

Islamic Law in the Jurisdiction of International Financial Centers: a Comparative Legal Analysis



Didikin Anton,

Doctor of Philosophy, PhD in Law,
Head of the Department, Leading Researcher of the Department
Legal Philosophy, Legal History and Legal Theory,
Institute of State and Law, Russian Academy of Sciences
E-mail: abdikin@bk.ru

Abstract. *The article analyzes the modern mechanisms and ways of adapting the Islamic law principles and norms to the regulation of financial relations. Taking into account the significance of fiqh as a legal doctrine that interprets religious prescriptions for law enforcement, the key features of the Islamic law institutions in the context of the Islamic economy model development are identified. The object of the comparative legal analysis in the article is the jurisdiction of international financial centers as territories with a special legal regime for conducting business. Its legal status is fixed in special legal acts, thus contributing to the formation of flexible instruments of legal regulation in view of the correlation with the norms of the national legal order. International financial centers are presented as an example of the formation of global legal institutions in Western countries as well as those in Southeast Asia and the Middle East. The author argues that Islamic finance — as a way of adapting Islamic law principles to the regulation of business activities — is a mandatory element of a legal environment for international financial centers.*

Keywords: *Islamic law, Islamic Finance, Islamic economy, jurisdiction, international financial center.*

Islamic law in the modern global legal order is a stable and dynamically developing legal system that uniquely combines religious and legal principles as well as the means and technologies of adaptation to modern global economic processes. Despite its long period of formation over several centuries and close connection to religion, the institutions of Islamic law are a way of implementing creative and business initiatives not only in the Muslim community, but also for their partners and compatriots in different countries of the world¹.

There is a widespread opinion in Russian legal science that the essence of Islamic law is an autonomous legal family of ancient traditions and a developed system of legal institutions, that implements the principles of *sharia* law in the system of national legislation with varying degrees of depth. The works of L.R. Syukiyainen cover the experience of implementing the principles of *sharia* in the legal systems of the Arab world [Syukiyainen, 2016, p. 207]. Meanwhile, Islamic law and its institutions in modern conditions are becoming a source and means in the development

of the Islamic economy, which is why, along with “Islamic law,” the terms “Islamic finance” and “Islamic finance” are actively used [Yandiev, 2017, p. 65-66].

From the structural point of view, the sources of Islamic law include both norms of a religious nature (contained in the Quran and Sunnah) and legal norms closely related to their interpretation in legal doctrine (*fiqh*)². The comprehensive influence of *sharia* in the Islamic economy is manifested in a special attitude to the conduct of trade and business activities, since money in Islam is only a measure of value and has no intrinsic worth of its own. Therefore, *sharia* allows contracts that do not involve charging interest (*ribah*, Quran, 2:275) [Guliev, 2002, p. 53-54] or transactions based on risk (*gharar*), both of which create ambiguity between the involved parties [Zhuravlev, 2017, p. 26-28]. The doctrine of Islamic law implies the secondary nature of economic relations in relation to the performance of religious duties; thus, commodity-money relations must only be a means to achieve religious goals and deviation from those goals is unacceptable. In this regard, certain business activities (e.g., the sale of alcohol, and weapons and furnishing funds for gambling)

¹ On the peculiarities of the operation of Islamic law norms and principles in modern states, see: Law and Religion in an interdisciplinary interpretation. The collective monograph / under the editorship of A.B. Didikin. Moscow, 2019. P. 350-357.

² Islamic Law, vol. 2. Questions of Economics and Public Relations. Moscow, 2017, p. 3.

are absolutely prohibited by Islamic law³. Other forms of entrepreneurship based on the principles of Islamic finance are permissible if the rules of *sharia* are observed.

The global influence of Islamic law in the modern economy is ensured by the activities of AAOIFI, an Islamic non-profit organization located in the Kingdom of Bahrain. The standards of this organization are the foundation for training specialists in the field of Islamic finance. They also affect the basics of accounting, auditing, and business ethics in various sectors of the Islamic economy⁴. AAOIFI was established in 1991 with the aim of harmonizing international practices of financial institutions in accordance with *sharia* law.

