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## FOREWORD AND INTRODUCTION

### Foreword

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المركز الإسلامي الدولي للتصالح والتحكيم  
International Islamic Centre For Reconciliation and Arbitration  
Centre International islamique de Reconciliation et d'Arbitrage

### Foreword

It's my immense pleasure to write this foreword to this Transnational Dispute Management (TDM) Special Issue on **Islamic Finance and Dispute Resolution**, edited by Professor Dr. A. F. M. Maniruzzaman, an Honorary Fellow and International Arbitrator of the International Islamic Centre for Reconciliation and Arbitration (IICRA).

There is no doubt that Islamic finance is progressively growing as an emerging phenomenon of global finance in the wake of recent financial crisis worldwide in the last two decades and is expected to play its significant role in the years ahead. This is more so in the context of the serious consideration about Islamic finance given by some major international financial institutions including the World Bank for financing the UN Sustainable Development Goals Agenda 2030. The increasing role of Islamic finance in trade, commerce and investment in both the Muslim and Non-Muslim worlds will be palpably felt in the world economy in the years ahead. Islamic finance will thus play a noticeable role along with conventional finance as in Non-Muslim countries the former is becoming ever so popular and high in demand.

It has to be noted that with this growing trend in the world economy, the prospects of disputes arising out of financial transactions are not out of the question. For a sound growth of Islamic finance and its prospective significant role in the world economy a sound legal infrastructure of dispute resolution in the field of Islamic finance is very important.

It is interesting to see that this TDM Special Issue has attracted experts and practitioners from various regions of the world and their contributions on diverse subjects will certainly enhance knowledge of Islamic finance and dispute resolution and contribute to the development of a sound legal infrastructure of Islamic dispute resolution.

Given the absence of specific legislation, and judicial or arbitral bodies specialized in organizing the settlement of all kinds of disputes based on the principles of Islamic Shari'ah governing the transactions of almost 25% of the world's population, whose



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investment assets in the year 2024 is about to reach an amount of 3.87 trillion US dollars, IICRA was established in 2005 AD as an international non-profit organization whose sole mission is to adjudicate all kinds of financial, commercial, banking, and real estate disputes through reconciliation and arbitration in accordance with institutional Rules based on the Model International Arbitration Law (UNCITRAL).

The importance of Arbitration at IICRA has increased in settling such dispute, whereas the Arbitral Awards related to disputes rendered under IICRA are based on the principles of Islamic Shari'ah and do under no circumstances include (a usury - or an increase in the outstanding amounts due to delay in making the payment). Therefore, it would be in the greater interest of the parties, especially for the financial institutions, to settle their disputes as soon as possible, as it guarantees them financial stability and avoids allocating legal precautions imposed on them by Central Banks as a result of lawsuits.

Over the past fifteen years, IICRA has resolved many disputes of various types and values, and it has now become one of the infrastructure institutions of the Islamic economy and its legal arm. Also, IICRA has recently updated its Rules of procedure to go hand in hand with latest recommended international practices in the field of institutional arbitration with an aim to maintain IICRA's core specialty in order to promote the advantages, especially speed, confidentiality, flexibility, and rationalization of expenses, IICRA has launched an e-platform for online dispute resolution through Reconciliation and Arbitration via its website [www.iicra.com](http://www.iicra.com).

Last but not least, IICRA is pleased to communicate with all those interested in its mission and objectives set out above, in order to strengthen cooperation and achieve the purpose of its establishment.



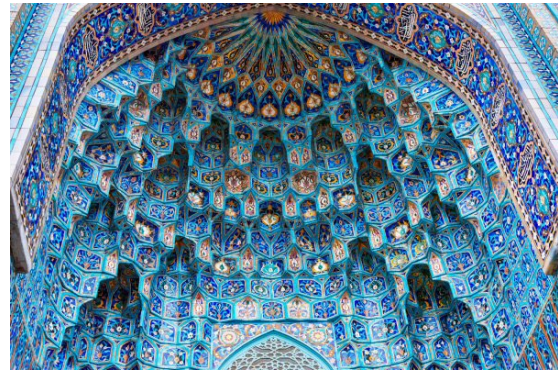
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[Full article here](#)

## Islamic Finance and Dispute Resolution

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### Introduction

The fundamental tenet of Islamic finance is that the expected outcome of such transaction is profit-loss-sharing based (*i.e.* returns to be linked to risks) as opposed to conventional finance which is interest based. Islam prohibits interest (*i.e. riba*- the payment of a fixed or determinable interest on funds)[1], hence any transaction based on *riba* or interest is not allowed in Islamic law or Shari'ah. Islam prohibits not only *riba*, but also other financial transactions that involve the concept / practice of *gharar* (deceptive uncertainty, asymmetrical information), *maysir* (gambling, speculation) and *harām* (prohibited behaviour). Above all, Islamic finance is geared to social purpose and community welfare, and it is socially inclusive unlike conventional finance. These principles are the drivers of Islamic finance not only on the religious but also on moral grounds.

Since the dawn of Islam, the existence of Islamic finance has been recognised and it has had a long tradition. However, over the last few decades it has been progressively emerging as an alternative finance on the international level as not only many Islamic countries have practised it but many Western banks and financial institutions have sponsored it and made provision for it with the help of their countries' favourable legislative changes. The popularity of Islamic finance appears to be on the rise since the 2008 financial crisis as it is considered by many as a panacea to the ills of conventional finance in many respects.

Even Pope Benedict XVI in his formal Vatican statement advised the Western banks to look out for Islamic finance practice as an ethical model of banking for their salvation from the effect of the meltdown.[2] In that sense, as an ethical business model Islamic banking appears to cross the religious boundaries. It has to be noted that in Europe, during the Middle Ages, the great Catholic theologians propagated against usury. As Thomas Aquinas famously wrote, "to take usury for money lent is unjust in itself, because this is to sell what does not exist and this evidently leads to inequality which is contrary to justice." [3] Similarly, in 1515 Pope Leo

X wrote that usury "is not a sin because it is prohibited; rather it is prohibited because it is in itself sinful, for it is contrary to natural justice."<sup>[4]</sup> It is thus on both moral and religious grounds that usury is prohibited, and there was, in fact, anti-usury law in the European Christendom in the Middle ages.

It has to be acknowledged that Islamic banking principles once guided the trade and financial activities in the Arab Muslim World and the Mediterranean as well as in Spain and the Baltic states, and the system lasted until the 15<sup>th</sup> century.<sup>[5]</sup> However, with the rejuvenation of Islamic financing in the Arab World in the 1970s and 1980s<sup>[6]</sup>, the momentum had the rippling effect in both the Muslim world and the non-Muslim world alike. Now, Islamic finance is provided by dedicated Islamic banks and other Islamic finance institutions and also through Islamic windows of conventional banks everywhere. There are about 1500 Islamic financial institutions (still counting) across the globe ranging from retail banks to investment banks and asset managers.

In the post-COVID-19 pandemic era, Islamic finance is increasingly considered as a viable means and option of financing global recovery in the years to come alongside the conventional financing.<sup>[7]</sup> It has been reported that "(m)ajor financial markets are discovering solid evidence that Islamic finance has already been mainstreamed within the global financial system - and that it has the potential to help address the challenges of ending extreme poverty and boosting shared prosperity."<sup>[8]</sup> It is also noted lately that "The world currently faces a \$15 trillion infrastructure investment gap by 2040."<sup>[9]</sup> There is no doubt that Islamic finance can contribute to that much needed fund.

