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«Those are the believers, truly. For them are degrees
(of high position) with their Lord and forgiveness
and noble provision».

Surat Al-Anfal, 8.4 Holy Quran



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The Shari'ah Scholar's Journal

SHARI'AH SCHOLARS

Aly Khorshid
Imam Uddin
Taqi Usmani

ACADEMIC ARTICLE

Murat Cizakca

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Camille Paldi
Joseph Franz Schacht

ISLAMIC FINANCE-ITALY

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ISLAMIC FINANCE-SWITZERLAND

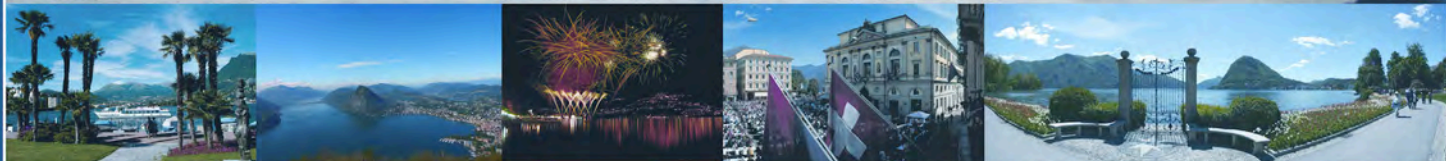
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Editorial

Dear Readers

there is no religion, including Islam of course, that tolerates the killing of innocent people. Everybody agrees that there is nothing Islamic about killing ordinary civilians taking the subway or bus to work or school. And there is nothing in the Holy Koran that could possibly justify such a deplorable and calculated murder. In fact, Islamic texts clearly condemn the killing of innocents. Such acts of terrorism are both morally reprehensible and in direct violation of Islamic teachings.

There is no political message that can be transmitted through brutality and violence. The perpetrators, whether they turn out to be fundamentalists or some other group, will fail to promote whatever political cause they pretend to espouse. The only message that they will successfully convey is that they have a passion for bloodshed and violence.

Sadly, the victims of their crimes are not only those who were killed or wounded everywhere, but all the Muslims, particularly those in the West, where they have looked at with increasing discrimination in the wake of these attacks. Such acts serve to further distort the image of Muslims and Islam.

The ramification of the terrorist attacks in the Middle East, in Europe, in Asia, in USA will undoubtedly be far-reaching and will be felt around the world. But they are also likely to further inspire a wave of international counterterrorist cooperation between governments and security agencies, thus wasting valuable resources that would be otherwise gone toward more productive endeavours for the welfare of suffering people in the world.

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Aly Khorshid

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Global Financial crises and its effect on Islamic Finance

By Dr. Aly Khorshid

Introduction

The Islamic finance industry today offers a broad variety of products and services as well as corporate finance, project finance, equity funds, personal and wealth management, venture capital investment, real estate investment and private equity, mainly providing Islamic trade financing solutions. Structured in accordance with Shariah principles are all these products and services, as interpreted in their respective jurisdictions. The Shariah compliant capital markets products have gathered acceptance in the global market and are now shaping up into an attractive investment in market place. The demand for Shariah compliant securities has been high and is growing the supply side is also witnessing increasing activity.

The development of Shariah compliant securities "Sukuk" is one of the capital market products that have been developed to avoid the Islamic prohibition of Riba (interest). Sukuk (plural of Sak) mean certificates and papers with the features of liquidity, tradability and cash equivalence, while a conventional bond is a promise to repay a loan, Sukuk present partial ownership. They're several types of Sukuk, Ijarah Sukuk, Mudarabah Sukuk, Istisna Sukuk, and Musharakah Sukuk

Islamic Perception of Money

Money is a social convention and was invented based on the need to facilitate socio-economic activities. Progress in business has transformed money, and it has evolved from its original basic functions to sophisticated modern applications. Money is an integral part of the financial system and has a fundamental effect on the whole system.

From the Islamic point of view, money should be observed as a medium of exchange and a standard of measurement. Money is consideration, not an object that can be traded or something that is expected to generate returns without economic activities. Money is neither a productive good nor consumption good. Therefore, if money needs to be exchanged with money, the Islamic injunction on trading ribawi material is applied. Such a transaction must take place with the condition that it is on spot basis and for an equal amount. Similar to conventional finance, in Islamic finance money exchanged with money on a deferred basis has become a norm, and the repayment of loaned money with additional

Islamic Debt Securities (Sukuk)

As far as the Islamic finance industry is concerned, Sukuk are not new. Since the early days of Islamic civilization the concept of Sukuk has been in use – in the first

century Hijri (corresponding to the seventh century AD) the Umayyad government would pay soldiers and public servants both in cash and in kind. The payment in kind was in the form of Sukuk, which is commodity coupons or gain permits.

Sukuk re-emerged in Bahrain in 2001, almost fourteen centuries after they were first recorded, as an Islamic alternative to conventional debt securities. In the domestic market, the State of Bahrain offered Sukuk with an al-ijarah issue. The issue amount was US\$250 million and had a tenor of five years. The Sukuk al-Ijara concept was derived from prevailing practices of “lease ending with purchase” (Ijara muntahiyah bi-tamlik) known in conventional finance as “financial lease”. The Sukuk carried six monthly lease rentals that were fixed at the lease inception and paid in arrears during the lease term. The Sukuk offering was highly successful. The Bahrain Sukuk issue was a major milestone in Islamic finance as it marked the birth of an Islamic capital market where Islamic equity and debt-based instruments are issued and traded.

Another landmark was initiated by Malaysia in 2002 when it issued the first Islamic securities that complied with US Regulation S and Rule 144A formats that are used for conventional global bonds. Prior to that in December 2001 Kumpulan Guthrie Berhad, a Malaysian public listed company involved in the plantation and construction sectors has offered a Sukuk al-Ijara. A number of successful Sukuk issues have followed, including the Islamic Development Bank’s offering of US\$400 million Sukuk in 2003, the State of Qatar’s US\$700 million Sukuk al-Ijara issue in 2003 and the Kingdom of Bahrain’s US\$250 million Sukuk al-Ijara issue in 2004. In the Islamic finance markets these successful issues have created much excitement and more issuers looking for a viable and attractive alternative source of funds are considering the Sukuk option.

Features of Sukuk

A fundamental requirement of Shari’ah is that the security must reflect or evidence the security holder’s share in an underlying asset or enterprise, which must of course be Shari’ah compatible. On the basis that the security reflects the holder’s ownership of the underlying assets of the company, contemporary Shari’ah scholars have allowed investment in equity or share in a company. Through the ownership of the company, the shareholders are deemed to indirectly own the company’s assets.

A conventional bond typically confers on the bondholder a contractual right to receive from the issuer of the bond certain interest payments during the life of the bond and the principal amount at the maturity of the bond. Creditors to

the issuer of the bond are the bondholders themselves and are ranked as senior unsecured and unsubordinated creditors of the issuer in priority to the shareholders.

Bonds vs. Sukuk

A bond is evidence of debt issued by the issuer or borrower to an investor or lender, an IOU with a promise to pay the debt or the financial obligation at the end of a specified period. It is also a debt instrument with fixed return (loan + interest), the obligation to pay the debt being evidenced by papers certificate called bonds or securities issued by the borrower or issuer; these certificates are tradable on the secondary market. Bonds are evidence of indebtedness only. Sukuk provide evidence of financial obligation from the issuer to the Sukuk certificate owner of the underlying asset. It is an asset instrument whereby the issuer pays the value being evidenced by a paper certificate called a Suk, or securities issued by the issuer. This paper certificate is tradable on the secondary market. Sukuk are evidence of assets, not debt; therefore, Sukuk are wider and have higher value than bonds.

Global Financial Crises

The global financial crisis shook the international financial system around the globe, and its repercussions are still being felt globally. Owing to its severity it has been labeled as the worst crisis since the Great Depression. It is now, more than ever before, clear that the current financial system is not stable and that the invisible hand is not doing what its proponents claimed.

The prolonged period of “the great moderation”, together with runaway credit growth, paved the way for the current crisis. Easy money, uncontrolled growth of credit and debt, lax regulation and supervision, innovation of complex and opaque financial products, mismanagement of risks involved, lack of disclosure and transparency, predatory lending and high leverage – among other factors – are thought to be the main culprits behind the crisis. The current global financial crisis brought Islamic financial industry (IFI) into the limelight as a possible alternative. However, IFI has not been totally immune to the crisis; it has been hit as well, although to a much more moderate extent. This may indicate a possible correlation between IFI and its conventional counterpart, as it lives under the same umbrella and is governed by the same rules of the game.

Being a niche industry, Islamic finance faces considerable challenges. The way the industry responds to these challenges will determine whether it will become “a significant alternative to the conventional system in global financial markets” (Karuvelil, 2000). Moreover, lack of an

efficient legal framework and of standards and procedures, qualified manpower and effective government support exacerbate the risk exposures of IFI (Khorshid, 2009).

The limited impact of the global financial crisis on IFI, there are many lessons that should be learned from it, and commensurate steps must be taken within IFI in order to make it more resilient to similar shocks. One of the steps necessary for strengthening the resilience of Islamic finance, according to Bank Negara Malaysia is the assimilation of Shari'ah values in the realization of benefits to the relevant stakeholders.

Islamically for justice, fairness, cooperation and shared responsibility. Its goals go far beyond monetary indicators and growth as it promotes ethics, responsibility and market discipline (Aziz, 2008; Chapra, 2008). This is an opportune time for IFI to reduce reliance on debt-like products and move closer to equity-based, risk-sharing instruments. However, whatever choice is made by the industry, there is a need for an efficient regulatory and supervisory framework that will stay ahead of the market so as to prevent regulatory arbitrage from making significant inroads in the market (Aziz, 2008; Mirakhor and Krichene, 2009). An effective system of checks and balances has to be constructed that will help avoid making mistakes similar to those which led to the current crisis.

Social interest. Among the Islamic countries, Malaysia has had by far the greatest success in creating a flexible, innovative environment with the potential to provide both the incentive structure as well as the administrative apparatus to allow steps towards developing new risk-sharing instruments under an effective regulatory structure. The country's courageous step of unifying the Shari'ah-ruling framework, as well as its long standing commitment to provision of human capital to IFI and its encouragement of innovation, gives it a leadership position that can serve to strengthen the progress of Islamic finance.

Islamic finance is a limited niche activity; while international financial markets are dominated by Riba based activity. There are significant pressures from international organisations such as the IMF and the WTO for Muslim countries to open up their financial markets to multinational banks. International rating agencies such as Moody's and Standard and Poor classify Muslim government debt and rate commercial banks, and even some Islamic banks, which affects the terms on which they can conduct their business. The Basle based Bank for International Settlements has capital adequacy guidelines that pose significant challenges for Islamic banks and Islamic finance more generally.

Islamic finance has become a worldwide industry, with assets under management in accordance with the Shariah law valued at over \$1.4 Trillion US Dollars. Within individual countries, especially in the Muslim world, Islamic finance plays a significant role, with the financial systems of countries such as Malaysia, Pakistan, Iran and the Sudan operating under the Shariah law. Other countries such as the Gulf States Islamic banking are playing an increasingly significant role, accounting for over 40 percent of deposits in Kuwait and Qatar. Bahrain has become a major regional center for Islamic finance. At the same time many major multinational banks including Citibank, HSBC, ABN-AMRO and Deutsche Bank are offering Islamic financial products, while in Malaysia a sophisticated market in Islamic securities has developed, and Bahrain is providing money management instruments that comply with the Shariah law.

The Muslim world was exploited in the 19th century and for much of the 20th century with the penetration of western capital, but in its early years, Islam itself promoted globalization through the transmission of its value system, a process that has been reinvigorated in recent decades. Contemporary globalization involves not merely freer trade and capital movements, but also the communication of ideas by new methods including the Internet. Indeed it is the advance in information and computer technologies that is one of the major forces driving globalization, which makes it possible for market participants and regulatory bodies to collect and process the information they need to measure, monitor and manage financial risk and to price and trade complex new financial instruments. Islam, and Islamic finance in particular, has a message to spread, and global networks are arising for this purpose. It is the spread of ideas rather than mere money that is the greatest challenge, but one that presents hope for Muslims.

To some extent these views of globalization may reflect disciplinary biases rather than different strands of Muslim thought, this in itself demonstrating the dynamic interaction of western ideas with modern Islamic scholarship. These ideas can be applied to Islamic finance, which facilitates the creation of Muslim wealth that can be used for social purposes.

The role of Islamic banks and financial institutions can be to enable this process. In contrast the hoarding of personal riches, even in Muslim countries, makes those that hoard subservient to and dependent on global secular capitalism with its corrupting influences. Capitalism without faith is corrupt but cannot generalize.

Within international financial organisations there is considerable interest in Islamic banking, and it would be wrong to see those organisations associated with the “Washington consensus”, notably the IMF and World Bank, as being antagonistic to Islamic economic ideas. Indeed the IMF sponsored a study back in the 1980s on Islamic banking that was seen by many as an important contribution to the growing literature at that time, and a work that helped bring Islamic finance to the attention of a wider non-Muslim readership. At the macroeconomic level there has also been a willingness by the IMF to encourage investigation of how monetary policy can operate and debt management handled in compliance with Islamic principles.

The World Bank has long had close relations with the Islamic Development Bank and both organisations have co-funded projects in a number of Muslim countries. There are also a number of Muslims working for the World Bank who are enthusiastic about Islamic finance, and keen to point out the merits of such a system.

General Agreement on Trade in Services (GATS) and the opening up of domestic retail and investment banking markets from an Arab banking perspective, within the Islamic financial community only limited attention has been paid to the issues of international banking competition. The majority of middle and high-income Muslim states are World Trade Organisation (WTO) members, including Malaysia, Turkey, Egypt, Jordan, Tunisia, Morocco and five of the six GCC states. This membership not only has implications for trade, but for financial services through the GATS provisions for the opening up of markets for banking and insurance. In some Muslim states such as Egypt and Syria the banking system is largely state owned, while in other states, notably Kuwait and Saudi Arabia, there are limitations on the share that foreign institutions can hold in the ownership of local banks. Privatization of the state owned banks, and the removal of ownership restrictions is likely to result in the take-over of local banks by multinationals.

Muslim countries can open up their conventional banking sector under GATS while still protecting their Islamic finance sector using infant industry arguments. In the January 2002 Trade Policy Review of Pakistan, the review team noted Pakistan’s commitment to liberalisation under GATS in forty seven activities including banking, insurance, business and communications. Pakistan requested and received GATS exemptions under the most favored nation clause (MFN) in financial services where there were reciprocity agreements and in Islamic financing transactions. This ruling by the WTO should help the position of Islamic banks in Pakistan,

demonstrating that a sympathetic treatment of globalization issues can prove beneficial to those seeking to ensure Shariah compliant financing facilities are offered to potential Muslim clients.

As financial systems become more open, national discretion in the determination of interest rates is reduced, as if money flows freely, differentials in inter-bank rates between currencies will largely reflect exchange rate expectations in relation to a dominant currency, usually the United States dollar.

Most Muslim countries apart from the GCC member states maintain controls over capital movements and some payments restrictions for import transactions. IMF structural adjustment policy encourages member states to eliminate multiple exchange rates and float currencies so that an equilibrium currency rate can be determined in the foreign exchange market, potentially facilitating the reduction of external deficits. In practice the results of such policies have been mixed in the Muslim world, but in the longer term the dismantling of foreign exchange controls seems likely for most countries. This will create additional opportunities for Islamic banks to offer Murabaha trade financing facilities as well as leasing, Ijara, and project financing, Istisna. With foreign exchange liberalisation the pricing of Islamic financing products has to be internationally rather than simply nationally competitive.

The Basel Accords, the rating of Islamic banks and FSAP financial monitoring Like conventional banks Islamic banks are not only regulated by the central banks of the countries in which they are based, but they are also potentially subject to the scrutiny of international monitoring agencies, notably the Bank of International Settlements (BIS) in Basel. National regulation by central banks is also subject to international inputs, an example of this being the IMF and World Bank intervention through the Financial Sector Assessment Program (FSAP), which was started as a response to some of the issues raised by the Asia financial crisis of 1997. The annual reports of Central Bank Governors of Asian countries such as Malaysia and Indonesia are monitored and disseminated by the BIS, including their reviews of Islamic banking developments. In addition there is also continuing assessment of both Islamic and conventional banks by other commercial financial institutions, a process facilitated by the work of the ratings agencies.

