

THE VALUE OF ISLAMIC BANKING IN THE
CURRENT FINANCIAL CRISIS

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I. Introduction

The international financial crisis began over two years ago, and intensified throughout late 2008 and early 2009.¹ The International Monetary Fund (“IMF”) has estimated that the crisis will give rise to losses in excesses of one trillion dollars.² This crisis has now revealed just how vulnerable the Western financial services industry is to its own greed and irresponsible fiscal policies. The collapse of revered financial institutions such as Lehman Brothers, the sales of financial services firms Merrill Lynch to Bank of America and First Boston to JP Morgan Chase, and the trillion dollar bailout package are just a few examples of a system gone bad, the likes of which have arguably not been seen since the Great Depression.³

Until Dubai World (a holding and investment company for Dubai’s government)⁴ announced on November 26, 2009 that it would delay repayment of its \$59 billion debt,⁵ Islamic banks were

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¹ Mohammed Al-Hamzani, *Islamic Banks Unaffected by Global Financial Crisis*, ASHARQ AL-AWSAT, Sept. 30, 2008, <http://www.asharq-e.com/news.asp?section=6&id=14245>.

² INTERNATIONAL MONETARY FUND, THE STATE OF PUBLIC FINANCES: OUTLOOK AND MEDIUM-TERM POLICIES AFTER THE 2008 CRISIS 19 (2009), available at <http://www.imf.org/external/np/pp/eng/2009/030609.pdf>.

³ David Pendery, *Three Top Economists Agree 2009 Worst Financial Crisis Since Great Depression; Risks Increase if Right Steps are Not Taken*, REUTERS, <http://www.reuters.com/article/pressRelease/idUS193520+27-Feb-2009+BW20090227> (last visited Apr. 19, 2010).

⁴ Antonio Perez, *Dubai Credit Crisis Roils Global Markets*, EPOCH TIMES (New York), Nov. 27, 2009, <http://www.theepochtimes.com/n2/content/view/25740/>.

⁵ Reuters, *Dubai Debt Delays Revive Fear of Financial Crisis*, EPOCH TIMES (New York), Nov. 26, 2009, <http://www.theepochtimes.com/n2/content/view/25715/>.

posting profits and weathering the economic storm, while conventional banks were writing down billions. For instance, in 2008 the Emirates Islamic Bank recorded a 68% increase in its net profit over the previous year.⁶ This phenomenon has prevailed for many Islamic financial institutions throughout the world.⁷ Why is it that Islamic banks, until recently, have not faced the same global credit crisis that has rocked conventional banks? Adherence to strict *Sharia* (Islamic law) principles accounts for much of this success. Indeed, even the current Dubai World credit crisis can be attributed to a failure of that enterprise to adhere to Islamic banking principles.⁸ For instance, Islamic law forbids complex, opaque financing structures and actually encourages profit sharing. This article examines these principles in greater depth.

Indeed, Islamic finance has become a dynamic, fast-growing global phenomenon. According to the IMF, there are over 300 Islamic financial institutions spread over 51 countries, plus well over 250 mutual funds that comply with Islamic principles.⁹ Moreover, Islamic banking has had growth rates of about 15 percent per annum over the past 10 years.¹⁰ Estimates are that the market should continue to grow considerably in the foreseeable future, given the amount of oil wealth in much of the Muslim world and a recent surge in demand for investment products developed according to the tenets of *Sharia*.

Part II of this article introduces the Islamic financial services industry by briefly tracing its evolution from infancy to its exceptional growth. Part III introduces the reader to Islamic lawmaking, which is central to understanding the fiscally conservative Islamic investment principles that have preserved Islamic banks in the

⁶ Press Release, Emirates Islamic Bank, Emirates Islamic Bank Profits Hike by 68% (Feb. 15, 2009) (available at http://www.arabianbusiness.com/press_releases/detail/37937).

⁷ Faiza Saleh Ambah, *Islamic Banking: Steady in Shaky Times*, WASH. POST, Oct. 31, 2008, at A16.

⁸ See generally Andrew Newby, *Dubai Debt Woes Give Islamic Finance Its First Big Crisis*, AFP, Dec. 2, 2009, <http://www.muslims.net/news/newsfull.php?newid=307045> (“The ban on interest and other rules would prevent Islamic investors investing in certain instruments such as conventional bonds and derivatives,” which caused last year’s global credit crunch.”).

⁹ Juan Solé, *Introducing Islamic Banks into Conventional Banking Systems* 3 (Int’l Monetary Fund, Working Paper No. 07/175, July 2007), available at <http://www.imf.org/external/pubs/ft/wp/2007/wp07175.pdf>.

¹⁰ *Id.*

current credit crisis. Part IV explores some of the more common Islamic financial instruments. Part V discusses the current state of Islamic banking within the context of the global credit crisis and how aspects of the Islamic system have proven more stable than conventional banking. Part VI discusses the potential for Islamic banking in Canada.¹¹ Part VII explores the challenges the industry faces in the years to come. Finally, Part VIII concludes the article.

II. *The Evolution of Islamic Finance*

In its earliest form, Islamic Banking has existed since the time of Muhammad, the last Prophet of Islam. Various concepts within Islamic banking are based on rulings in the *Quran* (the Holy book of Islam) and sayings of the Prophet (which are referred to as *Sunnah*). However, with the colonization of the Muslim world in the seventeenth century, Western banking models replaced Islamic-based transactions.¹² And while Islamic financial transactions have existed for a long time, there was a significant period where no institution was exclusively devoted to such banking.¹³

The delayed development of Islamic banking can be attributed to many causes. First, nation states were only introduced in the Islamic world during the 1950's and 1960's.¹⁴ Second, during this time awareness of an Islamic identity (*per se*) was on the rise.¹⁵ Third, wealth grew exponentially in the Middle East due to oil production, in turn creating demand for financial intermediation.¹⁶ Before the entry of Islamic banking, Western financial institutions handled and managed the investments of the so-called "petro dollars."¹⁷ Another reason why Islamic banking did not develop in the Islamic world until much later is because of the structure of economic life.¹⁸ "[F]inance was never an autonomous activity; it was

¹¹ For purposes of this article, the terms "Islamic Banking," "Islamic Finance," "Islamic financial services," or any such related terms, will be used interchangeably.

