

ISLAMIC FINANCE

INTELLIGENCE



TasaamuH Opalesque

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Swap
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Lex Islamicus

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an English law of contracts
Hakimah Yaacob and Edib Smolo

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Joy Abdullah

Welcome to the ninth issue of Opalesque Islamic Finance Intelligence, it's a busy edition! We touch on equity screening methodologies in our editorial section, while the Featured Resource covers multimedia and interactive sources. The Featured Structure section has Nikan analyzing how successive parallel Murabahas can be used to construct a Profit Rate Swap.

Lex Islamicus hears from Hakimah Yaacob and Edib Smolo, both from the International Shari'ah Research Academy (ISRA), as they dissect the approach taken by English courts towards Islamic finance contracts. Furthermore, the Kulliyah Korner hears from Ezry Fahmy, Jhordy Kashoogie and Asim Anwar Kamal who co-authored a study on the relationship between Shariah compliant structures and the Maqasid al-Shari'ah.

As part of our ongoing survey (The Islamic Window) Joy Abdullah delves into the perception of Islamic finance, particularly from outside of the industry. This is complemented in the Industry Snapshot by Deloitte's David Vicary who provides his views on the importance of education and financial literacy. Our Opinion Column shares the views of Nihad Awad from CAIR, on a topic that might not appear to be related to Islamic finance although we argue the industry has the opportunity to contribute in a positive way.

As always, we are keen to hear your comments & suggestions and remember that you can visit our online archive ([see reference link](#)) for access to our ever-growing databank of Opalesque Islamic Finance Briefing as well as all of the back issues of Opalesque Islamic Finance Intelligence.

Best Regards,
Bernardo
Editor, Opalesque Islamic Finance Intelligence

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Photography by: Kelly Lemon, Robert Seabrook

Equity Screening and the Golden Calf

By Bernardo Vizcaino, CAIA

From Ten Commandments to Exchange Traded Funds

Various discussions, here and elsewhere, have touched on the concepts of ethics, social responsibility, governance, or lack thereof. Indeed Islamic finance often draws comparisons with ethical or socially responsible investing, since it contains references to various non-permissible activities which IFIs must abstain from. Similarly, this set of non-permissible activities represents the essence of equity screening (as it is implemented today) - where one identifies industries (i.e. tobacco) and practices (i.e. interest) which are to be avoided in order to setup an Islamic finance instrument/vehicle. These screens, which are both qualitative and quantitative, apply as much for a long-only ETF as they do for a multi-jurisdictional SPV concoction.

Common to this theme of non-permissibility is the notion of a set of rules to guide us in life, and this is evident in how the Abrahamic religions observe the story of prophet Moses (prophet Musa in Islam) and the divine message that was revealed to him in Mount Sinai (in the Quran Tur Sinin) in the shape of the ten commandments. These are recognized as a moral foundation in Islam, Christianity, and Judaism. Oddly enough, this is an area that is seldom explored, as though openly discussing religion and different faiths is somehow off-limits or politically incorrect. Even more so when one considers that Moses is the most important prophet in Judaism and at the same time he is mentioned in the Quran over 500 times. In fact it is Moses who escorts prophet Muhammad (pbuh) through the heavens into the presence of God (where he pleads to reduce the number of daily mandatory prayers from fifty to five).

The Golden Calf and the Second Set

To be clear, the Quran does not directly specify the ten commandments nor does it provide a specific set of rules in a list form. Care must be given on this point, since the Quran is a guide in its entirety - it would be rather callous to suggest a summary or that a set of rules supercede or dominate the overall message from the Holy Quran. However, the



message from the Bible and the Torah (where they are explicit in both) coincide with many verses in the Quran. The teaching of Islam is that the original texts of these previous scriptures are indeed divine messages which have been corrupted over the years by human tampering (interpretation, modification, translation, etc).

The narrative of Moses tells us of his 40 days of meditation, after which he returned to his people with the stone tablets that contained the ten commandments. While the exact number and order differs slightly, these commandments are generally divided in two: the first four statements refer to the relationship between God and humans, while the next six statements refer to the relationships between human beings.

Unfortunately, Moses found his followers indulging in the worship of a golden calf (attributed in the Quran to an individual called Alsameri). Observing the sacrifices and the revelry, he broke the tablets in anger (another version mentions the tablets breaking themselves as the divine scripture witnessed the idolatry). After another 40-day period of penitence, God offered Moses to inscribe two other tablets as replacements. A question arises here as to who did the actual writing on the second tablets, God or Moses.

In Deuteronomy it is God himself, whereas Exodus informs us that Moses was commanded to actually write the commandments. The difference might not be trivial.

Human Nature and The Advent of Positive Screens

Does this mean that God needed to rethink his revelation to Moses? Was this original revelation flawed in some way that it needed to be re-written? Perhaps it was this worship of the false idol that alerted Moses to the fact that we, as frail humans, respond to penalties and prohibitions - as opposed to positive directives and guidance. After all, the statements are mostly negatory: do not kill, do not steal, do not bear false witness, do not commit adultery, and so forth. What a sentence of human nature that is - it is not about saving one another, sharing with each other, being compassionate, honest or truthful. It is the fear of being struck by lightning that keeps us in check.

In fact we see this all the time in modern finance - the main effort of regulation is indeed a cat and mouse game. Regulators the world over must contend with the fact that practitioners will go to great lengths to circumvent the rules, evade taxes, avoid disclosure, manipulate confidentiality to trump transparency. Hence, the main approach of regulators is to command what we cannot do. Do not embezzle, do not cheat, do not be late in submitting form 21b. Money is the new golden calf and we have run out of tablets.

So it seems that our friendly neighborhood regulator must either look for something more to ban or find a larger stick to smitten those who trespass. Here is where codes of ethics, industry best practices, and positive screens have been latecomers in the financial world. Whenever they arrive they are seemingly condemned to being unofficial efforts, lacking industry-wide acceptance, or just plain unenforceable paper. Could this be the reason that we debate substance over form? We keep wondering what would happen in case of a sukuk default, perhaps what we need instead is a good fat injection of scruples?

