
[…] The advance of Islamic banking and finance in Russia has been unsteady and slow, particularly compared to the swift pace at which it developed elsewhere world-wide during the 2000s. […] The information suggests that, in spite of the large Muslim population, in the foreseeable future Russia is unlikely to witness rapid and wide-scale development of an Islamic financial services industry. Unlike in the Arabian Gulf or South East Asian countries, Russia does not possess the necessary market and sufficient ethical motivation to aid development of Islamic financing as part of the overall banking system or as a distinct alternative system likely to appeal also to non-Muslims. Nor do the Russian authorities (except within a few specific regions) have any political or economic motivation or will to promote and encourage institutionalisation of such "alternative" financial activities. The most likely scenario is the development of three processes running in parallel: One of these is about emergence, from time to time, of basic sharia-compliant offerings from traditional providers. […] Another process will be of gradual germination of local community initiatives seeking sponsorship of the grass-root interests rather than that of the polity. […] A third scenario will manifest itself through issuance of *sukuk* by some major borrowers such as local governments, leading banks and non-financial corporations. Should that happen on a meaningful scale it may well raise the awareness of Islamic finance on the part of decision-makers, the business community and certain sections of the general public and impact positively on the image of sharia-compliant financial activity. However, to speak about introducing Islamic finance to Russia in the proper meaning of the word, this awareness still should be translated into actions institutionalising this alternative mode of financial business.

Andrei Juravliov is an arabist and holds a PhD in Economics. As a graduate of *Moscow State Institute of International Relations (MGIMO),* faculty of international economic relations, Juravliov worked at the MENA Department of the *Ministry of Foreign Affairs* of the USSR, and then Russia, including service at the embassies in South Yemen and Bahrain. In 1995 he became head of the regional representative office of *Rossiyskiy Kredit Bank* in the Arabian Gulf. He also worked for the first Russian Islamic bank *Badr Forte*. Since an Islamic banking course at *Bahrain Institute of Banking and Finance* in 1991, he also became an independent researcher and in 1996 introduced the public to the phenomenon of Islamic banking in one of the leading Russian business newspapers. He also authored the first monograph on the topic in Russia, *The Theory and Practice of Islamic Banking* (2002).

Participation Banks in Turkey

Ayhan Keser

Abstract

Since 1984 participation banks (PBs) have succeeded in managing idle funds by using the interest free banking model in Turkey while demonstrating strong growth rates. The PB model is also a type of banking which provides 'less risk in liabilities, but higher quality in assets, based on high level of credits'.

- On the liabilities side, PBs do not carry foreign exchange risk through making any foreign exchange position deficits.
- On the asset side of the balance sheet: credits are provided only for solid projects and transactions (purchasing commodity and equipment).
- Payments are made directly to the vendor rather than the customer (against an invoice), which prevents credits being used in risky and speculative purposes.
- Lending against invoices impedes irrational actions by preventing enterprises from using credits that exceed their needs.
- The policy of installment based lending, which allows the banks to collect credits via monthly installments generally regulates the cash flow and liquidity needs of PBs and also strengthens credit security.
- Lending through the leasing method, on the other hand, provides enterprises credit compatible with their cash flow.

Ayhan Keser graduated from the Department of Economics at the *Middle East Technical University* (Ankara, 1991). After briefly working at T.C. *Ziraat Bank*, Mr. Keser worked successively as the Banks Sworn Assistant Auditor and Banks' Sworn Auditor at the Undersecretariat of Treasury; *Prime Ministry of Republic of Turkey*. He worked for *Bank Asya* in 1997 until 2011 when he joined *Albaraka Turk* as assistant general manager. As executive vice president, he is now responsible for the financial affairs, fund management, and the financial institutions departments.