The World Bank, the IMF and other international financial institutions are very much enthusiastic about the global prospect of Islamic financing and more specifically for the UN Sustainable Development Goals,<sup>[10]</sup> not to mention their increasing attention to Islamic financing vehicles over the last decade or so. Even without the prospect of the post-COVID-19 pandemic in sight, the upward trend of Islamic finance was notable. Over the last decade, Islamic finance grew by 10-15 per cent which is far higher than that of conventional finance. It is noteworthy that according to the 2017 ICD-Reuters report<sup>[11]</sup> global Islamic finance was estimated to be \$2.2 trillion of assets in 2016 which rose by the end of 2018 to \$2.6 trillion, \$2.88 trillion in 2019 and was expected to grow to \$3.8 trillion of assets by 2022 and is also forecast lately to stand at \$4.95 trillion in 2025.<sup>[12]</sup> This means that over the decade since 2016 the global Islamic finance will grow more than double.

Let us look at some recent illustrations to appreciate the growth and the hubs of Islamic finance as follows:

It was elsewhere noted in November 2020 that 10 countries account for almost 95% of the world's *shari'ah*-compliant assets. Iran leads the way with 29% of the global total followed by Saudi Arabia (25%), Malaysia (11%), the United Arab Emirates (8%), Kuwait (6%), Qatar (6%). Turkey (2.6%), Bangladesh (2.1%), Indonesia (2%) and Bahrain (1.8%).<sup>[13]</sup> It is reported that "financing by Islamic banks in Pakistan registered a significant 40% annual growth during 2021-2022."<sup>[14]</sup>

### Top 10 Countries by Islamic Finance Assets (2020) <sup>[15]</sup>



The Islamic finance industry consists of Islamic banking, Islamic capital markets (e.g., *sukuk* and funds), *takaful* (Islamic insurance), Islamic microfinance, *awqaf* (endowments), *Zakah* and *Sadaqah* as shown in the following chart.

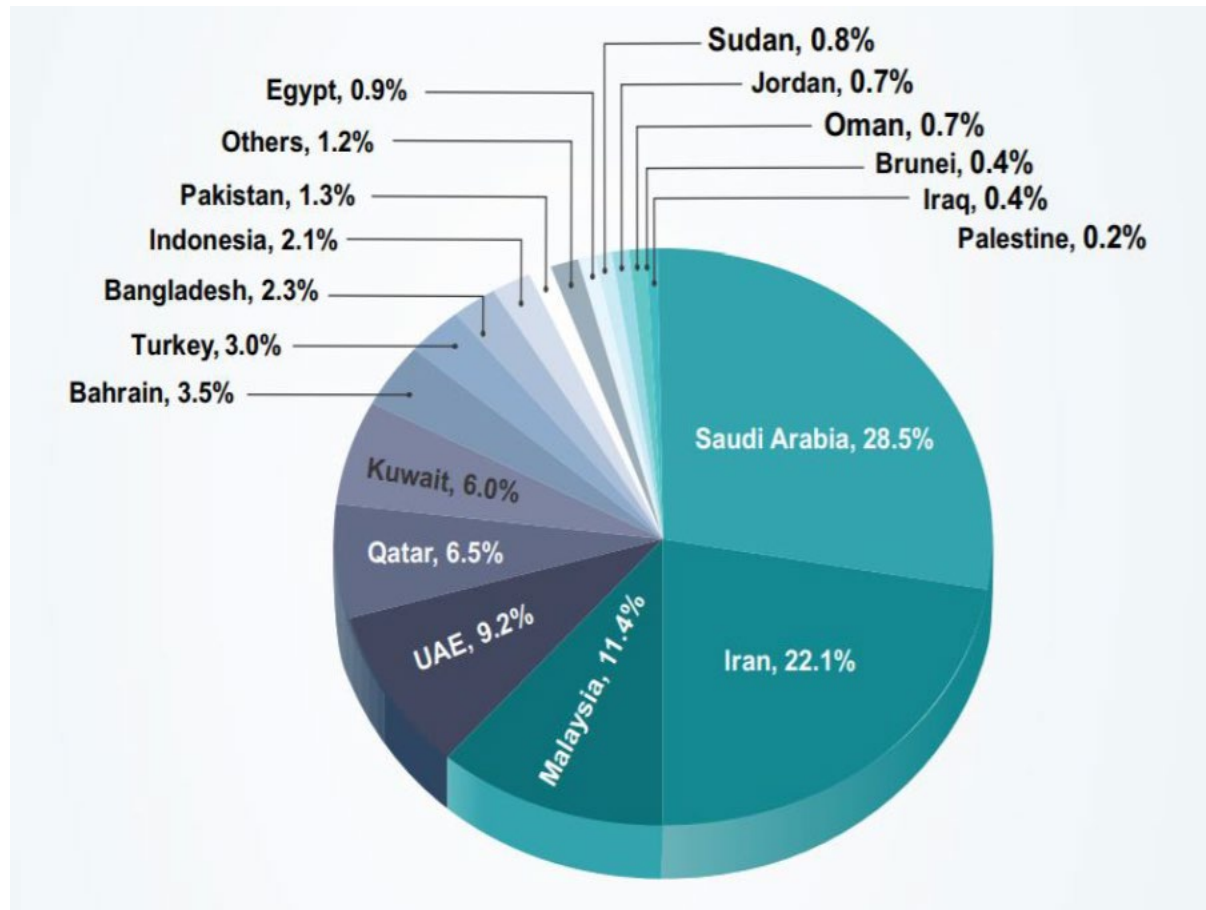
As per the current state of play, in the Islamic finance industry banking is the largest sector comprising both Islamic banks and conventional banks with Islamic windows in both Muslim and non-Muslim countries. The banking sector globally represents 77% of all Islamic financial assets.

### The Main Sectors of Islamic Finance



## Global Islamic Banking Sector (2020)

It is noteworthy that over 50% of the Islamic banking asset is concentrated in two countries such as Saudi Arabia (28.5%) and Iran (22.1%). The other major players are Malaysia (11.4%), the UAE (9.2%), Qatar (6.5%) and Kuwait (6.0%).



It has to be borne in mind that there is no monolithic system of Islamic law to govern Islamic financial transactions.[22] There are different schools of thoughts ( *uṣūl al-fiqh* ) in Islam. In Sunni Islam, there are four major schools of jurisprudence or *fiqh* such as the Hanbali School, the Maliki School, the Shafei School and the Hanafi School.

It has to be noted that Islamic financial technology (Fintech) has lately proved to be another progressively rapid growth area.[16] In different parts of the world, Fintech is mushrooming consistently. So far, Saudi Islamic Fintech is considered to be the largest worldwide, and it is projected from its current estimate of \$17.8 billion to grow to \$47.5 billion (a growth of 22 per cent annually) by 2025 in Saudi Arabia[17] with the global projection reaching at \$120 billion by the same time. It shows that with the growing computer and online-savvy younger generations (including the marginal ones), especially in the Arab Muslim World, Fintech will exponentially grow "with its tangible traction across multiple markets and jurisdiction" [18] in the years ahead to significantly boost Islamic finance across the globe [19] and thereby the emerging global Islamic economy. [20] It should be noted that the 2013 Sheikh Mohammad bin Rashid Al Maktoum initiative to make 'Dubai as the Capital of the Islamic Economy' added a new dimension to Islamic finance in the region.[21]

Broadly, apart from the matters that can be clearly governed by the Quran and the Sunnah, differences arise as to the other sources of Islamic law or Shari'ah such as *ijma* (consensus) and *qiyas* (analogical deduction by reasoning), etc. There are also other schools of jurisprudence in Shia Islam, e.g., Ihna Ashari, or Ja-fari, Ismaili, and Zayadi.