Your feedback and comments are very important to us, please feel free to contact the author [via email](#).

Islamic Finance Multimedia

 **Blogger** [As Featured in the Islamic Finance Resources Blog](#)

Over the recent past we have witnessed an increase in the use of multimedia to disseminate information relating to Islamic finance - from webcasts and podcasts to online discussions forums. Featured below is a short selection of some of these sources:

[Podcasts & Webcasts](#)
CFA Institute

[Islamic Finance Multimedia Glossary](#)
Deloitte Islamic Finance Portal

[Islamic Finance Roadshows](#)
Redmoney Group

[Webcasts](#)
INCEIF

[LinkedIn Discussions - Highlights of 2009](#)
Global Islamic Finance Resources

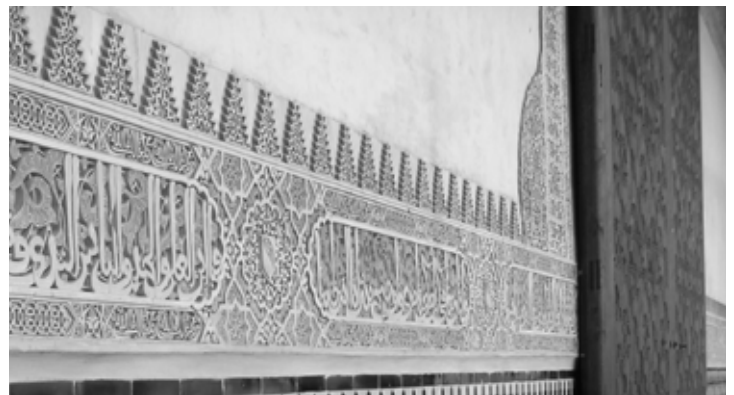
[Video: AAOIFI on Screening Islamic Products](#)
Thomson Reuters

[Webcast: Interview with Sheikh Muhammad Taqi Usmani](#)
Deloitte Islamic Finance Portal

Shariah Compliant Profit Rate Swap

By Nikan Firoozye, PhD

Nikan has over 14 years experience in leading Wall Street and City firms on the buy and sell-side including Lehman Brothers, Goldman-Sachs, Deutsche Bank, Sanford Bernstein Alliance, Citadel and Nomura where he is currently Head of European Rates Strategy. He has worked in a variety of primarily technical or quantitative fixed income roles from Rates & Hybrids Structuring to Rates Strategy and Quantitative Modelling to Asset Allocation and Risk Management to Prepayment Analysis and Securitization and Capital Markets. Education: PhD Mathematics (Courant Institute, NYU), Asst Prof University of Illinois.



It had been obvious for some time that Murabaha represented a form of short-rate financing, an Islamic alternative to a LIBOR contract. Hence the ability to promise through the wa'd mechanism to enter into a forward Murabaha could easily lead to forward financing methods. However, the fact that a Murabaha, essentially a trade finance with a markup, could have this same markup linked to LIBOR did essentially open up some possibilities. In particular, why couldn't this same markup be linked to anything more exotic. For instance, it has been said that if a Muslim owned a beverage store and sold soft-drinks, his activities are permissible. If he also decided to 'keep up with the Joneses' and sell soft-drinks which had a price which ratched up whenever his next-door non-Muslim beer-selling neighbour ratched up his prices, this activity is similarly permissible or halal.

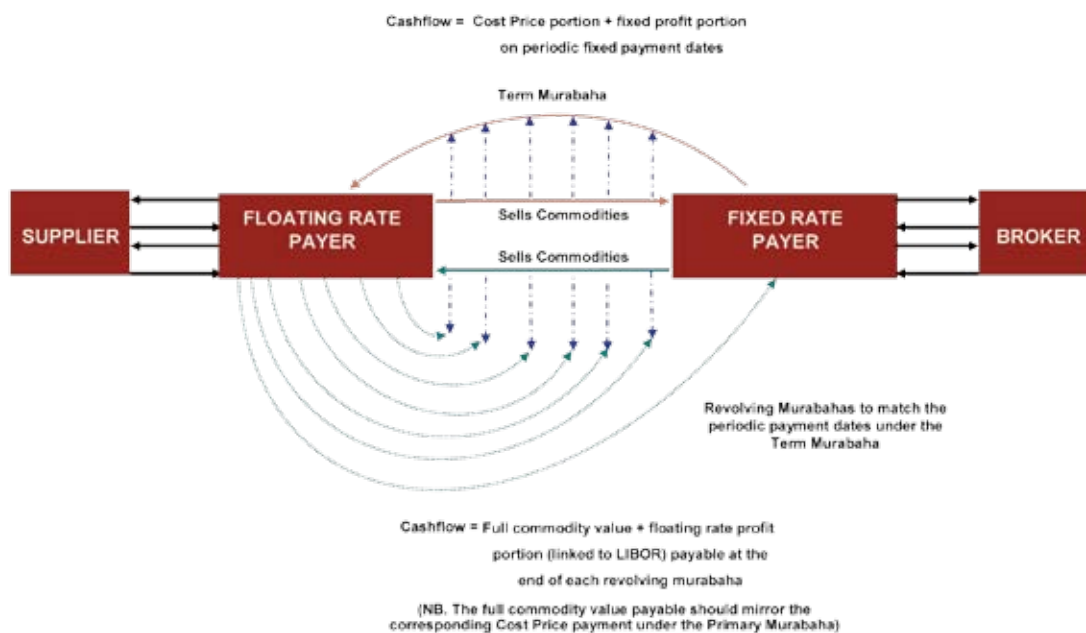
Just extending the logic further, it has been granted that it is permissible to link the markup in a Murabaha, trade financing vehicle, to just about any observable index, as long as this index had been set and could be verified before the Murabaha is actually entered into. This opens a world of possibilities. Thus we can link Murabaha markups to exotic instruments (e.g., to the number of days LIBOR was in a given range with the possibility of a knockout if it far exceeds the same range, or the slope of the yield curve, etc.) The key precondition being that this exotic payoff would have to be determined before the actual purchase of any underlying commodity, in other words one cannot agree to a markup sale if the markup price is not known at the time of the original sale.

