

Amel Makhlouf

LL.M. in Banking and Finance, Queen Mary University of London (2008)

PhD Candidate & Lecturer in Private Law, Panthéon-Sorbonne University (Paris)

Legal consultant, Shariah Board CIFIE (Paris)

Research Assistant under the supervision of Professor Nicholas HD Foster, SOAS (London)

THE EMERGENCE OF ISLAMIC FINANCE IN FRANCE

Considered to be one of the fastest growing segments of the financial industry, Islamic finance is increasingly viewed as a key component of the financial services sector¹. This is in part due to the fact that the current global financial crisis has exposed the limits of capitalism² and has forced a reconsideration of the fundamental tenets of the global economic system³. Massive speculation, intense competition, excessive risk-taking as well as inadequate government regulation have all been contributing factors, and the resulting crisis of confidence has undermined the ability of political and economic leaders to offer ideal solutions for recovery. This context has led to an increased public awareness regarding the need to provide a more ethical focus to conventional economic models⁴.

This redesign of the global economy implies the new challenge of promoting an ethical solution by means of socially responsible finance⁵. Regarding the drastic consequences induced by the worldwide financial crisis, most notably job losses and social hardship, Islamic finance appears as a solution to modify the current and dominant financial way of thinking. This explains the exponential growth of the Shariah-compliant finance sector in both Muslim and non-Muslim communities⁶.

However, Islamic finance is not really a "new industry", as it has existed in the early years of Islam since the Holy Quran was revealed to the Prophet Muhammad (*Sal Allah Alayhi Wa Salam*)⁷ by the angel Gabriel. Mecca was at that time a major centre of commercial exchange, thereby underlining the importance of trade in Islam and its positive view of commerce, including the use of borrowed capital.

¹ See BMB Islamic, *Global Islamic Finance Report - GIFR 2010*, Section I - Introduction, Chapter I: The Islamic Banking and Finance Industry.

² See Charles Tripp, *Islam and the moral economy: the challenge of capitalism*, Cambridge: Cambridge University Press, 2006; Bryan S. Turner, *Weber and Islam: a critical study*, London: Routledge and Kegan Paul, 1974; Maxime Rodinson, *Islam and Capitalism*, Paris: Le Seuil, 1966.

³ See Elyès Jouini and Olivier Pastré, *La finance islamique - Une solution à la crise?*, Paris : Economica, 2009; Tarik Bengarai, *Comprendre la Finance Islamique - Principes, Pratiques et Ethique*, Paris : Les 4 sources, 2010.

⁴ See Isabelle Chapelliére, *Ethique et Finance en Islam*, Paris: Koutoubia, 2009.

⁵ See Timur Kuran, "On the Notion of Economic Justice in Contemporary Islamic Thought", International Journal of Middle East Studies, Vol. 21, No. 2 (May, 1989), pp. 171-191.

⁶ See Ibrahim Warde, *Islamic Finance in the Global Economy*, Edinburgh, UK: Edinburgh University Press, 2nd revised edition 2008; Clement M. Henry and Rodney Wilson, *The Politics of Islamic Finance*, Edinburgh, UK: Edinburgh University Press, 2004.

⁷ The transliterated Arabic "Sal Allah Alayhi Wa Salam" refers to individuals' desire to praise God whenever the Prophet is mentioned.

The French interest for this growing industry certainly started in 2008 when the Minister of Economy, Finance and Industry - Christine Lagarde⁸ – officially announced her support to introduce Islamic finance in France. Further progress was encouraged by the Islamic finance commission of Paris Europlace⁹ which has made a series of tax, legal and regulatory adjustments into the French financial system to integrate Islamic finance transactions. The next major step took place in November 2011 when the AAOIFI¹⁰ main 20 Shariah standards¹¹ were made available in French. This work has been carried out by the Paris Europlace's Islamic Finance Law Committee, and duly supervised by two French Shariah boards: COFFIS¹² and CIFIE¹³. All these organisations intend to foster and promote the development of Islamic finance in France by finding a possible combination between French and Shariah requirements as well as suggesting a comprehensive transcription of Shariah law concepts into French law concepts. Although several modes of financing are currently available on the Islamic finance market – such as Ijara¹⁴, Mudaraba¹⁵, Musharaka¹⁶ and Takaful¹⁷ – Murabaha¹⁸ remain the most common transactions used by Islamic financial institutions worldwide¹⁹. Consequently, the AAOIFI Murabaha Shariah standard will be valuable to integrate this cost-plus financing into the French legal system.