¹² SIMON ARCHER & RIFAAT AHMED ABDEL KARIM, *Introduction to Islamic Finance*, in ISLAMIC FINANCE: INNOVATION AND GROWTH 3, 3-4 (2002)

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ IBRAHIM WARDE, *ISLAMIC FINANCE IN THE GLOBAL ECONOMY* 26 (Edinburgh Univ. Press 2000).

always a subset of commerce.”¹⁹ Financial relationships were to a much greater degree embedded in personal and communal ties in the Islamic world compared to European economies of the late Middle Ages.²⁰ “Western banking arose as a combination of two factors: the generation of capital by means of deposits of the many on the one hand, and money lending and the provision of credit for the few on the other.”²¹ In the Islamic world, there had been a “disconnection between deposit and credit” and the conversion of deposits into loans was therefore not realized.²²

Theoretical debates on Islamic economics and banking led to a pioneering experiment in Egypt in 1963.²³ Opposition to Western banking practices had been growing since Barclays Bank was established in the late nineteenth century in Cairo for the purpose of raising capital for the construction of the Suez Canal.²⁴ The experiment was based on the *Mudaraba* principle (limited-partnership arrangement) and lasted until 1967.²⁵ By that time there were nine banks involved.²⁶ These banks were not called “Islamic banks” for the simple reason that leaders in Egypt feared it might be associated with fundamentalist currents within the country.²⁷ Even banking isn’t immune to Islamophobia. Nonetheless, the banks were established to win the confidence of farmers and workers in Egypt.²⁸ This group was more religious and shared no confidence in the secularized banks, which were run according to Western laws.²⁹

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See ZAMIR IQBAL & ABBAS MIRAKHOR, AN INTRODUCTION TO ISLAMIC FINANCE: THEORY AND PRACTICE 24 (2007); see also FUAD AL-OMAR & MOHAMMED ABDEL-HAQ, ISLAMIC BANKING: THEORY, PRACTICE AND CHALLENGES 21 (1996).

²⁴ IQBAL & MIRAKHOR, *supra* note 23, at 23.

²⁵ See *id.* at 24.

²⁶ AL-OMAR & ABDEL-HAQ, *supra* note 23, at 21.

²⁷ See WARDE, *supra* note 18, at 73-74.

²⁸ See Monzer Kahf, *Strategic Trends in Islamic Banking and Finance Movement 2-4* (Harv. Univ. Forum on Islamic Banking & Fin., Apr. 6-7, 2002), http://monzer.kahf.com/papers/english/strategic_trends_in_islamic_banking_and_finance.pdf.

²⁹ See *id.*

In 1975, the Islamic Development Bank was established, which provided developmental finance in accord with *Sharia*.³⁰ This bank and other financial systems used financial contracts, such as *Murabahah* (the resale of an item at some profit added on the original cost), for the placement of the Islamic banks' funds.³¹ Iran, Pakistan and Sudan, at least officially, converted their entire banking systems to be interest free.³²

By the 1990s countries such as Bahrain and Malaysia began to promote Islamic banking in conjunction with the conventional system.³³ Products such as Islamic insurance and equity funds were developed and both the Dow Jones and FTSE created indices that specifically listed *Sharia* compliant securities.³⁴ The Islamic Financial Services Board was established as a regulatory body.³⁵ By the turn of the twenty-first century, the Islamic financial system encompassed products such as banking, mortgages, equity funds, fixed income, insurance, project finance and private equity.³⁶

This form of banking has grown from virtual nonexistence to an industry expected to be worth upwards of \$1 trillion in 30 years.³⁷ The Islamic banking industry has had growth rates of about 15 percent per annum³⁸ and some individual Islamic banks have reported even faster growth.³⁹ In 2006, for example, Arcapita Bank in

³⁰ IQBAL & MIRAKHOR, *supra* note 23, at 25.

³¹ *Id.*

³² ZAMIR IQBAL & ABBAS MIRAKHOR, *The Development of Islamic Financial Institutions and Future Challenges*, in ARCHER & KARIM, *supra* note 1212, at 42, 44.

³³ RODNEY WILSON, *The Evolution of the Islamic Financial System*, in ARCHER & KARIM, *supra* note 12, at 29, 34-35.

³⁴ IQBAL & MIRAKHOR, *supra* note 32, at 48.

³⁵ *Id.* at 57.

³⁶ *Calling the Faithful*, *ECONOMIST*, Dec. 7, 2006, http://www.economist.com/finance/displaystory.cfm?story_id=8382406.

³⁷ See Howard Davies, Chairman of the Financial Services Authority, Seminar on Islamic Finance (Sept. 20, 2002) (transcript available at <http://www.fsa.gov.uk/Pages/Library/Communication/Speeches/2002/sp103.shtml>) (acknowledging, implicitly, that if growth continues at 15 percent annually, Islamic banking may reach \$1 trillion in 30 years).

³⁸ *Id.*

³⁹ Javid Hassan, *Arcapita Bank Acquires Varel for \$401.4 M*, *ARAB NEWS*, Dec. 14, 2007, <http://www.arabnews.com/?page=6§ion=0&article=104614&d=14&m=12&y=2007>.

Bahrain reported year on year growth of nearly 40 percent.⁴⁰ This growth can be attributed to the growth and success of Muslim nations as well as countries with a sizeable number of Muslim “minorities” (such as England).⁴¹

Gulf firms are using *Sharia*-compliant financing to fund takeovers of Western companies. For example, British luxury car-maker Aston Martin was acquired in early 2008 for \$925 million by a consortium including Kuwait’s Investment Dar, which invests according to Islamic law.⁴² More recently, an Islamic Bank is opening in Switzerland, where it intends to cater to high net worth individuals from the Gulf region.⁴³ A large number of conventional banking institutions such as Citibank, HSBC, and UBS all provide *Sharia*-compliant financial products throughout Islamic and non-Islamic regions.⁴⁴

While more than two-thirds of Islamic finance business originates from the Middle East, the region is increasingly looking to international capital markets to finance grander projects.⁴⁵ A \$1.5 billion *sukuk* (the Islamic equivalent of a bond) issue from Dubai Ports World and arranged by London-based Barclays Capital over a year ago allocated 60 percent of its bonds to Western buyers.⁴⁶ The global *sukuk* market grew by 75 percent to reach \$85 billion in the

⁴⁰ *Id.*

⁴¹ See Davies, *supra* note 37.