There are also legal systems in Muslim countries which are either a combination of civil law or common law and Islamic law as a hybrid system such as in the UAE, Egypt and Pakistan, etc. This can also add an extra layer of complexity. Given the differences of views, their nature, scope and context on many matters especially in Islamic finance, a unified and harmonised system of Islamic law is increasingly desired across the globe as Islamic finance is gaining the momentum at present.

It has to be acknowledged that the Bahrain-based entity called Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI)[23] has, as noted, "developed more than

100 standards on Shari'ah law, accounting, auditing, ethics and governance issues for international Islamic finance."<sup>[24]</sup> Such standardization of the Shari'ah rules is market-driven, responsive to stakeholders' needs and also forward-looking in the context of the ever-developing Islamic financial architecture.<sup>[25]</sup> In order to facilitate the sustainable growth of Islamic finance around the world, efforts are currently going on in various forums to build a unified global legislative framework for Islamic finance.

The Paris-based International Chamber of Commerce (ICC) has the vision of such a global legal framework for "Islamic Finance through the convergence and codification of Islamic contract law"<sup>[26]</sup> and legality of various transactional structures and modes under Islamic financing. There is also, according to some views, some urgency, given the fast and steady growth of Islamic finance, in favour of an international treaty to harmonize the laws, standards and practice of Islamic finance across the board.<sup>[27]</sup> In 2020, the UAE also took an initiative along the lines as it aspires to be the Islamic Financial Hub in the foreseeable future.<sup>[28]</sup> It is, however, still on the drawing board and the work is in progress.<sup>[29]</sup> It is noted in a 2022 Report that "(t)he project's stated objectives include providing a global legal benchmark for Islamic finance, reducing regional differences in product offerings and practices, providing legal protection to all parties involved, and developing an international dispute resolution framework."<sup>[30]</sup> If it comes to fruition, it may pave the way for the building blocks towards the development of a uniform body of law amounting to Islamic *lex mercatoria*<sup>[31]</sup> / *lex Islamica*<sup>[32]</sup> in the Islamic financial sector across the globe over time. It is notable that to this body of law the jurisprudence or case law of Islamic finance litigation and arbitral tribunals' awards and decisions will progressively contribute to the sustainable growth of Islamic finance globally.

As pointed out above, if such is the upward trend of the growth of Islamic finance<sup>[33]</sup>, there will also be a concomitant growth of disputes between parties in various Islamic finance transactions along the way. A sound dispute resolution system is considered to provide the vehicle for the progressive growth and development of Islamic finance worldwide. Thus, the Islamic finance disputes horizon appears to be a progressive growth area in the foreseeable future for serious consideration by dispute resolution specialists.

Disputes arising out of Islamic finance have been in many cases referred to litigations by the parties involved leading to unsatisfactory outcomes due to the failure of the courts, especially in the Western world, concerned to apply Shari'ah (Islamic law) principles as agreed by the parties in their contract, or due to their misconceptions of Shari'ah.<sup>[34]</sup> As the popularity of Islamic finance is on the rise in both Islamic and non-Islamic countries, so will be the differences in understanding Shari'ah or Islamic rules and principles applicable to such transactions between diverse parties giving rise to multifarious types of disputes on the international level. Besides, there

also arises the debate about the suitability of the various methods of resolution of Islamic finance disputes such as litigation, arbitration, mediation, conciliation, etc.<sup>[35]</sup> Various other issues relating to Islamic financial disputes may arise.

It has to be noted that arbitration is increasingly considered to be a suitable mechanism for Islamic finance dispute resolution to avoid unpredictable outcomes in litigation in national courts when Shari'ah is in issue due to the courts' attitude to Shari'ah as well as their often misconceptions of Shari'ah as reflected in English court cases concerning Islamic finance, for example.<sup>[36]</sup> Thus, the International Islamic Financial Market (IIFM) provides for arbitration in its standard documents.<sup>[37]</sup> There are also other prominent institutions for Islamic dispute resolution which make suitable arbitration rules and adoptable model clauses suitable for such disputes. For example, the International Islamic Mediation & Arbitration Centre (IMAC)'s Shari'a Arbitration Rules, the Asian International Arbitration Centre (AIAC)'s i-Arbitration Rules (2021)<sup>[38]</sup> and the International Islamic Centre for Reconciliation and Arbitration, i.e. IICRA's revised Arbitration and Reconciliation Rules (December 2020)<sup>[39]</sup>, the revised P.R.I.M.E. Finance Arbitration Rules (January 2022).<sup>[40]</sup> The Astana International Financial Centre (AIFC), which was officially launched in July 2018, is a prospective venue for disputes arising out of Islamic finance.<sup>[41]</sup> In a recent report ICC points out the suitability of the ICC Arbitration Rules as it states that the disputes arising out of Islamic finance instruments (as any other dispute involving financial institutions) can be resolved through arbitration and existing rules.<sup>[42]</sup>

However, it has to be noted that financial dispute resolution requires special expertise. It has been observed that:

"What makes disputes in banking and finance different? After all, like most commercial disputes, their determination often requires the interpretation of contracts, deciding whether a party is liable in contract or tort, and quantifying damages. Furthermore, financial institutions are, in many respects, no different from other commercial parties to disputes. . . Yet, in practice banking and finance disputes require special expertise to resolve them."<sup>[43]</sup>

This is true more in the context of Islamic finance dispute settlement when Shari'ah is the governing law where an expertise in Islamic law and philosophy is essential.

\* \* \*

## Structure and Content

The Special Issue is organised thematically into three parts: **Part I**, **Part II** and **Part III**.

**Part I** is concerned with the landscape of Islamic finance, in general, in the Organization of Islamic Cooperation (OIC) countries and, in particular, in Bangladesh and Pakistan as two fast-growing Islamic finance hubs. Also, it looks at the trend of Islamic finance in China as a non-OIC country as China's role will be increasingly apparent in the context of its Belt and Road Initiative (BRI) project in its transactional and financial relationships with many Muslim countries where Islamic finance is practised in various degrees.

In their study, Mohieldin and Hamzah have sketched the role of Islamic finance in the post-Covid-19 pandemic era in the Organization of Islamic Cooperation (OIC) countries to meet the sustainable development goals (SDG), given the fact that Islamic finance is gaining rapid growth since the global financial crisis coupled with the adoption of fintech recently<sup>[44]</sup>. It explains how Islamic finance can create opportunities to increase the global reach of Islamic financial services and enhance financial inclusion.

Hasan's article examines the domestic legal framework of Sukuk in Bangladesh to check its compatibility with the international standards, especially with the Malaysian regime (another major Islamic finance-hub OIC country). It considers the prospects of Sukuk in Bangladesh and outlines the challenges and limitations of the Sukuk market there. It also examines the loopholes in the existing regulations in Bangladesh and suggests for improvements using the Malaysian regime as a model.