Although there is no obligation to adhere to the BIS minimum requirement of 8 percent of capital to risk weighted assets, Islamic banks that are seen as being adequately capitalized are more likely to have their trading

instruments recognised, and can negotiate better terms for their assets which are managed by other banks. Capital therefore can be a constraint on Islamic bank growth, especially when the bank has been successful in rapidly building up its deposit base. Often it has taken longer for Islamic banks to identify profitable lending opportunities than build up their deposit base, which implies lower initial profitability. This may delay stock market quotation to increase the capital base, or where the bank is already a quoted company, it may preclude rights issues to raise additional capital.

The IFSB is to serve as an association of institutions that have responsibility for the regulation and supervision of the Islamic financial services industry. The aim is to set and disseminate standards and core principles as well as adapt existing, mainly AAOIFI, standards. Adoption of the standards will be voluntary, but banks and countries that adhere to the standards are likely to be more favorably rated. The IFSB is also responsible for liaison and cooperation with other standard setters, including central banks and security market regulators, in the area of monetary policy and financial stability, opening up the possibility of the adoption of Shariah law in this area for the first time. In addition the IFSB is responsible for the promotion of good practice in the area of risk management through research, training and technical assistance.

Standardisation of Islamic financial products can come about by adhering to international regulations, whether from secularist institutions such as the IMF or BIS or from designated Islamic international institutions such as the IDB, AAOIFI or the IFSB. It can also result from the interchange of ideas by national Islamic banks at international conferences, which encourages the spread of “best” practice. Even more influential in standardisation has been the emergence of major multinational banks and fund management groups as providers of Islamic financial products either directly to their own clients, or indirectly to those of the national Islamic banks. As HSBC Amanah Finance typifies this type of initiative by a major multinational bank, it is perhaps instructive to examine its experience.

Despite its size as the largest United Kingdom based bank, with a significant presence in many Muslim countries from the Middle East and the Gulf to Malaysia, HSBC was a relatively late entrant to Islamic finance. Banks such as Citicorp, ABN AMRO, Deutsche Bank and some of the British merchant banks were involved from the 1980s, but HSBC only established its Amanah Finance division in 1998. In its mission statement HSBC Amanah Finance stresses its respect

for the sanctity of the Shariah, its professionalism, uncompromising integrity and strong customer focus. The aim is to build Amanah’s reputation amongst Muslim clients of HSBC who already use its financial products and potential internal and external clients. Initially the emphasis has been on cross selling Amanah products to existing HSBC Muslim customers who use its conventional financing facilities, the internal clients, rather than reaching external clients of other banks through marketing and advertising the Islamic products. Direct cross selling is cheaper, and usually more effective given the captive nature of the market. Credibility with Muslim communities internationally rather than within single countries is important for multinational banks such as HSBC. Reputations can be enhanced internationally by having Shariah committee members accountable who combine academic scholarship with practical work on the Shariah committee and understand Western economics system and Islamic economics. Towards a pluralist international financial system—Far from being a threat to Islamic finance, globalization provides an opportunity. Islamic finance extends choice, and enables Muslims internationally to conduct their financial affairs in a manner that is consistent with their beliefs and values. Many non-Muslims are concerned with the ethics of how their money is utilized and their financing derived, hence the rise of the ethical finance industry encompassing some western banks and many mutual funds. Western and Eastern non-Muslim clients have shown their willingness to use Islamic financing when it is attractive. HSBC Amanah financing, for example, have found that 20 percent of their Malaysian clients are non-Muslim Chinese. Islamic finance adds value to the international financial system and encourages non-Muslims to think more seriously about debt issues, from the injury caused by lending sharks in the consumer loan market to the issue of developing country debt.

The challenge of globalization is both to regulation and to markets, with a widening in the remit of the former and in the breadth and depth of the latter. Islamic finance should not only be judged by its quantitative impact on global markets, which though increasing, remains small, but more importantly by the quality of the service and its effect on the perceptions and thinking of global financial players. Ultimately finance is more about values than the mere accumulation of money. Finance is also concerned with social responsibilities, including that of the wealthy towards the less fortunate in an often too selfish global economic order based on greed rather than economic justice.







Imam Uddin

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Corporate Governance In Islam

A Comparative Study Of OECD Principles And Islamic Principles Of Corporate Governance

By Dr. Imam Uddin

This is an attempt to provide comparison of Organization of Economic Co-operation and Development (OECD) principles and Islamic principles of corporate governance (CG). Like Pakistan, majority of the corporate civilized countries all over the world are using OECD principles as guideline and benchmark for corporate governance in their corporate sector. The Islamic financial system has progressed a lot in last one decade, beside this there is need to develop the Islamic CG system too. In the paper, OECD principles have been taken from publications of OECD. For Islamic principles the Quran, Hadis, and renowned Islamic scholars have been consulted. After the analysis, it has been found that OECD principles are covering six different issue and rights related to firm. But Islamic corporate governance necessarily has wide horizon, with obligations extended beyond shareholders, financiers, suppliers, customers, and employees, embracing the spirit of humanity well-being as well as the temporal needs of the Islamic community.

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INTRODUCTION

This paper explores the importance of Principles of Islamic Corporate Governance in the light of Quran & Sunnah. It compares the Islamic Principles with the OECD Principles of Corporate Governance. The implications of Islam for corporate governance and the issues about international convergence have also been raised. In the practical sense, corporate governance involves the nuts and bolts of how corporations should fulfill their responsibilities to their shareholders and other stakeholders. Transparency, accountability and adequate disclosure are three essential ingredients in corporate governance. The concept of corporate governance was put forward because of increasing awareness on the importance of the need to protect the rights of all stakeholders, including minority shareholders.

This concern started in new shape in early 20th century with development of corporations in western countries. However, it shaped properly in early 1990s with Cadbury Report (1992). This report kept on improving in the form of different reports and at last shaped into OECD Principles of Corporate Governance-2004. These Principles were so sound that it immediately adopted by EU, World Bank, USA, other OECD and non-OECD countries (Morck, 2005).

This term corporate governance is relatively new, but the concept is actually not alien to Islam. Islam is not only a religion but also a complete code of life. The hallmark of the Islamic business system lies in the high ethical values that underpin the governance and business operations. Islam stresses the practice of justice, equality, truthfulness, transparency, protection to minorities, accountability and adequate disclosure in every aspect of life. All forms of exploitation are prohibited. There is no doctrine of caveat emptor in Islamic law. As mentioned above that, OECD Principles of Corporate Governance are based on three basic principles transparency, accountability and adequate disclosure. OECD has developed these principles after a series of reports and researches but surprisingly these were the basic principles of business in Islamic Civilization about 1400 years ago.

Here it has tried to identify similarities in both codes of business conduct and differentiations in both have been identified. It will help to find more consolidated principles of corporate governance that would be applicable and acceptable to whole world.

The paper has divided into six parts; after introduction there is definition and need identification of corporate governance, third part explains the OECD principles of corporate governance, on fourth is Islamic viewpoint on corporate governance, fifth contains comparison of both approaches and last is the conclusion.

CORPORATE GOVERNANCE

“In the practical sense, corporate governance involves the nuts and bolts of how corporations should fulfill their responsibilities to their shareholders and other stakeholders. Corporate governance is the mechanism by which agency problems of corporation stakeholders, including the shareholders, creditors, management, employees, consumers and the public at large are framed and sought to be resolved. Transparency, accountability and adequate disclosure are three essential ingredients in corporate governance” (Hakim, 2002).

Good corporate governance reinforces sound regulation and supervision. It contributes towards maintaining market confidence, and strengthening transparency and accountability. Its emphasis is to be value-oriented and promote fairness and justice with respect to all stakeholders of the organization. For corporate governance to work, good corporate practices need to be instilled and embedded in all aspects of the operations and at all levels within the organization.

Good and proper corporate governance is considered imperative for the establishment of a competitive market. There is empirical evidence to suggest that countries that have implemented good corporate governance measures have generally experienced robust growth of corporate sectors and higher ability to attract capital than those that have not (SECP, 2005).

Sound corporate governance practices have become critical to worldwide efforts to stabilize and strengthen good capital markets and protect investors (Darman, 2005). They help companies to improve their performance and attract investment. Corporate governance enables corporations to realize their corporate objectives, protect shareholders rights and meet requirements, and to demonstrate to the wider public how they are conducting their business. Research shows that investors from all over the world indicated that they would pay large premiums for companies with effective corporate governance. Companies with better corporate governance had higher per book ratios, demonstrating that investors do indeed reward good governance (McKinsey, 2004).

Taken together, all above discussion of corporate governance lead to the basic idea, which refers to the system by which companies are directed and controlled, focusing on the responsibilities of directors and managers for setting strategic aims, establishing financial and other policies and overseeing their implementation, and accounting to shareholders for the performance and activities of the company with the objective of enhancing its business performance and conformance with the laws, rules and practices of corporate governance.

OECD PRINCIPLES OF CORPORATE GOVERNANCE

The OECD Principles of Corporate Governance were endorsed by OECD Ministers in 1999 and have since become an international benchmark for policy makers, investors, corporations and other stakeholders worldwide. They have advanced the corporate governance agenda and provided specific guidance for legislative and regulatory initiatives in both OECD and non-OECD countries (OECD, 2004).

The Principles are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance. The Principles focus on publicly traded companies, both financial and non-financial. However, to the extent they are deemed applicable, they might also be a useful tool to improve corporate governance in non-traded companies, for example, privately held and state owned enterprises. The Principles represent a common basis that OECD member countries consider essential for the development of good governance practices. They are intended to be concise, understandable and accessible to the international community. They are not intended to substitute for government, semi-government or private sector initiatives to develop more detailed “best practice” in corporate governance.

“Corporate Governance is the system by which business corporations are directed and controlled. The corporate governance specifies the distribution of rights and responsibilities among different participants in the corporation, such as the Board, managers, shareholders and other stakeholders, and spell out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structures through which the company objectives are set, and the means of attaining those objectives and monitoring performance” (OECD, 2004).

Following are the principles of Corporate Governance designed by OECD:

I. Ensuring the Basis for an Effective Corporate Governance Framework

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

II. The Rights of Shareholders and Key Ownership Functions

The corporate governance framework should protect and facilitate the exercise of shareholders’ rights.

III. The Equitable Treatment of Shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

IV. The Role of Stakeholders in Corporate Governance

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

V. Disclosure and Transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

VI. The Responsibilities of the Board

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders.

The above six OECD principles of corporate governance are based on following three basic principles;

1. The mechanism of decision making and its transparency
2. Accountability in roles and responsibilities
3. Adequate disclosure of results

Above principles seems to be clearly aligned with Hakim (2002) that transparency, accountability, and adequate disclosure are the basic ingredients of corporate governance. The soundness of these principles has been proved by its adoption all over the world (Morck, 2005).

ISLAM AND CORPORATE GOVERNANCE

“Indeed, Islam strongly advocates all forms of positive governance. Islamic values and ethical conduct have already been in built and are inherent in the community. Islamic corporate governance serves through its underlying principles of economic well-being of the Muslim community, universal brotherhood, justice, accountabilities, truthfulness, and transparency, protection to minorities, adequate disclosure and equitable distribution of income. Therefore, while the virtues of Islam have always advocated good corporate governance, the challenge to us lies in its application. The paramount principle is honesty and fair dealings. All forms of exploitation are prohibited. “Islam always encouraged trade and commerce as long as it is conducted within the

framework of Holy Quran, and the word of Allah as revealed to his Prophet Muhammad (PBUH)” (Lewis,2005)

Islam commands authority over the totality of a Muslim’s being, not accepting any distinction between sacred and the secular. Two aspects, in particular, shape the nature of Islamic corporate governance. One is that Islamic Law, the Shari’ah claims sovereignty over all aspects of life, ethical and social, and to encompass criminal as well as jurisdiction. The ethical principles define what is true; fair, just, the nature of corporate responsibilities, the priorities to society, along with some specific governance standards. Second, in addition to providing a set of business ethics, certain Islamic economic and financial principles (zakat, riba, prohibition of speculation) have a direct impact upon corporate practices and policies.

The stated above three basic principles used by OECD to define corporate governance, can be searched out in Islam as well.

Corporate Governance Framework

As OECD have emphasized on proper corporate governance framework before stating the principles. Islam also provided the vast guidelines for implementation and monitoring framework. The Ibn Khaldun’s analysis (1407) of the rise and fall of governments and civilizations, moral norms, which emanate in his analysis from the Shari’ah in a Muslim society, may not get reflected in laws, and the laws may not get implemented effectively if the political authority does not attend to this task seriously. It is the responsibility of the political authority to check all morally objectionable behavior - dishonesty, fraud and unfairness that are harmful for socio-economic development. It must also ensure the fulfillment of contracts and respect of property rights, and inculcate in the people qualities that are necessary for social harmony and development with justice. What may be important within the Islamic perspective is not just the holding in check of objectionable behavior (nahi ‘an al-munkar) but also the promotion of desired behavior (amr bi al-ma’ruf) by the creation of a proper enabling environment through effective educational, political, social, legal and economic reforms and the building of proper institutions for this purpose. The governments generally fail to perform these tasks if they are not accountable before the people, do not apply the law equally and equitably on all the different strata of the population, and do not employ staff based on character and competence. Like OECD, the above guidelines from Islam also emphasized on promoting the transparent, consistent and equal rule of law.

Decision Making

After implementation framework, Islam is also very clear on the principles of corporate governance

فَبِمَا رَحْمَةٍ مِّنَ اللَّهِ لِنْتَ لَهُمْ وَلَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ لَانفَضُّوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ ﴿١٥٩﴾

- “And consult them on affairs (of moment). Then, when you have taken a decision, put your trust in Allah.” (Ale Imran, 3:159)

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ ﴿٣٨﴾

- “Those who respond to their Lord, and establish regular prayers; who (conduct) their affairs by mutual consultation; who spend out of what We bestow on them for sustenance.” (Al-Shu’ra, 42:38).

لا يؤمن احدكم حتى يحب لأخيه ما يحب لنفسه

- Abu Hamzah Anas bin Malik (RA), who was servant of the Messenger of Allah, reported that the Prophet (PBUH), said: “None of you truly believes (in Allah and in His religion) until he loves for his brother what he loves for himself (Al-



جَنَّةُ نَجْرَى مِنْ خَنْدَقِهَا الْإِنْفَارُ
فَلَمْ يَخْلُصْ مِنْهَا أَحَدٌ

فَلَمْ يَخْلُصْ مِنْهَا أَحَدٌ

Similar to OECD principles, above verses also emphasize on consultation with stakeholders at the time of decision-making and give equal importance to all stakeholders (including minority shareholder). However, one addition is trust in Allah. There are two benefits of trust in Allah after decision is taken. First; the bless of Allah will help in implementation of decision. Second, when all stakeholders will trust in Allah, there will be no conflict among them. Mode of decision-making is also different from OECD. Islam believes in consultation and consensus of stakeholders but OECD principles empower the BOD and senior management for decision-making.

Disclosure and Transparency

فَإِنْ لَّمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَآمَرَ أَحَدَانِ مِمَّنْ قَرِضُونَ مِنَ الشَّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَىٰ وَلَا يَأْبَ الشَّهَدَاءُ إِذَا مَا دُعُوا وَلَا تَسْمَعُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ذَٰلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا وَأَشْهَدُوا إِذَا تَبَايَعْتُمْ وَلَا يُضَارَّ كَاتِبٌ وَلَا شَهِيدٌ وَإِنْ تَفَعَّلُوا فَإِنَّهُ فُسُوقٌ بِكُمْ وَاتَّقُوا اللَّهَ وَيُعَلِّمُكُمُ اللَّهُ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿٢٨٢﴾

Another reference in Quran explained in verses 282 and 283 of Surah al-Baqarah, states a detailed:

﴿وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَيْنِ مَقْبُوضَةً فَإِنْ أَتَيْنَا بِبَعْضِكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمْنَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ فِئْتَةٌ عَلَيْهِمْ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ﴾

- “O you who believe! When you contract a debt for a fixed period, write it down. Let a scribe write it down in justice between you.....You should not become weary to write your contract down, whether large or small, for its fixed term, that is more just with Allah, more solid as evidence, and more convenient to prevent doubts among yourselves... Take witnesses whenever you enter into a commercial contract” (Al-Baqarah: 282)

يَتَأْتِيهَا الَّذِينَ عَامَتُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَيْعَاتُ

- And if you are traveling and cannot find
 ① أَلَّة يَحْكُمُ مَا يُرِيدُ

a scribe, then let there be a mortgage taken And do not conceal any evidence for he whoever hides it, surely his heart is sinful, and Allah is all Knower of what you do” (Al-Baqarah: 283)

These two verses gave the clear guidelines for disclosure and transparency. It emphasizes on making reports for each aspect of business and clearly discloses stakeholder to avoid doubts among them.

