

Program of Events

Sixth Harvard University Forum on Islamic Finance

Islamic Finance:
Current Legal and Regulatory Issues

Harvard Law School
Harvard University
Cambridge, Massachusetts

May 8-9, 2004

ISLAMIC FINANCE PROJECT

The Islamic Finance Project (IFP) is the continuation of the Harvard Islamic Finance Information Program (HIFIP), which was established at Harvard's Center for Middle Eastern Studies in 1995. IFP, now part of the Islamic Legal Studies Program (ILSP) at Harvard Law School, aims to study the field of Islamic finance from the legal and shari'a points of view by analyzing contemporary scholarship, inducing collaboration among scholars within and outside the Muslim world, and increasing interaction between theory and practice in Islamic finance.

Drawing on resources in the fields of law, economics, business, and Islamic studies, IFP compiles specialized bibliographies with the primary goal of acting as a point of convergence for information about Islamic finance and law for academics, researchers, and industry professionals, not only to serve researchers but also to promote dialogue for better understanding of the field.

Over the last ten years, the subject of Islamic finance has attracted growing interest among academics, students and professionals around the globe. The Islamic Investment Study, conducted by Professor Frank E. Vogel at the Law School and Professor Samuel Hayes, III, at the Business School culminated in the 1998 publication of Vogel and Hayes' *Islamic Law and Finance: Religion, Risk, and Return*. This landmark study, which has been well received by scholars and students alike, underscores Harvard's leadership role in the field. IFP, through its wide array of activities, seeks to build upon these contributions. At the Law School, IFP is poised to offer the field of Islamic finance a much needed academic thrust.

IFP seeks to develop an increased awareness and understanding of Islamic finance both within the Muslim world and in the West. To this end, it sponsors seminars, lectures, and forums on topics relevant to Islamic finance. Most noteworthy is the annual Harvard University Forum on Islamic Finance, which has been organized and hosted at Harvard since 1997. IFP publishes papers from each conference, making an original contribution to the growing scholarship in this field.

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ISLAMIC LEGAL STUDIES PROGRAM

Harvard Law School's Islamic Legal Studies Program (ILSP), established in 1991, seeks to advance knowledge and understanding of Islamic law. It is dedicated to achieving excellence in the study of Islamic law through objective and comparative methods, and fosters an atmosphere of open inquiry that embraces many perspectives, both Muslim and non-Muslim. It seeks to promote a deep appreciation of Islamic law as one of the world's major legal systems.

The main focus of work at the Program is on Islamic law in the contemporary world. This focus accommodates the many interests and disciplines that contribute to the study of Islamic law, including the study of its writings and history.

The Program supports the needs and interests of scholars and students from all parts of the globe and endeavors to mirror the universality of Islam itself. It seeks the active participation of scholars and practitioners from outside the University, particularly from the Muslim world. The Program does so through visiting professorships, research positions, lectures, conferences and publications. It provides fellowships and specialized programs for students at Harvard Law School, especially for individuals from the Muslim world. The Program fosters Western scholarship in Islamic law by supporting young scholars, and it encourages innovative scholarship across many disciplines.

The Islamic Legal Studies Program collaborates with other institutions and individuals at Harvard University to advance the study of Islamic law, Islam, and the Muslim world. In addition, it has established and will continue to establish close relationships with scholars and institutions abroad.

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Sponsored and hosted by

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CONTENTS

Introduction.....	7
Forum Schedule.....	9
Abstracts of Papers.....	15
Profiles of Speakers and Moderators.....	23

INTRODUCTION

On behalf of the Islamic Finance Project (IFP) at the Islamic Legal Studies Program (ILSP), I would like to welcome you to the Sixth Harvard University Forum on Islamic Finance. This will be the first Forum held since the Harvard Islamic Finance Information Program (HIFIP) was transferred to Harvard Law School from Harvard's Center for Middle Eastern Studies. This shift will allow us to bring a greater academic balance to our activities in the burgeoning interdisciplinary field of Islamic finance.

The institutional shift at IFP comes at a time when the field of Islamic finance itself is witnessing widespread and momentous changes. Important new institutions have been founded in the past year, most notably the Islamic Financial Services Board in Malaysia, which is supervised by fourteen regulatory and supervisory agencies in addition to the International Monetary Fund and the World Bank. The regulatory and legal landscape, too, has witnessed similarly important developments, such as the new laws for financial institutions promulgated in Lebanon and Kuwait. The Sixth Forum will reflect these developments, particularly in exploring current legal and regulatory issues in Islamic finance. These issues are at the forefront of developments in the field, and we hope that the Forum, with its unique blend of academic scholarship and industry experience, will once again provide a critical and objective examination of such issues.

The Forum maintains the diversity of topics and speakers it has featured in previous years. IFP will continue to bring to fore current research on shari'a issues in Islamic finance by prominent scholars. Like previous Forums, papers this year on current legal issues and challenges will examine not only deal structures and instruments, but also contractual issues, conflict of laws, and the interaction of legal systems. A wide range of regulatory issues and challenges in Islamic finance that are shaping the field will be explored. A session on corporate governance in Islamic finance, particularly in light of Basel II, will examine a highly relevant topic. IFP is proud to encourage young researchers by introducing two sessions on current graduate work in Islamic finance to the Forum.

IFP is pleased to announce the publication of the Proceedings of the Fifth Harvard University Forum on Islamic Finance, held in 2002. The Proceedings include more than two dozen selected papers from the Fifth Forum on Islamic economics, the shari'a, and Islamic financial business models. They are complemented by introductions from prominent scholars in the field and reports on other sessions of the Fifth Forum. These are snapshots of current thought and work in the field. Selected papers from the Sixth Forum are currently being compiled for future publication.

We would like to thank the many individuals and organizations that have made this event possible: the Forum speakers, whose contributions to the field have made holding this Forum worthwhile; the faculty and staff at ILSP, of which IFP is a part and from which IFP draws support; the student volunteers from various Harvard schools without whom the logistical challenges of this Forum would be insurmountable; and of course, yourselves, the attendees. It is your continued interest in the field of Islamic finance that creates ground for the exciting exchange of ideas and perspectives.

S. Nazim Ali
Director
Islamic Finance Project

SIXTH HARVARD UNIVERSITY FORUM ON ISLAMIC FINANCE
Islamic Finance: Current Legal and Regulatory Issues

Harvard Law School
Austin Hall

Saturday, May 8, 2004

7:30 a.m. REGISTRATION Austin Hall Lobby

9:00 a.m. OPENING SESSION Ames Courtroom

FORUM CHAIR'S WELCOME

Frank E. Vogel (Director, Islamic Legal Studies Program, Harvard Law School)

KEYNOTE ADDRESS

John B. Taylor (Under Secretary for International Affairs, U.S. Dept. of the Treasury)

Building Foundations to Support Islamic Finance

SIXTH FORUM ADDRESS

Ahmad Mohamed Ali (President, Islamic Development Bank)

Development of the Islamic Financial Industry and the Need for Regulation and Supervision

10:00 a.m. REGULATORY CHALLENGES TO ISLAMIC FINANCE Ames Courtroom

Moderator: Samuel L. Hayes, III (Harvard Business School)

Mohammed E. Al-Shroogi (Citi Islamic Investment Bank)

Sukuks: Legal and Regulatory Challenges

Iqbal A. Khan (HSBC Amanah Finance)

The Relevance of Narrow Banking to Islamic Finance

Abdulkader S. Thomas (Shape Financial Corporation)

Regulating Islamic Banking in the United States

M. Nejatullah Siddiqi (Independent Researcher)

The Social Dynamics of the Debate on Default in Payment and the Sale of Debt

Pervez Said (State Bank of Pakistan)

A Market-Based Regulatory Framework for Islamic Banking: The Experience of Pakistan

Noon LUNCH BREAK Austin Hall Lobby

1:30 p.m. LEGAL TRENDS AND NEW CHALLENGES Ames Courtroom

Moderator: Frank E. Vogel (Harvard Law School)

Kilian Bälz (Gleiss Lutz)

Islamic Financing Transactions in European Courts

Michael J.T. McMillen (King & Spalding)

Structuring Securitized Shari'a-Compliant Real Estate Acquisition Financing

Husam El-Khatib (Royal Bank of Scotland)

Enforcing Islamic Financial Contracts through Courts of Arbitration

Umar F. Moghul (Ahmed & Moghul LLP)

Understanding Laws and Discovering Opportunities: Commercial Lending Approaches to Private Equity

4:00 p.m. BREAK Austin Hall Lobby

**4:30 p.m. PARALLEL SESSION A:
NEW GRADUATE RESEARCH I Austin Hall, East Room**

Moderator: Ibrahim Warde (Massachusetts Institute of Technology)

