



THE LONDON SCHOOL
OF ECONOMICS AND
POLITICAL SCIENCE ■

جامعة حمد بن خليفة
HAMAD BIN KHALIFA UNIVERSITY
كلية الدراسات الإسلامية
College of Islamic Studies



Workshop on

FINTECH AND ISLAMIC FINANCE:

*Applying Hiyal & Makharij and other
Islamic Principles*

**Thursday, February 23, 2017
8:30a.m--5:00p.m.**

London School of Economics

Box Room, 5th Floor, Tower #3

London, United Kingdom WC2A 2AE

Directions: <http://www.lse.ac.uk/mapsAndDirections/campusMap.pdf>

OVERVIEW

In the last London School of Economics (LSE) and Hamad Bin Khalifa University (HBKU) workshop in 2016, the 10th in the series of these workshops, participants discussed Islamic Infrastructure Finance and the Sustainable Development Goals. To continue to enhance the ongoing discussions amongst Islamic economists, practitioners, lawyers and *Shari'ah* experts, this year the participants decided “Fintech and Islamic Finance: Applying *Hiyal & Makharij* and other Islamic Principles”, as the central theme of LSE and HBKU workshop. It is a combination of the most preferred options selected by our participants. Within this context, the focus of the workshop will be to understand and review how developments and progress of technology in financial activities matters when it comes to *Shari'ah* ideals.

The format remains the same; participants come to the Workshop having shared their comments and thoughts in advance. This allows the Moderator to start the workshop focusing the core issues in a structured manner and without worrying much about the mundane aspects. The Workshop Agenda is drafted in the light of comments received from the participants and with the discussion amongst the core team of Workshop volunteers. We strive our best to remain focused on the key issues from all important stakeholders point of view.

In its 11th year now, this is a unique annual event with little parallel in the Islamic finance industry. In this series of annual workshops, for a select group of established *Shari'ah* scholars, economists, legal luminaries, 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 the key stakeholders.

INTRODUCTION

Fintech's current pace of innovation and structuring has unearthed (and will continue to unearth) a number of unsettled specific *Shari'ah* compliance conundrums and challenges. Furthermore, even basic legal concepts governing Islamic contractual rights and obligations are being put to the test.

As a consequence of these challenges, Islamic finance is frequently required to choose between the enforcement of *Shari'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/or market financial challenges. Moreover, many of the drivers for these challenges are in order to replicate, to the extent possible, structures similar to those used in conventional financing, all in order to retain market appetite and the desired credit ratings.

This workshop is not meant to be a review of contemporary Fintech technology, products and processes, but rather focus on the *Shari'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 this chosen contemporary area of Islamic finance, i.e., Fintech. Therefore, it is not a prerequisite for the participants to have the knowledge of Fintech application and processes.

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

OBJECTIVES

We would like to examine the workshop theme from the following angles:

- To understand and to review Fintech as currently practiced and applied to Islamic finance, the relevance of achieving *Shari'ah* compliance.
- *Shari'ah* Compliance - What are some of the current *Shari'ah* issues in Fintech and what needs to be looked into to ensure continued or even improved *Shari'ah* compliance and the evolution of Islamic finance.
- *Fiqh & Ijtihad* – How to apply the best use of Islamic *Fiqhi* tools (*Hiyal & Markharij* and *Dhara'i*) to Fintech driven products, services and contracts. The question is should we wait for issues to emerge and mature or should we be proactive and be prepared with a suitable and timely response.
- *Maslahah* Determination – How can we continue to apply *maqāṣid al-shari'ah* and agree on the 'ideal' *maslahah* for new technologies, especially those that challenge existing structures and methods? How to determine and deal with disagreements on *maslahah*? [i.e., Bitcoin is challenging our understanding of what is money and how it is derived] Should a "*maqasidic* index" be developed for Fintech?

WORKSHOP AGENDA

| | |
|------------------|-----------------------------|
| 8:30 a.m. | Reception and Coffee |
|------------------|-----------------------------|

9:00 a.m. Opening Remarks on behalf of London School of Economics & Hamad Bin Khalifa University.