Here is also an addition which is not given by OECD is that make sure Allah know everything. So stakeholders can hide things from each other but when all believe that Allah know everything, no one can courage to hide something from each other. It will promote proper disclosure and transparency in reporting.

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمْنَتِكُمْ
وَأَنْتُمْ تَعْلَمُونَ ﴿٢٧﴾

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ
تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ
رَحِيمًا ﴿٢٨﴾

Accountability

From the perspective of Islam, deeds are more important than mere words, slogans, rhetoric or lectures, as highlighted in various verses of the Quran:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتَذَلُّوا بِهَا إِلَى
الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

- “O ye who believe! Fulfill (all) obligations” (Al-Maidah: 01).

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَى
الْأَمْرِ مِنْكُمْ فَإِنْ تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ
كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا ﴿٥٩﴾

- “O ye who believe! Betray not the trust of Allah and the apostle, nor misappropriate knowingly things entrusted to you” (Al-Anfal: 27).

الَا كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ

- “O ye who believe! Eat not up your property among vanities. But let there be amongst you traffic and trade by mutual goodwill, nor kill (or destroy) yourselves; for verily Allah hath been to your Most Merciful” (An-Nisaa: 29).

- “And do not eat up your property among yourselves in vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people’s property” (Al-Baqarah:188).

التاجر الصدوق الأمين مع النبيين والصديقين والشهداء والصالحين

- “Obey God, and obey the Apostle, and those charged with authority among you. If ye differ in anything among yourselves, refer it to God and His Apostle, if ye believe in God and the Last Day: That’s the best and most suitable for final determination” (4:59).
- “Each one of you is a guardian, and each guardian is accountable to everything under his care” (Bukhari & Muslim)

"Why do which you do?" (As-All above Hadis are principles

Basis of Difference	OECD Principles	Islamic Principles
Authority	Directors have authority for decision-making. They follow the principles of OECD.	Sole Authority is for Almighty Allah; all decisions are to be made by keeping in view Shari’ah.
Decision Making	Decision-making rests with CEO & Senior management. Voting required just for selection of BOD and few other decisions.	Consultation and Consensus seeking for each decision from respective stakeholders.
Goal	Maximization of profits and shareholders’ value	Sensation of equality, equal distribution of wealth, consideration to whole community.
Accountability	Senior management accountable to shareholders.	Accountability not only towards Shareholders but also towards Almighty Allah.
Ethics	Transparency, accountability and disclosure.	Justice, equality, truthfulness, transparency, protection to minorities, wider accountability, written as well as oral disclosure.
Application	Principles are not equally applicable all over the world.	Equally applicable all over the world.

you say that do not Saff :02) verses and clear of

accountability in roles and responsibilities. Moral values needed for this purpose are clearly specified in the Quran, the Sunnah and the Fiqh. The Quran requires the honest fulfillment of all contracts (al-Quran, 5:1) irrespective of whether these are written or oral, and explicit or implicit. It prohibits betrayal of all trusts (al-Quran, 8:27) and considers it immoral to derive any income by cheating, dishonesty or fraud (al-Quran, 4:29). It prohibits the giving of bribes to derive an undue advantage (al-Quran, 2:188). The Prophet (PBUH), made it abundantly clear that whoever cheats is not one of us (i.e. not a Muslim). (Mishkaat)

At another place, Prophet (PBUH) said;

“The hypocrite has three signs: when he speaks he tells lies; when he makes a promise he does not fulfill it; and, when he is entrusted with something he commits a breach of trust” (Bukhari & Muslim)

. He also said that;



“Honest and trustworthy businessman will be with the Prophets, the truthful and the martyrs on the Day of Judgment”. (Bukhari & Muslim)

In Islam, it has been clearly defined the accountability in roles and responsibilities of not only the business people but in life of every person. So corporate governance not only limited to BOD and senior management but every person related with that organization. OECD has made senior management accountable to BOD and BOD to shareholders but Islam made accountable not only to stakeholders, also to God; the Ultimate Authority. OECD made persons accountable for all written and defined obligations but Islam asks for accountability of oral promises too.

Corporate Governance in Islam and OECD Principles – A Comparison

We are now in a position to make a comparison between Corporate Governance in Islam and OECD Principles as under.





Taqi Usmani

Mufti Muhammad Taqi Usmani is one of the leading Islamic scholars living today. He is an expert in the fields of Islamic Jurisprudence, Economics, Hadith and Tasawwuf. Born in Deoband in 1362H(1943 CE), he graduated par excellence from Dars e Nizami at Darul Uloom, Karachi, Pakistan. Then he specialized in Islamic Jurisprudence under the guidance of his eminent father, Mufti Muhammad Shafi, the late Grand Mufti of Pakistan. Since then, he has been teaching hadith and Fiqh at the Darul-Uloom, Karachi

Looking for New Steps in Islamic Finance

By Mufti Taqi Usmani

Islamic banking industry has grown rapidly during the past three decades spreading its operations in many parts of the globe. Making its first debut in the small Savings Association of Mitghamr (Egypt) in 1963, its strength has now reached over 250 financial institutions operating in more than 40 countries with assets valuing USD 750 billions, and an annual growth rate of 15 per cent. Almost all the giant conventional banks are in queue to establish their Islamic units to capture the new emerging market. This rapid growth of Islamic financial industry is, no doubt, encouraging for those who wished to relieve themselves from the prohibition of interest on the one hand and to remain a part of the modern market economy on the other.

Now that a substantial period of more than three decades has passed on the experience of Islamic Banks and Financial Institutions, it is imperative to review what they have achieved so far and what they have missed.

It is, no doubt, a great achievement of these institutions that they relieved the Muslims from clear prohibition of *riba*, and came up with some alternatives that might be adopted in financial market without indulging in interest. In an atmosphere entirely dominated by interest-based transactions, it was really a formidable task. I do not agree with those who criticize them on the basis of utopian idealism, and claim that they should have brought an immediate revolution in the entire pattern of the financial market and should, at the very outset, have achieved the basic objectives of a true Islamic economy.

This idealism that accepts no breathing space between 0% and 100% always tends to support 0% and to maintain status quo in practical terms. Looking from practical aspect, it is always a wise policy to start something that can be done in a given situation, even though it is less preferable from an idealistic approach. It was in this background that some instruments of lesser risk like *murabahah*, *ijarah* and diminishing *musharakah* etc. were allowed by the Shariah scholars. It is also wrong to say that these instruments have an element of camouflaged interest. In fact, if implemented with all their necessary conditions that have always been stressed upon by the Shariah scholars, they are substantially different from an interest based financing. At the first place, all these instruments are based on real assets, and do not amount to trading in money and financial papers, which is the case in an interest based financing.



Secondly, unlike an interest-based transaction, the financier, in each one of these instruments, assumes the risk of real commodities, properties or equipments without which the transactions cannot be valid in Shariah. Thirdly, these modes can be used only to finance a commercial activity that is permissible according to Islamic rules and principles.

These basic distinguishing features are enough to draw a line of difference between the two techniques of financing. Therefore, the notion that they are another form of interest is not correct.

Having said this, one must not forget that these instruments are not modes of financing in their origin. They are in fact some forms of trade that have been modified to serve the purpose of financing at initial stage as secondary and transitory measures. Since they are modified versions of certain forms of trade, they are subject to strict conditions and cannot be used as alternatives for interest-based transactions in all respects. And since they are secondary and transitory measures, they cannot be taken as final goal of Islamic Finance on which Islamic Financial Institutions should sit content for all times to come.

It is a matter of concern for a student of Islamic finance, like me, that both these points are increasingly neglected by the

players in the field, and especially by the new-comers in the industry.

One should always differentiate between the transactions based on the original philosophy of a particular system and the transactions resorted to in exceptional situations on the basis of need. The former ones represent the real concept of the system, while the latter ones do not.

The original concept of Islamic financing is undoubtedly in favor of equity participation rather than creation of debts, because it is only equity participation that brings an equitable and balanced distribution of wealth in the society. Debt-ridden economy, on the other hand, tends to concentrate wealth in the hands of the rich, and creates a bubble economy which fuels inflation and brings many other social and economic evils.

That is why Islam has discouraged creation of debts, which should be resorted to in exceptional situations only, and encouraged equity participation, which is the best way to a just and balanced distribution of the benefits of commercial activities.

Out of innumerable instructions given by Islamic resources to that effect, I would like to quote only two examples. It is reported by Sayyidah 'Aisha, the blessed wife of the Holy

Prophet that, during his prayer the Holy Prophet used to seek refuge from indebtedness. On the other hand, the Holy Prophet has declared that 'Allah Almighty remains with trade - partners (to help and support them) unless one of them becomes dishonest to the other.'

These two comments made by the Holy Prophet are more than sufficient to show Islamic attitude towards debts as opposed to the equity participation.

In the light of the above, Islamic financial institutions have much to do before they achieve the desired objectives of a true Islamic economy.

Although the trade-related instruments like murabahah, ijarah etc. used by them in their operations, are not loans in strict terms, yet they create debts on the basis of deferred sales or renting.

As explained above, debt-based instruments are not preferred ones, but they were suggested to be used as modes of financing to start the wheel of interest-free financing, and to bring an instant relief from interest in an atmosphere that was not fully prepared for immediate switch over to an equity based system.

It was a sort of first aid provided to a patient before he may have access to full medical treatment. No one can deny the importance of measures taken as first aid, but who can claim that they are the final cure of the disease, or that no further treatment is needed after them?

Pain-killers are necessary to give immediate relief, but they are not enough to cure the deep-rooted ailments.

The idea was that after starting their operations on the basis of these instruments, they should gradually proceed towards the ideal forms of Islamic finance.

Failure to abide by this idea has caused many problems resulting in total neglect of equity-based financing. Despite the differences we have explained above between interest and these instruments, they have many similarities in the net result, especially because of the benchmark used for their pricing. This has prompted Islamic Financial Institutions to

compete with their conventional counterparts in all respects, and restrict themselves to the debt-based products.

In their zeal to compete conventional banks, they are trying to invent 'Shariah compliant' counterparts for each and every financial product available in conventional capitalist market, regardless of whether or not they are in consonance with the ethos of Islamic economy. Instead of gradual progress towards equity, the tendency is to make maximum compromises to accommodate debt-related products matching with practices of the conventional market.

Even derivatives are being designed on the basis of 'Shariah compliant' methods. If some products had to be equity based, they too were equated in some way or the other with a fixed return debt. 'Sukuk' was the best way to proceed towards equity, but in order to restrict the return of sukuk holders, a threshold based on Libor is applied after which the whole profit is given to a particular party in the name of incentive for good management.

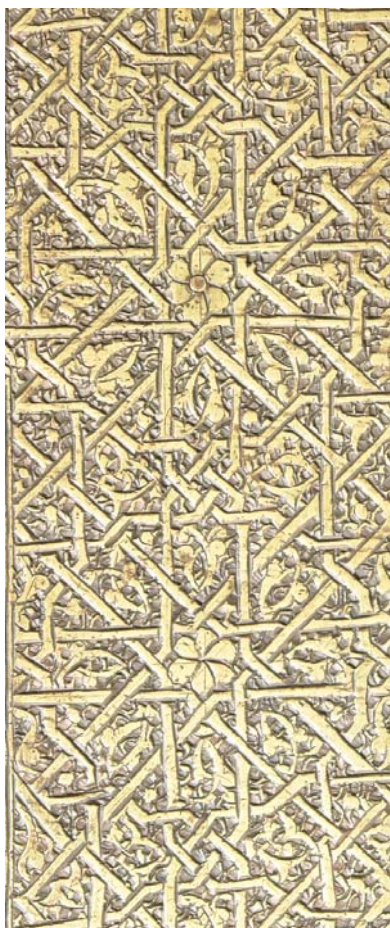
In many cases, it is not even mentioned that after the fixed rate the rest is incentive. This situation needs serious consideration of the players in the field and of the Shariah scholars who oversee the new products for Islamic financial Institution. Many conferences and seminars are being held frequently to consider various aspects of Islamic finance.

I think it is high time now to find out ways and means to make our products not only compliant with, but also founded on Shariah. Our research should now focus on how we can move from debt-based to equity-based instruments in their true spirit, so that they may demonstrate the beauty of Islamic finance based on its economic ethos.

No doubt, there are still some hurdles in their implementation, but they are not insurmountable for an industry that is growing so fast, if serious importance is attached to this vital issue, which must be the next topic of our discussion in a workshop devoted for this purpose







Murat Çizakça

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Origins And Evolution Of Risk Sharing In Islam

By Prof. Dr. Murat Çizakça

Classical sources of Islam prohibit interest transactions but encourage business partnerships and trade. While interest transactions shift the risks from the capitalist to the entrepreneur, partnerships lead the two to share them. Thus, Islam prefers risk sharing to risk shifting. Since it is the risks which generate profits and losses, it follows that when risks are shared, profits and losses are also shared. Thus, risk sharing leads to a share economy, that's what an Islamic economy is supposed to be all about. But all of this is theory. What about application? In all cultures economic theory is translated into application via institutions. If so, which institutions are we talking about? 3 We start with the interest prohibition and business partnerships. Everything boils down how the capital of the capitalist is combined with the work and talent of the entrepreneur. In the conventional system this is done with credit transactions and the rate of interest. In an Islamic economy it is done by business partnerships.

Two questions here:

- 1) Which partnerships
- 2) Are these partnerships specific to a locality or universal? In Islamic economic history, the most important partnerships observed were the Mudaraba and its derivatives. Mudaraba was born in the Middle East but then spread to the whole of the Islamic world from the Atlantic to the Pacific. With the crusaders, it even spread to Europe. During the late 12th century Eleanor of Aquitaine, Queen of France, brought the Islamic law of Partnerships as well as the Admiralty Law from Jerusalem to France. In France at the Island of Oleron, these laws were then incorporated into the Lex Mercatoria –the medieval European law of commerce.
- 1 Thus the Islamic partnership and maritime laws constituted the essence of the later corporate law of the West. Another remarkable feature of the classical Islamic partnerships is their resilience. A thousand years after their birth, they can be observed in Ottoman finances without any change in their structure.
- 2 There is one financial instrument, however, which can be considered as typical Ottoman. These were the Cash Waqfs. Cash waqfs were charitable foundations established with cash.
- 3 In brief, their modus operandi was as follows: A wealthy person donated a certain amount of cash for a charitable purpose. The money was invested and the revenue it generated was spent for the charitable purpose of the donation. When

Imam Zufar was asked during the 8th century how a cash waqf should function, he said, the cash capital should be invested with mudaraba. But when Ottoman cash waqfs were studied, it became clear that they did not apply mudaraba. Had they done so, they would have been risk sharing instruments. Instead, they applied istiglal, a basically risk shifting instrument. Why did the Ottoman cash waqfs fail to apply Imam Zufar's ruling? The most plausible explanation is the profit limits imposed by the Ottoman state. As it is well known, Mudaraba is a risky instrument and it may end up with losses. Such losses can be tolerated only if there is no upper limit imposed on profits. But maximum profit limits in the range of 5 to 20 percent were the rule in the Ottoman economy. With such profit controls waqf trustees refused to apply the risky mudaraba and preferred istiglal. Thus, profit limits imposed by the state killed any potential for risk sharing by cash waqfs. So, the relevance of all this for us today is that risk sharing and profit limits imposed by an authority⁶ are simply incompatible. All of this pertains to private finance. What about state finance? Indeed, all governments need to borrow money from the public. But how does an Islamic government do this? Obviously it cannot borrow with interest. The earliest solution found was tax-farming.

