

Islamic Finance Access Programme: Recent Issues & Career Opportunities

Welcome

20 February 2012

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Islamic Finance and Investment Map



- K&L Gates office location
- K&L Gates office with Islamic Finance and Investment coverage

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The route into Islamic Finance

- Religious belief
- Alternative investment strategy
- Alternative source of funds
- Project requirement
- Government requirement
- Regional necessity
- Geographical location
- Ethical finance
- Risk sharing
- “Failure” of conventional finance

Islamic Finance: not only Islamic Banking

- Private equity
- Insurance / Takaful
- Pensions
- Funds / Investment Management
- Compliance and regulation
- Real estate
- Construction / Infrastructure
- Legal services
- Religious knowledge
- Education

Islamic Finance: Recent Issues in the UK

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Islamic Finance: Recent Issues in the UK

- UK Islamic banks
- UK sovereign sukuk
- UK real estate
- The UK's battle for Europe

UK Islamic banks

- Islamic Bank of Britain (IBB)
 - 2004
- European Islamic Investment Bank (EIIB)
 - 2005
- Bank of London and the Middle East (BLME)
 - 2006
- Gatehouse Bank
 - 2007

UK Sovereign Sukuk / Alternative Financial Investment Bond

Lord Sassoon, Commercial Secretary to the Treasury

"does not currently offer value for money, at a time when Treasury gilts are giving their lowest yield. The priority (for the Treasury) is to raise the cheapest debt in relation to fiscal discipline."

January 2012

UK real estate

- 2011 transaction volumes:
 - 38.3% office
 - 35.6% retail
- Student accommodation investment:
 - 2010: £261m
 - 2011: £1.076bn
- London and South East: 56.5% deals by volume
- UK funds: £10.8bn of acquisitions
- UK property companies: £13.5bn of assets sold
 - Source: CoStar UK Investment Bulletin

The UK's battle for Europe

- UK
 - Ireland
 - Luxembourg
 - France
 - Turkey
-
- Legal certainty & legislative change
 - Choice of law & Expertise
 - Sovereign Sukuk
 - Muslim population size

Islamic Finance: Recent Issues in Qatar

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Qatar Highlights

- Population 1.7 million (more than 75% expat)
- Muslim population 77.5%
- World's richest country with per capita GDP approaching \$100k in 2011
- Third largest gas reserves after Russia and Iran
- Proven oil reserves of 26 billion barrels
- And . . . winner of the FIFA 2022 World Cup

Qatar's Aspirations

- Twin focus:
 - Stage the world's largest sporting event
 - Implement its National Vision 2030 to diversify its economy away from a reliance on hydrocarbons towards a knowledge-based economy
- Projected public sector spending between 2010 and 2015 is approximately \$100bn

The Big News for Islamic Finance in Qatar

- Closure by Central Bank of Islamic windows of conventional bank
- Opportunities for Islamic finance – 2022 and beyond

Closing the Windows: What the CBQ said

- Conventional banks running Islamic financing activities must:
 - Cease their Islamic finance activities
 - Wind down their existing portfolios by 31 December 2011
- Supervisory issues: Comingling of activities and services leads to difficulties for conventional banks to manage:
 - Bank risks
 - Financial reporting
 - Capital adequacy
 - Financial stability
- Monetary policy issues:
 - Application of monetary policy easier to administer
 - Improve QCB framework of liquidity management

Closing the Windows: Other reasons?

- Unfair competition between conventional and Islamic banks
- Islamic banks more “pure” than conventional banks
- Reputational risk
- Policy to support Islamic banking
- Desire to become regional hub for Islamic finance
- Something else?

Closing the Windows: Pros

- Clears the market for Islamic banks
- Instills confidence in customers
- Promotes transparency and accuracy
- Eliminates possibility of crossover contamination
- Greater focus on fundamental Shariah principles and development of true Shariah compliant products
- Places Qatar at forefront of positive economic development in Islamic finance

Closing the Windows: Cons

- Negative impact on conventional banks
- Reduces competitive pressures that lead to greater efficiency, service, and innovation
- Reduces financing options for corporate borrowers
- Reputational damage to CBQ?

Closing the Windows: Opportunities

- Provides a platform for:
 - Qatar to become an important centre of expertise
 - Islamic banks to develop know-how and technology
 - Improved effectiveness of Shariah governance
- Strengthens Islamic banks in preparation for planned infrastructure development

FIFA and Beyond: Islamic finance opportunities

- Highlight the Islamic finance sector
- Showcase Muslim countries
- Platform for Qatar to start addressing challenges
- Become early leaders in innovation
- Knowledge transfer through teaming with international banks
- Ability to attract top-tier talent

FIFA and Beyond: Islamic finance challenges

- Islamic banks are relatively small
- Over-exposure to real estate and construction sectors
- Developing long-term Islamic financing solutions
- Competing on price and service
- Availability of experienced, talented, and appropriately-trained people to deliver competitive Islamic products and services

The Outlook for Islamic Finance in Qatar

- Islamic banking
- Takaful
- Shariah compliant investment banking
- Sukuk

In Conclusion

- Restructure of Islamic banking structure
- Expansion of Islamic financial services sector
- Need for insurance products will drive takaful sector
- Increasing sophistication of Islamic investment arena
- Recession-resistant, hydrocarbons-based economy enjoying double digit GDP growth
- Government committed to diversification and expansion

Islamic Finance in the United States: Current Issues, Trends and Solutions for Practitioners

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Current State of the U.S. Islamic Finance Market

1. Expansion in the retail market
 - Entry of Freddie Mac/Fannie Mae into Islamic home finance market via American Finance House-LARIBA
 - Injection of capital
 - Alleviation of the “COBM” through benchmarking of Islamic home finance products with falling interest rates

Current State of the U.S. Islamic Finance Market (cont'd.)

2. Continued growth in the wholesale market
 - Entry of Islamic financial institutions which enable Middle Eastern investors to invest in the U.S. using Shariah-compliant methods of finance
 - Arcapita, Codexa, Zayan, GIH and others
 - The Dow Jones Islamic Market Index

Current State of the U.S. Islamic Finance Market (cont'd.)