Walid Hegazy (Fulbright & Jaworski)

Fatwas and the Fate of Contemporary Islamic Finance

Kristin Smith (JFK School of Government)

Islamic Banking and the Politics of International Financial Harmonization

Nicolas Hardy (Ecole des Hautes Études en Sciences Sociales)

Shari'a Boards: A Gateway between Legal Systems

Abdur-Rahman Syed (University of Chicago)

Toward a Philosophical Justification of Islamic Finance

**4:30 p.m. PARALLEL SESSION B:
NEW GRADUATE RESEARCH II Austin Hall, West Room**

Moderator: Fahim Khan (IRTI, Islamic Development Bank)

Aamir A. Rehman (Harvard Business School)

Shari'a-Compliant Endowments in the United States: Commercial and Legal Challenges

Mansoor Shakil (Harvard Law School)

Risk Analysis of Islamic Banking and the Impact of Basel II on Its Future

Tarik Dahir (Columbia Business School)

An Analysis of the Emergence of the "Shari'a-Compliant" Islamic Hedge Fund

Abu Umar Faruq Ahmad (University of Western Sydney)

Islamic Banking in Bangladesh: Legal and Regulatory Issues

6:30 p.m. BANQUET RECEPTION *by invitation only* Pound Hall, Ropes Gray Room

6:30 p.m. Reception

7:00 p.m. Banquet

BANQUET ADDRESS

Nurcholish Madjid (Rector, Universitas Paramadina)
The Social Sciences of Islamic Finance: Morality and Ethics

9:00 p.m. CLOSE OF DAY ONE

Sunday, May 9, 2004

8:30 a.m. INTRODUCTORY REMARKS

Ames Courtroom

Samuel L. Hayes, III (Professor Emeritus, Harvard Business School)

Ahmad M. Jachi (First Vice Governor, Central Bank of Lebanon)
Toward a Stable Islamic Financial System

**9:00 a.m. FINANCING, REGULATORY AND CONTRACTUAL
ISSUES IN ISLAMIC FINANCE**

Ames Courtroom

Moderator: Samuel L. Hayes, III (Harvard Business School)

Nicholas H.D. Foster (University of London, SOAS)
Owing and Owning in Islamic and Western Law

Muhammad Imran A. Usmani (Meezan Bank)
Treasury Operations of Islamic Banks

Mohamed Rafe Md. Haneef (HSBC Amanah Finance)
*Recent Trends and Innovations in Islamic Debt Securities: The Prospects for Islamic
Profit-and-Loss Sharing Securities*

M. Kabir Hassan and M.A.M. Chowdhury (University of New Orleans)
Islamic Banking Regulation in Light of Basel II

11:00 a.m. BREAK

Austin Hall Lobby

11:30 a.m. REVISITING SHARI'A ISSUES

Ames Courtroom

Moderator: Frank E. Vogel (Harvard Law School)

Mahmoud A. El-Gamal (Rice University)
The Limits of Shari'a Arbitrage and the Unrealized Potential of Islamic Finance

Mohammed A. Elgari (King Abdulaziz University)
*The Contribution of Contemporary Fiqh to Creating Tools for Risk Management in
Islamic Finance*

Nizam Yaquby (Shari'a Supervisor)
The Debate about Tawarruq in Islamic Finance

Yusuf Talal DeLorenzo (Shari'a Supervisor)
Reviving Relevance: The Classics and Modern Finance

M. Fahim Khan and Layachi Feddad (IRTI, Islamic Development Bank)
*The Need for Standards for Shari'a Supervision and for Shari'a Supervisory Boards
in the Context of Corporate Governance*

1:30 p.m. LUNCH BREAK Austin Hall Lobby

**2:30 p.m. CORPORATE GOVERNANCE AND REGULATION
IN ISLAMIC FINANCIAL INSTITUTIONS** Ames Courtroom

Moderator: M. Nejatullah Siddiqi (Independent Researcher)

K. Salman Younis (Kuwait Finance House)

Islamic Financial Institutions and Risk Management

Ibrahim Warde (Massachusetts Institute of Technology)

Corporate Governance and the Islamic Moral Hazard

Michael S. Gassner (International Real Estate Agent)

The Regulatory Framework of Germany: Opportunities for Structuring Shari'a-Compliant Financial Products

Saiful A. Rosly, M.M. Sanusi, and N.M. Yasin (International Islamic University Malaysia)

Does a Shari'a-Compliant Product Automatically Result in a Valid Contract under the Shari'a? A Study of the Legal Documentation of Islamic Financial Products in Malaysia

4.30 p.m. CLOSING REMARKS Ames Courtroom

S. Nazim Ali (Director, Islamic Finance Project, ILSP, Harvard Law School)

Abstracts of Papers

ISLAMIC BANKING IN BANGLADESH: LEGAL AND REGULATORY ISSUES

Ahmad, Abu Umar Faruq

This study offers an introduction to the Islamic banking system in Bangladesh, focusing on the legal and regulatory issues facing this industry. It examines the development of the legal framework within which Islamic banks operate. It also addresses the theoretical and operational differences between Islamic banks and conventional banks. The study examines the prospects of the Islamic banking industry in Bangladesh and offers insights as to how these prospects may be improved. In a comparative analysis between Islamic banks and conventional banks, the study finds that Islamic banks in Bangladesh face legal constraints that limit their ability to compete with conventional banks: the laws, regulations, and regulatory bodies are designed to facilitate interest-based banking. Thus, Islamic banks in Bangladesh should have their own banking acts to provide legal support to the parties concerned.

DEVELOPMENT OF THE ISLAMIC FINANCIAL INDUSTRY AND THE NEED FOR REGULATION AND SUPERVISION

Ali, Ahmad Mohamed

As regulatory frameworks are reviewed under the purview of Basel II, Islamic financial institutions are developing risk management systems and enhancing transparency and disclosures. In this background, effective supervision of Islamic financial institutions requires formulation and adaptation of standards in the areas of risk management, disclosure and transparency, accounting and auditing, internal control systems and corporate governance that can match international standards yet are able to cope with the special needs of the Islamic financial industry. The Islamic Financial Services Board has already initiated work on preparing two standards, namely risk management and capital adequacy. It will soon start work on two more standards for the industry, namely, corporate governance and transparency and disclosures. The Accounting and Auditing Organization for Islamic Financial Institutions has been preparing best practice financial reporting standards. The Islamic Development Bank will continue to support capacity building for the regulation and supervision of the Islamic financial industry. There is also an increasing need to coordinate the work of the newly established institutions to create synergies and to avoid duplication of efforts.

SUKUKS: LEGAL AND REGULATORY CHALLENGES

Al-Shroogi, Mohammad E.

Sukuks represent the fastest growing segment of products in Islamic Finance and are proving to be a catalyst for bridging the gap between conventional and Islamic capital markets. The documentation for international *sukuks* is typically governed by English law, but certain key contracts between the local issuer special purpose vehicle and the local lessor/lessee are required to be governed by local law. In some jurisdictions, established English Law concepts that are also integral from a shari'a perspective are not recognized and, therefore, require alternative structuring solutions to ensure enforceability while maintaining shari'a compliance. Parliamentary approval to raise funding through *sukuks* is frequently required by sovereign and quasi-sovereign issuers and in some instances new laws also need to be passed in order to facilitate *sukuk* structures. Governments can lead the corporate sector in tapping the *sukuk* market by acting as first time issuers in their respective countries, thereby also addressing any shortfalls in the domestic legal and regulatory framework.

ISLAMIC FINANCING TRANSACTIONS IN EUROPEAN COURTS

Bälz, Kilian

This paper explores questions arising in connection with the enforcement of Islamic financing transactions in European courts. The first part of this paper analyzes the landmark decisions of the London High Court in *IIC vs. Symphony Gems* and, more recently, of the Court of Appeals in *Shamil Bank of Bahrain vs. Beximco*. Both are concerned with *murabaha* transactions governed by English law. The second part discusses the findings of the English court rulings from a comparative perspective, both in light of international conventions and with respect to the continental European civil law approach, paying particular attention to Germany. The third part discusses the implications of these developments for the structuring and drafting of Islamic financing agreements. Lastly, this study examines the possibility of drafting agreements that are both enforceable under English or German law and are simultaneously shari'a-compliant.

REVIVING RELEVANCE: THE CLASSICS AND MODERN FINANCE

DeLorenzo, Yusuf Talal

Abu Hamid Al-Ghazali's *Book of the Lawful and the Unlawful* discusses the fundamentals of finance in Islam. The lawful and the unlawful of which he speaks in this volume are the legal categorizations of the ways in which people make their living, enter into trade and exchange with others, and acquire and manage their wealth. It is for this reason that this volume is as vital to Muslims today as it was when the book was written nearly a thousand years ago. Scholarship on works from the classical period may contribute in significant ways to the understanding of finance from the perspective of the shari'a and, in turn, to the development of modern Islamic Finance.