The origins of tax-farming can be traced back to the early centuries of Islam. The Ottoman version of this system was called iltizam. In iltizam, entrepreneurs were delegated the right to collect taxes. So, taxes were collected by the private enterprise. Can we consider this arrangement as risk sharing? Not really, the state was shifting all the risks upon the agent or the entrepreneur. Indeed, the entrepreneur not only paid a fixed amount to the state, but he also did not have any guarantee that he would be allowed to collect taxes for a certain period. Moreover, With so much uncertainty and risk shifting, iltizam also⁷ contained elements of gharar. The consequence of all this risk shifting and gharar was that the state was not earning much. This became obvious in 1683, when Ottoman armies were defeated at the gates of Vienna. In 1695 a new system, the malikane, had to be introduced. Now the tenure of the entrepreneur increased to his life-time. Thus, the entrepreneur could collect taxes for the rest of his life. In return for this increased reliability of the tenure, the entrepreneurs began to compete in the auctions and the auction prices increased greatly, yielding much higher revenues to the state. Malikane can be considered as a system of risk sharing. The entrepreneur took a great risk and made a very large lump-sum payment up front, but, in

return, enjoyed the right to collect taxes for the rest of his life. Now the risks were shared fairly: If the entrepreneur lived a long life he would make substantial profits, and the state would lose. If he lived a short life, the state could take back the tax-farm at his death and re-sell it again at a new auction making substantial profits. With such risk sharing, the gharar was eliminated as well. As a result of all this, the Ottoman state was able to increase its revenues by 1400%.⁴ This is a dramatic confirmation of the relative efficiency of risk sharing vis a vis risk shifting in state finance.

But even such financial successes could not protect the Ottoman state from the aggression of Imperial Russia, which was enjoying a population explosion and had doubled its population during the 18th century. Ottoman armies suffered a disastrous defeat in 1774 and a huge war indemnity had to be paid. A new system that would be able to collect this amount, rapidly and in a Shariah compliant way, was needed. The solution found was the esham.

In this system, the state set aside an asset, which yielded a regular annual revenue. It then allocated a certain fraction of this revenue for esham. This revenue fraction was then securitized into equal shares and offered for sale to the public. Each share authorized its purchaser, the investor, to receive his share of the allocated annual revenue pro rata. This was a fixed amount. The investor received his annuity for as long as he lived. Each share was sold at a certain multiple of the annuity it was to yield to the investor. Usually, the price of a share was determined as 5 to 12 times the annuity it yielded. Once bought, each sehm was negotiable and could be sold in secondary markets.

Two questions would be relevant here.

- 1) Was esham usurious?
- 2) Was it an instrument of risk sharing? It was not usurious. What makes esham non-usurious, riba free, ¹⁰ was the fact that :

first, redemption was at the discretion of the state. Put differently, the borrower, i.e., the state paid back the principal only when it felt like it. There was no pre-fixed and obligatory date of redemption.

Second, there was uncertainty and risk sharing. This was a result of the uncertainty of the life-span of the investor, as well as, the fluctuating economic conjuncture. As was the case with malikane, in esham also, if the investor enjoyed longevity, the state would lose, and if he lived a short life it would gain. So, the risk with regard to the life-span was shared. Profit/loss sharing reflecting the economic



conjuncture also occurred when the investor sold his share in secondary markets at current prices. In short, esham system involved risk sharing as well as profit and loss sharing.

Finally, we may ask, was esham successful in meeting the financial needs of the Ottoman state? The new system succeeded in raising one-third of the war indemnity within less than a year. Within ten years of its establishment, in 1785, 11 Esham generated 11.500.000 grüş revenue, which was more than half of the entire revenue of the state. It has been calculated that what the previous malikane system was able to generate in 90 years, Esham succeeded to generate in only 10 years.⁶ On the down side, total annuity payments reached 10% of the total expenditure of the state. Basically a risk-sharing system, Esham came to dominate the Ottoman public finance for the next century or so and played a decisive role in the survival of the Ottoman state until the 20th century.

Twentieth Century Developments and the Present:

The most important development of the 20th century in Islamic finance was the establishment of the first Islamic bank in Mit Ghamr in Egypt by Dr. Ahmed el-Naggar. El-Naggar's bank was based on a two layer multiple mudaraba. In other words, both the liability and the asset sides were

designed as multiple mudarabas. Consequently, It was a truly risk sharing system. But it did not last and all the other Islamic banks established later on applied murabaha rather than Mudaraba in their asset sides. Thus they abandoned risk sharing and focused on trade financing based on the murabaha mark-up.

What Needs to be Done? Replacement of mudaraba by murabaha has caused great disappointment with the Islamic banks. This is because, Murabaha is a simple mark-up, it operates in similar fashion to the rate of interest and is not based upon risk sharing. So, how can the Islamic banks be encouraged to focus on mudaraba financing, which was the original design of Dr. Ahmed el-Naggar? Very briefly, the following observations may be made. ¹³ Half a century of experience since 1963 has taught us that it is unrealistic to expect Islamic Banks to be involved in risk sharing with their clients, who demand fixed returns. So, private sector risk sharing needs to be undertaken by non-bank financial institutions. Western experience since the Second World War indicates to venture capital as the most pertinent non-bank financial institution. Indeed, it has been shown that venture capital is in perfect harmony with the teachings of the classical sources of Islam. Indeed, this American institution,

the financier of such companies as Apple, Fed Ex, Amazon etc., has a structure that is, mysteriously, identical to the Islamic multiple mudaraba.⁷ If a western institution is highly successful and it is also practically identical to a classical Islamic institution, then it is obvious that Muslims should do their utmost to re-introduce it.

Introducing Venture Capital:

The following simple principles must be remembered while establishing a venture capital sector.

1) The heart of VC is the venture capital company. So, the state must make the establishment of these companies as easy as possible. Insisting on a high threshold minimum paid-in capital would be wrong. This was the mistake that the Turkish Capital Market Board did during the 1990s. A venture capital should not be confused with banks. A VC does not collect deposits, therefore it does not create risks for the public. If it goes bust, it would only hurt its own shareholders. So, no paid-in capital requirement should be imposed at all.

2) Venture Capital is a private sector activity. Some state support might be needed initially, but this must be strictly for the short term.

3) Initial state support should be in the form of fund matching. This means, the government can declare that 15 if a VC has decided to finance an entrepreneur, the state shall also buy the shares of that entrepreneur at a maximum rate of 49%.

4) Tax breaks can be also important. Capital Gains Tax should be zero percent. Inheritances if invested in equities can also be taxed at zero percent.

5) Pension funds can be a very important source for venture capital companies. If these funds are given the permission to invest even a small percentage of their funds in VC, that

would be a great support. In the US the 1974 ERISA Act did just that with a huge impact. On the Asset Side: The main principle to be remembered is this: the ultimate goal of the venture capitalist is to sell the shares of the entrepreneurial firm he has financed, preferably with great profits. For this;

6) Well functioning “over the counter markets” need to be established.

7) Professors and their research students are the ideal potential entrepreneurs. Venture capital-university linkages are very important. Universities must give professors and their students the freedom to establish their own companies. Only then the venture capital companies can become actively engaged with universities. 8) If research is financed with government money, patents obtained should not be in the name of the state but in the name of the research team. The Bayh-Dole Act of 1980 did precisely this in the US, with very impressive 16 results. This is essential to make the most out of the university technoparks. 9) Since VC is simply impossible without entrepreneurs and the domestic pool of entrepreneurs may be insufficient, immigration rules can be relaxed for skilled foreign potential entrepreneurs.

Conclusion:

The essence of this paper is that it is the economic circumstances which shape institutions. In other words, you cannot introduce a desired institution simply by passing a law. Institutions do not emerge because they are desired due to ideological reasons. They spring into being when they are needed. Law responds to economic circumstances, not the other way around. So, the duty of the state is to prepare the economic conditions which will favour certain institutions. Enterprising individuals will do the rest.





Joseph Franz Schacht

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Early Doctrines On Waqf

By Prof. Joseph Franz Schacht

I.

The origin of the institution of waqf cannot be traced to any single source; it is, as Heffening and Santillana have seen, the result of the combination of several factors and various elements which were intimately fused during the formative period of Muhammadan law. In this paper, I do not intend to discuss again the ingredients which went into the making of the institution of waqf; I rather propose to draw attention to some early doctrines concerning it which, it seems to me, are apt to throw new light on the development of its theory. The main sources for these early doctrines are the *Mudawwana* of Saḥnūn (d. 240), a work which contains the opinions of Mālik (d. 179), of Ibn Qāsim (d. 191), and of other early authorities of Medina, the *Kitāb Ahkām al-Waqf* by Hilāl (d. 245), a work which contains authentic information on the doctrines of Abū Ḥanīfa (d. 150), of Abū Yūsuf (d. 182), and of other early Iraqi authorities, the *Kitāb al-Siyar al Kabīr* of Shaibānī (d. 189), who in this book, mainly concerned with the law of war, has occasion to deal with an important aspect of waqf, and the *Kitāb al-Umm* of Shāfiʿī (d. 204) in which the author works out his own doctrine in polemical discussion with his Medinese and Iraqi predecessors. These texts, and a few others, carry us straight into the formative period of Muhammadan jurisprudence concerning waqf. In this connexion, I should like to formulate the self evident methodical rule that information on the doctrine of a given author ought to be sought in his own writings or at least in more or less contemporary sources; the simplified and systematized statements of later handbooks should not be taken as reliable evidence on the teaching of the early authorities. I shall begin with the doctrine of Medina, because the conclusions at which I arrived in my *Origins of Muhammadan Jurisprudence* show that the ancient Medinese doctrine, though often dependent on Iraqi opinion, usually lags behind it and therefore represents an earlier stage.

II.

The first salient feature of the doctrine of Mālik and his companions on waqf, as expounded in the *Mudawwana*, is the important place taken by contributions to the holy war, *ḥabs fī sabīl Allāh*. If a benefactor uses the expression *fī sabīl Allāh* without further specification, it is considered to refer to the holy war. In the majority of the cases discussed, the objects of these charities *fī sabīl Allāh* are movables, such as horses, weapons, and garments; according to Ibn Qāsim, also slaves may be given and employed for purposes of the holy war. Speaking of the *ḥabs* of movables, Ibn Qāsim distinguishes three kinds: (a) for individuals, (b) for

the poor, (c) *fi sabīl Allāh*. The movables given *fi sabīl Allāh* are intended to be used up by normal wear and tear; the doctrine concerning their disposal when they become unsuitable for further use in war is somewhat uncertain; Yaḥmā b. Sa'īd (d. 143) deals with a case which must often have presented itself in practice, of a man who sells a horse which had been given to him as *ḥabs*, by which is obviously meant the *ḥabs fi sabīl Allāh* and is mentioned rather in contrast to it. In another passage (XV. 99), Mālik deals with the case of a man who by legacy makes his house a *ḥabs*, but thinks that in a place like Alexandria, where the majority of *ḥubus* is *fi sabīl Allāh*, the administrator is probably entitled to use his discretion in the matter and to devote the *ḥabs* to this last purpose. In analogy with other passages in the *Mudawwana*, where Mālik deals with the *ḥabs* of houses (XV. 107, 111), we must conclude that the house is to be used for the accommodation of warriors. Hilāl refers to the same custom (see below). According to Rabi'a (d. 136), every *ḥabs* or *ṣadaqa* (he uses both words as synonyms, as many ancient Medinese do) is to be used in the most appropriate way; animals in the holy war, and the produce of property in any way proper to a *ṣadaqa* (an allusion to Sura IX. 60) that the administrator may decide XV, 98 f.).

In Iraq, Shaibāni deals at length with contributions to the holy war in his *litāb al-Siyar al-Kabir*. In the chapter entitled *al ḥabīs fū sabūl Allāh* (IV. 248251), he speaks of contributions of horses and weapons; the problems and the solutions are similar to those found in the *Mudawwana*; an isolated passage (II. 214-217) gives additional details. The long chapter that immediately follows the first (IV. 251-281) deals, in addition, with contributions of money, either outright or by legacy; unless a specific purpose is prescribed, it is used for equipping and paying warriors.

In the time of Hilāl, the practical importance of the *waqf fi sabīl Allāh*, though it was always recognized in theory, had greatly diminished, Hilāl mentions the holy war as one of the legitimate purposes of a *waqf* (p. 10), and singles out the construction of a house in a frontier post as accommodation for the warriors *fi sabīl Allāh* as a valid kind of *waqf* (p. 18). In another passage he says that the *waqf* (or the *ṣadaqa mauqūfa*, as he calls it) of animals, merchandise, and garments is not valid; it is valid, he says, in houses and land only, and in horses or mules and weapons if they are made a *ṣadaqa mauqūfa fi sabīl Allāh* (p. 16. F.). The general exclusion of movables represents the Ḥanali doctrine of his time; the exemption in favour of contributions to the holy war is a concession to an ancient practice which had found full recognition in the school of Medina.

In Shāfi'i's doctrine, too, this ancient kind of *waqf* or *ḥabs* has left its traces. Shāfi'i defines the *waqf* technically as a *ṣadaqa mu-ḥarrama mauqūfa*, to which he assimilates *mā subbila maḥbūsan*, which means «that which has been made a *ḥ fi sabīl Allāh*» (Umm III. 274). He thereby distinguishes between the ordinary *waqf* which according to him is permanent, its use or profit only being devoted to the purpose for which the *waqf* has been created, and the contribution to the holy war which, Shāfi'i is clear, is to be used up; but this distinction has no further importance in his doctrine.

All this shows the great practical importance that the *ḥabs fi sabīl Allāh*, particularly in the frontier posts of Islam, possessed during the whole of the second century. This kind of *ḥabs* continued the *ṣadaqa fi sabīl Allāh*, which many passages of the Koran had consistently and forcefully enjoined upon the believers in Medina. The practice of individual contributions to the holy war during the first generations of Islam was an important constituent factor of the institution of *waqf*.

III.

The ancient Medinese doctrine, which has survived in the Māliki school, recognizes a temporary *ḥabs* in favour of a determined person or number of persons, after whose death it reverts to the original owner or to his heirs. This doctrine is expressed, for instance, in a statement reported by Ibn Wahb (d. 192) with an *isrād* of two transmitters. «It is held that if a man makes a *ḥabs* in favour of another without saying, and for your posterity after you, it reverts to him, or to his heirs under the normal rules of inheritance, if he dies before the beneficiary or the beneficiaries of the *ḥabs*» (Mud. XV. 102). Ibn Wahb ascribes a similar doctrine, with an *isnād* of one transmitter, to Abul Zinād (d. 130): «A *ḥabs* made in favour of a man and of his children, as long as they live, with the provision that it shall not be sold or made a gift or inherited, after their extinction reverts to the next of kin of him who made it a *ḥabs* and *aṣadaqa*» (ibid. 103). This is on the doctrine of Rabi'a, reported by Ibn Wahb on the authority of the same transmitter; «If a man makes his house a *ḥabs* in favour of his children and the children of another man, they inhabit it until they die out; then his own next of kin take it back, grandchildren or others, and not the next of kin of those whom he associated with his children»; (ibid. 102 f.).

This reversible *ḥabs* or *ṣadaqa* was called *mauqūf(a)* from Rabi'a onwards. Saḥnūn relates that Rabi'a said: «A *ṣadaqa mauqūfa* which can be sold comes into being if a man makes a *ṣadaqa* in favour of one or more individually determined persons — meaning: for as long as they live, and not



mentioning their posterity; this is a *ṣadaqa mauqūfa*, and its original owner may sell it, if he so wishes, after it has reverted to him» (ibid. 102). The kind of *ṣadaqa* which Rabi'a has in mind is identical with the *ṣadaqa* in the first passage quoted from Ibn Wahb, Saḥnūn reports that «some of Mālik's authorities held that every *ḥabs* or *ṣadaqa* in favour of future persons is a *ḥabs mauqūf*, for instance if the benefactor uses the words 'for my children', without mentioning them by name; in this case any future children of his are beneficiaries too; the same applies if he sayus: 'for my children and any future children of mine', and this too is a *ḥabs* in favour of unknown future persons» (ibid. 101). The actual terminology of these anonymous authorities of Melik differs from that of Rabi'a because Rab'a uses the term *mauqūfa* of a *ṣadaqa* in favour of one or more individually determined persons. It seems that Rabi'a's usage was the original one, and the other secondary. In any case, this does not effect the meaning of *mauqūf* itself.