⁴² David Oakley, *Islamic Finance Behind Barracks Project*, FINANCIAL TIMES, Mar. 3, 2008, <http://www.reuters.com/article/MiddleEastInvestment07/idUSL2721394620070327?pageNumber=1>.

⁴³ David Oakley, *Swiss Islamic Bank Planned*, FINANCIAL TIMES, Mar. 31, 2008, http://us.ft.com/ftgateway/superpage.ft?news_id=fto033020081725006241&page=2.

⁴⁴ Majid Dawood & Yasaar LT, *Shariah-Compliant Financial Products—the Future*, <http://www.financialplaces.com/actemem/ms/suptech/shariah-compliant-financial-products-the-future/> (last visited Apr. 19, 2010).

⁴⁵ IPR Strategic Business Information Database, *UK: Important Islamic Finance Conference to be Held at London*, Sept. 21, 2008, <http://www.encyclopedia.com/doc/1G1-185358876.html>.

⁴⁶ *Islamic Banks Give London World Financial Clout*, ASSOCIATED PRESS, Mar. 6, 2008, <http://www.msnbc.msn.com/id/23505646/> (last visited Apr. 10, 2010).

first half of 2007.⁴⁷ The \$24.5 billion raised in the first half alone nearly surpassed the 2006 new issuance of \$26.8 billion.⁴⁸ Many other deals have been put on hold; United Arab Emirates (“UAE”) based Dana Gas postponed its \$1 billion *sukuk* due to credit market weakness⁴⁹ and First Gulf Bank of the UAE and Bahrain’s Ithmar Bank deferred their issues.⁵⁰

Of course, the primary reason for the growth of Islamic banking has been the oil boom of the last decade. Barrels of oil topped \$120 a barrel, leaving the Middle East the most liquid and cash rich region in the world.⁵¹ This has resulted in tremendous economic growth in the Gulf region, a steep rise in per capita income and large volumes of repatriated funds long parked overseas.⁵² Among other sectors, such as realty, the boom has triggered new growth in the financial sector with a rise in demand for *Sharia*-compliant products. Total bank deposits in the region are expected to increase at a cumulative annual growth rate of 19.18 percent during 2007-2011.⁵³ Since the religious demographic of the Gulf region is predominantly Muslim, many of these consumers demand *Sharia*-compliant financing.

While the growth of Islamic banking has been, and continues to be, driven by oil-rich Middle Eastern states, the future of Islamic banking will surely rest on the forecasted economic growth of Muslim and non-Muslim countries of the world alike (including Pakistan, Indonesia, Malaysia, Uzbekistan and those countries with

⁴⁷ Jane Wardell, *Islam Gives London Finance Markets Edge*, USA TODAY, Mar. 6, 2008, http://www.usatoday.com/money/economy/2008-03-06-1484303726_x.htm.

⁴⁸ *Id.*

⁴⁹ Simon Webb, *UAE’s Dana Gas Delays \$1 Bln Islamic Bond Pricing*, REUTERS UK, July 27, 2007, <http://uk.reuters.com/article/oilRpt/idUKL2635872920070727>.

⁵⁰ *Id.*

⁵¹ *Oil Hits \$120 Dollars a Barrel Milestone*, BBC NEWS, May 5, 2008, <http://news.bbc.co.uk/2/hi/business/7384427.stm>.

⁵² See, e.g., Stephen Timewell, *Gulf’s New Energy—Finance Is Taking Over From Oil As The Fuel That Drives The Engine Of Economic Growth In The Gulf Region*, GOLIATH, Nov. 1, 2007, http://goliath.ecnext.com/coms2/gi_0199-7139559/Cover-Story-Gulf-s-New.html.

⁵³ RAJASHEKARA V. MAIYA & BASUDEV BANERJEE, INFOSYS TECHNOLOGY, *BANKING ON FAITH: ISLAMIC BANKING IN THE MIDDLE EAST 3* (2009), available at <http://www.scribd.com/doc/11720540/infosys-technologies-islamic-banking-in-the-middle-east-report-jan-2009>.

large Muslim “minorities,” such as England, India and even the United States). This is especially true in an economic climate where investors are searching for fiscally and socially responsible financial institutions with new growth potential.

III. *Islamic Jurisprudence*

The fundamental premise of Islamic banking is that making money *from* money is forbidden (*haram*). In other words, deriving wealth purely from interest is illegal. Islamic law prescribes that one should seek the permissible (*halal*) and avoid the forbidden (*haram*) in all “pursuits of life.”⁵⁴ Jurisprudence is primarily divined from religious scripture to understand and act according to the “permissible” framework (and avoiding the forbidden). This is called *Sharia*. “In general, Islamic law (or *Sharia*) extends to the understanding of a believer’s rights and obligations vis-à-vis God, humankind, and the universe at large.”⁵⁵

The *Quran* is the primary source of Islamic law. It can be analogized to a constitution (for those familiar with common law systems), or a civil code (for those familiar with civil law systems). Another primary source of Islamic law are the teachings and actions of the Prophet Muhammed (peace be upon him).⁵⁶ These are called *Sunnah*. A third source of Islamic law is consensus, or *ijma*, amongst Muslim jurists on a particular legal issue. *Ijma*, however, is considered secondary to the teaching of the *Quran* itself, or *Sunnah*.⁵⁷ Another source of Islamic law—familiar to those from common law legal systems—is “analogical deduction” (or *qiyas*), whereby an Islamic jurist uses logic found in *Quran* and/or *Sunnah* to decide unprecedented cases.⁵⁸ Like all principles of natural justice, *qiyas* must not be arbitrary judgments, but squarely rooted in primary sources. In sum, the *Quran* and the *Sunnah* represent the “immutable basic code” (although some *Sunnah* are subject to debate), whereas

⁵⁴ Ali Adnan Ibrahim, *The Rise of Customary Business in International Financial Markets: An Introduction to Islamic Finance and the Challenges of International Integration*, 47 AM. U. INT’L L. REV. 661, 664 (2008).

⁵⁵ *Id.* at 674.

⁵⁶ *Id.*

⁵⁷ FARHAD NOMANI & ALI RAHNEMA, *ISLAMIC ECONOMIC SYSTEMS* 9-12 (1994).

⁵⁸ 9 THE NEW ENCYCLOPEDIA BRITANNICA 835 (15th ed. 1998).

ijma and *qiya* are seen as fluid and evolving (as to meet the exigencies of modern life).

