

# Cryptos: Distinguishing Hype and Realities in Islamic Finance

The Centre of Islamic and Middle Eastern  
Law (CIMEL) at SOAS presents:  
**The SOAS-QFC Workshop on Islamic Finance**

TIME / DATE / LOCATION

9.00 – 17.00, Thursday, 16 June 2022

Brunei Gallery (BG01-02)

SOAS, University of London, 10 Thornhaugh Street, London WC1H 0XG

IN COOPERATION WITH

*Workshop on*

# **CRYPTOS: DISTINGUISHING HYPE & REALITIES IN ISLAMIC FINANCE**

**Thursday, June 16, 2022**  
**9:00a.m--5:00p.m.**

**The Centre of Islamic and Middle Eastern Law (CIMEL)**  
**School of African & Oriental Studies**  
**Brunei Gallery (BG01-02)**  
**10 Thornhaugh Street, Russell Square, London WC1H 0XG**  
Directions: <https://www.soas.ac.uk/soas-life/location/maps/>

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## OVERVIEW

This year, the 15<sup>th</sup> annual workshop on Islamic finance (after a two year break due to the global Covid crisis), we are again proud to be back and to be hosted once again by the School of African & Oriental Studies (SOAS) at the University of London. At SOAS, we are very fortunate to be aligned with enthusiastic and talented individuals in the field, led by Dr. Jonathan Ercanbrack, Chair, Centre of Islamic and Middle Eastern Law, SOAS.

In the first SOAS workshop in 2018, the 12th in the series of these workshops, participants discussed Challenging Shari'ah Compliance on Islamic Finance Products. In the last workshop two years ago (2020), participants discussed Islamic Social Finance and Sustainable Development Goals.

To continue to enhance the ongoing discussions between Islamic economists, practitioners, lawyers and *Shari'ah* experts and scholars, this year participants chose to focus the 2022 SOAS Workshop around the topic of "Cryptos: Distinguishing Hype from Realities in Islamic Finance", the most preferred option selected by our participants. Within this context, the focus of the workshop will be through the use of a short presentation on Crypto-currencies and other electronic mechanisms of monetary exchange in order to understand and to review what do we actually mean by the use of these mechanisms in the context of *Shari'ah* compliance, and both how and when can *Shari'ah* compliant financial products can be used or even 'enhanced' by these new technologies that are stretching our traditional methods of fiat global currencies.

As with prior similar events, participants come to the Workshop having sent their comments on the topic in advance. This allows participants to start the Workshop at an advanced stage and to maximize the use of the workshop time. A detailed program of events is prepared from the participants' comments. Therefore, participants are kindly requested to have read in advance all of the circulated papers and comments, as they become the basis of most of the day long discussions on the Workshop theme.

Running for 15 years now, this is a unique annual event with little parallel in the Islamic finance industry. This series of annual workshops along for a select group of established *Shari'ah* scholars, economists, legal luminaries, bankers and top industry professionals gather for a day long close-door discussion on an important contemporary theme within the field of Islamic finance, as pre-selected by these top decision makers in the industry.

# INTRODUCTION

This year, participants are encouraged to discuss and evaluate the role, application and current views on Crypto currencies within the realm of Islamic finance.

Though no longer a new topic, but Crypto currencies have created significant polarization of views and emotive responses from both its proponents and opponents. *Sharī'ah* boards from a number of traditional Islamic jurisdictions have provided their pronouncements (*fatawa*) either for or against them, with the latter being the more widespread result.

With this backdrop and these pronounced divisions, how Islamic finance can position itself to meet the challenges of the future and not be left out of the discussion has become even more important. To what extent can such new technologies in the form of blockchain and Crypto currencies be used to support or even enhance Islamic finance in fulfilling its long standing objectives as set out in the next section?

Below are some initial questions that this year's workshop hopes to examine. These are extrapolated largely from the comments contributed by participants before the Workshop, who we are especially grateful for. Though specific questions and ideas have been directly taken from participant's comments, we have largely refrained from adding specific attributions to specific authors. Though, all participants' and their contributors are hereby duly recognized. We also rely on you, the participants, to help us to develop these ideas and to consider ones which we have not addressed.