Piracha's article is focused on the Islamic Republic of Pakistan as a rapidly rising OIC Islamic economy to explore its philosophy, theory and practice regarding banking and finance which could prove to be a test case for many other growing OIC Islamic economies. It provides insights into the evolution of the legal framework in Pakistan pertaining to Islamic finance and its inconsistency with the international legal regime of Islamic finance.

China is an emerging leading economy and its Belt and Road initiative (covering many Middle Eastern countries and non-Arab Muslim states) will have significant relevance to Islamic finance transactions in its dealing with those countries in the years to come. Erie's article explores the prospect of Islamic finance in China's transactional relationship with many Muslim countries where Islamic finance principles are more often than not the norm. Thus, Chinese commercial and financial institutions will experience a learning curve. It reviews the short history of Islamic banking in China, assesses the current supply of Shari'ah-compliant financial instruments for cross-border business between Chinese parties and their counterparts based in Muslim states, appraises the

demand of Chinese enterprises for Islamic banking products and services, and, lastly, suggests possible trajectories for the integration of Islamic finance into the political economy of China and Muslim states.

**Part II** looks at the jurisprudence and the law applicable to Islamic finance and disputes.

In his paper Wahab aims at disambiguating the doctrine of Al-Maqāsid Al-Shar'iyyah (objectives/aims of Islamic law) as a fundamental concept of Islamic law and finance and also analyses some of the general legal maxims and jurisprudential principles of Shari'ah law. The importance of the doctrine of Al-Maqāsid Al-Shar'iyyah and the jurisprudential principles of Shari'ah law transcends the boundaries of Islamic finance transactions and represents a fundamental tenet that guides any conducive Ijtihad (diligent research) across all aspects of Islamic law. This doctrine defines the philosophy underlying Islamic norms and principles and is undoubtedly crucial for arbitral tribunals when confronted with questions of Islamic Shari'ah and when asked to make determinations based on applicable Islamic legal principles.

Nosrollah Ebrahimi and Mahdi Ebrahimi's paper is focused on the methods of Islamic finance dispute resolution in Iran and also the Shi'a jurisprudence that may be applicable in Iran to Islamic finance and dispute resolution as a Shi'a Muslim dominated major country. Having discussed the different methods of Islamic finance dispute resolution such as mediation, med-arb, arbitration and litigation as are practised in Iran, it turns to emphasize the most important underlying factor for any kind of sound Islamic finance dispute mechanism, *i.e.* the quality of the knowledge and the level of expertise and experiences of the individual or group of dispute resolvers or board of disputes settlement/adjudication to resolve such disputes. In their view, the expertise of such dispute resolvers needs to be at the level of *ijtihad* in order to be able to appreciate both the technical side of Islamic finance as well as the application of Shari'ah or Islamic law to it especially from the perspectives of the Shi'a jurisprudence as is applicable in Iran. They particularly advocate that while settling Islamic finance disputes particular attention should be given to the established Islamic jurisprudential principles namely principles of *La-zara va la zerar* ("no harm and no loss"), principle of *solteh-e-motlaqeh* ("despotic dominion"), principle of *dhaman-e-ghahri* (non-contractual in the meaning of civil liability), principle of *tasbib* (causation) and principle of *itlaf* (dissipation).

Tavana 's paper addresses the issue of Shari'ah as the applicable law to Islamic finance disputes in two parts. In the first part, the challenges when Shari'ah is chosen as the applicable law as are spotted in light of the available case law from the English courts. The second part provides a proper solution to those challenges by proposing the application of the principles of Shari'ah concerning commercial transactions together with a complementary law.

Zahid's article concerns the choice of law and choice of forum (belonging to an Islamic jurisdiction) in the context of an international commercial / financial contract from an Islamic law perspective. He makes a theoretical inquiry into the matter in respect of a single choice of law that conflicts with Shari'ah law in full or part and also in respect of a combined conflicting choice and the forum's attitude to that. Secondly, he looks at the scenario in the case of a single choice of Shari'ah law and ponders over the issue of the forum's jurisprudential approach or the prospect of the school of *fiqh* (madhhab) to follow.

Abid's article explores the practical aspects of Islamic project finance, notably, aspects that largely set the Islamic project finance apart from the conventional project finance, in addition to the main challenges facing the use of Islamic project finance at a larger scale. This article is structured in three main sections: the first section briefly describes conventional project prevalent in project financing, the second section lays down a number of Islamic finance techniques and the third section analyses a number of challenges facing Islamic project finance structures. It also looks at the issues of mingling Islamic funds with other non-Islamic funds in multi-sourced projects throughout.

**Part III** includes an array of articles dealing with Islamic finance dispute resolution, Islamic versus conventional finance dispute resolution, dispute resolution methods, some procedural aspects including some characteristics of Islamic finance dispute resolution and some institutions. The thrust of this part is to identify some trends and explore them in respect of the aforementioned aspects rather than focusing comprehensively on them.

Islamic finance disputes have traditionally been subject to litigation in the hubs of common law systems such as London and New York more than to international arbitration. Connerty's article looks at Islamic finance disputes through the lenses of an English lawyer in litigations in London and New York. It also considers arbitration as a method of Islamic finance dispute resolution. Finally, it considers the recognition and enforcement of such arbitral awards under the New York Convention.

Tsaturya's paper attempts to provide an overview of the Islamic financial instruments, which conform to Shari'ah law and, based on their specifications, explore the suitability of litigation, arbitration and other methods of alternative dispute resolution for resolving disputes involving these instruments.

Mahmood, Juss and Dowling-Hussey's article looks at the under-explored method of Islamic dispute resolution (IDR) alongside the conventional alternative dispute resolution ('ADR') method. It emphasizes that a comprehensive understanding of the two would well equip one to work out IDR better.

Blanke's article explores the case for semi-secular arbitration as a viable form of dispute resolution in the Islamic finance industry and also

confirms the procedural and commercial viability of the same. It is considered that semi-secular arbitration will allow disputing parties to mitigate the Shari'ah risk by facilitating Shari'ah compliant dispute resolution in a forum that is acceptable and accessible to non-Muslim investors without placing them at a perceived procedural disadvantage whilst providing the comfort of a Shari'ah compliant outcome.

Alrefaei 's paper sketches the current state of the arrangements of Islamic finance dispute resolution in Saudi Arabia, a country at the forefront of Islamic finance system in the world. It indicates that with the ever-increasing role of Islamic finance in the Islamic economy and beyond, and Saudi Arabia, being in the leading role, should embrace arbitration as a method of Islamic dispute resolution and it will be along the lines of the aspirations of the Kingdom's Vision 2030.

Bantekas examines the following matters in his article: a) Islamic law as the governing law of contracts; b) the absence of a distinct Islamic arbitral process, as such: c) the relative conformity of public policy exceptions with industrialized arbitration-friendly states and; d) whether there is a need for a global hub for Islamic finance arbitration, with particular emphasis on the Qatar Financial Center (QFC) and its specialized court. He endeavours to show that there is no reason to fear the secularization of the Islamic finance arbitration's essential elements by the referral of disputes to secular arbitral institutions.

The remaining three articles deal with three disparate issues in the context of Islamic dispute resolution such as the prohibition of *riba* in awarding in post-award interest in international arbitration, the role of Shari'ah Advisory Council (SAC) in Islamic dispute resolution in Malaysia and the prospect of third-party funding within the Islamic framework.

