

Workshop on Islamic Finance

Hosted under the auspices of the Centre for Islamic and Middle Eastern Law

Responsible Investment,

Value-based Intermediation

and the Future of Islamic Finance

**Commentaries from Workshop Participants**

**(Not for Distribution or Citation)**

**Thursday, 14 February 2019**

**9 am to 5 pm.**

**SOAS University London**

Brunei Gallery, Ground Floor, Room G01

Russell Square London WC1H 0XG

ACADEMIC PARTNERS

**WORKSHOP AGENDA**

**8:30 a.m. Reception and Coffee**

**9:00 a.m.** Welcome Remarks by Dr Syed Nazim Ali

**9:05 a.m.** Opening Remarks on behalf of SOAS, Dr Jonathan Ercanbrack

**9:15 a.m.** Introduction by Workshop Moderator, Professor Frank E. Vogel

**Part 1: VBI, Responsible Investments and *Islamic Finance***

**9:25 a.m. Presentation**: A quick overview of the principles and thinking behind Value-Based Intermediation and responsible investment principles, and how this relates to *Shari’ah* Compliance as a focus.

**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 and questions:

* + - What is VBI and its relevance to Islamic finance?
    - What do we actually mean by ‘responsible investments’?
    - The UN’s Principles of Responsible Investment defines responsible investment as an approach to investing that incorporates ESG factors into investment decisions to better manage risk and generate sustainable, long-term returns. Do you agree? Is this sufficient?
    - Is it just a modified form of corporate social responsibility?
    - Why this now?
    - Alternatives - Is there anything better?

**Part 2: Applicability to the Maqasid of *Shari’ah* Compliance –**

**Macro Considerations**

**10:10 a.m. Participants’ Views – Open Floor Discussion**

Opportunity for each participant to explain briefly their views on the following macro considerations on its applicability to Islamic finance and *Shari’ah* Compliance. Do you agree/disagree with the following statements and questions:

***Is VBI really needed?***

* + - Though there is plenty of verbal support for initiatives like VBI and socially responsible, actual support comes with a lot of scepticism. Would you agree ? Why or why not?
    - Why should VBI be important to *Shari’ah* compliance?
    - Should they not be left to each jurisdiction and national entity to decide what level these should be, rather than on a global level?
    - Are not Islamic financial institutions already over-stretched in resources, costs, increased regulations and competition to be dragged down by new additional requirements, making their offerings even more expensive and less attractive?
    - As Islamic financial institutions struggle to gain significant market share in a greater regulated and complex current business environment, should they have to be weighed down even further with even more new regulations and stricter *Shari’ah*-compliance standards?

***Is VBI even relevant to most Islamic Finance Transactions?***

* + - As most Islamic banks primarily provide consumer credit, mortgage finance and trade support for small and medium sized businesses – so the above is least of their priorities?
    - How much should social welfare play a part in *Shari’ah* compliance?

***Does VBI really have Public and Institutional Suppport?***

* + - Based on some studies as well as general perceptions, real concern for ESG and socially responsible investments are still low among Muslim clientele. Does this mean there is little interest for such additions to the *Shari’ah* -compliance certification?
    - Central banks are primarily concerned with banks being adequately capitalised and having sufficient liquidity rather than how they should allocate funds. Any environmental initiatives are a matter for banks rather than regulators. Do you agree or not?

***Alternative Moral and Ethical Initiatives***

* + - Are not VBIs simply a modified form of corporate social responsibility, absent a central bank *Shari’ah* advisory body?
    - Why not other ethical and/or environmental standards?
    - What if international interpretation and/or levels of tolerance changes, should VBI standards as applied by Islamic financial intermediaries using this initiative also automatically change and evolve with those views?

***Practical and Financial Appeal***

* + - Would Islamic financial institutions be willing to take on such a role of enforcing VBI, as arguably the risks are higher. Furthermore,any profits generated may be inadequate to cover dividend payments to shareholders and the profits paid to depositors with investment accounts subject to mudarabah contracts. Would you agree?
    - If VBI not only carries the basics of *Shari’ah* compliance, but also higher moral and ethical goals, can not the financial intermediary justify higher returns/fees for a ‘higher quality’ product?

**11:00 a.m. Tea/Coffee Break**

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

**Part 3: Applicability to the Maqasid of *Shari’ah* Compliance –**

**Product/Micro Considerations**

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

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

Opportunity for each participant to explain briefly their views on the following micro considerations on its applicability to Islamic finance and *Shari’ah* Compliance. Do you agree/disagree with the following questions and statements:

***Sufficiency of Product Certification***

* + - Are not the current certified structures sufficient?
    - Certified ‘*Shari’ah* compliant’ - Does that not suffice in of itself? Or are we saying to be ‘fully’ or ‘more’ compliant, it really must incorporate other standards? Or, are we saying they first was not compliant to begin with?
    - Is VBI/responsible investments for all types of transactions, or just some?
    - Are not all certified Shari’ah -compliant products already ‘responsible investments’? If not, why not?