It is true that economic progress is often linked with risk. However, in Islamic finance, risk is not held by one party to the transaction (as in Western finance), but rather risk is shared by all parties. And while this approach is not necessarily unique from other religions, these principles are combined with specific guidelines for trade and commerce. According to Islamic concepts of social justice, lenders and borrowers must share both rewards and losses, not simply a fixed, risk free return.⁵⁹ Wealth accumulation within an economy must be distributed in a fair manner that reflects actual gains in productivity and innovation.⁶⁰

Certain requirements must be met for a financial transaction to be *Sharia* compliant. These requirements can broadly be placed into three categories: (A) prohibition of interest (*riba*), (B) prohibition of specific industries and (C) the prohibition of transactions and products with excessive uncertainty (*gharar*).⁶¹ We discuss each in turn.

A. Prohibition of Riba

The definition of *riba* is the source of some controversy. Orthodox Muslims and some social reformers define *riba* as any type of “interest.”⁶² They argue that banks should refrain from charging interest in all circumstances.⁶³ A more moderate view holds that *riba* refers to “usury” and it is this form of excessive compound interest that is against Islamic law.⁶⁴

There are a few reasons that interest is forbidden. First, transactions that are based on interest are believed to violate the equity of a business.⁶⁵ In business the outcome of any enterprise is uncertain, yet in conventional banking models a borrower is obliged

⁵⁹ Mohammed Akacem & Gilliam Lynde, *Principles of Islamic Banking: Debt Versus Equity Financing*, 9 MIDDLE EAST POLICY 124, 125 (2002).

⁶⁰ *Id.* at 126.

⁶¹ Theodore Karasik, Frederic Wehrey & Steven Strom, *Islamic Business and Commercial Law: Islamic Finance in a Global Context: Opportunities and Challenges*, 7 CHI. J. INT'L L. 379, 381 (2007).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Akacem & Lynde, *supra* note 59, at 125.

to pay the agreed rate of interest even if a loss is incurred. In Islam this is unjust.⁶⁶ Second, it is held that an interest-based system is inflexible, causing wide scale bankruptcies.⁶⁷ A bank's strategy must be aligned with the long-term success of a company to which it lends.⁶⁸ Alternatively, conventional banks are primarily concerned with receiving interest on money lent. The current credit crisis is a salient example of banks recklessly recalling loans and freezing credit with no view to the long-term viability of an enterprise. This has led to unprecedented bankruptcies, to the loss of productive potential for all of society and increased levels of unemployment.⁶⁹ Third, a bank holds a commitment to keeping depositors' money safe and to provide a fixed rate of return. This causes banks to provide loans to only the safest ventures, which severely hinders innovation and limits entrepreneurs' access to capital.⁷⁰

B. Prohibited Industries

"Financing must be for a worthwhile cause."⁷¹ In conventional banking, "worthwhile" means profitable. This is not so in Islamic banking. Certain industries are viewed as immoral, since they run counter to the teachings of Islam and the Prophet Muhammad (peace be upon him); they are not "worthwhile" *ab initio*.⁷² Gambling, alcohol production, swine rearing and production, pornography, prostitution and financial services dependent on the payment of interest are all obvious examples.⁷³

While many of these restrictions may seem inappropriate to Western readers, or run counter to notions of capitalism or freedom of expression, it must be remembered that these "religious" restrictions are actually legal restrictions. In the West, we have separated "church" and State, so laws are no longer seen as reflecting the values of a particular religion (in theory, at least). Yet, restrictions on prostitution, laws against homosexuality and even the confidentiality of communications between a pastor and a church-

⁶⁶ *Id.*

⁶⁷ *Id.* at 132.

⁶⁸ *Id.* at 129.

⁶⁹ *See, e.g., id.*

⁷⁰ *Id.*

⁷¹ Karasik, Wehrey & Strom, *supra* note 61, at 382.

⁷² *Id.*

⁷³ *Id.*

goer, all represent examples of legal restrictions (or rights) that are fundamentally rooted in religion.

C. Transactions and Products with Excessive Uncertainty

Then there is the Islamic ban on transaction and products with excessive uncertainty (*gharar*).⁷⁴ In short, it is a prohibition against “trading in risk.”⁷⁵ Many modern financial products—like derivatives, options and futures—are all forbidden (especially if we combine *gharar* with the earlier prohibition on gambling).⁷⁶ Indeed, *gharar* also prohibits the sale of things that do not yet exist.⁷⁷ Again, the ability to sell futures is clearly impacted, as are other forms of speculative trading and arbitrage. It is this conservatism that has helped preserve Islamic banks—for the most part—from the global credit crisis.⁷⁸

Despite these restrictions, Islamic finance is a viable, profitable and attractive alternative to conventional finance. The prohibition against interest is undoubtedly a difficult one for Western bankers to accept. Indeed, if interest is forbidden, then what is the incentive for lenders to provide capital?

One creative approach is the sharing of risk. This approach ensures equity and stability in financial systems. In conventional lending, “financings are generally structured as either debt (with a fixed rate of return provided, regardless of the performance of the

⁷⁴ *Id.*

⁷⁵ Mahmoud El-Gamal, *An Economic Explication of the Prohibition of Gharar in Classical Islamic Jurisprudence* 25 (Int’l Conference on Islamic Econ., May 2, 2001) (available at <http://www.ruf.rice.edu/~elgamal/files/gharar.pdf>).

⁷⁶ *Id.*

⁷⁷ *Id.* at 11.

⁷⁸ The late 2009 failings of Dubai World is addressed later in this article, but one wonders whether the financing of many of Dubai’s extravagant real estate projects accord with basic principles of *gharar* and humility in Islam. David Oakley, *Dubai debacle overshadows growth*, FINANCIAL TIMES, Dec. 7, 2009, <http://www.ft.com/cms/s/0/8465aa26-e2be-11de-b028-00144feab49a.html> (“For example, excitable pre-credit-crunch talk of Islamic hedge funds has faded as it has become increasingly clear that developing products, involving speculative bets on the direction of the market is extremely difficult as they are so far removed from the principles of Islam, which forbids *gharar*, or gambling.”).

business) or equity (with returns based more completely on performance).⁷⁹ Islamic lending adopts a “mutual sharing” approach, so as to ensure the long-term performance and viability of a venture. Lenders and borrowers are seen as belonging to a joint venture (or limited partnership), rather than as arms-length actors. “Rather than receiving a fixed interest rate, a capital provider has an element of responsibility for operations and shares in the potential returns and losses of the business through shared ownership.”⁸⁰ The next section discusses specific Islamic financing structures including some of the more commonly used Islamic financial instruments.