3. Resilience of Islamic banks in the global financial crisis
 - Growth at double-digit rates (10-20% annually), to \$1 trillion in assets in 2010
 - Survival during downturn largely attributed to avoidance of speculative activities and backing by physical assets
 - Contrast with decline in *sukuk* market and vulnerability to fluctuations in the mortgage market

Current State of the U.S. Islamic Finance Market (cont'd.)

4. Expectation of substantial growth in the future
 - Revisions to tax, legal, and regulatory frameworks to attract and/or accommodate Islamic finance
 - Increase in Muslim population
 - Large number of Islamic investment bank executives with degrees from U.S.

Overarching Regulatory and Domestic Issues

1. Umbrella concerns affecting the U.S. market
 - Higher transaction cost of Shariah-compliant financing
 - Compliance and standardization concerns
 - Improper conflation with *hawala*, leading to terrorist-finance concerns
 - First Amendment concerns

Overarching Regulatory and Domestic Issues (cont'd)

2. Changes in legal and regulatory arena to accommodate and attract Islamic finance
 - OCC approvals leading to case law focus on “economic substance,” rather than mere form, of a transaction
 - *East Cameron sukuk* case and its importance in the U.S. sukuk markets

Specific U.S. Concerns and Solutions for Practitioners

1. U.S. National Banking Act of 1864

- **Problem**: Banks are restricted from owning real property or taking an equity stake in a business
- **Solution**: *Ijara* and *murabaha*, both of which have gained favorable treatment by Federal Reserve and OCC

Specific U.S. Concerns and Solutions for Practitioners (cont'd)

2. FDIC Insurance

- **Problem:** FDIC rules require that all consumer deposits under US\$250,000 be insured against capital loss, creating tension with Shariah law requiring that funds be at-risk
- **Solution:** Refuse to accept payments from the FDIC fund

Specific U.S. Concerns and Solutions for Practitioners (cont'd)

3. Concerns with Retail Financing Products

- **Problem #1:** Double taxation resulting from state property transfer taxes
- **Solution:** New York State has issued rulings to eliminate this double taxation; other states are expected to follow suit

Specific U.S. Concerns and Solutions for Practitioners (cont'd)

- **Problem #2**: Risks of environmental liability and liability for injuries resulting from ownership of real estate
- **Solution**: Conduct thorough due diligence prior to entering into any transaction, seek indemnity from the customer, and use a separate subsidiary for each transaction

Specific U.S. Concerns and Solutions for Practitioners (cont'd)

- **Problem #3**: In *murabaha* transactions, the customer will expect certain express and implied warranties
- **Solution**: Contract should dictate that the customer looks to the supplier, and not the bank, to satisfy these warranties

Specific U.S. Concerns and Solutions for Practitioners (cont'd)

- **Problem #4**: Voluntary prepayment in *murabaha* transactions risks violating U.S. laws
- **Solution**: Shariah scholars have blessed approach of financial institutions rebating the unearned profit back to the customer

Specific U.S. Concerns and Solutions for Practitioners (cont'd)

4. Concerns with Wholesale Equity Investments
 - **Problem #1**: Tax benefits would belong to the lessor of the SPE, rather than the investor

 - **Solution**: Ancillary agreement between SPE and investor, whereby investor agrees to take on ownership obligations on the SPE's behalf

Specific U.S. Concerns and Solutions for Practitioners (cont'd)

- **Problem #2**: Having an SPE hold title could possibly afford it less remedies than it would otherwise have in a traditional financing transaction
- **Solution**: Place a self-executing subordination provision directly into the *Ijara* agreement between SPE and investor

On the Horizon

- There IS opportunity in the U.S.: prospects for growth
 - Syndication
 - *Sukuk*
 - *Takaful*
 - Home mortgage market
 - Oil & gas

Does Islamic Finance need you?

Mohammed Amin
Islamic finance consultant

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Does Islamic finance need you?

Mohammed Amin MA FCA AMCT CTA (Fellow)

Disclaimer

- Career planning is a complex subject and almost all issues require specific professional advice.
- Nothing in this presentation is intended to constitute professional advice.
- The presenter accepts no responsibility to anyone who may act, or refrain from acting, as a result of anything shown or said during this presentation.

Mohammed Amin



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He is:

- a chartered accountant, a chartered tax adviser and a qualified corporate treasurer
- a Council member of the Chartered Institute of Taxation
- a member of the Policy & Technical Committee of the Association of Corporate Treasurers

Amin has spoken on Islamic finance on every continent, except Antarctica! Some of his articles and presentations on Islamic finance can be found on his website:

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Overview

- The demand for jobs
- The supply of jobs
- A job in Islamic finance?
- What the industry needs
- Career planning suggestions

The demand for jobs

- Many young Muslims enthusiastic about Islamic finance
- Growing number of university courses. Three examples
 - Reading university MSc partnering with INCEIF, launched 2008.
 - Aston University MSc Islamic Finance
 - Durham University MA and MSc in Islamic Finance
- Many people doing IFQ, CIMA and IIBI qualifications

The supply of jobs

UK Islamic banks

Bank	Headcount
BLME 31.12.2010	68
EIIB 31.12.2010	35
Gatehouse 31.12.2009	36
IBB average 2010	120
QIB (UK) 31.12.2008	20

Add: Window operations (e.g. HSBC Amanah, Lloyds TSB etc.) and conventional investment banks with structured Islamic finance desks

A job in Islamic finance?

- No such generic role
- Is there such a thing as a generic job in conventional finance?
- Employers need specialists

What the industry needs

- Shariah experts
- Lending officers
- Internal auditors
- Regulatory specialists
- Risk specialists
- IT specialists
- Etc.

Career planning suggestions

- Pre employment university degree subjects?
- Professional qualifications? E.g. ACA
- Conventional bank training programmes
- Specialised conventional banking experience

“My religious beliefs prohibit working for a conventional bank.....”

Graduate training in UK Islamic banks



Conclusions

There is no such thing as a generic Islamic finance practitioner.

What is your area of expertise?

How are you going to acquire that expertise?