Applying these standards, participants are also encouraged to reflect on (as we did last workshop on Social Finance) what is actually meant by *Sharī'ah* compliance and certification, and should or when can *Sharī'ah* opinions and certified *Sharī'ah* compliant financial products can be 'enhanced', 'modified' or altered (or even improved) based on globally accepted initiatives and standards, and most importantly, by whom.

Participants are encouraged to reflect on whether this initiative is even applicable in other countries other than Malaysia? Is this even desirable or wanted? As Islamic financial institutions struggle to gain significant market share in a greater regulated and complex current business environment, should they have to be weighed down even further with even more new regulations and stricter *Sharī'ah*-compliance standards? Will initiatives like VBI help address the arguably widespread skepticism concerning the *Sharī'ah* authenticity of Islamic financial products? How can concerns regarding current *Sharī'ah* compliance of Islamic financial products be better managed with now additional standards? Is the *Maslahah* of creating further confidence in an emerging, growing industry more important?

We also encourage participants to look deeper into the meaning of compliance and certification. Is *Sharī'ah* compliance a matter not only of adhering to the basic rules of *fiqh* on contractual structure, but also a matter of adhering to principles such as those of the *maqāsid al-Sharī'ah* as defined by consensus of the public and current public sentiments and values? Islamic finance is frequently required to choose between the application and enforcement of *Sharī'ah* legal principles (as currently understood and applied), or, to justify new exceptions, all in order to overcome contemporary regulatory, compliance, credit risks, investor appetite, and market financial challenges. So how can *Sharī'ah* scholars have the freedom to amend or revoke their advice with new developments/thinking, without subjecting their prior decisions to critical review?



This workshop is not meant to be a review of all forms of contemporary *Sharī'ah* compliant products and processes, but rather focused on the *Sharī'ah* challenges Islamic finance must address to ensure their compliance. Therefore, the main purpose of this workshop is to go back to the original unresolved debate on whether to use and apply the *akham fiqhiyya*, and/or, *hiyal*, *makharij* or other exception based Islamic principles, to achieve a specific *masalah* or *masalih*, within a contemporary financial strategy.

This day long roundtable workshop also aims to foster dialogue among the diverse professions represented by the participants, and to initiate collaborative efforts in solving some of the most urgent unresolved challenges in enhancing Islamic finance.

In order to maximize the benefit of this workshop for all participants, workshop attendees are kindly requested to avoid some of the repetitive discussions tackled in previous workshops, but rather to focus more on specifics to enhance the level of discussions above, and to hopefully bring out new or non-discussed sub-issues, and/or to agree on a realistic way forward.

## OBJECTIVES

In this workshop, we would like to examine the workshop theme from the following angles:

- *Sharī'ah Compliance* - Should *Sharī'ah*-compliance mean a financial product is compliant with the principles of the *Sharī'ah*, or rather, compliant with the strict interpretation of the rules (*ahkam*) and of the *fiqh*. In other words, should it be more principal based, or rather, factual rule based, or other?
- *Sharī'ah Social Ideals* – How can the *Sharī'ah* remain rooted to its idealistic economic goals (of social justice, fairness, wealth distribution, profit & loss sharing focus, etc.), whilst being able to adapt and remain relevant in a highly competitive modern financial world.
- *Maslahah Determination* – As with all of our workshops, continue to discuss how can we continue to apply *maqāṣid al-Sharī'ah* and agree on the 'ideal' *maslahah* for new Islamic financial products, especially those that challenge existing structures and methods? How to determine and deal with disagreements on *maslahah*? Should a "*maqasidic* or ethical index" be developed for Islamic financial products?
- *Challenging Certification* - To understand on what basis and when can fatwa be 'enhanced', amended or disregarded by 'globally accepted standards' such as SDGs, once issued on Islamic financial products. How we can create certainty in the market if such opinions can be challenged, amended or recalled? Should there be different levels, standards or forms of compliance?
- *Sharī'ah Authenticity* – How do we maintain the authenticity of Islamic financial products if they are prone to non-standardization and frequent or unexpected change due to varied opinions?
- *Value Proposition and Distinctiveness* - What is the value proposition of *Sharī'ah* Compliant financial products, especially if they are open to new variant views and interpretation? What is fixed and what principles are open to interpretation? How can the industry maintain the distinctiveness of Islamic finance?
- *Qualification* - Who is qualified to challenge and on what basis can such objections be raised. Should it be left to specific, learned individuals, or rather, open to the public to challenge, or both. Is a proper method to make such a challenge (i.e., open public criticism, review board, escalation, or other?)