AN ANALYSIS OF THE EMERGENCE OF THE "SHARI'A-COMPLIANT" HEDGE FUND

Dahir, Tarik

This study is an examination of the most recent developments in the creation of Islamic hedge funds and the various challenges faced by Islamic financial institutions in the structuring and distribution of such complex investment vehicles. The study begins by identifying the key factors that led to the explosive growth of conventional hedge funds witnessed over the past decade, as well as the various motives behind recent attempts to establish similarly structured alternative investment vehicles that are in compliance with shari'a guidelines. The limitations imposed on Islamic hedge funds—vis-à-vis their conventional counterparts—is investigated and the implications of these restrictions are explored. The use of the "*Salam-sale*" contract as a mechanism for short-selling is explained in depth. Finally, various "shari'a-compliant" hedge funds currently in existence or near launch are examined.

THE LIMITS OF SHARI'A ARBITRAGE AND THE UNREALIZED POTENTIAL OF ISLAMIC FINANCE

El-Gamal, Mahmoud A.

To date, Islamic finance has focused on replicating conventional financial products that are deemed forbidden based on classical juristic interpretations of the canonical Islamic texts. The first part of this paper illustrates the two main components of "shari'a arbitrage" that allow this replication: (1) the degree of separation between the "Islamic" transaction and its underlying conventional counterpart, and (2) the dual characterization of the "Islamic" instrument's financial structure, one for financial regulators and another for shari'a scholars. The resulting financial product is an inefficient replication of the underlying conventional product, due to the requirements of the degree of separation, fees to lawyers composing the two characterizations, and fees to shari'a scholars who authorize the use of the Islamic brand-name. The development of a competitive Islamic finance requires a paradigm shift. A careful legal analysis of canonical Islamic texts and classical jurisprudence is needed, using contemporary methods of "economic analysis of the law". The need for this new jurisprudence is illustrated with examples from contemporary Islamic finance. Without it, Islamic Finance may cease to exist, as its captive market discovers that the combination of centuries old jurisprudence and shari'a arbitrage produce financial products that are not only inefficient, but also ones that subvert the intent of the Islamic legislator.

THE CONTRIBUTION OF CONTEMPORARY *FIQH* TO CREATING TOOLS FOR RISK MANAGEMENT IN ISLAMIC FINANCE

Elgari, Mohamed A.

It is a forgone conclusion that, without efficient and effective tools for risk management, no banking system can survive, let alone flourish and grow. Islamic banking is no exception. Beyond the fact that any investment decision must include the measurement and management of risk, banks face an added difficulty because almost all their sources of funds are short term but are used for longer maturity financing. In the last few years Islamic banking has seen exceptional growth, partly due to innovation, especially in the realm of risk management. This paper tries to survey and shed light on the contribution of contemporary *fukah* in helping Islamic bankers in the process of developing innovative financial tools.

ENFORCING ISLAMIC FINANCIAL CONTRACTS THROUGH COURTS OF ARBITRATION

El-Khatib, Husam

How do we create contracts that simultaneously apply both shari'a law and conventional common law? The recent U.K. Court of Appeal decision *Beximco & Ors v. Shamil Bank of Bahrain* highlights the extreme difficulty of interpreting and enforcing contracts that subject themselves to both legal systems. This paper seeks to explore an alternative solution to this problem. The paper will examine (1) why conventional commercial courts are ineffective for the interpretation and enforcement of Islamic financial contracts; (2) the alternative legal systems available for enforcement; (3) the roles of mediation, expert appraisal, and arbitration are about; (4) why mediation and

arbitration are the best forms for both dispute resolution and the enforcement of international Islamic financial contracts; and (5) why a commercial arbitration tribunal would advance and encourage the use of shari'a in Islamic financial contracts as well as provide a platform to review the legal decisions of the various independent shari'a boards.

OWING AND OWNING IN ISLAMIC AND WESTERN LAW

Foster, Nicholas H. D.

This paper relates to the area of ownership rights. Civil and common law systems differ in some fundamental ways (and those differences are of considerable topical importance in today's globalized legal environment), but they do exhibit certain common characteristics, one of which is that they have arrived at a position in which rights, not things, are regarded as the essential elements of property, and in which all kinds of things are capable of being the subject of property rights. This position was reached in the world of civil law largely through the activities of scholars. In the world of common law, various factors and processes were involved, one of which was the liberal attitude of the Court of Chancery toward the transfer of rights, blurring the Roman Law distinction between owing and owning, thus creating a profound difference between civil law and common law. Islamic law, however, did not reach the same conclusion as either of the Western traditions. Ideas of ownership are expressed through ideas other than those of rights. Transfers of rights are, with only one restricted exception, not possible, thus apparently closing the door on the idea of intangible property. And even physical property is restricted, with certain categories of assets excluded from the definition of *mal* (property). The paper compares the different approaches of the three traditions, discussing the possible reasons for and consequences of the differences. With respect to the consequences, particular attention is paid to financial transactions and Islamic Finance.

THE REGULATORY FRAMEWORK OF GERMANY: OPPORTUNITIES FOR STRUCTURING SHARI'A-COMPLIANT FINANCIAL PRODUCTS

Gassner, Michael S.

This paper presents the basic requirements of the German credit act regarding banking licenses. Furthermore, it elaborates the opportunities by using other non bank financial institutions, such as leasing companies and closed end funds, as potential alternatives to a fully scaled bank. The successful start of a shari'a-compliant non-bank entity could locally validate the concept of Islamic banking, thus making it easier for an Islamic bank to be eventually licensed. Such an Islamic bank could handle various Islamic deals smoothly in line with the traditional Universal Banking system in Germany. In addition to these key issues, the paper also discusses the potential market size of Islamic banking in Germany.

RECENT TRENDS AND INNOVATIONS IN ISLAMIC DEBT SECURITIES: THE PROSPECTS FOR ISLAMIC PROFIT-AND-LOSS SHARING SECURITIES

Haneef, Mohamed Rafe Md.

The paper will trace the origin of Islamic financial instruments. The paper will then examine the key products currently available in the Islamic finance market such as *bai' bithaman ajal* bonds in Malaysia (which are based on *murabaha* and *bai' al-dayn* principles) and *sukuk al-salam* in Bahrain. The study delves into each product's structure, the salient features, shari'a basis, legal aspects, major shari'a concerns, current market size, and future prospects. The industry of Islamic finance is deeply focused on debt-based solutions built on conventional interest rate benchmarks but fails to sufficiently promote any profit-sharing based solutions based on *mudaraba* or *musharaka*. The study analyzes the reasons behind the lack of profit-sharing based solutions in the Islamic finance industry, highlighting relevant issues and hurdles.

SHARI'A BOARDS: A GATEWAY BETWEEN LEGAL SYSTEMS

Hardy, Nicolas

Islamic banks are commonly defined as companies practicing banking activities in compliance with the norms and principles of the Islamic shari'a. While focusing on the distinctive feature of Islamic banking, as opposed to conventional banking, this definition tends to ignore the fact that an Islamic bank also complies, like any other bank, with the norms enacted by the state authority to regulate the banking sector. In this respect, Islamic finance represents an interesting case of legal pluralism. What are, therefore, the mechanisms that allow the articulation of state law and shari'a law to create the legal framework of Islamic finance? Based on an examination of banking laws in force in the Middle East, as well as the standards of the AAOIFI concerning shari'a supervision, this paper describes how Shari'a Supervisory Boards, duly authorized to determine valid applicable norms, are functioning ultimately as a gateway between legal systems.

ISLAMIC BANKING REGULATION IN LIGHT OF BASEL II

Hassan, M. Kabir & M. A. Mannan Chowdhury

The objective of this paper is to answer the question of whether current regulatory standards and supervisory framework are adequate to ensure the viability, strength, and continued expansion of Islamic financial institutions. This is an appropriate time to consider the regulatory environment within Islamic institutions because of the reemergence of Islamic banking and because regulators around the globe are now considering the implications of a recently issued Basel II banking regulation. This new framework is based on minimum capital requirements, a supervisory review process, and the effective use of market discipline. The still diverse views on Islamic banking operations among the regulatory agencies in different countries amplify the difficulty in assessing the overall performance of international Islamic banks. In light of increased financial innovation and the diversity of instruments offered in Islamic finance, the need to improve the transparency of bank operations is particularly relevant for Islamic banks. Governance of Islamic banks is made more complex by the need for these banks to meet a set of ethical and financial standards that are defined by the shari'a and by the nature of the financial contracts that are used by banks to mobilize deposits. Effective transparency in this area will greatly enhance the credibility of Islamic banks and reinforce the confidence of depositors and investors.