Umex Securities

Mahesh Jayanarayan
Umex Securities

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CAREERS IN ISLAMIC AND SHARIA FINANCE

Date: 20th February 2012

THE NEED , OPPORTUNITIES & THE TASK

MAHESH JAYANARAYAN

FOUNDER & CEO

UMEX CAPITAL MARKETS GROUP PLC



CAREERS IN ISLAMIC AND SHARIA FINANCE

1. Introduction to UMEX

- 1. UMEX the company**
- 2. Sharia Appointments – the division**
- 3. Our role in creating job opportunities**

2. Career opportunities in Islamic & Sharia finance in the EU

- 1. Back drop on Islamic finance in EU**
- 2. Islamic Capital Markets and mainstream – convergence in skills**
- 3. A career in Islamic /Sharia finance compared to mainstream finance**
- 4. Job sectors and opportunities**
- 5 Qualified vs Trained**

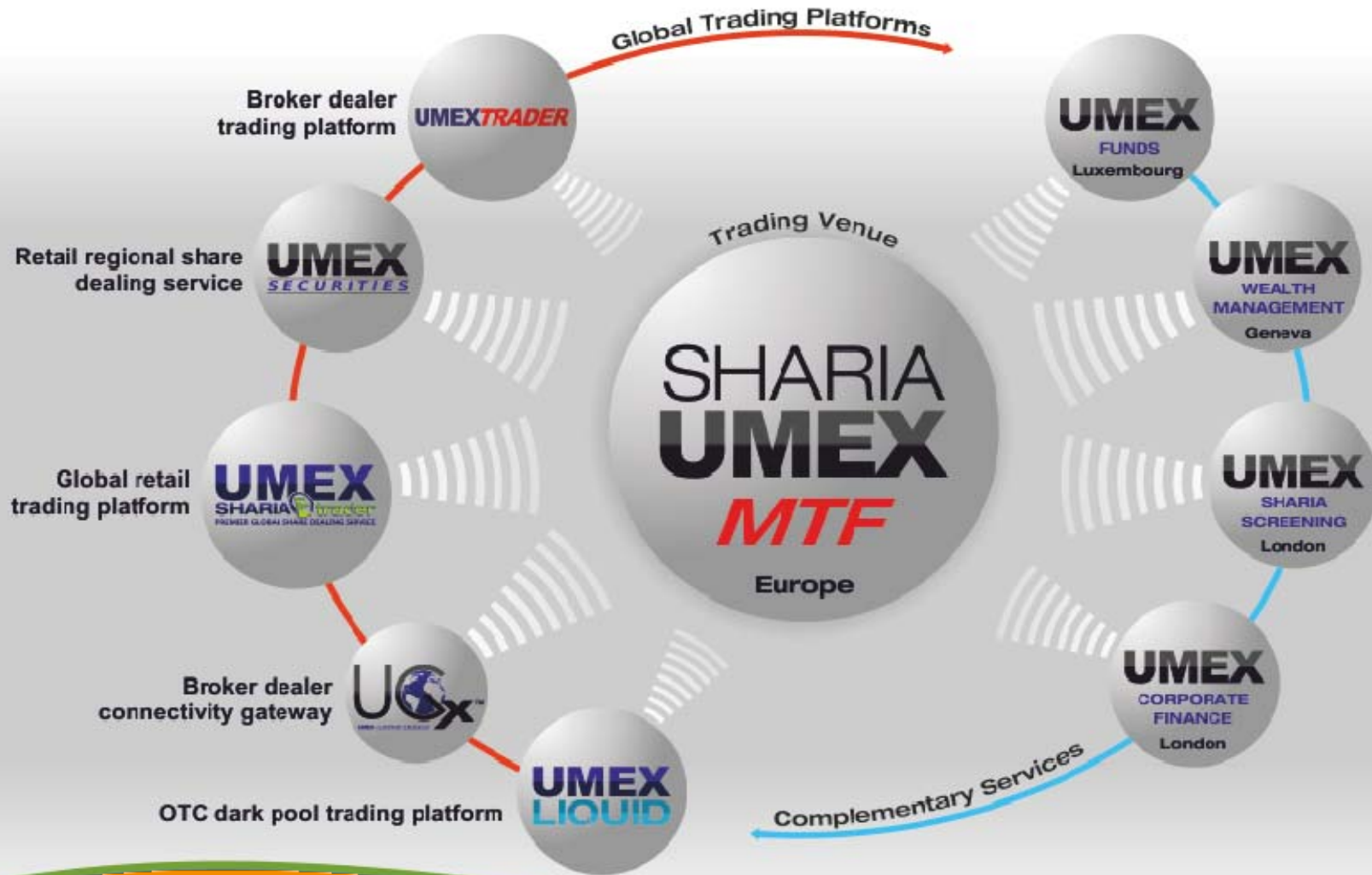
3. Muslim Women in Finance

4. The TASK



UMEX - THE COMPANY

UMEX UNIVERSE



OUR FOCUS

ISLAMIC FINANCIAL SERVICES

Our focus is in Sharia compliant financial trading facilities and solutions.

We provide FATWA awarded and Sharia compliant financial trading solutions to Banks, fund managers, broker-dealers who are engaged in Islamic finance or Sharia compliant investments.

We cater to the Islamic community as well as Sharia centric private investors through our range of investment products.

We are unique – we have focussed ourselves in a space that no other provider has embarked upon.

OUR BRAND

UMEX

Our signature and hallmark

The brand name was derived from the word 'UMMAH' meaning 'community of nations' and the UMMAH was established in 622 AD by the Prophet, with a view of bringing communities and nations together (Muslims, Jews and other faiths) under the Medina Constitution. It was established with similar aims to the United Nations.

UMEX means "Community Exchange"

OUR MISSION

Our mission and aspiration is for UMEX to achieve global brand recognition as an Ethical and Sharia compliant service provider in financial services among Muslim households, Islamic businesses, the Global investment community and also to those Ethical conscious communities.

OUR AIM

In the short while we have been in business, the brand 'UMEX' is known among many financial circles and continues to gain traction among the global financial community and main stream press as a focused and dedicated provider of Sharia and Islamic financial products and services.