Of course this leads one step further, in that one could have back-to-back Murabahas, where one counterparty sells another corn with a markup of LIBOR and this same counterparty sells the initial party platinum with markup linked to the slopes of the yield curve less a fixed spread. If we promise to enter into successive further Murabahas, we suddenly have a swap, known as a Profit Rate Swap (PRS), originated in Malaysia around the same time Deutschebank invented its now famous TRS (Total return Swap), specifically being a wa'd based total return swap (see Islamic-Finance Resources, "[Shariah Compliant Swap: Shariah "conversion" or subversion?](#)" for more details on the wa'd swap).

To reiterate, the essential ingredients are successive parallel Murabahas. Allen & Overy has a relevant discussion paper ([see reference link](#)) on the structure which goes into some detail on the individual legs of the swap (the individual Murabahas/rolling murabahas). The idea is simple enough and is depicted in the adjoint graph:

Featured Structure

Profit Rate Swap Structure



- For the floating leg, we are allowed Murabahas with markups linked to LIBOR. We can enter into consecutive Murabahas on a rolling basis, with Wa'd to enter into Murabaha at the market price + market determined LIBOR to make for rolling Murabahas.
- For the exotic leg, some scholars would allow the linkage of the Profit Rate of the Murabaha to be almost anything so long as it is determined as of the time of entering into the Murabaha. So range accruals (i.e., the profit rate is LIBOR + X accruing times the number of days LIBOR is in between LowerBound and UpperBound) and almost any exotic payoff can be used as a markup so long as it is set at the time the Murabaha is entered into.

It may even be possible to do away with the underlying purchases altogether, especially if they are buys and sells of the same underlying commodity with the same two counterparties, under the rule of set-offs. If so, the swap is very much a regular swap except that all cashflows must be fixed before a given Murabaha sale takes place (i.e., no 'in-arrears' style payments).

Notes:

1. This is not a typical exotic swap and in this case the exotic leg has a delayed payment. The typical structure for a range accrual is to pay periodically (say every 3M) $\text{LIBOR}(t) + X\%$ times the number of days LIBOR(t) is between LowerBound and UpperBound, for t between 0 and 3M, with payment made at $t=3M$. In the above PRS version, $t=3M$ is the first date that the coupon (or profit markup) is known with complete certainty and is then the date at which the Murabaha is entered into with payment of this markup at $t=6M$. This delay is nonstandard in the exotic world but is really only a small matter for traders, structurers, and clients.
2. Sh Yusuf DeLorenzo's objections to DB's "Shariah Conversion Technology" (see reference link) applies equally well to this structure. Can we asset swap Pork Bellies for LIBOR using Murabahas and make it all seem Shariah Compliant?
3. Possibly countering Sh DeLorenzo's objections, it should be possible to use a PRS as long as hedging the underlying cashflows is entirely halal. So, one could do cross currency swaps easily, do fixed for floating, but applying the same principle to various more exotic structures become significantly more challenging. One could see the application of maslaha or public interest in the permissibility of fixed for floating or cross-currency swaps, but then again we could have those with knock-out double-touch Asian Himalaya payoffs (I just made up a term, but used quite a few in common exotics parlance). Do they really help the common good?

Your feedback and comments are very important to us, please feel free to contact the author [via email](#).