Kemal Kozarić

Kemal Kozarić obtained his Phd in economics at the *University of Sarajevo*. He has 15 years of experience in commercial banking. From 1996 until 2000 he was Minister of Finance in the Sarajevo Canton Government. After that he was appointed Vice Governor of the *Central Bank of Bosnia and Herzegovina (CBBiH)*. Since 2005 he acts as Governor of *CBBiH*. Furthermore, in 2007 he was appointed chairman of the board of the *Deposit Insurance Agency of BiH*. He published various works concerning banking and trends in BiH and the book 'Monetary Credit Policy'. Moreover, Kozarić delivers lectures and actively participates in national and international conferences.

The Regulatory Environment for the Establishment and Operation of Islamic Banks in Germany

Rüdiger Litten

Abstract

In October 2009, Jochen Sanio, the President of *the Federal Finance Supervisory Authority* (*Bundesanstalt für Finanzdienstleistungsaufsicht BaFin*), publicly stated that there were no general regulatory obstacles to present the establishment and licensing of an Islamic bank in Germany. Mr Sanio also indicated that the regulatory path for Islamic finance in Germany should be positively facilitated. 18 months later, in May 2011, Sanio's successor as BaFin President, Mrs. Elke Koenig, at the 2nd conference on Islamic finance organised by BaFin, confirmed this statement. Other BaFin officers went even further, such as Peter Baier, who said that 'Islamic banking can make a valuable contribution to western financial supervision.' This paper gives a description of the regulatory environment relevant for the operation of an Islamic bank in Germany. It discusses the specific legal issues that every Islamic financial institution will face when it considers offering its services and products in Germany. It should be noted, however, that many of the matters described are based on opinions and individual practical experience of the author as advisor to Islamic banks under German law. To date the German BaFin has not issued clear administrative practice guidelines on this subject. […]

Rüdiger Litten has been a partner in the Frankfurt office of the international law firm *Norton Rose LLP* since 2001 and lectures at the *Institute for Law and Finance* at *Frankfurt University*. Litten has studied law in Germany, England and France. He holds a law degree and a PhD from *Hamburg University* as well as an LL.M. from *Bristol University*. In 1997 he was admitted as German attorney at law and has practised law in Frankfurt and London ever since. He has specialised in the areas of capital markets, structured financing (incl. derivatives and securitisation), loan-portfolio-transactions, testructuring, and Islamic finance and advises German and international banks and companies in all financial law related matters. With this experience, Litten also authored a number of publications in the field of capital markets law.

The Jewish Ethics of Interest

Nathan Marcus

Abstract

What are the Jewish ethics of usury and interest? The Hebrew Bible prohibits taking interest from 'thy brother' (Exodus, 22:25 and Leviticus, 25:35-37). Through the ages, rabbinic scholars have interpreted these passages differently. My paper looks at the codification of Jewish law during the Mishnaic and Talmudic period, to understand how early Rabbis dealt with the prohibition. In their view the law's intention was to protect the poor, and hence not all interest-bearing loans had to be categorically outlawed.

Nathan Marcus earned his PhD from *New York University* in 2012 for a dissertation in financial history titled "Credibility, Confidence and Capital: Austrian Reconstruction and the Collapse of Global Finance, 1921-1931". He is a postdoctoral research fellow at the *Hebrew University of Jerusalem*, where he is working on a history of currency reforms in post-WWII Europe.

A Dialogue between Cultures
What can the EU learn from the Malaysian Experience?

Aaron Z. Pitluck

Abstract

What can EU bankers, regulators and academics learn from Malaysia's three decades of experience in this market — particularly the phenomenal growth of the industry over the past decade? This paper draws on ongoing research in Malaysian investment banks and sharia advisory committees to identify specific economic transformations and social processes in Malaysia that are likely to influence the Islamic finance market in the EU over the coming decades. The paper begins with the well-known moral distinction between Islamic finance and conventional banking — the prohibitions against *riba* and *gharar* arguing that the interpretation of these two prohibitions remains contested and evolves over time, both within countries and internationally, due to the social organisation of the religion as well as of the Islamic finance industry. [...] In summary, this paper identifies three transformations in the Malaysian Islamic finance industry that we can expect to see in the EU in the years ahead — as well as one potential transformation among retail and institutional clients of financial services (both Muslim and secular). The paper also identifies three social processes that continue to push Islamic financial practices and instruments to resemble those currently existing in the EU conventional finance market. In addition to providing a framework for EU practitioners, regulators, and academics, with which to understand developments in Islamic finance in the EU, the paper's argument produces a counterintuitive corollary: Although Islamic banking and finance offers an evolving alternative to conventional banking practices, in the years ahead we can expect this substantive alternative to continue to resemble conventional banking practices very closely.