FATWAS AND THE FATE OF CONTEMPORARY ISLAMIC FINANCE

Hegazy, Walid

This paper examines three problematic aspects of relying on fatwas (legal opinions issued by qualified Islamic scholars or institutions) as the main source of legislation in contemporary Islamic financial markets. First, Islamic finance fatwas tend to focus on the permissibility of specific financial transactions without subjecting such transactions to the higher test of *maqasid* (objectives) of shari'a. Islamic finance *muftis* often do not address the question of whether the potential adoption of their fatwas by a large number of market participants adheres to the objectives of shari'a. Second, most Islamic finance fatwas are issued by *muftis* who are employed, in one form or another, by the institutions seeking their fatwas. The phenomenon of the hired *mufti* (*al mufti al-'ajir*) calls into question the independence of Islamic finance *muftis*. Third, many Islamic finance *muftis* employ controversial legal techniques such as *hila* (legal stratagem) and *talfiq* (selective combination of prior legal opinions to achieve a desired legal position not allowed by any of the earlier schools or scholars) to circumvent the prohibitions of *riba*, *gharar*, and rules of *daman* (liability for the risk of loss).

THE RELEVANCE OF NARROW BANKING TO ISLAMIC FINANCE

Khan, Iqbal Ahmad

The concept of fractional reserve banking that seems so central to modern banking requires commercial banks to serve the dual function of holding deposits and lending. This system has faced criticism in recent years, however, as being inherently unstable. Advocates for narrow banking argue for a different approach to allow banks to focus on financial intermediation while restricting the use of guaranteed depositor funds to "safe" assets (negligible credit risk and return). These arguments for narrow banking are of particular relevance to Islamic financial services for two reasons: (1) there is a theoretical affinity between narrow banking and the prohibition of interest in Islamic economics, and (2) the Islamic financial services industry provides a practical opportunity for the implementation of narrow banking. Indeed, it can be argued that the comprehensive benefits of an Islamic financial system can only be realized upon the implementation of narrow banking.

THE NEED FOR STANDARDS OF SHARI'A SUPERVISION AND FOR SHARI'A SUPERVISORY BOARDS IN THE CONTEXT OF CORPORATE GOVERNANCE

Khan, M. Fahim & Layachi Feddad

The paper discusses the corporate governance implications for Islamic financial institutions arising out of various factors including: (1) growing diversity among shari'a opinions of different Islamic financial institutions; (2) lack of independence of shari'a authority from the governing authority that establishes or employs shari'a authority, on both institutional and national levels; (3) absence of common standards to judge who is authorized to issue shari'a rulings and who is not in the context of the Islamic financial industry; (4) absence of common standards for shari'a boards of individual institutions for certifying their products; (5) lack of specification of legal responsibility of shari'a scholars in the context of the law of the country while playing their advisory or supervisory role in the financial institutions. The paper discusses these factors through case studies of Bahrain, Sudan, and Malaysia. The case of Iran may also be included as an example of shari'a authorities that are more independent at the national level. The paper concludes by highlighting the need for developing and setting standards for the appointment of shari'a boards

and the operation of shari'a boards at the institutional level and the national level. The role of Islamic Financial Services Board (IFSB) is also discussed in this respect.

STRUCTURING SECURITIZED SHARI'A-COMPLIANT REAL ESTATE ACQUISITION FINANCING

McMillen, Michael J.T.

This article focuses on the structuring of shari'a-compliant real estate acquisition financing in South Korea using a transactional case study. The unique "residual interest sale" structure involves disassociation of real property interests and the sale of *hissas* in an entity holding some of those interests. The article surveys certain factual, business, and legal constraints: (a) the land and multiple buildings constituting the acquired "property"; (b) acquisition subject to a lease with a single tenant in a prohibited business (insurance); and (c) South Korean securitization laws that require issuance of interest-bearing bonds (senior bonds to the bank providing acquisition financing; and junior bonds to the holder of "equity" in the property owner). The article discusses each element of the "residual interest sale" structure: (i) the mandatory senior/junior bond securitization structure; (ii) the application of bond proceeds in payment of the property purchase price; (iii) use of end user rents to pay the bonds; (iv) secular and shari'a principles applicable to real property interests; (v) the sale of a residual or remainder property interest to an investor entity that is indirectly owned by the shari'a-compliant investors; (vi) the sale of *hissas* in the investor entity to a "residual interest purchaser" (also the holder of the junior bonds); and (vii) elements to allow the shari'a-compliant investor to own the residual interest after the term of the non-compliant end user lease. Finally, the article examines how the "residual interest sale" structure allows a shari'a-compliant securitization in a transaction of this type (where real property interests are capable of being disassociated).

UNDERSTANDING LAWS AND DISCOVERING OPPORTUNITIES: COMMERCIAL LENDING APPROACHES TO PRIVATE EQUITY

Moghul, Umar F.

Properly and thoroughly understanding both U.S. and Islamic law provides the optimal framework for Islamic financial innovation. Substantive moral, economic, and formalistic legal considerations exist in Islamic transactional law no less than in U.S. law, yet contemporary Islamic finance tends to diminish the importance of aligning Islamic transactional law's formalistic considerations with modern market realities. By doing so and by not placing a critical eye upon the rationale and ultimate purposes of the law fails to lead to shari'a compliance and limits substantive innovation. This paper illustrates by means of a case study how substantive innovation in Islamic finance ought to occur. Using partnership-based and lease-based legal concepts from U.S. and Islamic law, this paper reveals a unique transaction form that integrates the criteria, methods, and preferences of commercial lending with those of private equity and venture capital.

SHARI'A-COMPLIANT ENDOWMENTS IN THE UNITED STATES: COMMERCIAL AND LEGAL CHALLENGES

Rehman, Aamir A.

As the Islamic nonprofit sector in the United States develops, institutions in this sector increasingly strive to develop shari'a-compliant endowments. These endowments are vital to the organizations' sustainability. This research suggests that while hundreds of organizations are engaged in developing endowments, they find strikingly few, if any, investment products that meet their needs. As a result, organizations either manage their own endowments (often doing so poorly) or allow their assets to sit idle as cash. This study, produced at the Harvard Business School and based on interviews with a variety of Islamic nonprofits in the U.S., seeks to address several questions such as (1) What implications does the shari'a have on endowment management? (2) How are Islamic organizations in the U.S. addressing this challenge? (3) How large is the market for shari'a-compliant endowments in the U.S.? (4) What types of products are needed to serve this market? (5) What legal and regulatory challenges exist in serving this client base? (6) What strategies can financial services firms employ to serve this client base profitably?

DOES A SHARI'A-COMPLIANT PRODUCT AUTOMATICALLY RESULT IN A VALID CONTRACT UNDER THE SHARI'A? A STUDY OF THE LEGAL DOCUMENTATION OF ISLAMIC FINANCIAL PRODUCTS IN MALAYSIA

Rosly, Saiful Azhar, Mahmod Sanusi & Norhashimah Mohd. Yasin

Islamic banking in contemporary Muslim society has reached a new level of maturity: financial instruments no longer hinge around concepts and principles but rather on their legal definitions and the affect of these definitions on legal disputes. The paper intends to show that what is defined by the law of contract was not manifested in its genuine form in the legal documentation of Islamic financial instruments in Malaysia. The paper examines contracts

in *al-bai' baithman aja*, *al-ijarah thumma al-bai'*, and Islamic personal financing. Islamic credit cards, *mudaraba* investment accounts, and Islamic bonds are also discussed. The legal stipulations of an instrument are of serious concern since civil judges will only make judgment based on the written legal documents and not on general implications of Islamic commercial law. It is thus critical that Malaysian banks ensure that the legal papers of Islamic financial products are in complete compliance with the rules of Islamic commercial transactions.

A MARKET-BASED REGULATORY FRAMEWORK FOR ISLAMIC BANKING: THE EXPERIENCE OF PAKISTAN

Said, Pervez

This paper explains Pakistan's Islamic banking model, which is designed to allow people to manage their finances in line with their Islamic beliefs in a system that is simultaneously compatible with conventional banking on a global level. This study presents an analysis of the needs of key stakeholders—the government, financial institutions, and users of the banking services—and the rationale of the current approach. The regulatory framework of this model is market-driven, complete with monitoring and supporting mechanisms. The legal framework of this model contains adequate controls while offering flexibility to businesses. The study goes on to identify current issues that are being faced, how these are being resolved, and the consequent outlook for the future of this Islamic banking model in Pakistan. The industry's response thus far has been very encouraging.