It is not a murabaha contract; it is just an English law of contracts

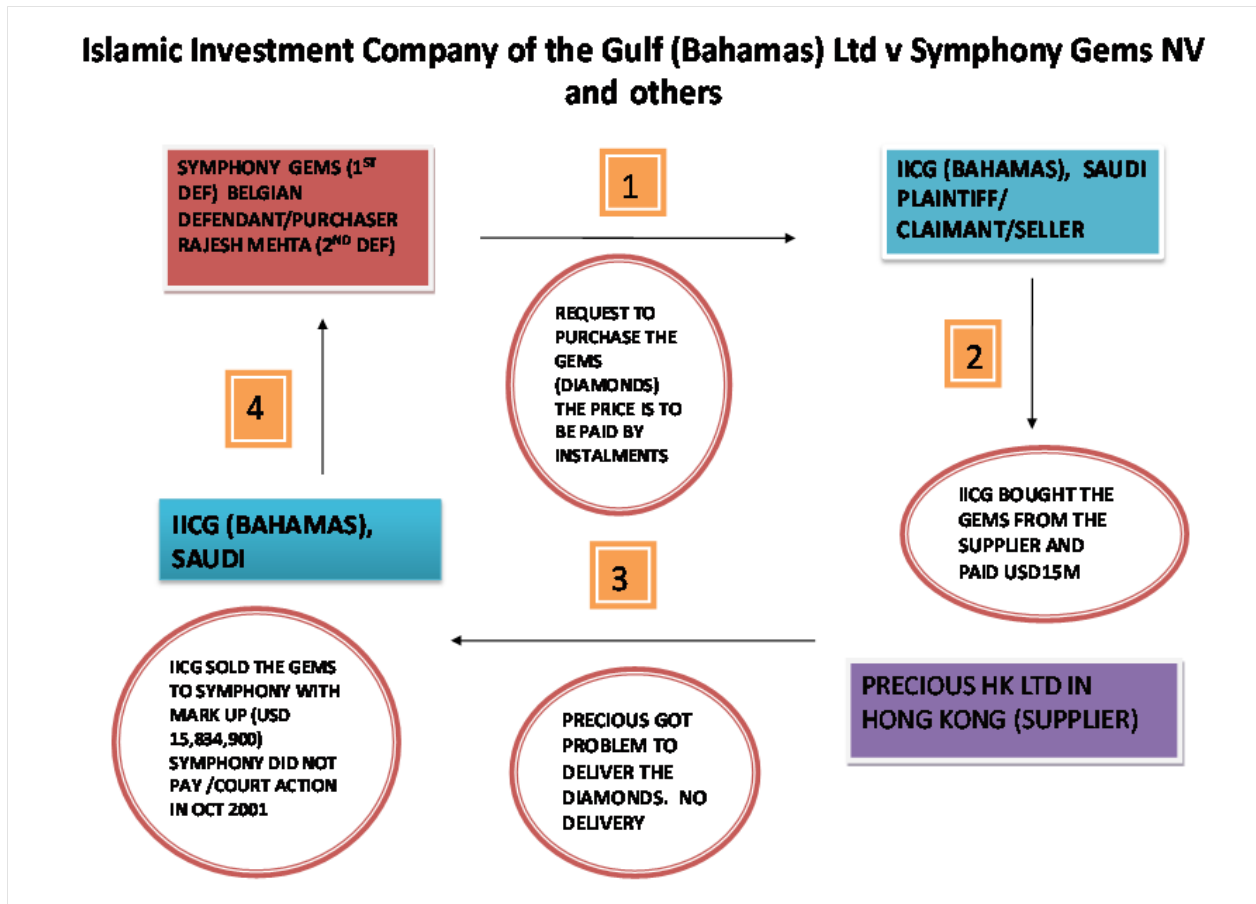
By Hakimah Yaacob and Edib Smolo

Hakimah Yaacob and Edib Smolo are both Associate Researchers at the Islamic Banking Unit, International Shari'ah Research Academy (ISRA) for Islamic Finance. Hakimah holds a Bachelor of Laws (Hons), Bachelor of Syariah (Hons), a Master in Comparative Laws, from International Islamic University Malaysia and a diploma from Tokiwa International Institute, Japan. Previous positions held include Head of Law Reform & International Treaties, SUHAKAM, legal practitioner, as well as being the Drafter of International Standard Organisation 26000 on social responsibility. She has published many articles on alternative dispute resolution (ADR) in Islamic finance including arbitration, mediation and hybrid ADR. Edib obtained his undergraduate double-degree in Economics and Islamic Revealed Knowledge (Hons) as well as Master in Economics from International Islamic University Malaysia. He has published several papers on Islamic microcrediting, economics, and finance. Their combined areas of specialization are in Islamic banking and finance, law, microcrediting, fiqh muamalat, risk management, Islamic capital market products, mediation, ethics and social responsibility (among others).



Reviewing the decision in *Islamic Investment Company of the Gulf (Bahamas) Ltd v Symphony Gems NV and others*, which was decided by the Queen's Bench Division (Commercial Court) on 13th of Feb 2002, is a must for Islamic finance practitioners since it provides a significant precedent for the Islamic finance industry. Everything started with a murabaha agreement executed between the parties consisting of IICG as the claimant or the seller or the plaintiff and Symphony Gems and Others.

The purpose of this short article is to highlight few triable issues concerning the validity of Shari'ah law in the eyes of English court. Regardless of whether we name it a murabaha or a wakala, for the English court it is just a contract. The terms bound the parties as long as it does not contravene any legal provisions and law (of course not Shari'ah law). In this case, the purchaser requested the seller to purchase the supplies and sell them to the purchaser through a murabaha arrangement and the seller agreed to make such purchases and sell the supplies to the purchaser on the terms and subject to the conditions set out in the so-called "murabaha agreement." The brief summary of the case can be seen from the table below:



The murabaha contract is viewed as an alternative to the lending practices within conventional banking. The transaction involves two types of promises: a promise by the client to purchase the goods (wa'd) and a promise by the bank to sell him the goods. The payment may be in cash or deferred. The two parties will conclude the sale after the purchaser has the goods in his possession. Although it is generally argued that the purchase orderer may or may not be obliged to conclude the sale, some modern scholars have allowed the promise in this type of sale to be binding for the purchase orderer. Today, this practice is known as wa'd.

Imam al-Shafi, in his book al-Umm, held that this transaction is valid provided that the bank receives the purchased items. The validity of wa'd is based on the Maliki school held by Ibn Shabramah that any promise that does not results in permitting that which is forbidden or forbidding that which is permitted is binding. This applies whenever the promise leads another person or entity to undertake a financial obligation. The bank also must hold the risk of destruction of the goods prior to delivery to the final buyer.

The court discussed several issues including the validity of the agreement and the illegality of the contract executed. It is very interesting to note that most of the cases in Islamic finance will delve into the defense of non-compliance when the party or the defendant fails to comply with the contract or in other words fails to pay. The two experts were called to testify the ingredients and the validity of a murabaha contract. After a deliberate discussion, the experts said that underlying contract is not based on a murabaha transaction. In the end, the court ignored their expert views and considered a contract as valid from English law point of view. This is due to the express terms in the contract saying that even without delivery of the goods, the seller is still entitled to claim the price (refer to the Clause 4.3, 4.4, 5.1, 5.2 and 5.6 of the agreement executed between the parties stating that delivery of goods is not a prerequisite for the seller to recover the sale price from the purchaser). As a result, the court judged in favour of the plaintiff.

