

Islamic banking and the Italian financial tradition

Legal remarks on a dialectical relationship

Gabriella Gimigliano
(Ph.D., University of Siena)

Business-based and Culture-based approach

- Does the Italian legal framework prevent Islamic financial institutions from coming on to the Italian banking market?
- If an Islamic bank is authorised as a domestic financial intermediary, how will Shari'a Supervisory Board (SSB) work?

Shari'a-compliant banks vs Italian banks

“Bank” = An undertaking authorised to engage in banking business (art.1.1, lett. a), Legislative Decree no. 385/1993)

“Italian bank” = A bank having its registered office in Italy (art. 1.2, lett. a), Legislative Decree no. 385/1993)

[Source: <http://www.fitd.it/en/laws>]

Banking authorization (art. 14)

1. Legal form: società per azioni/società cooperativa per azioni a responsabilità limitata;
2. Registered and head office in Italy;
3. The paid-up capital not less than that established by the Bank of Italy;
4. Programme of operations;
5. The persons performing administrative, management and supervisory functions fulfil the experience, independence and integrity requirements (referred to in Article 25);

Banking authorization (art. 14)

6. The owners of significant holders are in possession of integrity requirements (ex art. 25);
7. Close links do not exist between the bank or the components of the group it belongs to and other persons preventing the effective exercise of supervisory functions.

[Source: <http://www.fitd.it/en/laws>]

And the “banking business”?

Fund-raising on a public basis and the granting of credit.

(...)

In addition to banking, banks may engage in any other financial business, in accordance with the provisions applicable to each activity, and in related and instrumental activity.

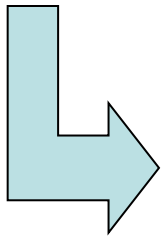
(art. 10, legislative decree no. 385/1993)

[Source: <http://www.fitd.it/en/laws>]

Core banking business

(art. 11.5, Legislative Decree no. 385/1993)

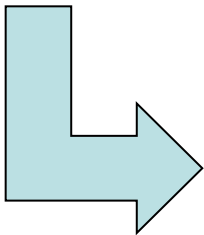
- the raising of sight funds (in order to extend credit)
- any form of fund-raising related to the issue or administration of generally spendable means of payment



Client = a “risk-free” creditor

Non-core activities

Financial activities
(pass-ported activities
investment services)



Clients = investors

Maybe not...

- ✓ Italian banks can devote their business more to financial activities than to the core banking business;
- ✓ Some financial activities seem to resemble Shari'a-compliant services: leasing and ijara-based operations or investment portfolio service and mudaraba-based operations;
- ✓ Holders of sight accounts usually have no remuneration.

Maybe...

- Italian banks are set to provide the core banking business;
- Italian banks join a deposit-guarantee scheme;
- When Italian banks hold shares or capital parts in non-financial enterprises they are not extending credit (generally speaking).

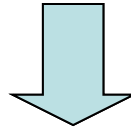
Reversing the approach

From the cultural differences to the suitable business model:

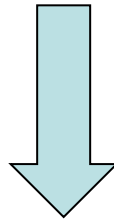
- Specialized sections of Italian banks;
- Payment institutions or Electronic Payment Institutions;
- Financial intermediaries (ex art. 106, legislative decree no. 385/1993);
- Collective investment funds;
- Micro-credit entities.

Corporate governance

Shari'a Supervisory Board



Compliance Service



Inside or Outside Corporate Structure?

Reversing the approach

SSB and Muslim(?) clients:

- Will *Shari'ah* rules in the contracting relationships between an Italian financial intermediary claiming to be *Shari'ah* compliant and its Italian clients be enforceable according to the Italian civil code?
- Can Muslim clients challenge SSB opinions?
- Can Muslim clients take action against company directors claiming that they did not comply with SSB opinions?

Reversing the approach

And, in conclusion,

- Principle of no discrimination, Art. 3.2, Italian Republican Constitution
“It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country”.

**Thank you all
for your attention**