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Capital Markets Group plc



UMEX ELECTRONIC PLATFORMS

RETAIL

UMEX
Festival

UMEX
SHARIA **e**trader
PREMIER GLOBAL SHARE DEALING SERVICE

UC  **ix**™
UNIQUE GUARANTEED FINANCING

SHARIA
UMEX 
MULTILATERAL TRADING FACILITY

INSTITUTIONAL

UMEXTRADER

UMEX
LIQUID
BRINGING LIQUIDITY TO SHARIA STYLIZED PRODUCTS

UMEX
Capital Markets Group plc



KEY PARTNERS

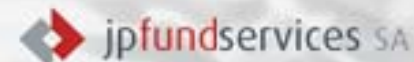
Technology Partners



Sharia Screening Partner



Trading Partners



WWW.SHARIAAPPOINTMENTS.COM

The screenshot shows the homepage of Sharia Appointments. At the top, there is a navigation bar with links for EMPLOYER: LOGIN, PRODUCTS, and REGISTER. The main header features the 'Sharia Appointments' logo with the tagline 'Path to an Ethical Career' and the 'UMEXTRADER' logo, which is a 'Sharia Compliant Ethical Trading Platform' with a 'LEARN MORE' button. Below this is a secondary navigation bar with links for HOME, REGISTER NOW, SEARCH JOBS, RESOURCES, PREMIUM SERVICES, CONTACT US, and JOBSEEKER - LOGIN. The main content area is divided into two sections. On the left, a large image of four business professionals celebrating is accompanied by the text 'OPPORTUNITIES UNLIMITED' and a 'REGISTER NOW... ITS FREE!' button. On the right, a 'SEARCH JOBS' form includes a text input field for keywords, dropdown menus for category and city, and a 'SEARCH' button. Below the main content, there are two sections: 'SPOTLIGHT' and 'FEATURED EMPLOYERS'. The 'SPOTLIGHT' section highlights a 'Private Banker of Emirati Clients in Abu Dhabi/Dubai' at 'Gulf Connexions - United Arab Emirates'. The 'FEATURED EMPLOYERS' section displays logos for American Express, Festival Trader, Clayton|EuroRisk, Montpellier, and Sharia Appointments.



Back drop on Islamic finance in EU



STATISTICS

- 20 MILLION + MUSLIMS IN EU
- CONTRIBUTION TO GDP APPROXIMATELY 2.5 %
- AVERAGE UNEMPLOYED IS ABOVE 25% AMONG MUSLIMS IN THE EU
- SAVINGS RATE IS BELOW EURO 3000 PER HOUSEHOLD
- VOLUNATARY PENSION PLANNING – ALMOST NON EXISTENT
- INVESTMENT IN CAPITAL MARKETS - 0.3% OF EU AVERAGE



Islamic Capital Markets and mainstream

- Convergence in skills
 - Islamic vs Conventional
- Banking
- Securities trading
- Savings and Pension
- Capital Markets

A career in Islamic /Sharia finance compared to mainstream finance

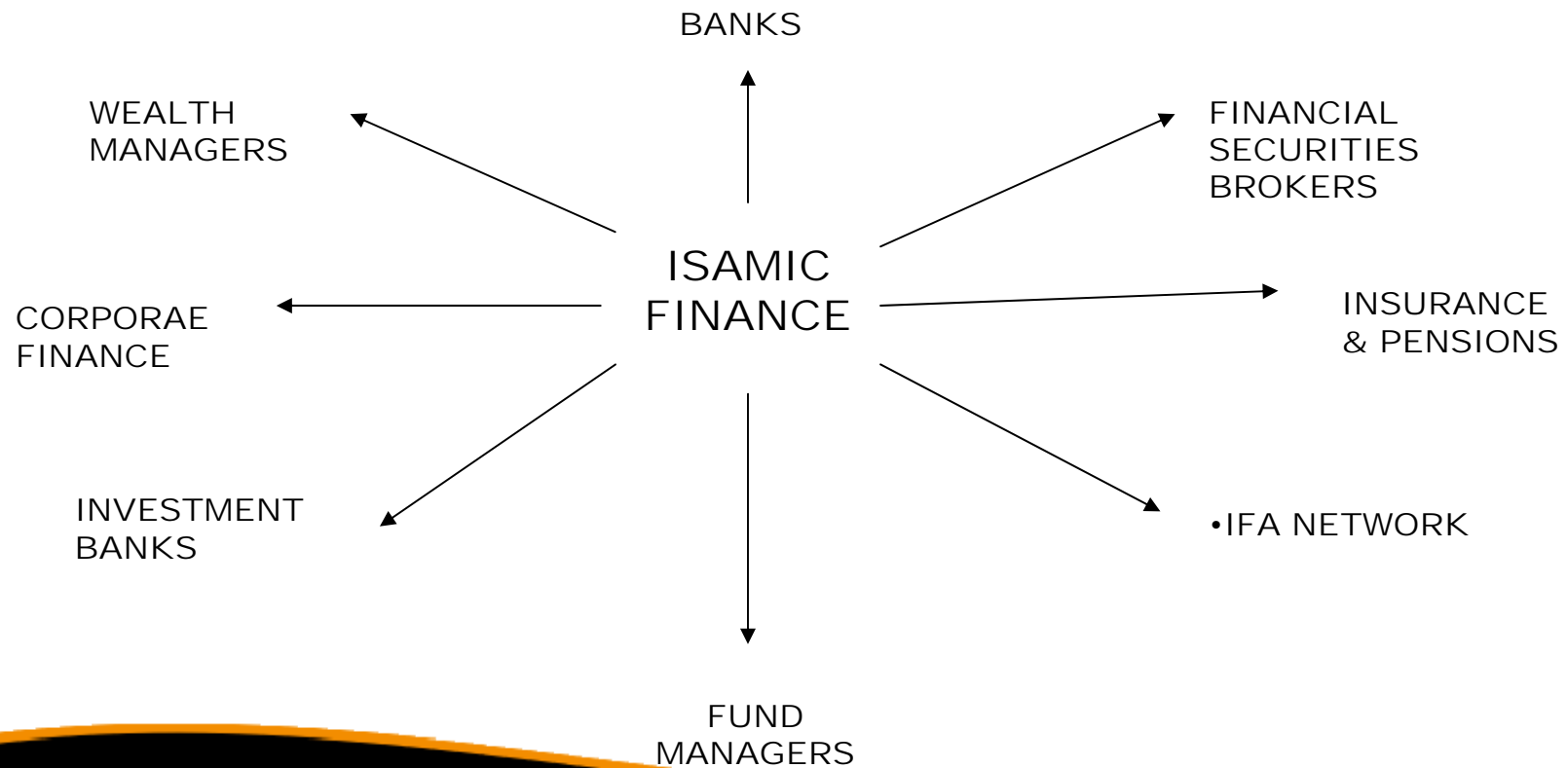
- **Advantages**

- Target audience well defined
- Products well defined

- **Disadvantages**

- Lack of products
- A number of Sharia standards
- Lack of investment knowledge among the target audience
- Lack of trained professionals