# WORKSHOP AGENDA

<b>8:30 a.m.</b>	<b>Reception and Coffee</b>
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- 9:00 a.m.** Welcome Remarks by Dr Nazim Ali
- 9:05 a.m.** Opening Remarks on behalf of SOAS, Dr. Jonathan Ercanbrack
- 9:10 a.m.** Introduction by Workshop Moderator, Professor Frank E. Vogel

## Part 1: Crypto Currencies and Islamic Finance: Characteristics

**9:20 a.m.** **Presentation:** A quick overview of the key issues facing Crypto-currencies and modern electronic currencies, and how this relates to *Shari'ah* Compliance as a focus.

**9:30 a.m.** **Participants' Views – Open Floor Discussion**

Opportunity for each participant to explain briefly their views on the following.  
Do you agree/disagree with the following statements and questions?

### **Framing Islamic Cryptos: Shari'ah Characteristics vs Realities**

- In determining if a type of currency is legal tender as per Shari'ah rules and norms:
- Must they possess all these features: “being a means of exchange, a unit of account, and a store of value”? Does it matter if they do not?
- Does it really matter if currencies do not possess the same characteristics of fiat money? Why would or should Shari'ah make a distinction?
- Is it necessary that currencies in Islam be fungible, portable, scarce, divisible, and durable (e.g., like metal backed currencies)?
- If the function of money is “to serve and facilitate exchange transactions”, would not Cryptos fall under that definition?
- How should we determine whether a new technological asset or means of exchange is Shari'ah compliant?
- What are the “necessary Shari'ah characteristics of a valid currency”?
- If the following characteristics as set out in the Prophet's (s) sayings have been met, would not therefore these conditions have been met by cryptos (do you agree or

disagree) *"Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt like for like and hand to hand. Whoever increases or asks for an increase in the counter value, that is Riba (interest) the receiver and the giver in it are alike (sinful)."* If these items differed (not of the same genus), then you may sell as you like if the exchange was done hand to hand". (Al-Bukhari 1985).

- Are all Cryptos alike – should we treat them as such – (e.g. Bitcoin, Altcoin and Tokens)? Some allow transactions without due diligence of the users or who is undertaking the transaction, some use ‘Smart Contracts’ such as Altcoins, which pays its Stakers (users) dividends to guarantee the value of its coin and compensate its Stakers for any loss they may suffer due to fluctuations in the value within certain limit, say e.g. up to 7%. Is this acceptable under Sharī‘ah?
- Do cryptos need to have any intrinsic value? Do you agree or disagree with the following: *“Crypto currencies must have an intrinsic value [such] as in dirhams or in dinars, or a nominal value granted by central banks or other monetary authorities. To achieve that, cryptocurrencies should be backed by real financial assets such as currency backed by sovereign, gold, services or real assets.”*
- Are crypto currencies an asset class on their own? If so, then what are their distinguishing characteristics compared to other financial assets?

**11:00 a.m.**

**Tea/Coffee Break**

**11:15 a.m.**     **Summary** – Moderator to provide a summary of all the points of view and frame questions. (10 mins.)

## **Part 2: Cryptos & Islamic Finance: Examining the Perspectives in Favor and Against Their Use**

**11:25 a.m.**     **Participants’ Views – Open Floor Discussion**

Examining the reasons Crypto currencies have strong opponents and proponents for them, this gives an opportunity for each participant to explain briefly their views on their concerns, applicability, success and/or short-comings in achieving Islamic finance goals. Do you agree/disagree with the following questions and statements?

### **Fatawa Against**

- Indonesian national council of shariah scholars (*Nahdlatul Ulama*) issued a *fatwa* banning all cryptos based on the prevailing "uncertainty," speculation, and potential harm to the society.