Besides, it should be noted that the growing development of Islamic banking and finance does not coincide with the emergence of Takaful²⁰. One wonders if this gap is coherent with the need for Islamic banks to be insured in a Shariah-compliant way since the Islamic insurance sector is apparently less well developed than the broader Islamic finance one.

Yet, the establishment of Takaful undertakings represents a great opportunity for France. In fact, the first Islamic life insurance contract has been distributed by Allianz Life Luxembourg on the Reunion island in 2009. It has been certified by the Reunion Islamic Center and

⁸ Christine Lagarde was a French Minister of Economy, Finance and Industry, who succeeded Dominique Strauss-Khan as managing director of the International Monetary Fund. Her speech was given at the opening of the Second French Forum on Islamic Finance on 26 November 2008.

⁹ Paris Europlace is the Paris financial markets organisation. Its Islamic finance commission is divided into several committees, such as the Islamic finance law committee.

¹⁰ Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI), <<http://www.aaoifi.com/aaoifi/TheOrganization/Overview/tabid/62/language/en-US/Default.aspx>> accessed 14 March 2012.

¹¹ These standards are "key references used by most Islamic banks and Islamic finance professionals globally". See the press release of Paris Europlace on 22 November 2011, <<http://www.paris-europlace.net/links/doc064143.htm>> accessed 14 March 2012.

¹² Conseil Français de la Finance Islamique (French Council of Islamic Finance), <<http://www.coffis.fr>> accessed 14 March 2012.

¹³ Comité Indépendant de la Finance Islamique en Europe (European Independent Committee of Islamic Finance), <<http://www.cifie.fr>> accessed 14 March 2012.

¹⁴ The contract of Ijara refers to a lease agreement.

¹⁵ The contract of Mudaraba refers to a partnership contract.

¹⁶ The contract of Musharaka is also based on a partnership process.

¹⁷ The Arabic word for solidarity or mutuality. The Council of the Islamic Fiqh Academy held in Jeddah on December 1985 decided that: "1) The commercial insurance contract with a fixed periodical premium, which is commonly used by commercial insurance companies, is a contract which contains major elements of deceit, which void the contract and, therefore, is prohibited (haram) according to Shari'a; 2) The alternative contract, which conforms, to the principles of Islamic dealings is the contract of cooperative insurance, which is founded on the basis of charity and cooperation. Similarly, is the case of reinsurance based on the principle of cooperative insurance; 3) The Academy invites the Islamic countries to work on establishing cooperative insurance institutions and cooperative entities for the reinsurance, in order to liberate the Islamic economy from exploitation and put an end to the violation of the system which Allah has chosen for this Ummah". See the Council of the Islamic Fiqh Academy, Resolution n° 9 (9/2) concerning Insurance and Reinsurance, in Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985-2000, <<http://zulkiflihasan.files.wordpress.com/2009/12/majma-fiqh.pdf>> accessed 14 March 2012.

¹⁸ The contract of Murabaha refers to a cost-plus sale contract.

¹⁹ In this respect, it is important to assess whether this intensive use of Murabaha can match with the moral and ethical principles required by the Islamic finance theory.

²⁰ See Amel Makhlof and Hisham Bouhouita Guermach, "Conventional vs. Islamic Insurance", Revue droit et affaires (9th edition, 2011).

ACERFI²¹, the first French Shariah board. The next major step occurred last March 2012 when the French Consulting and Investment Company & Associates²² officially announced the future distribution of the first Islamic life insurance in Metropolitan France²³. The Islamic products will be certified by a French Shariah board, the European Independent Committee of Islamic Finance, in the following months.

These innovations reveal the huge potential for Islamic finance in France and remain positive for the upcoming years.

²¹ Audit, Conformité Et Recherche en Finance Islamique <<http://www.acerfi.org/>> accessed 14 March 2012.

²² French Consulting and Investment Company & Associates <<http://www.cfcia-associes.com/epargne-assurance-finance-islamique.php>> accessed 14 March 2012.

²³ Marc Vignaud and Aziz Zemouri, "Après la viande, l'assurance-vie halal" (Le point, 7 March 2012) <http://www.lepoint.fr/economie/apres-la-viande-l-assurance-vie-halal-07-03-2012-1438799_28.php> accessed 14 March 2012.