Nodoushan and Jahangard's article discusses the impact of the prohibition of *riba* (interest) under Shari'ah on the ability of dispute settlement body (in particular an arbitral tribunal) to award post-award interest and on the enforcement of such awards in those Islamic countries that their legal systems are strongly influenced by principles of Shari'ah. It argues that this problem can be solved by issuing an award on specific performance combined with an award on liquidated damages for late/non-compliance with the arbitration award.

Zain and Hasan's article looks at the important role of the Shari'ah Advisory Council (SAC) as a strategy for better dispute settlement in the Islamic financial services industry in Malaysia. It has adopted qualitative and doctrinal legal methodologies to trace the crucial role of SAC in the dispute settlement process in the Malaysian regulatory framework. It has found that the involvement of SAC in the process of dispute settlement is a unique legal innovation adopted in Malaysia and it could be a model for other jurisdictions.



Can's article examines the suitability of third-party funding (TPF) in Islamic finance disputes. He views that since Islamic finance transactions are based on profit-loss sharing rather than interest akin to the practice of TPF and it is expected to fit very well into the framework of Islamic law. In his doctrinal analysis he concludes that TPF as a financial tool within Islamic finance is indeed in accordance with Shari'ah Law. In his analytical approach he looks at the compatibility of TPF in each of the seven major schools of Shari'ah Law, including four Sunni doctrines (i.e., Hanbali, Maliki, Shafi'i and Hanafi) and three Shia doctrines (i.e., Isna Ashari, or Ja-fari, Ismaili, and Zayadi). He considers TPF as a new vision within the context of Islamic jurisdictions, particularly in Shari'ah, and highlights the significance of a developing funding market like TPF which makes the judicial system and justice accessible to many what may not be the case otherwise.

### Footnotes

[1] Although the very notion of the prohibition of *riba* is well acknowledged, the nature, scope and the context could be sometimes subject to controversy. See Filippo di Mauro, *et al*, "Islamic Finance in Europe", available at: <https://www.ecb.europa.eu/pub/pdf/scpops/ecbocp146.pdf>. See also, Ibrahim Shehata, "Partial Refusal to Enforce Award Brings Out Interest Rates Public Policy Dilemma", ICC Dispute Resolution Bulletin (2020, Issue no.2), p.55; S. Singh, "The Mirage of Interest-Free Islamic Finance" (May 22, 2021), available at: <https://www.linkedin.com/pulse/mirage-interest-free-islamic-finance-sukudhew-sukhdave-singh/>; S. Aren, & H.N. Hamamci, "The mediating effect of religiosity in evaluating individual cultural values regarding interest. 9 Turkish Journal of Islamic Economics", (2022, no.2), 73-97; Available at: <https://www.tujise.org/content/7-issues/19-9-2/a2881/tuj2881.pdf> H.A. Hamoudi, "The Muezzin's call and the Dow Jones Bell: on the necessity of realism in the study of Islamic law" 56 The American Journal of Comparative Law (2008, no.2) 423; See Historic Judgment on Riba, available at: <https://old.ethica.institute/Historic-Judgement-On-Riba.pdf>; Chibli Mallat, The Debate on Riba and Interest in Twentieth Century Jurisprudence, in Islamic Law and Finance (1988); Mahmoud Amin El-Gamal, "Interest and the Paradox of the Contemporary Islamic Law and Finance", 27 Fordham Int'l L.J. (2003, no.1), 108. See for some detailed discussion in Mahmood Hussain Ali Ahmad, "Critical Study of the Role of Sharia Public Policy in the Recognition and Enforcement of Foreign Arbitral Awards in UAE" (unpublished PhD thesis, 2020, University of East Anglia, U.K.), esp. Chapter 4.

[2] See: available at: <https://www.worldfinance.com/news/vatican-praises-ethical-sharia-banking>.

[3] Quoted in J. Arthur Bloom, "Sharia Law: As American As Apple Pie", available at: <https://dailycaller.com/2019/04/15/sharia-law-american-apple-pie/>.

[4] Ibid.

[5] See <https://mfr.mv/islamic-finance/overview-islamic-finance-in-the-maldives>.

[6] M. Priest and R. Wilson, "Finance In The Arab World: Resurgence of old ideas about handling cash", The Times, London, 6 March 1981; M. Hussain, A. Shahmoradi, and R. Turk "An Overview of Islamic Finance" 2015, IMF Working Paper WP/15/120, International Monetary Fund, Washington D.C.

[7] See Islamic Finance Outlook (2022 edition), available here: <https://www.spglobal.com/ratings/en/research/pdf/articles/islamic-finance-outlook-2022-28102022v1.pdf>. It notes: "S&P Global Ratings believes the global Islamic finance industry will expand 10%-12% in 2021-2022. The expansion of Islamic banking assets in some Gulf

Cooperation Council (GCC) countries, Malaysia, and Turkey and sukuk issuances exceeding maturities explain this expected performance. Islamic finance expanded rapidly in 2020 with total assets increasing 10.6% despite the double shock from the COVID-19 pandemic and drop oil prices."

[8] See <https://www.worldbank.org/en/programs/global-islamic-finance-development-center>.

[9] See <https://www.refinitiv.com/en/infrastructure-investing>. See also The Sustainable Infrastructure Investment Report - Potholes on the Road to Sustainable Infrastructure: *Exploring the Trends, Participants and Data Powering a Sustainable Infrastructure Boom*. Available at: <https://www.refinitiv.com/en/infrastructure-investing/insights/sustainable-infrastructure>.

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The Report states: "Over the next 12 months, we expect some progress on the unified global legal and regulatory framework for Islamic finance that the *Dubai Islamic Economy Development Centre* (DIEDC) and its partners are developing. DIEDC embarked on this project with the Islamic Development Bank, the United Arab Emirates Ministry of Finance, and several other advisors in 2020."

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## ISLAMIC FINANCE AND DISPUTE RESOLUTION

### PART I: The Landscape of Islamic Finance

#### Islamic Finance in OIC Countries and Sustainability

*Dr. Mahmoud Mohieldin*  
*Cairo University, International Monetary Fund*

*Dana Hamzah*  
*International Monetary Fund*

#### Abstract

This paper examines the role that Islamic finance can play in addressing the challenges created by the Covid-19 pandemic and in getting Organization of Islamic Cooperation (OIC) countries back on track to meet the SDGs. It draws on the heightened interest and the greater attention that Islamic finance has received since the global financial crisis (GFC).

The Islamic Financial Industry has evolved greatly within the past decade and has witnessed rapid growth, driven by enhanced Shari'a governance and more innovation in the digital landscape especially with the adoption of fintech. Several features underpin the expansion and performance of Islamic finance. Multilateral development institutions, including the World Bank and the Islamic Development Bank (IsDB), have longstanding programs to support the development of the industry and have used Islamic instruments to tap capital markets. Addressing key regulatory and governance issues will be essential for Islamic finance to achieve its full potential.

This paper explains how Islamic finance can create opportunities to increase the global reach of Islamic financial services and enhance financial inclusion. The paper draws upon the role of digitalization and sustainability to help OIC countries achieve the UN's 2030 Sustainability Agenda and put the SDGs back on track.

↪ [Full article here](#)

## Prospects and Challenges of Issuance of Sukuk in Bangladesh: Lessons from Malaysia for Developing a Comprehensive Legal Framework for Bangladesh

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### Abstract

(Will be added shortly, readers will be notified)  
The introduction of Islamic Bond Sukuk in Bangladesh has created a new source of funding for the government and private sector. A favourable legal framework is necessary for the growth of Sukuk in Bangladesh. The core objective of this paper is to examine the domestic legal framework of Sukuk and to find out its compatibility with international standards, more particularly with the Malaysian regime.