Table 1: Relevant clauses of the case

Clause	Content
4.3	If, in relation to a Purchase Agreement, the Purchaser shall have failed to enter into arrangements with the Supplier to the effect that the Seller will purchase the Supplies from the Supplier on the Settlement Date thereunder, the Purchase Agreement shall be automatically terminated and neither the Seller nor the Purchaser shall have any liability to the other in respect of the Purchase Agreement Provided that, for the avoidance of doubt, the provisions of this Agreement (including, without limitation, cll 5.8 and 9) shall survive such termination.
4.4	The relevant instalments of the Sale Price in respect of each Purchase Agreement shall be payable by the Purchaser to the Seller on the due dates therefor, whether or not: (a) any property in the Supplies has passed to the Purchaser under the relevant Purchase Agreement and/or to the Seller under the relevant Supply contract; or (b) the Seller is in breach of any of its obligations under the relevant Purchase Agreement or the relevant Supply Contract; or (c) the Purchaser is in breach of any of its obligations under the relevant Supply Contract, and such payment shall not be conditional upon the happening of any event, in recognition by the parties of the facts that the source of the supply of the Supplies is selected by the Purchaser and that the Supplies are purchased and sold, on behalf of Seller, by the Purchaser provided that the Sale Price shall not be payable by the Purchaser to the Seller on the relevant instalment dates thereof to the extent to which: (a) the Seller has failed to transfer the Cost Price for the Supplies on the Settlement Date to the Purchaser pursuant to clause 4.1; or (b) the Sale Price has already been paid to the Seller.
5.1	The Purchaser hereby acknowledges and agrees that the Purchaser shall be solely responsible for selecting any Supplies and each proposed Supplier of Supplies under each Purchase Agreement and shall, in respect of the Offer, nominate the proposed Supplier selected by it (and give full particulars thereof) to the Seller.
5.2	When title to the Supplies passes to the Seller under the terms of the relevant Supply Contract, the same shall immediately thereafter pass to the Purchaser. The Purchaser will obtain such title to the Supplies delivered as the Seller has received from the Supplier pursuant to the relevant Supply contract and the Seller shall not be deemed to give any warranty or representation in respect of the Supplies whatsoever whether arising by implication, by statute or otherwise and, without prejudice to the generality of the foregoing, any such warranty or representation is hereby expressly excluded to the extent permitted by law.
5.3	The Purchaser acknowledges that prior to the transfer of title to the Supplies to the Purchaser, it shall take, or procure that such steps are taken, as may be appropriate for the Purchaser to be treated for the purposes of this Agreement as having accepted such Supplies undeniably and without reservation and the Purchaser shall have no further remedy against the Seller in respect of their quality, condition, quantity, description, title or otherwise.

Source: Murabaha Agreement between Islamic Investment Company of the Gulf (Bahamas) Ltd v Symphony Gems NV & Ors [2008] EWCA Civ 389 (11 March 2008), ([2008] EWCA Civ 389, From England and Wales Court of Appeal (Civil Division) Decisions; 31 KB)

The total amount of US\$ 10,060,354.28, up until 13 Feb 2002 inclusive of both principal and the compensation for late payments, was awarded to the Plaintiff. This was calculated on a basis more favourable to the defendants than the contract required. This case observed the consistency of the practice of English law in the tendency towards a literal interpretation of commercial agreement. If the reference to Islamic law is made, it is a less likely that the murabaha agreement constructed in this case would be enforced because of the issue of non-compliance to Shari'ah. This is according to AAOIFI Standard No. 8 (3) on murabaha, which states that "The institution is prohibited from selling any item in a Murabaha transaction before having acquired the item. Hence, it is not valid for the institution to conclude a Murabaha sale with the customer...before actual or constructive possession of the item..."

Therefore, the reasons for stating that in this case it was not a murabaha transaction are as follows:

- i) According to the agreement, the delivery is not a prerequisite for payment. In murabaha contract, the payment for the goods ordered takes place after the delivery of goods. Here the possession of goods never took place and the goods were never delivered.
- ii) The risk is supposed to be borne by the bank and properly insured. However, in this case, the risk was solely borne by the purchaser, i.e. the client.

Therefore, we believe that the choice of parties to be adjudicated by a non-Islamic court in a non-Islamic jurisdiction shows that a due recognition was not given to the validity and the principles of Shari'ah law. Even though the contract is deemed as being non-compliant with Shari'ah law, the court still validated the transaction based on normal contract and made it enforceable. This decision may be harmful to the Islamic finance industry as its aims to comply with Shari'ah are seemingly being defeated. Furthermore, this case could easily be used as a precedent in future disputes whereby the Shari'ah rulings will be abandoned in favour of prevailing English law (or any other law depending on the jurisdiction). For example, in *Shamil Bank of Bahrain v Beximco Pharmaceuticals Ltd and others*, Shari'ah is not a choice of law because it is considered a non-national law. If parties to a contract want to apply Shari'ah for the Islamic financial contracts it must be specifically incorporated in the contract itself. If the parties give the right to an English court to try their case then the English court will interpret the sukuk contracts (and any other contracts for that matter) according to the law of England except where specific peculiarities of Shari'ah have been expressly added in the contracts.

The reference to the "Glorious Shari'ah" in the governing law clause was merely intended to reflect the Islamic religious principles according to which the Bank held itself out as doing business. It was not a system of law designed to trump the application of English law as the governing law. Having said that, this case was decided on the construction of the governing law clause, which incorporated English law. Hence, the Court did not need to consider and apply Shari'ah. Consequently, the judge held that even if the plaintiff (Shamil Bank) acted in contradiction of the Shari'ah and this may have contributed to the defendants subsequent default, it was no matter for English courts to decide and therefore they must decide only in accordance with English Law.

Nevertheless, in the recent case of *The Investment Dar Co KSCC (TID) v Blom Developments Banks SAL*, TID claimed that the agreement is not Shari'ah compliant being an agreement for deposit taking with interest and therefore null. Even if it is valid, according to the agreement, profits payable to Blom should be limited to 5% and any extras should be retained by TID as its own profits. If there are any losses, on the other hand, it will be borne entirely by Blom. The court allowed the appeal (dismissed the summary judgment and ordered full trial) on the condition that TID first pays Blom the principal amount invested by Blom. The court refused to discuss on the Shari'ah compliance of the deposit products, as the Shari'ah committee of TID has already ruled on its compliance, and the court relied on the expert evidence by the Shari'ah committee. This case also invites ethical issues that play a major role in Islamic finance, and it is a very interesting case since the parties argue the validity of a Shariah contract in an English court of law.

In short, it is not an issue of contract being Shari'ah compliant or not, it is a contract that reads in the eyes of English law. The Shari'ah validity may not be relevant in this case as the English court will not bother to determine whether the contract is valid or not. Finally, if we make it a practice to have Shari'ah issues being heard at the English court and if we leave to the English court to decide on its (Shari'ah) validity, then the above cases provide strong indications of the potential results. Should this continue, the industry will be presented with a serious legal dilemma in the future.

Your feedback and comments are very important to us, please feel free to contact the fund manager [via email](#).