If we read the passages in question as they stand, dismissing from our minds the later terminological meaning of *waqf* and *mauqūf*, the word takes on its obvious and natural meaning of «provisional», «left in suspense». A *ṣadaqa mauqūfa* or a *ḥabs mauqūf* is originally, in Rabi's archaic doctrine and

terminology, a charity which reverts to the original owner or his heirs, after the beneficiary or the beneficiaries, who must necessarily be a limited number, have died out. In the doctrine of the anonymous scholars, it refers to a charity which reverts in the same way after an indetermined but nevertheless limited group of beneficiaries has died out. This kind of charity is opposed to the perpetual charity in favour of the poor, and also to the quasi-perpetual charity in favour of a man and of his posterity. *Mauqūf*, in Rabi'a's doctrine, did not, as yet, express the later concept of *waqf*.

The term *mauqūf* acquired its later meaning as the consequence of a doctrinal development. On one hand, the term *mauqūf* was transferred (or perhaps extended) to charities in favour of indetermined groups of beneficiaries, as in the doctrine of the anonymous scholars; on the other, the doctrine gradually prevailed that such a charity should revert to the original owner not as full property, to be inherited by his heirs, but only as a *ḥabs*, that is to say, in usufruct, to be transmitted to his next of kin, or that, even as a *ḥabs* it should not revert to the original owner at all, but only to his next of kin. Mālik's doctrine, as stated by Ibn Qāsim, represents a stage of transition (ibid. 102).

(1) If a man makes his house a ḥabs in favour of another man and of his posterity, without specifying them individually, and neither uses the term ṣadaqa nor states that it is not to be sold or made a gift, it is a ḥabs. (This quasi-perpetual charity would never have been considered a ḥabs mauqūf in ancient terminology).

(2) If the same disposition is made in favour of a number of specified persons, Malik's doctrine varies: (a) sometimes, he said, always supposing the man had said ḥabs and not ṣadaqa, and had made no provision that the house should not be sold or made a gift: it reverts to the original owner if he is alive, or else to his heirs, as full property; (b) but occasionally he said: it does not revert to him but remains a ḥabs, as if he had stipulated that it must not be sold», or « a ḥabs and ṣadaqa», then — although the beneficiaries may be individually determined — it is mauqūf and after the death of the beneficiaries reverts to the next of kin of the original owner but never to him himself, though he may be alive. The word mauqūf is a valent here; it is still used, it is true, of a temporary charity, but of a charity which can never again become full property. Different in details (and, as far as we can see, systematized and less reliable), but similar in its general purport is a parallel statement of Saḥnūn on the doctrine of Mālik (ibid. 101): if someone makes a ḥabs, in favour of a man and his posterity, or a man and his children and children's children, or his own children, and neither mentions the term ṣadaqa nor fixes an ultimate purpose of the ḥabs, and the beneficiaries die out — then, according to Mālik, this ḥabs is mauqūf, it cannot be sold or made a gift, and reverts to the next of kin of the original owner, as ḥabs. These words of Saḥnūn, incidentally, are the only allusion in the chapter on ḥabs in the Mudawwana to an ultimate or subsidiary reversion of aḥabs to the poor. This alone is sufficient to show how far Mālik's concept of ḥabs still was from the later, common idea of āabs or waqf. The reversal of temporary ḥabus to the original owners, we are told, was frequent in Medina in Malik's time (ibid. 110).

Shefi¹⁴⁶; I who lived in the second half of the second century, still seems to have left the term mauqūf, used in its later meaning, as redundant. In the first lines of his chapter on ḥabs, it is true, he defines the ordinary waqf, as we have seen, as a ṣadaqa muḥarrama mauqūfa (Umm III. 274), but further on he uses by preference ṣa-daqa muḥarrama only (ibid. 225, 279 f.). In his time, therefore, outside Iraq (on which, unfortunately, there is little evidence concerning the history of the term), mauqūf had not yet become a normal attribute of the kind of charity which later became known as waqf.

The temporary ḥabs which was recognized in Medina and survived in the Māliki school, must at some time have existed in Iraq. We conclude this not so much from the fact that Shaibni declares such a temporary ḥabs, whether made for the holy war or in favour of individually determined persons, invalid (Siyar IV. 271) — this may merely be polemics against the Medinese doctrine —, or because the late commentator Sarakhsi (d. 483) on this passage attributes to Abu Yūsuf the opinion that a waqf may be temporary or permanent, but because the ancient doctrine of the Basrians was formulated in conscious opposition to it. Hilāl, himself a man of Basra (though a Ḥanafī, because in his time the school of Abū Ḥanīfa had superseded the ancient local or geographical school of Iraq), states repeatedly that «the people and judges of Basra have always insisted that every waqf must finally go to the poor» (pp. 5, 8). He further states that «some lawyers», who must be the same Basrians who seem to have survived as a group within the Hanefi school down to the time of Hilāl, demand that the poor should be explicitly mentioned as the ultimate beneficiaries of each waqf, and do not consider it sufficient that this ultimate destination be implied by the terms ṣadaqa lillāhi, etc. (p. 9). This last remark is an allusion to the doctrine of the majority of the Ḥanafīs, who took the ultimate reversion of every waqf to the poor for granted, and could therefore be content with an implicit allusion to that final purpose. It is obvious that the doctrine of the Basrians does not represent a secondary increase in strictness as compared with that of the others, but embodies the direct reaction of the scholars of Basra to a doctrine similar to that held in Medina. As the influences during the early period in question proceeded almost invariably from Iraq and not from Medina, we are justified in postulating for Iraq the same ancient concept of a temporary waqf which alters the extinction of the beneficiaries reverted to the original owner or his heirs. It is therefore likely that the concept of mauqūf, too, connected as it was with the idea of a temporary waqf, originated and further developed in Iraq and, with a certain time-lag, was taken over in its different stages in Medina.

IV

It is well known that Abū Ḥanīfa considered invalid every waqf that was not made under a legacy (and therefore subject to the limit of one third of the estate, and revocable by the benefactor during his lifetime), The reason for this doctrine, however, is less obvious. Sarakhsi must have felt some difficulty in explaining it, because he says in his Kitāb al-Mabsūt (Cairo 1324, vol. XII, 27); «Some of our Companions believe that the waqf is invalid (ghair jā'iz) in the opinion of

Abū Ḥanīfa» he himself goes on to make a distinction between fāiz and lāzim in the doctrine of Abū Ḥanīfa, this ḥabs has no effect (laisa bishai') in the same way as any waqf in his doctrine» From the work of Hilāl (p. 12 ff.) it becomes clear that what Abū Ḥan considered invalid was awaqf, inter vivos, in favour of the poor, whether the poor were mentioned as beneficiaries explicitly as the Basrians demanded, or were included by implication, and that he did so for systematic reason that for the waqf to be valid and systematically feasible, the ownership (milk) must be transferred to someone other than the original owner and a transfer to the indeterminate body of the poor could not be envisaged. As a secondary argument, an alleged tradition from Shuraiḥ was adduced. The systematic argument would not apply to one's own relatives, or to one's poor neighbours and we find in fact that Abū Ḥanīfa recognized the waqf in favour of these two groups of persons (pp. 171, 198). It is not clear how he envisaged the ultimate destination of such awaqf. The argument equally does not apply if a waqf for the poor is created by legacy, where the question of milk does not arise in the same way.

Mālik's doctrine is fundamentally similar: «If a man, whilst he is in good health, makes his garden a ḥabs or a ṣadaqa for the poor, and does not relinquish possession until he does, this is not valid because it is not a legacy; and if it is not a legacy it is valid only if he relinquishes possession before he dies This is the opinion of Mālik» (Mad. XV. 108). Ṣaḥnūn adds traditions collected by Ibn Wahb concerning Companions of the Prophet and others, to the effect that a ṣadaqa is not valid unless possession has been taken. The difference between Mālik and Abū Ḥanīfa, on the evidence of the oldest texts, is that Mālik envisages and recognizes the taking of possession on behalf of the poor by an appointed administrator, whereas for Abū Ḥan, the presence of the poor even as ultimate beneficiaries invalidates even a waqf that can be handed over to an individually determined first beneficiary.

The doctrine of Ibn Abi Laila (d. 148), a cadi of Kufa and contemporary of Abū Ḥanīfa, is similar to that of Mālik: «If a man makes a ṣadaqa mauqūfa and makes the poor the ultimate beneficiaries, and does not hand it over to an administrator but makes himself one of the administrators, it is null and void (bātil); if he makes another person the administrator and gives him power to take possession and

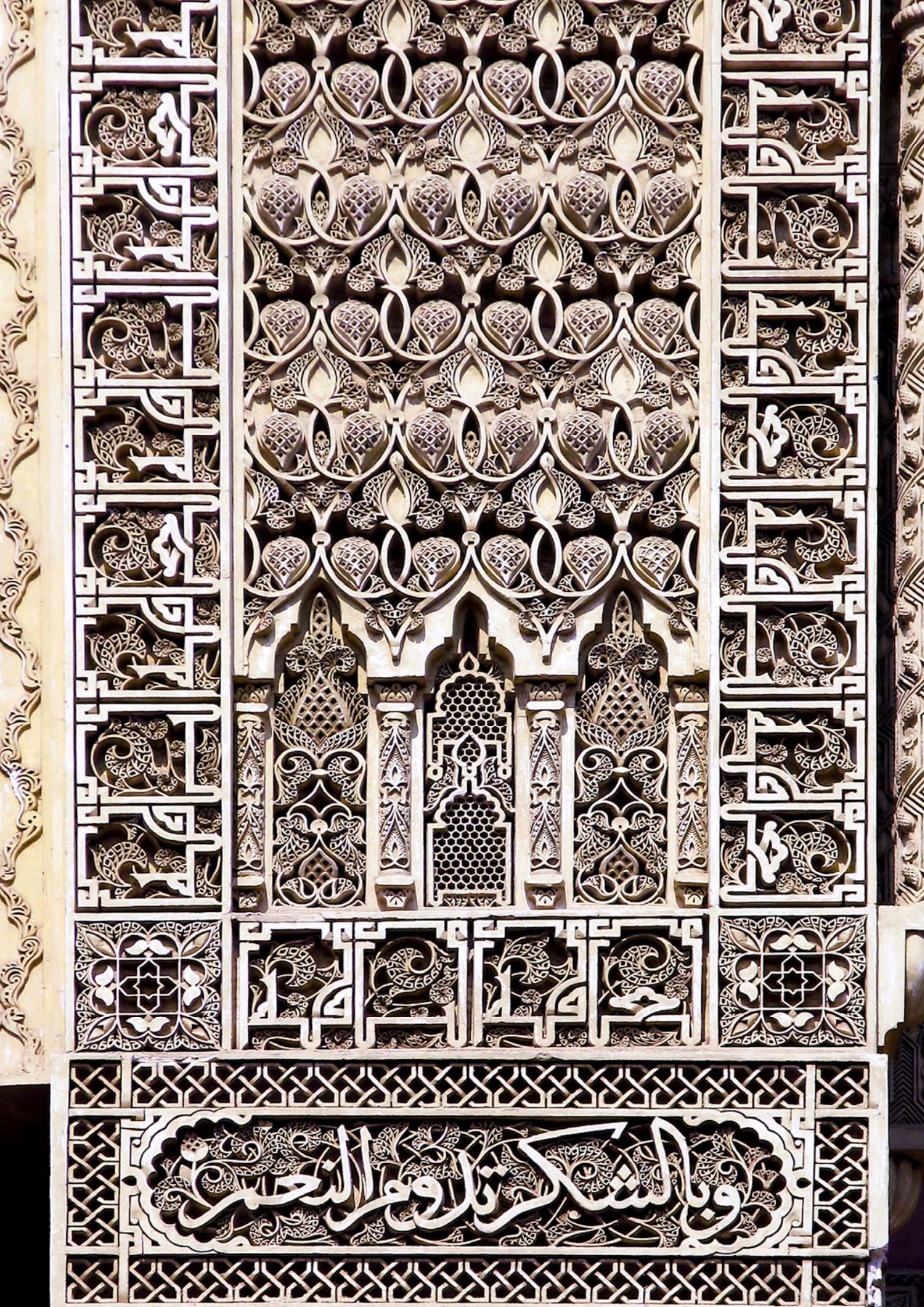
hand it over, it is valid and irrevocable; but if he does not hand it over to another person, it is invalid and revocable and he can sell it, and it is part of his estate» (Hilāl, p. 13). Ibn Abi Lailā, we see, hovers between the two concepts» «null and void» and «revocable» which are, strictly speaking, incompatible in this context. It may fairly be doubted whether Abū Ḥanīfa himself clearly distinguished the two aspects.

One of the most natural forms of public benefactions in Islam was the building of mosques and the undertaking of other public works for the use of the Muslims; this activity, in the same way as the making of contributions to the holy way, was an important factor in the development of the institution and doctrine of waqf. There can be no doubt that it was well under way in the first half of the second century, when Abū Ḥanīfa lived. For an obvious material consideration, Abū Ḥanīfa made a concession in favour of mosques (in later terminology, that would be an istiḥsān on his part), but he held that no public work other than a mosque could be a valid waqf (Hilāl, p. 18). Both to works of public utility and to benefactions for the poor, Abū Ḥanīfa applied strict and rigid systematic reasoning, without much regard for the practice; this is in keeping with the general character of his legal reasoning.

Abū Yūsuf, Shāfi'ī tell us (Umm III. 281), diverged from the doctrine of Abū Ḥanīfa under the influence of traditions; this again is in keeping with his legal reasoning as a whole. There is no reason to credit this anecdote, reported by so late an author as Sarakhasi (Mabsūt) that Abū Yūsuf changed his opinion on the occasion of his pilgrimage in company of the Caliph Rashid, when he saw the numerous waqf made by the Companions of the Prophet in Medina. Abū Yūsuf did not need a pilgrimage to become aware of this; his doctrine continued the old tradition from which only Abū Ḥanīfa, in the interest of rigid systematic thought, and diverged for a moments.

These few remarks, I trust, will show that in order to gain a true picture of the early development of Muhammadan law and jurisprudence, we must go back to the early sources themselves.







Camille Paldi

Arabist and a specialist in Islamic thought and practice. She has worked on many aspects of Islam, from the time of the Prophet to the contemporary period; she conducted textual studies and have done fieldwork. She did two major fieldwork projects in Egypt, one on Muslim women's religious lives in contemporary Egypt (1980-81) and another on Sufism in modern Egypt (1987-89). As Director of the Center for South Asian and Middle Eastern Studies, much of her time and energy is now devoted to promoting these areas of study on our campus.

Proposal for the Dubai World Islamic Finance Arbitration Tribunal (DWIFAC) and Jurisprudence Office (DWIFACJO)

By Camille Paldi

Introduction

As the Islamic finance industry is growing annually at a rate of 10% to 15% per year, it is imperative that a unique, independent legal framework is established in order to effectively adjudicate Islamic finance disputes. Currently, Islamic finance disputes are being adjudicated in inadequate civil and common law courts and arbitration centers where the contracts in dispute are being transformed from Islamic to conventional transactions. The aim of this paper is to explore the role of the Dubai World Islamic Finance Arbitration Center ("DWIFAC") and its' jurisprudence office (DWIFACJO) as the dispute resolution center of the Islamic finance industry, fitting in with the recent 2013 Sheikh Mohammad 'Dubai as the Capital of the Islamic Economy' initiative.

Islamic finance contracts should include an additional standardized dispute resolution contract issued by Dubai World Islamic Finance Arbitration Center Jurisprudence Office ('DWIFACJO') with a built-in dispute resolution procedure similar to the International Federation of Consulting Engineers ('FIDIC') designating the Dubai World Islamic Finance Arbitration Center ('DWIFAC') as the arbitration center. If the contractual dispute resolution procedure is exhausted, then the dispute may be referred to DWIFAC, which may utilize the Model Islamic Banking Law created by DWIFACJO as the substantive law of the arbitration, the procedural law of the seat of the arbitration, and the DWIFAC arbitration rules, which includes Shari'ah and lex mercatoria. The arbitration center may be staffed with the world's top Shari'ah scholars and Islamic finance lawyers, judges, and experts who can provide input about the Shari'ah aspects of the dispute through the use of an Islamic form of *ex aequo et bono*, which allows disputes to be settled using

commercial practice rather than purely legal devices.