Aaron Z. Pitluck is associate professor at *Illinois State University*, and currently holds a two-year research fellowship with the political economy research group at *Central European University* in Budapest. He holds a PhD in Sociology from the *University of Wisconsin-Madison*, a Master's degree in Development Studies from the *University of Cambridge*, and a postgraduate diploma in Economics from the *London School of Economics*. His research focuses on the intersection of finance and society. His present book project investigates how investment bankers and religious scholars co-produce Islamic financial instruments and promote the Islamic finance market in Malaysia. His previous research has investigated professional investor behavior, the socially responsible investment industry, and conflicts of interest in the finance industry.

Ethical Banks and Church Banks compared to Islamic Banking in Germany

Rebecca Schönenbach

Abstract

Germany's first ethical bank founded in 1967 has achieved substantial success by integrating environmental criteria into its social corporate identity. By broadening its scope of ethics, the bank managed to become more attractive to a larger number of customers and was also noticed by a wider public. Two Christian banks went along the same path of integrating ecological concerns, though with a less significant effect. All banks give customers the opportunity to donate their revenues from interest to charity. The one with the most significant growth is the one that incorporates denominational, social as well as ecological ethics into its portfolio. The implications of these findings are analysed in light of the developing Islamic banking sector, the opportunities of additional criteria winning potential customers who would otherwise be less inclined to invest with an Islamic bank. The similarity of products and investments of ethical banks and Islamic banks is noteworthy.

Rebecca Schönenbach is a German economist with longstanding work experience in project finance. She studied in Paris, Berlin and Limerick and worked both on the national and international level with a focus on moral economics. Schönenbach is a participant of the *Durham Islamic Finance Summer School* and is a certified Islamic finance expert. Since 2010 Rebecca is head of www.raven-center.com, an independent information service on Islamic finance and frequently publishes articles on Islamic finance in Europe both for professionals and the media.

Ownership Structure and Risk-Taking Behaviour in Conventional and Islamic Banks: Evidence for MENA Countries

Samir Srairi

Abstract

This paper investigates the impact of ownership structure, measured by two dimensions: nature of owners and ownership concentration, on bank risk, controlling for country and bank-specific traits and other bank regulation. Particularly, it compares risk-taking behaviour of conventional and Islamic banks in 10 MENA countries under three types of bank ownership (family-owned, company-owned and state-owned banks) over the period 2005-2009. The result shows a negative association between ownership concentration and risk. We also find that different categories of shareholders have different risk attitudes. Family-owned banks have incentives to take less risk. State-owned banks display higher risk and have significantly greater proportions of non-performing loans than other banks. By comparing conventional and Islamic banks, the empirical findings show that private Islamic banks are as stable as private conventional banks. However, Islamic banks have a lower exposure to credit risk than conventional banks.

Samir Srairi is associate professor at the Faculty of Law, Economics and Management, *University of Jendouba*, Tunisia where he is teaching several courses in finance and accounting. He earned a PhD degree in Business Administration and Finance from the *University of Tunis* in 2001. He has worked in a wide variety of institutions. These jobs include positions in two academic institutions in Saudi Arabia and Tunisia as well as in different financial companies (1989-1997). He has published various papers written in different languages (English, French and Arabic) related essentially to the Islamic banks in *Gulf Cooperation Council (GCC)* countries and development strategies (mergers and acquisitions) of companies in Tunisia. He also participated in many international conferences. He was also responsible for and member of many academic commitments at the universities in Saudi Arabia and in Tunisia.

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