Debt versus Equity Financing in the Light of Maqasid al-Shari'ah

By Eddy Yusof, Ezry Fahmy, Kashoogie, Jhordy and Anwar Kamal, Asim

Jhordy Kashoogie, graduated from International Islamic University Malaysia (IIUM) with a B. Econs.(Hons) in Islamic Economics and Finance qualification, he is currently undertaking his postgraduate study, MSc Islamic Finance, at Durham University, United Kingdom. Ezry Fahmy, graduated from International Islamic University Malaysia (IIUM) with a B. Econs.(Hons) in Islamic Economics and Finance qualification, currently he is pursuing Chartered Islamic Finance Profesional (CIFP) program at the International Centre for Education in Islamic Finance (INCEIF). He has written various articles on Islamic Banking and Shariah issues. Asim Anwar Kamal, graduated from International Islamic University Malaysia (IIUM) with a B. Econs.(Hons) in Islamic Economics and Finance qualification with a first-class degree, currently he is pursuing Chartered Islamic Finance Profesional (CIFP) program at the International Centre for Education in Islamic Finance (INCEIF). Together, they recently published their paper on “Debt versus Equity Financing in the Light of Maqasid al-Shari'ah” ([see reference link](#)).

We started working on this research paper ([see reference link](#)) as part of the requirement to complete our Bank Management course during our undergraduate studies, but what brought us together was the keen desire shared by all of us to explore the development of Islamic banking and finance (more than to have a publishable research paper). One of the key lessons from the course was in terms of developing a relevant topic, brainstorm the arguments, setting problem statements, stating the objective of the study, and performing the actual research questions. Developing this entire process at the outset was critical for us to succeed, and from here we had a much easier task of analyzing the data and constructing the final paper.

This discursive research paper departs from our concern regarding the current development of Islamic banking & finance in which there is a divergence of direction of the current Islamic finance practices from the initial ideals/visions enshrined in the objective (Maqasid) of Shari'a. Specifically, we scrutinize how debt-based financing has proliferated through a legal ruse (hiyal) with a fancy Arabic name, rather than promotion of equity financing, which is genuinely in line with Maqasid Al-Shari'a. Therefore, our paper scrutinises the danger of debt-financing and exposes the importance of equity financing for Islamic finance in light of Maqasid Al-Shari'a coupled with equity financing's misgivings. The extensive elaboration of the arguments for this paper includes a wide survey of academic literature and authored material by Islamic economists and Shari'a scholars.

Before discussing the key points of the paper, it is pertinent to discuss obstacles faced by building up this research. One of the main obstacles we faced was on finding the relevant reference papers, which analyses the industry's reluctance to use equity financing. Until recently, the literature regarding equity financing are mainly focused on theoretical debates as well as idealistic arguments among the scholars without taking into the account the 'voice' of the key players in the industry. Consequently, our paper has relied mostly on theoretical (and to an extent idealistic) references. Due to this reason, there is a clear urgent need for further research to be undertaken with regards to field work, industry research, practitioner interviews, etc.

In that sense, such additional resources would allow us to examine the reasons why there is a lack of implementation of equity financing and what kind of incentives can be developed for industry players to design (and implement) such products. Thereafter, the findings of that field work could then be used as valuable feedback for scholars and practitioners to develop their arguments in a more holistic fashion. In this regard we believe there is a close alignment between academia and practitioners to promote equity financing in the industry.

This paper suggests that proliferation of debt-financing with conventional finance ingredients would further deprive the “unbankable” consumers to access financing at the micro level, and threaten the long-run existence of Islamic financial institutions from any forthcoming negative shocks, if Islamic finance remains using debt financing. However, there are no incentives as of yet for Islamic banks to recourse to equity financing - in fact one can argue that there are high costs and significant risks involved. Since there is deep deliberation of scholars’ arguments that equity financing must be practised in lieu of debt financing, whilst the current financial system does not support the equity financing implementation, we feel that there should be another form of institutions that could facilitate the implementation of equity financing (i.e. in the form of cooperatives for example).

Your feedback and comments are very important to us, please feel free to contact the fund manager [via email](#).

Industry Perception

By Joy Abdullah

Joy Abdullah, Brand Strategist, has more than 20 years of experience across ASEAN & the Indian sub-continent in developing and managing national, regional and international brands in a wide variety of industries covering Islamic Financial services, tourism, B2b Halal, telecommunications, beverages, real estate, tobacco, hospitality and healthcare.

In the April issue of OIFI we published the preliminary findings of the “Islamic Window: Consumer Perception and Market Research in Islamic Finance”. For this issue we take a look at the comments and suggestions provided in the survey in order to ascertain current perceptions prevailing about the industry. Of the total comments provided, 22% are Islamic Finance practitioners, 35% are in related areas to Islamic Finance and 41% are not related to the Islamic Finance industry. This provides us with a wide range of views but also with a straightforward account of how the industry is viewed in the “real world”. Based on these comments, we have categorized the perception problem of the Islamic finance industry with regards to the following:

- A. Transparency
- B. Comprehension (understanding)
- C. Brand marketing
- D. Ethics & Governance
- E. Human Capital



Transparency: Post the financial crisis, transparency is of grave importance to all – practitioners, consumers, investors and most certainly regulators. The research clearly indicated a perception of lack of transparency and the comments further suggest this needs to be addressed. Certain comments also echo how the industry can go about doing it.

- “There is lot of grey areas and institutions are not complying and are not transparent”. “There is a sincere lack of transparency and credible reporting”.
- “Most Islamic Finance Institutions are shrouded in mystery. Their clients are not informed of the many products. These institutions want to remain superior to their clients as opposed to exercising equity and fairness. Educate the masses on this.”
- “Islamic Financial institutions should be very careful in product development and structuring”.

Comprehension: The comments, qualitatively show, a rather poor comprehension or understanding of certain types of Islamic Finance products, the difference between Shariah compliance and Shariah based, and most critically the generic difference between the conventional financial system and the one offered by Islamic Finance.