IV. Financial Instruments

A. Mudaraba

Mudaraba is one of the more common financial instruments in Islamic banking. It is essentially a limited partnership arrangement.⁸¹ It is an agreement with the bank and an entrepreneur where the entrepreneur provides labor, expertise and management.⁸² The profits are shared between the bank and the entrepreneur according to a predetermined ratio.⁸³ In the event of a loss, the bank loses capital and the entrepreneur loses its invested labor.⁸⁴ It is the financial risk that entitles the bank to a share of profits as per *Sharia*. The profit sharing continues until the loan is repaid.⁸⁵

B. Musharaka

Musharaka is an equity participation arrangement or joint venture financing structure with two or more partners, each contributing capital or labor and sharing the profits and losses of the venture.⁸⁶ The bank is not the sole provider of financing and in return

⁷⁹ Karasik, Wehrey & Strom, *supra* note 61, at 383.

⁸⁰ *Id.*

⁸¹ Tarek S. Zaher & Mohammad K. Hassan, *A Comparative Literature Survey of Islamic Finance and Banking*, in FINANCIAL MARKETS, INSTITUTIONS & INSTRUMENTS 155, 165 (2001).

⁸² *Id.*

⁸³ *Id.* at 161.

⁸⁴ *Id.* at 165.

⁸⁵ *Id.*

⁸⁶ *Id.* at 165-66.

for its funds receives an equity stake in the business.⁸⁷ The bank may have input into the management of the business and a share of profits that reflects its equity stake in the business.⁸⁸ Any losses are borne in accordance with the proportion of equity held.⁸⁹ This instrument may also be structured as to give the bank a diminishing equity stake as the loan is paid off, and/or allow the entrepreneur to repurchase (or re-acquire) such equity from the bank.⁹⁰ This purchase of shares and/or share of the profit is correlated to the initial capital provided by the bank until that debt is repaid.⁹¹

C. *Ijara*

Ijara is similar to an operating lease where a bank agrees to provide an asset to a customer for a set period in exchange for regular payments, which include a disclosed profit margin.⁹² The asset remains in the bank's name and the profit margin is disclosed in advance.⁹³

D. *Murabaha*

In this financial instrument, a sale of goods is made at a price, which includes a profit margin agreed upon by both parties.⁹⁴ The profit margin and other costs must be stated at the time of the sale agreement.⁹⁵ The bank is compensated for the time-value of money by a fixed profit margin.⁹⁶ The asset remains in the name of the bank until the loan is paid in full.⁹⁷ This is similar to a rent-to-own arrangement, but in the event of late payments an Islamic bank cannot charge above the agreed upon rates.⁹⁸

⁸⁷ *Id.* at 161.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *See id.* at 165-66.

⁹¹ *Id.* at 161.

⁹² *Id.* at 163.

⁹³ *Id.*

⁹⁴ *Id.* at 160.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *See id.*

⁹⁸ *Id.* at 160.

E. Takaful

Conventional insurance is forbidden in Islam, largely due to the excessive risk and uncertainty (*gharar*) involved in most insurance instruments.⁹⁹ *Takaful* is an alternative form of insurance that takes a large group of people and pools them together to create group insurance.¹⁰⁰ The idea is that individual insurance is based on the uncertain, but with a large number of people certain statistical outcomes are almost guaranteed.¹⁰¹ This removes uncertainty from the equation and is a way to effectively manage and mitigate risk.¹⁰²

F. Sukuk

Sukuk is an asset-backed bond and one of the most common Islamic financial instruments.¹⁰³ A *sukuk* allows asset monetization or securitization; companies form a special purpose vehicle under which it sells its assets.¹⁰⁴ *Sukuk* holders become shareholders, holding these assets, which are then leased back to the original company for an asset-related return over a pre-determined period of time based on the profit of the underlying assets.¹⁰⁵ This allows a company to raise funds, and investors to gain an Islamically permissible return.¹⁰⁶

G. Istisna

Istisna is a pre-delivery financing and leasing structure that is used to finance long-term projects and large-scale facilities, such

⁹⁹ *Id.* at 191.

¹⁰⁰ Abdul Rahim Abdul Wahab et al., *Islamic Takaful: Business Models, Shariah Concerns, and Proposed Solutions*, 49 THUNDERBIRD INT'L BUS. REV., 371, 373 (May-June 2007)

¹⁰¹ *Id.* at 373-74.

¹⁰² *Id.* at 376.

¹⁰³ Ayman Abdel-Khaleq & Christopher Richardson, *New Horizons for Islamic Securities: Emerging Trends in Sukuk Offerings*, 7 CHI. J. INT'L L. 409, 409 (2007)

¹⁰⁴ *Id.* at 410.

¹⁰⁵ *Id.* at 424.

¹⁰⁶ *See generally*, Ayman Abdel-Khaleq & Christopher Richardson, *New Horizons for Islamic Securities: Emerging Trends in Sukuk Offerings*, 7 CHI. J. INT'L L. 409, 413 (2007) (discussing the growing importance of *sukuk* in the finance industry).

as the construction of refineries.¹⁰⁷ Here the bank would own the plant and charge the company a fee based on profits.¹⁰⁸ The bank could also sell the plant to the company on a deferred basis with a profit mark-up like a *Murabaha*.¹⁰⁹ However, unlike *Murabaha* there are some expenses in such endeavors that cannot be reflected in a sale and purchase agreement, but can be included in the fees paid to the bank.¹¹⁰

V. *The Credit Crisis*

Islamic finance imposes strict rules on lending. This includes banning some of the structures and financing models at the root of the current mortgage crisis. Islamic finance practices are conservative and promote active participation by investors and denounce parking assets in off balance sheet vehicles.

As noted earlier, the way in which Islamic banks lend is of particular interest. The banks charge a floating interest rate that is pegged to the borrowers' rate of return. This means that the banks profit on the loan is equal to a percentage of the borrower's profit. This profit sharing continues until the principle amount of the loan is repaid.¹¹¹ This approach stands in stark contrast to today's credit crunch. Banks are hesitant to lend on anything but a short-term basis, and even then only on the safest deals. However, if a bank's profits were directly linked to the rate of return that a borrowing company generated, then the financial system would once again be linked to the real economy.