JOB SECTORS



QUALIFIED VS TRAINED



- QUALIFICATION IS NECESSARY
 - BUT TRAINING IS ESSENTIAL

MUSLIM WOMEN IN FINANCE

- **MUSLIM WOMEN – CAN THEY CHANGE THE PACE OF ISLAMIC FINANCE IN EUROPE**



EUROPE**Sex Ratios in Muslim Populations**

*Number of Muslim men per 100 Muslim women,
ranked as of 2005-10*

	2005-2010	PROJECTED 2025-2030
Spain	189.7	132.7
Italy	156.6	136.7
Finland	150.9	127.6
Ireland	134.3	110.1
Greece	121.4	120.6
United Kingdom	116.0	121.0
Sweden	115.5	114.4
Austria	115.5	106.6
Norway	115.1	120.0
Romania	113.9	109.1
Switzerland	111.5	107.0
Denmark	111.4	106.3
Belgium	110.7	106.3
Germany	109.5	103.6
Netherlands	109.3	104.7
Serbia	103.1	101.6
Kosovo*	100.1	99.0
Bulgaria	99.5	97.9
Montenegro	98.8	98.2
Rep. of Macedonia	98.3	98.8
France	97.3	103.1
Albania*	97.3	95.6
Georgia	96.4	94.8
Russia	94.1	Not Available
Ukraine	92.9	91.0
Bosnia-Herzegovinia	91.0	90.1



MUSLIM WOMEN IN FINANCE

- Muslim women hold higher qualifications compared to Muslim men.
- In EU there are more muslim women in work than men. (perhaps this is on account of women are employed where as most muslim men are self employed)
- 60% of these women are employed in the low paid service sector.
- The State , high street banks, retail sector and health care is the largest employer of muslim women in the EU
- Only a small % of the women take up a job in the Investment banking sector

MUSLIM WOMEN IN FINANCE

- **ADVANTAGES**

- WOMEN MAKE THE FINANCIAL INVESTMENT DECISIONS IN THE MUSLIM SOCIETY
- ACCEPTANCE IN THE HOUSEHOLD
- CONSIDERED MORE RELIABLE
- MORE DEDICATED IN THE WORKPLACE
- STAYING PUT



Barrier in Investment Banking

-
- “We had to overcome the bearded elders on the home front and now we have to contend with the prejudices in the workplace”

THE OPPORTUNITY

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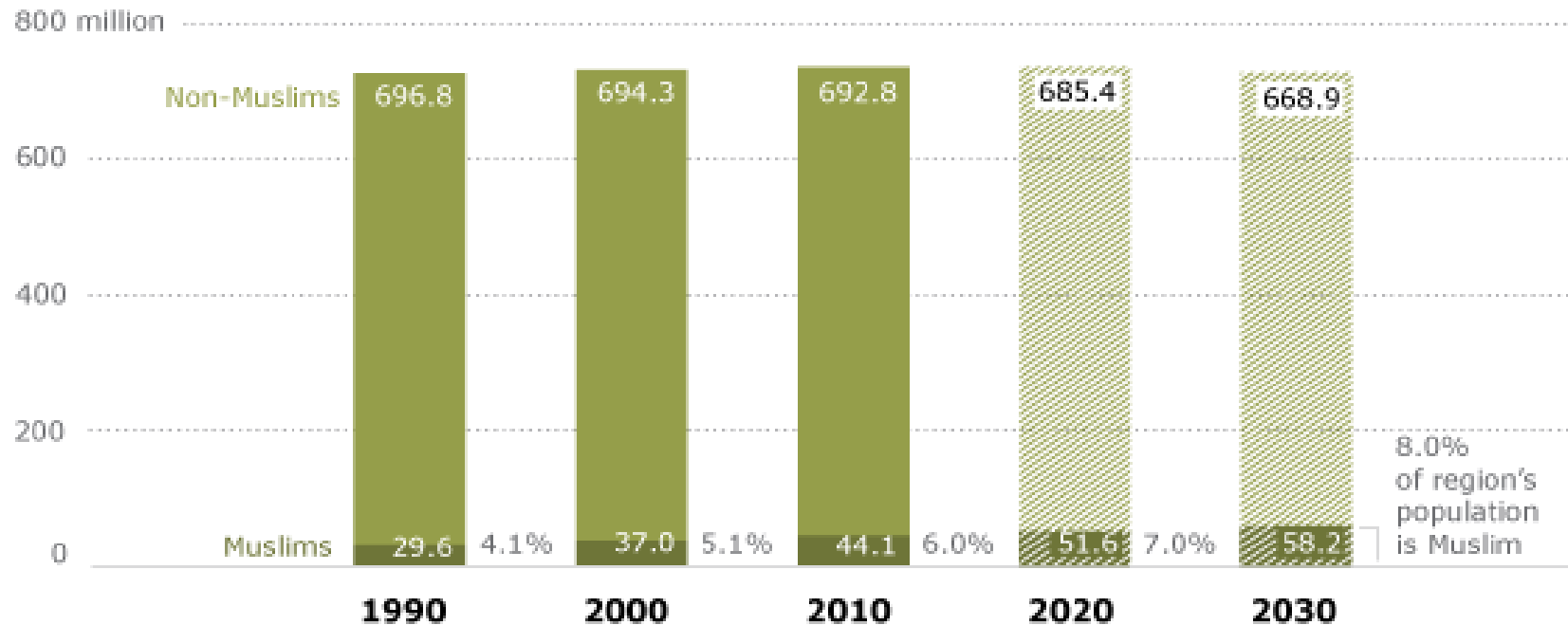


EU GDP VS MUSLIMS

Country	Per capita GDP (K euros)	% of Muslim
Denmark	32.9	3.3
Sweden	27.5	3.9
UK	27	2.7
Netherlands	26,5	5.8
Austria	26.2	4.2
Germany	25.1	3.9
France	24.8	9.2
Belgium	24.4	3.5
Italy	21.3	1.7
Spain	16.1	1.8
Greece	11.9	0.9
Portugal	11	0.3

EUROPE

Muslims as a Share of Overall Population, 1990-2030



Percentages are calculated from unrounded numbers. Cross hatching denotes projected figures.