- “As a capital raising advisor I am becoming more aware of Islamic/Sharia finance and would like to know more. I am currently transacting a \$200m deal between a SA Sheik and a US company and working very much in the dark. Produce a plain language guide for us on which we can build.”
- “I feel that Islamic products only appeal to the religious Islamic sector. Otherwise why bother? To fulfil which criteria? Are the resulting margins not pretty close to the conventional market trends? I feel it is only a trick that the concept of interest is put aside. Otherwise how come the results can always be parallel to the larger global market trends where interest is the deciding factor in calculations of returns?”

The Islamic Window

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- *“The practical services provided by Islamic Financial Institutions need to strictly follow the Principle which are followed by the conventional Institutions to attract the customers.”*
- *“The Islamic Financial system is still way behind the conventional system due to lack of awareness and we need to emphasize more on publicising more into non-Muslim community and there can be a very strong argument for not matching with the conventional returns due to collateralized investments.”*

Brand Marketing: In the area of marketing, the lack of transparency plays up as the respondents perceive that ethical marketing or strong individual corporate brand identities are not there. Coupled with this is the perception that conventional products are being made “Shariah compliant”.

- *“Islamic finance has a lot of promise but it has yet to adopt its unique paradigm with confidence. So we see a lot of copying of conventional products. I will pay more for an Islamic Finance product if I believe it is compliant and competitive (that I am not being taken advantage of).”*
- *“I just want to say that Islamic Banks should avoid copying conventional banking system and forcibly modifying it to make it same as conventional products e.g; credit cards derivatives murabaha and tawarruq. They should maintain their USP by providing fully compliant and innovative products to the Muslims as well as non Muslims as this how they provide alternate system.*
- *“We need real Islamic products not only shariah compliant which only mirror the conventional ones.”*
- *“We need more up-to-date marketing with international offers for consumers. Now it s mostly for the well-off people.”*
- *“Islamic Financial Products need aggressive marketing. The Islamic Marketing Ethics need to be incorporated in all these campaigns i.e. The customers’ interest should be given utmost importance and the products should be transparent enough to be understood by most if not all of the prospective customers.”*

Ethics & Governance: Based on the perception gaps in Transparency and Marketing, the perception for Ethics and Governance is also one that is lacking or of non-adherence. Leading to specific statements of how the Shariah scholars are constantly in disagreement with one another. However in the same light, there is the perception that Islamic Finance has the opportunity to deliver on Islamic values & financial acumen together for the consumers.

- *“We should have strong corporate governance to promote and build Islamic products”.*
- *“We need to standardize our Shariah positions and quell the notion of Shariah Arbitrage as it’s is referred to.”*
- *“There are lots of apprehensions in the minds of people in terms of the trust on these Islamic products. There is also a knowledge gap with regard to the feasibility of these products to provide financial viability in terms of future prospects risk-returns and ROI compared to other financial products. The Islamic institutes should step in the shoes of the investor to get the big picture of what they really want.”*
- *“The Shariah scholars can’t agree to disagree. It’s a core problem that will persistently bog down the potential of Islamic Finance.”*
- *“Most of Islamic rich people invest in Europe or USA. They should take care of poor Islamic countries.”*
“Different standard of tolerance in screening should be avoided – Supervisory boards should be sound enough to hold the company on sharia track”
- *“Islamic finance is brilliant way to build Islamic values and financial acumen simultaneously”.*
- *“With the actual crisis in the traditional financial system personally I think that the Islamic financial system & products may offer an alternative option branded by the faith & transparency”.*

Human Capital: Lastly, the respondents clearly perceive a lack of communication and availability of actual training, cross functional training (ie shariah knowledge with product development background) and Islamic Finance education which would help develop a pool of knowledgeable practitioners.

- *“I am a final year undergraduate student but I have knowledge of the industry through brief work experience in this field. I feel that more emphasis should be given to training fresh graduates as they would be the future driving force behind this emerging market especially in the UK and other areas in the West.”*
- *“We need more sharia scholars with business & financial experience/skills in order to innovate & provide creative Islamic solutions which can be correctly applied & that are fair to both institutions & clients.”*
- *“Islamic finance needs a through grassroots development education of the masses. This is critical to the success of the industry “.*
- *“Where can i get the best islamic finance lesson and certification online?”*

Your feedback and comments are very important to us, please feel free to contact the author [via email](#).

What Makes Sense?

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Napoleon Bonaparte, when faced with the issue of what to do with his army during the summer months, as it was too hot for them to march, suggested that they plant trees. To this his advisors queried as to why trees? As they take a long, long time in growing and how would it be beneficial? Napoleon's response was to ask them how long does it take for a tree to grow and provide shade. The reply was- about 25 years before a tree is fully grown and provides shade. To which Napoleon responded by saying "then there is not a moment to lose, is there?"

The moral of this story is that in order to affect social change one has to have long term strategic thinking in place. Strategic thinking that leads to actions which would make people query. As, through the process of enquiring, one obtains knowledge. And that knowledge, when implemented, brings about social change which is beneficial. Beneficial to future generations.

Do I have to be a Muslim to use Islamic Finance?

Like Napoleon's advisors, many ask this question 'do I have to be a Muslim to use Islamic Finance'? The answer is no! The author understood that this question was not what it appeared to be. It was a reflection of something much greater. Something that the people asking the question were hiding. It was the lack of knowledge on the basics of financial management. People didn't want to display how little they knew about financial management.

In 2007, the author undertook two, key, strategic steps in order to provide an answer to this question:



Industry Snapshot

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1) By authoring a book, titled “Islamic Finance: Why it Makes Sense”. Which includes details on how, not just Islamic Finance works but, how the conventional financial management system works and highlighting the difference between Islamic Finance and conventional finance i.e.: Islamic Finance is governed by Sharia but with practicality of use. Therefore providing clarity and knowledge to the question of “what is the difference between Islamic finance and conventional finance”.

2) And in a program that educated youngsters on financial management, the author undertook to include an educational module on Islamic Finance targeted to the youth. By providing this awareness and being educated on the benefits of Islamic Finance it enabled the youngsters to choose between conventional finance and Islamic Finance with full knowledge of the benefits that one would receive.