- In Egypt – issued the *Fatwa* No 88972 on Bitcoin & Other Digital Cryptocurrencies: That Crypto currency is not legitimate and legal, unless it meets the following criteria: that it is issued by the State, and enjoys guarantee and protection of the law; to reassure people, when dealing with them, to guarantee their rights and fulfill their obligations”
- “In November 2019, the Syrian Islamic Council (SIC) issued a *fatwā* declaring that cryptocurrencies “like bitcoin” were *ḥarām*, or forbidden. They viewed that “their decentralization and the lack of regulation regarding their circulation means they can be used for money laundering and other illegal activities. The SIC thus prohibits the use of cryptocurrencies as they currently stand—as high-risk ventures with unknown variables, fluctuating values, and a resemblance to gambling.”
- Further *Fatawa* like a Palestinian committee and an Indonesian council raised similar concerns on the following bases:
  - Uncertainty / *Gharar*
  - Wagering / betting / *Maysir* (“easy money by games of luck” y-s-r root in Arabic for easy)
  - Deception / *Ghubn*
  - Snowball, pyramid or ponzi schemes
  - State approval, if approved by state it takes “the same ruling as officially approved currency”
  - Not backed by Gold or fiat currency
  - Money laundering and illegal abuses

Why have some traditional ‘Islamic’ jurisdictions approved crypto currencies (e.g., some GCC states), but others have banned them (as above)?

#### Proponents of Crypto Currencies’ Views

- Are the differences in viewpoints largely due to conflict-of-interest reasons – the *fatawa* are based on and taken from the view point more in line with national interests and ensuring the stability and control of their own central banks, rather than, in the global or human interests of finding new means of exchange, even if contrary to states’ interests?
- Is prohibiting and banning really an option if the majority of the world [eventually] moves to acceptance - similar to the debates concern Bretton Woods and fiat money? the Islamic finance community will be ‘left out’ in the formation of this financial process.
- We fear what we do not understand – is this a fair assessment of the current concerns with Cryptos?
- Proponents of Crypto currencies cite their advantages of transparency, anonymity, cost effectiveness and speed, along with moving away from fractional reserve constraints. – How does one balance between the benefits (*masalih*) and advantages of new innovations versus their disadvantages and harm (*dharar*)?

- Many contributors favor that Cryptos must have high standards of transparency and accountability in the open ongoing process of digitization. Is this really the main concern of Cryptos, and if sufficiently addressed, would bring widespread acceptance?

#### **State Control vs Decentralization**

- In Sharī'ah, why does it matter if Cryptos are centralized or decentralized?
- Is not arguable that the decentralization of Cryptos may actually free Islamic finance from the very constraints faced from centralized global monetary rules and the creation of fiat money?
- Is not the remaking of the creation of money and means of exchange, for which it has been constrained by via fiat money, a good thing for Islamic finance?
- If not centralized or regulated by states, do Cryptos currencies create zakatable returns or not?
- If Crypto currencies are not national currencies issued by a country's central bank, who ultimately determines that they are Sharī'ah compliant – scholars, economists, regulators, technologists or the general public opinion?
- Are Crypto currencies like Bitcoin, if used as a monetary base, more closely aligned with the Islamic economic model?
- Can Crypto currencies help realize the ideals that Islamic finance originally aspired to, of risk sharing, less reliance on debt as a tool, etc.?
- Should Crypto developers be permitted to develop and act outside the *fiqh muamalat*. as national states have specific rights and obligations alongside public policy (*siyasah ash shariah*)?

**1:00 p.m.**

**Lunch**

**1:45 p.m.**

**Summary** - Moderator to provide a summary of all the main points of view.

### **Part 3: Cryptos & Islamic Finance: Sharī'ah Epistemological Perspectives**

**1:55 p.m.**

**Participants' Views - Open floor Discussion**



Opportunity for each participant to explain briefly their views on the following considerations on Crypto currencies' applicability to Islamic finance and *Sharī'ah* Compliance. Do you agree/disagree with the following questions and statements?