RISK ANALYSIS OF ISLAMIC BANKING AND THE IMPACT OF BASEL II ON ITS FUTURE

Shakil, Mansoor

The new Basel Accord, Basel II, is to take effect in 2006. While it addresses some of the objections raised against the old Accord in its calculation of required capital, it raises new concerns especially for smaller or medium sized banks, which fear that the new Basel may make them less competitive. This paper focuses on the three pillars of the new Basel Accord—capital adequacy, supervision, and market discipline—with special focus on the first pillar. The paper studies the introduction of three distinct options for the calculation of credit risk and three others for operational risk under Basel II. This paper also addresses the impact of Basel II on the capital adequacy requirements of Islamic banks, which, by international standards, are generally classified as small banks, and the resultant effect on their competitiveness in the international financial market. Additionally, the paper discusses particular regulatory issues that will remain unchanged under the new Accord, such as the special risks associated with the PLS and the non-PLS modes.

THE SOCIAL DYNAMICS OF THE DEBATE ON DEFAULT IN PAYMENT AND THE SALE OF DEBT

Siddiqi, M. Nejatullah

In the discipline of economics, there exists a tension between social justice and growth. In the discipline of Islamic economics, there exists a tension between *maqasid al-shari'a* and *fiqh al-mu'amalat*. This study illustrates these parallel tensions by means of two examples: (1) dealing with a delay in the payment of debts resulting from credit-sales, especially *murabaha*; and (2) securitization and sale of that category of debts. It is suggested that participation of economists and social scientists in the debate would enhance resolution of these issues more so than simply regarding these issues as legal or juridical matters.

ISLAMIC CORPORATE GOVERNANCE

Siddiqui, A. Rushdi & Yusuf Talal DeLorenzo

Concepts of corporate governance for Islamic financial institutions are derived from the Qur'an, the *Sunna*, and all the other sources of Islamic Law. This is what determines thinking regarding the infrastructure by which companies are directed and, concurrently, controlled in a shari'a-compliant manner. For conventional companies, corporate governance, or implementation of company law, is about controlling management and balancing the interest of internal and external stakeholders affected by the corporation. Key issues for good corporate governance—both Islamic and conventional—include implementation and enforcement. This study examines corporate governance from western and Islamic perspectives for public and private companies. It also considers the merging of present shari'a screens with screens for corporate governance, and concludes by demonstrating that effective corporate governance reduces costs, lifts profits, and attracts the best human assets.

ISLAMIC BANKING AND THE POLITICS OF INTERNATIONAL FINANCIAL HARMONIZATION

Smith, Kristin

The distinctive practices of Islamic banks are key to their popular appeal, but they have proven a liability with regulators. Islamic banks have found themselves under pressure to comply with international standards inattentive

to their special characteristics and often detrimental to their interests. This presents a formidable challenge to the industry, which has had to confront substantial obstacles to collective action while simultaneously answering fundamental questions about the nature of their enterprise and its relationship with global capitalism. Is Islamic finance a rejectionist movement seeking to create a separate banking system with its own norms, rules, and logic? If not, what is to be the nature of its integration into the international financial system? I argue that Islamic banks are attempting an Islamic integration into the existing hegemonic Western financial system that will force their recognition as distinct institutions requiring different rules, while still gaining acceptance in global financial markets. This has entailed the creation of a whole new set of transnational institutions to develop and lobby for separate standards in accounting and capital controls for the industry.

TOWARD A PHILOSOPHICAL JUSTIFICATION OF ISLAMIC FINANCE

Syed, Abdur-Rahman

The field of Islamic finance and investment has to date been elucidated as a set of principles or practices with reference to Islamic law or Islamic economics. The advocates of Islamic finance have not yet considered, however, what its justification might look like in philosophical terms. A philosophical justification of Islamic finance can be made with reference to certain contemporary (Yusuf Qaradawi, Umer Chapra) and classical (al-Ghazali, Ibn Khaldun) Islamic thinkers, and the resultant argument offers a useful contribution to debates in Western philosophy. Even as the industry seeks wider commercial relevance, such a dialogue offers the field wider intellectual relevance.

REGULATING ISLAMIC BANKING IN THE UNITED STATES

Thomas, Abdulkader S.

Prior to September 11, 2001, U.S. banking regulators facilitated Islamic banking tools that would inevitably lead to the establishment of an Islamic bank in the United States. Regulators sought to facilitate diverse needs through the development of specialized institutions, serving ethnic, un-banked or under-banked communities. Narrow product offerings and delivery systems were allowed in order to facilitate reaching more consumers and broaden the banking system. The regulators have shifted. Although they support and expand their prior rulings on Islamic instruments, they will not facilitate the formation of an Islamic bank. They no longer countenance that either the Islamic community or instruments are sufficiently broad to support a bank. Troubles with narrow based banks, including Internet and credit card banks have allowed the convenient excuse that an Islamic bank could not succeed. This paper examines the premise that the challenges for those seeking to implement Islamic banking in the U.S. require moving beyond the current ad hoc regulatory status of Islamic financial transactions.

CONTRACTUAL ISSUES IN ISLAMIC FINANCE, WITH A FOCUS IN EUROPE

Thompson, Henry A.

The shari'a-compliant leveraged finance market in the United States is fairly developed and has become standardized over the past five years. However, no shari'a-compliant leveraged buyout has been undertaken in Europe as most Islamic investment banks have thus far focused primarily on real estate projects or funds in Europe. Reliance on traditional financing tools within the legal and regulatory regimes in Europe gives rise to certain issues that do not occur in common law systems such as the U.S. For instance, in France, any acquisition must be undertaken in light of the legal statutes relating to financial assistance and corporate benefit. Therefore, it is necessary to adapt traditional Islamic financing tools and apply them in different ways in order to achieve a buyout under such civil law regimes. This paper seeks to explore some of the difficulties of shari'a-compliant leveraged buyouts in Europe, particularly in France. After a brief summary of the traditional tools used in the U.S. for Islamic leveraged buyouts, the paper explores some of the statutes in France, which cause difficulties to complete such a buyout. This paper then proposes solutions to these issues and shows that, by adapting the traditional tools, it is possible to execute a shari'a-compliant leveraged buyout in France.

TREASURY OPERATIONS OF ISLAMIC BANKS

Usmani, Muhammad Imran A.

Treasury operations of a conventional bank primarily involve the following operations: (1) call borrowing placement, (2) liquidity management, (3) bill purchase and discounting of receivables (factoring & forfeiting), (4) forward covers, (5) short sales, and (6) derivatives and options. The first three of these are usually practiced through borrowing and advancement based on interest and buy-back transactions from the conventional capital market and are hence not allowed in shari'a. The remaining three activities are also impermissible under shari'a because of *gharar* and *riba* in some cases. This paper discusses the alternate shari'a-compliant modes for the smooth running of the treasury operations of Islamic banks and will discuss all six operations in detail.

CORPORATE GOVERNANCE AND THE ISLAMIC MORAL HAZARD

Warde, Ibrahim

In dealing with issues of corporate governance, Islamic institutions face more challenges than their conventional counterparts. Indeed, they must also address problems caused by the “Islamic moral hazard.” The hybrid nature of Islamic finance—the fact that it is subjected to both religious and secular norms—in addition to the uncertainties and ambiguities of a rapidly changing industry, can foster reckless or unscrupulous behavior. The paper deals with substantial empirical evidence showing how banks, their employees, clients, depositors and other stakeholders have at times been affected by the Islamic moral hazard. Examples include using religion as a shield for questionable practices, conflicts of interest in profit-and-loss sharing transactions, and clients using religious principles to default on their financial obligations. The paper also makes specific recommendations to achieve greater transparency, accountability, and responsibility, and to reduce potential conflicts of interest.

THE DEBATE ABOUT *TAWARRUQ* IN ISLAMIC FINANCE

Yaquby, Nizam

The concept of *tawarruq* is used fairly widely in the Islamic finance industry in debt swapping transactions and in order to extend credit to individuals. However, some regard this practice as merely a legal device (*hila*) and therefore an impermissible practice. The manner in which *tawarruq* is practiced in debt swapping transactions between banks and their clients is regarded by some critics as *tawarruq* in name only, at best. This paper will examine the validity of these claims and address the difference between the concept of *tawarruq* as used by Islamic financial institutions and conventional debt swapping.