The social benefits that these two steps brought about:

1) Youth (6 years and above) are now being educated (and being aware) of how financial management helps in one’s life in terms of providing the link in focussing common human aspirations to financial management in achieving those aspirations.

2) In the long term, (15+ years), today’s youth will become tomorrow’s leaders. Given this educational awareness they start with a solid foundation where financial management is concerned and a clear idea of what Islamic Finance is and the benefit of it.

3) Socially such an educational program also provides a strong platform on “de-mystifying” Islam and showing its community benefit leading to a change in attitude and perception on Islam for e.g. in China, though there are approx. 100million+ Muslims. Many of whom are Muslims in name only. To such an audience a universal educational program on good financial management brings forth what they want to know in order to achieve the aspirations they have whilst understanding the benefits of Islamic Finance and thereby Islam. In USA, the private equity business opportunity is huge. Yet it lacks a comprehensive understanding of the benefits of Islamic Finance from the perspective of achieving common human aspirations.

Planned education is the way forward in order to affect attitudinal and perceptual change to take place on Islamic Finance and thereby facilitate entry and willing acceptance in both Muslim and non-Muslim markets simultaneously.

Your feedback and comments are very important to us, please feel free to contact the author [via email](#).

A Muslim Response to 'Draw Muhammad Day'

By Nihad Awad

Nihad Awad is national executive director for the Washington-based Council on American-Islamic Relations (CAIR), the nation's largest Muslim civil liberties organization. The article was first published by CAIR on their website and is reproduced here with their permission.

I will be the first to defend anyone's right to express their opinion, no matter how offensive it may be to me. Our nation has prospered because Americans value and respect diversity.

But freedom of expression does not create an obligation to offend or to show disrespect to the religious beliefs or revered figures of others.

In reaction to the recent controversy over a depiction of Islam's Prophet Muhammad in an episode of Comedy Central's "South Park," a Seattle cartoonist apparently declared May 20th to be "Everybody Draw Muhammad Day."

I say "apparently" because cartoonist Molly Norris -- the creator of the cartoon showing many objects claiming to be a likeness of the prophet -- now says she never intended to launch "Draw Muhammad Day."

On her web site, she has since posted a statement that reads in part: "I did NOT 'declare' May 20 to be 'Everybody Draw Mohammed Day.'...The cartoon-poster, with a fake 'group' behind it, went viral and was taken seriously...The vitriol this 'day' has brought out, of people who only want to draw obscene images, is offensive to the Muslims who did nothing to endanger our right to expression in the first place...I apologize to people of Muslim faith and ask that this 'day' be called off."

Norris even visited a mosque at the invitation of the local Muslim community.

The creator of a Facebook page dedicated to the day also repudiated the "inflammatory posts" it inspired. He said, "I am aghast that so many people are posting deeply offensive pictures of the Prophet...Y'all go ahead if that's your bag, but count me out."

Despite the cartoonist's and the Facebook page creator's seemingly sincere attempts to distance themselves from the fake event, Muslim-bashers and Islamophobes made sure the call to "draw Muhammad" went viral on the Internet. They are hoping to offend Muslims, who are generally sensitive to created images of the Prophet Muhammad or any prophet.

[The majority of Muslims believe visual representations of all prophets are inappropriate in that they distract from God's message and could lead to a kind of idol worship, something forbidden in Islam.]

So how should Muslims and other Americans react to this latest attempt by hate-mongers to exploit the precious right of free speech and turn May 20 into a celebration of degradation and xenophobia?

Before I answer that question, it must first be made clear that American Muslims value freedom of speech and have no desire to inhibit

the creative instincts of cartoonists, comedians or anyone else.

The mainstream American Muslim community, including my own organization, has also strongly repudiated the few members of an extremist fringe group who appeared to threaten the creators of "South Park." That group, the origins and makeup of which has been questioned by many Muslims, has absolutely no credibility within the American Muslim community.

I, like many Muslims, was astonished to see media outlets broadcasting the views of a few marginal individuals, while ignoring the hundreds of mosques and Muslim institutions that have representatives who could have offered a mainstream perspective.

Next, one must examine how the Prophet Muhammad himself reacted to personal insults.

Islamic traditions include a number of instances in which the Prophet had the opportunity to retaliate against those who abused him, but refrained from doing so. He said, "You do not do evil to those who do evil to you, but you deal with them with forgiveness and kindness."

Even when the prophet was in a position of power, he chose the path of kindness and mercy. When he returned to Mecca after years of exile and personal attacks, he did not take revenge on the people who had reviled him and abused and tortured his followers, but instead offered a general amnesty.

In the Quran, Islam's revealed text, God states: "Invite (all) to the way of your Lord with wisdom and beautiful preaching, and argue with them in ways that are best and most gracious: for your Lord knows best who have strayed from His Path and who receive guidance." (16:125)

Another verse tells the prophet to "show forgiveness, speak for justice and avoid the ignorant." (7:199)

This is the guidance Muslims should follow as they express concern about an insulting depiction of the Prophet Muhammad, or of any other prophet of God.

Instead of reacting negatively to the bigoted call to support "Draw Muhammad Day," American Muslims -- and Muslims worldwide -- should use that and every other day as an opportunity to reach out to people of other faiths and beliefs to build bridges of understanding and respect.

The best and most productive response to bigoted campaigns like "Draw Muhammad Day" is more communication, not less communication -- including not restricting the free flow of ideas with measure like banning Facebook.

Research has shown that anti-Islam prejudice goes down when people interact with ordinary Muslims and have greater knowledge of Islam.

Therefore, the best reaction to those who would mock the Prophet Muhammad (or the religious symbols of any faith) might be a mosque open house for the local interfaith community, a community service activity organized by Muslims and involving people of other faiths, or a newspaper commentary describing the life, legacy and personal character of the prophet, which is the opposite of the calumny some people fabricate about him. This should be of concern to all decent and objective people.

We will all benefit if each of us -- whether Muslim, Jew, Christian, Buddhist, or Hindu -- exhibits the common human decency required by our respective faiths.

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