The standards of Islamic law presuppose the implementation of business activity and trade in the light of interpretations of the norms of *sharia fiqh* [Kalimullina, 2017, p. 123], among which a number of key principles are highlighted:

- A drive for efficiency (avoiding wasteful use of resources), equity, and *ihsan* (excellence) (Quran, 16:90) [Guliev, 2002, p. 339];
- The prohibition of *ribah* as any excessive or unreasonable compensation arising from profit from cash interest (hence, *sharia* recognizes only the time value of money as a real capital to achieve socially useful purposes);
- Avoidance of *gharar* (a high degree of risk and uncertainty arising from fraud), which is forbidden in Islam;
- The prohibition against misleading or exploiting a monopoly position in the market;
- The prohibition against the exchange of some debt obligations for others, except for the conclusion of a contract for the regular supply of the same product in a certain period of time⁵.

In addition to these general principles of trade, Islamic law has a practice of charity to the religious community, which allow for “income purification” (*haram*). Such donations include a mandatory religious duty to a designated recipient (*zakyat*) and recommended charitable donations to foundations or institutions (*waqf*)⁶.

As M. Damirli rightly notes, “the use of Islamic law today is no longer limited only to Muslim countries, where it is more or less an integral part of legal systems, but also covers Muslim communities outside the Islamic world as a result

of the emergence of a Muslim environment in Europe and other parts of the world” [Damirli, 2014, p.15]. One of the relevant vectors of research of Islamic law institutions is their wide distribution in the jurisdictions of international financial centers. Despite the fact that the discussion on the legal nature of international financial centers continues with regard to their recognition as a kind of autonomous mixed legal systems or as an element of the national legal order of specific states, we will focus on the reasons and conditions for adapting Islamic legal institutions to the structure of an international financial center.

The formation of legal means of ensuring financial activity on the basis of *sharia* rules in a particular financial center depends on the specifics of social conditions, geographical location, the degree of integration into the international division of labor, and the legislation already in force in the country. Thus, the Islamic banking system, established in Luxembourg in 1978, represents the first attempt to develop Islamic banking in the Western world [Mausen, 2018, p. 35-49]. In the UK, Islamic finance institutions appeared in the 1980s, when the first *murabaha* commodity transactions were concluded. Hong Kong’s initial attempt to develop the Islamic finance industry began in 2007, when acting Chief Executive D. Tsang Yam-Kuen mentioned in his keynote address the possibility of developing an Islamic financial market and an Islamic securities market (*sukuk*). The Legislative Council of Hong Kong has amended the Internal Revenue and Stamp Duty ordinances to provide a *sukuk* tax system similar to the bond issue⁷.

One of the most important factors for the introduction of Islamic finance in financial centers is the adaptation of national legislation and legal acts of the financial center to the norms established by *sharia*. For example, in order to create a favorable fiscal and regulatory framework for Islamic finance in the UK, a number of measures have been taken by the state over the past decade. These include the abolition of the double tax on Islamic mortgages and the extension of tax breaks on Islamic mortgages for both companies and individuals and the reform of the legal framework for recognizing *sukuk* income and payments, similar to interest payments, which makes London attractive as a financial center for issuing and *sukuk* trade⁸. Additionally, the

³ Ibid., p. 18.

⁴ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) // AAOIFI. URL: <https://aaoifi.com/?lang=en> (дата обращения: 20.04.2020).

⁵ Values and Principles of the Islamic Economy. Moscow, 2017, pp. 36-65.

⁶ Islamic Law, vol. 2. Questions of economics and Public relations, pp. 251-273.

⁷ HKSAR Government’s Sukuk Offering // Hong Kong Monetary Authority. URL: <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2017/02/20170222-3/> (reference date: 21.04.2020).

⁸ Global trends in Islamic finance and the UK market. 2017. P. 6. URL: <http://ethicalfinancehub.org/wp-content/uploads/2017/12/Global-trends-in-Islamic-finance-and-the-UK-market-2017.pdf> (reference date: 20.04.2020).

Financial Conduct Authority (FCA) ensures that Islamic finance complies with statutory objectives and principles, which facilitates the opening and support of Islamic banks to provide *fiqh*-compliant financial transactions.