This paper offers a brief discussion on the prospects of Sukuk in Bangladesh and then outlines the challenges and limitations of the Sukuk market. Part five of this article investigates the loopholes in the existing regulations of Bangladesh. Finally, this paper argues that while Bangladesh has established a regulatory guideline for prudential management of Sukuk, there is still room for improvement for efficient operation and effective management of Sukuk. Notably, this paper explores the Malaysian legal regime to find out the critical areas of reform in Sukuk regulations in Bangladesh.

## Theory and Practice of Islamic Financing in Pakistan - A Legal Insight on National and International Issues for Investments in Pakistan Based on Hybrid Financing Structures and Banking Systems

*Dr. Nudrat E. Piracha*  
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### Abstract

This article explores the philosophy, theory, and practice of the Islamic Republic of Pakistan regarding Islamic Banking and Financing. It provides insights as to the evolution of the legal framework in Pakistan pertaining to Islamic Financing and the international issues that have generated from the uncertainty, unpredictability, and inconsistency in the present regime, identifying the risks posed to the system, which is in its infancy but surrounded by multiple legal frameworks in the international arena which are not complementary.

[Full article here](#)

## China and Islamic Finance: Past, Present, and Future

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### Abstract

China's commercial and geostrategic interests increasingly deepen its trade and investment in Muslim countries throughout the world. In terms of compliance with local law, many Muslim countries feature mixed or hybrid legal systems, including common law, civil law, and sharia. Chinese enterprises have little experience with sharia compliance and Islamic finance. Domestically, whereas China has emerged as an innovator in such areas as fintech and digital commerce, Islamic finance is one field of transactional and financial regulation that is largely absent. While there is no inherent obstacle to Chinese commercial and financial institutions acquiring expertise in sharia-compliant Islamic banking, they nonetheless will experience a learning curve as the Chinese government promotes ties with Muslim countries.

This brief article reviews the short history of Islamic banking in China, assesses the current supply of sharia-compliant financial instruments for cross-border business between Chinese parties and counterparts based in Muslim states, appraises the demand of Chinese enterprises for Islamic banking products and services, and, lastly, suggests possible trajectories for the integration of Islamic finance into the political economy of China and Muslim states.

[Full article here](#)

## PART II: Jurisprudence and Law Applicable to Islamic Finance & Disputes

### Al-Maqāsid Al-Shar'iyah and Substantive Principles of Islamic Shari'ah: Considerations for Islamic Finance Disputes and Shari'ah-Based Arbitrations

*Professor Dr. Mohamed S. Abdel Wahab*  
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### Abstract

Over the past two decades, Islamic banking and financial products have exponentially grown at an accelerated pace and on a global scale. Disputes involving applicable Shari'ah principles to financial transactions have also proliferated and have been considered by both secular and Islamic tribunals/courts.

That said this article aims at disambiguating the doctrine of Al-Maqāsid Al-Shar'iyah (objectives / aims of Islamic law) as a fundamental concept of Islamic law and finance. It also aims at analyzing

some of the general legal maxims and jurisprudential principles of Shari'ah law. The importance of the doctrine of Al-Maqāsid Al-Shar'iyah and the jurisprudential principles of Shari'ah law transcends the boundaries of Islamic finance transactions and represents a fundamental tenet that guides any conducive Ijtihad (diligent research) across all aspects of Islamic law. This doctrine defines the philosophy underlying Islamic norms and principles and is undoubtedly crucial for arbitral tribunals when confronted with questions of Islamic Shari'ah and when asked to make determinations based on applicable Islamic legal principles.

[↪ Full article here](#)

### **Islamic Finance Disputes Settlement under Shi'a Jurisprudence and Iranian Legal System**

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*Dr. Seyed Mehdi Ebrahimi  
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#### **Abstract**

Islamic finance arrangements are moving fast to counter not only the Islamic markets but also other non-Islamic countries. Due to the new features of such arrangements and the lack of established best practices in the current markets, Islamic finance arrangements are bound to encounter disputes throughout the Islamic finance application. Islamic finance disputes like other disputes could be settled by various mechanisms under both Shi'a jurisprudence and the legal system of Iran. However, due to the complexities and technical nature of the Islamic finance disputes, a particular consideration should be given to the quality of the knowledge and the level of expertise and experiences of the individuals or panel of Islamic jurists and experts who could settle such disputes.

In this article, a debate is presented that the conventional disputes settlement mechanism including the ordinary court litigation or conventional arbitration or even normal ADR have failed to show that they are fit for the purposes when dealing with the settlement of the Islamic finance disputes, but rather, special scholarly Islamic jurists and expert to the level of ijtihad is required to understand the concept, nature, characters and complexities of the Islamic finance instruments and their related disputes in order to settle such disputes.

This article concludes that comprehension of the Islamic finance arrangements, both on a technical level (as a matter of fact) and Islamic law level (as a matter of law) demands an Islamic expert or jurist, who ought to be well trained and qualified, even to the level of Ijtihad in order to hear the Islamic finance disputes and settle the issues according to the Islamic law, particularly Shi'a

jurisprudence, where the Iranian legal system is originally driven from.

It is also concluded that for the Islamic scholars and Shi'a jurists and experts to settle the Islamic finance disputes, particular attention should be given to the established Islamic jurisprudential principles, inter alia, the principle of la-zarara-wa-la-zerar ("no harm and no loss"), the principle of sulteh-e-mutlaqeh ("despotic dominion"), the principle of dhaman-e-qahri (non-contractual in the meaning of civil liability), the principle of tasbib ("causation") and the principle of itlaf ("dissipation").

It is driven from the writings of Shi'a scholars there are no harmful laws in the Islamic jurisprudence and there is no rule in Islam that justifies the harm. In other words, based on the principle of "la-zarara-wa-la-zerar" in Islam, any rule issued in the name of Islam that may inflict harm upon others or cause harmful effects to people, shall not be accepted, thus, should be removed.

[↪ Full article here](#)

### **Sharia as the Applicable Law in Islamic Finance Disputes**

*Dr. Mohammad Hossein Tavana  
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#### **Abstract**

Compliance of a contract with Sharia is a major concern of parties, or at least one party to a contract, who chooses Islamic finance instead of conventional banking. In relation to dispute resolution, the same concern could exist. Despite the enormous development that has taken place in the Islamic banking industry, the issue of dispute resolution has remained underexplored and experienced serious challenges. A number of those challenges concern the choice of Sharia as the applicable law. This paper addresses the issue of Sharia as the applicable law in Islamic finance disputes in two parts. In the first part, the challenges when Sharia is chosen as the applicable law is spotted in light of the available case law from the English courts. The second part provides a proper solution to those challenges by proposing the application of the principles of Sharia concerning commercial transactions together with a complementary law.

[↪ Full article here](#)

## Islamic Theory of Conflict of Commercial / Financial Law: A Proposition

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### Abstract

The parties to an international commercial/financial contract may choose a single law or a combination of laws like English law and Islamic law to settle their dispute that may arise therefrom. At the same time, they may choose a forum (law court or arbitral tribunal) belonging to an Islamic jurisdiction. Such a choice of law and forum deserve a theoretical inquiry from Islamic perspective since it gives rise to two important issues. First, if the choice is a single secular law and it conflicts with Shari'ah law in full or in part, then how the forum will reconcile the conflicts. It has to handle again the same issue where the choice is a combined one. Second, if the applicable law is solely Shari'ah, then the forum has to decide which school's (madhhab) fiqh (jurisprudence) will apply. This paper is a purely theoretical attempt to answer these two questions.