Until recently, the Islamic financial system has not suffered the shocks that the conventional system has encountered several times since the beginning of the twentieth century. And even the so-called "Dubai debt crisis" that struck in late 2009, when Dubai World (a holding and investment company for Dubai's government)¹¹²

¹⁰⁷ Zaher & Hassan, *supra* note 81, at 164.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See Humayon A. Dar & John R. Presley, *Lack of Profit Loss Sharing in Islamic Banking* 4 (Loughborough Univ. Dep't of Econ., Econ. Research Paper No. 00/24, Session 2000-2001) (examining the disadvantages of the Islamic banking system's profit loss sharing).

¹¹² Perez, *supra* note 4.

announced that it would delay repayment of its \$59 billion debt,¹¹³ can be attributed to excessive, speculative lending using non-*Sharia* compliant instruments. The issues outlined in Part VII of this paper explain the current shortcomings of Islamic finance and should help prevent future crises from arising.

Indeed, Islamic banking ought to be safeguarded from the pitfalls of convention banking through the constant sharing of risk. The ban on depositors extracting funds before the expiration of a *Mudarabah* (investment partnership) also means that bank runs are less likely to occur.¹¹⁴ The collection of bad debts and the artificial inflation of balance sheets are also unlikely as banks are actively involved in the performance of the companies to whom they have lent.¹¹⁵ In addition, the concept of banks holding assets until they are fully paid off would prevent huge asset devaluations.¹¹⁶ When banks share in the risks of the borrower, it implicitly keeps lending in check by providing financing to well-managed business ventures. In sum, this prevents the financial system from growing beyond the real economy.¹¹⁷

Banks in a conventional system are victims to asymmetric information in that they are never certain about the precise manner in which a debtor will use funds or, more importantly, how productively those funds will be utilized. An Islamic bank, however, is privy to this information and has valuable insight into the operations of the company.¹¹⁸

For conventional banks, there has been an increased disconnect between bank profits and actual gains in society's general wealth. Whereas the health of the banking sector in an Islamic financial system is tied directly with the overall economy. The Islamic model leads to greater stability, and allows banks to once again be an accurate gauge of an economy. The divergence between a bank's performance in conventional economies with actual productivity is unsustainable, and while the subprime crisis may

¹¹³ Reuters, *supra* note 5.

¹¹⁴ Akacem & Lynde, *supra* note 59, at 129-30.

¹¹⁵ *Id.* at 130.

¹¹⁶ *Id.*

¹¹⁷ Here again we note that the financial system that funds Dubai's opulence and extravagance has far exceeded the growth of Dubai's actual economy. It was inevitable that Dubai's economy would, at some point, face a credit crisis in light of many of the issues set out in Part VII.

¹¹⁸ *Id.*

bridge that gap slightly, the nature of the conventional system will likely lead banks to once again discover new ways of creating artificial profits.

VI. Islamic Banking in Canada

In Canada, Islamic mortgages have been available for over twenty-five years by organizations such as Ansar Financial and ISNA Housing Corporation.¹¹⁹ Recently, new entrants such as Ittihad Capital of Calgary, Alberta and UM Financial of Toronto, Ontario have greatly increased the attention on the industry and the size of the market.¹²⁰

There are nearly 700,000 Muslims in Canada.¹²¹ Muslims are among the most affluent groups in Canada and approximately 30,000 new Muslims enter Canada each year.¹²² The potential for Islamic banking in Canada is substantial, in part because of reluctance by banks in the United States to develop Islamic subsidiaries. This presents a large untapped market, as Islamic banks in Canada could potentially gain the investment of the nearly 2.5 million Muslims residing in the United States.¹²³ Even heavyweights such as HSBC Amanah are looking to enter the Canadian market.¹²⁴

In July 2007, the Ontario Securities Commission, in conjunction with four major Canadian Banks (CIBC, RBC, TD and

¹¹⁹ Press Release, UM Group, UM Financial supports CMHC study on Islamic Mortgages (Jan. 30, 2008) (available at <http://tyo.ca/islambank.community/modules.php?op=modload&name=News&file=article&sid=4025&mode=thread&order=0&thold=0&POSTNUKESID=108c544c8c5768506bc84c357fff2a82>).

¹²⁰ *Canada Woos Islamic Finance*, NATIONAL POST (Canada), May 22, 2007, <http://www.canada.com/nationalpost/financialpost/story.html?id=fb6699bc-72ea-46c5-ba60-03d2b63dbf35&k=86595>

¹²¹ PEW RESEARCH CENTER FORUM ON RELIGION AND PUBLIC LIFE, MAPPING THE GLOBAL MUSLIM POPULATION 25 (2009).

¹²² See Facts and Figures 2008—Immigrant Overview: Permanent and Temporary Residents, Canada—Permanent Residents by Source Country, <http://www.cic.gc.ca/EnGLish/resources/statistics/facts2008/permanent/10.asp> (last visited Apr. 19, 2010).

¹²³ PEW RESEARCH CENTER FORUM ON RELIGION AND PUBLIC LIFE, *supra* note 121, at 33.

¹²⁴ Videotape: Islamic Banking and Finance—Riyazi Farook (Riyazi Farook 2007) available at <http://www.youtube.com/watch?v=sTWPWWNXfac> (interviewing Hussain Al-Qemzi, CEO of Sharjah Islamic Bank).

Scotia Bank), retained a law firm, Ogilvy Renault LLP, to look at enacting legislation to bring *Sharia* compliant banking to Canada.¹²⁵ It is expected that by 2010 there will be at least ten Islamic Banks in Canada; Ittihad Capital being the first Islamic Investment Bank in Canada.¹²⁶

A strong consumer banking presence for Islamic banking in Canada is likely to lead to increased activity. Despite the fact that not many Muslims actively utilize Islamic mortgage services, it is likely that if they were more readily available Muslims would opt for the “more” Islamic option. There is a greater appetite for socially responsible investing among Muslims and non-Muslims alike. Consumers and investors recognize their role in corporate social responsibility.