ISLAMIC FINANCIAL INSTITUTIONS AND RISK MANAGEMENT

Younis, K. Salman

The Islamic financial industry comprises an increasingly diverse range of institutions offering a diversified spectrum of products. These range from traditional offerings like *murabaha* to complex structures like hedge funds. Accordingly, the soundness of these institutions is of key concern for the systemic stability. Based on the present standing of this industry, its future growth potential, and the anticipated changes in regulatory environment, effective risk management deserves priority attention from all participants. However, risk management entails many complex issues that need to be better understood in order to be successfully addressed. The issues to be addressed include risk measurement, income recognition, adequacy of collateral, transfer pricing, asset liability management, and disclosure requirements. Accordingly, Islamic institutions need to focus on developing innovative solutions and appropriate adaptation of available risk management mechanisms in order to address the special characteristics of their products and services.

Profiles of Speakers and Moderators

AHMAD, ABU UMAR FARUQ

Chairman, Shari'a Advisory Board of Islamic Cooperative Finance Australia; Sydney, Australia

Abu Umar Faruq Ahmad is the Chairman of the Shari'a Advisory Board at the Islamic Co-operative Finance Australia Limited. He was formerly a shari'a supervisor at Islami Bank Bangladesh Limited, Dhaka. He is an Islamic Legal Advisor with research interests in the development of shari'a-compatible products and instruments and in the Islamic legal system of banking and finance. He received an LL.B. in Shari'a from the Islamic University of Madina, Saudi Arabia in 1984, and in 2003 he received an LL.M. (Honors) in Law from the University of Western Sydney (UWS), where he completed his research on Islamic Banking in Bangladesh. At present, he is undertaking his doctoral thesis entitled *Law and Practice of Modern Islamic Finance with Particular Reference to the Australian Experience* at the University of Western Sydney with an UWS Postgraduate Research Award.

ALI, AHMAD MOHAMED

President, Islamic Development Bank; Jeddah, Saudi Arabia

Ahmad Mohamed Ali is currently President of the Islamic Development Bank (IDB), a post he has held since 1975, except for a brief stint as Secretary-General of the Muslim World League. Prior to joining IDB, Ali held various posts within the Saudi Ministry of Education, including Deputy Minister for Technical Matters, and acted as Rector of King Abdulaziz University. Ali received a B.A. in Commerce and a B.A. in Public Administration, both from Cairo University, and then an M.A. and Ph.D. in Public Administration from the University of Michigan at Ann Arbor and SUNY Albany, respectively.

ALI, S. NAZIM

Director, Islamic Finance Project, Harvard Law School; Cambridge, Massachusetts

S. Nazim Ali is the founding Director of the Islamic Finance Project, established as the Harvard Islamic Finance Information Program (HIFIP) in 1995. He received his Ph.D. from the University of Strathclyde (Glasgow). An Information Management specialist, Ali has published numerous articles in international journals and sits on the boards of several publications. For the last ten years, Ali's research and professional activities have concentrated on Islamic banking and finance. Most noteworthy among his contributions to the field are the HIFIP *DataBank* and the Harvard University Forum on Islamic Finance, as well as *Information Sources on Islamic Banking and Economics* (Kegan Paul, London). Ali has spoken at a number of international conferences on information science as well as on Islamic banking and finance.

AL-SHROOGI, MOHAMMED E.

Chairman, Citi Islamic Investment Bank; Manama, Bahrain

Mohammed E. Al-Shroogi is Chairman of Citi Islamic Investment Bank in Bahrain as well as Managing Director of the Middle East division of Citigroup International. Al-Shroogi's efforts were instrumental in the establishment of the Islamic bank he now heads. He studied as an undergraduate at the University of Kuwait and has since attended Harvard Business School's Management Executive Program. Al-Shroogi's career at Citibank is particularly noteworthy for his contribution to making Citibank Bahrain an important player in the trade market between Asia and Europe. Al-Shroogi has been posted principally in Bahrain and in London.

BÄLZ, KILIAN

Partner, Gleiss Lutz; Frankfurt, Germany

Kilian Bälz is among the pioneers of Islamic finance in Germany and has published widely on issues related to Islamic banking and other topics of Islamic and Middle Eastern law. He specializes in international M&A and capital market with a particular focus on the MENA region. Gleiss Lutz is one of the leading German corporate law firms with international reach. Before joining the firm, Bälz taught law at the University of Frankfurt. Bälz studied law and Middle East studies at the Universities of Freiburg. He has also studied in Berlin (Dr. jur.), Damascus, Cairo, and London (LL.M., SOAS).

CHOWDHURY, M. A. MANNAN

Visiting Senior Fulbright Scholar, University of New Orleans; New Orleans, Louisiana

M.A. Mannan Chowdhury is a development economist with research, teaching, and consulting experience in Islamic economics and macroeconomics. He has published ten books in Bengali and English and a number of research

papers in various refereed academic journals. He has also presented research papers in many academic conferences both in Bangladesh and overseas. Chowdhury earned a B.A. in Economics with distinction in 1973 and an M.A. in Economics in 1974 from the University of Chittagong, Bangladesh. He also earned a second M.A. in Economics in 1978 from Thammasat University, Bangkok, Thailand, and a Ph.D. in Economics in 1993 from Rabindra Bharati University, Calcutta, India. He has been teaching in the Department of Economics at the University of Chittagong since 1974, where he is now Professor of Economics and Chairman of the Department. Currently, he is visiting the U.S. as a Visiting Senior Fulbright Scholar.

DAHIR, TARIK M.

MBA Candidate, Columbia University; New York, New York

Tarik Dahir is a second-year student at Columbia Business School in New York, where he is currently pursuing an MBA with a concentration in finance. Dahir serves as President of the Islamic Finance and Economic Forum (IFEFF), a student-run association that aims to increase awareness of Islamic finance and economics among the Columbia student body. Dahir's professional background includes employment as an analyst at Remington Capital Partners, a venture capital firm in Charlotte, NC. Dahir also founded a successful entrepreneurial venture, which he led for seven years before selling. Subsequently, he joined ICG Capital Partners, a boutique investment bank specializing in middle market mergers and acquisitions. After graduating from Columbia this May, Dahir plans to join the global headquarters of HSBC Amanah Finance in Dubai.

DeLORENZO, YUSUF TALAL

Shari'a Supervisor; Ashburn, Virginia

Yusuf Talal DeLorenzo is an independent shari'a consultant associated with the Dow Jones Islamic Market Index, the Wafra Investment Advisory Group, the Nova Bancorp SAMI fund, the Institute of Islamic Banking and Insurance, and others. He has researched, translated, and published from Arabic, classical Persian, and Urdu and has taught shari'a subjects at institutions in Pakistan, Sri Lanka, and the United States. He was Advisor on Islamic Affairs to the Government of Pakistan from 1981-84. DeLorenzo is presently working on the third of his four-volume compilation and English translation of legal rulings issued by the shari'a supervisory boards of various Islamic banks, *A Compendium of Legal Rulings on the Operations of Islamic Banks* (London: Institute of Islamic Banking and Insurance, vol. I, 1997, vol. II, 2000). He has studied classical Islamic disciplines in the traditional manner at Jamiah al Ulum al Islamiyah in Karachi, where he received an M.A. in Islamic Studies. He is a Ph.D. candidate at the Hartford Seminary.

EL-GAMAL, MAHMOUD A.

Professor of Islamic Economics, Finance, and Management, Rice University; Houston, Texas

Mahmoud A. El-Gamal is the Chair of Islamic Economics, Finance, and Management and a Professor of Economics and Statistics at Rice University. He has held professional positions at the University of Wisconsin, the California Institute of Technology, and the University of Rochester, in addition to working as an economist at the International Monetary Fund. El-Gamal has a B.A. in Economics and Computer Science and an M.A. in Economics from the American University of Cairo, an M.S. in Statistics from Stanford University, and a Ph.D. in Economics from Northwestern University for a dissertation entitled *Estimation in Economic Systems Characterized by Deterministic Chaos*. El-Gamal has research grants to study Islamic jurisprudence and its proofs, game theory, and the data of experimental economics. He has published extensively.

ELGARI, MOHAMED ALI

Professor, King Abdulaziz University; Jeddah, Saudi Arabia

Mohamed Ali Elgari is Associate Professor of Islamic Economics at King Abdulaziz University in Jeddah. He was formerly the director of the Center for Research in Islamic Economics at King Abdulaziz University. He is also a member of the OIC Fiqh Council. He serves as a consultant to Islamic banks and has served on the consulting committee that counseled the Government of Pakistan on the Islamization of its banking system. Elgari holds a Ph.D. in Economics from the University of California.

EL-KHATIB, HUSAM

Corporate Manager, Royal Bank of Scotland Group; London, United Kingdom

Husam El-Khatib is a Corporate Manager at the Royal Bank of Scotland Group, specializing in Property and Construction and in Islamic Banking. He has published on the jurisdiction of classical Islamic law for *Islamica*. During his academic career, he organized two conferences on Islamic finance at the London School of Economics

and Political Science. He has a Masters from Johns Hopkins University, a law degree from the London School of Economics, and a B.A. from the University of Chicago. His professional degrees include a Postgraduate Diploma in Legal Practice from the College of Law and an Applied Diploma in Corporate Banking. He is an affiliate of the Islamic Finance Project.