DWIFAC and DWIFACJO

DWIFAC along with the DWIFAC Jurisprudence Office shall be the central command station for Islamic finance dispute resolution in the UAE, GCC, and the world, providing a standardized contract with built-in dispute resolution, a uniform Islamic banking law, an arbitration center, and a centralized Shari'ah authority in the form of the Supreme Shari'ah Council.

It is clear that state courts in common and civil law jurisdictions are inadequate to adjudicate Islamic finance disputes due to the lack of recognition of Shari'ah law, lack of independent Shari'ah advisory committees, and/or the inability of court staff to apply effectively Islamic finance and Shari'ah concepts in dispute resolution. In addition, the currently existing arbitration centers are insufficient to handle Islamic finance matters due to lack of properly trained staff, inadequate procedure and rules, misapplication and non-application of Shari'ah and preference for national law, legal uncertainty, and lack of popularity as a mode of dispute resolution. DWIFAC may offer the Islamic finance industry a globally recognized arbitration center complete with the DWIFAC jurisprudence office, which may issue a uniform Islamic banking law and a standardized DWIFAC dispute resolution contract, creating harmony, legal certainty, and investor confidence in and across the Islamic finance industry. The DWIFAC standardized dispute resolution contract contains a built-in dispute resolution mechanism, facilitating early dispute settlement and completion of contracts. This contract may be attached to all Islamic finance contracts industry-wide, making DWIFAC the central dispute resolution authority for the industry.

DWIFACJO Uniform Banking Law

As it stands now, the UAE does not have an Islamic Banking law, however, it has a law allowing Islamic Banks to exist, UAE Federal Law No. 6 of 1985 Regarding Islamic Banks, Financial Institutions, and Investment Companies. There had previously been a proposed law for governing Islamic banks in 1985, but it had not been backed up by a decree and therefore, that is why the law is not in existence now. However, Federal Law No. 6 of 1985 was promulgated to legalize Islamic banking in the UAE. Article 5 provides that a Supreme Shari'ah Council should be established and approved through a cabinet decision, but it never materialized. The Supreme Shari'ah Council would oversee Islamic banks, financial institutions, and investment companies and its opinion would be binding. However, Article 6 was implemented, which requires that each Islamic

firm establish its own Shari'ah Supervisory Authority ('SSA') consisting of three members, to be approved by the Shari'ah Supervisory Council (ISRA 2013:656) and inserted into the articles of association (ISRA 2013: 656). The SSA is obligated to apply Shari'ah to the company operations and contracts (Thani, Abdullah, Hasan 2004: 256).

DWIFACJO may take the opportunity to formulate and issue a Uniform Islamic Banking Law based upon the draft of the UAE 1985 Islamic Banking Law, UAE Federal Law No. 6 of 1985 Regarding Islamic Banks, Financial Institutions and Investment Companies, the Law Regulating Islamic Financial Business DIFC Law No. 13 of 2004, and AAOIFI standards. The new law may then be utilized as the substantive law in DWIFAC arbitrations and submitted to the UAE government for approval and gazetting as this law would be necessary for the UAE in order to fulfil its mandate of becoming the capital of the Islamic economy. In addition, DWIFAC may establish a central Shari'ah Supervisory Authority or Supreme Shari'ah Council for the UAE, which may be utilized by all existing UAE dispute resolution bodies, including the Central Bank of the UAE, the Dubai Courts, and the DIFC/DFSA, which lacks such a board. The Supreme Shari'ah Council may fulfil its original purpose of approving the Shari'ah boards of all Islamic financial institutions in the UAE, including in the DIFC.

The DWIFAC Standardized Dispute Resolution Contract

I propose that DWIFACJO issue a standardized dispute resolution contract, which may be attached to the main contract. The DWIFACJO standardized dispute resolution contract may contain a similar built-in dispute resolution mechanism as the FIDIC contract containing three stages including (1) the Dispute Resolution Board ('DAB'), (2) amicable settlement, and (3) final referral to DWIFAC arbitration. Within thirty days of the occurrence of the subject-matter of a dispute, any party to the contract may submit a claim to the DAB, addressed to the chairman of the DAB and with a copy to all parties of the contract. However, if any of the parties to the contract considers that there are circumstances, which justify the late submission, she may submit the details to the DAB for a ruling. If the DAB considers that it, in all the circumstances, is fair and reasonable that the late submission be accepted, the DAB shall have the authority to override the relevant thirty day limit and if it so decides, it shall advise both the parties accordingly.

The DAB shall have sixty days to issue a binding ruling, which must be implemented immediately. If either party is not satisfied with the DAB ruling, either party can give notice of dissatisfaction to the other before the thirty days after the

day on which she received the decision on or before the thirty days after the day on which the said period of sixty days expired. If there is no dissatisfaction within thirty days after the day on which she received the decision, the DAB's decision shall become final and binding upon both parties. The DAB's decision may then only be overturned by settlement or arbitration.

The DAB shall consist of three people who must be suitably qualified in law, Islamic finance, and Shari'ah. Each party shall nominate one member for the approval of the other party. The parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman. However, if a list of potential members is included in the contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DAB.

The agreement between the parties and either a sole member (adjudicator) or each of the three members shall incorporate by reference the General Conditions as written by DWIFACJO, with such amendments as agreed between them. The composition of the DAB shall be by nomination and then joint-selection. DAB members are to be remunerated jointly by the parties with each paying half of any fees. DAB members may only be replaced by mutual agreement. The appointment of any member may be terminated by mutual agreement of both parties, but not by any party acting alone. Unless otherwise agreed by both parties, the appointment of the DAB shall expire when the discharge of the matter shall have become effective. Where the parties fail or are otherwise unable to agree upon the appointment, nomination or replacement of any member of the DAB, then the appointing official so named in the contract shall make the appointment.

DWIFAC may establish an Ambassadors List similar to the FIDIC President's List, from which arbitrators and DAB members may be selected, if not specified in the contract. Persons who have successfully completed a DWIFAC Adjudication Assessment Workshop and International Arbitrator's Islamic Finance Contracts Course and applied for entry to the DWIFAC Ambassadors List of Approved Dispute Adjudicators are entered on the List for five years. Successful attendees at an Adjudication Assessment Workshop are required to be fluent in English and to be thoroughly familiar with Islamic finance, law, and Shari'ah.

There may be situations where a party fails to comply with a DAB decision. In such cases, the other party may refer the failure to DWIFAC arbitration. Where notice of dissatisfaction has been given, both Parties shall attempt to settle the

dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fiftieth day after the day on which notice of dissatisfaction was given. The attempt to obtain an amicable settlement during this prescribed period of fifty days is a condition precedent to a referral to arbitration. There is no given timeframe to refer a dispute to arbitration, however, it should be without undue delay. Once the arbitration procedure has been initiated, the arbitration shall commence according to the DWIFAC arbitration rules.

The arbitrator(s) shall have full power to open up, review, and revise any decision of the DAB relevant to the dispute. Neither party shall be limited, in the proceedings before the arbitrator(s), to the evidence or arguments previously put before the DAB to obtain its decision nor to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration. Arbitration may be commenced prior to or after completion of the contract. The obligations of the Parties and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the contract.

The arbitration shall be conducted in the English language and any arbitral decision shall be final and binding. All of the DWIFAC decisions (see Appendix B) are to be published in English, French, and Arabic and the arbitration itself to be conducted in English. In the event of a conflict of laws, the Shari'ah shall prevail. A valid arbitration decision should lead to a verdict that conforms to the rules of the Shari'ah (AAOIFI 2004:559). The Shari'ah and legal basis of the arbitration decision shall be mentioned in the decision (AAOIFI 2004:559).

In the context of DWIFAC, the Center may make arrangements with the Dubai and DIFC courts for enforceability of DWIFAC arbitration awards. However, parties to the dispute must realize that the arbitration award issued by DWIFAC may be overturned or enforced in other jurisdictions (International Bechtel Co. Ltd. v. Department of Civil Aviation of the Government of Dubai 300 F. Supp. 2d 112 (DDC. 2004)) or challenged in UAE courts based on Article 216 of the Civil Procedure Law. Shari'ah Supreme Council decisions shall act as a source of precedent and shall be binding, thus providing legal certainty to Islamic finance dispute adjudication. The Shari'ah Supreme Council established by DWIFAC shall act as the highest Shari'ah authority for DWIFAC arbitration, the UAE, and the DIFC.

DWIFAC Relationships Courts and Tribunals

A special component of the DWIFAC dispute resolution mechanism is the special relationship between DWIFAC, the

Central Bank of the UAE, the Dubai Courts, the DIFC, DIFC-LCIA, and DIAC. The Central Bank of the UAE ('CBUAE') was formed in 1980 and is primarily responsible for overseeing banks in the UAE, except in the DIFC, where the regulatory authority is the Dubai Financial Services Authority or ('DFSA'). The DFSA is a Shari'ah Systems Regulator, requiring that any Islamic firm must have a Shari'ah Supervisory Board ('SSB'). The DFSA is unfortunately not itself a Shari'ah regulator and has not constituted its' own Shari'ah Board to oversee the regimes in Islamic firms (DFSA: 2010). Under the Shari'ah Systems Regulator requirements, the firm must have systems and controls to implement the SSB's rulings and must conduct annual Shari'ah reviews and audits and produce disclosures based on AAOIFI standards (DFSA: 2010). In general, most of the disclosures recommended by the IFSB are already mandated in the DFSA rules (DFSA: 2011) and the DFSA currently requires the use of AAOIFI standards for Islamic financial business (DFSA: 2011). In addition, the DFSA utilizes the IFSB standards in determining its capital adequacy regulations and there are also special rules for Islamic funds and for Sukuk (DFSA: 2010).

The DIFC has been actively promoting Islamic finance with the Law Regulating Islamic Financial Business DIFC Law No. 13 of 2004, the establishment of the Islamic Finance Advisory Council in 2005, the presence of the Islamic International Rating Agency ('IIRA') from 2006, and an MOU between the DFSA and the Securities Commission of Malaysia facilitating cross-border flows of Islamic Finance between the DIFC and Malaysia in 2006. There appears to be a substantial amount of Islamic finance business being conducted in the DIFC, under the regulation of the DFSA, however, the DIFC lacks an adequate Islamic finance dispute resolution mechanism and centralized Shari'ah authority.

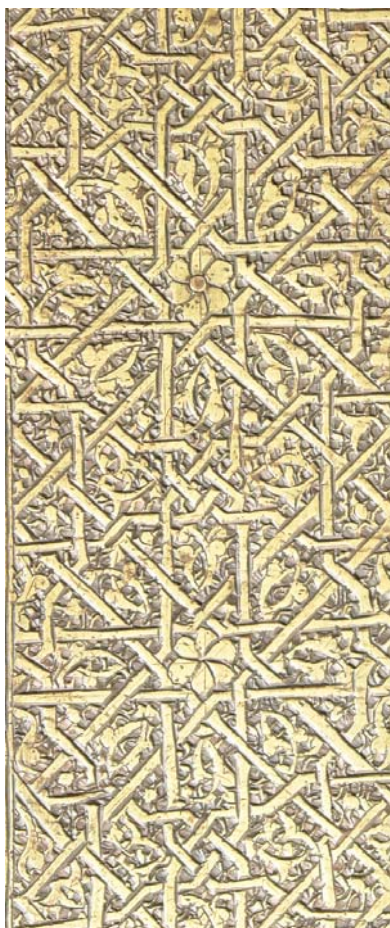
DWIFAC, which shall be funded by Sheikh Mohammed bin Rashid Al Maktoum (Arabic, محمد بن راشد آل مكتوم) may act as the independent central dispute resolution authority and

Shari'ah regulator connecting all of the adjudication apparatus's of Dubai, the UAE, and the DIFC into one consolidated framework for the adjudication of Islamic finance disputes with a centralized Shari'ah authority in the form of the Shari'ah Supreme Council. The decisions of the Shari'ah Supreme Council shall be binding and available to the public for review, thereby giving certainty to legal decisions and promoting confidence amongst investors. The DIFC, Dubai Courts, Central Bank of the UAE, and the IICRCA may refer arbitration to DWIFAC and/or utilize the DWIFAC Ambassador's List and facilities. In addition, DWIFAC may utilize the expert determination, mediation, and other services of the Dubai and DIFC Courts and the arbitrators of the IICRCA, DIFC-LCIA, DIAC, and the Central Bank of the UAE governance unit. DWIFAC awards may be enforceable in the Dubai and DIFC Courts through a special protocol.

Conclusion

The DWIFAC arbitration center along with the DWIFAC jurisprudence office provides the best solution of the dispute resolution conundrum of the Islamic finance industry, providing a globally recognized center for dispute resolution located in one of the world's major financial centers, which adjudicates disputes using arbitration incorporating *lex mercatoria* and Shari'ah, the DWIFACJO uniform banking law, the DWIFAC arbitration rules, and the procedural law of Dubai as well as uses highly qualified Shari'ah and Islamic finance/law arbitrators. DWIFAC may also organize and utilize the existing dispute resolution framework in Dubai, the DIFC, and the UAE, consolidating the centers into one hierarchical system, which includes the Shari'ah Supreme Council for the efficient adjudication and regulation of Islamic finance disputes.





Gianni Gregoris

Business consultant for SMEs, enterprise network manager for assisting in the processes of growth, internationalisation, structured finance, web marketing and social networks. His business draws on a network of collaborators and partnerships with international law firms, international taxation firms, banking institutions at home and abroad, and national associations.

Internationalization: Egypt Economic Development Conference

By Dr. Gianni Gregoris

The summit of Sharm where Egypt has presented major projects in an area of extraordinary great investment opportunities for Italian companies in sectors renewable energy, petrochemical, construction, agriculture, tourism and port areas the Suez Canal and Damietta in order to develop the logistics and increase with the doubling of the Suez Canal trade in the Mediterranean basin, considered the gateway in the Arab countries and in Africa. Italy is the third largest trade partner with trade over five billion dollars that can be increased with the new opportunities for economic development in Egypt, estimated at about \$ 60 billion in direct investment and loans.

Foreign investors in the MENA, as Saudi Arabia, Kuwait and United Arab Emirates have announced the allocation of 12 billion dollars in aid and investment to Egypt. The International Monetary Fund The expects growth in GDP of 3.8 percent in 2015 and 4.3 percent in 2015-2016. The Conference of Sharm, were present in 1800 delegations from over 70 countries, there were 50 Heads of State, also the first Italian Minister Matteo Renzi accompanied by the Deputy Minister for Economic Development, Carlo Calenda and many big business on which the Egyptian government undertook to present "Egypt The Future," the program of development and growth of the country.

The message from the Egyptian government to foreign investors was clear: "stability, investment and growth" but also reducing taxes to attract foreign investment: the corporate tax is reduced from 25 percent to 22.5 percent . Was also announced the removal of a 5 percent "millionaire tax" levied on additional annual incomes above one million Egyptian pounds, or € 123,000. The growth plan must be sustainable to create a competitive environment among enterprises, facilitate investment, in order to create new jobs for the Egyptian people. The nation looks to the 35 million young people, on which the government is building Egypt's future-oriented economic and social growth.

President Abdel Fatah El Sisi focuses on youth and at the end of the conference, invited on stage a few guys who have participated in the organization of the event next year will become a fixed date on the international calendar. Prime Minister Ibrahim Mahlab declared at the conclusion of his speech " that will have a positive



impact on people and the economy Egyptian" in fact have been dozens of agreements signed in several sector areas during the three days.

The Italian government is promoting a number of initiatives with the internationalization of SMEs to foreign markets. Italian System is the slogan to communicate our Road show for the internationalization of SMEs, an initiative that sees for the first time together all stakeholders, public and private, of the Italian system, engaged in a joint action of the medium term on the entire national territory. In the course of 2015 are scheduled appointments Vicenza, L'Aquila, Cosenza, Bergamo, Power, Catania, Pisa, Reggio Calabria, Novara, Forlì, Campobasso and Como. Each event will open with a plenary session, which will see the participation of experts in the field of internationalization, which will illustrate the opportunities and tools to access to foreign markets.