Pew Research Center's Forum on Religion & Public Life • *The Future of the Global Muslim Population*, January 2011

EUROPE**Number of Muslims in Selected Countries**

<i>Countries</i>	ESTIMATED MUSLIM POPULATION	ESTIMATED PERCENTAGE OF POPULATION THAT IS MUSLIM	PROJECTED MUSLIM POPULATION	PROJECTED PERCENTAGE OF POPULATION THAT IS MUSLIM
	2010	2010	2030	2030
Austria	475,000	5.7%	799,000	9.3%
Belgium	638,000	6.0	1,149,000	10.2
Denmark	226,000	4.1	317,000	5.6
Finland	42,000	0.8	105,000	1.9
France	4,704,000	7.5	6,860,000	10.3
Germany	4,119,000	5.0	5,545,000	7.1
Greece	527,000	4.7	772,000	6.9
Ireland	43,000	0.9	125,000	2.2
Italy	1,583,000	2.6	3,199,000	5.4
Luxembourg	11,000	2.3	14,000	2.3
Netherlands	914,000	5.5	1,365,000	7.8
Norway	144,000	3.0	359,000	6.5
Portugal	65,000	0.6	65,000	0.6
Spain	1,021,000	2.3	1,859,000	3.7
Sweden	451,000	4.9	993,000	9.9
Switzerland	433,000	5.7	663,000	8.1
United Kingdom	2,869,000	4.6	5,567,000	8.2
Total for these countries	18,267,000	4.5	29,759,000	7.1



EUROPE

Countries with the Largest Projected Percentage Increase in Number of Muslims, 2010-2030

	ESTIMATED MUSLIM POPULATION	PROJECTED MUSLIM POPULATION	PROJECTED PERCENTAGE INCREASE
<i>Countries</i>	2010	2030	2010-2030
Ireland	43,000	125,000	187.7%
Finland	42,000	105,000	148.9
Norway	144,000	359,000	148.7
Sweden	451,000	993,000	120.2
Italy	1,583,000	3,199,000	102.1
United Kingdom	2,869,000	5,567,000	94.0
Spain	1,021,000	1,859,000	82.1
Belgium	638,000	1,149,000	80.1
Austria	475,000	799,000	68.3
Switzerland	433,000	663,000	53.1



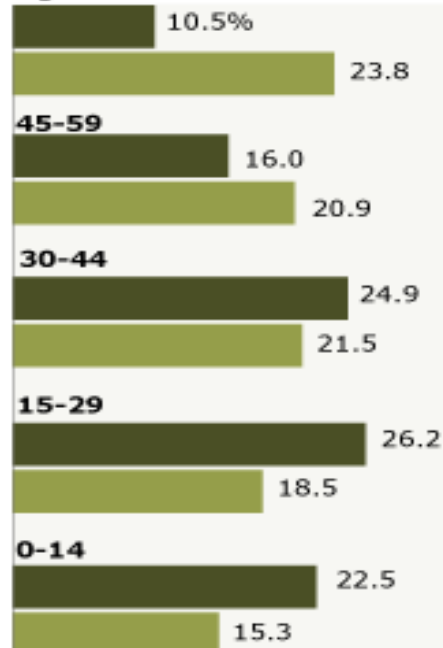
EUROPE

Percentage of Population in Selected Age Groups

■ Muslims
■ Non-Muslims

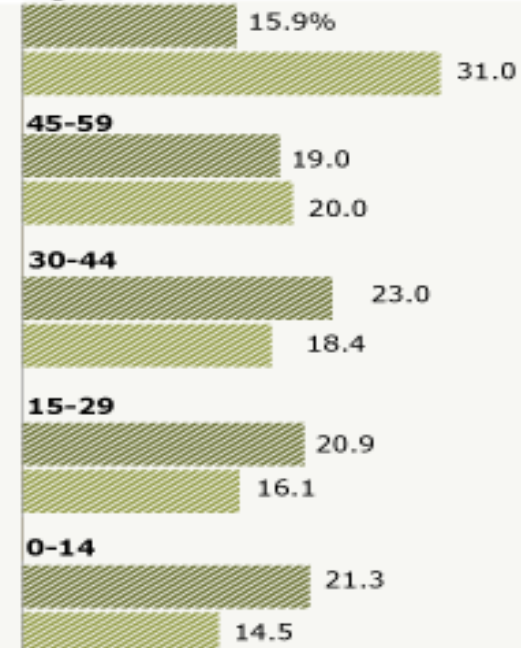
2010

Age 60+



2030

Age 60+



THE NEED

The following report sums up **THE NEED AND THE OPPORTUNITY**

Islamic finance short on wealth management report **BANK SARASIN - SWITZERLAND - 01/04/2010**

Islamic banks are failing to cater for clients' wealth management and estate planning needs, pushing them to rely largely on traditional asset managers - said a report published by Bank Sarasin this week.

Until very recently there were no dedicated Islamic wealth management services - the report said - and the few that have emerged offer restricted services and products that fail to completely satisfy Islamic investors' needs.

"You have Islamic products that try to mimic the behaviour of conventional instruments, but there is a shortage of products that are Islamic in spirit " - Sarasin head of Islamic finance Fares Mourad told Reuters in an interview.

The Islamic Wealth Management report said there was a shortage in Islamic private banking services. Islamic succession planning is in need of an overhaul, it said, currently lacking mechanisms to ensure wealth preservation over generations.

"In the Muslim world hardly any financial planners address this issue, yet successful estate planning would ensure the wealth people have built is consolidated, as well as encouraging family unity" - Mourad said.

He also said that the preponderance of real estate-based financial products exposes clients excessively to the vagaries of property markets, limiting diversification.

"In Islamic Finance, the long-term perspective of investment is still missing"

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OVER 50% OF EU MUSLIM HOUSEHOLDS ARE AT A RISK
WITH NO PROPER PENSION PLANNING

THE TASK

- **Career Planning should be a continuous effort.**
- **Qualifications are necessary but Training is essential**
 - **Understanding Financial markets**
 - **Communication skills**
 - **Overcoming social and cultural prejudices**



EASE OF ACCESS

- Information
- Market knowledge
- Less complex products and structures
- Less restrictive practises

FUTURE OF ISLAMIC FINANCE

Engaging The Trading Community.