***What Makes a Product both VBI and Shari’ah Compliant***

* + - is it its certification, or
    - its intrinsic adherence to both rules, or
    - its adherence to the principles, or just the absence of non-compliant elements (i.e., like interest, riba and gharar, etc)?
    - is it because it fits within a defined structure (i.e., ijara, mudaraba, murabaha, etc) under a set of agreed circumstances, or
    - is it because of the intention of the parties to be Islamic compliant that makes it compliant?

***Shari’ah Auditing***

* + - How can auditor check it is non-compliant with VBI/socially responsible elements in audited? For an IFI? In a transaction? Product? In Operations? On what basis?

***Authority to Review and to Audit Certified VBI compliant Financial Products***

* + - The public or only skilled scholars or professionals? If the public – are there any limits?
    - If just professionals or scholars – what can the public rely on for certainty of opinions?
    - What if the scholars get it wrong, what recourse does the affected parties have?
    - What qualification should the issuer and/or the reviewer (if different) should have?
    - Who is authorized to critique certified compliance?

**1:00 p.m. Lunch**

**Part 4: Redefining *Shari’ah* Compliance and the *Masalah***

**1:45 p.m. Summary** - Moderator to provide a summary of all the main points of view.

**2:00 p.m. Participants' Views - Open floor Discussion**

Opportunity for each participant to explain briefly their views on the following issues on the ability to redefine what we mean by *Shari’ah* Compliance generally (not limited to VBI but to all forms of alternative added ‘ethical’ initiatives). Do you agree/disagree with the following statements:

***Differentiation of Certification***

* + - Certifying that the contracts are *Shari’ah* compliant - vs - a ‘holistic’ sharia compliance approach - Are they not the same from a *Shari’ah* compliance perspective? If not, why not?
    - How are we to differentiate between products that just simply comply with the bare minimum compliance mechanics of *Shari’ah* compliance – vs – those products that aim to achieve a ‘greater *masalah’* or higher moral objectives? Should we really even differentiate between the two?
    - How do we get from the ‘just make this transaction *Shari’ah* compliant as cheap as possible’ mindset – to one where moral and ethical concerns trump any higher risks and fee costs?

***Redefining Compliance***

* + - If we start using external forms of globally accepted standards, including any new standards to be devised in the future, are we not introducing new elements to the already accepted certification process?
    - Who decides what is or is not acceptable to include in compliance certification?

***Challenging Certification***

* + - If a transaction complies with all of the contractual elements, but not the VBI standards, does this make it non- *Shari’ah* compliant?
    - Does the lack of VBI or similar certification make it non-compliant?
    - Challenging Product Compliance – Can (or should) the issuer (or even an investor/creditor) of a sukuk for example be prevented from challenging the *Shari’ah*-compliance of its own sukuk after it is issued?
    - Should one be able to challenge compliance for changes to the "*evolution and continual development of Islamic financial instruments and their interpretation*"?

***Ignorance of Shari’ah and/or VBI***

* + - Is customer or even IFI ignorance of these VBI and/or *Shari’ah* rules on such elements serve as a valid excuse if the products or services assumed/offered is discovered to be non-compliant?
    - Who should bare responsibility in such situations? The customer? The IFI? The advisors? The *Shari’ah* board? Or the national central board?

***When can opinions be modified, replaced or rescinded***

* + - *Changing Retrospective Opinions* - Should *Shari’ah* scholars have the freedom to amend their previous advice (i.e., with new developments/thinking), without subjecting their old decisions to critical review?
    - *Clash of Fatwas* - Do differences of opinion or conflicting views on a product make that product non-compliant? Is it sufficient that one scholar/board opine in favour of a product/structure, even if all others do not agree? How many opinions are required?

**Part 5: VBI Enforcement, Responsibility and Implementation with *Shari’ah* Compliance**

**3:20 p.m. Summary and Open Floor Discussion**

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

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

***Responsibility of Modified Sharīʿah Compliance***

* + - Who is responsible for the compliance that has been ‘enhanced’ by VBI or ESG principles?
    - Is it really just the *Shari’ah* board or advisors blessing the transaction, or all stakeholders?
    - Are the central regulatory authorities capable of handling?
    - How do they deal with differing standards among different jurisdictions?

***Enforcement of Modified******Sharīʿah Compliance***

* + - Should the role of *Sharīʿah* experts be strengthened in order to achieve more initiatives like VBI?
    - Who decides what stanrdards should be included or added?
    - What if they conflict or cause unintended consequences, can they be repealed, challenged or reviewed?
    - “*The evaluation of social costs and benefits of (the use of) technologies is quite complex and requires multi-disciplinary competencies. The same applies to the definition of maṣlaḥah. VBI should not create any institutional setup (e.g. for political guidance or direction) that can be dominated by Sharīʿah scholars.”* Do you agree or not with this statement?

***Other Regulatory Ideas***

* + - Use of a “VBI Scorecard” approach?
    - The increased role of non-shareholder stakeholders in the decision-making process?
    - The additional financial value of integrating environmental, social and governance (ESG) factors into investment processes –can they be combined with all forms of Shari’ah screening?
    - How do we deal with differing regulatory attitudes towards Islamic finance between jurisdictions?

**Part 6: Exploring the Way Forward for *Shari’ah* Compliance**

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

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

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

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