### The *Maqāṣid* and Cryptos

- Do you agree with this statement: “From a Sharī'ah perspective, a currency whose value is technical and not intrinsic has to be properly backed by real valuable assets or be supervised by a trustworthy financial authority, in order to protect people dealing in it from possible fraud and excessive fluctuations in its value.”?
- In determining Sharī'ah compliance, do we need to examine how this means of exchange is used (e.g., if used largely for crime, speculative trading, gambling, etc.)? How does this differ if at all with current fiat currencies in use?
- In determining Sharī'ah compliance, do we need to examine what level of environment impact this means of exchange has (e.g., high electricity consumption and its impact)? Why does it matter? How does it vary from fiat currencies and their negative externalities?
- In determining Sharī'ah compliance and the *maqāṣid*, do you agree these elements need to form part of any currency: “circulation, preservation, persistence, transparency and justice”
- In determining Sharī'ah compliance, do you agree that we should be concerned if it may cause exclusion and distributive justice (e.g., in favor of the more IT savvy, richer individuals as compared to the vast majority of the unbanked)?
- If Cryptos require fairly sophisticated knowledge of blockchain technology and similar, do Crypto currencies create more exclusion rather than inclusion, especially for the unbanked, for the poor, uneducated, etc.?
- Putting the technology to one side, should the Islamic finance community just treat the actual use of Cryptos no differently from that of traditional currencies?
- What should be the ‘measuring stick’ used to ensure *maqāṣid al-Sharī'ah* compliance?
- What if the global standards and objectives on Cryptos themselves change over time – how should IF adapt to and adopt such changes?

### Specific Sharī'ah Concerns

- From a Sharī'ah point of view, are Cryptos considered *Ma'al* (property), *Manfa'ah* (usufruct), *Haqq* (right), or *Dayn* (debt)? Many legal jurisdictions like the English courts have had difficulties in determining whether it meets all the criteria for defining it as property. What does the Sharī'ah say?

- What makes something characterized as too speculative or too volatile for Sharī'ah? Where does one draw the line between acceptable vs non-acceptable levels of speculation, volatility?
- Crypto currencies have seen of recent rapid fluctuations of value and questions over its reliability – this has triggered Shariah scholars to debate crypto uncertainty (*gharar*) and ignorance (*jahala*). How significant are these concerns? What are the triggers or thresholds for when something is or is not in violation of these Sharī'ah principles?
- Most opposed to Cryptos cite concerns about *gharar*, *maysir*, deception, ponzification (ponzi schemes), money laundering - But who determines? Who should determine? How much of a problem are these? If not the national state, who can regulate and control these concerns?
- Do these new technologies stretch and challenge our traditional definitions and understandings of *gharar* (uncertainty) and *maysir* (gambling)?
- Legal risks, technical risks, tax evasion, consumer risks, manipulation (by those who are more tech savvy on those less so) – are all some of the concerns contributors have highlighted. At what point does Sharī'ah deem something unacceptable because these risks become too high?
- How does the fragmentation of systematically belated guidance on topical issues by Sharī'ah authorities impact the credibility and strength of Sharī'ah as a legal system? Can it offer more than a moral compass with several options for "self-calibration"? Will there be a kind of "privatization" of Sharī'ah or a Sharī'ah à la carte?

#### **Part 4: *Crypto Currencies* – Scope for any Innovation in Islamic Finance?**

##### **3:15 p.m.      Open Floor Discussion**

Can the Islamic finance industry and Sharī'ah compliant structures adopt/enhance/build-upon any of the following list of existing Sharī'ah compliant or Islamic inspired Crypto currencies techniques (as listed in Michael Gassner's paper)? Any others not mentioned? Would there be appetite for such?

Do new innovations such as the following solve some of the concerns we have highlighted today:

The Central Bank Digital Currencies (CBDC) which has the potential for non-banks (individuals and firms) to hold direct accounts with the central banks or to transact directly with one another using the CBDC as a legal tender.

Is Bitcoin either a collectible or a dysfunctional currency as items are not priced in? What can be done to improve it from an Sharī'ah perspective?



Other suggested actions:

- research full reserve money and complementary currencies from an Islamic point of view, along with baskets of commodities as underlying index for a currency minimizing volatility, i.e. John Nash's Ideal Money approach as a starting point.
- Research central bank digital money and whether new policy tools like negative interest or progressive individual VAT provide good or bad
- Let us use the Fintech regulation to create a balanced financing approach with equal level playing field for debt and equity, so that economies run on a sustainable and resilient financial basis.
- Lower the thresholds to obtain funding and benefit from SMEs as investor

### **Part 5: Action Plan and Concluding Remarks**

#### **4:00 p.m. Summary and Open Floor Discussion**

Participants to discuss—and, where possible, reach consensus on—points or issues within areas to be raised by the Moderator.

#### **4:30 p.m. Discussion on Future Workshop and Action Plan** – Participants to assist the Moderator in drafting the workshop summary including suggested solutions.

#### **5:00 p.m. End of Workshop**