- **RETAIL CLIENTELE :**
 - • Muslim investor culture
- **Investment Focused:**
 - • Innovative investment products
 - • Life stage approach
- **Technology Driven:**
 - Easy access to trading
- **Internationally Oriented:**
 - • International reach

1.6 BILLION MUSLIMS WILL BE THE DECIDING FACTOR

THANK YOU

MAHESH JAYANARAYAN

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What happens when Islamic Finance transactions go wrong? The use of arbitration to resolve disputes

Tom Ross: K&L Gates, London
Peter Morton: K&L Gates, London
Hussain Khan: K&L Gates, London

www.klgates.com

Sharia Compliant Finance and Applicable Law

- Huge growth in Sharia compliant products.
- Many Sharia compliant finance transactions are governed by English law or the law of another country.
- Sharia is a set of moral and religious principles rather than a codified body of laws.
- Sharia compliant transactions may involve parties from many jurisdictions.

Tendency to Favour Litigation

Historic reasons for antipathy towards arbitration:

- Scepticism towards alternative forms of dispute resolution amongst entities working in Sharia compliant finance e.g.
 - Current practice in Malaysia.
 - Aramco and experience in the Kingdom of Saudi Arabia.

Issues to Consider When Choosing Traditional Litigation

Two principal issues:

- Difficulty of reconciling English law (and the laws of other jurisdictions where the Rome Convention applies) with Sharia principles, e.g.
 - Beximco: Sharia law not capable of being a governing law.
 - Halpern: Detailed contractual provision required to incorporate Sharia principles.
 - Lack of judicial understanding of Sharia principles.
- Enforcement

Beximco

Beximco established:

- Sharia was not capable of being a governing law for the purposes of the Rome Convention.
- Sharia law was not capable of guiding the application of English law, as there were as there were too many possible interpretations of Sharia law.

Halpern

Halpern established:

- If Sharia law principles are to be contractually agreed then these need to be spelt out or “black letter” anything less is too uncertain.

Judicial Understanding of Sharia Law

"Litigation is not geared towards solving these cases. Judges often lack education in many industry principles" (Prof. Andrew White, International Islamic Law and Finance Centre, Singapore, July 2011)

"More often than not, judges have made flawed statements relating to Shariah banking and finance principles" (Nik Norzul Thani, Chairman Zaid Ibrahim & Co, Kuala Lumpur, July 2011)

Enforcement (or location, location, location)

This is a largely practical consideration:

- Choice of jurisdiction must be considered alongside choice of law to determine the likely remedies available in the event that litigation is necessary.
- Where are the assets? Need to consider where the assets of any counterparties are located and the likely ability to enforce any award by the local Court. Is security available (or appropriate)?

Traditional Litigation Can Be Suitable

- Where you have international parties with global businesses and assets in the relevant jurisdictions then traditional litigation may be appropriate.
- English law is flexible and principles can be incorporated into contracts provided that these are spelt out clearly.

But Arbitration Should be Considered ...

Arbitration can also be very well suited to Sharia compliant finance transactions and should be considered as an alternative.

GROWTH OF ARBITRATION IN FINANCE

- Establishment of Panel of Recognised International Market Experts (*PRIME*) in Finance in 2011
- New arbitration institutions / rules aimed at Islamic finance disputes e.g.,
 - Kuala Lumpur - Regional Centre for Arbitration (KLRCA) – Islamic Banking and Financial Services Arbitration Rules, 2007
 - Dubai - International Islamic Centre for Reconciliation and Arbitration (IICRA), 2005
- Inclusion of optional arbitration provision in the standard ISDA/IIFM Ta'hawwut Master Agreement, issued March 2010

IS ARBITRATION THE ANSWER? (1)

Some key features:

- Independent and impartial tribunal (normally 1 or 3 arbitrators)
- Often a neutral venue
- Private and confidential
- Often administered by an arbitration institution
- Arbitral rules provide procedural framework
- Limited grounds of appeal / challenge of the award

IS ARBITRATION THE ANSWER? (2)

Potential advantages:

- Input in selection of the arbitrator(s)
- Ability to select a neutral venue
- Procedural flexibility e.g., can agree ‘fast track’
- Absence of wide ranging ‘discovery’ exercises - IBA Rules of Evidence
- Final and binding - no endless appeals
- Privacy
- Cross-border enforcement - *New York Convention 1958*
- No real alternative?

IS ARBITRATION THE ANSWER? (3)

Potential problems:

- Can be expensive (n.b. fees of arbitrators and institution)
- Can take a long time
- Not all potential venues ('seats') are arbitration-friendly
- No default / summary judgment procedures
- No precedent value in arbitration award
- Multi-party / multi-contract situations
- Enforcement - theory vs. reality

WHY ARBITRATION FOR ISLAMIC FINANCE DISPUTES?

- Selection of decision maker
- Ability to agree on suitable procedure (e.g., KLRCA and IICRA)
- Confidentiality - “*The Sharia fraternity prefer arbitration due to confidentiality ... goodwill means an awful lot to the finance sector*”, Sundra Rajoo, Director of KLRCA
- Possible ability to have dispute decided under non-national system of law (n.b. seek advice / check)
 - e.g., England – s46 Arbitration Act 1996 – see *Sanghi Polyesters Ltd -v- International Investor KCSC* (2000) All ER 93

ALWAYS ...

Consider, and take advice as necessary, regarding

- (i) arbitration law and practice at the seat; and
- (ii) the enforcement regime at the likely place of enforcement

Drafting an effective arbitration clause

The perennial problem

- Often treated as a standard boilerplate provision
- Given little attention
- Insufficient care in drafting
- “Cut and paste”
- Relevant factors not considered
- Not tailored to the dispute

Benefits in having a considered and drafted arbitration clause

- Targeted, swiftly and amicably resolve disputes
- Expedite resolution of disputes
- Avoid lengthy expensive diversions
- Avoid ill suited procedure and unintended results

Essential elements

- Agreement to arbitrate
- Type of arbitration
- Scope of the arbitration
- Method of appointment of arbitrators
- Number of arbitrators
- Place or “seat” of arbitration
- Language of the arbitration
- Governing law of the contract
- Sharia Compliant