In other European countries, the development of the Islamic finance industry is somewhat different. In particular, in Germany there are no special legislative acts on this issue, but the German market is allowed to recognize the activities of Islamic banks along with traditional banking structures⁹. In Switzerland, the basic principles of contract law have been extended to cover the activities of any financial institution. The concept of contract freedom in this case is similar to the principle of permissibility under Islamic law (when an activity is considered permissible (*halal*) if it is not *haram*) and includes both the freedom to determine the subject matter and terms of the contract, and to conclude a contract. Freedom of contract also implies the possibility to choose legal remedies in case of non-performance or violation of its terms, if such contractual norms or certain provisions do not contradict the mandatory norms of Swiss law. Freedom of form means that the contract must meet certain formal requirements only if it is expressly provided for by law or agreed by the parties; in other cases it is valid regardless of such compliance. With regard to international commercial contracts, the mandatory provisions on social protection of the weak party, which are characteristic of Swiss law, are not as relevant and apply only in exceptional cases. Thus, freedom of contract and form allow the subjects of law to act within the framework of Islamic finance quite freely, and restrictions are manifested only in cases that are directly regulated by Swiss law.

Luxembourg also lacks specific laws on Islamic financial products or services, and the existing legal framework has proven to be sufficiently flexible and innovative for the practical implementation of Islamic finance. All the provisions and requirements in force in Luxembourg relating to credit institutions also apply to Islamic banks, since no special treatment is provided for this type of institution. The relevant provisions of European law are largely implemented in the Law of 5 April 1993. "On the Financial Sector," as well as in the law of December 18, 2015 "On the Insolvency of Credit Institutions and Certain Investment Companies"¹⁰. In accordance with the

law, companies carry out banking activities after obtaining the permission of the Commission for Supervision of Financial Institutions. Islamic banks are also required to obtain such permission. As a general rule, Luxembourg banks (including Islamic ones) are classified as "universal banks," that is, authorized to carry out any activity in the field of the financial market. The Bank can provide services either through a branch or on a cross-border basis in any other country in the European Union.

The implementation of *sharia* norms and principles in the field of financial activity is inextricably linked with the emergence of Islamic banking as an interest-free banking business. The fundamental principles of Islamic banking are the separation of profit and loss, as well as the prohibition on the collection and payment of interest by creditors and investors. In addition, there is the concept of an "Islamic window," when products and services that comply with *sharia* are offered as part of the work of a traditional bank. Typically, an Islamic window is defined as a form of operating structure in a conventional bank with a knowledgeable, dedicated team that offers Islamic banking products and services. At the same time, the services are not limited to the Islamic religious community; any interested client who is ready to fully comply with the rules of Shariah in this area can use Islamic banking products.

It should be noted that since the return of Hong Kong to the jurisdiction of the People's Republic of China in 1997, the Hong Kong Monetary Authority (HKMA) has made no secret of its aspirations to develop the city as an Islamic financial center. Active participants in Islamic finance are Hong Leong Bank (Malaysia), which became the first Islamic bank in Hong Kong in 2008, and CIMB Islamic, which offers Shariah-compliant financial services through its strategic partner, Yinkou Bank in China¹¹. (International Islamic Bank for Investment and Development (IIBID), National Bank of Pakistan (NBP), Standard Chartered Islamic banking, The Islamic Bank of Asia Limited, DBS Bank, CIMB Islamic Bank, Bank Mandiri и BNI group)¹².

The first British Islamic bank, Al Barakara International, was opened in London in 1982.

Luxemburg // The Law reviews. URL: <https://thelawreviews.co.uk/edition/the-islamic-finance-and-markets-review-edition-4/1209532/luxemb> (reference date: 10.04.2020).

¹¹ HK banks on Islamic finance // China Daily Asia. URL: https://www.chinadailyasia.com/asiaweekly/2015-02/27/content_15232242.htm (reference date: 25.04.2020).

¹² List of Islamic Banks In Hong Kong // Global Banking & Finance Review. URL: <https://www.globalbankingandfinance.com/list-of-islamic-banks-in-hong-kong/> (reference date: 25.04.2020).

⁹ Casper M., Asma Ait Allali. Islamic Finance Made in Germany — A Case Study on Kuveyt Türk (KT Bank): Germany's First Islamic Bank. 2017. P. 7. URL: https://www.unimuenster.de/imperia/md/content/religion_und_moderne/preprints/crm_working_paper_15_casper_allali.pdf (reference date: 08.04.2020).

¹⁰ The Islamic Finance and Markets Review. Edition 4.

Over the past decades, a number of investment banks have appeared on the financial market with offers for their Middle Eastern clients in the form of products developed in accordance with the requirements of *sharia* law. In 2004, Al Rayan Bank, a commercial bank, was also established to provide banking services in accordance with *sharia* law to representatives of any nationality and/or religious belief. More than 80% of all current Al Rayan Bank depositors are not Muslim¹³. London is now actively positioned as a leading center for Islamic financial lending outside the Muslim world, with the assets of British institutions offering Islamic finance services totaling more than \$5 billion. In total, more than 20 banks in the UK offer Islamic financial services, 5 of which fully comply with the principles of *sharia* law.