Among the major economic partners are SMEs and Large Enterprises of Made in Italy and Egypt, as pointed out by the Deputy Minister for Economic Development, Carlo Calenda, Eni signed agreements for \$ 5 billion over the signing of contracts other areas for about 2 and a half billion dollars.

The action of the Italian Government, is strengthening its action to help Italian companies to internationalize and there are a number of facilities targeted for SMEs in the 2015-2017 three-year plan for the Made in Italy from € 260 million allocated to the implementation decree the Ministry of Economic Development, Italy Unlock (DL 133/2014) and financed by the Stability Law in 2015. Italian SMEs supported by the Italian system, seize investment opportunities in

various fields, but also the great advantages of two great projects, the doubling of the Suez Canal and the construction of the new capital east of Cairo.

The doubling of the Suez Canal

The work "pharaonic" interested in the doubling of the 72 of 193 km of strategic channel dug to the west of the Sinai Peninsula in the nineteenth century to allow navigation from Europe to Asia avoiding to circumnavigate Africa. The work was also the deepening and widening of the Great Bitter Lake which is located along the Suez Canal. The aim of partial doubling of the Suez Canal, is to reduce from 18 to 11 hours transit times to 3 hours reducing the waiting times created by points a transit alternated for some types of cargo, it informs the website of the Authority of the Suez Canal. It also aims to double from the current 49 to 97 in 2023 the average number of daily transits and allow transit non-stop for 45 cargo in both directions. The proceeds of the Channel, already arrived last year to a record \$ 5.3 billion, representing a major source of hard currency for Egypt, thanks to the new channel are provided up 259 percent to 13.2 billion in 2023.

The construction of the New Capital east, Cairo. The BBC's Orla Guerin says "If and when it is completed it will be about the size of Singapore with an airport larger than Heathrow".

The Egyptian Government has presented during the conference, building model of the new capital that will be built along the corridor between Cairo and the Red Sea, which provides access to major shipping routes. Minister Mostafa Madbouly declared that the project could cost \$ 45 billion and it takes five to seven years to complete. He said the aim was to reduce congestion and overpopulation in Cairo over the next 40 years. In the metropolitan area of Cairo residents are about 19.4 million and in the next 40 years, the entire population could double to 40 million inhabitants. The designers say the new city, whose name was not revealed, would include almost 2,000 schools and universities and more than 600 health care facilities. The project will create more than a million jobs. Capital City Partners, will build a private real estate investment fund led by Emirates Mohamed Alabbar, Dubai businessman Mr Alabbar built the world's tallest building, the Burj Khalifa.





Raffaele Coglianese

He is a swiss - italian citizen. He started out as junior assistant to relationship managers and traders in the forex company owned by his father, Devco Trade AG, Baar, Canton Zug, Switzerland.

Together with his father and six other shareholders, Raffaele founded Eurogest SpA in 1998, a fully regulated forex company in Italy licensed with the security dealers' permit.

In 2002 he sold his holding, and acquired 35% of Unionforex SpA, a regulated company in Italy that specialises in the forex industry. He was responsible for trading activities and relationship management on behalf of HNWIs. He sold this company to the initial shareholders, and in 2006 he relocated to Switzerland. He formed Plusfinanz AG, a financial intermediary company regulated in Switzerland by PolyReg since 2009.



Ettore Scudella

He is a swiss - italian citizen . Since 25 years he is involved in the Swiss private banking industry. He started with foreign exchange activities and became a private banker with multilingual skills. He's professional experience in the insurance industry started in Switzerland in a department for "Life and Risk Management" of a big insurance company. As founder and CEO of IB Life Ltd. He dedicated his professional experience to the promotion of Life Settlements investments in Europe. In Switzerland he is considered to be the pioneer for US Life Settlements bringing second hand policies from the USA to the European investment community.

PLUSFINANZ Launch its Middle East Operations

After Oman, where the Swiss financial group PLUSFINANZ AG based in Rain (Lucerne) is already active in partnership with an important Omani company , "Exo -Commodity Oman", operating in the field of commodities, and in the light of the constant increasing return on its "RESCO Opportunity Fund" which generated a great interest from the banks and financial institutions in the Middle East. Thanks to the management of Mr. Ettore Scudella, the "RESCO Opportunity Fund" is confirming the linear growth and its attractiveness enhanced by no correlation to the financial markets.

This has led PLUSFINANZ to begin the procedures for the study of the possibility to license the fund as a "Shariah- Compliant Fund" and to step up its presence and operations in the financial world of the Arab countries.

The possible completion of the procedure and the issue of the certificate of compliance by the Gulf advisory firm which the Swiss financial group has appointed as mentioned above, PLUSFINANZ will start with a series of road shows in the Gulf and in Beirut, important historical financial center of the Middle East, for the presentation of the investment fund to the banks as well as to institutional and private investors, all this in order to a plan of penetration by the group PLUSFINANZ in the Islamic and conventional financial world of the Middle East.



Plusfinanz AG –IB LIFE Ltd Headquarter

RESCO Opportunity Fund

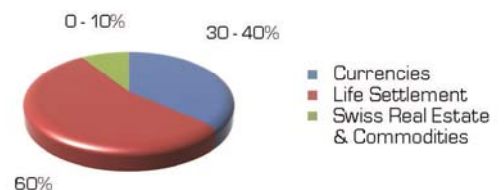
DESCRIPTION

The principal investment objective of RESCO Opportunity Fund is to archive capital growth over a long-term period by investing primarily in US Life Settlement policies. In order to provide for adequate liquidity, the Fund may also invest up to 40% of its assets in foreign exchange derivatives. Up to 10% may also be invested in collective investment schemes related to the Swiss real estate market and commodities. The Fund aims to achieve a target rate of return ranging between 9% and 15% per annum. Such rate of return is for indicative purposes only and does not represent any commitment. The Fund will implement the IB-Plus Concept Strategy which has a long term successful track record (see page 2).

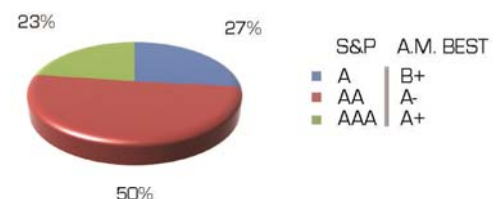
FUNDS FEATURES

Name:	RESCO Opportunity Fund
Structure:	SICAV plc, domiciled in Malta
Type:	Open-ended Professional Investor Fund
Regulatory Authority:	MFSA Malta Financial Services Authority
Auditor:	Deloitte S.A., Malta
Legal Adviser:	Dr. David Griscti, David Griscti & Associates, Malta
Custodian Bank:	Valartis Bank AG, Liechtenstein
Manager:	Reichstein Trading & Asset Management, Zürich, CH
Administrator:	SGGG Fexserv Fund Services, Malta
Policies Advisor:	Mr. Ettore Scudella, IB Life AG, Luzern, Switzerland
Policies Valuation Specialist:	Mr. Christoph Arnegger, Sigma Investment AG, Wien, AT
NAV and Redemption:	Monthly
Initial min. Subscription:	EUR 75.000 or any currency equivalent
Subsequent min. Subscription:	EUR 50.000 or any currency equivalent
Expected Return:	9% - 15% p.a
Currencies:	CHF / USD / EUR

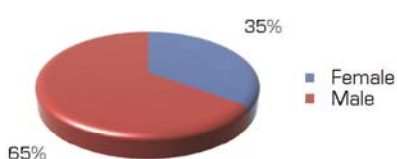
FUND ALLOCATION



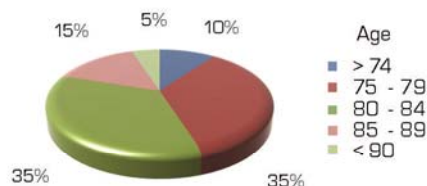
RATING OF INSURANCE COMPANIES



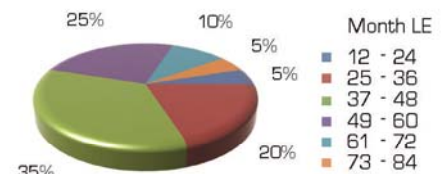
DIVERSIFICATION BY GENDER



AGE BRACKETS INSURED



DIVERSIFICATION BY LIFE EXPECTANCY



US LIFE SETTLEMENT MARKET

US Life Settlements are existing US life insurance policies successfully used in the United States and sold on the secondary market at a price below the sum insured. Policies of seniors between 50 and 95 years of age are selected as fund investment. After the insured person has passed away, the insured amount will be paid out by the US insurance company to the new beneficiary. The new beneficiary is the buyer of the policy in the second hand market. In 2013 the second hand policies market had a volume on sold policies of approximately the amount of 24 billion dollars. This market has a capability of estimated 160 billion dollars. The market for US Life Settlements is an independent market without correlation to other markets such as stock markets, real estate markets and commodities.

ABSOLUT RETURN

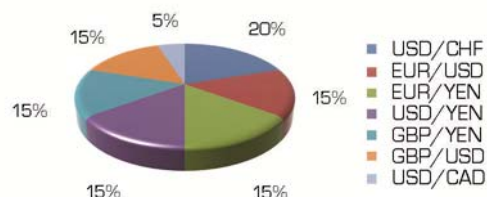
Life Settlement are performing in a linear way and do not correlate with any other financial markets. Therefore, US Life Settlements are classic absolute return investments. Optimized and diversified in a portfolio they will improve return and lower risk.

RESCO Funds Sicav plc

The Sub-Fund is licensed by the MFSA with licence number PIF/140H as a Professional Investor Fund available to Qualifying Investors.
168, Christopher Street - Valetta VLT 1467 Malta - Phone +356 256 93 000 - Fax +356 21227731
www.rescofunds.com - info@rescofunds.com

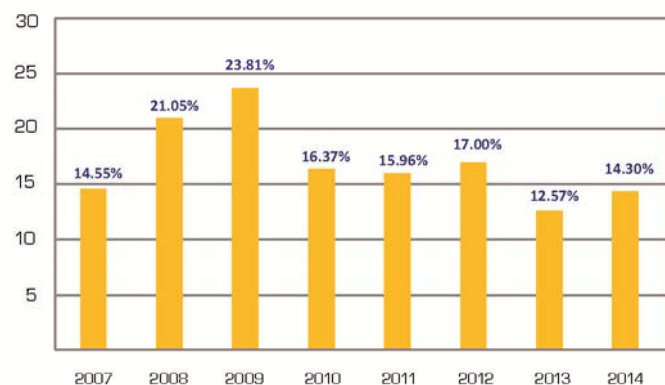
DIVERSIFICATION BY CURRENCIES

Positions normally will be traded in the main currencies. Based on a conservative trading strategy gains are going to be accumulated continuously, also during weak markets with high volatility. The risk exposure of each position is limited by a stop-loss-order since the beginning. This is one of our most important rules to limit trading risks as much as possible. Strict discipline in trading is the key success factor.

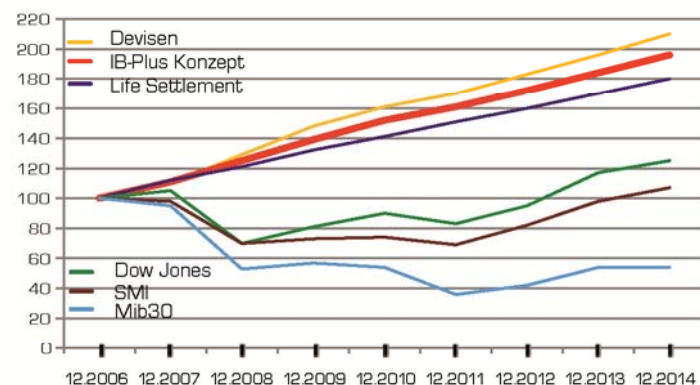


TRACK RECORDS CURRENCY TRADING STRATEGY

The charts below relate to the performance of another fund applying the same trading strategy as the RESCO opportunity fund and should not be taken to be indicators of the future performance of the RESCO opportunity fund.



TRACK RECORDS IB-PLUS CONCEPT



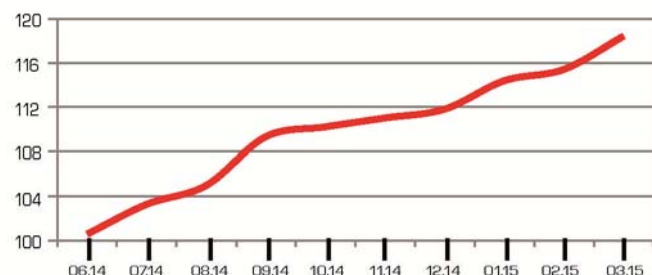
The mentioned figures and historical quotes are not reliable for future results. The performance illustrated does not consider commissions and costs.

PERFORMANCE RESCO OPPORTUNITY FUND

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
2014	0.00%	0.00%	0.00%	0.00%	0.00%	0.57%	2.69%	1.65%	4.15%	1.19%	0.67%	0.31%
NAV	00.0	00.0	00.0	00.0	00.0	100.57	103.27	104.97	109.32	110.63	111.37	111.72
2015	2.36%	0.90%	2.60%	-	-	-	-	-	-	-	-	-
NAV	114.36	115.39	118.39	-	-	-	-	-	-	-	-	-

RESCO OPPORTUNITY FUND - TREND (NAV)

The chart represents the trend in the Fund's NAV and should not be taken to be any indication of future performance.



The performance of the fund depends on two principal factors:
First, maximal accuracy in the selection of good policies. The selection process is based on TWO medical evaluations on life expectancy (LE). The longer LE is decisive in the policy purchase process. Second, the conservative foreign exchange trading approach based on low leverage trading is ensuring an appropriate management of the liquidity/cash management. That's the reason why we have combined US Life Settlement with foreign exchange.

FUND SUBSCRIPTION

	Bloomberg	ISIN	CH-Valor
EUR	BBG005TVWL2	MT7000008892	22018313
USD	BBG005TVWJ5	MT7000008900	22018320
CHF	BBG005TVYD57	MT7000008918	22018322
Subscription:	Monthly, last working day, 12:00 h		
Redemption:	Monthly, subject to 30 days notification period		
Financial Statements Date:	31 March		

FEES & ADDITIONAL INFORMATION

Management fee:	2.0% p.a.
Performance fee:	20% p.a. (high water mark)
Subscription fee:	up to 5%
Redemption fee:	up to 5%
Investment Target:	exceeding 9% p.a.
Volatility:	+/- 1.5% of the investment target
Fund Investment Capital:	< EUR 10 Mio.

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KAIROUAN

An Intellectual Center

Historical records relate that in 670 AD the Arab conqueror, Uqba ibn Nafi crossed the deserts of Egypt and began the first Muslim conquest of the Maghreb region of North Africa. Establishing military posts at regular intervals along his route, Uqba ibn Nafi came to the site of present day Kairouan and there decided to encamp his soldiers for some days (Kairouan, also spelled Qayrawan, means "camp" in Arabic). Old chronicles describe the region as completely deserted, covered with impenetrable thickets, and being distant from trade routes. Apparently inhospitable as a long term settlement site, why then did this temporary military camp soon become the greatest Muslim city in North Africa and the 4th holiest city of Islam (after Mecca, Medina and Jerusalem).

To answer this question we must look beyond historical records to the earliest legends of the site. Here we find mention of an incident that occurred during the initial encampment of Uqba ibn Nafi, an incident which, because of its miraculous nature, most history books have chosen to ignore. The legend tells of warrior's horse that stumbled on a golden goblet buried in the sands. This goblet was recognized as one that had mysteriously disappeared from Mecca some years before. When the goblet was dug from the desert sand, a spring miraculously appeared and the waters of this spring were said to issue from the same source that supplies the sacred Zamzam well in Mecca. The power of these three miracles - the mysteriously lost and then found Meccan goblet, the miraculous gushing forth of the spring, and the source of that spring - exercised a magnetic effect upon the early North African Islamic people and thereby established the site of Kairouan as a pilgrimage destination for ages to come.