Essential element

Agreement to arbitrate

- Key element
- Omission can be fatal to the arbitration proceeding

Essential element

Type of arbitration

- Administered or “institutional”
 - Supervised by an arbitral institution
 - Institution provides procedural rules
 - Assists with appointment of arbitrators
 - Institution may charge fees
- “Ad hoc”
 - Parties decide their own rules and procedure
 - Frequently refer to UNCITRAL Arbitration Rules
 - Difficulties can arise

Arbitral Institutions

UAE

- Dubai International Arbitration Centre (DIAC)
- DIFC LCIA Arbitration Centre
- Abu Dhabi Chamber of Commerce & Industry
- International Islamic Centre for Reconciliation and Arbitration (IICRA)

Qatar

- Qatar International Centre for Commercial Arbitration (QICCA)
- Qatar Financial Centre (QFC)

Egypt

- Cairo Regional Centre for International Commercial Arbitration (CRCICA)

Malaysia

- Kuala Lumpur Regional Centre for Arbitration (KLRCA)

Hong Kong

- International Islamic Mediation & Arbitration Centre (IMAC)

Singapore

- Singapore International Arbitration Centre (SIAC)

Essential element

Scope of the arbitration

- The categories of dispute covered
- Clarity is paramount

Essential element

Method of appointment of arbitrators

- Generally covered in institutionally administered arbitration
- In ad hoc arbitration the procedure should be covered in the clause or by reference to another set of Rules (e.g. UNCITRAL)

Essential element

Number of arbitrators

- Sole arbitrator
- Three person tribunal

Essential element

Place or “seat” of arbitration

- Practical convenience
- Neutrality
- Legal factors
 - Scope for court interference
 - Scope for challenge to the award
 - Ease of enforcement

Essential element

Language of the arbitration

- Ordinarily follow the language of the contract
- Carefully consider cost implications
- Impact on the pool of arbitrators, counsel and experts

Essential element

Governing law of the contract

- Preferably separate from the arbitration clause

Essential element

Sharia compliant

- Take advice on the requirements of the seat
- Having a Muslim arbitrator in a Muslim country
- Minimise risk of award not being enforced

Optional elements

- Procedure
- Remedial powers
- Qualifications of the tribunal
- Confidentiality
- Rights of appeal
- Waiver of sovereign immunity

Common mistakes

No unequivocal choice of arbitration

*“English law – arbitration, **if any**, London according to ICC Rules”*

*“In event of a dispute the parties **undertake to submit** to arbitration, **but in the event of litigation** the Tribunal of Helsinki shall have authority”*

*“Any dispute relating to the Agreement **may** be referred to arbitration. The arbitration will take place in Brussels under ICC rules”*

Common mistakes

Stipulate the seat and institution correctly

*“Any dispute arising under this agreement shall be resolved by arbitration at the **ICC of Zurich**”*

*“Any dispute...between the Parties arising out of or relating to this Agreement which cannot be settled amicably shall be referred to and determined by arbitration in the Hague under the **International Arbitration Rules**”*

Common mistakes

Other errors

“Any dispute arising out of this contract shall be referred to Mr X who shall act as a sole arbitrator”

“Disputes arising in connection with the agreement shall be determined by a single arbitrator to be appointed by the Director General of the World Health Organization”

“Any dispute relating to this agreement shall be submitted to arbitration...the tribunal shall publish its award within 2 months of the terms of reference”

General comments

- Advisable to use short model clauses recommended by the leading arbitration institutions – “tried and tested”
- Depart from model wording with great care
- Don't over prescribe – “less is more”
- Ensure that all of the essential elements are covered
- Not all seats are the same, take local advice as necessary
- Make sure the arbitration clause is Sharia compliant

Islamic Investing and leasing

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20th February 2012



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LEASED ASSETS



ISLAMIC AND LEASING BACKGROUND

1. History of Leasing:

- Started in 1950's v.s. leasing international expanded to a trillion \$ global market.

2. International expansion in Middle East:

- Saudi Arabia, Kuwait, UAE, Bahrain all regulate leasing based upon Shariah Law, on the « Ijara » foundation. Leasing is emerging since 2000 and growing;
- Kuwait lease receivable exceed US\$ 2 billion (6 companies);
- Other Islamic markets are growing such as Indonesia and Malaysia.

ISLAMIC AND LEASING BACKGROUND

3. Benefits of Islamic Leasing:

- Invoices real assets for use in the economy;
- Potential for securitisation i.e. SUKUK, fund source for leasing;
- Islamic Leasing helps with finance of longer term projects and related equipment;
- Lease Finance easier, documentation quicker and collateral is the equipment;
- Lease Finance is clear since it regards the obligation payment of the lessee: rent is fixed.

SAUDI ARABIA LEASING

Leasing is called « IJARA » in Arabic and has been around for 1,400 years for the hire of asset but only later when in the 1970's first Saudi leasing was formally created by U.S. leasing international in a joint venture with a major Jeddah Finance House.

Differences between Standard Saudi Finance Lease and Islamic Ijara:

1. Lessor retains the risk of total loss (where the loss is not the fault of the lessee)
2. Hell and high water type clauses are not permissible
3. Lessor cannot pass all responsibility for maintenance but can be reflected in lease rate
4. Late payment surcharge application is questionable
5. Assignment of lease not permitted

SAUDI ARABIA LEASING (Continued)

In 2000 leasing for Saudi Commercial Bank & Finance Company

1. Regulated by SAMA
2. Compatible with Islamic Shariah Law
3. Growing sectors include:
 - Manufacturing
 - Oil and Gas
 - Construction
 - Agriculture
 - Medical
 - Transportation
4. Currently a \$ 3.0 billion industry
5. Legal enforceability

OTHER ISLAMIC GROWTH MARKET IN LEASING

Malaysia

1. Started 1973 growing market
2. Number of leasing companies have grown from 9 (1979) to 149 (1984) 170 (2010)
3. All Firms offer standard leases but Islamic leasing is now growing
4. 100% finance available

Indonesia

1. Started 1982
2. Growing as conventional market along with 6% growth rate of current leasing represents US\$ 5.0 billion
3. Use of Leasing as part of Shariah is growing but not clearly defined
4. Leased equipment concentration on mining and plantation industries

ISLAMIC VENTURE LEASING

- History – US experience
- Potential – small medium sized companies and Islamic entrepreneurs
- Technology Development – equity to rental to lease
- Educate Exporters – using offset, trade finance