The Swiss Financial Center also recognizes the growing demand for *sharia*-compliant financial products. Many Swiss banks offer *sharia*-compliant financial and investment products, as well as capital management services in connection with such products. Major Swiss banks are currently continuing to expand their operations in the Middle East. Swiss banks that provide financial services in accordance with *sharia* law, according to the analysis, include: Bank Sal. Oppenheim, Jr. & Cie (Switzerland) AG, SwissLux Selective Corporation Schweiz AG, Habib Bank AG Zurich, Shirkan Finance Ltd, Faisal Private Bank, Swiss Islamic Banking¹⁴.

Similarly, in Germany, KT Bank AG, located in Frankfurt am Main, is a subsidiary of the Turkish Islamic bank Kuveyt Tür, which has been active since 2004. In 2010, the bank entered the market and received a license from the Federal Agency for Financial Supervision (BaFin) for brokerage, deposit, and credit operations. Among the banks in Frankfurt am Main that carry out Islamic financing in accordance with *sharia* law are Commerzbank, which offers a wide range of interest-free products, such as *murabaha* deposits and *tawarruk* financing [Baidalet, 2014, pp. 37-38]. Deutsche Bank also provides *sharia*-compliant financial products. The Bank's financial services include the creation, management, and ongoing administration of special-purpose companies (SPVs) and a wide range of trust and agency services for debt financing and capital market operations.

¹³ The UK can be a world leader in Islamic finance // The Telegraph. URL: <https://www.telegraph.co.uk/business/business-reporter/uk-islamic-finance/> (reference date: 02.04.2020).

¹⁴ List of Islamic Banks In Switzerland // Global Banking & Finance Review. URL: <https://www.globalbankingandfinance.com/list-of-islamic-banks-in-switzerland/> (reference date: 11.04.2020).

The Central Bank of Luxembourg (BCL) became the first European central bank to join the Islamic Financial Services Council (IFSB)¹⁵. In 2013, it was announced that the first Islamic bank in the euro zone, called Eurisbank, was opened in Luxembourg, with the involvement of private investors from the Persian Gulf. The Bank is actively increasing its investment resources, taking advantage of the Luxembourg's favorable tax conditions.

There are a number of socio-economic reasons for the spread of the Islamic financial industry and Islamic law institutions in the jurisdictions of financial centers. Among them are the multiculturalism and tolerance of the London financial center population, which made it possible to adapt Islamic standards of doing business without excessive social or ethnic tension. In Hong Kong, a slightly different strategic goal was cited: to reduce the gap between the Islamic world and China, as well as other developing countries in Southeast Asia. This goal is typical for territories where the legal regime is aimed at integrating national companies and legal entities into international economic processes.

There is also another strategic approach based on the idea that without Islamic financing and the application of *sharia* rules, it is impossible to form the jurisdiction of an international financial center. For example, Australia has been seeking to expand *sharia*-compliant products in its own financial market for several years. In 2010, Minister of Commerce Simon Crean stated in one of his speeches that Islamic finance is a key element of the government's strategy to turn Australia into a financial center in the Asia-Pacific region¹⁶. Similarly, the Luxembourg Government is actively promoting the attraction of more Islamic funds to the country, as well as foreign investments from oil-rich countries in the Middle East and developing countries¹⁷. The Association of the Luxembourg Stock Industry and the Luxembourg for Finance Agency have prepared and published a number of materials containing comprehensive information on the legal framework and tax regime for a number of widely used Islamic financial institutions, as well as best-practices guides for foreign investors.

¹⁵ Ernst & Young S.A. The gateway for Islamic finance and the Middle East. 2016. P. 2. URL: <https://www.islamicfinance.com/wp-content/uploads/2016/06/Luxembourg-Islamic-Finance.pdf> (reference date: 17.04.2020).

¹⁶ Westpac to offer Islamic banking // The Sydney Morning Herald. URL: <https://www.smh.com.au/business/westpac-to-offer-islamic-banking-20100211-nv86.html> (reference date: 22.04.2020).

¹⁷ LFF Luxembourg for Finance. 2017. P. 11. URL: https://www.luxembourgforfinance.com/wp-content/uploads/2019/01/lff_brochure_islamic_finance.pdf (reference date: 15.04.2020).