[Full article here](#)

## Reflection on Practical Aspects of Islamic Project Finance: Implications of Partnering with or Departing from Conventional Project Finance

*Yosra Abid  
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### Abstract

Islam is not antagonist to market forces nor to market economy, and its attitude to international trade is positive. Profit is acceptable under Islam but there are restrictions on what a financier can do.

As conventional debt market is not always able to respond to the total debt financing requirements for some projects, an increasing percentage of capital-intensive projects have been financed not just from one source of debt finance, but from two or several sources, including Islamic project finance.

Expectations, that Islamic project finance offers advantages higher or at least comparable to conventional project finance, are truly challenging.

This article explores practical aspects of Islamic project finance that set it apart from conventional project finance, in addition to the main challenges facing its use at a larger scale.

It has been demonstrated in this article that, promoting Islamic project financing without defeating the merits of Islamic law, while not losing

sight of the need to enhance its competitiveness on the finance market, is a key challenge for Islamic project finance to win. In this context, a number of polemical issues, driven by concerns about mingling Islamic funds with other non-Islamic funds, in multi-sourced projects, are addressed throughout this article.

Because applying the very set of rules and laws to Islamic project finance as the conventional project finance, may disqualify the sharia-compliant character of a given Islamic financing transaction, the article further analyzes a variety of legal devices aiming at ensuring the application of sharia law to Islamic financing transactions at a potential dispute.

It is the goal of this article to help the reader gain exposure to some of the challenges that are facing Islamic project finance, and to some of the controversial issues that have been, or yet to be, dealt with in this respect.

[Full article here](#)

## PART III: Dispute Resolution in Islamic Finance - Methods, Institutions and Related Aspects

### Methods of Dispute Resolution for Islamic Finance: Litigation and Arbitration

*Anthony Connerty  
IDR Group*

### Abstract

This article sets out the view of an English lawyer on aspects of Islamic Finance.

[Full article here](#)

### Litigation vs. Arbitration & ADR for Islamic Finance Disputes - Theory & Practice

*Sona Tsaturyan  
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### Abstract

As of 2019, the total Islamic Finance assets were around USD 2.88 trillion, while projections suggest an increase of volume reaching USD 3.69 trillion by 2024. Although the majority of those assets are concentrated in Muslim-majority countries, such as Iran, Malaysia, and Saudi Arabia, there is a clear trend of non-Muslim-majority countries (such as the USA or the United Kingdom) expanding their respective markets.

This ongoing internationalization of the Shari'a-compliant financial market may raise some concerns as to the familiarity of involved stakeholders with the technicalities of Islamic

financial instruments. When looking at the dispute resolution mechanisms concerning Islamic financial disputes a particular question arises as to which tribunal or rather which method of dispute resolution is the most suitable, considering that those disputes may be subject to Islamic law and its interpretation.

This paper aims to provide an overview of the Islamic financial instruments, which conform with Shari'a law and based on their specifications explore the suitability of litigation, arbitration and other methods of alternative dispute resolution for resolving disputes involving these instruments.

[Full article here](#)

### Islamic Dispute Resolution versus Conventional Alternative Dispute Resolution

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#### Abstract

This Paper sets out to provide a brief introduction to the much under-appreciated and under used Islamic dispute resolution ('IDR') procedure with a view to explaining how it sits alongside conventional Alternative Dispute Resolution ('ADR') methods of dispute resolution. It draws upon the differences and similarities between the two systems. A detailed understanding of the two, it argues, enables one to use IDR dispute resolution processes effectively and efficiently, based on a comprehensive understanding of well-known Islamic legal paradigms, which can prove to be of great utility for the wider ADR community.

[Full article here](#)

### Semi-Secular Arbitration in Islamic Banking and Finance Disputes: The Proposal Revisited

*Dr. Gordon Blanke  
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#### Abstract

This article explores the case for semi-secular arbitration as a viable form of dispute resolution in the Islamic finance industry. In doing so, it revisits a proposal made in favour of semi-secular arbitration of Islamic banking and finance disputes on a previous occasion and confirms the procedural and commercial viability of semi-secular arbitration in the field.

More specifically, semi-secular arbitration charts a middle way between traditional forms of Islamic arbitration, which pay deference to the requirement for Shari'a compliance, on the one hand and secular arbitration that operates outside the context of the Islamic faith and as such poses a Shari'a compliance risk on the other. In a globalising world in which Islamic finance products attract Muslim and non-Muslim investors alike, semi-secular arbitration will allow disputing parties to mitigate the Shari'a risk by facilitating Shari'a compliant dispute resolution in a forum that is acceptable and accessible to non-Muslim investors without placing them at a perceived procedural disadvantage whilst providing the comfort of a Shari'a compliant outcome.

[Full article here](#)

### Islamic Finance Disputes Settlement in Saudi Arabia

*Dr. Fahad Alrefaei  
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#### Abstract

(Will be added shortly, readers will be notified)  
It is indisputable that increasing the capital of projects would contribute to achieving economic and social development in any given society. Besides achieving multiple other advantages, this development includes more significant employment opportunities that would inevitably lessen burdens on the public budget, more profits, and a greater possibility of providing goods and services to beneficiaries and customers at a fair price with high quality.

In order to address the problems arising from traditional financing and the result of economic thought, and in light of such significant difficulties faced by the project executives as the exaggeration of credit-granting institutions, as well the unfair terms to the point of incapacity, many countries have begun to aspire to legalize financing in some forms.

In this regard, it is noteworthy that Saudi Arabia is one of the pioneers in credit financing and has taken measures to regulate disputes resolution between the borrower and the financial institutions. The Saudi regulator assured to solve the financing problems of the Quasi-Judicial Committees, as the third clause of the Royal Decree No. (M / 59), dated 13/8/1433AH, approved the formation of a committee named "Committee for Resolutions of Financial Disputes and Violations" until the establishment of specialized courts.

It was clear that there was an increase of the volume of cases presented to Committees for Resolutions of Financial Disputes and Violations. With the issuance of the Judicial Fees Law No. (M/16), dated 30/1/1443 AH, it became necessary to find alternative methods to resolve disputes between the parties of contracts of Islamic financing

(banks, and borrowers, private companies and governments).

The paper reaches the conclusion showing the increasing rates of project financing through Islamic banks. Therefore, the researcher appeals to the Saudi Central Bank for the necessity of contributing to the problems of the accumulation of funding cases submitted before the Committees for Resolutions of Disputes by spreading the arbitration culture in the Kingdom and directing various banks to resolve financing disputes which are in line with the Kingdom's Vision 2030.

## **The Qatar Financial Center Court and How it can Attract Islamic Finance Arbitration**

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### **Introduction: is There a Distinct Islamic Arbitration?**

There are at least three types of arbitral processes, which although share many common elements, can be characterized as distinct models. If the common type of commercial arbitration is the norm, then investor-state arbitration (especially under ICSID) is distinguishable because of the absence of privity (regarding the agreement to arbitrate) in BITs and domestic arbitration laws. Moreover, enforcement is in-built in the ICSID Convention and does not require a distinct mechanism, such as the New York Convention. In equal manner, consumer arbitration is always conditioned (at least in the EU context) on balancing the interests of the weaker party (the consumer) against powerful corporations. What might be viewed as abusive or highly asymmetrical in consumer arbitration is unproblematic in commercial arbitration.