FEDDAD, LAYACHI

Shari'a Advisor, Islamic Research Training Institute, Islamic Development Bank; Jeddah, Saudi Arabia

Layachi Feddad has been working as a shari'a expert at the Islamic Research Training Institute of the Islamic Development Bank for the last 10 years. He has done extensive research in the area of application of shari'a to the finance sector. Feddad graduated from Ummul Qura University with Bachelor's and Master's degrees in shari'a and later with a Ph.D. in Islamic Economics from the same university.

FOSTER, NICHOLAS H. D.

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Nicholas H.D. Foster is a Lecturer in Commercial Law at the School of Oriental and African Studies at the University of London. Foster has taught comparative commercial and company law, international economic and financial law, law and development, the law of contract, and conflicts of laws and the English legal system. His regional interest is in the Middle East, particularly the United Arab Emirates. Having trained with Clifford Chance, he qualified as a solicitor in 1983 and then worked in the fields of commercial law and banking with Clifford Chance and Nabarro Nathanson. Foster was educated at Trinity Hall, Cambridge, where he read Law and Arabic, and the Université de Droit, d'Economie et des Sciences d'Aix-Marseille, where he studied French law. His major research interests are in the fields of comparative commercial and company law with particular reference to Islamic commercial law, the commercial law of the Arab Middle East, and company law theory. He has published extensively.

GASSNER, MICHAEL S.

International Real Estate Agent; Cologne, Germany

Michael S. Gassner is conference director of the 2004 First Islamic Finance Summit in Frankfurt, Germany. He works in the field of institutional real estate as an agent for Muslim investors as a consultant for Islamic finance and real estate in Germany. Gassner manages the portal Islamicfinance.de. His professional experience ranges from business development in the New Economy to sales as independent financial advisor. Regarding Islamic Finance, Gassner seeks to fund a non bank financial institution for the local German market. He started in banking in 1986 with an apprenticeship in a cooperative bank. During his studies he learned Arabic in Syria, Egypt, and Tunisia. Gassner studied business administration at University Siegen in Germany and graduated with a Master's in 1999. He has published in the fields of Islamic finance and real estate in leading German magazines.

HANEEF, MOHAMED RAFE MD.

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Mohamed Rafe Md. Haneef is an Associate Director currently based in HSBC Amanah Finance Dubai and in charge of originating Islamic cross-border transactions from Asia with key focus on Islamic debt securities. He joined HSBC Amanah Finance, London in 1999 as a core member of the Islamic cross-border financing team. Haneef graduated from the International Islamic University Malaysia in 1994 with a Bachelor of Laws degree in Common Law and Shari'a. He obtained an LL.M. in 1997 from Harvard Law School, where he specialized in international finance. He was admitted to the Malaysian Bar in 1995 and qualified for the New York Bar in 1997. Haneef practiced law in Malaysia, specializing in Islamic banking before moving to HSBC.

HARDY, NICOLAS

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Nicolas Hardy is a Ph.D. candidate at the Centre d'Étude des Normes Juridiques of the École des Hautes Études en Sciences Sociales where he is completing a dissertation on legal reasoning and financial innovation in Islamic law. In addition to field work in the Middle East, he stayed as a Visiting Researcher at the Islamic Legal Studies Program of the Harvard Law School during the Fall term of 2002. Before starting his Ph.D., Hardy worked in the commercial section of the French embassy in Cairo (Egypt) and for nearly four years as a banker, first in trade finance and correspondent banking in relation to Middle Eastern institutions, then in structured finance. Hardy received a Maîtrise in international business law from the University Paris I Pantheon-Sorbonne and earned a degree in classical Arabic from the Institut National des Langues et Civilisations Orientales (Paris).

HASSAN, M. KABIR

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M. Kabir Hassan is currently Associate Professor of Finance and Associate Chair of the Department of Economics and Finance at the University of New Orleans, where he has been teaching since 1990. He also regularly runs executive development seminars on financial decision-making, international banking, and finance in the United States, Jamaica, and Bangladesh. He has worked as a consultant for the Government of Bangladesh, USAID, the World Bank, IDB, ICDT, USIA, and Nathan Associates. As a Visiting Scholar at the IMF, he has written on both interest rate and monetary policies in developing countries. Hassan earned his B.A. in Mathematics and Economics from Gustavus Adolphus College and his M.A. in Economics and his Ph.D. in Finance from the University of Nebraska at Lincoln. He has published one book and over 40 articles in refereed journals, and has presented over 100 research papers at conferences all over the world.

HAYES III, SAMUEL L.

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Samuel L. Hayes, III, is Jacob Schiff Professor Emeritus at the Harvard Business School. He joined Harvard's faculty in 1971, prior to which he was a tenured faculty member of the Columbia Business School. Hayes has a B.A. in Political Science from Swarthmore College and an MBA and DBA from the Harvard Business School. Hayes has published in journals such as *Harvard Business Review*, *Accounting Review*, and *Financial Management*. He was a principal contributor to the Harvard Islamic Investment Study. Hayes is the author or co-author of seven books, including *Islamic Law and Finance: Religion, Risk and Return*, which he co-authored with Frank E. Vogel of Harvard Law School. Hayes has consulted for a number of corporations, financial institutions, and government agencies, and is a member of HIFIP's Advisory Board.

HEGAZY, WALID

International Consultant, Fulbright & Jaworski; Houston, Texas

Walid Hegazy is currently working as counsel at Fulbright & Jaworski LLP in Houston, Texas and is currently writing a dissertation on the theory and practice of Islamic finance. His thesis focuses on the theory of *daman* and the practice of Islamic finance. Hegazy is fluent in Arabic, English, and French. He holds LL.M. degrees from Harvard Law School and Paris IX University. Hegazy worked for the law firm of White & Case in New York City and for Baker & McKenzie in Saudi Arabia. He is admitted to the Cairo Bar Association and has been a member of the Egyptian Bar Association since 1991 and the American Bar Association since April 2003.

JACHI, AHMAD M.

First Vice-Governor, Central Bank of Lebanon; Beirut, Lebanon

Ahmad M. Jachi was appointed First Vice-Governor of the Central Bank of Lebanon in August 2003. He chairs committees on: Modern Banking and Financial Techniques and Information Technology (COBIT); Basel II; Financial Stability; Islamic Banking. Previously, Jachi was the Chairman of the Center for Economic and Financial Studies in Lebanon. He has served as Professor of Finance at the Lebanese American University and also as Financial and Economic Consultant for several leading international organizations including ESCWA (United Nations). He has contributed to the fields of economics and finance through research papers with a number of prominent publications and institutions, including the Harvard Institute for International Development.

KHAN, IQBAL AHMAD

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Iqbal Ahmad Khan is Chief Executive Officer of HSBC Amanah Finance. He was formerly Managing Director of Citi Islamic Investment Bank and Global Head of Islamic Finance for Citicorp. Before that, Khan worked for the DMI Group's subsidiary Islamic Investment Company of the Gulf, Bahrain. He was also a member of the Management Committee of the DMI Group. Khan has a B.Sc. in Physics and Chemistry and an M.A. in Political Science and International Relations, both from Aligarh Muslim University. He serves on the Board of the International Association of Islamic Banks and is a member of the Consultative Committee for the Islamic Credit and Investment Export Corporation, a subsidiary of the Islamic Development Bank. Khan is a founding member of HIFIP's Operating Board.

KHAN, M. FAHIM

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M. Fahim Khan has served the Islamic Research and Training Institute (IRTI) since 1988 in various positions such as Head of the Research Division, Acting Director, Head of Training, and now as Chief of Islamic Economics. Before joining IRTI, he worked in the Ministry of Planning of the Government of Pakistan as Deputy Chief, International Institute of Islamic Economics and as Professor and Director at the School of Economics at the International Islamic University, Islamabad. He has been on deputation for a year at the State Bank of Pakistan as Advisor on Transformation of the Financial System. Khan holds a B.A. and an M.A. in Statistics from Punjab University, Pakistan, and an M.A. and a Ph.D. in Economics from Boston University. He has published or edited 10 books on Islamic economics, banking, and finance. These include *Money and Banking in Islam* and *Fiscal Policy and Resource Allocation in Islam* jointly edited with Ziauddin Ahmed and Munawar Iqbal.

MADJID, NURCHOLISH.