Nevertheless, there is an ongoing debate within the Muslim community in Canada as to the merit of Islamic banking. Major Muslim organizations such as Islamic Society of North America (“ISNA”) and Islamic Circle of North America (“ICNA”) have voiced their support for Islamic banking, while a secular Muslim group, the Muslim Canadian Congress (“MCC”), has voiced its opposition, as it believes it will allow banks to take advantage of Muslim customers under the guise of Islam.¹²⁷

Canada, like the rest of the world, has a severe shortage of trained Islamic scholars in both *Sharia* and finance. This will be an issue in terms of introducing and managing new products. Indeed, not only must the mortgages be *Sharia* compliant, but also the underlying cash used for mortgages and loans must also be *Sharia* compliant.¹²⁸ Regrettably, Canada has been slow in introducing and accepting Islamic banking. As early as 1995, numerous Muslim organizations and banks such as HSBC Amanah had sought federal

¹²⁵ Tavia Grant, *A Hot New Banking Trend: Sharia-Compliant Finance*, GLOBE & MAIL, May 7, 2007, at B1.

¹²⁶ Islamic Finance Comes to Canada—Online Q & A Discussion with Walied Soliman, May 31, 2007, <http://tyo.ca/islambank.community/modules.php?op=modload&name=News&file=article&sid=3928>.

¹²⁷ *Islamic Banking Deceptive and Not Interest-Free*, DAILY TIMES, Feb. 1, 2008, http://www.dailytimes.com.pk/default.asp?page=2008%5C02%5C01%5Cstory_1-2-2008_pg7_10.

¹²⁸ Tavia Grant, *Banks Give Sharia a Second Look*, GLOBE AND MAIL, May 25, 2007, at B4.

approval for setting up banking facilities in Canada, but to no avail.¹²⁹

The Canadian financial services industry is beginning to recognize the true potential in this market. Canada is on the verge of introducing Islamic banking and it promises to change the Canadian banking and investment sectors. Bennett Jones LLP (one of Canada's major, national law firms) recently introduced Islamic banking and finance to its practice groups.¹³⁰ This proves to be an exciting time in Canadian banking—which has reached maturation in many regards—and is in search of new areas of growth and innovation.

VII. *Challenges that Face Islamic Banking*

A. **Issues from a Religious Perspective**

Sharia law precludes Islamic institutions from being involved in the kind of complex credit trading that has paralyzed Western credit traders. But Islamic banking has its own shortcomings. Islamic banking—as a theoretical concept (like all banking models, to some extent)—is sound. The practical application, however, leads to many potential issues in terms of how to implement or execute the operation of a bank or certain financial instruments in a manner that is mindful of the needs of all parties to a transaction.

Major threats to the industry include a lack of standardization of *Sharia* rules and regulations.¹³¹ Each Bank has its own *Sharia* board, which looks at Islamic law and interprets it according to their own understanding of Islam.¹³² Islam has no central body or hierarchy and each scholar's opinion is equally valid.¹³³ This creates particular challenges because what one scholar deems to be Islamically permissible, might be impermissible to another. This

¹²⁹ Sayyid Tahir, *Islamic Banking Theory & Practice: A Survey & Bibliography of the 1995-2005 Literature*, J. ECON. COOPERATION AMONG ISLAMIC COUNTRIES, Jan. 2007, at 19.

¹³⁰ Islamic Finance Practice at Bennett Jones LLP, http://www.bennettjones.com/areas_practices_item.aspx?practice=4000 (last viewed Feb 23, 2010).

¹³¹ ALEXANDER VON POCK, STRATEGIC MANAGEMENT IN ISLAMIC FINANCE 44 (2007).

¹³² Monzer Kahf, *Islamic Banks at the Threshold of the Third Millennium*, THUNDERBIRD INT'L BUS. REV., at 13-14 (2001).

¹³³ *Id.*

creates problems of predictability, consistency and perhaps even arbitrariness.

Ironically, another shortcoming is the shortage of individuals who are sufficiently trained in Islamic jurisprudence and finance to make decisions about financial instruments, investments and Islamic banking as a whole.¹³⁴ The result is a huge backlog of instruments and investments and longer wait times to reach the market. Indeed, current scholars may find themselves sitting on the *Sharia* board of as many as twenty banks.¹³⁵

Finally, Islamic banking tends to betray its Islamic heritage by artificially circumventing *Sharia* to compete with conventional Western banking.¹³⁶ Take the example of *sukuk*. In 2007, it was estimated that 85% of *sukuk* issues did not fulfill the intent of Islamic law.¹³⁷ The Dubai debt crisis of late 2009 has been attributed to precisely this.¹³⁸ *Sukuk* are widely seen as the *Shariah*-compliant equivalent of conventional debt securities, and come in various forms (depending on the underlying economics and risk characteristics). While *mudaraba* and *musharaka sukuk* are essentially equity-type instruments, they sometimes employ repurchase agreements at maturity or specified default events, to guarantee the return of the

¹³⁴ *Id.* at 14.

¹³⁵ See FUNDS@WORK, SHARIAH SCHOLARS—A NETWORK ANALYTICAL PERSPECTIVE 6-7 (2010), available at http://www.funds-at-work.com/fileadmin/downloads/Sharia-Network_by_Funds_at_Work_AG.pdf.

¹³⁶ Mahmoud El-Gamal, *Incoherent Pietism and Sharia Arbitrage*, FINANCIAL TIMES, May 23, 2007, at 2.

¹³⁷ Mohammed Abbas, *FACTBOX: Key Facts About Islamic Finance*, REUTERS, Feb. 3, 2008, <http://www.reuters.com/article/idUSL0122621620080203>.

¹³⁸ One article stated as follows:

Elaborate sukuks have been developed to mitigate risk and provide returns similar to that of conventional interest-bearing loans. . . . The default of Nakheel's sukuk clearly shows that Islamic banks are not immune to taking undue risk and conducting insufficient due diligence. While real estate bubbles can form anywhere, Dubai's was more obvious than most. Islamic lenders were no different than conventional lenders in ignoring the growing real estate bubble and will now have to re-evaluate their perception of risk the same as conventional lenders. Such reflection may result in a shift to musharaka financing structures which are often considered to be more acceptable by Islamic scholars.

sukuk.¹³⁹ This is at odds with the spirit of Islamic finance, where profits should be shared and interest is prohibited.

The recent Japan Bank for International Co-operation (“JBIC”) *sukuk* is another illustration of these challenges. JBIC was preparing to launch one of the first sovereign *sukuk* issuances to fund international development projects.¹⁴⁰ JBIC had selected Citigroup of Dubai and CIMB of Malaysia to arrange a deal.¹⁴¹ However the respective *Shariah* boards of the two banks could not come to an agreement regarding the compliance of the deal with Islamic law.¹⁴² The transaction had to be further restructured (at additional time, labor and frustration).¹⁴³ These situations—especially in multi-bank deals—are detrimental to growth, predictably, consistency and acceptance of Islamic banking.