Where does Islamic, or Islamic finance arbitration fit into this general system of arbitration? The fundamental question as to whether arbitration in general is Sharia-compliant is beyond contention. In fact, it is a preferred method of dispute resolution in Muslim practice and the only reason why doubts even exist, is because Muslims felt manipulated and ultimately wronged by several high-stake arbitrations that showed little respect (but mostly no understanding) of Islamic law as the parties' chosen governing law. Beyond this, however, there is no such thing as a distinct arbitral process of resolving Islamic finance disputes, other than through ordinary commercial arbitration. Muslims and non-Muslims writing on Islamic finance arbitration typically conflate Islamic law with the ordinary arbitral legislation of Muslim majority states.

There are three unique features that shape Islamic finance arbitration, but these do not render it in any way distinct and in fact they reinforce the application of general commercial arbitration. These features are: a) the distinct nature of the contract, as dealing with a very specialized subject matter; b)

by necessity of the contract's subject matter, it is self-evident that the parties will choose (although there is no compulsion to do so) Islamic law as its governing law and; c) the procedural rules chosen by the parties may be Sharia-compliant, wholly or partially.

This article will examine the following matters: a) Islamic law as the governing law of contracts; b) the absence of a distinct Islamic arbitral process, as such: c) the relative conformity of public policy exceptions with industrialized arbitration-friendly states and; d) whether there is a need for a global hub for Islamic finance arbitration, with particular emphasis on the Qatar Financial Center (QFC) and its specialized court. The article will endeavor to show that Islamic finance arbitration is still in its infancy and there is no reason to fear the secularization of its essential elements by the referral of disputes to secular arbitral institutions. Quite the contrary, any introversion will surely decrease the already low volume of global Islamic finance transactions and this will be detrimental not only to the industry but will contribute to the poor image of Islamic finance as a largely redundant and inflexible set of rules. This is hardly the case and should be avoided at all cost.

*Footnotes omitted from this introduction.*

[Full article here](#)

## **Liquidated Damages for Late/Non-Compliance with an Arbitration Award - Dealing with the Prohibition of Riba under Shari'ah in Awarding Post-Award Interest in International Arbitration**

*Dr. Shahab Jafari Nodoushan  
Islamic Azad University of Tehran*

*Elahe Jahangard  
Divan Solh Law Firm*

### **Abstract**

This article discusses the impact of the prohibition of Riba (interest) under Shari'ah on the ability of dispute settlement body (in particular an arbitral tribunal) to award post-award interest and on the enforcement of such awards in those Islamic countries that their legal systems are strongly influenced by principles of Shari'ah. It argues that this problem can be solved by issuing an award on specific performance combined with an award on liquidated damages for late/non-compliance with the arbitration award. In such circumstances, it is highly recommended that parties agree on such damages in advance. This approach secures the claimant's right to a reasonable interest on damages and provides leverage for voluntary compliance with an arbitration award.

[Full article here](#)

## The Significant Role of Shariah Advisory Council (SAC) in Dispute Resolution Mechanisms: The Evolution of Regulatory Framework in Malaysia

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Dr. Aznan Hasan*

*International Islamic University Malaysia (IIUM)*

### Abstract

(Will be added shortly, readers will be notified)  
The continuous growth of Islamic financial services globally indicates the growing interest and acceptance from the relevant stakeholders for ethical financing and faith-based financial system. A progressive demonstration in product innovations and governance can be traced in many countries that participate in the Islamic financial services industry (IFSI). However, such demonstration is still lacking when it comes to dispute resolution mechanisms. Depending on regulatory challenges that need to be faced by the IFSI in these respective countries, there is a crucial need to find a suitable dispute resolution forum that is able to appreciate both of the existing laws and Shariah-compliance nature that may be questioned when a dispute arises.

Looking close to the evolution of IFSI in Malaysia, they provide an innovative way in their regulatory system to impose a serious consistency in adhering to Shariah-compliance nature and the existing laws in their industry. With the increasing number of legal disputes that emerged from IFSI, the introduction of Shariah Advisory Council (SAC) gains a significant role in crafting the way for a better dispute resolution strategy. By adopting qualitative and doctrinal legal methodologies, this research is conducted to trace the crucial role of SAC in dispute resolution mechanisms within Malaysian regulatory framework. It is found that the involvement of SAC in the process of legal settlement is a unique legal innovation that may be followed in other jurisdictions.

### Analysis of Third-Party Funding within the Islamic Framework

*Can Eken  
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### Abstract

Third-party funding (TPF) is an investment made by funders to finance the legal costs of litigation or arbitration in return for remuneration. It is a non-recourse investment; if the funded party loses, the funder does not receive any return, and consequently loses all their investment. It is a growing trend in litigation and arbitration proceedings, as the last decade has seen a proliferation of TPF cases across the globe. Indeed, the funding mechanism has become so ubiquitous that it has spread to Muslim countries. An example is the United Arab Emirates, the Dubai International

Financial Centre (DIFC) published the practice direction No. 2 on TPF in the DIFC courts in 2017. In Islamic finance, profit and loss sharing is as fundamental as it is in third-party funding, since the funder assumes the risk of legal proceedings. Thus, TPF might be expected to fit very well into the framework in Islamic Law. However, an analysis of its compatibility with Sharia Law might unravel a far more complicated picture. Using doctrinal analysis, this article answers the question of whether TPF arrangements comply with Sharia Law. It concludes that TPF as a financial tool within Islamic finance is indeed in accordance with Sharia Law.

This article comprises five sections. The first section begins with an introduction which sets out the overarching aim of the paper and the research question. The second section then proceeds to explain the working mechanism of TPF arrangements. The third section describes the Islamic financial framework and the major schools of Sharia law. The fourth section analyzes the compatibility of TPF in each of the seven major schools of Sharia Law, including four Sunni doctrines (i.e., Hanbali, Maliki, Shafi'i and Hanafi) and three Shia doctrines (i.e., Isna Ashari, or Ja-fari, Ismaili, and Zayadi). The fifth and last section concludes the article, which positions TPF as a new vision within the context of Islamic jurisdictions, particularly in Sharia. Overall, the article highlights the significance of a developing funding market that promotes access to the judicial system and to justice.

[Full article here](#)

### IICRA - Arbitration & Reconciliation Rules

#### Rules

Arbitration & Reconciliation Rules of the International Islamic Centre for Reconciliation and Arbitration (IICRA) which came into effect on 17 December 2020.

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### IICRA - Professional Islamic Code of Ethics for Arbitrator

#### Code of Ethics

The arbitrator's mission is to achieve justice and equality between the disputants, and it is a common objective of a judge's mission. The arbitrator appointed by International Islamic Centre for Reconciliation and Arbitration (IICRA) shall abide by the Code of Conscience leading to achieve justice between the disputing parties with professionalism, honesty, sincerity, and objectivity. The nobility of Arbitrator's task requires him to adhere to the



professional Code of Ethics in order to exercise his duties and responsibilities. The breach of such Codes or any of them by him may held him accountable, in the event of default, misconduct, or intentional breach, which may cause serious harm to the parties.

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