Rector, Universitas Paramadina; Jakarta, Indonesia

Nurcholish Madjid has been rector of Paramadina Mulya University in Jakarta since 1998. He is a prominent Muslim intellectual, known for his innovative opinions on social and political matters in Indonesia and other developing Islamic nations. He also lectures at the postgraduate faculty of the IAIN Syarif Hidayatullah, Jakarta, and is a senior researcher at the Indonesian Institute of Sciences. Previously a leader of various student organizations, he holds a B.A. in Arab literature from Syarif Hidayatullah and a Ph.D. in Islamic thought from the University of Chicago. He is a member of the Board of Advisors of Dialogues: Islamic World-U.S.-The West, a program of the World Policy Institute of New School University, established in the aftermath of 9/11.

McMILLEN, MICHAEL J.T.

Partner, King & Spalding; New York, New York

Michael J.T. McMillen is a partner in the New York office of King & Spalding, where he focuses on Islamic finance and international and domestic project finance, leasing, and structured finance. He was formerly a partner with White & Case and spent three years in Jeddah with the law office of Hassan Mahassni. He is an international project financing expert and has worked on some of the largest and most innovative project financing deals in well over 20 countries. McMillen has extensive transactional experience in the field of Islamic finance, and has developed many Islamic financial products in Saudi Arabia and the Gulf. He developed the first *istisna'-ijara* (construction contract-lease) construction and mini-perm finance structure for United States real estate. He has particular expertise in the electricity generation, petrochemical, mining, paper milling, and natural gas sectors. McMillen received his BBA from the University of Wisconsin, his M.D. from the Albert Einstein College of Medicine, and his J.D. from the University of Wisconsin.

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Pervez Said is the director of the Islamic Banking Department of the State Bank of Pakistan. He also carries the designation of Advisor of Islamic Banking to the Governor of the State Bank of Pakistan. Said completed his MBA in 1980 from Ohio University. He has worked with the world's leading multinationals in Pakistan, U.S., and the UAE. He has extensive marketing experience with multinationals such as Johnson & Johnson, where he was the Managing Director for Pakistan. He has also worked for Reckitt & Colman, W. Woodwards, Unilever, and Exxon Chemicals. He started his banking career with Citibank Pakistan as Marketing Director in conventional banking and worked with Citibank Pakistan for about seven years where he launched various branded financial products.

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M. Nejatullah Siddiqi is an independent researcher in Islamic finance. He was previously a Visiting Fellow at the University of California at Los Angeles and the President of the International Association for Islamic Economics. Prior to this, he was Professor of Economics at the Center for Research in Islamic Economics at King Abdulaziz University. He was formerly Professor of Islamic Studies and Director of the Institute of Islamic Studies at Aligarh Muslim University. Siddiqi has a Ph.D. in Economics from Aligarh Muslim University. He has supervised Ph.D. dissertations at Aligarh Muslim University, Umm al-Qura University, Imam Muhammad bin Saud University, and Sokoto University. Siddiqi has been the recipient of the King Faisal Islamic International Prize for Islamic Studies. He is the author of dozens of books, including *Muslim Economic Thinking*, *Banking without Interest*, and *Role of the State in the Economy: An Islamic Perspective*.

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A. Rushdi Siddiqui is Global Director of the Dow Jones Islamic Index Group, where he has created over 60 Islamic indexes and works closely with a six-member global shari'a board. Siddiqui is a respected authority on Islamic finance, having delivered presentations at Islamic finance conferences around the world and given over 200 media interviews. He is a contributing editor to *Islamic Banker*, Advisor on Islamic Capital Markets to Euromoney's *Islamic Finance Weekly*, a lecturer on "Principles of Islamic Investing" for the on-line Dow Jones University, and was a lecturer at NYU's School of Professional Studies. In 2003, he received the Sheikh Mohammad Rashid bin Maktoum Award of Innovation in Islamic Finance. Siddiqui holds a BS from NYU, an MBA from Baruch College, and a J.D. from the Albany Law School of Union University.

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Kristin Smith is a Ph.D. candidate in the Department of Government at Harvard University. She is currently completing her dissertation, entitled *Economic Integration and Cultural Resistance: Islamic Finance in the Arab Gulf*. Research for this project took place in Kuwait, Bahrain, and the United Arab Emirates and has resulted in the publication of a chapter on the political aspects of Islamic banking in Kuwait in the upcoming book *The Politics of Islamic Finance* (Edinburgh: Edinburgh University Press, 2004). Smith has also published *Kuwait in the Balance: Islamist-Liberal politics in the wake of September 11th* in *Middle East Policy*, September 2002. Next year she will be a postdoctoral fellow at the Georgetown Center for Contemporary Arab Studies where she will be teaching a seminar on Gulf politics.

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John B. Taylor is Under Secretary for International Affairs at the U.S. Department of the Treasury. Taylor serves as the principal advisor to the Secretary of the Treasury on international economic and financial issues. He leads the development and implementation of policies in the areas of international finance, trade and investment, economic development, international debt, and U.S. participation in the IMF, the World Bank, and other international lending institutions. Taylor's previous government experience includes two stints on the President's Council of Economic Advisers. Before becoming Under Secretary, Taylor was Roberts Professor of Economics at Stanford University. Before joining the Stanford faculty in 1984, he held positions as a professor of economics at Princeton University and Columbia University. Taylor has also served as Senior Fellow at the Hoover Institution; Director of the Stanford Institute for Economic Policy Research; Director of the Stanford Introductory Economics Center; and a Research Associate at the National Bureau of Economic Research. Taylor received a B.A. in economics *summa cum laude* from Princeton University in 1968 and a Ph.D. in economics from Stanford University in 1973.

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Muhammed Imran A. Usmani is Editor of the *Journal of Islamic Banking and Finance*. He has carried out extensive research in the area of Islamic Finance. Usmani also serves as advisor or shari'a supervisory board member for a number of institutions, including the State Bank of Pakistan, Amanah Finance HSBC, UBS Switzerland, Credit Suisse bank Switzerland, and Mashreq Bank Dubai. Usmani has been a faculty member or teacher at Jamia Darul Uloom in Karachi for 14 years and at the Institute of Business Administration in Karachi for five years. He is author of various books of Islamic shari'a. Usmani holds an M.Phil. and a Ph.D. in Islamic Finance, as well as an M.A. and a B.A. from Karachi University. He also holds an *Alimiyyah* and a *Takhassus* (specialization in Islamic jurisprudence) from Jamia Darul Uloom, Karachi.

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Frank E. Vogel is the Custodian of the Two Holy Mosques Adjunct Professor of Islamic Legal Studies at Harvard Law School, where he has been teaching since 1987. He has been Director of the Law School's Islamic Legal Studies Program since its inception in 1994. Vogel's courses include the Islamic Legal System; Contemporary Islamic Legal Thought: Law, State, and World Order; Islamic Contract Law; Islamic Constitutional Systems; Human Rights and Islam; Comparative Adjudication; and the Comparative Law of the Arab Middle East. He has spent a number of years practicing law and conducting research in the Middle East, particularly in Saudi Arabia and Egypt. Vogel has an A.B. in Applied Mathematics from Harvard College, a J.D. from American University, and a Ph.D. in Middle Eastern studies with a focus on Islamic law from Harvard University. He is the author of *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden 2000) and, with Samuel L. Hayes, III, *Islamic Law and Finance: Religion, Risk, and Return* (Boston and The Hague, 1998), as well as numerous articles.

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Nizam Yaquby is a shari'a scholar and advisor to numerous Islamic banks and companies, including Abu Dhabi Islamic Bank, the Islamic Investment Company of the Gulf, Arab Islamic Bank, and Dow Jones Indexes. He pursued traditional Islamic studies in Saudi Arabia, India, and Morocco under the guidance of scholars such as Abdullah Al-Farisi and Muhammad Saleh al-Abbasi. Yaquby has a B.A. in Economics and Comparative Religion from McGill University and is a Ph.D. candidate in Islamic Law at the University of Wales. Yaquby has published several books on Islamic law, is a frequent speaker at Islamic conferences, and has taught Islamic subjects in Bahrain since 1976.

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K. Salman Younis is currently Director of Business Consulting of the Investment Sector at Kuwait Finance House. He also currently acts either as a director or officer of numerous holding companies owning or controlling various assets in the U.K. and U.S. He joined Citibank in 1982 in Saudi Arabia. He worked for Citibank there until 1996. Subsequently he moved to Bahrain as part of the team setting up the Citi Islamic Investment Bank (CIIB), and was formerly the Head of Product Development and Investments at CIIB, where he was also secretary to the shari'a board. Younis played an active role in developing a range of Islamic banking products for CIIB and originated structured deals from a large number of prominent firms in the emerging market. He is an associate of the Institute of Bankers in Pakistan. Younis holds a double degree in Commerce and Business Administration.

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