Furthermore, Islam is often associated with images of terrorism, suicide bombers and fanaticism. These stereotypes must be overcome. Islam has nothing to do with violence or funding Al-Qaeda. This stereotype is one of the reasons why the industry has been unable to penetrate the United States banking sector, one of the largest potential markets for the industry, despite the recent credit crisis. One only needs to recall the recent Dubai Ports World controversy in 2006 to understand the deep-rooted ignorance and fear of anything Islamic in the United States.¹⁴⁴

Lorne Culter, *Islamic Default*, NATIONAL POST, Dec. 7, 2009, <http://network.nationalpost.com/np/blogs/fullcomment/archive/2009/12/07/islamic-default.aspx>.

¹³⁹ Ali Ravalia, *Sukuk Markets at a Crossroads*, CPI FINANCIAL, July 2008, <http://www.cpifinancial.net/v2/print.aspx?pg=fa&aid=87>.

¹⁴⁰ Mushtak Parker, *Japanese Parliament Approached to Amend Law for Sukuk Issuance*, ARAB NEWS (London), June 2008, <http://www.arabnews.com/?page=6§ion=0&article=110715&d=9&m=6&y=2008>.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ For example:

Several Bush-administration security officials expressed concerns yesterday that terrorists could infiltrate seaports through a United Arab Emirates company that is vying to manage six U.S. ports. Intelligence and security officials opposed to the deal with Dubai Ports World said ports are vulnerable to the entry of terrorists or illicit weapons because of the large number of containers that enter U.S. territory, regardless of who manages them. A Persian Gulf

B. Issues from an Operational Perspective

It is challenging for a system that is diametrically opposed to the fundamentals of the conventional financial system to function within that system. At the same time, the integration of foreign economies into a global economy continues to increase. When putting aside generalized Islamophobic and racist concerns,¹⁴⁵ the strengths of the Islamic banking system as outlined in this article should demonstrate that Islamic banking possess many admirable elements. Indeed, many Islamic banks operate in cultures where businesses operate in a very opaque manner. Islamic banking shies away from nepotism and non-arm's length dealing.¹⁴⁶ Two traits that are endemic to Western banking.

The management of risk is an important issue in Islamic banking (like all banking). Derivatives and most hedging have been deemed against *Sharia*.¹⁴⁷ There has been a strong push to discover instruments or models that will not eliminate risk but allay risk as much as possible in every investment that a bank decides to pursue. The failure to build effective models to minimize risk has in many

state such as the United Arab Emirates could provide an infrastructure for terrorists to penetrate U.S. security as part of a major terrorist operation, the officials said. One long-term worry is that al Qaeda terrorists will attempt to smuggle a nuclear device into the United States through a port via a shipping container. Allowing a Middle Eastern company to manage key ports "would be like putting the fox in charge of the henhouse," said one security official, who, like most other critics, spoke on the condition of anonymity. Another official said the problem is not the company but its location in a region rife with Islamic terrorism.

Bill Gertz, *Security Fears about Infiltration by Terrorists*, WASH. TIMES, Feb. 22, 2006, at A1.

¹⁴⁵ Mairi Mackay, *U.S. Banks 'Missing a Trick' with Muslim Customers*, CNN, Mar. 31, 2008, <http://www.cnn.com/2008/BUSINESS/03/28/sharia.banking/>.

¹⁴⁶ Carl A. Solberg, *Culture and Industrial Buyer Behavior: the Arab Experience* 29 (18th IMP Conference, Sept. 2002) (available at <http://impgroup.org/uploads/papers/522.pdf>).

¹⁴⁷ Liao Y-Sing, *Derivatives Dispute Divides Islamic Finance Market*, REUTERS, Feb. 5, 2009, <http://www.reuters.com/article/asiaHedgeFundsNews/idUSLNE51400C20090205>.

cases made Islamic banks uncompetitive with conventional banks. However, the Sirens' song that Western banks have called "risk" has revealed its true nature in the current subprime crisis.¹⁴⁸

Allied with operational issues are the issues of dispute resolution and choices of law. Canadian courts have never been called upon to interpret a contract based on *Sharia* law. Though, the English decision in *Beximco Pharmaceuticals Ltd et al. v. Shamil Bank of Bahrain EC*¹⁴⁹ is particularly persuasive. In that case, the Court of Appeals ruled that it was not possible for a case to be decided based on the principles of *Sharia* law because it is a non-national system of law, and *Sharia* principles (as noted earlier) are a matter of debate, even in Muslim countries.¹⁵⁰ To prevent such an outcome, Islamic contracts are usually governed by English or New York law.

Moving forward these issues must be resolved or appropriately addressed in order for the industry to continue to grow. It is important to mention, however, that many of the issues relating to Islamic banking are largely due to the infancy of the sector. These growing pains must be overcome to reveal both the theoretical and the demonstrated merits of the Islamic banking system.

VIII. Conclusion

Islamic banking is making increasing headway in the Western world. The trend is likely to continue as oil exporting nations continue to accumulate wealth, the Gulf Cooperation Council and South East Asian Islamic financial markets develop further, and as Western businesses seek innovative means of attracting international investors. As the global economy struggles to overcome the credit crisis, it is important to examine alternate forms of doing business and future trends for how economic systems can change. Western complacency, and arrogance in some sense, has stifled reform of financial and economic systems through the twentieth century. The current crisis has highlighted that regulations and structures of our current financial systems need to be overhauled. Enter Islamic banking, which has experienced rapid growth and appears to address many of the weaknesses in the current con-

¹⁴⁸ *Id.*

¹⁴⁹ *Beximco Pharm. Ltd. v. Shamil Bank of Bahrain* [2004] EWCA Civ 19 (appeal taken from Q.B.D.).

¹⁵⁰ *Id.*

ventional system. Of course, no system is perfect and Islamic banking too has its shortcomings. The Dubai debt crisis of late 2009 is a poignant reminder for Islamic banking to “return to its roots” and adopt more conservative banking approaches that adhere to *Sharia* law and Muslim values. But Western banking should at least be mindful of the “best practices” of Islamic banking in addressing their own responsibility as lenders—lenders who underlie the entire economy.