By 698, following several more military campaigns in the Maghreb, the Arabs had driven the Byzantines from their garrisons in Carthage and become masters of the provinces of North Africa, called by them Ifriqiya. The town of Kairouan became the capital of this vast province. Governors were appointed to the province by the Omayyad and Abassid caliphs (ruling from Damascus and Baghdad), and they exercised their rule from Kairouan. This tradition was continued over the centuries by the Aghlabid emirs (9th century), the Fatamid caliphs (10th century), and the Zirid emirs (11th century). During these centuries, the city became one of the most important cultural centers in the Arab world, witnessing a flowering of sciences, literature and the arts. Agriculture was favored by the execution of sizable irrigation projects and an active increase in trade with the surrounding regions added to the general prosperity. Kairouan grew in size and beauty and no where was this more evident than in the construction and continuing elaboration of its Great Mosque.

The lower portion of the mihrab is decorated with openwork marble panels in floral and geometric vine designs. Though the excessively decorated mihrab is unique, the panels are from the Syrian area. Around the mihrab are lustre tiles from Iraq. They also feature stylized floral patterns like Byzantine and eastern Islamic examples.

Since it was used for Friday prayer, the mosque has a ninth-century minbar, a narrow wooden pulpit where the weekly sermon was delivered. It is said to be the oldest surviving wooden minbar. Like Christian pulpits, the minbar made the prayer leader more visible and audible. Because a ruler's legitimacy could rest upon the mention of his name during the sermon, the minbar served both religious and secular purposes. The minbar is made from teak imported from Asia, an expensive material exemplifying Kairouan's commercial reach. The side of the minbar closest to the mihrab is composed of elaborately carved latticework with vegetal, floral, and geometric designs evocative of those used in Byzantine and Umayyad architecture.

The minaret dates from the early ninth century, or at least its lower portion does. The minaret is three stories tall, 103 feet high by 34 feet wide, with its lower stories composed of stone blocks taken from classical Roman buildings. This minaret, built from 724 to 728 AD, is the oldest standing minaret in the world and is widely recognized as one of the greatest gems of Islamic architecture.

So in addition to functioning as a place to call for prayer, the minaret identifies the mosque's presence and location in the city while helping to define the city's religious identity. As it was placed just off the mihrab axis, it also affirmed the mihrab's importance.

The mosque continued to be modified after the Aghlabids, showing that it remained religiously and socially significant even as Kairouan fell into decline. A Zirid, al-Mu'izz ibn Badis (ruled 1016-62 CE), commissioned a wooden maqsura, an enclosed space within a mosque that was reserved for the ruler and his associates. The maqsura is assembled from cutwork wooden screens topped with bands of carved abstracted vegetal motifs set into geometric frames, kufic-style script inscriptions, and merlons, which look like the crenellations at the top of a fortress wall. Maqsuras are said to indicate political instability in a society. They remove a ruler from the rest of the worshippers. So, the enclosure, along with its inscription, protected the lives and affirmed the status of persons allowed inside.

In the thirteenth century, the Hafsids gave the mosque a more fortified look when they added buttresses to support falling exterior walls, a practice continued in later centuries.

In 1294, Caliph al-Mustansir restored the courtyard and added monumental portals, such as Bab al-Ma on the east and the domed Bab Lalla Rejana on the west. Additional gates were constructed in later centuries. Carved stone panels inside the mosque and on the exterior acted like billboards advertising which patron was responsible for construction and restoration.

An intellectual center

The Great Mosque was literally and figuratively at the center of Kairouan activity, growth, and prestige. Though the mosque is now near the northwest city ramparts established in the eleventh century, when Sidi Okba founded Kairouan, it was probably closer to the center of town, near what was the governor's residence and the main thoroughfare, a symbolically prominent and physical visible part of the city. By the mid-tenth century, Kairouan became a thriving settlement with marketplaces, agriculture imported from surrounding towns, cisterns supplying water, and textile and ceramic manufacturing areas. It was a political capital, a pilgrimage city, and intellectual center, particularly for the Maliki school of Sunni Islam and the sciences. The Great Mosque had fifteen thoroughfares leading from it into a city that may have had a circular layout like Baghdad, the capital of the Islamic empire during Kairouan's heyday. As a Friday Mosque, it was one of if not the largest buildings in town.

The Great Mosque of Kairouan was a public structure, set along roads that served a city with a vibrant commercial, educational, and religious life. As such, it assumed the important function of representing a cosmopolitan and urbane Kairouan, one of the first cities organized under Muslim rule in North Africa. Even today, the Great Mosque of Kairouan reflects the time and place in which it was built.

The Great Mosque of Kairouan, Tunisia, is an archetypal example of the hypostyle mosque. The mosque was built in the ninth century by Ziyadat Allah, the third ruler of the Aghlabid dynasty, an offshoot of the Abbasid Empire. It is a large, rectangular stone mosque with a hypostyle (supported by columns) hall and a large inner sahn (courtyard). The three-tiered minaret is in a style known as the Syrian bell-tower, and may have originally been based on the form of ancient Roman lighthouses. The interior of the mosque features the forest of columns that has come to define the hypostyle type.

The mosque was built on a former Byzantine site, and the architects repurposed older materials, such as the columns—a decision that was both practical and a powerful assertion of the Islamic conquest of Byzantine lands. Many early mosques



From the 11th century onward, however, Kairouan ceased to be the capital of Arab Ifriqiya. Tunis, Tlemcen, Fez, Marrakech and other North African cities usurped its political and economic prominence. Slowly the ancient city shrunk in size until it covered scarcely a third of the area occupied by the metropolis of the Aghlabids, the Fatamids, and the Zirids. Yet, as a holy city, Kairouan grew in importance with the passing centuries and its splendid mosque became a magnet for pilgrims from Muslim territories throughout Northern and Saharan Africa.

Seventh-century North Africa was not the easiest place to establish a new city. It required battling Byzantines; convincing Berbers, the indigenous people of North Africa, to accept centralized Muslim rule; and persuading Middle Eastern merchants to move to North Africa. So, in 670 CE, conquering general Sidi Okba constructed a Friday Mosque (masjid-i jami' or jami') in what was becoming Kairouan in modern day Tunisia. A Friday Mosque is used for communal prayers on the Muslim holy day, Friday. The mosque was a critical addition, communicating that Kairouan would become a cosmopolitan metropolis under strong Muslim control, an important distinction at this time and place.

Known as the Great Mosque of Kairouan, it is an early example of a hypostyle mosque that also reflects how pre-Islamic and eastern Islamic art and motifs were incorporated into the religious architecture of Islamic North Africa. The aesthetics signified the Great Mosque and Kairouan, and, thus, its patrons, were just as important as the religious structures, cities, and rulers of other empires in this region, and that Kairouan was part of the burgeoning Islamic empire.

The Aghlabids

During the eighth century, Sidi Okba's mosque was rebuilt at least twice as Kairouan prospered. However, the mosque we see today is essentially ninth century. The Aghlabids (800-909 C.E.) were the semi-independent rulers of much of North Africa. In 836, Prince Ziyadat Allah I tore down most of the earlier mudbrick structure and rebuilt it in more permanent stone, brick, and wood. The prayer hall or sanctuary is supported by rows of columns and there is an open courtyard, that are characteristic of a hypostyle plan.

In the late ninth century, another Aghlabid ruler embellished the courtyard entrance to the prayer space and added a dome over the central arches and portal. The dome emphasizes the placement of the mihrab, or prayer niche (below), which is on the same central axis and also under a cupola to signify its importance.

The dome is an architectural element borrowed from Roman and Byzantine architecture. The small windows in the drum of the dome above the mihrab space let natural light into what was an otherwise dim interior. Rays fall around the most significant area of the mosque, the mihrab. The drum rests on squinches, small arches decorated with shell over rosette designs similar to examples in Roman, Byzantine, and Umayyad Islamic art. The stone dome is constructed of twenty four ribs that each have a small corbel at their base, so the dome looks like a cut cantaloupe, according to the architectural historian K. A. C. Creswell.

Other architectural elements link the Great Mosque of Kairouan with earlier and contemporary Islamic religious structures and pre-Islamic buildings. They also show the joint religious and secular importance of the Great Mosque of Kairouan. Like other hypostyle mosques, such as the Prophet's Mosque in Medina, the mosque of Kairouan is roughly rectangular. Wider aisles leading to the mihrab and along the qibla wall give it a T-plan. The sanctuary roof and courtyard porticos are supported by repurposed Roman and Byzantine columns and capitals.

like this one made use of older architectural materials (called spolia), in a similarly symbolic way.

On right hand side of mosque's mihrab is the maqsura, a special area reserved for the ruler found in some, but not all, mosques. This mosque's maqsura is the earliest extant example, and its minbar (pulpit) is the earliest dated minbar known to scholars. Both are carved from teak wood that was imported from Southeast Asia. This prized wood was shipped from Thailand to Baghdad where it was carved, then carried on camel back from Iraq to Tunisia, in a remarkable display of medieval global commerce.

Commenting on the interior of the Prayer Hall, the Islamic historian Paul Sebag (The Great Mosque of Kairouan) says: "It is decorated with extreme richness. All of the resources of Islamic ornamentation, carved or painted, have been lavished here on marble, stone, pottery, or wood. This ornamentation borrows its elements from the vegetable world, from geometry, and from epigraphy. Its flora inherited from the Hellenistic tradition the acanthus, the vine, and even the palm tree; it was enriched by oriental plants such as the lotus and the homa, but above all it evolved an imaginary and idealized plant world made up of rinceaux and tresses, of palmettes and fleurons, all of extreme elegance and grace. The geometrical ornamentation of pagans, Christians, and Berbers was extended and refined before being used for the creation of surprising and strange new figures. Arabic writing lends itself here to the fantasy of the calligrapher and reveals its incomparable qualities as decoration. These elements are juxtaposed and mingled to compose a decor which is

enchanting.....Moving forward with slow steps through the half-light in which the sanctuary swims, we suddenly find that the stones, when ordered by an inspired mind, can attain to sublime poetry and move us profoundly."

The great French novelist Guy de Maupassant, visiting Kairouan in 1889, was also enchanted by the Great Mosque. He penned the following words: (La Vie Errante):

"I know of three religious buildings in the world that have given me the unexpected and shattering emotion that was aroused in me by this barbaric and astonishing monument: Mont Saint-Michel, Saint Mark's in Venice, and the Palatine Chapel in Palermo. These three are reasoned, studied, and admirable work of great architects sure of their effects, pious of course, but artistic first, inspired as much or more by their love of line, of form, and of decoration, as by their love of God. But at Kairouan it is something else. A race of fanatics, nomads scarcely able to build walls, coming to a land covered with ruins left by their predecessors, picked up here and there whatever seemed most beautiful to them, and, in their own turn, with these debris all of one style and order, raised, under the guidance of heaven, a dwelling for their God, made of pieces torn from crumbling towns, but as perfect as the purest conceptions of the greatest workers in stone."



The Domes of Cairo

By John Feeney

Minarets have always delighted the people of Cairo. Indeed they sometimes call their city "Cairo-of-the-thousand-minarets." In architectural terms, however, Cairo's medieval domes, largely unknown and at times unseen, are far more important and possibly even more beautiful.

They are not, to be sure, as impressive as the great domes swelling over Istanbul. And they are certainly not as obvious. Merely to see them you must go down into the narrow streets of the old city and search. But the domes of Cairo, nevertheless, are quite unlike any others and some are unique.

Centuries ago, when the domes of Isfahan and Samarkand were blossoming in profusions of mosaic splendor, the domes of Cairo were already in full flower. Unlike Samarkand's fabled turquoise domes - built in a day by craftsmen captured and brought back to build Tamerlane's new desert city - Cairo domes had been evolving for hundreds of years and with little reference to the craftsmen of other lands in the great Islamic empire.

The very first "Cairo" or Islamic style, dome, was built during the Fatimid rule in Egypt, specifically in the second half of the 10th century. Small, smooth and whitewashed to a ghostly white, in sunlight or moonlight, these early Fatimid domes have since vanished into the anonymity of dull, somber colors almost lost in the midst of more imposing buildings from later ages.

But the small whitewashed dome was merely a beginning. By the time of the Ayyubids, Cairo's home-grown craftsmen had developed their fine brickwork to the point where they could shape the domes into peaked and oval melons. And by the age of the Mamluk sultans, who governed the city for about 250 years, between A.D. 1250 and 1517 they were building both extensively and lavishly. For the Mamluks wanted monuments - imposing monuments to themselves - and to be sure they got what they wanted, they built their tombs within their own lifetime. Being exceedingly rich, each Mamluk ruler tried to outdo his predecessor until eventually their funerary palaces - each consisting of an imposing decorated dome, a soaring minaret, a mosque and a mausoleum - were as luxurious and spacious as the palaces they lived in.

To satisfy the need for grandeur, Mamluk domes grew to twice and three times the size of the earlier ones - thus demanding a radical change in the method of construction. Instead of using small baked bricks, the craftsmen began to work with large stone blocks. Architecturally, this was a daring move; to build bigger domes was one thing, but to build them with stone blocks, instead of small bricks, called for not only extremely skilled stonemasons, but also engineers able to design and construct stronger and more massive structural bases.



John Feeney

(10 August 1922 – 6 December 2006) was a New Zealand-born director of documentary films. He worked with the New Zealand National Film Unit, National Film Board of Canada (NFB) and made films and did photography in Egypt. He was nominated for two Academy Awards.

The stone for the new domes was conveniently quarried in the nearby Mokattam Hills - no more than a mile away from the construction sites in the "cities of the dead." Originally pure white, this stone, from centuries of hot desert winds and cooling Nile mists, has since weathered into the soft grays and browns that characterize the domes today."

As with the small domes, the craftsmen of Cairo - architects, engineers and masons - began to experiment with new shapes and, in the next 200 years, produced amazing results: domes that were fluted, domes that were both fluted and twisted - as though they were about to swirl off into space - and many others with elaborate embellishments chiseled directly onto the lovely white surfaces. Other experiments involved chevron designs - which, through pattern and shadow, suggested fluted domes - and still others adorned the stone with geometrical star patterns, stars and leaves together, and the interwoven foliage today called "arabesque." As none of these patterns was easy to achieve - cutting an elaborate, design onto a curved and receding stone surface called for a supreme level of skill - the domes with sculptured patterns emerged as an architectural triumph which moved a French consul to write:

"...in particular one cannot but marvel at their ornamentation. Some are fashioned to form a kind of lace-work, others are decorated compartments of flowers, or have parquet-type paneling or a melon-rib design, and these, let it be said, are among the more ordinary styles of ornamentation. Some of the more flamboyant domes are adorned with green and blue stones which heighten their effect still further... and their construction is so perfect that after six or seven hundred years they are still as complete as when they were built..."

As with so much of Islamic art, the identities of the Cairo craftsmen who produced it are largely unknown. But it is clear that they were master builders; alone, and with little influence from other centers of Islamic architecture, they conceived domes that had not been built before - and have not been equaled since. They were, certainly, masters of decoration too, but decoration, in a sense, grew out of Islam itself. Because of Islamic prohibitions against the drawing of

man or beast, the artisans who decorated Cairo's domes confined themselves to geometric designs - possibly expressions of crystal structure - and the floral vines clinging about them were but expressions of ordinary plant life.

Traditionally the highly decorated domes of Cairo were never put on mosques; instead they were constructed only on mausoleums - although it was also a tradition that a funerary mosque be attached to the mausoleum. Sometimes too, schools, libraries and even hostels were attached, thus creating in the end impressive complexes of buildings such as those that stand today in ancient burial grounds to the north and south of medieval Cairo.

Here, where the most impressive domes can be found, are such examples as the complex built by Sultan Barquq and his two sons, Farag and Abd al-Aziz. One of the most magnificent medieval buildings in all of Cairo, it consists of two very large domed chambers containing the family tombs and, around a large central courtyard, a series of rooms and arcades leading to immense halls and a sanctuary of magnificent proportions. Not far away there is also Kait Bey's tomb, a masterpiece of architecture built in A.D. 1474. As in Sultan Barquq's tomb, the walls are lined with marble, the floors are paved in mosaic patterns and, set high in the walls, dusters of traditional stained-glass windows send shafts of startlingly intense colored light into the darkened interior.

Despite the somber nature of the tombs, their effect on observers is one of beauty rather than sadness. Instinctively the eye looks upward - first to glittering pin-points of blue, red and green light filtering through tiny windows set in the massive stone walls, and then into the dome itself where, inevitably, it tracks the endless rim into a darkness that seems infinite. To many observers - and not only the faithful of Islam - it suggests a beauty beyond the experience of man and his most esthetic achievements.

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