The jurisdictions of international financial centers are largely similar, which is why Islamic finance, together with the institutions of English common law, are their characteristic feature. Over the past two decades, Islamic financial standards have been implemented in the financial centers of Dubai (UAE), Qatar, Singapore, Nur-Sultan (Kazakhstan), etc. However, the strictness of compliance with standards is also determined by the need to train qualified personnel. “The discipline of Islamic finance is undervalued,” says Jeroen Tap, Energy Contract Manager in the Benelux region. He also notes that knowledge of how transactions are structured to comply with *sharia* law was crucial to his work with Saudi Aramco executives¹⁸.

To train specialists in the field of Islamic finance, there are a number of Master’s programs in modern universities. Durham University Business School offers applicants two Master’s programs aimed at studying Islamic finance: “Master of Islamic Finance” and “Master of Islamic Finance and Management.” Both programs require one year of full-time study and include the opportunity for students to participate in international study trips, usually to Switzerland, as well as international conferences on Islamic economics and finance in cooperation with other leading international academic institutions¹⁹. Master’s degree programs in Islamic finance are also available at the University of Bolton, the University of Dundee, Al Maktoum College of Higher Education, and other educational institutions in the UK.

At the Geneva Business School (GBS), students are offered the opportunity to complete both Bachelor’s and Master’s degrees in Islamic Finance. After receiving their education, graduates can pursue a number of careers, including adviser to an Islamic bank, financial manager of Islamic banking, manager of banking relations, etc.²⁰

In 2006, the Institute of Islamic Banking and Finance (IFIBAF) was founded in Frankfurt am Main, which in a very short time managed to take the first place in Islamic banking and finance in the German-speaking region²¹. The Frankfurt School of Finance and Management also offers the opportunity to obtain a diploma in the direction

of “Certified Expert in Islamic Microfinance”²². In the Russian education system, unfortunately, the topics of Islamic finance and economics are new and poorly studied. The few available training courses and programs do not yet allow us to assess the level of global development of Islamic financial instruments in the legal systems of countries around the world.

In summation, we must note the relevance of adapting sharia religious standards in modern secular and religious legal systems. Despite the strict compliance with the regulations, sharia rules are widely used in business practice as well as the public life not only in Asia and the Middle East, but also in Europe, and the practice of their implementation in the jurisdiction of international financial centers contributes to the growth of capitalization of Islamic financial assets in the global economy.

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¹⁸ Demand rises for education in Islamic finance // Financial Times. URL: <https://www.ft.com/content/2fcf979a-96d2-11e6-a80e-bcd69f323a8b> (reference date: 22.04.2020).

¹⁹ Master of Science Programs in Islamic Finance // Masterstudies. URL: <https://www.masterstudies.com/MSc/Islamic-Finance/> (reference date: 15.04.2020).

²⁰ How is Islamic Finance different // Geneva Business School. URL: <https://gbsge.com/how-is-islamic-finance-different/> (reference date: 22.04.2020).

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Исламское право в юрисдикции международных финансовых центров: сравнительно-правовой анализ

Дидикин Антон Борисович,

доктор философских наук,

кандидат юридических наук,

и.о. заведующего сектором, ведущий научный сотрудник сектора философии права, истории и теории государства и права,

Институт государства и права РАН

E-mail: abdidikin@bk.ru

Аннотация. В статье анализируются современные механизмы и способы адаптации принципов и норм исламского права к регулированию финансовых отношений. С учетом значения фикха как правовой доктрины, интерпретирующей религиозные предписания к правоприменительной практике, выявляются ключевые черты институтов исламского права в контексте развития исламской модели экономики. В качестве объекта сравнительно-правового анализа в статье выступают юрисдикции международных финансовых центров как территорий с особым правовым режимом ведения предпринимательской деятельности, правовой статус которых закреплен в специальных правовых актах, что способствует формированию гибких инструментов правового регулирования ввиду соотношения с нормами национального правопорядка. Международные финансовые центры представлены в качестве примера формирования глобальных правовых институтов как в западных странах, так и странах Юго-Восточной Азии и Ближнего Востока. Автор аргументирует позицию, согласно которой исламские финансы как способ адаптации принципов исламского права к регулированию предпринимательской деятельности являются обязательным элементом правовой среды международных финансовых центров.

Ключевые слова: исламское право, исламские финансы, исламская экономика, юрисдикция, международный финансовый центр.

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