9:10 a.m. Introduction by Workshop Moderator, Professor Frank E. Vogel

| |
|---|
| Part 1: Islamic Fintech - Differentiating it from Conventional |
|---|

9:25 a.m. **Presentation:** An Overview of Fintech in Islamic Finance and the Key Issues Faced, by Professor Volker Nienhaus

9:40 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:

- **Differentiation:** There are no real differences in either substance or outcome between conventional Fintech and Islamic Fintech; they are simply facilitating tools. Moreover, other than being possibly contractually *Shari'ah*-compliant, Islamic Fintech has no added benefits or enhancements of any kind over conventional Fintech forms of financing.
- **Preference:** Many equity-based tools developed and certified by Islamic Finance Institutions (IFIs) already exist which can be used for general financing. Given their certified compliance, these should always be preferred over just any new Fintech financing application.
- **Limitations:** Islamic Fintech structures are limited in their application to the wider public and are subject to changes in technology. Key inhibitors to their use: Limited appetite; Limited sources of funding; Costs; Structuring considerations; Tax, and other.
- **Ensuring Compliance:** As Islamic Fintech is focused on an increasingly tech savvy populace and more on efficiencies of scale, it will drown-out the calls for ensuring *Shari'ah* compliance and its integrity are maintained with each new technological advance.

| | |
|-------------------|-------------------------|
| 11:00 a.m. | Tea/Coffee Break |
|-------------------|-------------------------|

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

| |
|--|
| Part 2: Applying the <i>Ahkam</i> or <i>Hiyal</i> & <i>Makharij</i> in the Context of Islamic Fintech |
|--|

11:25 a.m. **Presentation on an Overview of the Key Issues Faced in Islamic Fintech** (10 mins.)

11:35 a.m. **Participants' Views – Open Floor Discussion**

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

- ***Hiyal* or *Makharij*** – What do we mean by each of them? Do we apply the *Ahkam*, or rather, *hiyal* in order to ensure *Shari'ah*-compliance and drive results in Fintech?
- **Drivers:** Is Islamic Fintech largely *Hiyal* and *Maqasid* or *Akham* derived and driven?
- ***Hiyal*:** There has been too much reliance on *hiyal* (legal artifice) to create *daman* (contractual liability) in Islamic finance. The effects of additional agreements and obligations on the customer often seem to end up effectively negating the *daman*.
- **Contractual Over-Complexity** – The use of multiple contracts as a form of *hiyal* to avoid non-permissible financial structures may suffer from technological successes, especially for Fintech.

| | |
|------------------|--------------|
| 1:00 p.m. | Lunch |
|------------------|--------------|

1:30 p.m. **Summary** - Moderator to provide a summary of all the main points of view and frame questions.

Part 3: Fintech – Determination of *Maslahah* in Fintech

1:40 p.m. Participants' Views - Open floor Discussion

Opportunity for each participant to explain briefly their views on the following issues with Islamic Fintech. Do you agree/disagree with the following statements:

- **Determining and measuring "success" in Islamic Fintech - How do you determine or classify the "*maslahah*"?** Would you agree that this is met when the financing mobilizes long term resources under consideration of the public good, while observing best in class standards?
- ***Maslahah*.** Who determines whether a specific Fintech technology has *maṣlaḥah* to the society as inspired by the *maqāṣid al-shari‘ah*? Are there any thresholds? Does just any *maṣlaḥah* make a financing viable - or - is there a minimum threshold level? What if there are *mafasadah* (harms) in the same project that has some *maṣlaḥah* - who should say it should or should not proceed? Scholars and/or practitioners and/or regulators? What if there is a disagreement on what is or is not a sufficient *maṣlaḥah*?
- **Islamic Finance Idealism:** "Socioeconomic idealism will only prevail over pure legalism in Islamic finance, when we establish meaningful regulation and taxation. Else legalism continues to dominate." Is this statement still correct as of today or has the situation changed?
- ***Maqasid*:** Are there any real differences between the ideal *maqāṣid al-shari‘ah* and those used in Fintech? Islamic structures cannot for the foreseeable future balance between economic advancement, social equity and environmental sustainability. They add no incremental benefits to fighting corruption and promoting good governance, implementing environmental laws, fostering public education and changing regulation and taxation to promote equity and limit debt growth. Would you agree? If not, what benefits are there?
- **Harmonization of *shari‘ah* standards on cross border and constantly evolving Fintech:** For Fintech, is harmonization of

juristic opinion, especially in cross-border transactions, essential to further develop the Islamic finance industry and to reduce disputes? Are any of these really needed: a) Cross jurisdiction regulator cooperation; b) standardization, i.e., developing shari‘ah standards in an international body; and c) Harmonization of shari‘ah fatwa?

- **Views on some of the working initiatives:**
 - Malaysia's initiative to establish the “Harmonisation of Law Committee” in 2010, which consists of law makers, *shari‘ah* scholars, academicians, Islamic finance practitioners, to identify the conflicting laws and suggest how harmonisation can be attempted.
 - Can the Malaysia’s “Financial Technology Regulatory Sandbox Framework 2016” serve as a model for the regulation of Islamic Fintech?
 - Should a "maqasidic index" be developed for Fintech?

Part 4: Exploring the Way Forward for Islamic Fintech

3:00 p.m. Summary and Open Floor Discussion

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

4:00 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